
TRANSCRIPT OF PROCEEDINGS

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

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

BEFORE:

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

On 11 May 2022 at 10.08am

(Day 8)

1 PRESIDENT NEAVE: Ms Bennett.

2

3 MS BENNETT: Morning Commissioners. Commissioners, before
4 I call the first witness there are a number of
5 non-publication and pseudonym orders that we would ask the
6 Commissioners to make.

7

8 PRESIDENT NEAVE: Today, in order to protect the identity
9 of a victim-survivor and other relevant people, the
10 Commission has decided to make a restricted publication
11 order in relation to the first witness who will give
12 evidence.

13

14 The Commission makes this order because it is
15 satisfied that the public interest in the reporting on the
16 identities of certain people who may be discussed during
17 this hearing, as well as the identity of any particular
18 schools, is outweighed by the preference of the
19 victim-survivor and relevant privacy considerations.

20

21 I will now briefly explain how this order will work.
22 The order requires the use of a pseudonym, this means that
23 the witness will be called "Rachel" rather than by their
24 real name.

25

26 The order requires that any information in relation to
27 Rachel's identity be kept confidential; this means that
28 anyone who watches or reads the information given by Rachel
29 to the Commission must not share any information which may
30 identify Rachel or the people who will be referred to as
31 Anne and Wayne. This information is not limited to their
32 real names and may include other information which may
33 identify them such as where they live or work.

34

35 In addition, the order also requires that anyone who
36 watches or reads the information must not share any
37 information which may identify any school which may be
38 referred to during the evidence.

39

40 In accordance with this order the live stream of this
41 hearing will be suspended while Rachel gives evidence.
42 This will protect Rachel's face and voice. A transcript of
43 Rachel's evidence will be available in due course.

44

45 Those who are watching in this hearing room are able
46 to stay in the hearing room to watch this evidence. I make
47 the order which will now be published. A copy of the

1 order will be placed outside the hearing room and is
2 available to anyone who needs a copy.

3
4 I ask that the live stream be suspended prior to
5 Counsel Assisting calling Rachel.

6
7 (Live stream suspended)

8
9 MS BENNETT: Thank you, Commissioners. Having confirmed
10 that the live stream's now been cut, can I ask that Rachel
11 come to be sworn in.

12
13 <RACHEL (A PSEUDONYM), sworn and examined: [10.10am]

14
15 <EXAMINATION BY MS BENNETT:

16
17 MS BENNETT: Q. Good morning, thanks for coming.

18 A. Thank you.

19
20 Q. You've made a statement to assist the Commissioners in
21 this Commission of Inquiry; is that right?

22 A. Correct.

23
24 Q. And have you read that statement lately?

25 A. Yes.

26
27 Q. And is it true and correct to the best of your
28 knowledge?

29 A. Yes.

30
31 Q. Thank you. Rachel, I'd like to ask you about you and
32 your early days of school. Can you tell us about what you
33 were like as a kid?

34 A. I was a happy child. I wanted to be the best that I
35 could at anything. I wanted to be on the SRC committee, I
36 wanted to be a part of sporting activities, I'd always try
37 and do my best academically, I really tried, I was never
38 one to - it just come straight to me, I always had to try
39 to get my marks.

40
41 Towards my senior year I actually managed to achieve
42 some awards for my work within school. I was involved with
43 community, I ended up achieving a Tenacity Award. I
44 achieved Young Citizen Awards, so I was quite happy.

45
46 Q. It sounds like you liked school?

47 A. Yeah, I did, and I was known for being smiley, bubbly,

1 but also shy at the same time, yeah.
2
3 Q. Did you have a good group of friends?
4 A. I had one friend. Being small, yeah, I was just --
5
6 Q. It was a small town?
7 A. Yeah, a small town, I lived there, so I definitely had
8 one close friend, yeah.
9
10 Q. In your older years of school there was a teacher
11 there who we're going to refer to as Wayne but I might just
12 call "the perpetrator" for now. He was a teacher at your
13 school; can you tell us what he was like, just from a
14 general first impressions?
15 A. He seemed to want to be your friend, he wasn't very
16 serious, he wanted to have that, I guess, charismatic focus
17 of not really being a teacher but more a friend. A cool
18 teacher.
19
20 Q. A cool teacher?
21 A. Yeah.
22
23 Q. Did he sort of talk to you about your life outside of
24 school?
25 A. Yes, he did.
26
27 Q. You say he sort of wanted to be your friend; what
28 makes you feel like he wanted to be your friend?
29 A. He made it very clear that he was "Wayne" after
30 3 o'clock as soon as school had finished, and that he was -
31 his teacher's name --
32
33 Q. Mr X.
34 A. Mr X in school. He made it very clear that he had two
35 identities basically.
36
37 Q. And he encouraged you to be friends with his "Wayne"
38 identity?
39 A. Yes, he certainly did.
40
41 Q. Looking back now just for a moment, we'll get into
42 what happened next, but as a 15-year-old how did you see
43 that kind of a teacher at school? Did you think it was
44 cool or?
45 A. Oh, definitely, I thought it was cool, I was getting a
46 lot of attention from him, invitations into an office. He
47 was wanting to know more about me, wanting to have more

1 involvement with me, and having a lot of one-on-one time
2 with him.

3
4 Q. Was that at school or?

5 A. At school and outside of school.
6

7 Q. And was he starting to be more familiar both at school
8 and out of school?

9 A. Definitely.

10
11 Q. You talked about one-on-one time in the office; can
12 you tell the Commissioners about how that came about?

13 A. So, eventually there were times when he would invite
14 me into his office after school allowing me to do - saying
15 that I can do homework there because he had a spare
16 computer in there. He said that he would teach me guitar
17 lessons and I'd be able to do one-on-one lessons where he
18 would actually sing to me. He would show inappropriate
19 footage on his phone and on the computer whilst I was in
20 there. Sometimes I would have another friend with me. But
21 his office didn't necessarily used to be away from the main
22 part of the school, but eventually he isolated himself and
23 created his own office away from the main part of the
24 school.

25
26 Q. And he'd invite you there to just chat?

27 A. No, he would - if I was trying to do school work he
28 would - I'd be sitting in my chair and he would come up
29 behind me and lean over and grab the mouse while my hand
30 was on the mouse and brush his body against my back. He
31 sang a song called Wonder Wall by Oasis and then he would
32 kiss me.

33
34 Q. And, how did you feel about that at the time?

35 A. That wasn't the first kiss, sort of stuff happened
36 after the first kiss, but he sort of --

37
38 Q. Sorry, that's all right.

39 A. He made it known that I could come to him if I had a
40 problem and if I needed anything, come to his office.

41
42 Q. So, you said that it wasn't the first time he kissed
43 you in the office, and please don't feel you need to say
44 anything more than you want to. Are you able to tell the
45 Commissioners about the first time he kissed you?

46 A. So, we were doing a sporting event and he became more
47 involved through that, where I was selected to do this

1 activity with him, and that meant travelling from, I guess,
2 an isolated area for an hour or so in a vehicle and commit
3 to this activity every weekend, and in the end he convinced
4 Anne that it would be - because she was working two jobs at
5 the time, that he could take me up to that sporting event
6 and which meant I was isolated in this vehicle with him
7 weekly, and that he could help me with my learners log, so
8 I would drive the car, his vehicle as well to get hours up
9 on my --

10
11 Q. That's your learners permit for driving, you need to
12 get 120 hours?

13 A. Yeah, I was - yeah.

14
15 Q. So, he was helping you, he would say?

16 A. Yeah, he was helping me and he, I guess, in a way
17 portrayed trust with my mother to say that, you know, I'm
18 helping you, she will still be able to do this sporting
19 activity and be involved as a team and be a part of it, and
20 it was something that I was really passionate at the time
21 and wanting to pursue at the time that type of sporting
22 activity.

23
24 Q. So, he was offering you the chance to do your sporting
25 activity, to get your driver's licence, he was paying
26 attention to you; how was that feeling - how old were you
27 at this stage?

28 A. I was 16 but the, what I would say grooming, began
29 when I was 15.

30
31 Q. And the sporting activity wasn't connected with your
32 school; is that right?

33 A. There were certain aspects that were, yes.

34
35 Q. Tell us about that.

36 A. So, there was an extracurricular activity that the
37 school run and that was in combination with the school and
38 another club, and he very much ran that and he had a class
39 in school to teach the theory and then the practical was at
40 the sporting event club to continue doing that. And then
41 there were other activities where Wayne organised for a
42 group of students in the early 2000 to go up and do a
43 school activity and race --

44
45 Q. Yeah.

46 A. -- race and do that activity in [REDACTED].
47

1 Q. There was one time when you went on a trip associated
2 with that sporting activity, didn't you?

3 A. Yes.
4

5 Q. Can you tell the Commissioners a little bit about -
6 so, can we place that in time: is this after you were 16
7 or?

8 A. Yes, I was 16.
9

10 Q. Had he already kissed you at this point?

11 A. Yes.
12

13 Q. And he arranged for you to go on a sporting trip that
14 he would be on; is that right?

15 A. Yes.
16

17 Q. Can you tell the Commissioners a little bit about what
18 happened on that trip?

19 A. So, my mother came as a guardian; there was a lot of
20 lead up to this sporting activity trip; the community were
21 really involved in this trip, they had raised a lot of
22 money so I could do this trip, and I very much felt trapped
23 in the fact that I had to do this trip even though I had
24 abuse going on in the background and that my mother did not
25 know at the time that that abuse was happening.
26

27 But during this trip my mother saw things that were
28 very alarming to her, and the type of things that she saw
29 and witnessed was him tucking me into bed. One night when
30 we were walking from the sporting event back to the lodge,
31 which he had organised this lodge, and it was a two-bedroom
32 apartment, he offered to piggyback me, which he did, and
33 then I sort of felt uncomfortable; mum was right there and
34 I wanted to be put down and then I sort of walked in front
35 of him and he said, "Nice arse" in front of my mum.
36

37 Then we got back there. He was giving me alcohol at
38 the sporting event without my mother knowing, without any
39 consent. My mother did not consent for him to giving me
40 alcohol. And, on top of that, he was drinking one night,
41 and I can't remember exactly how it all came about, but he
42 ended up drawing a penis on my ankle and told me to push my
43 foot back and forth to flex it so that it would go from
44 small to large and he was videoing it. Um, yeah.
45

46 Q. I just want to pause there to ask: at the time how did
47 you see these events, how did you feel about it at the

1 time?

