
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 25 August 2022 at 10.11am

(Day 30)

1 PRESIDENT NEAVE: Before we start, if I could just remind
2 everybody here present that there's a restricted
3 publication order in place in relation to our next witness,
4 and the order is placed on the door of the hearings room.

5
6 MS RHODES: Thank you, President.

7
8 Our first witness this morning is Fred. Fred is
9 appearing from Risdon Prison and he finds himself - the
10 circumstances of his appearance today is due to the
11 mandatory requirements of where he is being housed and no
12 negative inference should be drawn from his appearance
13 today.

14
15 If Fred could be sworn in through affirmation, please.

16
17 <FRED, affirmed: [10.12am]

18
19 <EXAMINATION BY MS RHODES:

20
21 MS RHODES: Q. Fred's not your real name; correct?

22 A. That's right, yes.

23
24 Q. But, Fred, you've prepared a statement for the purpose
25 of this Commission that you signed yesterday?

26 A. Yes.

27
28 Q. Have you had an opportunity to read through that
29 statement?

30 A. Yes.

31
32 Q. And the contents of that statement are true and
33 correct?

34 A. Yes.

35
36 Q. Thank you. Fred, could you please explain to the
37 Commission what your childhood was like before you went to
38 Ashley?

39 A. I'd say it was pretty turbulent. My parents split up
40 when I was about ■ and I went between either parent. My
41 father was an extremely violent person, he assaulted myself
42 and my siblings, and we lived under a pretty strict regime
43 under him.

44
45 When I was about ■ I moved back to Tasmania to live
46 with my mother and grandparents, and subsequently not long
47 after that I moved out of home due to my stepfather and me

1 not, you know, seeing eye-to-eye, there was a family
2 violence order put in place.

3
4 Q. And that was when you were about [REDACTED]; is that correct?

5 A. Yeah, I'd just finished high school.

6
7 Q. When you say you moved out of home, that's more that
8 you were homeless at that point, you had no --

9 A. Yeah, I went and stayed - I stayed on the streets for
10 quite a few months and then did some time in the shelters.
11 They managed to get me a Salvation Army house for a little
12 while, then got kicked out of that, and yeah, moved to
13 Hobart.

14
15 Q. How did you find yourself at Ashley the first time?
16 What were the circumstances leading up to that first
17 admission?

18 A. So, I had been implicated in stealing a car with my
19 then partner. I hadn't stolen the car, I was just removing
20 it from our property when the police detained me. I then
21 stated a false name and address and was charged under that
22 false name, which then led to the charges of pervert the
23 course of justice being put on me when they found out who I
24 was. I then told the magistrate that I didn't have an
25 address for bail and that I'll - and to send me to Ashley.

26
27 Q. So you applied for bail but you didn't have an address
28 to go to, so the magistrate remanded you to Ashley?

29 A. Yes.

30
31 Q. So, you were on remand at that time. How long were
32 you in there for remand?

33 A. I believe about two months, maybe three.

34
35 Q. You say in your statement you then applied for bail
36 again and received bail?

37 A. Yep.

38
39 Q. Before then being sentenced for the offences and going
40 back to Ashley a second time to serve your sentence; is
41 that correct?

42 A. Yep.

43
44 Q. So, the first time that you were admitted to Ashley on
45 remand was when you were about 17; is that correct?

46 A. Yeah, I believe so.
47

1 Q. Can you explain to the Commission, what was your
2 experience when you were first admitted; what was the first
3 step that you went through when you were admitted?

4 A. Strip-searching.

5

6 Q. And, can you explain what happened in that
7 strip-search?

8 A. Well, I believe they were under the influence that I
9 had contraband, and I was asked to squat and cough.
10 Stripped naked, asked to squat and cough, asked to spread
11 my arse cheeks apart; that was on the very first time. I
12 went through other strip-searches that were a lot worse
13 than that; one where I was held down and had fingers run
14 through my arse crack and underneath my genitals.

15

16 Q. How did these experiences make you feel at the time?

17 A. You feel very belittled. You know, you've got three
18 or four grown men on top of you, their knees on your back,
19 on your head and your neck, and they're taking - if you've
20 not taken your clothes off, they'll take them off for you;
21 it's - yeah, it's yuck, it's harrowing: I hated it.

22

23 Q. When you were in Ashley you were placed in the
24 Franklin Unit; is that correct?

25 A. Yeah.

26

27 Q. How would you describe the Franklin Unit?

28 A. We used to call it "the gladiator pit". There's
29 fights in there every day.

30

31 Q. Sorry, I think I talked over you; could you please
32 repeat your answer, I apologise?

33 A. We used to call it "the gladiator pit". Yeah, there
34 was always fights in there, (indistinct words) --

35

36 Q. And, when you say there was fights, who were the
37 fights between?

38 A. Inmates. Some staff versus inmates depending on who
39 it was, never my experience; it was mainly inmate versus
40 inmate, or detainee versus detainee, sorry.

41

42 Q. Were you ever assaulted whilst at Ashley?

43 A. Yes, several times. Yeah, several times.

44

45 Q. Are you able to give some detail as to what happened
46 during those assaults for you?

47 A. One occurred before I was moved to Franklin in the

1 Huon Unit, and that one involved three other inmates in the
2 TV room where there's no cameras; they pulled my jumper
3 over my head and hit me with crib boards and table tennis
4 bats. I ran out of the room eventually and one of the
5 female officers stopped those boys pursuing me. I think
6 the worst couple were, one in the gym where officers just
7 stood by and watched me get beaten up because I kicked a
8 ball and it had hit someone in the face.

9
10 And another one in the Franklin Unit. I was on the
11 phone and another detainee believed I was on the phone to
12 his girlfriend, and he started attacking me. And, the
13 phones are located right in front of the officers' office,
14 and the officers there were clearly watching these boys
15 kick me and punch me, bash me, and then they came out and
16 locked me down and those other boys just went on about
17 their days.

18
19 Q. With your experience there, was there any time that a
20 guard intervened to help you or stop the assaults on you?

21 A. I believe there was one time in the Huon Unit, I
22 can't - the officer stopped the boys from pursuing me, but
23 yeah, in my experience, especially in the Franklin Unit,
24 they waited till the fight was over or they waited until
25 they had more staff members there before they stopped a
26 fight.

27
28 Q. You say in your statement, at paragraph 12, that the
29 staff would encourage and provoke fights between the
30 detainees and that it was like sport for them; is that
31 correct?

32 A. Yeah. So, on several occasions I noticed comments
33 were made by staff members about other, "Oh, he said this"
34 or "this detainee said this about ya", and that would cause
35 arguments within the unit and therefore fights, and you
36 felt like they were just doing that for sport just to
37 watch.

38
39 Q. You said that on one occasion you were put in lockdown
40 as the victim of an assault; was that the only occasion
41 that you were placed in lockdown after being assaulted?

42 A. No, it was - it was pretty normal to be put into a
43 lockdown. Usually, in most cases it would be both offender
44 and victim were locked down; in several of my cases it was
45 only me that was locked down as the victim; I was told this
46 was because I was an annoyance to the unit.

1 Q. So, in your view it was a punishment for --

2 A. Yep.

3

4 Q. Are you able to explain to the Commission what your
5 experience was in lockdown, what it was like?

6 A. 24-hours in your cell. Sometimes they'd put music
7 through your intercom. Most of the time you just sat in
8 there, no TV, no anything, you'd sit there twiddling your
9 thumbs; I learned to be a very patient person.

10

11 Q. You say that after one of these assaults you did make
12 a complaint about the inaction of one of the guards; could
13 you explain the process of making that complaint and what
14 the outcome of that complaint was?

15 A. So, I wrote down my experience on a piece of paper and
16 put it in an envelope with - I believe I was told to put
17 "complaints" on it - and slipped it under my door; it was
18 picked up by passing officers, like, as all mail would go
19 out, and I never heard anything. I put two complaints in
20 in my time at Ashley and I never heard anything about
21 either of them.

22

23 Q. Were you aware if the complaint ever was physically
24 given to anyone who could do anything?

25 A. Once I put it out under my door it was - that was the
26 last I saw of it, the last I heard of it. I mean, I have -
27 you know, there have been instances I have put in
28 complaints, and you hear that, "Yeah, the incident happened
29 but it was embellished or exaggerated by the victim or the
30 complainant".

31

32 Q. After you made that complaint about the guard, you say
33 in your statement that you were then shipped off to Risdon.
34 Do you believe that there's a connection between making
35 that complaint and the move?

36 A. I believe it was all around - I was told it was all
37 around my behaviour, and I believe the fact that I will
38 speak out is part of the reasons that they decided to move
39 me; in fact, I was 18, the fact that they were having a
40 very hard time housing me. I think it always came into
41 factors - I was basically told, "You go and have your 18th
42 birthday".

43

44 Q. And, in addition to what you experienced yourself at
45 Ashley, I understand that you also witnessed quite a lot of
46 brutality occurring to other inmates.

47 A. Yep.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. And you do give a detailed account, in your statement, about a very violent rape between detainees; is that correct?

A. Yep.

Q. And so, in addition to witnessing sexual violence, you also witnessed quite a lot of physical violence; is that correct?

A. Yeah. Yeah, I saw people get, you know, jumped on by three or four officers and kneed in the head, you know, bashed their head in the floor. I seen a female detainee dragged from the shower naked by her hair and then placed on the ground and cuffed and - but I saw so much stuff that; like, you don't even see some of it here in Risdon.

Q. You give an account in your statement also of an episode where boys tried to escape Ashley.

A. Yeah.

Q. And you weren't part of that group who were trying to escape, but what happened to you as a result of those boys trying to escape?

A. Because I was a known associate of these boys and we often, you know, did education groups and stuff together; and that day we were in the gym together and I was basically interrogated: handcuffed to a chair and asked question after question, like something out of the movies really. The less I said, the angrier they got, you know, "Where are they? Where have they gone? What are they doing?" And this was by Ashley staff, not even police.

Q. You also give an account of a masseuse who was coming to Ashley. Could you explain to the Commission why a masseuse was coming and why you were there, and then what happened in that time?

A. So, I believe it was the type of, like, therapeutic, meditation, massage, you know, those types of things. In some ways it did, I think, help. I don't want to get this lady in trouble because she was very nice, but yeah, it sometimes felt very sexual, and I don't know if that's just, I'm a young boy - at the time I was a young boy getting massaged. But yeah, when you're on the massage table, you had your elbows out and you often felt her crotch on your elbow, yeah. There were stories of other people that were having sex with her, but you hear that many stories in there you don't know what to believe. It

1 was actually possible to have sex with female detainees in
2 Ashley: I know that for a fact.

3
4 Q. And, what made it possible?

5 A. Just lack of staff awareness, lack of cameras being
6 around. People were just put in positions they shouldn't
7 have been put into, you know. We had these groups for
8 education, and they were mixed groups and, you know, some
9 boys would distract while, you know - I was in there with
10 my partner at the time, so we were often, you know, in
11 trouble for kissing in the back of the classroom or stuff
12 like that.

13
14 Q. In your statement you also describe the impacts of
15 what you saw and what occurred to you. Could you explain
16 to the Commission what that impact has been for you?

17 A. Oh, I suffer from pretty bad, really bad PTSD. I've
18 got crazy flashbacks sometimes. I freeze in certain
19 situations and don't know what to do, panic, I have panic
20 attacks. You know, it left me unable to trust anyone in a
21 place of authority: prison guard, police officer, you know,
22 and that's had implications throughout my life where I've
23 panicked and, you know, lied or done the wrong thing
24 because I was fearful of what they'd do to me.

25
26 Q. I understand that in preparation for today you made
27 some notes that you wish to make comments on for the
28 Commission because they're not currently contained in your
29 statement.

30 A. Yep.

31
32 Q. I now give you the opportunity to tell the Commission
33 what you would like them to hear.

34 A. Yep, thank you very much. I just want to give some
35 reference to what it was like resisting and Ashley staff
36 members. On the news on Tuesday night I saw police in
37 America assault a person and it reminded me of those
38 events, you know, the way they jump on top of you, knee you
39 in the head. I'd like for you to find, just close this
40 place down and start again, because it's not - it's
41 systemic, it's grown in that environment. You won't ever
42 get rid of it by putting in new staff members or changing
43 things: tear the place down and start again, the memories
44 are too - just appalling.

45
46 All the detention centres in Tasmania, in my opinion,
47 lack any form of rehabilitation and are punitive. Tasmania

1 has the highest rate of recidivism in Australia and I have
2 no doubt it was due to Ashley and the way we were treated
3 as kids. Every single detainee I met in Ashley I now know
4 in Risdon. Yeah, that's about all. Shut it all down, it's
5 culture.

6
7 MS RHODES: Thank you very much, Fred. That completes my
8 questions, if there's anything from the Commissioners?

9
10 COMMISSIONER BROMFIELD: I don't have any further
11 questions, but I wanted to thank you for your evidence.
12 A. Yeah, I'd also like to thank you guys for giving me
13 the opportunity to, you know, talk about this stuff. I
14 also want to thank my partner immensely; she's the one that
15 gave me the courage to actually make the phone call and
16 speak about this, you know, because I'd been putting this
17 off for years and it's something that affects me greatly as
18 an adult, you know, it affects my relationships, and she
19 gave me the courage to come forward and do this, so I thank
20 her immensely.

21
22 PRESIDENT NEAVE: Thank you very much, Fred, and we're
23 sorry to hear about your experiences as a child and what's
24 happened to you since, so thank you very much.
25 A. Yep, thank you.

26
27 MS RHODES: Thank you. Thank you, Fred, we'll now
28 terminate the link.
29 A. Not a problem, thank you.

30
31 MS RHODES: Thank you, Commissioners. If I could kindly
32 ask you to stand down for a short time, there's just a few
33 issues that need to be addressed before our next witness
34 can give evidence.

35
36 PRESIDENT NEAVE: Thank you.

37
38 **SHORT ADJOURNMENT**

39
40 MS NORTON: Commissioners, our next witness is Jacqui
41 Allen. Before Ms Allen is given the affirmation I just
42 wanted to explain briefly for the benefit of the
43 transcript and the people watching today that at an
44 appropriate time during Ms Allen's evidence the Commission
45 will make an order that a brief portion of her evidence be
46 given during a closed hearing at which only specified
47 people will be able to be present.

1
2 I explain that just so that those listening today will
3 understand that there may be points in Ms Allen's evidence
4 in the public session where she averts to providing further
5 information in private session.
6

7 If the affirmation could be administered, please
8

9 <JACQUELINE ROSE ALLEN, affirmed: [11.15am]

10
11 <EXAMINATION BY MS NORTON:
12

13 MS NORTON: Q. Ms Allen, could you state your name,
14 professional address and occupation, please?

15 A. Jacqueline Rose Allen, care of Kirksway Place, 21
16 Kirksway Place, and I'm currently the Acting Executive
17 Director of People & Culture for Communities Tasmania.
18

19 Q. And your previous role, as I understand it, or your
20 immediately prior role with the Department of Communities
21 was as Assistant Director, Safety, Wellbeing and Industrial
22 Relations; is that correct?

23 A. Yes, it was.
24

25 Q. Thank you. And can I ask you, at what point in time,
26 having regard to the various roles that you've had - sorry,
27 withdraw that. You commenced working at the Department of
28 Communities in July 2020; is that correct?

29 A. Yes, 6 July 2020.
30

31 Q. And at what point during your employment with the
32 Department of Communities did you begin to have involvement
33 in the department's response to allegations of child sexual
34 abuse against employees at Ashley Youth Detention Centre?

35 A. I'd say probably by about August-September of 2020.
36

37 Q. Thank you. And so, the evidence that you'll give
38 today insofar as it relates to the period of
39 August-September 2020 is based on your personal experience
40 and any evidence you give relating to the prior point in
41 time is based on enquiries you've made; is that accurate?

42 A. That's correct.
43

44 Q. Thank you. You've provided two statements to the
45 Commission: an initial statement in response to a request
46 from the Commission, that statement is 426 paragraphs long
47 and has a series of attachments; is that correct?

- 1 A. That's correct.
2
- 3 Q. And then you've also provided a supplementary
4 statement seven paragraphs in length?
5 A. That's correct.
6
- 7 Q. Have you recently reviewed those statements?
8 A. I have.
9
- 10 Q. And are they true and correct to the best of your
11 knowledge and belief?
12 A. They are.
13
- 14 Q. Thank you. Can I ask you a bit about the work of the
15 People & Culture division of the department, which is the
16 division that you work within. I mentioned before your
17 previous role in relation to Safety, Wellbeing and
18 Industrial Relations; am I right to understand that in that
19 context the reference to "Safety" was a reference to
20 employee safety as opposed to child safety?
21 A. That's correct.
22
- 23 Q. You say in your statement, at paragraph 201, that the
24 safety of residents at Ashley Youth Detention Centre sits
25 with centre management; is that accurate?
26 A. That is correct.
27
- 28 Q. I understand that that would be the case on a
29 day-by-day basis in terms of the operations of the centre.
30 Does it remain the case that it is centre management that
31 are responsible primary or solely for child safety in
32 circumstances where allegations of child sexual abuse are
33 made in relation to employees at the centre?
34 A. That's correct.
35
- 36 Q. So, at all times centre management has, would you say,
37 the primary or sole responsibility?
38 A. If you include, I guess, going from the Secretary to
39 the Dep Sec, including when you say Ashley management, yes.
40
- 41 Q. So the chain of command is from the Centre Manager?
42 A. To the Director of Youth Justice, to the Deputy
43 Secretary of Children, Youth and Families to the Secretary.
44
- 45 Q. Thank you, and so, they are the people who, in your
46 understanding, bear responsibility for child safety,
47 including in circumstances where allegations in relation to

1 child safety are made against Ashley employees?

2 A. That's my understanding.

3

4 Q. And you sit outside that chain of command?

5 A. Yes.

6

7 Q. And so, in that context - we'll come in a bit more
8 detail later to situations where allegations are made
9 against employees but they haven't yet been stood down, and
10 you refer in a number of points in your statement to
11 employees being put on alternate duties before they can be
12 stood down. Who makes the decision about when to put
13 someone on alternate duties and what alternate duties to
14 put them on?

15 A. So, usually that would be a Case Conference, including
16 the Deputy Secretary of Children, Youth and Families,
17 Deputy Secretary of Corporate Services, People & Culture.
18 So, it was the Director of People & Culture, the Assistant
19 Director of Safety and Wellbeing and Workplace Relations,
20 the Director of Youth Services.

21

22 Q. And so, in your current role - I think you just
23 referred to the Director of People & Culture as being
24 somebody who would be involved in those Case Conference
25 processes. Does that mean that, if fresh allegations were
26 to be made tomorrow in relation to an Ashley employee, is
27 that a Case Conference that you would be involved in in
28 your current role?

29 A. Yes.

30

31 Q. Have you been involved in those Case Conferences in
32 the past?

33 A. Yes.

34

35 Q. What are the sorts of considerations that are taken
36 into account at those meetings about when to put someone on
37 alternate duties and what might be appropriate alternate
38 duties?

39 A. It's really difficult, I guess you have to look at a
40 matter on a case-by-case basis and the information that you
41 might have that's come into you at that particular point in
42 time. So, it could be looking at the level of particulars
43 that you have in those allegations, whether I guess in some
44 matters we've had there might be spelling differences or
45 even a completely different or quite a different name and
46 you have to go and then cross-check information, so there's
47 a whole range of, I guess, factors that you'd look at as

1 part of those initial considerations.

2
3 Q. So, can I ask you this: let's assume there's no
4 ambiguity about the subject of the allegations, you know
5 precisely who the allegations are in relation to, and let's
6 say it's somebody that's part of the Operations Team at
7 Ashley who has day-to-day contact with residents in the
8 ordinary course: what sort of factors would be taken into
9 account or what would be relevant to deciding whether to
10 put that person on alternate duties to address the risk
11 they might pose to child safety?

12 A. So, the number one factor that the department does
13 look at is the safety of children in looking at matters;
14 other than that we usually follow the matters outlined in
15 the Integrity Commission's Guide to Managing Misconduct,
16 but they don't have the safety of children as their
17 paramount concern. So, if there is a matter where there is
18 an allegation of child sexual abuse and, as you said,
19 they're an operational employee, more than likely the
20 matter would be progressed into the Secretary to form that
21 reason to believe that a breach of the Code may have
22 occurred.

23
24 Q. And, in relation to the alternate duties, the
25 Commission has heard evidence in relation to a number of
26 employees at Ashley, and including an employee we're
27 referring to as Lester, who were put on alternate duties at
28 the centre, so they remained working at the centre but they
29 were taken out of a detainee-facing operations role, if I
30 can put it that way. How is it that in those Case
31 Conferences the group satisfies itself that alternate
32 duties of that kind, noting that the employee is still
33 physically present at Ashley, that that's a sufficient
34 safeguard to ensure the safety of detainees?

35 A. I think Lester is a difficult one to use as an
36 example, but I'll speak to that one, potentially. My
37 understanding is that Lester was in a non-resident-facing
38 role from approximately 2000, so I don't think there was a
39 decision specifically to move him into alternative duties
40 because of allegations of child sexual abuse.

41
42 Q. But, in any event, can I just ask you there: even
43 though perhaps it wasn't the allegations that prompted that
44 move to alternate duties, presumably at a Case Conference
45 there was discussion about whether remaining on those
46 alternate duties while a preliminary investigation was
47 conducted was an appropriate way to manage the risk that

1 Lester posed to detainees; is that fair?
2 A. Yes.
3
4 Q. Were you at the Case Conference in relation to that
5 matter?
6 A. Yes. So, Case Conferences in relation to Lester would
7 have occurred in late September, from memory.
8
9 Q. Can you recall whether you personally were satisfied
10 with the decision to keep him on alternate duties at the
11 centre as an appropriate risk mitigation measure?
12 A. Personally?
13
14 Q. Personally.
15 A. No.
16
17 Q. And what were your concerns?
18 A. I think Lester's, again, a difficult one to use as an
19 example. If there are allegations of child sexual abuse
20 then I don't think there are circumstances where personally
21 I would be happy leaving someone on site. My understanding
22 of Lester, however, is that the allegations that were made
23 in January were not allegations of child sexual abuse. My
24 understanding is, the allegations were inappropriate
25 behaviour.
26
27 Q. Sorry, I don't want to cut you off.
28 A. That's okay.
29
30 Q. You've drawn a distinction there between allegations
31 of child sexual abuse and allegations of inappropriate
32 behaviour. The inappropriate behaviour was with respect to
33 detainees at the centre?
34 A. It was.
35
36 Q. And so, would you agree that, even if the allegation
37 doesn't rise to the level of child sexual abuse but is
38 perhaps inappropriate behaviour, it's still conduct that
39 could raise a risk for children in detention?
40 A. Yes.
41
42 Q. Thank you. Continue if there was anything else you
43 wanted to say about your concerns in relation to that
44 management decision.
45 A. No, I think that's okay.
46
47 PRESIDENT NEAVE: Can I just have one question there?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MS NORTON: Yes.

PRESIDENT NEAVE: Q. And I'm not going to pursue that particular case. What is the process of ensuring that that decision that somebody be placed on alternative duties works on the ground?

A. Ashley management.

Q. Is that left to Ashley management as I understand it?

A. It is left to Ashley management.

Q. So the case management process is to decide whether alternative duties are appropriate and then it's left to Ashley management to work out how that's actually done administratively; is that a fair analysis?

A. Yes. So, normally if - and I'm just sort of struggling thinking back to the last few matters. In more situations than not it would be a discussion where Ashley management would come with the options available in terms of what may those alternative duties look like whilst the preliminary assessment is ongoing, and then it would be Ashley management responsibility, I guess, to ensure the adherence to those alternative duties. So, People & Culture have no permanent presence at Ashley and no line management.

PRESIDENT NEAVE: Right, thank you.

MS NORTON: Q. The concerns that you had personally in relation to Lester remaining at the centre once the allegations of inappropriate behaviour were made in January 2020 - or in consideration, I should say, of those allegations, do you recall whether you raised those concerns at the Case Conference?