2 A. I was really confused, I was very giggly and I was
3 getting this attention, but at the same time I had
4 realised - I was coming to my senses that this was not
5 right, my mum was picking up on things. When I was told,
6 or asked, after my mother had come forward with this
7 initial report, they asked - when I was being investigated
8 they asked questions to me, "So, did he tuck you in bed?"
9 "Yes, he tucked me in bed". "Did he do anything else?"
10 And I would say "no", even though every time he would tuck
11 me into bed he would kiss me on my forehead.
12

13 Q. Let's go back. So, you said that your mum saw things
14 that made her concerned and she made a report when she got
15 back to Tasmania?

16 A. Yes, she did.
17

18 Q. Is it fair that she didn't know the full extent of
19 what was going on?

20 A. She had no idea, only just what she reported, and that
21 was seven allegations.
22

23 Q. And one of those was around a t-shirt; is that right?

24 A. Yes, that did eventuate, yes; it wasn't in the initial
25 report but that came about because she found it hidden in
26 my wardrobe, and that t-shirt said, "MILF in training".
27

28 Q. And where did it come from?

29 A. Wayne had it made at school and he had it specially
30 created in my size to wear, and "MILF" means "mother I'd
31 like to fuck in training" and he made me wear it at a
32 sporting event locally, and I was completely embarrassed at
33 that point and zipped up my jacket that I was wearing at
34 the time because people were laughing at it.
35

36 Q. Was it sort of hard to say "no" when he asked you to
37 do things like that?

38 A. Oh, absolutely. I did fear him. There were points
39 where I did, when he was abusing me in the vehicle, that
40 first time he would say to me, "I'm risking a lot for
41 liking you", and that, "You can't say anything because I
42 will lose my job".
43

44 Q. And you're 15, 16 at that stage and he was making you
45 feel responsible for his job?

46 A. Absolutely, I was - I felt in a way to protect him,
47 and that's sort of, that's how I was advocating for him, I

1 was protecting him in the beginning. I was so confused
2 because I was torn; I'm a people-pleaser and I wanted to
3 make sure - I just wanted it all to go away, all of this to
4 go away and I thought, by not speaking up and saying
5 anything back then it would go away, but it just didn't, it
6 just kept going.

7

8 Q. So, after your mum made that report and that was about
9 some things that she had seen which were by no means all of
10 the matters, was he suspended, do you know?

11 A. Yes.

12

13 Q. And he was asked not to contact you?

14 A. Yes.

15

16 Q. Did he comply with that direction?

17 A. No, he didn't.

18

19 Q. So, what happened?

20 A. So, he didn't realise that it was a public holiday,
21 and he had called me on a private number, and I just so
22 happened to have mum in the car and we were just about to
23 park home and I answered the phone call and it was clearly
24 him, and he said to the words of effect that, "I know that
25 there's stuff going on between me and your mother but this
26 doesn't mean that you can't come to this other sporting
27 event, we just can't talk". So, he had referred back to
28 the matter even though he was told - given an order not to
29 do it, which is, as far as I'm aware, a breach.

30

31 Q. And, how did that make you feel to hear from him at
32 that time after you thought he wasn't meant to get in
33 contact?

34 A. I was - my heart was beating out of my chest, I was so
35 nervous, I like had mum there and I was trying to cover up
36 that he hadn't done anything to me other than what she had
37 witnessed and I was I thinking, oh my gosh, why he is
38 calling me and made me even more confused and more willing
39 to try and protect him.

40

41 Q. Let's move on to the investigation. So, I think that
42 your mother's complaint was made roughly around August in
43 2005.

44 A. Yes.

45

46 Q. Is that roughly about right?

47 A. Yes, correct.

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Q. I think you tell us in your statement that in about October of that same year you were told that the investigation was going to be out-sourced?

A. Yes, correct.

Q. So, had you heard anything from your first complaint till then? This is not a memory test, just your impressions?

A. No, I can't remember being spoken to. I did have the initial investigators talk to myself briefly, for about 15 minutes, and then we were told that it would be outsourced to an independent investigator.

Q. What about supports for you at this stage: so, this is after the disclosure that your mother's made, the report your mother's made. A few months later you're told there's going to be external investigators. What about any offers of support, counselling, concern for you?

A. There was no support. We had no-one advocating for us, no-one guiding us and helping us through this process. My mother was only a couple years older than what I am today and she didn't have - she got kicked out of school when she was in Year 10, I believe, because she was pregnant at that very same school, they said that because she was pregnant she couldn't go to school anymore. So, I guess, with her - so, didn't have the education, I guess; realised I have more - what can I do more, and she was just listening to what she was told to do by these officials which very much isolated us. But there was no counselling, no support, no-one checked in to see how I was doing, no-one checked in to see how she was doing.

Q. When you say you felt isolated and there was no support coming from the department; what about, did you feel free to talk to other people to seek support from them?

A. No, not at all.

Q. Why was that?

A. The officials, the department officials, had come to my mother and said that she is not allowed to talk about this case otherwise she could be sued for defamation.

Q. And you heard about that fear as well, you were worried about being sued?

A. Yes, absolutely, and I wasn't ready mentally to talk

1 and tell anyone about what had happened to me; I just
2 wasn't ready.

3
4 Q. So, there were no supports provided and whatever
5 social network you had, did you feel connected to that
6 around these allegations?

7 A. No, not at all, and I did have one close friend and I
8 kept that - the abuse to myself, I still didn't reach out
9 to her until a little bit later.

10
11 COMMISSIONER BROMFIELD: Q. Excuse me, Rachel, you said
12 that you lived in a small community. Was there any talk
13 when this popular teacher was suspended in that small
14 community?

15 A. Absolutely, there was a lot of talk; it was, everyone
16 seems to know everyone's business without actually knowing
17 their business, so we very much felt that the community
18 knew what he had told them because he definitely did not
19 keep it quiet. He had put petitions up into the local
20 community in certain areas in that community trying to
21 reinstate himself, and people were signing it, they didn't
22 really know - because there was no context as to why they
23 wanted him to be reinstated, but he was happily able to do
24 petitions. We were just stuck being quiet, muzzled, not
25 being able to say anything, and I was - I didn't even have
26 the mental capacity as a child to even comprehend what was
27 really going on; I just listened, mum just said, "We've
28 been told not to say anything so we can't say anything",
29 and I very much feel that, until this day, that we have
30 been portrayed as liars.

31
32 MS BENNETT: Q. What petitions were circulating?

33 A. There was a few petitions, just basically saying along
34 the lines that Wayne had been suspended from duty and that
35 he should be reinstated back into his teaching position.

36
37 Q. And you felt you couldn't say anything?

38 A. Absolutely. I couldn't say anything, but I didn't
39 understand why he could do that.

40
41 Q. Let's talk about then the investigators that you did
42 speak to, so these are the people engaged by the Department
43 of Education. Just generally, what was the process like
44 from your point of view engaging with investigators?

45 A. So, there were, from what I remember, two men in suits
46 in a small office at school; I didn't - it wasn't a safe
47 place for me reflecting back because I wasn't willing to

1 come out with anything, but I just felt like this little
2 person with these men in suits hovering over the top of me,
3 and scared, I feared it.

4
5 Q. Did anyone ask you about where would be a place that
6 you felt safe to talk around these things?

7 A. No-one, no. So, I did have meetings at the school and
8 I did have a couple meetings at home. There would be times
9 where my mother wasn't present and there'd be times where
10 she was present.

11
12 Q. So, how old were you when your mum wasn't present?

13 A. How old, sorry?

14
15 Q. How old were you?

16 A. 16.

17
18 Q. Was any replacement adult there for you?

19 A. Sometimes there was and then from memory there were
20 other times that there was nobody.

21
22 Q. Just you and the investigators?

23 A. Yeah.

24
25 PRESIDENT NEAVE: Q. Can I just ask, who else was there,
26 who was - when they did have a support person or another
27 person, who were they?

28 A. So, there ended up being one of the staff admin ladies
29 at the school.

30
31 PRESIDENT NEAVE: Okay, thank you.

32
33 MS BENNETT: Q. Was she someone that you knew and
34 trusted?

35 A. I knew her; I sort of felt like I had no choice but to
36 have her there, they just said, "Here's this person, are
37 you happy to have her?" And I just said, "Yeah, whatever".

38
39 Q. Was it your choice?

40 A. I didn't choose her, no.

41
42 Q. Would you have rather had your mum there?

43 A. Yeah, I wish I did have her there, and I - I mean, I
44 wish I had someone who I felt was completely impartial.

45
46 Q. What about someone completely in your corner?

47 A. Say again?

1
2 Q. What about someone completely in your corner, would
3 that have helped?
4 A. Yes.
5
6 Q. Someone to make you feel safe?
7 A. Definitely.
8
9 Q. Did you feel safe in those interviews?
10 A. No, I did not.
11
12 Q. How did that affect your ability to talk truthfully
13 about what had happened?
14 A. I just, I couldn't tell them what had happened. There
15 were points where I really, really wanted to, and I mean,
16 when it became - when the interviews were happening at home
17 I would say to myself, "Rachel, just come out and say it,
18 just tell them what's happening, just do it, just do it,
19 just do it", and then it would come the time when they
20 would arrive and I'd be like, "Nah, I can't do it", and
21 then I would cry in my bed every night going, "Why me, why
22 me, why can't I just tell them the truth?"
23
24 Q. Did you feel, again, like it was all your
25 responsibility to --
26 A. Yes, it's my fault.
27
28 Q. You feel like you're blaming yourself for not having
29 been able to tell them?
30 A. Yeah, and --
31
32 Q. Is that the way you still see it now?
33 A. Oh, absolutely, I completely blame myself.
34
35 Q. Can you tell the Commissioners about the way you were
36 questioned? How long did the sessions go for, at the
37 longest how long were you in the room with the two men for?
38 A. Two hours was the longest.
39
40 Q. Did you get breaks?
41 A. I did get a couple of breaks, there were breaks, but
42 yeah, two hours; was long, I was tired, I didn't even
43 really want to do it, I wasn't ready to do it, I didn't
44 want - especially talk to a man. I just felt like there
45 was no consideration into the sexual composition of the
46 person interviewing me, I didn't even have a choice whether
47 it could be a male or a female. Yeah, just...

- 1
2 Q. I think you say in your statement that there are about
3 four sessions you had with the interviewers, and that two
4 were recorded and two weren't recorded?
5 A. Yes.
6
7 Q. Is that about right?
8 A. Yeah, about right from my memory, yeah.
9
10 Q. Were you spoken to about recording the sessions?
11 A. They did, yes, they said, "We're recording this".
12
13 Q. And was that when you had someone there to help you to
14 understand what that might mean?
15 A. They just sat there, yeah, and didn't explain to me
16 what it meant to be recorded, it was just, "Are you happy
17 for this to be recorded?"
18
19 Q. Did that make it easier or harder for you to talk
20 about the kind of topics you were talking about?
21 A. I felt it made it harder because everything was being
22 recorded and I was very apprehensive at that stage and I
23 was very much in the mind of protecting the perpetrator, so
24 I still had not clicked and realised what was happening to
25 me. I mean, I knew that what he had done, I was scared and
26 fearful of, but I just could not come out and I was worried
27 that I had told them certain parts that had happened and
28 that, if I had told them exactly what had happened, that I
29 would - that they wouldn't believe me.
30
31 Q. What made you think that? Can you tell us why?
32 A. Just, I felt fearful and I just wanted it to go away,
33 and I wanted to continue on with my passion, and then I
34 realised that that was just never going to happen, with the
35 sporting passion.
36
37 Q. Because of his involvement in the small town and that
38 sport?
39 A. Yes, yeah.
40
41 Q. At the end of each session with the investigators did
42 the talk turn to what supports you had? Did anyone check
43 in with you?
44 A. No.
45
46 Q. Did anyone provide access to supports?
47 A. No, there was no access. There was no - this wasn't

1 even anyone advocating for us to even know what we can and
2 can't do, and even - you know, there's so many documents
3 that you can have thrown at you, how do you even figure out
4 what they all mean? But, there was nothing. There should
5 be someone to guide you through it.
6

7 Q. You say in your statement:

8
9 *It took me two years of enduring the*
10 *Department of Education's investigation for*
11 *me to build up the courage to open up about*
12 *the full extent of the abuse that I had*
13 *suffered.*
14

15 And I just wanted to pause there and say, you use the
16 word "endure"; why do you use that word?

17 A. Well, two years is a very long time to be
18 investigated. I wasn't coping at all. I started drinking.
19 I hated myself. I just, I still was - I would still pass
20 him in the local area, and I was so fearful of getting off
21 the bus and having to get back onto another bus that I
22 would run into him, and it in fact did happen where I had
23 run into him, and my friend said, "Quickly, cross the
24 road", and he just had this arrogant face smile and was
25 just strutting straight towards me, and I had to run away
26 from him.
27

28 Q. In about 2007, I think it's May, you were invited to a
29 meeting with members of the Department of Education; can
30 you tell us what you understood that meeting to be about?

31 A. It was what I gather to be a closing meeting to tell
32 us the outcome of all the investigations over the past two
33 years, and they were basically going to say that he, what
34 has he done, nothing, and I felt this was my last -
35 absolute last opportunity to come out and tell them exactly
36 what had happened, and it was one of the most hardest
37 things to do, to come out and confront these two men from
38 the department and tell them what had happened. But, I
39 don't know, I just managed to have that inner courage to
40 come out and tell them what had happened.
41

42 I was in a room, at that stage I was in college, and I
43 had my mother there, and - oh, yeah, I was sitting on my
44 hands, I was shaking, my heart was in - just beating so
45 fast, it was in my throat, and then I managed to tell them
46 and to go through exactly what had happened, and my mum was
47 just bawling her eyes out because it was the first time

1 that she had heard what had actually happened to me and I
2 guess all the puzzles and the pieces from her initial
3 report made sense.

4

5 Q. So, let's just pause. So, you were invited to this
6 meeting, can you remember, and again not a memory test, can
7 you remember roughly who was at the meeting?

8 A. Yes.

9

10 Q. Can you tell the Commissioners who that was?

11 A. There were the two - suppose I can't name them, so
12 there were two --

13

14 Q. So the investigators?

15 A. Yeah, the two investigators from the Department of
16 Education, my mother, and I can't remember if there was
17 another female there, but that was it.

18

19 Q. And they told you ahead of time that the purpose was
20 to tell you the outcome of the investigation?

21 A. Yes.

22

23 Q. So that's what you came expecting?

24 A. Yes.

25

26 Q. And that's why you were shaking and had your hands --

27 A. Yeah, I was so nervous, and then eventually it felt
28 like he was going to just get away with it.

29

30 Q. What did they tell you was the outcome?

31 A. That he hadn't breached the State Service Act Code of
32 Conduct.

33

34 Q. And, how did you feel about that?

35 A. Oh, I was absolutely mortified because I just feel
36 like everything was sitting on deaf ears, but at that stage
37 they only had my mother's version. But there were many
38 other things that you would consider inappropriate; it's
39 just the way that they investigate it and someone's
40 opinion.

41

42 Q. And so, they told you that was the end of the process?

43 A. Pretty much, yes.

44

45 Q. And, how did you react to that?

46 A. I broke down crying and I admitted to them what had
47 actually happened and that consisted of many times driving

1 in his vehicle and being kissed. One time I said "no",
2 where he then got absolutely so angry and then didn't talk
3 to me the whole way back and then stopped again, and I
4 could tell that he wanted to kiss me again, and I ended up
5 doing it because I was absolutely so fearful of saying "no"
6 again because of the way that he acted and responded that I
7 did it again, and he like leant in, and then he kissed me;
8 and, for me, that gave him the green light that, yep, this
9 was okay and that she was committed to this secret of him
10 and me having this inappropriate teacher-student
11 relationship.

12
13 Didn't stop there; there were other times when we were
14 at [REDACTED] where he did it up there. We would be
15 driving in the vehicle where he'd put his finger in my
16 mouth and penetrate it back and forth, insinuating a penis,
17 and then I would have to return the favour putting my
18 finger in his mouth.

19
20 There were other times when I would be driving his
21 vehicle and he would brush his hand up my leg to my vagina,
22 and he did that a couple times, and he would be laughing
23 saying, "Oh, you have such good concentration to be able to
24 drive and handle me doing that", and I didn't realise what
25 he was doing at that point, what he was trying to do.

26
27 And then there were other times where he asked me
28 about what I had done with other boys. He, yeah, touched
29 up my leg and he - yep, sorry.

30
31 Q. And these are things you told the investigators?

32 A. Absolutely, and these - I was bawling my eyes out and
33 I told them, and to the point where one of them asked me,
34 "Can you show me how he did it?", and I had to rub up my
35 leg and touch my vagina, and he just went like this:
36 (demonstrates).

37
38 Q. And, how did you feel about it?

39 A. I was just so upset, it just still felt like, what are
40 you going to do about it? They were listening, and then I
41 just sort of felt like, it just ended and then we walked
42 out of the room and I didn't go back to college, and I went
43 home with mum, and mum's like, "Why didn't you tell me?
44 Why didn't you tell me what was going on?"

45
46 So, yeah, so, two years had passed and, I mean, that
47 wasn't the only thing; he was messaging me all the time, he

1 was calling me. He would tell me to put my phone down my
2 pants and that when a message come through it would vibrate
3 on my vagina and that he was doing the same thing, putting
4 his phone down his pants. He told me that he loved me and
5 that we could be in a relationship after Year 10.
6

7 He wrote me a love letter just before we went away to
8 a sporting event and told me to respond to it on the back
9 of the letter and give it back to him. The shirts that
10 he - he'd been giving me gifts; so, there was that "MILF in
11 training" shirt, and then there was a [REDACTED] - sorry.
12

13 Q. That's okay.

14 A. -- shirt that had the word "MILF" and the name of the
15 [REDACTED], and the name of the [REDACTED] - sorry, I'm not
16 meant to say that.
17

18 Q. That's okay, that's fine.

19 A. -- was absolutely inappropriate to what it means, but
20 basically - am I allowed to say what it means?
21

22 Q. Certainly.

23 A. So, the [REDACTED] basically meant, and the way that
24 he would word it was, "An unnatural love for your mum":
25 twisted.
26

27 Q. So, you've made this disclosure to the investigators?

28 A. Yep.
29

30 Q. It must have been hard to find the courage to do that?

31 A. Oh, it was so difficult and, for me, I thought that
32 that meant that everything was still open and that the
33 investigation hadn't finished. I mean, if someone comes
34 out with that information, how can you close an
35 investigation?
36

37 Q. And, what did they say to you at the end? After you
38 found it in yourself to say all that finally, how is that
39 received, what was the next step?