A. So, the allegations in relation to Lester - so, they were made in January and I've started in July.

Q. Yes.

A. And my understanding at the time was that the allegation made referenced previous action that was taken. So, the department's actions included looking for records as to whether or not that previous action was taken, because the evidence that had been provided indicated that there had been action taken and there was an issue of potentially double jeopardy insofar as, if someone's already gone through a process, what was that process and

1 looking to ascertain that.

2

3 So, when Lester came to my attention it was not
4 actually as part of a conduct matter. Lester came to my
5 attention through a grievance as Lester actually lodged a
6 grievance against Alysha.

7

8 Q. I see.

9 A. And how that came to my attention was then to look at,
10 well, is there any substance to Lester's grievance that he
11 has lodged. So, I think he lodged that on or about
12 28 July; beginning of August that came to my attention and
13 it was - the focus was then actually looking at, well, the
14 grievance. So, my understanding, I guess then of the
15 potential misconduct was a bit further down the track, and
16 around September there became knowledge of abuse in state
17 care applications, and that's probably from my perspective
18 and from a personal opinion when the real concern started
19 to come to the forefront.

20

21 Q. And so, when the abuse in state care applications came
22 to the attention of the department, was there a revisiting
23 of the appropriateness of Lester continuing to be at the
24 centre on alternate duties?

25

A. Yes.

26

27 Q. And, did you in the context of that Case Conference
28 raise concerns that you had about him remaining at the
29 centre?

30

31 A. Looking, and going from memory as to the Case
32 Conferencing, they would have been quite simultaneous or
33 quite close together in terms of the Case Conference, what
34 are the steps we need to do and the suspensions occurring.
35 So, the actual abuse in state care applications, we knew of
36 the existence and the nature of the allegations, but we
37 didn't actually have the applications until the actual date
38 of suspension occurred, and it was actually - so we knew
39 they existed, we knew he was named, but we hadn't actually
40 seen those applications themselves and the information, the
41 full information that they contained, but there was enough
42 to know that, I believe there were four abuse in state care
43 applications which named Lester, combined with then the
44 statement from --

44

45 Q. Ira?

46

A. -- Ira that, I guess, was the basis of the next steps
47 that were then taken.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. So I suppose what I'm trying to understand is whether there was consideration afresh as 2020 moved on and the department's understanding of the allegations against Lester increased and the allegations became increasingly concerning in terms of potential child safety risk. Do you recall formal consideration being given at a Case Conference to whether it remained appropriate for Lester to be at the centre?

A. I don't recall specifically, but I do recall that the timeframes were very close together. So, from memory, I think Ira signed a statement on or about 6 November, and the paperwork was prepared that weekend.

Q. I see.

A. And I personally drove up to Ashley first thing on the Monday morning for the suspensions to occur.

Q. Is it your evidence then that it was only when that statement was taken from Ira that the department really understood the gravity of the allegations that had been made by Ira in relation to Lester?

A. I believe so. So, there had been previous attempts to, I guess, obtain that evidence and that was really the first opportunity that that statement was - or the statement was signed.

Q. I want to ask you a question about the statement, but before I do: the Case Conferences you've referred to, are minutes kept of those meetings?

A. Yes, they are, yes.

Q. Who's responsible for keeping the minutes?

A. That responsibility did change throughout the progression, I guess, of that group. We've had a lot of staff turnover within Communities Tasmania. So, originally it was the community liaison officer, from memory; then I believe Children, Youth and Families; People & Culture did also over a period of time keep responsibility for keeping the minutes.

Q. I see. It moved around?

A. It did.

Q. Is it your understanding that, to the extent that alternate duties decisions were made, considered, revisited, whether in relation to Lester or any other

1 employees who were the subject of child sexual abuse
2 allegations, that those discussions ought be referred to in
3 the minutes?

4 A. Again, trying to recall the minutes. Sorry, can you
5 repeat that one?
6

7 Q. Yes, of course. You said that there were discussions
8 - I'm asking you at a general level, not specifically in
9 relation to Lester. Was it at these Case Conferences that
10 the various members, senior members of the department that
11 you've referred to might discuss whether or not a person
12 should be put on alternate duties while a preliminary
13 investigation was conducted in circumstances where child
14 sexual abuse allegations have been made, and my question
15 is, if those matters were discussed at these Case
16 Conferences, would you expect the minutes to refer to those
17 discussions?

18 A. Yes.
19

20 Q. Can I go briefly to the statement that you took from
21 Ira. As I understand it, you personally took that
22 statement?

23 A. I did.
24

25 Q. You've referred in your evidence just now to that
26 really being the point in time, that is, the taking of the
27 statement, as being the point in time when you understood
28 the true gravity of the allegations that were being made.
29 Would you accept that, even based on the allegations made
30 by Ira back in January 2020, that is, of inappropriate
31 conduct by Lester in relation to detainees, that that's
32 conduct that might constitute criminal offending?

33 A. Based on the information from Ira, in that, my
34 understanding is that he saw Lester standing behind a
35 naked --
36

37 Q. I don't need you to go to the detail. I am aware from
38 your statement what the detail is; I'm really just asking
39 for your conclusion, and it's a personal conclusion.
40 Perhaps if I can withdraw that question and ask it this
41 way.
42

43 When you went to take the statement
44 in September - September of 2020, or November?

45 A. I first met with Ira, I believe, in September. Ira,
46 yeah.
47

1 Q. When you went to meet with him at that point, did you
2 have any sense that the allegations that he was making
3 against Lester may have involved criminal offending?

4 A. No.

5

6 Q. And, had you had that sense, would you have considered
7 it appropriate that you as a person from People & Culture
8 take a statement from him as opposed to the police, for
9 example?

10 A. No. So, it wouldn't have been the role of People
11 & Culture if there was a criminal matter at that point, I
12 would not expect to take a statement.

13

14 Q. And at what point in the statement process: I think
15 you said you first met with him in September and the
16 statement was finalised in November; at what point in the
17 intervening period did you come to understand that there
18 was potential criminal offending?

19 A. It was still, um - sorry, I'm just trying --

20

21 Q. Take your time.

22 A. So, the information provided by Ira was still that he
23 did not witness child sexual abuse.

24

25 Q. Yes.

26 A. And indeed, he has been very upset to hear that it's
27 been equated to child sexual abuse. So, in meeting him he
28 was adamant that he saw something that didn't feel right
29 and reported it to management at the time and that action
30 was taken. So, it's difficult - it came with the addition
31 of the knowledge that abuse in state care applications
32 existed naming Lester. I think it's quite difficult to
33 probably look at it in isolation.

34

35 Q. I understand. I'd like to ask you some questions
36 about the Department of Communities and in particular your
37 team's capacity at the moment. You talk in your statement
38 in some detail about the various out of the ordinary
39 challenges that you're facing at the moment. There are
40 probably too many for me to list now, but they include in
41 addition to your own ordinary workload dealing with
42 responsibilities to this Commission, dealing with ongoing
43 investigations into historical allegations against current
44 employees, and also the transition to the new Department of
45 Communities is going to shortly be dissolved; you also
46 refer to a high degree of turnover since the announcement
47 of that transition. Is that a fair summary of the key

1 stressors that you and your team are under presently?

2 A. That's a good summary; probably more succinctly than I
3 put in my statement. Yes, since the transition we have
4 lost, I think, within People & Culture a lot of staff which
5 has been very disappointing. It really felt like we were
6 almost getting somewhere in terms of progressing matters,
7 progressing whole-of-agency initiatives strategy, and then
8 the announcement was made, and we've lost countless staff,
9 I guess I think 13 or 14, or down to (m), I think it was in
10 my statement of staff, and these have been right from the
11 top.

12
13 So, the Director of People & Culture to two of the
14 managers, Conduct and Investigation Consultant, graduate.
15 There's been a high degree of staff turnover and our
16 workload has probably only increased. We've got to manage
17 the transition or assist with the transition of Communities
18 going to five different ways and the people going five
19 different ways, so the workload has been extreme.

20
21 Q. So, you've got a big workload, you've got fewer
22 employees than you should have even in ordinary times; to
23 what extent has that had an impact on the ability of your
24 team to progress investigations into allegations of child
25 sexual abuse against Ashley employees?

26 A. It's definitely had an impact in terms of delays. The
27 team are doing an amazing job and I could not be prouder of
28 them. I work with some amazing people.

29
30 Q. Take a moment. There's some tissues there if you need
31 them.

32 A. I always get teary if you ask me about my team.
33 They're out there today too.

34
35 PRESIDENT NEAVE: Would you like to take a break?

36 A. I'm okay.

37
38 PRESIDENT NEAVE: Are you right? Good. Thank you.

39
40 COMMISSIONER BROMFIELD: Take a breath. I think you want
41 to tell us something about your team, and I want you to
42 work through it and make sure you say what you want to say
43 here.

44
45 MS NORTON: Q. Tears are okay.

46 A. Tears are okay. It's just what I didn't want to do.
47 Right from the top down I work with some amazing people,

1 but the People & Culture team are especially amazing. They
2 have worked weekends, worked nights, to lift to the demands
3 that are being put on them at the moment, and for them to
4 know too that we don't get to go to work with each other
5 day in, day out, and we were building something that was
6 quite amazing, so it is - it's upsetting for me personally.
7

8 The people that you recruit: I started that team and I
9 think I had five people in the team and it grew at one
10 stage to 17 direct reports, and it's just really
11 disappointing that there was a lot of really good work
12 going on, work that I was astounded with. I had never sort
13 of experienced that even within the State Service, and it
14 would have had some really amazing impacts on people, and I
15 think it had amazing impacts on the frontline service
16 delivery for Communities as a whole, for Child Safety and
17 for Ashley, and it is a real big disappointment of mine
18 that we haven't been able to deliver on those.
19

20 Q. That's understandable and it certainly comes through
21 in your statement that there was work that was going on
22 that you felt positive about and that has been halted. I'm
23 not going to put you in a position when I ask you to name
24 all the people who, you know, you have a particularly good
25 relationship with, but you did say from the top down you
26 worked with some really great people. If you just think of
27 the people above you, it's a smaller pool than the people
28 below you; are there any names in particular, any people in
29 the executive that you have a particularly strong working
30 relationship with and who you had in mind when you made a
31 statement?

32 A. I would say I've got a very fortunate - you probably
33 see most of them out there today. I've had amazing support
34 from the Secretary, from my direct Deputy Secretaries, both
35 my current and former.
36

37 Q. So that's Mr Pervan, the Secretary?

38 A. Mr Pervan.
39

40 Q. And you're current and former?

41 A. Kathy Baker, Anita Yan, Mandy Clarke; everyone's
42 amazing, and even from outside of those divisions in Child
43 Safety and Children, Youth and Families; there was Peter
44 Bright, Kate Kent, their whole executive are - I think I've
45 got great working relationships with them and, yeah.
46

47 Q. Thank you. You've been talking in general terms, if I

1 can ask you in a slightly more specific way about the
2 extraordinary challenges that the department has faced in
3 dealing with the allegations made against Ashley employees;
4 is that executive team that you've referred to one that you
5 think has worked well and cohesively in rising to that
6 challenge?

7 A. Personal opinion: the executive had a very difficult
8 challenge in front of them. You were pulling operational
9 areas from other agencies and asking them to come together
10 and make a new team, and that was always going to take time
11 for an executive to start to work together, and even within
12 that time you've had a change of leadership. So, you've
13 only got a department that's been around for four years and
14 a change of leadership, plus COVID-19, quarantine hotels
15 which the department deliver, so the workload demands on
16 the agency exec all the way down, I think, were quite high.

17
18 Q. Now, I know you've referred in your statement to
19 recruitment difficulties.

20 A. Yes.

21
22 Q. It's not just a matter of losing some employees and
23 just replacing them with others. If you put recruitment to
24 one side, have there otherwise been resources made
25 available to you to try and deal with the challenges that
26 you're facing at the moment, particularly in relation to
27 dealing with Ashley employees?

28 A. Resources, some resources have been made available.
29 The difficulty is getting, I guess, trained resources,
30 especially around the Workplace Relations, business
31 partnering-type roles. There's a, I guess, probably a
32 shortage of people in Workplace Relations within the State
33 Service, there's a lot of difficulty recruiting, and
34 they're the types of roles that you need and the skillsets
35 that you need for these types of matters.

36
37 And the difficulty is, too, I guess, fixed term
38 appointment: you're not going to get a lot of people that
39 might leave a permanent appointment for a fixed term, so
40 there are definitely recruitment issues and people that
41 have knowledge in ED matters. So, I have only been in the
42 State Service I guess for a short period of time and have a
43 fair bit of involvement, perhaps unfortunately, with ED
44 matters. Some departments don't deal at all - don't really
45 have any ED matters. Indeed, one of the attractions for
46 coming to Communities Tasmania for me was that they only
47 had two investigations at the time. So, I guess it's a bit

1 of a niche area and it's hard to recruit.

2
3 PRESIDENT NEAVE: Q. Can I just ask a question about
4 that. You mentioned the difficulty of recruiting fixed
5 term employees. Why are they fixed term positions? I
6 mean, now things are changing and I would understand why
7 they might be fixed term positions now, but when you came
8 on, were there any continuing appointments to the ED5 area
9 or to People & Culture?

10 A. Not to the ED5 area specifically. So, we did recruit
11 a fixed term conduct and performance consultant. The
12 work's really difficult, and so, the consultant who we did
13 have, who again, did an amazing job has unfortunately left
14 as well and that was actually because of the dealing with
15 the suspended employees and their interactions with the
16 team have been quite difficult as well and the emotion that
17 that did cause.

18
19 Q. But just looking forward to the future, is there an
20 argument that, in areas that are relevant to child sexual
21 abuse, there should be some continuing experienced
22 employees, of some people appointed to continuing positions
23 with experience in the area in which you're working? I
24 mean, is there a structural problem, is what I'm trying to
25 ask you?

26 A. I would actually beg your indulgence and probably go
27 one step further and say there needs to be a specific team
28 with people with a specific skillset; the risk of vicarious
29 trauma and the life of reading these allegations day in day
30 out. A lot of people who do investigations or have
31 association with ED5s within the State Service probably, if
32 they had dealt with it in the past, it would have been on
33 the basis of what I'd say contemporary matters and
34 non-sexual abuse matters. You're looking at inappropriate
35 things on your computer or not using your email in the
36 right way, those types of things. I think there would be
37 benefit in having people that know, really know the work
38 and how it works.

39
40 PRESIDENT NEAVE: Thank you.

41
42 MS NORTON: Q. If you put to one side the very
43 considerable recruitment issues you've referred to in terms
44 of finding really appropriately skilled people, if those
45 were not an issue, if you had a ready workforce out there
46 applying for jobs, do you feel that you have the support of
47 the executive and available resources to appropriately fill

1 those jobs so that you could, in a timely way, progress the
2 work in relation to Ashley employees?

3 A. It's a difficult question to answer just with the
4 transition happening and things like that.

5

6 Q. Of course.

7 A. In saying that, when we've approached the executive
8 around other workload issues, whether it be workers'
9 compensation or the like, we have had support to try and, I
10 guess, recruit suitably trained people.

11

12 Q. Is it an unfortunate consequence of the timing of the
13 transition that the work in relation to child sexual abuse
14 allegations necessarily must stall?

15 A. I wouldn't say the work has stalled, so there's
16 definitely still people that are working on that work. And
17 indeed, one of the things that the department put in place,
18 or Ms Baker put in place that's different from, say, for
19 instance Education where I worked previously, are people
20 dedicated or a person dedicated to just getting the records
21 out that are needed for the investigation matters to
22 provide to investigators. So, there are definitely people
23 still working on the matters, but you have a very small
24 team. You've probably got two, myself and another person,
25 that have the experience in the EDs and, even then, you
26 have some key person dependencies.

27

28 Q. I want to come back to record-keeping but before I go
29 there could I just ask you a question about a comment in
30 your statement where you say that you're concerned - this
31 is at paragraph 253 - you're concerned that you're the main
32 conduit for referral of matters such as advice coming from
33 Tasmania Police. Are you able to explain what that is a
34 reference to?

35 A. That's probably happened actually more recently. So,
36 the police have been referring, I guess, matters directly
37 to myself and the community liaison officer, or I think an
38 alternative email address, which unfortunately I have been
39 on my emails on weekends and been the person to get those.

40

41 Q. I see.

42 A. And it's probably more - and it's something that we
43 are looking at as to, I guess, the most appropriate place
44 for the complaints to come in. Complaints come in in a
45 variety of ways, though, and that's only one of them.

46

47 Q. Thank you. Moving on to information sharing between

1 agencies which you've really already gone to. You say in
2 your statement at paragraph 211 that the department has
3 access to a range of records regarding allegations of child
4 sexual abuse that were made in the context of abuse in the
5 state care program.
6

7 The Commission is aware of legal advice that was given
8 to the department in 2007, and I appreciate that's long
9 before your time, and I should say, Commissioners,
10 privilege has been waived in this advice.
11

12 PRESIDENT NEAVE: Thank you.
13

14 MS NORTON: Q. The upshot of the advice, as I understand
15 it, was that the department was not able to use material
16 obtained from the abuse in state care through that scheme
17 if the complainant didn't want to take the complaint any
18 further. I'm just keen to understand, based on your
19 experience more recently in dealing with these matters,
20 whether that advice has impacted on the way that those
21 matters have been approached?

22 A. I think it impacted the way that those matters were
23 approached within the State Service, so not just within
24 Communities Tasmania but also my previous experience.
25

26 Q. And that was with the Department of Education?

27 A. Yes. So, the advice generally, I guess, is that you
28 need a complainant to be able to progress an ED5
29 investigation, and ...
30

31 Q. And your experience is that the public service
32 generally acted in accordance with that advice?

33 A. We needed to follow OSG advice.
34

35 Q. Yes, thank you. You also say in your statement, you
36 refer to --
37

38 COMMISSIONER BENJAMIN: Q. Just to interrupt for a
39 moment: would it have been of assistance to you if you'd
40 been able to obtain advice from someone other than the
41 Solicitor-General in relation to issues such as that?
42

43 MS NORTON: I wonder, Commissioner Benjamin, if we can
44 just establish with the witness --
45

46 COMMISSIONER BENJAMIN: We can leave that till later?
47

1 MS NORTON: Q. Do you, in any of the roles you've had in
2 the public service, do you have authority to seek advice
3 from the Solicitor-General?

4 A. From the Solicitor-General?

5

6 Q. Yes.

7 A. There is an understanding that requests for advice
8 should be going through the State Service Management
9 Office. However, sometimes due to the nature of those
10 matters we will be going directly to the Office of the
11 Solicitor-General, and that will be through - so, for
12 instance, if we had questions that we would like answered,
13 we would write a letter that would usually then be provided
14 via minute to our Head of Agency to sign to go to the
15 Office of the Solicitor-General.

16

17 Q. So, was it a process that you are able to initiate or
18 is it a decision that's made by people higher up than you?

19 A. It is a process that we can initiate.

20

21 Q. Perhaps if I can address Commissioner Benjamin's
22 question this way: drawing on your experience as a lawyer
23 in private practice prior to working within the State
24 Service, do you have concerns, the department as a consumer
25 of legal services in being restricted to obtaining advice,
26 unless you get special permission, restricted to obtaining
27 advice from the Office of the Solicitor-General?

28 A. Not necessarily, no.

29

30 Q. Would you like to have greater ability to access
31 advice from private firms?

32 A. Personally?

33

34 Q. Yes.

35 A. It's always fascinating to get an insight to other
36 people's legal minds, so personally, I would love that in
37 terms of, you can get other ideas. In terms of the system
38 itself though, I guess the system in which we work --

39

40 Q. Can I come at the question this way. You refer in
41 some of the tables that you've provided in relation to
42 particular employees, you refer in a couple of places to
43 the obligation under the Registration to Work with
44 Vulnerable People Act the legislative obligation that
45 applied to reporting bodies, including the department, at
46 various points in time and in particular the threshold for
47 the obligation to report potential reportable behaviour to

1 the Registrar. I think the relevant provision is s.53A of
2 that Act. Is that a section that you're familiar with in
3 any way?

4 A. I'm just trying - is that when they had the word
5 "find"?

6
7 Q. Yes. As originally drafted s.53A imposed an
8 obligation where a department, for want of a better word in
9 the present context, finds that an employee may have
10 engaged in reportable behaviour. What's your understanding
11 of the legislative change that occurred that impacted on
12 the practices that you describe in your statement?

13 A. I should actually highlight, I guess, that it wasn't
14 the change in legislation. So, when I joined Communities
15 Tasmania I identified that there were some matters that
16 didn't - that hadn't been reported and had a discussion
17 with the risk assessment officer at RWVP, and my
18 understanding had been, I guess, taking into consideration
19 the purpose of that legislation would be to provide that
20 information to RWVP regardless of a finding. And so,
21 before the change happened in legislation I understand that
22 we started to provide material to RWVP where there wouldn't
23 have necessarily been a formal finding by the Head of
24 Agency, so that did happen prior to the change in
25 legislation.

26
27 Q. I see, and are you aware that the Office of the
28 Solicitor-General also gave advice in relation to the
29 interpretation of the word "finds" in the original s.53A?

30 A. I don't believe. So, where I had my discussions were
31 actually with RWVP and a risk assessment officer, not
32 through myself or others going to the OSG in relation to
33 that.

34
35 Q. So, if advice had come from the OSG, you haven't seen
36 it?

37 A. I don't believe.

38
39 Q. Or you don't recall having seen it?

40 A. I don't recall.

41
42 Q. Thank you. When Registrar Graham gave evidence
43 yesterday, he made a few statements, some of them in oral
44 evidence and some of them in his statement, but he
45 certainly referred to an impression when he started
46 engaging with the department in 2020, that the department
47 found the scale of the task that it was dealing with, in

1 terms of the historical allegations that had come in in
2 relation to Ashley employees, as being overwhelming. Would
3 you agree with that observation?

4 A. In terms of the number of requests from --

5
6 Q. Volume, workload?

7 A. Yes, that's my understanding.

8
9 Q. And he also described the scale of the information
10 that was being reported to his office and the fact that a
11 lot of it related to current employees as being quite
12 extraordinary. And yet, despite his characterisation of
13 the task as being extraordinary, his impression was, it was
14 very much a business as usual attitude within the
15 department in terms of its attitude to certainly providing
16 information to his office. I'd like to invite you to
17 reflect on whether that, as a person who from August
18 or September 2020 was in the department, whether that's a
19 fair assessment of the situation?

20 A. I'd probably disagree with that. I think there was
21 definitely - you have some people that are quite passionate
22 about the work that they are doing and want to provide the
23 information. The records of the Department of Communities
24 were far-reaching, here, there and everywhere basically,
25 and so, it wasn't for not, I guess for want of trying;
26 people wanted to be able to provide the information, it was
27 just getting it together and that takes time. And, in
28 saying that, the records team have done an amazing job
29 digitising a lot of records over the last 18 months so that
30 they can more efficiently respond to requests for
31 information, and the department were also developing its
32 systems and processes at the time in relation to where
33 those requests would best sit and who was best able to
34 obtain all of the information that RWVP may then need.

35
36 Q. Did you feel at the time that you had the resources
37 that you needed, or reasonable resources to deal with the
38 challenge?

39 A. Not at the time, but I do think that that was
40 remedied.

41
42 Q. Was there a request, whether it came from you or
43 others, for more resources?

44 A. So, it wasn't specifically in my area, so it was in
45 our information system and strategy, and I believe it was
46 Kathy Baker who instigated the Records Remediation Project,
47 recognising that the impact - or the task that was coming

1 up. So, as these matters started to ramp up and we started
2 to realise that we need more information and ready access
3 to information, that people were hired to come on board and
4 to start that process.