40 A. That I had to write a statement myself, provide a
41 statement to them.
42

43 Q. For anything to be done or?

44 A. It was detailing what I had told them; that it had to
45 be in writing.
46

47 Q. It wasn't enough for you to tell them?

- 1 A. No, it had to be in writing.
2
- 3 Q. And so, you went and what about any support at the end
4 of that meeting; was there any offers of support?
5 A. There was nothing. I had come out, and I don't
6 remember hearing any communication from there. It felt
7 like months had passed and nothing.
8
- 9 Q. And you did actually find it in yourself to make a
10 statement; a few days later you provided a written outline
11 to them, right?
12 A. Yes, I did, yes.
13
- 14 Q. That's a confidential annexure which I won't read from
15 but I will, Commissioners, with the permission of Rachel
16 read the last paragraph.
17 A. Yes.
18
- 19 Q.
20 *This has been the hardest and most painful*
21 *process that no word or words can describe.*
22 *I would never want to wish it upon anyone*
23 *else.*
24
- 25 Rachel, what were you talking about when you said -
26 what was it that was the most painful process you're
27 talking about there?
28 A. Having to go through two years of investigations; not
29 having an answer, not knowing where anything was at with
30 any of the investigation. No-one communicated that he -
31 the reasons why - what were the determining factors that he
32 had for not breaching the State Service Code of Conduct.
33 There was just, I just don't want anyone to ever go through
34 what I've gone through, which is why I'm here today, to
35 help pass this story on where the systemic issues have
36 happened so that someone may be able to take my story and
37 fix what we call the "Swiss cheese model" where all these
38 holes and loopholes are happening historically and today.
39
- 40 Q. We'll come back to that. So, after you've made that
41 disclosure, you've found the courage to do that, and then
42 were you told what the next step was going to be from the
43 point of view of the investigation?
44 A. They didn't really go into that, it was more going
45 into did I want to go to the police.
46
- 47 Q. Did you want to go to the police?

1 A. I did, yes.
2
3 Q. And, did you go to the police?
4 A. I did, yes.
5
6 Q. And, how was that?
7 A. I went there with a Department of Education official
8 and my mother.
9
10 Q. Yep.
11 A. They both supported me going there. I was then - they
12 were both told to not come into the room and I spoke to the
13 police officer one-on-one, where then, once I told him my
14 story I had to handwrite a statement and I gave that to
15 them back then.
16
17 Q. And, did you find that a process that made it easy or
18 hard for you to talk again about what had happened to you?
19 A. Oh, extremely difficult, I just am reliving it talking
20 about it over and over and over. It just would be nice to
21 have someone that is representing you to be able to speak
22 before that - I mean, two years had passed; I mean, had the
23 police been involved earlier, I feel like my situation and
24 the outcome would be totally different from where we are
25 today.
26
27 PRESIDENT NEAVE: Q. So, can I just clarify one thing.
28 You had to write a statement for the investigators?
29 A. Yes.
30
31 Q. And you then had to write a separate statement for the
32 police?
33 A. Yes, correct.
34
35 PRESIDENT NEAVE: Thank you.
36
37 MS BENNETT: Q. So, did you hear anything else about
38 your disclosures after that close-out meeting in May 2007?
39 Did you hear anything else from the department
40 before October?
41 A. No.
42
43 Q. In October you saw something in the local paper; is
44 that right?
45 A. Yes, correct.
46
47 Q. I'm going to read out, with relevant omissions, I'm

1 going to read out what was printed in the paper.

2
3 It says in bold:

4
5 *The following is an agreed statement*
6 *between the Department of Education and*
7 *Wayne.*

8
9 *After an extensive investigation the*
10 *Department of Education has determined that*
11 *Wayne has not breached the State Service*
12 *Act 2000 Code of Conduct. Wayne has been*
13 *appointed to a position within the*
14 *department in [REDACTED] and he took up that*
15 *position in February 2007.*

16
17 So, after you made your disclosure about those matters
18 you heard nothing about the investigation that followed,
19 and then you found that in the paper one day.

20 A. Yes.

21
22 Q. Can you tell us about the effect of that on you?

23 A. Oh, I was gutted. I felt betrayed, I felt neglected,
24 I felt that no - I had come out with the truth, and that
25 was so difficult coming out with the truth, that it hadn't
26 been listened to. I didn't get it, I didn't understand.
27 Well, I had just told you what he had done to me and that
28 he is still allowed to teach?

29
30 Q. That was in your local paper.

31 A. Yes.

32
33 Q. What was the effect on the small community you lived
34 in?

35 A. I wanted to hide. I ended up leaving that community.
36 I didn't want to stay there, and even to today I'm so
37 fearful of being in that community, and there are certain
38 places that I don't like driving past - isolated.

39
40 Q. And that's the community where you were born, where
41 you grew up and where your mother had lived?

42 A. Yes, still lives.

43
44 Q. Did anyone tell you to expect a notice in the
45 newspaper about your complaint?

46 A. Absolutely not.

47

1 Q. How do you feel about the fact that it ended up in a
2 newspaper?

3 A. I just felt that my - that the trust had been betrayed
4 and that they were protecting the perpetrator, and
5 protecting them themselves, and my complaint wasn't taken
6 seriously.

7

8 Q. Did you ever hear about the outcome of the complaint
9 that you made at that 2007 meeting? So, when you told the
10 full story did you understand that was ever investigated by
11 the Department of Education, just from your point of view?

12 A. No, but I did submit the same statement to the
13 Teachers Registration Board.

14

15 Q. So, let's go back, let's go to that then. The
16 Teachers Registration Board got in touch with you in - or
17 did you get in touch with them in about October 2007?

18 A. I submitted it to them.

19

20 Q. You submitted it to them?

21 A. Yep.

22

23 Q. And what was that process like for you from your
24 perspective?

25 A. Well, my mother had submitted a complaint as well and,
26 from memory, my sister did as well to them. We did have
27 meetings with them one-on-one up in their room in one of
28 their offices. I felt like there was a lack of any sort of
29 evidence being written in the communication, it was always
30 verbal.

31

32 Q. Did you have much insight into what that process was
33 going to look like?

34 A. I had no idea, I didn't even - I had no idea.

35

36 Q. Did you meet with representatives of the Teachers
37 Registration Board?

38 A. I did, yes.

39

40 Q. And, how was that?

41 A. I had spoken to them about what had happened and what
42 had happened to me, and they were high up in the TRB, where
43 they had created a statement for me based on the
44 information that I'd given to them; it wasn't everything,
45 it wasn't all the abuse, and it was random things in there
46 about my life that didn't really make sense as to why they
47 were adding that in a statement. I didn't really know why

- 1 I was doing this statement, I had no idea where it was
2 going to, and that was done in roughly early 2008, so was
3 still going on.
4
- 5 Q. This is things that are happening to you in 2005?
6 A. Yep.
7
- 8 Q. Are now getting looked at by the Teachers Registration
9 Board in 2008?
10 A. Yes.
11
- 12 Q. I think you say in your statement that you were told
13 that he wouldn't be able to teach anymore?
14 A. Yes.
15
- 16 Q. Who gave you that impression?
17 A. The TRB; they assured me that he would never be able
18 to teach again.
19
- 20 Q. And again, this is just the information that you were
21 given at the time?
22 A. Yes.
23
- 24 Q. You were told that there had been an appeal of some
25 sort?
26 A. Yes.
27
- 28 Q. Tell the Commissioners what you understood about that
29 process?
30 A. I understood nothing, I didn't know; I didn't know
31 that he could do an appeal. I didn't know what was for and
32 against that appeal. I don't know what information was
33 given to them from my side and what he was - what
34 information he gave to them to persuade them not to go
35 through with deregistering him once - after I had been
36 assured that he would be deregistered. I guess they, from
37 what I've read, that they focus on good character and fit
38 for being a teacher, and those are the two criterias, those
39 are the measurable things that they want to work out
40 whether a teacher's fit to have a teacher's registration.
41 Anyone can write a character reference.
42
- 43 Q. Just to step back a little bit, there's been a number
44 of processes that have gone on since you made your first
45 disclosure; did you ever feel at the centre of any of them?
46 A. No.
47

1 Q. Did you feel like you were the focus of care from the
2 people --

3 A. Absolutely not, I just felt like they were trying to
4 get - go through all those sort of, yep, we'll get a
5 statement from her: ultimately, I still felt like they were
6 protecting their own staff member.

7
8 Q. And ultimately you tried to make a Right to
9 Information request to get some information about what had
10 been going on as part of this process; is that right?

11 A. Yes, correct.

12
13 Q. Tell the Commissioners about how that went for you?

14 A. I managed to receive a Right to Information as much as
15 I can from the department, but I submitted another Right to
16 Information in October last year to the TRB and to date I
17 still do not have my Right to Information. They have made
18 up excuses, they have said that there has been issues
19 within the TRB, which I did not understand how their issues
20 implicate why I can't have my information. And they asked
21 for extensions multiple times, they wanted extensions so
22 they could sort out what was going on, and then there was
23 other things like, "Oh, someone is sick. Oh, we're really
24 small, we're really short-staffed". It was just excuse
25 after excuse, and I was very patient, I was willing to keep
26 going, "Yes, you can have an extension", and then it got to
27 Christmas time and they basically said that, "Well, we're
28 just going to give it to you whenever we feel like it", and
29 that there's so many issues going on.

30
31 So then I went to the Ombudsman and stated what had
32 been going on, and then they have basically repeated that
33 there are issues internally going on in the TRB and that
34 they are trying to speak with them to get the information,
35 and that, "We'll get back to you", and that "I'll get back
36 to you" has been weeks, if not a month.

37
38 Q. Again stepping back, can you tell the Commissioners
39 how you view the whole of this process now from your
40 perspective as an adult, as a mum; can you tell us how you
41 see the whole thing from your point of view now?

42 A. Completely disjointed. I speak of this chain of
43 responsibility, that there is no chain, there's no
44 connection between these agencies, no-one is talking to
45 each other. I don't understand why even witness statements
46 are not getting to the people that need to hear, because
47 there are definitely people out there that witnessed what

1 went on and are wanting to voice what has gone wrong with
2 my situation, but it's just, again, falling on deaf ears:
3 no-one is listening and no-one is taking action and I feel
4 like the balance of probability, when you look at the terms
5 of, has someone breached a State Service Code of Conduct,
6 hasn't been acted appropriately in this case.

7
8 Even like, when we talk about the evidence being held:
9 there was a letter from - that my mother had received from
10 the current Secretary and it basically said along the lines
11 that, "There is no - the TRB have no record of any
12 investigation in 2007", and that's - yeah. That was hard
13 to read because I was like, "What the heck? What do you
14 mean there was no investigation? I have a statement that
15 I've signed in 2008 from the TRB". I just don't get it, I
16 just don't understand.

17
18 COMMISSIONER BROMFIELD: Q. Did you say you met with
19 their officers, is that what you said?

20 A. Sorry, say that again?

21
22 Q. You say that you met with them in person, the officers
23 from the TRB?

24 A. Yes, yep.

25
26 MS BENNETT: Q. You're a parent now and how does this
27 affect how you think about the kinds of Department of
28 Education or educational support you feel like is
29 appropriate for your children?

30 A. Oh, everything in my life that I need to think of for
31 my children, who are at the age of being at school, who are
32 both women - daughters, sorry: I don't, I will not let them
33 go to a state school, I am firm on that, I don't care if
34 it's the best state school in the state, I just can't do
35 it.

36
37 I have - personally I'm on medication to keep my
38 emotions at bay, which is why I'm actually quite calm today
39 and not crying at the drop of a hat, because I used to be
40 hysterical with bringing up this issue.

41
42 I have been diagnosed with PTSD, I have been diagnosed
43 with major depressive disorder, I need sleeping tablets, I
44 have restless legs, I have nightmares, I have flashbacks, I
45 can't come to Tasmania without looking at [REDACTED] and
46 thinking of things that had happened to me. I hop in a car
47 and I am driving and I am thinking about how he touched me,

1 I am thinking about how he was teaching me to drive.
2

3 Every sort of relationship that I have had in my life
4 I struggle with, like, intimate relationships. I struggle
5 with trusting people. I struggle with being in a room with
6 men that do have power. My current career is immensely
7 affected by my abuse. I can't handle certain noises, I
8 can't function some days, yep. But, if I didn't have this,
9 I guess, medical intervention that I have today to be able
10 to speak, I don't know if I could even be here today,
11 because I am very fearful of being around too many people,
12 very intimidated if a male challenges me, and I'm not
13 necessarily saying that my experiences in life with men
14 have all been bad, because I actually do have friends that
15 are males, but it's just a challenge that I am always faced
16 with.
17

18 And, I am so over-protective and hypervigilant for my
19 daughters. I mean, I am here today to help bridge and be a
20 part of this bigger and wider world of child safety and
21 these new generations that are coming through because it's
22 impacting my children, it's impacting my nieces and
23 nephews, it's impacting everyone, every child that comes
24 into the system. I want to advocate for those children
25 that usually, that can't speak; I want to advocate for
26 parents or caregivers that - I've seen what it's done to my
27 mother. I'm physically seen how it's just ripped her
28 apart, how it's ripped me apart, and I'm doing my best to
29 not flow that onto my children, but I definitely have open
30 discussions with my children and I am very clear about,
31 there's a fine line on, like, your body being your body,
32 no-one can touch it except you and I will make that clear,
33 and one day I hope that they can look back and look at me
34 and go, "Mum, you're a great role model, we want to be like
35 you, we want to" - you know, as difficult as it is and my
36 pain, my suffering, I hope this story helps the Commission.
37

38 Q. You've made some specific recommendations for change?

39 A. Yes.
40

41 Q. And they're at paragraph 38 of your statement and I
42 commend them to the Commissioners. What would you like to
43 say to the Commissioners today about what you would like to
44 see changed in the future in Tasmania?

45 A. So, for - I mean, from a legislative point of view,
46 and something that really has hindered my journey - am I
47 allowed to go into the Police Offence Act?

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Q. Yes.

A. So, back when I finally did have enough courage to come out with the truth and go to the police it was, I guess, a clause that said that assault with indecent intent has a statute of limitation of 12 months, so I guess I'm really wanting to advocate and push for that to be abolished; because, how can someone who is 15 or - I don't even know if there's an age limit, 8 or 9, have 12 months to say that, "This person did this to me, but it wasn't rape, but it was pretty much close to rape", but you need to have come out within 12 months? Completely unfair, unjust, and I don't have closure with that.

The other thing is really, whether the education with - I can't remember what it's called now - consent; focus on that, but also focusing on how teachers are to be in and out of school, because in my case it was very shadowed that - and the facade that it was okay to do what he did because he wasn't teaching at that time, he was - yep, which is not okay.

And there's definitely loopholes into, you know, someone - I don't know if I'm allowed to go into this either?

Q. Yes.

A. When you are being investigated as a teacher, you resign, and where does that go? So, how can someone resign whilst being investigated, and I guess hopefully the investigation does prove that this person, this perpetrator, did in fact breach the State Service Code of Conduct, but ensuring that the redress is done correctly, that it is looking at my whole case, not just whatever's new that apparently was never investigated, but in full.

And whether the outcome is still against me because of policy and legislation and what everyone is governed to, you know, I can find peace and at least find peace in being here today.

I mean, I will live with this for ever, it affects me daily, but if I can help advocate for people who can't speak, that is such a great achievement for me, yep.

MS BENNETT: Thank you, Rachel. Those are the questions from Counsel Assisting, Commissioners.

1
2 COMMISSIONER BROMFIELD: No questions, but you are a
3 remarkable advocate for children's safety, thank you.
4

5 THE WITNESS: Thank you.
6

7 COMMISSIONER BENJAMIN: I have no questions, but Rachel,
8 I'm a grandfather and I thank you for your bravery and your
9 strength in protecting, not only your girls, but all
10 children in our community.
11

12 THE WITNESS: Thank you.
13

14 PRESIDENT NEAVE: Rachel, you've told us about the lasting
15 effects that the abuse has had on you and will probably
16 have for ever, and you've also told us about how difficult
17 it has been for you to come forward and talk to the
18 Commission, which we completely understand. We thank you
19 for your great courage in doing so and applaud the way that
20 you are trying to protect your own and other children from
21 similar experiences and we wish you all the best for the
22 future.
23

24 THE WITNESS: Thank you very much.
25

26 **SHORT ADJOURNMENT**
27

28 MS NORTON: Thank you, Commissioners. Our next witness is
29 Mr Steven Smith from the Australian Education Union. As
30 you can see, Mr Smith joins us remotely, and I'll ask that
31 he be sworn in.
32

33 **<STEVEN EDWARD SMITH, affirmed and examined: [11.36am]**
34

35 **<EXAMINATION BY MS NORTON:**
36

37 MS NORTON: Q. Mr Smith, can you just repeat your full
38 name for the Commission?

39 A. Steven Edward Smith.
40

41 Q. And your professional address and occupation, please?

42 A. I'm the Senior Advocate, which is with a legal
43 position supporting members at the AEU, and my professional
44 address is 32 Patrick Street in Hobart.
45

46 Q. Thank you. Mr Smith, you've prepared a statement to
47 assist the Commission, it's a statement dated 22 April

1 2022; have you recently reviewed that statement?

2 A. Yes, I have.

3

4 Q. And, subject to a clarification which you're about to
5 make, are the contents of that statement true and correct?

6 A. To the best of my knowledge, information and belief,
7 yes.

8

9 Q. Thank you. You'd like to make a point about the
10 language you use in that statement; I'll invite you to do
11 so.

12 A. There's a number of paragraphs in the statement where
13 I refer to teachers where I should be properly referring to
14 educators to include in lab techs, ESS and library staff,
15 and those are paragraphs 42, 58, 73, 83, and then, in
16 85(c)(i) and (f).

17

18 Q. Thank you, Mr Smith. And is it the case that when it
19 comes to the work of the Australian Education Union, that
20 educators generally, not just the smaller subset of
21 teachers, are able to be members of your union?

22 A. Yes.

23

24 Q. Thank you.

25 A. They can also be members - some of them can also be
26 members of the CPSU as well.

27

28 Q. I understand, thank you. Would you like to outline
29 for the Commissioners the nature of your relevant work
30 experience including in representing members employed by
31 the Department of Education?

32 A. My practice as a solicitor started in New South Wales
33 where I worked for a firm called Turner Freeman undertaking
34 plaintiff workers' compensation work and asbestos-related
35 matters. I then practised up in the Northern Territory
36 acting for a firm working predominantly in the personal
37 injuries area acting on instructions from insurers
38 including the Department of Education and the Catholic
39 Education Office.

40

41 I came down to Tasmania about a dozen years ago and
42 worked for a firm, Hunt & Hunt, and then Barry Nilsson,
43 advising insurers in relation to a variety of claims
44 including developing a workers' compensation practice for
45 Barry Nilsson, and I've been with the union now for about
46 two and a half years.

47

1 Q. Thank you, Mr Smith. I'd like to ask you some
2 questions about your statement and I might refer you at
3 times to paragraphs in your statement.

4 A. Please do.

5

6 Q. Do you have a copy of that? It's not a memory test.

7 A. Thank you.

8

9 Q. I'd like to begin, you outline in your statement some
10 concerns that you have based on your experience dealing
11 with the Department of Education in relation to its
12 investigative processes and I want to come to those but can
13 I start by asking for some clarification.

14

15 In paragraphs 31 and 32 of your statement you refer to
16 the fact that the Code of Conduct, which is a Tasmanian
17 State Service-wide instrument, has increasingly been used
18 to attempt to respond to grooming behaviours. And then you
19 go on to say:

20

21 *It's not always clear from the allegations*
22 *of breach if there are any sexual concerns.*

23

24 Can you just explain to me the significance of that
25 point?

26 A. When a member receives the initial letter saying,
27 these are the allegations made against you, they are
28 literally - the allegation is - I'm just going to pick
29 things from the air for this example - but allegation may
30 be that you touched a student on the bottom, and it may be
31 there's another allegation relating to that student; it
32 could be that there's allegations relating to other
33 students. It's not always clear whether we're trying to
34 respond to a situation where a teacher is, or an educator,
35 has developed bad practices in the sense of they've become
36 more touchy-feely than they know they should be; there's
37 just bad practices developing over time as opposed to
38 something that looks more like a deliberate attempt to
39 groom somebody.