5
6 So, you had hundreds of boxes of paper records, and we
7 don't know if that box there has the information that might
8 be a strip-search relevant to one of the allegations, so
9 they've done an amazing job I think to date, but there is
10 definitely still work that needs to be done in relation to
11 records. Records are still being provided to Communities
12 Tasmania that might be relevant to the investigations or
13 RWVP, so yeah, a lot of work has been done, but I believe
14 there's still some work to go.

15
16 PRESIDENT NEAVE: Q. Can I ask a question. Given the
17 enormous amount of work done by the National Royal
18 Commission, could one have anticipated that much of that
19 work would have been started at an earlier point? The
20 National Commission reported in 2017. It seems as if the
21 work that's being done now, excellent work that's being
22 done now, has really begun in 2020, around about then.
23 Should both the politicians and the bureaucrats in Tasmania
24 have anticipated that a lot of work would need to be done
25 to respond to the findings of the National Royal Commission
26 and the recommendations of the Royal Commission?

27 A. That's a little bit difficult, I think, to answer.
28 So, I don't think anyone was anticipating the amount of
29 National Redress applications that we have been receiving
30 or civil litigation, so it may have been slightly.
31 Communities Tasmania also, I guess, wasn't in existence
32 then.

33
34 Q. That's right.

35 A. So, I think the easiest way to say is that it was
36 recognised towards the end of 2020, and I think external
37 contractors were engaged to come and help us develop the
38 system of how we would respond to requests for
39 information - when I say "we", it's the department, not
40 People & Culture - and then that work then progressed from
41 there. So, I do think that it was recognised quite early
42 on in terms of the initial applications coming in in 2020
43 and realising the tasks that were to come, that that was
44 going to be a need and it was quite quickly actioned after
45 that.

46
47 PRESIDENT NEAVE: Thank you.

1
2 MS NORTON: Q. We've been talking about resources
3 challenges that at least Registrar Graham perceived
4 externally and you addressed your internal perspective. He
5 also referred, he said, and it was by reference to a
6 particular point in time, it was February 2021, I think
7 this was after the chronology - or sorry, the spreadsheet
8 was provided to him outlining 300 or more allegations. He
9 discerned at that point an apparent reluctance within parts
10 of DCT to share records.

11
12 I should clarify or qualify what he said by saying
13 that he acknowledged the work at the officer level and that
14 people at the officer level, consistent with your evidence,
15 people were doing their very best under difficult
16 circumstances. But he said that, when I asked him to name
17 the particular parts of the department where he thought
18 that reluctance was coming from, he said that he found
19 People & Culture to be more willing to share records than
20 the legal department, and I wanted to invite you to comment
21 on that if you'd like to.

22 A. I don't think I really can comment on that. I didn't
23 have - I wasn't privy to the requests that may have been
24 sent to the legal department, but the arrangement should
25 have been that most requests - or requests should have gone
26 through the Information Strategy and Systems Unit who were
27 specifically the Records Unit, and why they need to go
28 there is that they can see all information. Whilst People
29 & Culture I could only see, I guess, a certain amount of
30 information, so they were best placed to provide all of the
31 information, and again, legal may not have been the most
32 appropriate place for that request to have gone into.

33
34 It's my understanding that the requests should have
35 gone into ISS, so it may have been that they were misplaced
36 in terms of being directed to the wrong place, and then
37 they have then sent them to where they needed to go.

38
39 Q. I see. I'll ask you to comment on this: it sounds
40 from your answer that you're not aware of an attitudinal
41 reluctance to provide information within legal or other
42 parts of the department; is that accurate?

43 A. That's definitely accurate. So, my experience, I
44 guess from a People & Culture perspective, is that, we want
45 to provide as much information as possible because it goes
46 beyond to being just a Communities Tasmania issue, I guess
47 it's a safety of children in general issue. We can suspend

1 someone, but they could still be the local soccer coach or
2 something like that, so by providing as much information as
3 we can, they can then look at what action they need to take
4 to protect children more generally.

5
6 Q. Yes.

7 A. So, I think everyone in the team is cognisant of that.

8
9 Q. Yes, thank you. I'd like to turn to preliminary
10 assessments. Now, you outline in your statement the
11 processes - at around paragraph 274 you outline the process
12 that the department engages in in terms of initiating a
13 preliminary assessment. I don't need you to go into the
14 detail about that process, you've done so in the statement,
15 but I am interested to know how it was that that particular
16 process came to be: who made the decisions around setting
17 up the process?

18 A. The process, I guess, has evolved over time. So, a
19 lot of our guidance is taken either from the employment
20 direction itself or for the Integrity Commission's Guide
21 for Managing Misconduct; that's probably our main reference
22 material. And so, in the Integrity Commission's Guide to
23 Managing Misconduct they do step through a preliminary
24 assessment process and the steps that need to be taken.

25
26 We, I guess, during the course of our work, obviously
27 it might be an application in the Tasmania Industrial
28 Commission or something like that, so we I guess finesse
29 our way - our work as we go so, if we recognise that there
30 may be an issue, changes might be made then.

31
32 Q. In terms of that process and thinking about the people
33 who sit above you in the executive, is it routinely the
34 case that people at the Deputy Secretary and Secretary
35 level would be briefed on decisions about whether or not -
36 you know, the status, for example, of a preliminary
37 investigation?

38 A. So, usually, and it's quite difficult because we have
39 had a lot of change in personnel lately as well, even from
40 a Dep Sec level, but usually we would either meet quickly
41 to Case Conference a matter during the preliminary
42 assessment stage or there would be emails going left, right
43 and centre really with the exchange - or the providing of
44 information.

45
46 Q. And, who would those emails, thinking about particular
47 titles, particular roles, who would those emails be

1 between?

2 A. Usually it would be between the Deputy Secretary of
3 Children, Youth and Families, Corporate Services, Director
4 of Youth Justice, and then People & Culture, a
5 representative or two from People & Culture.
6

7 Q. And at what point in the preliminary assessment
8 process would you generally expect the - I should say
9 point or points plural - would you generally expect the
10 Secretary of the department to be briefed about the
11 process?

12 A. Usually quite close to when an allegation does come
13 in. So, for instance, at the moment - and again, it's hard
14 because we have had a change in personnel and we're almost
15 all in it together at the moment - but so, for instance, if
16 I received an allegation on the weekend it would be sending
17 it straight away to the Deputy Secretaries and the
18 Secretary for noting straight away as to, we've received
19 some information in and we need to act quickly.
20

21 Q. And, to the extent that you have insight into the
22 process going back to late 2020 around the time you started
23 to become involved in the management of these matters, was
24 the process the same; that is, that the relevant Deputy
25 Secretary and the Secretary would become aware of the
26 allegations within a short period of them having been
27 raised with the department?

28 A. Probably 2020 I was not more so involved in those
29 discussions.
30

31 Q. At what point did you become involved in the
32 discussions, doing the best you can?

33 A. Okay. It's probably been more since there's been
34 change in personnel and things like that. So, my
35 understanding is that usually it would have been the Deputy
36 Secretary of Children, Youth and Families to brief the
37 Secretary when matters came in, and my understanding is
38 that would usually occur quite quickly.
39

40 Q. Thank you. In your statement you make the point
41 that - it's at paragraph 203 - that under the ED4 process
42 it's not possible to suspend an employee during this
43 preliminary assessment phase. Sorry, I should ask: is that
44 because the test for exercising the power of suspension
45 under ED4 is effectively the same as the ED5 test for
46 commencing that process, or is there another reason why you
47 don't have the power to suspend an employee before an ED5

1 commences?

2 A. That's actually been the subject, I guess, of previous
3 matters or previous experiences that I've had; that an
4 investigation should commence before you actually do the
5 suspension based on the wording in the EDs themselves.

6

7 Q. Yes.

8 A. That's not to say that other action can't be taken
9 such as directing an employee to remain away from the
10 workplace, and anyone who has direct line management over
11 an employee is able to make that direction.

12

13 Q. Is that a fairly short-term solution though?
14 Presumably, and I know you refer in your statement at a
15 number of points to the possibility or the fact in a
16 particular instance that an employee was told to go home
17 and await further information; presumably that's not
18 something that you can do for weeks or months on end?

19 A. No, definitely our preference is not to do that for
20 weeks on end, but we have to, I guess, allow enough time to
21 be able - you might have a very serious allegation but you
22 might need more information from a complainant or something
23 like that before you can actually particularise to an
24 employee the reasons why they are actually - that the
25 Secretary formed the reason to believe, and then why maybe
26 it's in the public interest to suspend under the ED.

27

28 So, in an ideal world, if you were dealing with a
29 contemporary ED5 matter, it usually happens quite quickly
30 that you'll be able to provide them with an allegation and
31 everything would go from there. But the historic sexual
32 abuse allegations, we've been dealing with matters that we
33 haven't dealt with the like before, and I guess it's still
34 a learning process as we go in terms of how long things
35 take or how we get information.

36

37 So, for instance, we had to learn or find out how we
38 go to complainants and the best way to contact them and
39 things like that, so it's ...

40

41 Q. So these investigations can take time, and we might
42 come in a little while to the reasons why they can take
43 time. In a child safety context where serious allegations
44 are made against an employee, and an employee who has a
45 child-facing role, do you feel constrained in the present
46 legal and operating environment in the ability to stand an
47 employee down to remove them as a risk to children while

1 investigations are ongoing?

2 A. There definitely is, I guess, a pressure on people to
3 be able to particularise to an employee the reason why you
4 are asking them not to be in the workplace.

5

6 Q. So, is that an industrial pressure that you're
7 referring to there?

8 A. Yes.

9

10 Q. So, I can understand that, and I can understand that
11 through a disciplinary lens, but if you look at it through
12 a child safety lens, would you like in your role to have
13 greater scope to stand an employee down in order to make,
14 for example, detainees at Ashley safer while appropriate
15 procedural steps are undertaken?

16 A. Yeah, so Employment Direction No.4 is quite limited in
17 the circumstances in which you can suspend an employee, and
18 it would definitely be of greater benefit if that scope was
19 expanded, and that might be including child safety as a
20 reason why that could occur.

21

22 Q. And so, again, keeping that child safety focus and
23 putting the disciplinary procedural focus to one side,
24 would it be of assistance, and if you think about the s.53A
25 test under the Registration to Work with Vulnerable
26 Children Act where the threshold now for notifications is
27 the department becoming aware by any means or suspecting on
28 reasonable grounds that an employee poses a risk to
29 children, would a similar threshold be an appropriate - or
30 would that provide - would a similar test provide a useful
31 avenue for the department to stand somebody down on child
32 safety grounds?

33 A. I think it would be quite beneficial for child safety
34 grounds if there was the ability to do that.

35

36 Q. If we can move on to stand downs. I'd like to ask
37 about delays in commencing formal ED5 processes. Some of
38 the evidence available to the Commission, and I think it's
39 in relation - maybe in relation to multiple employees, but
40 I think it is in relation to Lester - is that one of the
41 reasons why it took some time for a formal ED5 to commence
42 was that the department didn't want to step on the toes, if
43 you like, of police in conducting their investigations. Is
44 that something in your experience - put Lester to one side,
45 but generally speaking is there an attitude or a reluctance
46 within the department to commence an ED5 for fear of
47 interfering with the police investigation?

1 A. I think you probably have to look at this almost from
2 2020 and post 2020. So, there's definitely been a change,
3 and I think that's definitely around the safety of
4 children.

5
6 Q. Can you describe the pre-2020 and post-2020 approach?

7 A. So, pre-2020 there was definitely an approach where we
8 would work with police and I guess wait for the OK in terms
9 of being able to put particulars to an employee. We didn't
10 want to potentially compromise a police investigation, and
11 that again follows the Integrity Commission's Guide to
12 Managing Misconduct. You don't have to put off an ED but
13 usually work with them around, is it right to go now, and
14 so, that was definitely relevant in some of the earlier
15 matters as well.

16
17 Q. Yes. And, would you now agree, is it your evidence
18 that in the post-2020 world there is the reluctance or the
19 concern about delaying ED5 until police have finished their
20 processes or said "we're not investigating further", that
21 that reluctance is no longer present?

22 A. There are still some matters, so I can't answer in
23 absolutes I guess there.

24
25 Q. Yes, generally speaking.

26 A. But generally speaking, but we still do have matters
27 where we have - someone has been, or an investigation has
28 commenced and someone has been suspended and it may be a
29 few weeks before the investigator can actually start
30 investigating whilst they wait for police to confirm that
31 they are able to do that.

32
33 Q. Can I ask you a question I meant to ask earlier, I'm
34 sorry for jumping around, but this is in relation to Ira
35 and the statement that you took from Ira. Do you recall
36 whose decision it was that you would take the statement
37 from Ira?

38 A. I don't recall whose decision it was specifically. It
39 was raised in the meetings that were being had, I guess,
40 around that time and --

41
42 Q. Were they meetings involving the executive?

43 A. Not all of the executive, no.

44
45 Q. Were they the Case Conferences?

46 A. More like the Case Conference ones.

47

1 Q. Thank you. I want to share with you some evidence
2 that was given earlier in the week by Mr Watson, and he was
3 the Acting Centre Manager from about March 2020 onwards,
4 and it's in relation to alternate duties. Would Mr Watson,
5 or I think you said earlier that the Centre Manager would
6 be present at the Case Conferences?

7 A. Some of them, I believe initially he was, but I don't
8 believe he was subsequently. So, usually it was the role
9 or my understanding the role of the Director of Youth
10 Justice to liaise any messages or provide him with any
11 direction that was needed.

12
13 Q. He said in his evidence, and this is in relation to
14 people who were the subject of child sexual abuse
15 allegations being on alternate duties but still being at
16 the centre, and he said:

17
18 *This I didn't feel was good enough and I*
19 *made my thoughts very clear regularly*
20 *through to my Line Manager and People*
21 *& Culture that we needed to act, we needed*
22 *to get these people off site.*

23
24 Are you aware of the concerns he's expressing there?

25 A. Not specifically, no.

26
27 Q. In a general sense? Was there a tussle between centre
28 management and the department, the executive, in relation
29 to alternate duties?

30 A. There's definitely been, I guess, some robust
31 discussions at some points in time as to the best approach
32 to take with matters.

33
34 Q. In circumstances where there is robust discussion at a
35 Case Conference, who ultimately makes the decision about
36 alternate duties?

37 A. Again, it's quite difficult. Usually it would be
38 within CYF, and again, it depends on which point the
39 Secretary is also brought into the conversation, so it's
40 difficult, I guess, to provide absolutes in relation to
41 these matters.

42
43 Q. Yes.

44
45 COMMISSIONER BROMFIELD: Ms Norton, excuse me.

46
47 MS NORTON: Yes.

1
2 COMMISSIONER BROMFIELD: Q. Ms Allen, I hope I'm
3 recalling this correctly, but I believe that Ms Honan also
4 said that she raised concerns about people remaining on
5 site at those, I think it was the conferences or one of the
6 joint meetings and she raised that a number of times. Is
7 that your recollection at all?
8 A. That does differ somewhat to my recollection. So, as
9 I probably previously stated, I started in July. My first
10 meetings, I have checked my notes, and we didn't discuss
11 child sexual abuse matters at that point in time. I have
12 checked the minutes from the first meeting that I can see
13 in terms of when we started to look at these matters and
14 that specific matter was not raised. In saying that,
15 discussions then did probably commence from late September
16 onwards into the progression of these matters.

17
18 Q. At which point is Ms Honan's recollection that she was
19 raising people being on site as something that needed to be
20 considered?

21 A. I think everyone was raising concerns or trying to
22 wade our way through these matters, being cognisant of the
23 legal advice that we had and the information that we had
24 and, without going into the specifics of cases which may be
25 at a point afterwards, yeah, there were a lot of
26 considerations that needed to be taken into account.

27
28 COMMISSIONER BROMFIELD: Thank you.

29
30 MS NORTON: Q. I note that in your statement you make a
31 range of comments about the ED5 process, the problems that
32 you've experienced with it, and your thoughts both as an HR
33 professional but also as a lawyer on how it might be
34 improved. I anticipate that those are matters that the
35 Commissioners will be greatly assisted by. However,
36 Commissioners, I'm inclined not to go to those matters now
37 owing to time constraints.

38
39 Would it be a possibility in future, Ms Allen, for you
40 to somehow share your thoughts or attend a separate session
41 with the Commissioners to talk about those reform ideas
42 that you have?

43 A. I'd be happy to.

44
45 COMMISSIONER BROMFIELD: Thank you.

46
47 PRESIDENT NEAVE: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MS NORTON: Thank you.

PRESIDENT NEAVE: Q. Sorry, just to clarify, there are no issues about you having to get permission to do that?

A. We don't believe so.

PRESIDENT NEAVE: Thank you.

MS NORTON: Thank you.

Q. You make a statement at paragraph 255, you're talking here about the ED5 process, I do just want to ask this one question. You make the point that you only came into the department in 2018, I think, so you can't speak to historical practice, but you say nowadays, even if an official has not been charged or convicted with a crime, this doesn't preclude the Head of Agency from conducting an ED5 or being satisfied at the end of an ED5 process. What do you mean by "nowadays"?

A. And, there might just be an additional word there that doesn't need to be there but we have, I guess, I think, I believe, 10 current ED matters under progression, and as far as I'm aware none of those are police - are also being investigated by police, so it's ...

Q. So, is your answer there informed by your understanding of current practice rather than a specific point in time where the practice changed?

A. That's right.

Q. Okay, thank you. I'd just like to ask you further questions about Lester and Ira, we've already gone to some of those. Based on your understanding of those two case studies, would it be accurate to say that, would you agree, that the department held off standing Lester down - and there might be other reasons which we can come to - but that one of the reasons why there was a delay in standing him down was the need to interview Ira?

A. To the point of interviewing Ira, it was very difficult to understand exactly what the information was. So, there had been attempts, I understand, to obtain - you're dealing with hearsay evidence, I guess, at that point in time, so there had been attempts to corroborate that, to do records checks.

I understand that discussions were had, prior to my

1 commencement, with previous HR professionals or people in
2 the State Service around - again, the information that was
3 provided, I understand, to the department at the time was
4 that action was taken at the time, so attempts to ascertain
5 what that action was, and going back through the records
6 which I have already gone into, did take some time.

7
8 Q. And so, can I infer from your response that, based on
9 what the department knew in September 2020, it was not
10 possible for the Secretary to reach the requisite state of
11 satisfaction to commence an ED5 and, therefore, have power
12 to suspend?

13 A. So, I guess that would be a matter for the Secretary.

14
15 Q. Of course.

16 A. But --

17
18 Q. Can I ask the question this way: why was it necessary
19 for a statement to be taken before a stand down would
20 occur - before an ED5 could formally commence?

21 A. Not necessary, but I guess in that situation there
22 definitely were concerns, and I understand approaches made
23 previous to September in relation to getting a statement
24 and there was a lot of reluctance to, so in terms of being
25 able to progress a matter, it was definitely useful to
26 being able to get that information.

27
28 Q. You said it wasn't necessary but it was useful. Could
29 the stand down have occurred - an ED5 commenced
30 in September of 2020, that is, prior to interviewing Ira?

31 A. Based on the information at the time it was difficult,
32 I believe, to know what was being dealt with. So, again,
33 at the time whilst - the information that was provided at
34 the time, whilst concerning, it was not an allegation of
35 child sexual abuse and further information needed to be
36 ascertained.

37
38 Q. You've said that there were difficulties understanding
39 those allegations, and earlier in your evidence, correct me
40 if I'm wrong, but I think the tenor of your evidence has
41 been that over the course of 2020 additional information
42 came in, not just from Ira but also abuse in state care
43 claims in relation to allegations against Lester. Were
44 those abuse in state care claims taken into account in the
45 decision to commence the ED5 in November?

46 A. Yes.

47

1 Q. At what point in time were they taken into account?

2 A. I believe --

3

4 Q. Doing the best you can.

5 A. Yes. So, from memory, I think it was about in August
6 or September that I became aware of the abuse in state care
7 applications, that they existed.

8

9 Q. And how did you become aware, do you recall?

10 A. Someone, it was mentioned to me in passing and it was
11 one of those, "Wait, wait, wait, hold up, what are you
12 talking about? We have got all of this information that
13 has never been put together and no action's been taken".

14

15 Q. Can I ask you there, I think you are speaking
16 to August or September 2020; is that right?

17 A. Yes.

18

19 Q. So, is the upshot of the evidence you've just given
20 that at that point in time it was not the regular practice
21 of the department to review the abuse in state care claims
22 with a view to identifying whether any of them related to
23 current employees?

24 A. It's my understanding at that point in time that the
25 four rounds of the abuse in state care applications were
26 never put together to paint a picture of who may have been
27 perpetrators of child sexual abuse, and I believe I've put
28 in my statement that it remains a very big disappointment
29 of mine that that work hadn't occurred prior, because I do
30 believe that, putting to one side issues with advice that
31 had been provided, there was definitely valuable
32 intelligence a long time ago in relation to potential
33 perpetrators of child sexual abuse; and it wasn't until,
34 again, the support of the executive that those files were
35 got out and put together and to create a bit of that
36 picture, a true picture, I believe, as to what may have
37 occurred at Ashley was able to be painted.

38

39 Q. I think I've asked you this question in a general
40 sense but can I ask it specifically in relation to Lester.
41 Are you aware of any requests or directions that came from
42 police, from August 2020 or thereabouts when you started in
43 the department, requests from police that the department
44 hold off on commencing an ED5 for Lester so that police
45 processes could play out?

46 A. I wouldn't say specifically a request, but there was
47 definitely discussions around the courses of action and we

1 were definitely agitating around when it was right to take
2 the next steps.

3
4 So, my understanding is that the police spoke to the
5 person that had been referenced in Ira's statement and --

6
7 Q. That is, the person who was the subject of the alleged
8 abuse?

9 A. Yes, and actually I might stop there, if that's okay?

10
11 Q. Is that something you'd like to return to?

12 A. Yes, please.

13
14 Q. All right. I'm just making a note of that.

15
16 COMMISSIONER BROMFIELD: Sorry, Ms Norton, while you're
17 making a note.

18
19 Q. I just want to come back to your statement, that you
20 felt the abuse in care claims put together, that what was
21 in your view a true picture of what was happening in
22 Ashley. And I note in your statement, and I'm not being
23 quick enough now to find the exact place, that you did make
24 comment about when you put that picture together, that it
25 formed for you, I guess, a pattern that helped you make
26 that belief. I just wanted you to maybe comment on why it
27 was you'd had formed a personal belief?

28 A. Probably up until that point I'd only read a few
29 applications, maybe one or two letters of demand, but when
30 you have I believe in excess of 300 applications that have
31 come through detailing acts of abuse, and you can see the
32 same names and the same types of abuse, and you can pick up
33 themes and - it's quite confronting.

34
35 Q. And, in picking up those names and acts, would it be
36 correct to assume that that was over quite a long period of
37 time, so not children who were there together?

38 A. Yes.

39
40 PRESIDENT NEAVE: So they would be, just following up on -
41 do you want to follow up?

42
43 COMMISSIONER BROMFIELD: That's fine, you go.

44
45 PRESIDENT NEAVE: Q. -- follow up on Commissioner
46 Bromfield's question, the picture you may have got from
47 that - I'm not putting words into your mouth - was that

1 there was some sort of a pattern where this behaviour had
2 occurred at Ashley over a lengthy period of time; is that
3 fair?

4 A. Yes. I guess my opinion's based on not just the abuse
5 in state care applications now, but it's also the National
6 Redress applications and the letters of demand. And, I
7 think I've put it in my statement that there is probably
8 too much commonality in some of the methods of abuse, if I
9 may call it that, or the allegations; that, for people that
10 have spanned so many different years, to not believe that
11 they're - it's not a matter of belief, but some of the
12 themes have just repeated so much that it does definitely
13 cause a lot of concern, and I think I've been quite
14 specific in my statement as to a couple of those areas
15 where I think that we see themes coming through now in
16 terms of almost opportunities for abuse when they occurred,
17 such as strip-searches; that's probably the main one coming
18 through.

19
20 COMMISSIONER BROMFIELD: Q. And so, I gather then you
21 would have a very different reflection to those who are -
22 the argument that's been put by some people that these are
23 false allegations for the purpose of getting a monetary
24 payment?

25 A. It's really difficult, and I guess that's the
26 difficulty that we're all in at the moment, because I've
27 definitely heard those sides of it as well. We get the
28 reports from the staff of the conversations they overhear
29 or are privy to, or even the threats that they are - people
30 ringing up and saying, "Make sure you say X, Y and Z did
31 something to you", so that there is money at the other
32 side, I guess, so it's really difficult.

33
34 But you do have again these themes that just continue,
35 and again going back to the strip-searching one, and it's
36 just how it's described in these applications. It wasn't
37 even so much - a lot of the people didn't even see what
38 happened to them in terms of a cavity search as being a
39 sexual abuse; it was almost like it was an intimidation
40 tactic, and that's how they describe it in their
41 applications, and some of them are so detailed that they
42 are very concerning.

43
44 COMMISSIONER BROMFIELD: Thank you.

45
46 MS NORTON: Q. Just a point of clarification following
47 on from that exchange. Is it the case, or do you agree

1 with me that, although a number and perhaps many of those
2 abuse in state care claims related to allegations back when
3 Ashley was a boys' home, that they nonetheless concerned
4 current employees of Ashley?

5 A. Yes.

6
7 Q. Just going back to Lester - and I should say,
8 Commissioners, I just have two more questions and then we
9 could take a short break perhaps and convene the private
10 session.

11
12 PRESIDENT NEAVE: Yes, thank you.

13
14 MS NORTON: I'm sorry, I've been asked to correct that
15 it's a closed hearing, not a private session, thank you,
16 for the benefit of the transcript.

17
18 Q. The allegation, just to recap, the allegations that
19 Ira made in relation to Lester were first made in January
20 2020, and I appreciate the evidence you've given that there
21 really was, that was the beginning of the process, if I can
22 put it that way, in terms of the department coming to
23 understand the full extent of allegations against Lester.

24
25 The first notice was in January 2020 and he was not
26 stood down and an ED5 commenced until November 2020. I'd
27 like to invite you to explain - or would you agree that
28 from an external point of view that that seems an
29 extraordinarily long time to wait to stand someone down?

30 A. I would agree with that.

31
32 Q. Are you able to explain to the Commissioners the
33 reasons why it took so long, and to the extent that the
34 reasons go to matters that are more appropriately dealt
35 with in the closed hearing, we will do that.

36 A. And I think I've alluded to some of those, and again,
37 some of that will be relevant subsequent to our next
38 discussions, but indeed there was a lot of focus on
39 ascertaining whether previous action had been taken and
40 that real issue of, was there double jeopardy. I mean
41 we've had applications even more recently in the Tasmania
42 Industrial Commission around, can a Secretary investigate a
43 matter that's already been determined almost by a Manager?
44 And so, there was a lot of effort put into, I guess,
45 ascertaining what were in records and what information did
46 we have available; what information did we have available
47 in terms of a potential resident. But also, again, trying

1 to work with Ira in terms of getting the information from
2 him, and that took some time obviously.

3
4 And following that, too, there were difficulties
5 associated with subsequent actions that had to be taken
6 which might be --

7
8 PRESIDENT NEAVE: Q. Can I just clarify one point.
9 You've used the expression "double jeopardy" which I think
10 you're using in sort of common parlance sense. This is not
11 technically double jeopardy?

12 A. No, it's not.

13
14 Q. This is not somebody being tried twice for a criminal
15 offence?

16 A. No.

17
18 Q. So you're talking about a situation where, at least in
19 theory, his behaviour - he might have received some sort of
20 response for his behaviour previously?

21 A. Yes, based on --

22
23 Q. A reprimand or something?

24 A. Well, actually, based on the information that was
25 provided to us, that was the point where he was moved into
26 a policy role.

27
28 Q. I see.

29 A. So, based on the information that came through, my
30 understanding is that at that point in time there was
31 action taken. So that he was removed from children, he was
32 away from the workplace for a period of time, and then he
33 returned in a policy role. So, from looking at that
34 externally and based on the information available at the
35 time, it sounded like there was action taken at the time to
36 address the concerns.

37
38 Q. And do you want to now tell us whether - you may wish
39 to leave this to the closed session - do you wish to tell
40 us now whether that turned out to be the case or would you
41 prefer to leave that to the closed session?

42 A. I can address that now.

43
44 COMMISSIONER BROMFIELD: Do we leave it? I think that,
45 because it's still - I prefer we leave it I think.

46 A. Yep.

47

1 MS NORTON: Q. Just by reference to paragraphs 120 and
2 121 of your statement, you refer there to regular meetings
3 that you had with originally Ms Honan, now [REDACTED], and
4 also potentially some other members of the executive. Just
5 at a very high level, are you able to summarise for the
6 Commissioners the sorts of concerns that you raised at
7 those meetings in relation to Ashley?

8 A. So, more recently it would be the staffing concerns,
9 and you've already, I believe, had evidence in the
10 Commission in relation to staffing at Ashley, so it would
11 be discussions around staffing.
12

13 Q. Can I be a little bit more specific? Can you recall
14 the sorts of concerns that you were raising in late 2020
15 and 2021?

16 A. So, late 2020 and late 2021, I don't believe I was
17 having, because in my role then, regular meetings with -
18 well, I wasn't the Deputy Secretary of Children, Youth and
19 Families, or Ms Honan.
20

21 Q. In those meetings that you're referring to, do you
22 recall ever raising concerns about the way that the
23 department was managing its response to the child sexual
24 abuse allegations against Ashley employees?

25 A. Not specifically.
26

27 Q. Generally?

28 A. These matters are types of matters that we would
29 generally just be discussing, so I can't remember the
30 specifics of, I guess, conversations but we would generally
31 discuss those types of - could discuss these types of
32 matters. But in saying that, I didn't have regular
33 meetings, or I didn't have meetings with the then Deputy
34 Secretary of Children, Youth and Families, and I didn't
35 have an established meeting with the Director of Youth
36 Justice either.
37

38 Q. Okay, thank you.
39

40 MS NORTON: Commissioners, I think now would be an
41 appropriate time for you to make the order that you're
42 proposing to make in relation to a closed hearing. We
43 might then just stand down very briefly just so that we can
44 clear the courtroom to the extent necessary and then we'll
45 resume for what I think will be a very short session.
46

47 PRESIDENT NEAVE: Thank you.

1
2 In previous hearings and again during the hearings
3 focused on the Ashley Youth Detention Centre we've made
4 orders to restrict the publication of certain information.

5
6 We're committed to being open and transparent, and
7 throughout our public hearings we have sought to shine a
8 light on the state's prevention, identification and
9 response to child sexual abuse. We've heard evidence that,
10 too often, people, including victim-survivors, have felt
11 silenced or have felt unable to come forward and be heard.

12
13 At the same time, we have sought to avoid prejudicing
14 any current investigation or proceedings. Not only is this
15 required by our terms of reference, but we're also acutely
16 aware of not prejudicing the ability of victim-survivors to
17 seek joint justice and not prejudicing ongoing attempts to
18 keep children safe today.

19
20 In this context, and for the first time, the
21 Commission has decided to make an order closing the next
22 session of the hearings to the general public, including
23 the media. We will also make a restricted publication
24 order in relation to the information and evidence which may
25 be heard during the next session.

26
27 We make this order because the Commission is satisfied
28 that the public interest in an open hearing and in the
29 reporting on the information and evidence which may be
30 heard during the next session is outweighed by relevant
31 legal and privacy considerations, including avoiding
32 prejudicing current investigation and proceedings.

33
34 So, I will now explain how the order will work. The
35 order will apply for the duration of the next session.
36 During that session only the Tasmanian Government and
37 Mr Michael Pervan, Ms Kathy Baker, Ms Mandy Clarke, Ms Pam
38 Honan and Mr Stuart Watson and the counsel and solicitors
39 representing them may remain, and I believe you have a
40 support person present - I'm sorry, I don't have her name,
41 but that person may also remain present.

42
43 So, let me just repeat that: the Tasmanian Government,
44 Mr Michael Pervan, Ms Kathy Baker, Ms Mandy Clarke, Ms Pam
45 Honan, Mr Stuart Watson, counsel and solicitors
46 representing them and Ms Allen's support person may remain
47 for the next session. Any other person cannot be present

1 during the next session.

2
3 Any information or evidence given by the witness
4 during the next session must be kept confidential. This
5 means that anyone who's entitled to remain in the hearing
6 room must not share any information or evidence which is
7 given during the next session. There will be no
8 live-streaming or public transcript of the next session.

9
10 I make the order which will now be published. I'm
11 just checking the time, we're going to have a 10-minute
12 break?

13
14 MS NORTON: Less. I think the minimum break possible, I
15 think. Five minutes, thank you.

16
17 PRESIDENT NEAVE: All right, yes, thank you. So, I'll
18 make the order which will now be published, and this
19 order will operate from, let's say 12.55.

20
21 MS NORTON: 12.50 perhaps, Commissioner.

22
23 PRESIDENT NEAVE: 12.50, thank you. I'm sure Ms Allen is
24 excused. A copy of the order will be placed outside the
25 hearing room, it is available to anyone who needs a copy.

26
27 We'll advise the general public and the media when the
28 next session has concluded and the hearings will be open
29 again and we currently anticipate, I think, that this will
30 be something like 10 to 2, but I don't have to include that
31 in the order.

32
33 MS NORTON: Yes.

34
35 PRESIDENT NEAVE: I request everyone who's not entitled to
36 remain for the next session, in accordance with this order,
37 to leave the hearing room.

38
39 MS NORTON: Thank you, Commissioners.

40
41 **CLOSED SESSION FOLLOWS:**
42
43
44
45
46
47

1
2 MS ELLYARD: Are the contents of the statement true and
3 correct?
4
5 MS BAKER: Yes, they are.
6
7 MS ELLYARD: Turning to you, please, Ms Clarke. Your full
8 name?
9
10 MS CLARKE: Mandy Clarke.
11
12 MS ELLYARD: And your current professional address and
13 occupation?
14
15 MS CLARKE: 47 Liverpool Street, Hobart. I'm the Deputy
16 Secretary in the Department of Police, Foreign and
17 Emergency Management.
18
19 MS ELLYARD: Similarly, you have made a statement to
20 assist the work of the Commission that arises from roles
21 that you previously held in the Department of Communities?
22
23 MS CLARKE: That's correct.
24
25 MS ELLYARD: You've got that statement with you?
26
27 MS CLARKE: I do.
28
29 MS ELLYARD: There are a few minor corrections, I gather,
30 that we need to make. Firstly, if we turn to paragraph 35,
31 we find in fact there's two 35s.
32
33 MS CLARKE: Correct.
34
35 MS ELLYARD: So you're inviting us to renumber them as 35A
36 and 35B?
37
38 MS CLARKE: Please.
39
40 MS ELLYARD: Secondly, if we turn to paragraphs 46.8, 46.9
41 46.10, there's an important word "not" missing in each of
42 those paragraphs so that it should say:
43
44 *As a former employee of the Department of*
45 *Communities I do not have access ...*
46
47 Is that right? 46.8, 46 .9 and 46.10. So, you'd like

1 that word "not" inserted into each of those three?
2

3 MS CLARKE: Thank you.
4

5 MS ELLYARD: Finally, in paragraphs 71 and 72, there's
6 drafting notes in each of those paragraphs that you'd like
7 us to strike through?
8

9 MS CLARKE: Thank you.
10

11 MS ELLYARD: With those changes made, are the contents of
12 your statement true and correct?
13

14 MS CLARKE: Yes, they are.
15

16 MS ELLYARD: Just to be clear about the roles that each of
17 you held that are relevant to the work of this Commission,
18 may I ask you first, please, Ms Clarke, what was the role
19 that you had in the Department of Communities that has made
20 you a witness with some relevant evidence to give about the
21 operations of the Ashley Youth Detention Centre?
22

23 MS CLARKE: My former role was the Deputy Secretary for
24 Children, Youth and Families, and so, that's the capacity
25 in which I'm here today in my former capacity with the
26 Department of Communities.
27

28 MS ELLYARD: And over what time period did you hold that
29 role?
30

31 MS CLARKE: I was the Deputy Secretary for Children, Youth
32 and Families from 11 September 2019 to 11 February 2022,
33 noting my last working day was 21 January 2022.
34

35 MS ELLYARD: The Commission's heard from other evidence
36 that the Director of Custodial Youth Justice reports to the
37 Deputy Secretary role?
38

39 MS CLARKE: That's correct.
40

41 MS ELLYARD: And so, during the period of time that you
42 held the role I think it was largely Ms Honan that reported
43 to you.
44

45 MS CLARKE: It's only been Ms Honan.
46

47 MS ELLYARD: Turning to you, Ms Baker: what was the role

1 that you formerly held that has given you relevant insights
2 into Ashley Youth Detention Centre?

3

4 MS BAKER: I was the Deputy Secretary of Corporate
5 Services with the department; that area included the
6 functional areas of budget and finance, People & Culture,
7 Governance, Risk and Performance, Information Systems and
8 Strategy. And, prior to being appointed as the Deputy
9 Secretary, I was the Executive Director of Capability and
10 Resources.

11

12 MS ELLYARD: Am I right in understanding there's a large
13 overlap between those two roles? there was a
14 reclassification and a renaming but a lot of the duties
15 stayed the same?

16

17 MS BAKER: That's correct.

18

19 MS ELLYARD: And you held that role from when the
20 Department of Communities commenced its operations?

21

22 MS BAKER: That's correct, from 1 July 2018.

23

24 MS ELLYARD: Thank you. Can I ask you about the extent to
25 which you're aware of other evidence that's been given.
26 Firstly and most immediately, you were both here today for
27 the entirety of Ms Allen's evidence; is that right?

28

29 MS CLARKE: That's correct.

30

31 MS ELLYARD: Both of you.

32

33 MS BAKER: That's correct.

34

35 MS ELLYARD: To what extent have you been made aware of
36 other evidence that's been given, for example, the evidence
37 of Ms Honan?

38

39 MS CLARKE: Yes, I watched Ms Honan's evidence last week.

40

41 MS BAKER: I was travelling interstate, so I did listen to
42 some of it but not all of it.

43

44 MS ELLYARD: What about the evidence of Mr Watson, the
45 current Manager of Ashley; did either of you get to see his
46 evidence?

47

1 MS CLARKE: Yes, I was here.

2

3 MS ELLYARD: Ms Clarke, you were here.

4

5 MS BAKER: And I was in attendance as well.

6

7 MS ELLYARD: Other than those whose evidence I've
8 identified, firstly with you, Ms Clarke, are you aware in a
9 more general sense of the evidence that's been given beyond
10 those particular witnesses?

11

12 MS CLARKE: Yes, I have, I've listened to the
13 victim-survivors' speech, I've read some of the
14 transcripts.

15

16 MS ELLYARD: And you, Ms Baker?

17

18 MS BAKER: I've seen partial evidence but not all.

19

20 MS ELLYARD: Have you become aware of some of the evidence
21 given by the lived experience witnesses?

22

23 MS BAKER: Yes, I have. So, I heard Max's evidence and
24 Charlotte's evidence.

25

26 MS ELLYARD: Can I ask you to begin with some general
27 reflections, starting with you, please, Ms Baker. At
28 paragraph 2 of your initial statement you've offered some
29 observations that you formed a view that Ashley's a
30 different kind of organisation from the other kinds of
31 activities and operations that are carried on by the
32 Department of Communities; what's different about it?

33

34 MS BAKER: I think it's the nature of being a 24/7
35 operation, having young people in our care on a 24-hour a
36 day, seven-day a week basis, working in partnership with
37 the other service providers in the Department of Education
38 and the Department of Health on site. It was also, for me,
39 reported via anecdotal evidence from people who are in my
40 teams who are working closely with staff at the centre that
41 there was challenges with understanding what a therapeutic
42 model of care might look like.

43

44 The other parts of our agency are largely, with the
45 exception of the Child Safety Service, the other part of
46 our agency are largely people who are working in offices,
47 developing programs and policies to support the Tasmanian

1 community.

2

3 MS ELLYARD: Turning to you, Ms Clarke, you've made some
4 observations at paragraph 2 of your statement about your
5 initial impressions when you came into the role of Deputy
6 Secretary in October 2019; what were those initial
7 observations?

8

9 MS CLARKE: Certainly when I was starting in the role I
10 made, probably within the first three to four months - my
11 statement says around the first three months - from
12 listening, certainly talking with the Director, certainly
13 observations, that I thought significant change was
14 required.

15

16 MS ELLYARD: And, can you summarise for us, what were the
17 kinds of change that it seemed to you as at the late part
18 of 2019 were required?

19

20 MS CLARKE: Some of those changes that were obvious to me
21 were, I think, firstly the relationships particularly
22 between the Custodial Inspector and the Commissioner for
23 Children, I believe was strained. I think that one of my
24 clear observations was the Professional Services staff and
25 what we might call, and certainly through this hearing's
26 been referred to as the operational staff; those
27 relationships did appear to me to be not at their optimum
28 in terms of the way you would expect cooperative working
29 relationships between those two areas to be working.

30

31 I think that my other observations were that there
32 were some staff that perhaps dominated decision making that
33 had been there for some time, and that perhaps new staff
34 who brought fresh ideas and new ideas and new way of
35 thinking, their thoughts were not always reflective in that
36 decision; in fact, sometimes they just weren't even being
37 heard, would be, I think, the key matters.

38

39 MS ELLYARD: One of the observations that Ms Honan made
40 when she gave her evidence was that it was her experience
41 when she started, around about the same time as you did, I
42 think, Ms Clarke, that Ashley had seemed to be very much
43 operating in a closed environment with not a very clear
44 passageway of information out and in and a poor
45 relationship with the executive structure above it. Was
46 that your observation?

47

1 MS CLARKE: Oh, absolutely. Yes, I would say not just at
2 a divisional level in terms of the service being part and
3 seeing part of the Children and Youth portfolio, but also
4 part of the department's work.

5
6 MS ELLYARD: Does that mean to your experience that there
7 was a lack of accurate and timely information feeding up
8 the line to the department about what was happening at
9 Ashley?

10
11 MS CLARKE: Yes, potentially, yes.

12
13 MS ELLYARD: The Commission's heard evidence that there
14 were certain categories of matters and incidents and so
15 forth that needed to be reported up via Ms Honan to you.
16 In your early months at the centre did you feel that you
17 were receiving reports and information in an appropriate
18 way?

19
20 MS CLARKE: Oh, I had absolute confidence in Ms Honan. I
21 believed that at that point in time assertive leadership
22 was required and I believe that that Director was
23 delivering that. I think they were experiencing
24 resistance, but I do believe that they were the right
25 person with the knowledge and skills, and I did have
26 extensive conversations with the Director about some of
27 those challenges at that time and the lengths they were
28 going to and assisting in trying to source information that
29 we could deem to be reliable.

30
31 MS ELLYARD: Thank you. Can I ask you, Ms Baker, for any
32 observations you made about, perhaps bringing particularly
33 your hat as, I'm calling it HR, in People & Culture, about
34 the extent to which there was a healthy working environment
35 for staff at Ashley at the time you started your role?

36
37 MS BAKER: Sure. I guess my reflections are that that
38 workplace is a very challenging workplace. We did receive
39 a very dis - what I would describe as a disproportionate
40 number of Safety Reporting and Learning System
41 notifications given the size of the staffing complement at
42 Ashley, and there was often contested views as to whether
43 matters should be resolved locally and the capability of
44 the management to resolve that locally within the centre
45 versus where they needed to seek expert advice from our
46 People & Culture Team.

47

1 Certainly through our Health, Safety and Wellbeing
2 Manager, I would describe that between the Child Safety
3 Service and the Ashley Youth Detention Centre, that
4 probably consumed around about 90 per cent of their time
5 supporting staff, supporting the HSRs, the Health and
6 Safety Representatives on site, and working between the
7 department and unions and supporting management in their
8 decision making, and it very much was disproportionate when
9 you look at the size of the centre with around about 90
10 staff in an agency that's nearly got 1,000 people in it,
11 that person spent an awful lot of their time helping to
12 assist to manage issues on site.

13

14 MS ELLYARD: And was that just when you first started or
15 did that percentage of time being allocated to Ashley
16 continue to your observation over the course of the time
17 you worked there?

18

19 MS BAKER: It's been pretty consistent that that is what I
20 would describe as the squeaky wheel for the organisation
21 and it is an area that required constant support out of our
22 People & Culture Team as well as some of our other areas.

23

24 MS ELLYARD: And of course in part we could acknowledge
25 that it's more challenging and difficult work than the work
26 that other parts of the Department of Communities might
27 perform, and involving direct contact in many cases with
28 young people with challenging behaviours. To your
29 observation did that fact, the nature of the work,
30 sufficiently explain why it was that there was such a
31 disproportionately higher number of complaints and concerns
32 coming out of that workforce?

33

34 MS BAKER: I don't think it was just the issues to do with
35 residents, I think it was pretty clear that there was a
36 divide between what I would describe as the "old guard and
37 the new guard" at the centre. The absence of having a
38 really clear definition of what a therapeutic model of care
39 might look like often added to the tensions between the old
40 and the new. Yeah, that's probably where I'd leave that.

41

42 MS ELLYARD: Ms Baker, you say at paragraph 14 of your
43 statement that you appreciate and acknowledge that Ashley
44 Youth Detention Centre has a dark past. What's that past
45 as you would feel able to describe it?

46

47 MS BAKER: For me, I guess it's acknowledgment that the

1 prior incarnations of Ashley was as a boys' home and prior
2 to that obviously there was Wybra Hall. Now, both of those
3 have had widespread coverage in terms of the history that
4 has happened in those organisations, and I think it's been
5 very challenging for the, not just the site, but the
6 reputation of that site to overcome that history of the
7 past.

8
9 I don't necessarily think that it's just unique to
10 Youth Detention facilities in Tasmania, I think that's an
11 issue facing other jurisdictions as well, and it has been a
12 very, very hard road to navigate dealing with the history
13 and former carnations of that centre.

14
15 MS ELLYARD: Ms Clarke, can I ask you, and I'll direct
16 your attention to paragraph 17 of your statement. We asked
17 you to comment on the results of what's called the AYDC
18 Discovery Report which was commissioned in April 2022 and
19 which made some observations about the culture and
20 attitudes of staff at that time. Can I ask you what your
21 reflections were when you saw that report?

22
23 MS CLARKE: Well, firstly, I thought it was a very, very
24 informative report. I thought that it was a reliable piece
25 of information from an appropriately qualified individual
26 that really did provide, particularly the Director and
27 myself and the Secretary, a way forward in terms of what
28 were some of the underlying reasons that we were dealing
29 with, so we already had some information and some basis to
30 work with, but I think that piece of work actually provided
31 an opportunity for people to have a voice, for them to have
32 their say, particularly people who were really committed to
33 trying to drive improved outcomes for young people who
34 found themselves in the detention centre, and there were
35 numbers of those staff.

36
37 I think, when you have a piece of work like that that
38 did provide a pathway forward, particularly for the
39 Director and the centre management to actually begin to
40 have a reset really, so it provided a foundation and a
41 baseline and from which the centre then started to really
42 progress a framework of practice and particularly a
43 learning and development framework. I thought it was a
44 very good piece of work.

45
46 MS ELLYARD: Would you agree with me, Ms Clarke, that one
47 of the things that that report showed was that, to a

1 significant though not complete extent, Ashley was
2 operating in a custodial model?

3
4 MS CLARKE: Oh, absolutely.

5
6 MS ELLYARD: Rather than as a therapeutic model of care?

7
8 MS CLARKE: Yes, absolutely.

9
10 MS ELLYARD: Notwithstanding the fact that there had been,
11 as at April 2020, a number of initiatives that were
12 implemented by people of goodwill over a number of years to
13 try to make that shift?