40

41 And I appreciate that there's a huge difficulty for
42 anybody looking at behaviours trying to work out what is
43 grooming and what isn't, but there's a difference - there
44 surely is some level of difference between things which
45 appear to have been inadvertent in a corridor as opposed to
46 something that fits in more with the sort of approach of
47 grooming that we read about where there's an attempt to

1 sort of exclude from others and to create very personal
2 one-on-one relationships. It appears to me that there
3 should be more care taken to inform members if there is a
4 concern that a pattern of behaviour that is being
5 identified looks as if it could be grooming.
6

7 And partially I think that's important because I think
8 there should be a different system for dealing with matters
9 that might relate to grooming. It's not as serious as
10 somebody swearing at a kid inadvertently in a class in an
11 emotional outburst; that can obviously have important
12 impacts and consequences, but it is a much more important
13 issue for the potential - for the victim, the child
14 involved, and obviously for consequences for the educator
15 that's involved as well.
16

17 Q. Thank you for that clarification, Mr Smith. I suppose
18 what you're describing there is a spectrum of behaviour
19 with, perhaps if we put at one end of the spectrum boundary
20 breaches, grooming behaviour, and then child sexual abuse.
21 Am I right to think that part of this distinction that
22 you're drawing in paragraph 32 is between what might be
23 called boundary breaches which are perhaps inadvertent or
24 don't carry a sexual intent and conduct that does carry a
25 sexual intent: is that the distinction you're drawing?

26 A. It is, but I'm uncomfortable in how to phrase it
27 because there isn't - I'm not aware of a really clear
28 definition of what "grooming" is, and also, appreciate that
29 patterns of behaviour can be part of that that at an early
30 stage might not actually fit the definition of "grooming",
31 so it is a really difficult area.
32

33 But I think it's serious child sexual assault,
34 grooming-related activities, and I think there are some
35 behaviours of some teachers that are inappropriate that
36 might be much less than that that are never going to move
37 into the child sexual assault or have any sexual
38 connotation at all.
39

40 Q. So, you've talked about it being difficult to draw a
41 line on that spectrum in terms of what's not serious and
42 what starts to become more serious. Am I right to think
43 that you're not able to confidently draw that line for the
44 Commissioners?

45 A. No, I'm not; certainly not.
46

47 Q. And, would you agree that - I mean, you gave an

1 example before of a teacher touching a student on the
2 bottom. Now, let's look at that. You might have a teacher
3 who touches a student on the bottom accidentally.

4 A. M'hmm.

5

6 Q. You might have a teacher, an educator, who
7 deliberately touches the student on the bottom. Would you
8 agree that, certainly in the second case, that's something
9 that is deserving of some kind of a disciplinary response?
10 And I appreciate that there is a range of disciplinary
11 responses that might be available and they need to be
12 proportionate, but is that example, touching a student on
13 the bottom, something that deserves a response from a
14 school?

15 A. I wouldn't necessarily automatically say disciplinary:
16 I would say firstly investigate, it's obviously something
17 that on the face of it is inappropriate, but context I
18 think is really important. If a teacher, for example, was
19 in the gym playing a game and - a game of tag or something,
20 and touches a child on the bottom in that scenario I think
21 it's vastly different to a teacher touching a bottom out
22 the back of the gym.

23

24 Q. I appreciate context is important, but would you agree
25 with me that, regardless of context which takes time to
26 understand, at the point of disclosure, at the point of
27 somebody complaining that they've been touched on the
28 bottom by an educator or someone else observing that,
29 that's an allegation that needs to be taken seriously by a
30 school --

31 A. Absolutely.

32

33 Q. -- regardless of context?

34 A. Yes.

35

36 Q. And you'd also accept, or would you accept, that there
37 might be conduct which, in isolation, might be easy to
38 dismiss or be seen as innocuous, but when seen as part of a
39 broader pattern of conduct takes on a very different
40 complexion?

41 A. Absolutely, yes.

42

43 Q. And so, if I can go back to your point about the
44 difficulty in drawing a line, and putting to one side the
45 question of the nature of the response that a school or the
46 Department of Education might make and the need for that to
47 be appropriate and proportionate, would you agree that

1 whenever a teacher engages in conduct which sits on that
2 spectrum, it deserves a response?

3 A. Yes.

4
5 Q. And so really while the line - I suppose what I'm
6 trying to explore with you is, although the line might be
7 hard to draw, do we need to draw the line really? Once
8 you're on that spectrum there's conduct that needs to be
9 looked at in an appropriate way?

10 A. Well, I think there's a need for some sort of line but
11 not necessarily at the initial stage. You're focused on it
12 at the beginning, so that when the allegation is made,
13 somebody's touched - somebody is alleging that somebody has
14 touched a child's bottom; I certainly think at that stage
15 it needs an immediate response. But, once you've
16 undertaken a preliminary investigation, what you do next is
17 obviously going to be dependent upon all of the
18 circumstances that you've ascertained at that point.

19
20 Q. Of course, of course, and I don't want to deal in
21 hypotheticals here, so I think I understand your point. As
22 a union representative your core business, your core focus
23 and responsibility in a general sense is to your members
24 and to assisting your members to protect their interests.
25 Does your approach to supporting members change at all when
26 allegations of child sexual abuse are concerned?

27 A. In one sense, no, in the sense that we're going to
28 support our members and go through those processes; but
29 yes, it does in the sense that you've immediately got to
30 prioritise the matter and focus on ensuring that the
31 process is undertaken properly and carefully because the
32 potential consequence for - well, the first issue obviously
33 is the child and how they're going through all of that, but
34 for the teacher, which is where I'm focused at that time,
35 my concern is that this is a matter that ultimately could
36 end up in them losing their career and potentially them
37 ending up in gaol, although we don't tend to get people
38 coming to us who are at the serious end, we tend to get
39 people who are members coming to us where there's an
40 allegation of a range of conduct, so - yep, sorry.

41
42 Q. Can I just stop you there. You said you don't have
43 members come to you with complaints at the serious end. Do
44 you have members come to you who face allegations of
45 grooming behaviours?

46 A. Yeah, I should rephrase that because I've misled
47 there, I do apologise, as you know.

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Q. Yes, please.

A. Yes, we get people come to us with allegations of grooming behaviours, and yes, we've had members come to us with allegations that they have dealt inappropriately with children, but none of the matters where I'm aware of convictions in this area have any members - have members come to us, so that's the distinction I would make there. I do apologise, I phrased that very poorly when I answered you originally.

Q. And I'm glad to have given you an opportunity to clarify that.

A. Thank you.

Q. Would you agree that, even though you have responsibilities to employees, and I take your point about the serious consequences for people accused of child sexual abuse, but would you agree that regardless of those concerns children's welfare really needs to be at the centre of what you as a participant in the broader process of looking at and responding to allegations of this kind, that children's welfare needs to be central?

A. Absolutely, yes.

Q. Thank you. If I can take you to paragraphs 34 and 35 of your statement, Mr Smith.

A. Yep.

Q. You talk there about an increased understanding of grooming and the dangers of grooming, and policies that the Department of Education has in relation to concepts like grooming, but you say that the impression you have:

... is that employees are aware of these policies, however, the extent of understanding is variable.

Is that based on your discussions with members?

A. It's based on discussions with members and organisers, who are our officers of the union who go out and deal with members on a daily basis, because I tend to deal with members when they come with issues rather than going out to work sites.

Q. Do you have a sense from those discussions about what the problem is? If there are policies in place which have

1 been updated to reflect contemporary understandings of
2 grooming behaviours and boundary breaches but they're not
3 being understood in a consistent way at the ground level,
4 if you like, in schools, do you have any sense of where the
5 problem is or what's lacking?

6 A. No, and I'm sitting here frustrated because there was
7 somebody who raised that issue with me, and I might be able
8 to find more information out in relation to this issue had
9 I spoken to her earlier in the week. It certainly concerns
10 me; I recently received a report that a teacher was
11 concerned that other teachers were using social media
12 inappropriately; I just don't have insight at this
13 point into why they may have been doing that, I haven't had
14 a chance to follow that up, it was just raised last week,
15 but I would --

16
17 Q. That's all right, and I don't want you to go to
18 examples that you don't feel comfortable speaking to.
19 Could I ask you --

20 A. But what I would say is that I think that, with some,
21 particularly social media stuff, it's people want to use
22 things that are practical but the restrictions inform them
23 they shouldn't, and I think there's a frustration sometimes
24 that comes about, but I think the key is that they just
25 need to be reminded every year and I'm a great fan of the
26 active review of these policies rather than just a passive
27 review where somebody signs to say they've read it, because
28 I think it's important that people understand the culture
29 of these policies: it's not just about what they say, it's
30 about what they intend.

31
32 Q. Do you have concern, based on the conversations that
33 you've had, that there's sort of a compliance culture
34 within schools of ticking a box, we've done that training,
35 we've read that policy, we've read that updated policy,
36 without a corresponding appreciation of the need to
37 actually understand what application of the policy means in
38 practice?

39 A. I wouldn't phrase it that way.

40
41 Q. Sure; how would you phrase it?

42 A. I would say that, like with all of these sorts of
43 policies, and I put out work health and safety policies as
44 well, there is a tendency for all of us - yeah, I looked at
45 that last year, and people have got so much demands on
46 their time, you just want to, "Yeah, I'll sign, I've read
47 that", move on, which is why I'm of a view that an active

1 engagement in relation to these each year is of real value.