14
15 MS CLARKE: That's right, I think my own personal
16 perspective on that is, I think it shows the gravity that's
17 required in the change process.

18
19 MS ELLYARD: Can I ask you to unpack what you mean by
20 that?

21
22 MS CLARKE: I think that when we go back in history, and I
23 have taken the opportunity during my tenure as the former
24 Deputy Secretary to understand the history of the
25 institution itself. I have read about the boys' home, I've
26 particularly learned, as I've become much more familiar
27 with redress applications, Abuse in State Care, I took
28 quite an interest in understanding what had happened in its
29 history. When you think about that, it came from a very
30 much a work - this is my understanding and from my
31 research - a work and punishment approach which wasn't just
32 for young people who found themselves in trouble with the
33 law, it was wards of the state - there were a whole range
34 of different circumstances in which young people
35 unfortunately came together in quite significant numbers.

36
37 Then, as you move through and into a youth detention
38 reign, I guess the questions that always came to my mind is
39 at the time - this is going back many, many years now -
40 what was that change process that actually occurred from a
41 boys' home into a youth detention facility that was merely
42 managed by a piece of legislation called the Youth Justice
43 Act.

44
45 And then as times change and of course as we all
46 become much more - society - much more akin to a child
47 safety lens then the service is moving and as research has

1 developed around our understanding of therapeutic
2 practices. So, when I say that gravity, I think that there
3 are a whole range of points in the life of this institution
4 that required significant change, and the one that I became
5 involved in through this piece of - the report that was
6 actually done, is that therapeutic framework and that is
7 our more modern day, more contemporary understanding of how
8 to support young people who find themselves in these
9 situations.

10
11 MS ELLYARD: Thank you. May I ask you, Ms Baker, a
12 question about records. We've already heard in some
13 evidence from Ms Allen today about the very considerable
14 work that she and others in her team have been doing in the
15 last couple of years, drawing on and trying to understand
16 the records that are held with young people and the extent
17 to which they might corroborate allegations of abuse that
18 are being made. You deal with this in your statement about
19 what you came to understand were record-keeping practices
20 at Ashley and the extent to which the state was making
21 records available in a timely way when people requested it.
22 Can you tell us about that please?

23
24 MS BAKER: Yes, sure. So, there's two parts. First of
25 all I became aware there was questions around whether the
26 records at Ashley were secure or deteriorating, so we
27 initiated an audit of the records at Ashley to make sure
28 that they were actually secured appropriately and weren't
29 deteriorating, so that was the first piece of work.

30
31 The second piece of work related to people who were
32 making applications through either the Personal Information
33 Protection Act or making requests for their files while
34 they were in care, and it came to my attention that the
35 department was nearly two years behind in actually
36 responding to those requests and providing the applicants
37 with their file.

38
39 So, I developed a submission for the Secretary's
40 consideration and endorsement to stand up a centralised
41 team to be able to respond to those file requests in a much
42 more timely manner. I think at the start of the process we
43 had over 300 outstanding file requests for applicants, and
44 I can't remember the exact number now, it is in my
45 statement, but we got that down to under 100 in a very
46 short period of time which for people - it might seem
47 insignificant, but for people who are seeking to understand

1 their care history or are seeking to consider what their
2 options are for pursuing matters as to why they were in
3 care, it seemed very - it was very important to me to make
4 sure that we were responding to those requests in a far
5 more timely a manner than what we were, so that was the
6 first part of the work.

7
8 The next part of the work became very clear to me in
9 late 2020, early 2021, that the department's ability to be
10 able to respond and produce information, both for the
11 Registrar and also for investigators to support active
12 investigations of ED5s, we were severely hampered by the
13 fact that those records: (1) we largely didn't know what
14 record holdings we had, so that was our first issue. Our
15 second issue is, those record holdings actually weren't
16 catalogued and indexed in any shape or form.

17
18 So, for example, if we needed to ascertain that a
19 particular trip may have happened at Ashley, there wasn't a
20 register that we could go to, so it became very clear over
21 a period of time that we had a significant piece of work
22 that we needed to do to, (1) identify what record holdings
23 that we had had; the second piece of work was to catalogue
24 those record holdings, and the third action was to actually
25 remediate and digitise those records.

26
27 And, we used, I guess, the relevant period that the
28 Commission is using from 1 January 2000 as our priority
29 records at Ashley that we sought to scan and digitise, and
30 we did that because we wanted to be able to participate
31 fully in the Commission and make all of the records that we
32 had available during that relevant period for the
33 Commission's benefit. But it also had the benefit of being
34 able - for the department being able to respond in a far
35 more efficient manner than we had done previously to
36 requests from the Registrar for information.

37
38 MS ELLYARD: That sounds like a huge piece of work well
39 outside the ordinary scope of work that you'd be expecting
40 your department to do in any given year. Were there
41 additional resources and supports that were made available
42 to you in getting that work done?

43
44 MS BAKER: Yeah, so there was two parts to that. First of
45 all, we did develop a budget submission for State
46 Government consideration. Unfortunately, you know,
47 contested budget environment, that wasn't funded through

1 that competitive budget process.

2
3 We then, recognising that that couldn't act as a
4 reason not to do this, it's far too important, we developed
5 an internal budget submission for the Secretary's
6 consideration and, as a result, we established a team of
7 about eight people, from memory, in our records team that
8 was able to commence the digitisation work, and we also
9 established a team in our legislation and Legal Services
10 area which was able to then dedicate the time to process
11 the personal information requests and the Right to
12 Information requests that started to come through.

13
14 MS ELLYARD: Am I right then that as the records were
15 digitised they then became available to be provided to
16 investigators or anyone else who might be looking into
17 particular allegations brought by someone?

18
19 MS BAKER: Correct. We certainly had a fuller set of
20 information that was available to the department and we had
21 a greater understanding of what type of record holdings
22 that we actually had, which did include things such as
23 diaries and handwritten diary entries which, at the start
24 of this journey, we didn't know existed. So, that then
25 made the information set available to the department and
26 what we could make available to the investigator and
27 subsequent requests to the RWVP much fuller.

28
29 MS ELLYARD: One of the things that Ms Allen touched on in
30 her evidence is becoming aware herself, I think she said in
31 the middle or late 2020, of the existence of records from
32 claims made and payments made under various iterations of
33 the abuse in care claims scheme. When did you become
34 aware, as I take it you did at some point, that there was
35 held within the records of the Tasmanian Government
36 information about allegations, including allegations
37 against former Ashley Boys' Home or Ashley Youth Detention
38 Centre staff?

39
40 MS BAKER: It was in the second half of 2020. Without
41 going directly to my statement, I think it was
42 between August and September 2020 when that information
43 became available to me.

44
45 MS ELLYARD: And how did it become available to you?

46
47 MS BAKER: It became available to me because in the office

1 next door to me was our principal legal officer who was
2 handling a civil matter and the existence of that scheme
3 became available to me through [REDACTED].
4

5 PRESIDENT NEAVE: So, that was just serendipity that you
6 became aware of it; is that right?
7

8 MS BAKER: Yes, it was.
9

10 PRESIDENT NEAVE: Thank you.
11

12 MS ELLYARD: Ms Clarke, can I ask you: I take it that you
13 also at a point in time became aware that records were held
14 arising from claims that had been made through that scheme.
15 When did you become aware that those records were held by
16 the government, I'll use that term?
17

18 MS CLARKE: Certainly through - those records were used
19 for people that were making applications, so when the
20 department had to populate forms for the National Redress
21 Scheme application, so I was aware of the concept but not
22 in any great detail.
23

24 My statement talks about what actually prompted me to
25 really have a good look at Abuse in State Care and how that
26 impacted. I had a meeting --
27

28 MS ELLYARD: Please, do tell us.
29

30 MS CLARKE: I had a meeting with a gentleman called
31 [REDACTED], who following a meeting that he had with
32 the Commissioner, our Secretary, had received
33 correspondence that actually suggested that there were
34 contemporary matters of harm afoot at Ashley which was
35 quite concerning. [REDACTED] met with myself and a
36 Department of Justice representative where we were really
37 trying to question appropriately because he was also
38 representing members, claimants, so it was about, you know,
39 trying to be appropriate without breaching or asking him to
40 breach any confidentiality.
41

42 [REDACTED] gave me an example which relates to the
43 Lester matter, but in that conversation he was really
44 helpful in saying, "Just check the records". He'd
45 indicated that many records had existed for quite some
46 period of time. I haven't been a long-term - I haven't
47 worked in the State Government long-term. It was from that

1 discussion where I guess there was a - I held a view of,
2 well, we were thinking, what records could they be and how
3 could you then align those records to being a relationship
4 between the current Ashley staff, and that's where really I
5 fully became abreast and we actually started to take some
6 action in cross-checking records, so extracting them,
7 cross-checking them against current staff. And then, of
8 course, as Ms Allen talked about this morning, as Ms Baker
9 just talked then, that was when we really started to get
10 some very informed views about what was in some of those
11 applications about current staff.

12
13 MS ELLYARD: To summarise, I think it's clear that once
14 one goes to those records it was possible to identify a
15 number of staff who had continued to be employed at Ashley
16 and who were still employed who had been named in one or
17 more claims that had been made and paid out under the abuse
18 in care schemes?

19
20 MS CLARKE: That's right, correct.

21
22 MS ELLYARD: But prior to the time when each of you
23 started getting involved in this, I take it, those records
24 hadn't been made available for use as far as you're aware
25 in any kind of employment or disciplinary context?

26
27 MS CLARKE: Not to my knowledge.

28
29 MS ELLYARD: And did you come to understand, Ms Clarke,
30 whether there had been any considered reason why that was,
31 that those records hadn't been brought to bear on
32 employment decision-making?

33
34 MS CLARKE: So following that meeting, perhaps if, can I
35 just?

36
37 MS ELLYARD: Yes, continue the story.

38
39 MS CLARKE: So following that meeting I think there were
40 probably three key actions that occurred. The first one,
41 [REDACTED] indicated that over the last decade - so we
42 really started at the Department and People & Culture and
43 the Operations, this was a joint effort in terms of people
44 having discussions - went back into our human resource
45 records of how many people were employed at the Ashley
46 Youth Detention Centre prior to 2010; that was the first.
47 Simultaneously, the Abuse in State Care applications that

1 related to Ashley were being extracted, so that was the
2 cross-check that I referred to.

3
4 The third piece, and we had a very - these are members
5 and I need to acknowledge them, they did very, very good
6 work, they were part of our legal team, they were very
7 dedicated to doing this, they went in and they actually did
8 an assessment of the notification processes through all
9 four rounds, so they were sourcing as much information as
10 they possibly could to identify, if there were actions
11 taken at the time or if they weren't, why they weren't.
12 And in my statement I have attached that notification
13 process report that that team did produce, which indicated,
14 rightly or wrongly, but at the time it does appear that
15 privacy and confidentiality - I guess that's the words of
16 the author - were, I guess, were given precedent over
17 perhaps what we now all believe in this day of the
18 importance of a child safety lens over those things.

19
20 MS ELLYARD: Ms Baker, in your statement you identify
21 becoming aware in part of some legal advice that had been
22 provided in the past that was relevant to the use that
23 could be made of the Abuse in State Care records. Can you
24 tell us about that? And, to be clear, privilege in the
25 advice has been waived.

26
27 MS BAKER: Yeah, I think I did note in my statement at
28 that point in time when I lodged it, it hadn't been. So,
29 yes, I was obviously broadly aware of that advice that had
30 been sought in 2007, from memory, which did point to,
31 unless there was a willingness from, (1) there was a
32 complainant, and (2), the complainant was willing to take
33 an oath in regards to the abuse that they had endured, that
34 there was limited action available to the department to
35 take.

36
37 MS ELLYARD: And, I'll direct this question to whichever
38 of you feels that perhaps you're more familiar with the
39 records that were reviewed, but there were four rounds of
40 the Abuse in State Care Scheme culminating, as I understand
41 it, in 2013. Did either of you see any evidence that, as
42 part of that scheme or afterwards contact had been made
43 with claimants to see if they were willing to go on oath
44 and participate in a disciplinary process?

45
46 MS BAKER: I didn't see any of the detailed records
47 themselves. I saw a summary spreadsheet which was - and

1 our focus of that was to identify whether we had any
2 current staff, so I'm probably not best placed to comment
3 and I wasn't employed in a Human Services setting or a
4 community setting at the time that that scheme was
5 administered.

6
7 MS ELLYARD: Of course. Ms Clarke, from the records that
8 you've seen, have you been able to identify the extent to
9 which, as the rounds of the scheme unfolded, contact was
10 made with claimants to identify whether or not they would
11 be willing to go on oath?

12
13 MS CLARKE: No. No, I haven't seen that, and at that
14 point I think what Ms Baker's referring to from a
15 department perspective is, that was the only piece of
16 information that we had, yep.

17
18 MS ELLYARD: So, it appears, and I'll stand to be
19 corrected of course, that the common understanding was that
20 information received through the Abuse in State Care Scheme
21 could be used for the purposes of assessing whether or not
22 a particular person should receive a payout under that
23 scheme, but neither of you have seen any evidence that
24 there was follow up, and there may be evidence, but neither
25 of you have seen any evidence that claimants under the
26 scheme were followed up to see whether or not they wished
27 to participate through making a sworn statement?

28
29 MS CLARKE: The only thing that I think that would be in
30 my attachments to my statement, that the notification
31 process report identified was that, if a person wanted to
32 pursue their complaint through police, that was supported
33 by the scheme.

34
35 MS ELLYARD: Through police?

36
37 MS CLARKE: Correct.

38
39 MS ELLYARD: Thank you. Can I ask you, Ms Baker, you
40 mentioned that unfortunately the budget bid that you made
41 to government wasn't successful so that it was necessary
42 instead to, with the Secretary's assistance, pool resources
43 inside the department. Did that have an effect on how
44 quickly and how well you could get through the work?

45
46 MS BAKER: Absolutely, and it was beyond a business as
47 usual approach. Establishing a team of approximately eight

1 people in the records team and a team of people to review
2 and redact file material was certainly above and beyond our
3 funded establishment; it required the use of the
4 department's cash reserves to meet that, and that proposal
5 was very much supported and ultimately endorsed and
6 approved by the Secretary. That did facilitate us being
7 able to respond to file requests in a much more timelier
8 manner than had been the department's history, and
9 certainly from once the digitisation of records actually
10 got underway and we knew what our record holdings were, we
11 were certainly in a much stronger position to be able to
12 extract relevant materials to inform investigations.

13
14 MS ELLYARD: It appears that, looking in from the outside,
15 and the Commission has heard some evidence from Mr Graham,
16 the Registrar for the Working with Vulnerable People
17 Scheme, that looking from the outside in a view was formed
18 that perhaps it had been business as usual inside the
19 department, in that, it was taking a long time sometimes
20 for records to be obtained and provided because there
21 wasn't additional resources and a sense of urgency as
22 Mr Graham observed it. What would be your response to
23 that?

24
25 MS BAKER: I've obviously got a different perspective on
26 that and I've probably got a fuller understanding of the
27 challenges and the issues that the department were
28 responding to at the time; that did obviously include the
29 department running a hotel quarantine program from March
30 2020 onwards, and I was the Emergency Commander and doing
31 my own role in conjunction with hotel quarantine at the
32 same time. And I would describe my role as broad and
33 shallow. So, I spanned multiple functional areas for the
34 department; hotel quarantine was obviously another gem on
35 top of that.

36
37 So, I don't think, in fairness, that Mr Graham has
38 probably got a full appreciation of the work that was being
39 undertaken by the department, but probably didn't
40 necessarily realise because it's quite an internal
41 function, the effort and the additional resources that the
42 Secretary had agreed to deploy in our agency to ensure
43 that, one, that we could participate really fully in our
44 response to the Commission, but also to help respond to
45 people who have formerly been in the State's care with
46 fulsome records, but also to enable responses to the
47 Registrar's notices to be responded to in a timely manner.

1
2 Now, when that was brought to my attention, I think
3 initially the contact came to Mandy, Mandy referred that to
4 me. I met with the Registrar within two days and there was
5 advice provided to me in terms of the matters that had been
6 outstanding, and there was a delay. I think the initial
7 request came in in June and we weren't - it was 23 August
8 when I met with the Registrar and we needed to obviously
9 respond to his requests for information in a much more
10 timely manner.

11
12 MS ELLYARD: And I guess these were very serious matters
13 in the sense that they were very serious issues potentially
14 affecting whether or not people should be accredited to
15 work with children?

16
17 MS BAKER: Correct, yes.

18
19 MS ELLYARD: And so, something which obviously warranted
20 the highest attention. Well, not just from a particular
21 department but from Government as a whole. Would you agree
22 with that?

23
24 MS BAKER: Yes, and I think we're a department where
25 there's constant re-prioritisation of our tasks for varying
26 and multiple reasons, and I think on balance we actually do
27 that particularly well with the limited resources that we
28 do have available to us.

29
30 Yeah, so I think from a response perspective, the
31 moment that that was brought to my attention, we already
32 had work underway and we had a satisfactory resolution.

33
34 PRESIDENT NEAVE: Q. Can I ask a question about that,
35 the process of constant re-prioritisation of tasks.
36 Presumably that is driven by political processes as well as
37 by bureaucracy; that is, politicians may perceive a need to
38 respond to a particular community demand, and that may mean
39 that other things go on the backburner. Would that be fair
40 comment?

41
42 MS BAKER: I guess political imperatives are one thing
43 that we balance. We also need to balance employee matters,
44 we need to balance client matters, we need to involve
45 contractual matters, so there's a breadth of complexity
46 that drives re-prioritisation of tasks within the agency.
47 It's generally done quite consciously to deal with what's

1 first and foremost in front of us, but I think it's the
2 reality of every senior public servant that you're
3 constantly re-juggling and re-prioritising what's on your
4 plate.

5
6 MS ELLYARD: And this was an example of needing to juggle
7 and re-prioritise because of the request for more money
8 from government to help you do it through the budget
9 process had been unsuccessful?

10
11 MS BAKER: Yeah, it was certainly one avenue that we
12 pursued; it wasn't pursued exclusively and we obviously had
13 a back-up plan of being able to use and re-prioritise
14 funding internally. So, the government's got multiple
15 considerations that they need to weigh up when they're
16 handing out funding to agencies, and ultimately that's the
17 decision of the Premier and his Cabinet in terms of what
18 gets funded. The fact that that didn't get funded, whilst
19 disappointing, it didn't mean that the work didn't happen;
20 we utilised our internal reserves to be able to meet, I
21 guess, what was largely an unprecedented demand.

22
23 COMMISSIONER BROMFIELD: Ms Baker, hi. Do you remember
24 what month it was that you found out that that was not
25 funded, the budget bid was not successful?

26
27 MS BAKER: I can't off the top of my head.

28
29 COMMISSIONER BROMFIELD: In the first half of 2021?

30
31 MS BAKER: Yeah.

32
33 COMMISSIONER BROMFIELD: That may be Q2?

34
35 MS BAKER: We generally find out through the budget
36 process informally between April and May prior to the State
37 Budget being handed down, but I obviously realise that it
38 was a disrupted year because of COVID, so I can't quite
39 recall off the top of my head what the exact timing would
40 have been for 2020.

41
42 COMMISSIONER BROMFIELD: And you mentioned that you were
43 disappointed. Are you prepared to say whether you were
44 surprised?

45
46 MS BAKER: I guess I've been in the public service for
47 21 years now: it is very difficult in a contested budget

1 environment for corporate areas to be funded, and that is
2 the reality, I don't think that's any different from any
3 other agency. It is, yeah, the funding envelope is what it
4 is. There's not a lot of sexy announceables in
5 record-keeping, and that is the pragmatic reality of that
6 budget cycle.

7
8 COMMISSIONER BROMFIELD: It does appear, on the
9 information we've got though, that by the time that budget
10 bid was submitted it was apparent that there was something,
11 potentially something quite extraordinary where records
12 could be very helpful and did have a bearing on safety of
13 children.

14
15 MS BAKER: Yes.

16
17 COMMISSIONER BROMFIELD: Thank you.

18
19 MS ELLYARD: Can I ask you both some questions now about
20 the Ashley workforce. We've had a lot of evidence given
21 about, both in this week and in previous weeks, about the
22 complex and difficult nature of the work that those who
23 work at Ashley are called upon to do and the extent to
24 which over time the staff working there have been
25 appropriately trained and qualified and then appropriately
26 supported to do their work.

27
28 We understand from material provided to us by
29 Mr Pervan that there isn't even currently any minimum
30 educational requirement to take up a role as a youth
31 worker. Can I ask you first, Ms Baker, you comment at
32 paragraph 94 and following of your statement about this
33 question of matching skills and aptitudes to positions?

34
35 MS BAKER: Yeah, so I've got a view that people succeed in
36 roles for a variety of reasons. Professional
37 qualifications is one important element to people
38 succeeding in roles, but along with their prior experience,
39 their willingness to take on feedback from coaching, their
40 personal alignment with the organisation's values and
41 behaviours are all really important contributing factors
42 for people's success in a role.

43
44 COMMISSIONER BROMFIELD: Following on from that then, for
45 the staff at the Ashley Youth Detention Centre are core
46 values or core aptitudes a part of their position
47 descriptions and their performance review process then?

1
2 MS BAKER: So, our agency went through a process during
3 the 2018 through to 2019 to establish departmental values.
4 Now, that was rolled out when we celebrated our first
5 birthday, I think on 1 July 2019, what the agency's values
6 actually were. We then, in the year of 2019 into 2020
7 started to work with individual divisions and teams across
8 the agency to develop what those supporting behaviours
9 would be in the workplace, so that period of work was taken
10 over those two years, of course disrupted in 2020 by COVID
11 as a lot of things were.

12
13 They aren't necessarily described in the statements of
14 duties, and the reason that they wouldn't be described in
15 the Ashley statement of duties at that point in time was
16 because we took the statements of duties as they were when
17 we came across from the Department of Health, but certainly
18 as roles have been advertised or new roles have been
19 created the departmental values are explicit in the
20 statement of duties.

21
22 COMMISSIONER BROMFIELD: But if I had been a youth worker
23 for 15 years, I would not have those aptitudes or values in
24 my statement of duties?

25
26 MS BAKER: No, I don't believe that they were listed in
27 the statement of duties from that period of time ago.

28
29 COMMISSIONER BROMFIELD: And are they incorporated into
30 the performance review process?

31
32 MS BAKER: Yeah. So, another initiative that we had, an
33 important piece of strategy out of our People & Culture
34 area was a Developing and Achieving Together Framework
35 which had a very strong focus on organisational values and
36 behaviours. Whether or not that has been picked up
37 operationally at the centre, I can't comment on, but
38 certainly the framework was there for all parts of our
39 agency to be able to pick up and adopt.

40
41 MS ELLYARD: Ms Clarke, can I ask you, at paragraph 19 of
42 your statement, having made the point that employment
43 matters are in your view more the purview of the Secretary
44 than the Deputy Secretary, you do offer some reflections
45 given your former role about this question of
46 qualifications for staff.
47

1 MS CLARKE: Certainly, my view as the Former Deputy
2 Secretary, is that I do believe that there are a number of
3 roles within a youth detention facility that do warrant
4 expertise, and they do warrant tertiary qualifications, and
5 I say that because I think that the structure can have a
6 variety, I do think experience is an important
7 pre-requisite. I do think the capacity to be able to
8 engage with a young person in a relational way is also
9 about the things that Ms Baker just talked about around
10 your values and your attitudes.

11
12 But when it comes to dealing with young people with
13 complex needs, that their trauma manifests itself in all
14 sorts of ways, in anger, in violence, that there are
15 numbers of professional staff that must have the
16 appropriately tertiary qualified - to be able to support
17 youth workers.

18
19 Also, importantly, I think people that are in
20 decision-making positions on a day-to-day basis do need to
21 be able to have an operating framework of practice that
22 does understand what is occurring for a young person in
23 that moment and that, yes, there are a whole range of risks
24 and safety risks in Youth Detention, but at its heart it is
25 often those complex behaviours are a result of trauma and
26 the ability to understand that in a grounded way, I think
27 tertiary qualifications absolutely helps that. And I'm not
28 dismissing non-qualified, I think it's a combination of.

29
30 MS ELLYARD: I think you're identifying that, to the
31 extent that people perhaps in frontline youth worker roles
32 are not themselves qualified to a tertiary level, they
33 require the support and guidance and supervision perhaps in
34 a clinical or professional sense of those who do have those
35 qualifications.

36
37 MS CLARKE: Yes, that's what I believe.

38
39 MS ELLYARD: Because we've heard some evidence about the
40 risk that people who are trained in youth processes might
41 under pressure or in a moment of crisis fall back on old
42 ways, and it would appear from the evidence that the
43 Commission has received, including evidence from a number
44 of former detainees, that the old ways were not
45 therapeutic.

46
47 MS CLARKE: I would agree on that. I also think that the

1 structure of a centre, at its heart sometimes interacting
2 with a young person is about developing a trusting
3 relationship with an adult, and that could be a youth
4 worker, it could be a visiting service, it could be one of
5 the members of the Professional Services Team. Regardless
6 of who a young person might choose to say that they have a
7 trusting relationship with, I think the Professional
8 Services staff, because of their framework of practice, can
9 really support and bolster interactions with youth workers;
10 they may have different types of therapeutic leverage with
11 a young person as well because it's a different
12 relationship with a young person.
13

14 But certainly also, to the point you raise about
15 reverting to old ways: detention centres in my experience
16 from the time I was there, they tap into people's personal
17 safety. Safety is a big issue that does need to be
18 managed, and so, I think there is always a vulnerability
19 for people to be much more risk averse because of the
20 safety matters afoot, and it takes very skilled
21 practitioners in my experience to work with some very
22 complicated trauma-related behaviours to allow - you do
23 need to take risks if you're going to be trauma-informed.
24 You do need to take risks for therapeutic engagement, and I
25 think it's a combination of skills, knowing the young
26 person but also having some application of clinical
27 skillsets to do that.
28

29 MS ELLYARD: Am I right in understanding, Ms Clarke, that
30 without being dismissive in any way of various reforms that
31 have been attempted over the years and the good work of
32 those, including in the relatively recent past, who did
33 bring those skills, your assessment would be that until
34 perhaps the introduction of the practice framework during
35 your tenure, there hasn't been a sufficient framework in
36 place to support and guide youth workers in providing
37 therapeutic care for detainees?
38

39 MS CLARKE: I think the team at Ashley have done a really
40 great job in the practice framework, but to answer that
41 question I would say to move change into the setting
42 requires very, very strong leadership and that leadership
43 must be grounded in understanding and an absolute
44 commitment to therapeutic practice.
45

46 MS ELLYARD: And you were the Deputy Secretary at the time
47 and I take it you would say that that change is now being

1 effected. Does it mean that, by necessary implication,
2 you're suggesting that there hasn't been appropriate
3 leadership prior to the recent past to help and support
4 those at Ashley making that seismic shift from custodial
5 and punitive to therapeutic?
6

7 MS CLARKE: I think it's been combinations of things. So,
8 strong leadership, one; change in leadership is another
9 one. Different things that have occurred in the centre in
10 terms of - I think my statement refers to an
11 underestimation of the change management that's actually
12 involved in trying to shift a setting from perhaps a
13 traditional custodial to a therapeutic framework.
14

15 PRESIDENT NEAVE: In some of our witness statements we
16 have a reference to a person whose role it was at Ashley to
17 lead change management, and the suggestion is that that was
18 going quite well, and I can't now recall whether that was
19 during the period of time you were involved, but then it
20 was abandoned.
21

22 COMMISSIONER BROMFIELD: I think that finished in 2018.
23

24 MS CLARKE: I did listen to that statement, it wasn't in
25 my time, Madeleine Gardiner was the witness but I wasn't
26 aware of that change management.
27

28 PRESIDENT NEAVE: But it was then abandoned.
29

30 MS CLARKE: Yes, and I don't know why.
31

32 MS ELLYARD: Can I turn then to ask you some questions,
33 both of you, that overlaps with some evidence that Ms Allen
34 has given. May I first begin by saying and confirming,
35 each of you heard the evidence that Ms Allen gave in
36 relation to particular current or now some former employees
37 whose names came forward through some claims and who were
38 the subject ultimately of ED5 and ED4 processes? You were
39 both here for that evidence.
40

41 MS BAKER: Yes.
42

43 MS CLARKE: Yes.
44

45 MS ELLYARD: Just perhaps to start with the big picture,
46 under Employment Direction 5, a Head of Agency can take
47 action to commence an investigation into whether or not a

1 State Servant's been guilty of misconduct; is that right?

2

3 MS CLARKE: Yes.

4

5 MS BAKER: Correct, if they form a reasonable belief that
6 the code may have been breached.

7

8 MS ELLYARD: And that's the threshold for starting an
9 investigation, a reasonable belief that the code may have
10 been breached?

11

12 MS BAKER: Yes.

13

14 MS ELLYARD: In your experience, Ms Baker, what's the
15 nature of the material that's needed before the belief can
16 be reasonably formed?

17

18 MS BAKER: Normally establishment of the facts. So, where
19 it's a matter you would be wanting to provide the Secretary
20 with assurance that the staff member was an employee at
21 that time; that we might have some corroborating evidence
22 that indicates that - I'll put it in the context of
23 children for a moment - that the staff member and the child
24 were at the same place and the same time that has been
25 nominated, and if there is any other supporting information
26 that the department may have to confirm that that event may
27 have taken place.

28

29 MS ELLYARD: So, you don't need to already have all the
30 evidence gathered?

31

32 MS BAKER: Don't need to have it all gathered, but I think
33 if you didn't make best attempts during an assessment of
34 information I would be very worried that industrially that
35 may be challenged, and in being challenged may limit the
36 department's ability to continue with an employment
37 investigation; because, if it was appealed in the Tasmanian
38 Industrial Commission and we weren't able to sufficiently
39 particularise what the allegations were, that could lead us
40 to a point where that matter was challenged.

41

42 MS ELLYARD: I take it then that it's been your experience
43 that the way it works is that, unless there's the breach of
44 the Code that a Head of Agency reasonably believes may have
45 occurred is well particularised, there is a risk in
46 starting an investigation?

47

1 MS BAKER: Yes, a concern that that could be challenged
2 and dismissed fairly quickly.

3
4 MS ELLYARD: That must mean that in some cases, and I
5 think perhaps we're talking today about some such cases,
6 there's quite a long process of initial assessment in
7 order to assist the Head of Agency to consider whether or
8 not he or she can form a belief?

9
10 MS BAKER: I think, if you've got access to reliable, well
11 indexed catalogued records, that those assessments could be
12 undertaken in a short period of time. That was certainly a
13 limiting factor for this department given the poor
14 record-keeping practices of the past to be able to do that
15 in a short period of time in some of our matters, yes.

16
17 MS ELLYARD: Could I ask you a hypothetical question,
18 recognising the particular difficulties posed by
19 allegations that were made a long ago and where there
20 hasn't been recent contact with the complainant.

21
22 If an allegation were to be made now through the
23 Ombudsman, through the Commissioner for Children and Young
24 People, that a young person in Ashley was making an
25 allegation that he or she had been sexually abused by a
26 worker, what's the kind of detail that would be required
27 for there to be a briefing prepared to invite the Secretary
28 to consider whether he - it is currently "he" - had formed
29 a reasonable belief or a reasonable view?

30
31 MS BAKER: Yes, certainly. So, the immediate benefit at
32 Ashley is the availability of CCTV footage, so getting that
33 secured and able to be provided to the Secretary.
34 Availability of witnesses, so current other people who may
35 have witnessed and seen firsthand the conduct, all of that
36 information would be readily available for a contemporary
37 event, which would enable that information to be put to the
38 Secretary for him to consider the matter.

39
40 MS ELLYARD: What about if the alleged conduct occurred
41 out of view of cameras, as we've heard is the experience
42 that many witnesses have described; if there's not that
43 kind of independent evidence in the form of CCTV, I take it
44 there would still be the possibility of the belief being
45 formed?

46
47 MS BAKER: Yes, because there would be the availability

1 of - there should be the availability of other witnesses,
2 given the practice as I understand it is not to have a sole
3 staff member providing care to a young person, there should
4 be in the current day events availability of firsthand
5 witnesses if that event did occur outside an area where
6 there wasn't CCTV footage.

7
8 MS ELLYARD: Can I ask you, Ms Clarke, is that your
9 experience too, that before a Head of Agency will form a
10 belief on reasonable grounds, there needs to be a
11 fair degree of particularisation of the misconduct that may
12 have occurred?

13
14 MS CLARKE: Yes, but I think if I may go to your example
15 of today, if that was to happen today?

16
17 MS ELLYARD: Yes.

18
19 MS CLARKE: I have no doubt that if that scenario was to
20 happen today there would be a discussion internally, I have
21 no doubt that the Secretary would issue on the basis of a
22 young person making a complaint, whether the paperwork
23 would be issued and all the particulars like that, but I
24 think that such an accusation like that in a Youth
25 Detention Centre that is - they are high risk settings in
26 nature - I have every confidence that the Secretary of the
27 Department would do that.

28
29 You would be able to match employee records of, were
30 they on the site at that particular - you could readily
31 grab information that you needed to, and then I do believe
32 that there would be work occurring in the background, but
33 I believe that the paramount concern would be that young
34 person and support to them, counselling services to them,
35 helping them to describe, but also being quite acutely
36 aware that in the settings - and I'm aware, Commissioners,
37 that you've heard evidence during the week that for young
38 people in detention it is about also not dobbing, it is
39 about, you know, not snitching, and you do need to be able
40 to manage those dynamics and protect that young person in
41 those circumstances.

42
43 PRESIDENT NEAVE: Could I ask a follow-up question. Would
44 either or both of you support changes to the test for an
45 investigation to be initiated? The reasonable belief that
46 the code may have been breached?

47

1 MS ELLYARD: Reasonable grounds to believe.

2

3 PRESIDENT NEAVE: Reasonable grounds, thank you, to
4 believe that the code may have been breached: should there
5 be some weakening of that requirement in cases involving
6 allegations affecting child safety?

7

8 MS CLARKE: My contribution to that would be that, I
9 acknowledge the - I think it's incredibly important that
10 Child Safe organisational practices are progressed, and I
11 think that those things, albeit will take some time to
12 implement, they are a mechanism in which self-reporting,
13 and I think it's very important to have a culture of
14 self-reporting alive and embedded in a workplace culture,
15 is extremely beneficial for Youth Detention because it
16 guards against - well, not relying on young people to make
17 complaints to start with.

18

19 PRESIDENT NEAVE: You mean one member of staff reporting
20 another member of staff?

21

22 MS CLARKE: Yes, so a culture alive of everyone, I guess,
23 having eyes - in the environment, it's very important, and
24 I think a Child Safeguarding Framework and an education
25 around what Child Safe Organisations are about complements
26 therapeutic practice frameworks, it complements those
27 things.

28

29 I'm not an HR technical person or have any industrial
30 relations expertise, but I think and recognise that those
31 things are very, very important in the State Service. The
32 government delivers a range of services to children and it
33 could be through that vehicle then in which you have
34 industrial leverage, but that's just my contribution.
35 People are talking about the current ED5 mechanism, but I
36 do think that there is another framework here about Child
37 Safe Organisational practices that are very important and
38 should be a requirement on people that are delivering
39 services to children.

40

41 MS ELLYARD: Ms Clarke, can I put to you that it appears
42 that the sting is on what "reasonable grounds" means. It
43 sounds like at the moment in current practice the word of a
44 child would be accepted as enough having regard to
45 contemporary understandings, if I can put it that way, of
46 the circumstances that would permit a child to disclose and
47 of course the immediacy of checking records. So, on the

1 child's say so would be much more likely now to be regarded
2 as reasonable grounds if there was a complaint made by a
3 child even before perhaps extensive other evidence was
4 sought?

5
6 MS CLARKE: I agree, yeah.

7
8 MS ELLYARD: But in that case of historical allegations,
9 including allegations that have been made directly but
10 after the fact through Abuse in Care Schemes, the view
11 seems to have been taken, including in the case of Lester
12 and Ira and Stan here, that it wasn't enough, that there
13 was a need to get surrounding corroborative material?

14
15 MS CLARKE: My response to that would be, those three
16 matters that you're talking about from my perspective of
17 the Deputy Secretary, the department started to enter into
18 really uncharted territory. I think it matured in its
19 capacity very, very quickly, I think it was a team effort;
20 of course, learning occurs in those circumstances, and
21 those particular matters, I think, from that, what we
22 actually did see is the department mobilised. In response
23 to, when a comparison between those and today, I actually
24 think it's vastly different.

25
26 MS ELLYARD: And I think you're inviting the Commission to
27 conclude that the way in which the matters of Lester, Ira
28 and Stan were dealt with in 2020 isn't perhaps the way
29 they'd be dealt with now?

30
31 MS CLARKE: I believe that's right.

32
33 MS ELLYARD: Just to tease out what the differences would
34 be, thinking firstly about Lester, the evidence is that the
35 allegation that he had been seen in the presence of a naked
36 crying child in the past came to the department's attention
37 in January 2020; is that right? I mean, perhaps I'll ask
38 each of you when each of you personally became aware of
39 that allegation.

40
41 MS BAKER: So, for me it was on or around 10 January, and
42 I was directly notified by the former HR Manager,

43 [REDACTED].

44
45 MS ELLYARD: And in the case of you, Ms Clarke, do you
46 recall when you became aware that that allegation had been
47 made about Lester?

1
2 MS CLARKE: Yes, I believe it was perhaps after 31 August
3 when [REDACTED] disclosed that matter and then I made
4 internal enquiries.

5
6 MS ELLYARD: So that matter hadn't come to your attention
7 as a disclosure about a current staff member until that
8 time?

9
10 MS CLARKE: No.

11
12 MS ELLYARD: Does that seem to you to be satisfactory?

13
14 MS CLARKE: I think it actually indicates that, you know,
15 where is the line around significant reporting in terms of
16 between operations in other areas of the department, yep.

17
18 MS ELLYARD: It appears then - I think it's clear that
19 Ms Allen has described in her evidence, which I take it
20 each of you would agree with, the various steps that were
21 taken, but in practical terms Lester remained in the
22 workplace, query whether he had any contact with children,
23 his formal role suggests that he shouldn't have,
24 until November when he was (a) reported to the police and
25 (b) suspended. Is that right, Ms Baker?

26
27 MS BAKER: That's correct.

28
29 MS ELLYARD: And as we understand the evidence of
30 Ms Allen, that suspension ultimately occurred after a
31 signed statement had been obtained from Ira?

32
33 MS BAKER: That's correct.

34
35 MS ELLYARD: And it also occurred in the context of
36 Ms Allen and her team becoming aware that there were also
37 other matters alleged against Lester that had been made
38 through the Abuse in Care Schemes?

39
40 MS BAKER: That's correct. So, there was that work done
41 to examine the Abuse in State Care Scheme and Mr Lester's
42 name was one of those names that was identified via that
43 examination of those records.

44
45 MS ELLYARD: And so, I think the explanation for why it
46 took so long is in part because the records weren't already
47 close to hand to be consulted; is that fair?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MS BAKER: That's correct, so there was extensive searching undertaken in that January period post the notification from Alysha, and the records that were available as I understand it were very limited.

MS ELLYARD: And so, thinking back to the definition or the need to have a belief on reasonable grounds, I take it that it was your assessment that there wasn't enough material in that early part of the year to present the matter to the Head of Agency?

MS BAKER: We certainly had information that was of concern and was disturbing, inappropriate behaviour, and that needed to be validated and confirmed, and the People & Culture Team at the time went to, I think, quite extraordinary lengths to try and get some corroborating evidence. Mr --

MS ELLYARD: Ira, the witness.

MS BAKER: -- Ira initially didn't wish to provide a statement; that was pursued. COVID then hit in March, and I actually left my role for a period of time March through to June, so did lose track about what happened during that period of time personally. But I do recall the team reporting that they were on hands and knees in basements trying to fossick through records to see what information holdings the department did actually have. I'm aware that they approached a former Manager in the Department of Health at that point in time who, again, wasn't able to assist the officers at the time with their enquiries.

MS ELLYARD: As I understand it, part of the context of this is, before Lester could be stood down under Employment Direction 4, there needed, as I understand it, to be a belief as well that he may have breached the Code of Conduct in a manner that meant that he shouldn't continue his duties?

MS BAKER: That's correct.

MS ELLYARD: What about the question of whether or not, having regard to the very concerning information, albeit yet not corroborated, what was the potential for Lester to have been directed to work from an alternative location or perform alternative duties that would put beyond doubt the

1 question of whether or not he would be exposed to children?

2

3 MS BAKER: I can't recall whether that was specifically
4 considered at the time, because the advice that we had was
5 that he was working in a role that didn't have him having
6 consistent access and supporting young people. He may have
7 had incidental contact, but there wasn't a - he wasn't
8 undertaking a role where he had direct access to children
9 so --

10

11 MS ELLYARD: I just interrupt you to say, it sounds like
12 you weren't made aware that on at least one occasion he was
13 observed conducting a strip-search of a child after the
14 time the allegation had been brought?

15

16 MS BAKER: No, I didn't have any knowledge of that.

17

18 MS ELLYARD: Would that have made a difference, if there
19 had been that suggestion that, whatever his formal title,
20 he was in practice performing direct child-related work?

21

22 MS BAKER: Absolutely, that would have been something that
23 would need to have been discussed and considered through
24 the Case Conferencing that Ms Allen mentioned before, that
25 would have been something that absolutely we would have
26 wanted to discuss and consider.

27

28 MS ELLYARD: Certainly the evidence is from Alysha that
29 she made that known to Ms Honan. I can't, as I sit here,
30 recall what Ms Honan said about that point but I'm sure
31 that I'll be reminded.

32

33 There's evidence from Ms Honan and from Mr Watson that
34 each of them were concerned about Lester remaining in the
35 workplace while this very significant allegation had been
36 made about him. Is it your recollection that they were
37 expressing those concerns?

38

39 MS BAKER: Certainly not to me, and my expectation and
40 understanding of how the People & Culture Team undertook
41 their duties, that if those concerns would have been
42 expressed, I would have been made aware. Certainly, I was
43 not made aware up until the time that I stepped out of my
44 role to go and help with the state's COVID response, and I
45 don't recall any representations being made directly to me
46 when I returned to my role in June.

47

1 MS ELLYARD: Ms Clarke, in your statement you've
2 identified that you would regard these matters as more
3 matters for the Secretary rather than the Deputy Secretary.
4 Is there a formal role under the delegations that apply
5 here for the Deputy Secretary in assisting or advising the
6 Secretary on whether or not action should be taken under
7 ED5 or a suspension under ED4?
8

9 MS CLARKE: No, not a formal delegation. However, perhaps
10 if I make a contribution to this safeguarding group because
11 I have heard some evidence around that. I think, and I'll
12 go back to, these are particular matters at a particular
13 point in time that I think were unchartered territory, and
14 that safeguarding group was formed - I'm not sure of the
15 exact name of it, but it actually was another action that
16 did follow from the meeting with [REDACTED]. It recognised
17 that there was numbers of people that did need to come
18 together and actually have some discussion.
19

20 I think Ms Allen referred to it this morning as
21 "robust discussion". It was certainly robust discussion.
22 So, I certainly think there may have been occasions where
23 Operations staff may have participated; I'm not - I really
24 can't recall, I'm sorry, but I do believe that structure
25 matured over time. I think that was a very important
26 structure to assist a Secretary in their decision making.
27 So, I think that any Secretary would get comfort from a
28 range of people coming together trying to actually work
29 their way through some very complicated unchartered
30 territory and I think that was being responsible to your
31 Secretary.
32

33 MS ELLYARD: You said, Ms Baker, that you can't recall if
34 consideration was given at the time to redirecting Lester
35 to perform other duties. Is that something though as a
36 matter of more general practice that would have been
37 available to the Secretary to try and meet the concerns
38 raised by allegation which hadn't yet risen to reasonable
39 grounds for an employment direction investigation?
40

41 MS BAKER: It's certainly something I think in today's
42 response that we would consider. I really don't recall it
43 being considered at the time, it's certainly something
44 available. A Secretary under ED1 can vary duties at
45 Level 4 for any employee, so that sort of capability does
46 exist under our current employment framework and it would
47 be something that's available to the Secretary to exercise.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MS ELLYARD: And would that be something that's available now in the event that a concerning issue arose, perhaps of an historical nature, where there was going to be some time involved in drawing together the material that might form the basis for a belief on reasonable grounds?

MS BAKER: Yes, it is, it's in Employment Direction No.1 and it would be available. One of the challenges with the physical location of the site at Ashley is how we could reasonably accommodate a staff member at another work site without there being, I guess, implications for the employee, but certainly that provision does exist.

MS ELLYARD: Can I ask you a question, and I'll direct it at you, Ms Baker, first, because you're the one that became aware earlier on about Lester, you indicated that you knew of the allegation about Lester on 10 January and it's clear from the evidence that that allegation involving Lester was not reported to the police until November. Can I invite you to agree with me that whether or not there was processes involved in the Department of Communities for its own purposes gathering information, nevertheless it would have been appropriate to make the police aware much sooner than occurred that this historical allegation had been made?

MS BAKER: I think we had concerns of inappropriate and disturbing behaviour, absolutely. Did it meet the threshold with what the disclosure was at that point in time for a notification to Tasmania Police? We obviously didn't advise Tasmania place at that point in time, and I still think I hold the view that until we had obtained some additional information that we could actually reliably provide to police.

In hindsight I probably would report - would err on the side of caution and report early: that obviously wasn't something that we discussed and considered at the time because we weren't dealing with it at that point in time as a disclosure of child sex abuse.

MS ELLYARD: But you should have treated it that way, don't you think?

MS BAKER: I agree.

1 MS ELLYARD: Given what was described and giving full
2 benefit to the protection of children it should have been
3 understood as an allegation of child sexual abuse?
4

5 MS BAKER: Totally agree, with a child safe lens and a
6 child safe lens, at the forefront of your mind you would
7 immediately report.
8

9 MS ELLYARD: Can I ask you for your reflections on that
10 point? I understand, Ms Clarke, that you say you didn't
11 become aware of it until much later, but really you should
12 have, shouldn't you, given what we can understand to be the
13 seriousness of what was being alleged against a current
14 employee?
15

16 MS CLARKE: I think my reflections on that time, based on
17 what Kathy was saying just then, is that, I think they
18 are - I think what's actually occurred here is the
19 industrial lens and the child safe lens; they need to marry
20 to some extent in these matters. However, at that
21 particular point in time, I think, as Ms Baker's indicated,
22 there was information afoot, I think from Assistant
23 Commissioner Higgins' testimony in terms of the witness
24 statement yesterday, I think that Tas Police did step
25 through a process too of having a conversation with police
26 in terms of the value of hindsight would have been very
27 useful at that point in time, and I think that all agencies
28 have probably moved over this period of time into the realm
29 of information sharing that may not have been available at
30 that point. I mean, I think there's been some very good
31 work done across the agencies, yep.
32

33 COMMISSIONER BROMFIELD: Ms Clarke, just reflecting on the
34 fact that the Department of Communities also includes the
35 Child Safety Services, what do you think it would be like
36 for front line staff in Child Safety Services to be hearing
37 that the corporate area didn't have that child safety lens
38 at that time?
39

40 MS CLARKE: I think - well, generally I think people - I
41 don't tend to think that the structure of organisations
42 have naturally lent themselves to that, and I think that
43 Child Safe Organisational practices is what that
44 encourages.
45

46 What I can say is, as the department started to really
47 accelerate work, not just on dealing with the here and the

1 now but simultaneously also trying to do future state,
2 which was setting up practices to be Child Safe
3 Organisations, and there was an external agency that was
4 qualified in that area, one of the first groups of people
5 that participated in that was the HR personnel, and so, I
6 do think that it is about educating and bolstering. I
7 don't think there's a natural progression to - I think it's
8 got to be deliberate and I do think that there were efforts
9 to do that, yes.