2
3 One example that was given to me was of a school where
4 the principal gets the teachers together and separates them
5 out into groups and they come back and report on something
6 they hadn't identified before in the policy or they weren't
7 aware of in the policy to the wider group: that, to me, I
8 can't see how that's not going to get through even the
9 thickest head, for want of a better way to put it.

10
11 Q. So, what you're talking about there really is not just
12 having a policy and requiring people to read the policy,
13 but having a process by which they have to engage in a
14 meaningful way with how the policy might apply in a
15 practical situation?

16 A. Yep, absolutely.

17
18 Q. And bearing in mind that of course practical
19 situations can be many and varied and it's always useful to
20 test theory against examples?

21 A. Yeah, and I don't think - it doesn't need to take that
22 much time; it's something, if you've got four or five
23 policies you can separate into a dozen groups, a couple of
24 groups on each policy and everybody's getting reminded of
25 the culture, the issues that are relevant; it just seems to
26 me to be a very sensible way to go about it, I was very
27 impressed, because I'd like to see that in work health and
28 safety practices as well, because they're often much more
29 that old-fashioned, that compliance culture of, tick the
30 box, you're done.

31
32 Q. Can I ask you about paragraph 37 of your statement
33 because, as I understand it, you have a particular - you've
34 been talking generally about concerns that educators as a
35 global population aren't necessarily engaging with the
36 content of policies in a meaningful sense. But in
37 paragraph 37 you talk about a particular concern with
38 relief teachers. Can you explain to the Commissioners what
39 that concern is?

40 A. Recently I was contacted by a relief teacher who had
41 been told that they weren't going to get any further work
42 from the department because of some concerns about their
43 practices, the way that they were touching children, and
44 this person had not been provided with any Protective
45 Practices training prior to starting work; no induction
46 whatsoever in that regard.

1 Q. Can I stop you, can I just ask a clarifying question:
2 was this a junior educator, somebody without very much
3 practical experience?

4 A. With no practical experience.

5

6 Q. Right.

7 A. And a lot of support staff don't come with any prior
8 training, so then, to the best of my knowledge anyway.

9 With the ESS that's different, they go through courses, but
10 most teacher assistants, it's training on the job.

11

12 Q. And is it the case that a common path for a teacher at
13 the beginning of their career, an educator, is from
14 university into a relief teaching role?

15 A. It's certainly, there's a large number of young
16 educators that go through that process because it's not
17 always easy to get straight into a full-time appointment.

18

19 Q. And so, is it a concern then that those graduate
20 teachers, if I can refer to them in that way, if they're
21 not - let's assume for the purposes of this question that
22 they're not currently being taught very much about
23 protective practices, grooming, boundary breaches, at
24 university. Is the significance of what you're saying
25 that, if they then start their career in a relief teaching
26 job, not only have they not learnt anything about these
27 important matters at university, but they're not learning
28 anything before they start on the job because there's no
29 training in place at the Department of Education?

30 A. Absolutely, because the result of that is, you fall
31 back on the patterns of behaviour that you've experienced
32 during your own education and your own upbringing and, if
33 the practices have changed in the interim, or the practices
34 that you were subject to weren't appropriate at the time,
35 you're going to find yourself in trouble.

36

37 And the young person that I'm thinking of in
38 particular, when I asked them how they were treated by
39 teachers, they said, "Well, the same way, I would touch on
40 the back", they'd get touched on the back of the shoulder
41 and that sort of stuff, so it was quite clear to me that
42 it's a big gap in our processes that needs to be filled;
43 but, of course, that requires some resourcing, particularly
44 at the relief TA level where teachers I think you can - it
45 would be much easier to run the system, but there's a lot
46 of TAs and that's going to require a big change, I think,
47 for the department.

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Q. So, these concerns that you're talking about, they apply not only to relief teachers but also to teachers' assistants?

A. Yes.

Q. I'd like to talk to you about the Code of Conduct, I mentioned it earlier on; that's an overarching instrument that applies across the Tas State Service.

A. Yep.

Q. Do you have any comments about the extent to which, in its current form, it provides an appropriate framework for responding to boundary breaches and grooming behaviour?

A. I think it's a bit of a blunt instrument, and one of the parts of it - so, I feel like there should be a separate system for these matters that isn't managed necessarily in the standard way. The system itself is, like in all employment-related systems, is one that's just designed to be rough-and-ready might be the right expression, but to practically achieve fair results if possible but in a cost-effective way.

And most of the time when you're dealing with issues of discipline, et cetera, you're not talking about ending someone's career, it's about a matter of educating them, bringing them to understanding how to improve their practices so that they're not breaching the code going forward. It can be people being terminated, obviously with theft, et cetera, but when we're talking about this issue we're talking about something where the witnesses involved are particularly vulnerable, we're talking about an area where the impact upon the educator can be wholly disproportionate - if it becomes a public issue can be wholly disproportionate to what they've done; it can be wholly proportionate too, it all depends upon the circumstances.

So, it to me seems like a system that needs a bit of review and a bit of thought so that we have a system in relation to issues involving potential child sexual abuse that is as quick and effective as possible whilst ensuring that the children's voices are clearly heard and the rights of the people accused are also carefully enabled through the process.

Q. I'd like to come back to that because I think what

1 you've just described are some of your concerns about the
2 ED5 process which I'd like to come back to, but before we
3 go there I just wanted to ask about the Code of Conduct and
4 whether - you said it's a blunt instrument. What --

5 A. I'm just trying to remember some of the lines in it,
6 but they're very broad.

7

8 Q. Can I ask you this question: do you think that there
9 is place for a Department of Education-specific Code of
10 Conduct, and it need not be limited to that, but perhaps a
11 Code of Conduct that imposes different obligations and
12 consequences for state servants who have regular
13 interactions with children? Do you think there's a role
14 for that?

15 A. I could see a separate system because that way you can
16 ensure that all those involved in it are properly trained,
17 clearly understand how to run the processes with a really
18 trauma-informed approach which is, as I understand it, the
19 best practice model at this point and I think there is
20 value in that. Whether the penalties et cetera need to
21 change, I'm not entirely sure, but certainly a separate - a
22 system where those involved understand the appropriate
23 approaches to interviewing and to conducting the process
24 well, then I think that would be well applauded.

25

26 Q. Yes. You mentioned before that there are some quite
27 broad concepts, or perhaps in some cases there are limiting
28 concepts that don't necessarily work very well in an
29 education context. Now, one of those concepts is that some
30 of the behaviour that is captured in the Code of Conduct is
31 limited to behaviour in the course of employment. Would
32 you agree that limiting behaviour that's worthy of a
33 disciplinary response for, let's say, a biosecurity officer
34 at DPIPWE might be appropriate in a way that it's not when
35 you're dealing with teachers?

36 A. Yes, yeah, I do, it very much depends upon the whole
37 circumstances but --

38

39 Q. Of course.

40 A. -- but if there are external - and I think the way
41 that the department interprets the code, it does allow them
42 to include behaviours outside of the school if it - coming
43 from that. So, if a teacher has been developing a
44 relationship with a student through Facebook or something
45 external to the school, nothing's been actually happening
46 within school, that is dealt with and covered. And, one
47 thing when we originally spoke and I have reflected on

1 since, the Code of Conduct does cover criminal charges, so
2 if somebody is exposed externally to criminal charges,
3 et cetera, they can get covered by it. I certainly think
4 some thought about that area is warranted, I'm not sure how
5 far it should go, but at the end of the day I don't care
6 where it's happening in society, and I don't think many
7 teachers would care where it's happening in society, we
8 need to deal with this issue; that needs to be the first
9 and most important thing that's done here.

10
11 Q. And so, with that in mind you used an example just now
12 of conduct which doesn't occur in the scope of employment
13 in a strict sense; if you've got concerns about the
14 relationship between a teacher and student, that
15 relationship is connected with the school and with
16 employment, that's where it's formed?

17 A. Yes, could be formed.

18
19 Q. You gave an example where the abuse takes place
20 outside of school, so off school grounds out of school
21 hours and I think you said you see that as being connected
22 with employment; is that right?

23 A. Yes.

24
25 Q. What would you say about a situation where there were
26 allegations of inappropriate sexual conduct, or indeed
27 grooming behaviours made against a Department of Education
28 employee in relation to children completely unrelated to
29 the school, so children from a different school, but there
30 was a question mark about whether that teacher was engaging
31 with a child in appropriate ways or inappropriate ways, do
32 you think that's conduct that the Department of Education
33 ought be entitled to look at with your members?

34 A. I think - I'm trying to think about the answer to that
35 carefully. One thing I do note is that there is in that
36 sort of situation, that's when working with vulnerable -
37 the Working With Vulnerable People system kicks in to gear,
38 because that is exactly the sort of situation where one
39 would expect that it's been brought to the attention of the
40 Department of Justice and an immediate suspension of that
41 person's Working with Vulnerable People card should occur,
42 which would result in that teacher being unable to teach.

43
44 Q. What if the system isn't working? And, the Commission
45 will hear evidence about concerns, and I think you speak to
46 some of them in your statement, concerns about those
47 Working with Vulnerable People Checks, the Teachers

1 Registration Board is another regulator that you would hope
2 would catch this behaviour, but if the Department of
3 Education is on notice about concerns of this kind, do you
4 think it would be acceptable for the department to ignore
5 them on the basis that, well, it doesn't concern a student
6 and someone else is going to take care of it?

7 A. No, I don't. It's really hard to see that as
8 justifiable in the context of, we're teaching kids. It's -
9 the same would apply in any situation where people are
10 regularly dealing with children; that there needs to be
11 action taken, but it needs to be action that is fair and
12 reasonable in all the circumstances. There are situations
13 where allegations are made that turn out to be unfounded or
14 exaggerated and so the system has to be fair to those
15 people who are accused, but yeah, the department can't
16 allow somebody who's being accused in a home for bashing
17 their kids or abusing their kids, it's surely inappropriate
18 that they're coming to school and teaching, and I
19 personally can't see any reason why the department
20 shouldn't be taking steps to at least suspend that teacher
21 on pay at the time until the issue is resolved and
22 clarified.