10
11 COMMISSIONER BROMFIELD: And, on the evidence that we're
12 hearing, it sounds like these events were really a catalyst
13 to start merging those industrial and child safe lenses?
14

15 MS CLARKE: Correct.
16

17 COMMISSIONER BROMFIELD: Do you have any reflection on why
18 the National Royal Commission wasn't the catalyst for that
19 to occur?
20

21 MS CLARKE: I think that, when I think through the
22 implementation of Royal Commission recommendations,
23 certainly the Ashley Youth Detention Centre certainly -
24 read the volume 13 I think it was of the Royal Commission
25 in terms of the learnings from the Royal Commission in
26 relation to Youth Detention, then there's a broader piece
27 of work which of course relates to the recommendations for
28 Child Safe Organisational practices.
29

30 At the point that the initial Bill did come out for
31 consultation, I certainly know the Children, Youth and
32 Families portfolio did do and started to progress that
33 work; that did include some HR people, so that safeguarding
34 inter-departmental committee did merge over time once it
35 actually begun to establish some good, solid processes for
36 ensuring good exchange of information and prompt in
37 response - responsiveness, it started to really turn its
38 mind to progressing child safe practices, not just in
39 education but also in relation to Ashley that also related
40 to using that organisation to do some audit checks really
41 on, was policy and procedure, is it written in a way where
42 it's child friendly? They were checking things like, are
43 documents in a manner that would be seen to be child safe
44 in practice; that teams of people, both in Child Protection
45 actually, and also in Ashley, they started to drill down
46 into the operations of where in your operations on a
47 day-to-day basis where you're interacting with young people

1 where practices of the past may no longer, if you're
2 applying a child safety lens, actually be truly safety, and
3 so, they do go to things like one-to-one work with children
4 where you can actually bolster protections.

5
6 COMMISSIONER BROMFIELD: Thank you.

7
8 MS ELLYARD: One of the aspects of this question, just
9 pursuing the question of Lester and the timing of the
10 report to police. Each of you had an involvement in
11 conducting what I'm calling a preliminary assessment of a
12 complaint that was made by Alysha which alleged, amongst
13 other things, that she had been discouraged by Ms Honan
14 from making a report to police herself.

15
16 I think each of you had a role to play in that report;
17 is that right?

18
19 MS BAKER: Yes.

20
21 MS CLARKE: That's right.

22
23 MS ELLYARD: And one of the concerns that might be raised
24 about the fact that it was the two of you who conducted
25 that report was the fact that at the relevant time Ms Honan
26 reported to you, Ms Clarke?

27
28 MS CLARKE: That's correct.

29
30 MS ELLYARD: And whether or not you could investigate that
31 matter in an appropriate - not just being impartial but
32 being seen to be impartial. Can I ask you for your comment
33 on that?

34
35 MS CLARKE: Yes. So, my role in conducting the
36 preliminary assessment: the nature of the complaint that
37 Alysha was raising related to a number of matters, one
38 which was Lester so, I'll just stay with that particular
39 matter, but it was asking - the nature of the complaint was
40 that it was an allegation that the Director had breached
41 the Code.

42
43 So, the preliminary assessment, similar to other
44 preliminary assessments was, it wasn't drilling into the
45 actual specific detail of the actual individual complaints,
46 it was assessing the detail that was available that would
47 form reasonable grounds for a breach of the Code.

1
2 In relation to that matter, I wasn't able to find any
3 evidence in terms of the documents that I assessed, albeit
4 a very important matter, albeit Alysha was - it was
5 important that that was reported, but I didn't believe that
6 the Director actually - there was any evidence afoot that
7 would suggest that she's breached the Code in that way.
8

9 In terms of actually doing the preliminary assessment,
10 I did it myself and I asked for a whole range of records, I
11 wanted to assure myself that, you know, some of the
12 matters - there was a lot of information coming in at that
13 time and I did want to actually check that and double-check
14 it for myself, so I did.
15

16 I perhaps would like to say that, it is in the
17 statement, I'm not sure if you're going to ask me but --
18

19 MS ELLYARD: It took too long.
20

21 MS CLARKE: It did, absolutely, and I owe Alysha an
22 apology for that. It was an important matter admittedly,
23 you know, I think we've always talked about
24 re-prioritisation of work. I was delivering and trying to
25 work through the Youth Justice reform documents at that
26 time, but albeit, I took five months to do that preliminary
27 assessment; there was a lot of information assessed, but I
28 owe Alysha apology, I didn't respond to that fast enough.
29

30 MS ELLYARD: One of the other issues that I know you've
31 answered in relation to the document that you prepared as
32 your preliminary assessment is the way in which you
33 described and summarised the information that was available
34 by that time about Lester, and just to be clear, one of the
35 things you said was that through the various reviews there
36 hadn't been able to be ascertained any record of any
37 incident or allegation through redress schemes that matched
38 what Alysha had described? But what you didn't say was
39 that there were multiple other matters known about Lester.
40 Don't you think that that was relevant information to
41 include in a report that purported to be, really, an
42 assessment of whether - of the credibility or support for
43 the allegation that Alysha had made about Lester?
44

45 MS CLARKE: I mean, I've had seven months out of the
46 service in terms of thinking about those things and I think
47 it does make a difference when you've actually got a sense

1 of space out of a particular challenging portfolio.
2

3 When I look at that I think that, where perhaps that
4 report could have been improved, and I note that Alysha
5 when she gave her evidence, I think she used the word, she
6 found the report "odd". So, I don't think we explained
7 what a preliminary assessment was to do; I think that was
8 the first area where it could have improved.
9

10 I was really conscious at the time of how much
11 information can you disclose about somebody else? But
12 certainly I take on board your question in terms of what
13 you're saying and agree that I could have improved the way
14 I wrote things to ensure that, even where I did pass on
15 information around a broader story where part of that
16 preliminary assessment, I did actually write to a third
17 party to try and verify, are we actually talking about the
18 same issue, because there was different things being said
19 in different forums, and I think I did disclose around the
20 statement.
21

22 The intention of doing that was, I knew this issue was
23 important to Alysha. I was trying to actually give
24 information as best I could that we had actually tried to
25 source as much information as we possibly could. Now, you
26 know, I think in hindsight you can always do those things
27 differently, but you're right to say that that report says,
28 and we sourced no information in that preliminary
29 assessment in relation to that particular matter that was
30 raised through redress, through an abuse in state care or
31 through a civil matter.
32

33 MS ELLYARD: And so what we've put to you then, and you've
34 responded at 46.12 to be clear, I'm putting to you that the
35 briefing or the report was misleading, in that, it referred
36 to, we haven't found anything, no application in the
37 ex gratia scheme rounds that relates to this matter; we
38 haven't received a request for information under the NRS,
39 the review of records undertaken as part of the preliminary
40 assessment consumed, there is no abuse allegation that
41 described the information provided by Alysha.
42

43 But what's missing from that is, but we do have four
44 other matters that we've identified involving Lester, and
45 I'm inviting you to agree that, without that information
46 that tended to suggest that, we haven't found anything
47 matching this, but we have found multiple other things

1 about him, your report was misleading?
2

3 MS CLARKE: I guess my view on that would be, I was
4 dealing with that matter that Alysha raised and I was going
5 back to, I wasn't absolutely sure what I could disclose, so
6 what I disclosed is what I believed I could disclose.
7

8 MS ELLYARD: I don't think you quite answered the question
9 that I had at the start of this, Ms Clarke, which was about
10 the conflict of interest point and the perception of you
11 being the one who did the assessment.
12

13 MS CLARKE: I've certainly, over the years I've certainly
14 assessed individual directors or managers over time. I
15 have no issue - I mean, I have professional working
16 relationships with directors, I had a particular interest
17 in this, I actually did want to assure myself, as I've
18 said, so I felt I was best placed to. I was across detail,
19 and so, perhaps you're saying, is there a perceived
20 conflict of interest? I guess that then goes to who else
21 would have been in a position to do that preliminary
22 assessment because one of the reasons it was referred from
23 the Office of the Solicitor-General to the Deputy Secretary
24 was, Alysha was making a complaint about the Secretary as
25 well, so there were difference arrangements in place, which
26 is why it ended up being the Deputy Secretary.
27

28 MS ELLYARD: Thinking about the fact that one of Alysha's
29 complaints or allegations was that Ms Honan had dissuaded
30 her from making a report to police herself. In the report
31 that you wrote you said, as was the case at the time you
32 wrote it, that a police notification had been made, but you
33 didn't refer to the fact that it was made 10 months later.
34 Again, would you accept that that had the potential to
35 mislead?
36

37 MS CLARKE: I think in hindsight what you would say - I'm
38 not sure I would use the term "mislead". What I would say
39 is that there's question marks every time you're doing
40 preliminary assessments of this kind: how much can you
41 disclose when it's about another person and it's about
42 employment arrangements?
43

44 I accept what you're saying. From Alysha's point of
45 view, having more information would have been very, very
46 beneficial, it was an important issue.
47

1 MS ELLYARD: Can I ask you a couple of other questions,
2 Ms Clarke, and I'm conscious of the time. We've asked you
3 some questions about the SERT review that was conducted
4 into the experiences of the young boy who we're calling
5 Henry had and we've had some evidence from Ms Burton about
6 that. I'm drawing your attention to paragraph 69.3 of your
7 statement. You answered some questions about the briefing
8 that was originally prepared at the time of the incident
9 in August 2019 which the SERT Review subsequently found to
10 be misleading. I want to ask you to comment on whether you
11 agree that that briefing to the Secretary at that time is
12 misleading.

13

14 MS CLARKE: In relation to the 7 and 8 August --

15

16 MS ELLYARD: Yes, and the way they were originally briefed
17 up to the Secretary.

18

19 MS CLARKE: Yes, I think that the SERT Report undertaken
20 by Veronica Burton indicated and provided us with very good
21 detail about what actually occurred on the 7th and the 8th,
22 and yes, I think that the issues brief was inadequate,
23 absolutely.

24

25 MS ELLYARD: And so, thinking about how those briefs are
26 prepared; I mean, where do you allocate responsibility for
27 the briefing being inadequate? Whose responsibility was it
28 to make sure that it wasn't misleading?

29

30 MS CLARKE: Well, I think where this goes to in terms of
31 future state, is I'll go back and draw to why I think
32 Professional Services staff are very important in the
33 structure of the service because they were very well placed
34 to understand matters.

35

36 Where I think those sorts of critical incidents
37 occur - I mean that was a particular briefing written by
38 the Centre Manager and I do think that any structure, in
39 terms of the reporting lines, that Centre Manager reports
40 to a Director, you've always got to have a level of trust
41 and I guess faith that what's being reported to you is
42 correct.

43

44 I do think, in relation to some of these more clinical
45 matters where your mind goes to into the future is, what's
46 the role of Professional Services staff in those briefings.

47

1 MS ELLYARD: Can I ask you about, in your observation of
2 the significance of the SERT as a tool available to the
3 Department of Communities to investigate incidents, and can
4 I ask you that in the context of evidence that we had from
5 Ms Burton that she did a number of such reviews and had at
6 least a perception that she didn't see the ones she did for
7 Ashley follow the same trajectory and receive the same
8 attention that she understood ought to have occurred?
9

10 MS CLARKE: The Serious Events Review Team was a team, if
11 I can just take a little bit of time to explain the context
12 of that team. Historically there were a number of matters
13 of infant death and this was really - whilst it was in the
14 Child, Youth and Family's portfolio, it was in the child
15 safety area. And the team, I can't recall - it may have
16 been 3F tier, it may possibly have been 4, it was
17 established before my time as the Deputy Secretary, it was
18 undertaking very important work and there were a number of
19 matters that that team were assessing from a child safety
20 perspective and some were pending coronial inquests.
21

22 That team actually did work through the number of
23 cases of infant deaths. So, as their time, it was set
24 through till 30 June, and the matters that were afoot in
25 child safety had a structure around them and I do believe
26 that they were set up prior to my time, but off the back of
27 an election commitment that then ended up being actually
28 embedded into the service.
29

30 So, when Veronica Burton gave her evidence I did note
31 that she talked about that there was no follow-up from the
32 service. So, my understanding is, we engaged - and I say
33 "we", being the Director and myself and the Secretary fully
34 aware of those things - engaged the services of the SERT
35 team because they were at arm's-length and appropriately
36 qualified practitioners to actually undertake some
37 assessments of events that actually occurred prior to the
38 Director and I starting, and in response to issues that
39 people were raising.
40

41 In terms, in response to the issue that you're asking
42 me around no follow-up back to Veronica as the assessor:
43 that was never usual practice. And the SERT reports
44 themselves historically have always been subject to peer
45 review or moderation and then through a committee. We were
46 using members or engaging members of the SERT Team because
47 they had capacity to actually undertake that work, and it

1 was very much a forensic compliance assessment of what has
2 actually occurred here.

3
4 We actually did undertake an evaluation of SERT. So,
5 the SERT team over a number of years matured in its
6 processes. I don't think anyone would deny the absolute
7 value in having scrutiny and external assessment when
8 serious events occur. The outcome of that evaluation was
9 very much around recognising the value of those processes,
10 but also the importance of framing those things from a
11 quality improvement framework.

12
13 There had been examples through the evaluation of
14 Serious Events Review, which is no reflection on any team
15 member or anyone involved in that work, that where
16 workers - the engagement process through SERT people felt
17 or had expressed that they felt they were being blamed.
18 And remember, in the context of Child Safety work, you're
19 actually working with a lot of grey, you know, individual
20 practitioners' decisions.

21
22 MS ELLYARD: You mentioned the committee. Part of
23 Ms Burton's evidence was that she had an understanding that
24 it would be usual practice for reports that were prepared
25 to go up and be considered by the committee and it was her
26 understanding that her report in relation to Henry, and I
27 think another report that she did as well, didn't go to the
28 committee. Is she right in understanding that that was the
29 case?

30
31 MS CLARKE: Yes, absolutely she's right.

32
33 MS ELLYARD: And that's a departure from normal practice,
34 isn't it?

35
36 MS CLARKE: No, not so much a departure from normal
37 practice because as I've just expressed, we engaged members
38 of that team to actually - because they were one
39 available --

40
41 MS ELLYARD: So it was a kind of an unofficial SERT, is
42 that what you mean? They had the skillset and they were in
43 (indistinct).

44
45 MS CLARKE: It was a serious event review.

46
47 PRESIDENT NEAVE: I don't understand that, I'm sorry, I

1 need to unpick this a little bit more. I understood that
2 the committee to which it went was a committee which had on
3 it people from a variety of different agencies, I think the
4 Police Commissioner was one.

5
6 MS CLARKE: That's correct, that's right.

7
8 PRESIDENT NEAVE: I can't remember who the others were,
9 and the normal process was, when the review was completed
10 the recommendations were made, it would then go to the
11 committee as part of an implementation process, and that
12 simply didn't happen in this case or in I think at least
13 one of the other SERT reviews that were done with Ashley.
14 Am I right in - is that correct and, if so, why? And I
15 suppose my supplementary question, and why was the SERT
16 team then dismantled later?

17
18 MS CLARKE: Commissioner, to answer your first question,
19 that is correct, it did not go to the committee, and the
20 reason it didn't go to the committee is that the Serious
21 Event Review Team was - its focus was within the Child
22 Safety Service system. To the best of my knowledge the
23 only time the Serious Event Review Team members were
24 engaged was twice at Ashley, I have no knowledge if they
25 were engaged before --

26
27 PRESIDENT NEAVE: She did mention four times.

28
29 MS CLARKE: She did mention four times, I'm aware of twice
30 that the Director and myself and the Secretary were
31 engaged --

32
33 PRESIDENT NEAVE: Is the proposition that this was not
34 really a SERT team or it should not have gone to that team?
35 I just don't understand your explanation, I'm sorry.

36
37 MS CLARKE: I guess from my perspective I wasn't really
38 engaging the Serious Event Review Team, we're engaging team
39 members who - that team had come to a completion of work in
40 terms of a backlog of cases. Those backlog of cases were
41 in the Child Safety Service. So, this is not a structure
42 that we see in other jurisdictions that might be connected
43 to legislative Serious Event Review processes through
44 coronal matters; it was a team of members that were stood
45 up for a particular point in time to undertake a particular
46 set of functions. That time that Veronica actually
47 engaged - and I absolutely respect from Veronica

1 perspective she might have been thinking something quite
2 different and questioning why it didn't go through the
3 committee, but it wasn't through the committee because at
4 the time we didn't feel it was even within the terms of
5 reference of that committee. What had been going through
6 the committee were child safety matters, infant death
7 matters.

8
9 PRESIDENT NEAVE: Thank you.

10
11 MS CLARKE: Did you want me to make comment, Commissioner,
12 on the value in terms --

13
14 PRESIDENT NEAVE: Yes.

15
16 MS CLARKE: I absolutely think that Serious Events Reviews
17 are extremely important and are extremely available, and
18 having practitioners who have the right skills to do that
19 can actually value-add and offer real improvements in
20 services, including within the Ashley Youth Detention
21 Centre. It did provide a whole raft of recommendations
22 that were implemented over time, so in terms of consistency
23 and process, yes, recommendations were made, they were
24 accepted, and then they began to be developed over time,
25 that's not different; what's different is, no, it didn't go
26 to the committee.

27
28 And from my perspective and I'm sure - well I can't
29 speak for anybody else - I didn't believe, I just saw that
30 we were engaging staff members who worked in another area
31 who had the capability to undertake a review of a serious
32 event that occurred in Ashley that we needed to get to the
33 bottom of.

34
35 PRESIDENT NEAVE: So, in other words, it wasn't a SERT
36 Team in the normal sense of the word, it was a specific
37 group of people brought together to examine issues arising
38 out of Ashley, and that was something different and you
39 didn't regard this as necessary for it to follow in the
40 same process as you had done with the infant deaths?

41
42 MS CLARKE: That's correct, Commissioner.

43
44 MS ELLYARD: Q, I'm conscious of the time, but as a
45 matter of fairness I need to put to Ms Baker and it relates
46 to the preliminary assessment that I've already asked some
47 questions of Ms Clarke about, Ms Baker, because you had the

1 role of being the reviewer for that assessment and you were
2 invited to reflect in the same way that I've put questions
3 to Ms Clarke on whether, with the benefit of hindsight,
4 that assessment report was misleading.
5

6 At paragraph 181 and following of your statement you
7 talk about this matter, and drawing your attention in
8 particular to paragraph 184, I put to you as I put to
9 Ms Clarke, in circumstances where there were multiple other
10 matters by that stage known to have been alleged against
11 Lester, derived from the abuse in care scheme, do you agree
12 that it was misleading for the report to state at
13 considerable length that nothing had been found matching
14 what Alysha alleged but that other things had been found?
15

16 MS BAKER: I don't think that it was misleading, I think
17 we could have better worded the disclosure in that report.
18 Being mindful of what could be disclosed, but also bearing
19 in mind that the matter that we were preliminarily
20 assessing was whether Ms Honan had responded appropriately
21 or not appropriately to Alysha's report. I don't think
22 that it's misleading but I think that we could have
23 possibly worded it better.
24

25 MS ELLYARD: Would you say at least the same about the
26 reference to the report to police, because the assessment,
27 the complaint was, "I was dissuaded from reporting to
28 police", and the assessment says, well, the report to
29 police was made, but what it doesn't say was that it was
30 made 10 months later.
31

32 MS BAKER: The inclusion of the timeframe for reporting
33 may have been helpful. I still don't think that the
34 inclusion of the timeframe goes to whether Ms Honan acted
35 appropriately or not. I don't think it affects the
36 outcome.
37

38 MS ELLYARD: Can I ask you another question which I think
39 is my final question, still to you Ms Baker, and it arises
40 from the evidence of Ms Honan on a different topic, and
41 that's about responsibility and decision-making where an
42 allegation of child sexual abuse is made against a current
43 employee.
44

45 Ms Honan's evidence, as I understand it relating to
46 the current procedure, is that, if there's an allegation of
47 child sexual abuse that comes to her attention about one of

1 her staff, it would be referred to People & Culture and
2 they would take the lead role in investigating and
3 responding. You're not there now, but while you were
4 there, is that accurate?

5
6 MS BAKER: That's correct, so People & Culture would take
7 the lead on preparing the information for the Secretary's
8 consideration, they would also do the notifications to the
9 Registrar and any notifications to Tasmania Police and the
10 Integrity Commission.

11
12 MS ELLYARD: What role is there for a Manager in this
13 case, Ms Honan or someone in her role, in contributing to
14 or being heard on the question of whether there should be
15 an investigation commenced and/or whether someone should
16 stand down?

17
18 MS BAKER: It's ultimately the decision of the Secretary
19 as to whether an employee should be suspended and whether
20 an ED5 is investigated, and that isn't delegated in our
21 department to anybody other than the Secretary. I think
22 Ms Clarke's already mentioned the value in having
23 operations people work alongside People & Culture who do
24 have the lead responsibility for provision of advice to the
25 Secretary on those employment matters, and it's very
26 beneficial for those parties to come together, and that was
27 recognised and formalised through the formation of the
28 safeguarding group which Ms Clarke's already mentioned and
29 Ms Allen referred to it as case conferencing and that's the
30 mechanism where we take those respective views and
31 certainly there was robust debate held by all parties that
32 attended those meetings.

33
34 MS ELLYARD: And just to close off this point, it's a
35 matter for the Secretary whether or not to commence an
36 investigation or stand someone down. He or she will act on
37 advice received, most of the work done in preparing that
38 advice will be done by People & Culture, but the views of
39 relevant operational staff would be taken into account in
40 how that briefing was prepared. Would that be right?

41
42 MS BAKER: That's correct. Whilst they might not be
43 formally in the approval chain, they have contributed and
44 their voice has been heard through those Case Conferencing
45 or the safeguarding meetings that Ms Clarke mentioned.

46
47 MS ELLYARD: Thank you, Ms Baker; thank, you Ms Clarke.

1 We've gone well beyond a reasonable time for our
2 stenographer, Commissioners, and for our next witness, so
3 it's with fear and trembling that I say are there any other
4 questions for this witness?

5
6 COMMISSIONER BENJAMIN: Not from me.

7
8 COMMISSIONER BROMFIELD: I'm aptly warned, no.

9
10 PRESIDENT NEAVE: Thank you very much indeed for your
11 evidence.

12
13 MS ELLYARD: Commissioners, I am keen to start on
14 Mr Pervan's evidence, he was always going to come back
15 tomorrow, but may I invite you to stand down if not for the
16 full 15 minutes then for at least between 5 and 10?

17
18 PRESIDENT NEAVE: Yes.

19
20 **SHORT ADJOURNMENT**

21
22 MS ELLYARD: Thank you, Commissioners. Before we begin
23 the evidence of the next witness - please feel free to sit
24 down, Mr Pervan - before we begin with the evidence of the
25 next witness my learned friend, Mr Gunson, has a very short
26 matter to put to you.

27
28 PRESIDENT NEAVE: Thank you, Mr Gunson.

29
30 MR GUNSON: May it please the tribunal - the Commission, I
31 apologise. It just relates to the position of the State
32 and the Commonwealth in relation to the use and disclosure
33 of what might be protected information under the National
34 Redress Scheme for Institutional Child Sexual Abuse Act
35 2018 of the Commonwealth.

36
37 As a general proposition via s.92 various information
38 is provided for its protection, and the protections are
39 strict. It is an offence against s.99 to disclose that
40 information except in certain circumstances which are
41 relevantly set out in s.97.

42
43 I am of the view, and have expressed the view - and I
44 should say that this has not been through the
45 Solicitor-General's Office, so it's my view on behalf of
46 the State of Tasmania - that any evidence that Mr Pervan
47 may give that relates to what would otherwise be protected

1 information under the National Redress Scheme Act is an
2 authorised disclosure by him in his capacity as a
3 government official under s.97. In particular, in respect
4 of s.97(e)(ii) relating to the safety and wellbeing of
5 children - that's s.97(1)(e)(ii), I should say, and/or
6 s.97(1)(e)(iii) which relates to investigatory or
7 disciplinary or employment processes related to the safety
8 or wellbeing of children.

9
10 I just observe that the Commission by nature is
11 investigatory and probably falls within that, but its terms
12 of reference also encompass the other matters.

13
14 Mr Pervan has also been called in his capacity as the
15 Secretary of the Department of Communities Tasmania, and
16 I am therefore of the view that he falls within the
17 sub-definition of s.97(1)(f) where the disclosures made by
18 a government official where the government official does so
19 in the official's capacity as an employee or officer of the
20 government institution.

21
22 Now, in discussions with General Counsel for the
23 Commission I understand that General Counsel and the
24 Commission, or Counsel Assisting, their views align with my
25 views.

26
27 I'm authorised by the Australian Government Solicitor
28 on behalf of the Commonwealth of Australia to note that the
29 Commonwealth has not committed to a position in relation to
30 that issue. The Commonwealth has stressed that it's not in
31 a non-committal position or an undecided position, but
32 rather, it has not had time to fully consider --

33
34 PRESIDENT NEAVE: Fully consider the matter.

35
36 MR GUNSON: -- the matter, so I simply flag those before
37 Mr Pervan gives evidence.

38
39 And, although I didn't inform my friend of this, if I
40 could just seek the Commission's indulgence to repeat what
41 I said during the closed session very briefly in relation
42 to the engagement of state servants with the Commission of
43 Inquiry and just confirm that both the Premier and the Head
44 of the State Service have publicly stated that all State
45 Service employees and officers are encouraged and welcome
46 to engage with the Commission of Inquiry by whatever means
47 they wish to and that there are no impediments to any such

1 state servants doing so.

2

3

Those are the matters I sought to raise.

4

5

PRESIDENT NEAVE: Thank you very much, Mr Gunson. I think we should proceed on that basis and, if the Commonwealth takes the view that we've got it wrong, then we'll deal with it when that occurs, but I think that's most unlikely to happen.

6

7

8

9

10

11

MR GUNSON: Yes.

12

13

MS ELLYARD: There's an appearance to be announced, Commissioners, on behalf of the next witness.

14

15

16

PRESIDENT NEAVE: Mr Morrissey.

17

18

MR MORRISSEY: Commissioners, my name's Morrissey and I appear for Secretary Michael Pervan, and I appear with Ms Fitzgerald.

19

20

21

22

PRESIDENT NEAVE: Thank you, Mr Morrissey.

23

24

MS ELLYARD: I'll ask that Mr Pervan be sworn in, please.

25

26

<MICHAEL PERVAN, sworn: [4.09pm]

27

28

<EXAMINATION BY MS ELLYARD:

29

30

MS ELLYARD: Q. Thank you, Mr Pervan. Could you tell us, please, your full name?

31

32

A. My full name is Michael Pervan.

33

34

Q. And you are presently the Secretary for the Department of Communities in Tasmania?

35

36

A. I am.

37

38

Q. You've previously given evidence at an earlier week of the hearing in relation to the responsibilities that you have as Secretary touching on matters of out-of-home care?

39

40

A. Yes.

41

42

43

Q. And, for the purposes of your appearance today, you've provided a total of three statements which are responsive to questions that have been posed to you by the Commission?

44

45

A. Yes.

46

47

- 1 Q. The first of those was in response to a Request for
2 Statement No.52, and it's a statement of some 109 pages; do
3 you have that statement with you?
4 A. I do not.
5
6 Q. You don't have that one with you?
7 A. I don't have that one with me, no.
8
9 Q. Okay. Well, no doubt we'll get you one. Would it be
10 fair to say that that's a statement in which you respond to
11 questions from the Commission that relate to the operations
12 of the Ashley Youth Detention Centre and the Youth Justice
13 System in Tasmania generally?
14 A. As I recall, yes.
15
16 Q. And you provide relevant information about matters
17 which relevantly include delegations, positions, the
18 frameworks that are applicable and matters of that kind?
19 A. Yes.
20
21 Q. We've got a copy that I'm grateful to my learned
22 instructor and junior. I'll just ask you to identify that
23 that's the statement we've been talking about, Mr Pervan?
24 A. 052; yes, it is.
25
26 Q. And its contents are true and correct?
27 A. Yes.
28
29 Q. More recently you've answered a request from the
30 Commission for a statement that responds to particular
31 issues that have emerged in the Commission's investigations
32 in relation to Ashley, and that was Request for
33 Statement 104?
34 A. Yes.
35
36 Q. You have that statement with you?
37 A. I do.
38
39 Q. It was initially provided in a slightly redacted form
40 but it's now been provided in a wholly unredacted form?
41 A. Yes.
42
43 Q. Are the contents of that statement true and correct?
44 A. Yes.
45
46 Q. And you have today provided a further statement which
47 seeks to clarify and expand on aspects of the evidence that

1 you've given in Statement 104?
2 A. Yes, I have.
3
4 Q. And you wish to adopt that as part of your substantive
5 statement?
6 A. Yes, please.
7
8 Q. May I ask you, Mr Pervan, what's the extent to which
9 you have been able to follow the evidence that the
10 Commission's been hearing over the last several days?
11 A. I've been able to follow the evidence substantially,
12 in particular with regard to the victim-survivors, and at
13 other times have been actually working on Statement 104,
14 but I have heard most of the evidence given.
15
16 Q. And, to the extent that you haven't heard of it,
17 you've been briefed on what's been heard?
18 A. Yes, I have.
19
20 Q. Thank you. As I understand it, you've been the
21 Secretary or the Acting Secretary responsible for matters,
22 which include Ashley Youth Detention Centre, since 2014
23 with the exception of a short period where it moved to the
24 Department of Communities and you took a little while to
25 catch up with it?
26 A. Yes.
27
28 Q. And so, for the substantive part of the last, I think
29 that makes six to seven - seven to eight years, you've been
30 the Secretary with responsibility for Youth Justice and
31 Ashley Youth Detention Centre?
32 A. Yes.
33
34 Q. And you would, as I understand it over that course of
35 time, have the opportunity to become aware of the nature of
36 the cohort of children who find themselves in Ashley?
37 A. Yes.
38
39 Q. And the nature of the issues that have caused them to
40 be there?
41 A. Yes.
42
43 Q. Indeed in your statement you offer some reflections on
44 the cohort of the children and the challenges that have
45 faced them in their lives?
46 A. Yes.
47

- 1 Q. Can I ask you, are you aware of evidence that was
2 given yesterday about how many children there are in Ashley
3 at present?
4 A. Yes.
5
- 6 Q. And that evidence was that, as at yesterday there were
7 11 children in Ashley, of whom one was serving a sentence
8 and 10 were on remand?
9 A. Yes.
10
- 11 Q. Do you have any update on that evidence today?
12 A. I have been here all day. The turnover in Ashley can
13 happen very quickly, and because there have been that many
14 children in there on remand, some of them may have been
15 sentenced, some of them may have been moved on; I haven't
16 had an update since those numbers.
17
- 18 Q. It's a daily proposition as we understand it.
19 A. Yes.
20
- 21 Q. The Commission has, as I understand it, been given
22 access to the daily roll; you're familiar with what the
23 daily roll is?
24 A. Yes.
25
- 26 Q. That's a document which is a point in time snapshot at
27 midnight each night, as I understand it, of the children
28 who are in Ashley, their ages, the basis on which they're
29 there?
30 A. Yes.
31
- 32 Q. Other matters including whether or not they're
33 Aboriginal?
34 A. Yes.
35
- 36 Q. It also relevantly records the extent to which
37 children in Ashley are subject to Care and Protection
38 Orders; are you aware of that?
39 A. Yes, I am.
40
- 41 Q. And, on the basis of that, it would appear that from
42 the most recent snapshot of the 10 children there on
43 remand, one was under an order placing their guardianship
44 with you; are you aware of that?
45 A. No, I haven't checked that.
46
- 47 Q. But I take it you'd accept that from me that's --

1 A. I would accept that, yes.

2

3 Q. Similarly, there's another young person who's in
4 Ashley on remand who's the subject of an order that places
5 his custody with you?

6 A. Yes.

7

8 Q. When you gave your evidence before the Commission
9 previously you gave some evidence and some reflections on
10 the way in which you would discharge the dual functions
11 that you would have where a young person is simultaneous
12 under your guardianship, or here perhaps custody, and then
13 also comes into a Youth Detention facility.

14

15 Now, what would be your expectation about how you,
16 through the delegated system you described last time, will
17 be meeting your obligations to those two children who are
18 the subject of a guardianship or a custody order placing
19 them in your care?

20 A. They would be entitled to, and I would expect them, to
21 have access to the same level of care, if not more so. The
22 chances are that, if they are in Ashley either on remand or
23 a term of detention, they would have more specific
24 therapeutic needs. So, not all children in out-of-home
25 care have therapeutic needs, but I would be surprised to
26 find them in Ashley without some need of professional
27 support. So, I would expect them to have that access in
28 Ashley as much as if they were in the community.

29

30 Q. Is that access that you would be - I guess I'm
31 interested to understand, of course once they're in Ashley
32 one would hope that they get the full benefit of such
33 services as Ashley provides to all detainees, but other
34 children who were there might have an involved guardian or
35 parent advocating for their interests in a way that
36 children on guardianship orders may be less likely to have.

37

38 To what extent would you be expecting that there'd be
39 someone through Child Safety Services, for example,
40 advocating for or meeting with or meeting the needs of
41 children in Ashley right now who are under your custody or
42 guardianship?

43 A. I'm aware that there's regular communication between
44 the two parts of that division around children who are
45 under Care and Protection Orders moving into and out of
46 Ashley, so there's open communication around what their
47 needs are and what the plans are for them.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. One of the things that the daily roll also shows is that there's - a number of the 11 children there at present are Aboriginal?

A. (Witness nods.)

Q. What's your understanding of the extent to which there are currently in place at Ashley programs to meet the particular cultural needs of Aboriginal children?

A. My understanding is that it actually depends on the child and which particular community they are from. The involvement and engagement of some community controlled organisations is at a higher level and more direct, particularly for some young people; with others it's less so, it depends on the engagement and capability of the community organisation that's most representative of the young people in Ashley. It's something that we have invited, it's something that we're very keen to increase, and is part of our commitment through the Closing the Gap national agreements.

Q. One of the most striking things about the figures that we heard yesterday is that only one of the young people in Ashley has been sentenced to be there, the other 10 are on remand, and the evidence of Ms Atkins, the current Acting Manager, is that that's not an unusual breakdown between children who are sentenced and children who are on remand.

Thinking about the role you have, you're the Secretary for Youth Justice generally, not just at Ashley, what are your reflections on a system which sees so many young people on remand as opposed to serving sentences?

A. Well, the decision on where they're remanded comes from Justices of the Peace and from Magistrates, so it's not something that we have input into. In terms of where we're going with Youth Justice reform and what the Premier announced just over a year ago, I'm hoping that part of that can envisage a different scenario, a different, if you like, facility.

I think the need for a detention centre has been established, a need for a smaller one than we've currently got has also been established. Whether we need two detention centres to replace Ashley or whether one of those should be a Remand Centre that's of a different makeup, of a different architecture and design, I think that's something that we've got to build the case for and take to

1 government.

2
3 But I am concerned, and have been for a long time,
4 that one of the reasons why young people might be remanded
5 to Ashley is through lack of an alternative.
6

7 Q. And, of course, I'm not inviting you to comment on the
8 appropriateness or otherwise of any individual judicial
9 decision, we understand that that's not within your purview
10 or indeed the Commission's purview, but it is concerning,
11 isn't it, that it appears that there have been a number of
12 cases where the appropriate outcome for a young person is
13 to be remanded to Ashley rather than being able to be
14 placed on bail with some appropriate conditions?

15 A. Yes, I agree. And, I thank you for that lead in; I'm
16 not challenging or questioning any decisions of any court.
17

18 Q. No.

19 A. But with that raises the challenge for the staff at
20 Ashley in terms of providing therapeutic input because they
21 don't know how long those young people will be remanded
22 there for. When someone's got a sentence, you've got a
23 time span you can plan, the accommodation and other issues
24 of them departing are known, so you can work to that. When
25 they're on remand it's uncertain how long you've got them
26 for, how long you've got to establish a therapeutic
27 relationship with them or what other measures you have to
28 take if they're immediately going to court and perhaps
29 going back to the community.
30

31 PRESIDENT NEAVE: Q. As I understand it, one of the
32 reasons why children are remanded to Ashley is that they've
33 got nowhere to go.

34 A. I have heard that evidence given, yes.
35

36 Q. Nowhere to live. Do you have any comment you want to
37 make on that matter?

38 A. I know that's a view that's been put forward; I don't
39 actually have any evidence to support that as a commonly
40 held view. I know that, when they are before a JP or a
41 Magistrate they are asked if they've got anywhere to go,
42 but the extent to which that's pursued, whether they look
43 into alternative family accommodation or shelters, I'm not
44 certain that those conversations are had. I think there's
45 a need to process people through the system as quickly as
46 possible.
47

1 MS ELLYARD: Q. To the extent that it is the case, and
2 certainly Ms Atkins gave evidence I think of her own
3 personal experience that that was sometimes the case, that
4 young people are remanded because they haven't got anywhere
5 to live, that suggests, doesn't it, that those are young
6 people in need of support from a different part of the
7 Department of Communities to support them in finding
8 somewhere safe to live that could be offered as a bail
9 address?

10 A. I agree. What we find when young people, and this is
11 a sweeping generalisation, but I'm aware of a number of
12 cases where young people have put as their residence a
13 shelter; as soon as they've been taken to the shelter
14 they've absconded. They don't want to live there, there
15 might be other people there that they don't want to be
16 around. So, in terms of finding them alternative where
17 they can be safe and secure, that's what we're lacking at
18 the moment.

19
20 Q. Yes, and so, in addition to a remand centre, to pick
21 up what you identified as part of a potential new solution,
22 there's a need for supportive, and perhaps supported,
23 accommodation for young people to keep them in the
24 community rather than making them go into Ashley or its
25 replacement on remand?

26 A. Yes, subject to considerations of their safety, the
27 community safety, and so on, yes.

28
29 Q. Yes, of course. This raises the question, and again,
30 noting that Magistrates and bail Justices will have made
31 the decision best and appropriate for them on the
32 information available, but it does certainly suggest, as
33 we've discussed, the desirability of there being more
34 options available to Magistrates and bail Justices who are
35 called upon to make a decision about the bailing or the
36 remanding of a young person. Is that something that, to
37 your knowledge, has been the subject of any formal
38 discussion between the Department of Justice and the
39 Magistrates' Court on the one hand and your department on
40 the other?

41 A. It's not been discussed with me, no.

42
43 Q. Can I ask you to comment on whether you can see merit
44 in some kind of cooperative work that might seek to
45 identify the reasons why bail decisions are being made as
46 they are and the extent to which gaps in accommodation or
47 other support services that are leading people to be

1 remanded could be plugged by your department?

2 A. I think that's absolutely a conversation that we
3 should have, and I'm very mindful of time, but in my Health
4 Service days there's a maxim in Health Services that,
5 "Every system is perfectly designed to get results it
6 gets", and whether the results are bad or good, it's
7 because of the design of the system and, if we want better
8 results, we have to change the design of the system.

9

10 Q. I'm conscious of time too, and there's one particular
11 topic that I do want to get to with you today, and that's
12 about the way in which you exercise your powers under the
13 Youth Justice Act through a series of delegations.

14

15 In paragraph 11 and following of your statement in
16 response to RFS 52, so that's the one that you've been
17 handed today, you give details of the various powers that
18 you have under the Youth Justice Act and the levels to
19 which they are delegated.

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

1 Q. Yes, and so my question to you is, what's the process
2 by which you satisfy yourself, just picking the
3 decision-making about isolation as an example and a topical
4 one in this context as I know you know, what's the process
5 by which you satisfy yourself that your delegates are
6 exercising the powers you've given them in accordance with
7 the terms on which you've delegated it?

8 A. In two ways: both through the reporting line through
9 the Deputy Secretary down to the Director and their reports
10 back to me, and frequently reports are requested on the use
11 of isolation by the Minister, so that line of reporting.
12 And, as Mandy Clarke put it, that assumption of competence
13 and trust going down the line to exercise those delegations
14 in accordance with the policies that are set for the
15 relative power.

16
17 But I also depend on the independent oversight that's
18 provided by the Commissioner for Children and Young People
19 and by the Custodial Inspector that when they go - and I
20 know that it's isolation to use the specific example - is
21 the subject of very, very passionate interest by the
22 Commissioner, so she will check and make sure, not only
23 with systems and paperwork and reports and data that we're
24 exercising those powers appropriately, she will ask young
25 people, and if the young people come back and say, "I was
26 locked up, they didn't give me a reason, I was there for
27 two days", she will pursue that with me and ask for an
28 explanation or a report back, and we happily collaborate
29 with her because, as I said, I need that to have those eyes
30 on the ground.

31
32 Q. So, it's a combination, as I understand it, if I can
33 paraphrase without doing an injustice: it's partly you have
34 a presumption that, having entrusted people with powers,
35 they'll exercise them appropriately in accordance with the
36 policies that have been put in place?

37 A. M'mm.

38
39 Q. And you will receive reports, if that doesn't happen,
40 up the line from those above the level of whoever's
41 breached?

42 A. Yep.

43
44 Q. But, in addition, you have eyes from outside, as it
45 were, in the form of the Commissioner and the Custodial
46 Inspector --

47 A. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. -- who will be able to - you will expect they will bring to your attention things that might for whatever reason have been missed through the chain of command?

A. Absolutely. And, as you heard yesterday towards the end of the day from the Commissioner, the young people there now have a phone and a speed dial capability to contact the Commissioner.

Q. But if you saw that evidence yesterday you'll recall, Mr Pervan, the discussion about the fact that even those mechanisms of the Custodial Inspector and the Children's Commissioner do still quite heavily rely on children identifying for themselves that they've been the subject of some inappropriate action?

A. Yes.

Q. And you'll be aware of the evidence, certainly from the various lived experience witnesses who have given evidence, and from other sources as well, of a culture in Ashley historically of reluctance to complain for a variety of reasons?

A. Yes.

Q. And so, other than what you have described, thinking about a young person who feels themselves to have been the victim of inappropriate isolation and so forth - well, at the moment are you confident that, if there's a misuse of the isolation power for example in the way in which it appears there was on a particular occasion in December 2019, are you confident that you'll find out about that?

A. Yes, I am, because of that incident and what followed afterwards and the actions of the Director, and the review and the abolition of the previous processes and the instigation of a new directive around who could determine isolation and how it would be determined in accordance with the legislation.

But, if I could, there's a bigger point here that one of the things that concerns me - and it's not just about isolation, it's about issues generally - that we've gone to the extent of our knowledge and skills to provide avenues for young people up there to express concern, to complain, up to and including the point of me funding an additional staff member from - the funding was my executive assistant, so I haven't had one for a year now because that funding was used for the Commissioner to employ someone to be based

1 at Ashley so that she had a representative on site most of
2 the week that young people could go directly to with any
3 concern, and that has added value; they've certainly been
4 able to address more low level issues, but there's been no
5 reporting of significant issues like abusive isolation and
6 so on through that officer.

7
8 And, I have been putting my mind to this and I'm
9 trying to come up with something that will provide a
10 mechanism for reporting by young people in Ashley, and in
11 the Youth Justice System generally, that they actually feel
12 safe to go to. And I've discussed that with the
13 Commissioner and she says - she advises me that it's that
14 perception of whether it's safe to report or not which is
15 the real challenge, and I would love to come up with a
16 suggestion for the Commission but, as I said, it's
17 something I've been struggling with for a while.

18
19 Q. It sounds from that answer and from the example that
20 you've given of spending some of your own budget to fund
21 the work of the Commissioner, that you are relying quite
22 heavily on the work of the Commissioner for Children and
23 Young People to be your eyes on the ground and to provide a
24 reporting line for concerns?

25 A. Some of my eyes on the ground, yes.

26
27 Q. But, of course, she's an independent office holder,
28 she doesn't work for you, although of course the
29 expectation is that you take the benefit of the work. That
30 seems to be the kind of - and this is not any criticism of
31 her, but isn't that kind of the ambulance going to meet
32 people after the problem has happened? If a child's going
33 to complain to her about a problem, that suggests that
34 you're going to find out about it later through her?

35 A. Well, the ambulance is the last resort. The fence at
36 the top of the hill, to use the metaphor, are the policies,
37 the procedures, the management framework and, as Mandy
38 said, the increasing input, and scrutiny's the wrong word,
39 but the increasing engagement and involvement of the
40 professional staff at Ashley.

41
42 Q. And this is the last point that I want to make until
43 we break until tomorrow and ask you to come back,
44 Mr Pervan, but aware of evidence that was given - I think
45 you heard Ms Clarke's today, but perhaps you would have
46 also heard Ms Honan's evidence about their observations of
47 what was previously they would say - not now - a very

1 insular inward-looking culture at Ashley where it was
2 really not connected at all to the broader department?

3 A. Yes.

4
5 Q. Firstly, are you aware of that evidence?

6 A. Yes, I am.

7
8 Q. Do you recognise that description from your own
9 experience?

10 A. Absolutely, yes.

11
12 Q. And what in your mind, thinking about the longer
13 period of time that you've had to observe Ashley and those
14 people, what in your mind caused that apparent disconnect
15 and self-isolation of Ashley from the broader Department of
16 Communities or its predecessor?

17 A. I think it's a broader reflection of cultural norms
18 and history, in that, there's been a facility on that farm
19 - and Ashley does sit on the edge of a farm that's owned by
20 the Crown - for around 100 years. It was, like a lot of
21 our not good past, a shameful past you might say, that no
22 regard was given to young people, young offenders, people
23 in the Wybra Boys' Home, all of those sorts of names that
24 it's had in the past.

25
26 And, when I first started in 2014 on an acting basis
27 and I recognised the change even over the last six to
28 eight years, my first visit to Ashley I was quite disturbed
29 by the number of youth workers who would take me to one
30 side to tell me that I'd got it all wrong, "These weren't
31 children, they were hardened criminals", that was the
32 expression that was used, and the way that the young people
33 were described was quite disturbing which led to a
34 discussion with the then Deputy Secretary, Tony Kemp, and
35 the engagement of Heather Harker because I just didn't like
36 what I heard and I wanted to know, without knowing anything
37 about Youth Justice, I wanted a specialist to tell me
38 what's wrong with this situation.

39
40 Compared to the last time I was there when the bulk of
41 the staff, in fact all the staff that I spoke to when I was
42 there just referred to the young people as "kids, the
43 kids", and I didn't hear anyone disparaging any of the
44 young people or calling them names or any of that kind of
45 behaviour.

46
47 And, before we close, I would like to credit Mandy's

1 description of it: it wasn't just having a great plan from
2 a Heather Harker or from an Australian Childhood
3 Foundation, or indeed Noetic, it's the combination between
4 having the good way forward and the right leadership with
5 the right skills around therapeutic care to really drive
6 that home.

7
8 MS ELLYARD: Thank you, Mr Pervan. There's lots more to
9 ask you, but I'm going to ask you to come back at
10 10 o'clock tomorrow morning.

11
12 Commissioner, can I invite you now to stand down for
13 the day?

14
15 PRESIDENT NEAVE: Yes, thank you. Thank you, Mr Pervan.

16
17 **AT 4.34PM THE COMMISSION WAS ADJOURNED TO**
18 **FRIDAY, 25 AUGUST 2022 AT 10.00AM**
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47