23
24 MS BENNETT: I think Commissioner Benjamin has a question
25 for you.

26
27 COMMISSIONER BENJAMIN: Q. Mr Smith, can you hear me? I
28 sometimes talk softly.

29 A. Yes, sir.

30
31 Q. I notice you're a solicitor and you've been a
32 solicitor for many years, and as a solicitor you have a fit
33 and proper person test to remain on the rolls of solicitor;
34 is that right?

35 A. Yes, sir.

36
37 Q. Do you think such a test should apply to teachers in a
38 broad sense, so that if a teacher commits some crime and is
39 convicted of a crime, or is likely to have been convicted
40 of a crime, that there should be a test in terms of his or
41 her employment, that they should be considered as to
42 whether they should or should not continue employment?
43 What are your thoughts on that?

44 A. I think - yeah, I do think there should be some sort
45 of test in that sense. What I would note, Commissioner, is
46 in the State Service Act Code there is a provision in there
47 where - I might see if I can find it up on the screen. I

1 was just trying to find the conduct, that's not coming up
2 for me on my screen.

3
4 PRESIDENT NEAVE: Criminal conviction, I think what you're
5 looking for is a provision relating to criminal
6 convictions, aren't you?

7 A. Yes, there's a provision there in section 9. I'd also
8 note that the TRB have a fit and proper person test;
9 whether that test needs to be changed to be more reflective
10 of the one that's used for lawyers, I'm not sure, but fit
11 and proper person is very broad in my mind; I would have
12 thought that covers this issue.

13
14 PRESIDENT NEAVE: Q. Can I give you an example. Let us
15 assume that the teacher is involved in grooming, for
16 example, a child that is encountered in the context of
17 their involvement in a sporting club, the child is not a
18 child that they have got to know through a school process.
19 Now, what would you do - is that something that, if there's
20 an allegation made about that, that the department should
21 investigate and consider suspending the teacher, and let's
22 make it hard because it's not a criminal conviction?

23 A. And then, yes, I do, I think it's about whether that
24 person is fit and proper to be a teacher. To my mind the
25 scenario you've just described, there's real questions over
26 that person's fitness to teach. I suppose what it does
27 bring up in my mind is, is there any way back, but that's
28 another issue I suppose. But, yeah, I have no issue with
29 the department, when they're made aware that somebody has
30 been involved in grooming, even though it's outside of the
31 education system, I wouldn't be comfortable as a parent for
32 that person continuing to teach my children without that
33 having been properly sorted out and that the department and
34 TRB are confident enough that they are a fit and proper
35 person to teach because my first assumption is they're not.

36
37 PRESIDENT NEAVE: Thank you.

38
39 COMMISSIONER BENJAMIN: Q. Mr Smith, just one other
40 question. In reading your statement the union assist
41 individual members in areas such as Code of Conduct
42 disputes or employment disputes arising out of the Code of
43 Conduct; secondly, with the Teachers Registration Board,
44 and thirdly, Working with Vulnerable People applications or
45 challenges. Does the union assist teachers who are charged
46 with any criminal offences arising out of their work at the
47 schools?

1 A. We have not, to my knowledge, assisted with the
2 defence of any criminal charges, that's something that's
3 left to them, but we have supported members who have been
4 charged and in one case cleared in relation to the TRB
5 Working with Vulnerable and dealing with the department.
6

7 COMMISSIONER BENJAMIN: Thank you.
8

9 MS NORTON: Q. Mr Smith, earlier this week the
10 Commissioners heard evidence from Ignatius Kim who is a
11 senior mental health nurse at CAMHS, and he talked about
12 the importance of a trauma-informed and child-centred
13 response to disclosures by - let's use a student in this
14 case for obvious reasons - the importance of a
15 trauma-informed response when a child comes forward and
16 makes a disclosure or an allegation against a teacher. And
17 he said in his statement, he said:

18
19 *An organisation's frontline managers ...*
20 *[which in this case is school staff and*
21 *educators] should be supported to focus*
22 *exclusively on a child's safety free from*
23 *any need to concern themselves with the*
24 *legal and industrial implications of*
25 *denying natural justice to an alleged*
26 *perpetrator.*
27

28 Now, I want to acknowledge that people who are accused
29 of child sexual abuse are, of course, entitled to natural
30 justice. But I think what Mr Kim is saying is that the
31 responsibility to afford that natural justice ought not sit
32 within a school environment, it ought sit elsewhere
33 because, really, the school needs to be focused on
34 responding in a trauma-informed way to the student who's
35 come forward, appreciating that's a difficult thing. Do
36 you have any comments about Mr Kim's evidence in that
37 respect?

38 A. It makes a great deal of sense to me that the first
39 focus is on the child and I don't have any significant
40 issue with that at all; the only concern I have is that, at
41 the same time that that is occurring, that appropriate
42 interviews are occurring within the context of
43 trauma-informed.
44

45 Q. Yes, can I ask you a bit about that, because I know in
46 your statement you express some concerns - I guess I'm
47 moving on to the preliminary investigation process. Can I

1 ask you to just explain for the benefit of the
2 Commissioners, what's your understanding of the preliminary
3 investigation process?

4 A. My understanding is, if it - it all depends upon how
5 the allegation comes up, so it can change, but basically if
6 an allegation is raised it's initially investigated just on
7 a preliminary level by senior staff at a school who will,
8 depending upon - when they realise the level of importance
9 of it, they will then get Learning Services involved and
10 get support from them with the processes, but often the
11 initial processes are run at the school by a principal or a
12 senior teacher. And then, even when Learning Services
13 become involved, it's Learning Services staff who are
14 assisting with that preliminary investigation process.
15 They then prepare a report that goes to the Department
16 Secretary, Mr Bullard, who makes the determination as to
17 whether or not there may have been a breach of the Code of
18 Conduct. I might --

19
20 Q. Thank you. Sorry, have you finished your answer, I
21 don't want to cut you off?

22 A. No, that's cool.

23
24 Q. To your knowledge - you've just spoken about those
25 initial interviews happening at the school level and then
26 perhaps at the Learning Services level within the
27 department - to your knowledge are staff within schools or
28 at Learning Services trained in interviewing children?

29 A. No; no, not to my knowledge.

30
31 Q. Is that a concern for you?

32 A. Yes.

33
34 Q. Can you outline the nature of your concern?

35 A. I can expand on that a little bit. When - the
36 Commission will appreciate the Hillcrest disaster that
37 occurred last year, I attended that to support some of our
38 members when they were having interviews with the police
39 and was fortunate enough to spend a little bit of time
40 chatting with one of the senior police officers that was
41 there and I said to him, "What are you doing in relation to
42 interviewing the students and the children that are
43 involved? How is that going to work, it's going to be a
44 real challenge for you guys?", and he then went on to tell
45 me that in fact the Commissioner had arranged for officers
46 from a particular squad in New South Wales to come across
47 to conduct the interviews. This squad, this group of

1 police officers, have trained Tasmanian officers over the
2 last few years in trauma-informed practices.

3
4 What I found really interesting with this older police
5 officer was him turning around to me and saying that he at
6 first had thought it was a bit ridiculous but his
7 experience is, it works and it makes a difference, and that
8 had a powerful impact upon me, because I could see where
9 the impact upon these children of poorly conducted
10 interviews would be to compound a trauma; that's the last
11 thing we want to happen in a situation like Hillcrest, and
12 it's certainly the last thing we need to happen in our
13 situation where there's issues of child sexual abuse
14 arising.

15
16 Q. Speaking as lawyer, do you also have concerns about
17 the impact that having untrained people interviewing
18 students and young people might have on the quality of the
19 evidence that's collected at the early stages of an
20 investigation?

21 A. Totally, it's so easy to lead kids: you ask the
22 question in the wrong way, you'll get the answer that they
23 think you want. It's something that's so important in my
24 mind, it is something that people need to be trained at.
25 Until that conversation with that police officer I wouldn't
26 have thought of trauma-informed practices, but certainly
27 after that, to my mind it seems like one of those things we
28 should have been doing for a long time, but that's what
29 these processes are designed to recognise, aren't they,
30 those gaps in our processes where we've become a bit lazy
31 with our thinking.

32
33 Q. Thank you, Mr Smith. One of the other concerns that
34 you speak about in your statement is concerns with the
35 delay that can be associated with an ED5 process. Can I
36 just read to you a paragraph or part of a paragraph from a
37 statement that was recently prepared by Mr Bullard, the
38 Secretary of the Department of Education, and he's
39 talking - and just for the state's lawyers it's
40 paragraph 378 of his most recent statement - he's talking
41 about the limitations of the State Service Act and the
42 absence of serious misconduct provisions, and he refers to
43 the Fair Work Regulations which define serious misconduct
44 as involving or as including conduct that causes serious
45 and imminent risk to the health or safety of a person.

46
47 And he goes on to say:

1
2 *Any form of sexual abuse also poses a*
3 *serious and imminent risk to the health or*
4 *safety of a person.*
5

6 And his point is that, if the department had available
7 to it a serious misconduct mechanism, then that might allow
8 for a more speedy and appropriate process to deal with very
9 serious allegations of misconduct. Do you see a role for
10 that in relation to child sexual abuse?

11 A. I'm not sure, I've got a - there's already capacity
12 for the secretary to suspend somebody and have them out of
13 the school same day under ED4 or 6, whichever one it is,
14 and the secretary has used that previously and uses it
15 regularly to suspend teachers who he decides may have a
16 case to answer in an ED5, and in fact in some situations I
17 think it's happened even before they've concluded there's
18 an ED5 but I may be overstating that. So, I think the
19 capacity to deal with things in that way is there. Whether
20 a serious - what was the expression you were using?
21

22 Q. Serious misconduct.

23 A. Serious misconduct element is necessary, look, that
24 may be helpful for then enabling the system to have
25 graduated penalties, et cetera. I'm not sure that that's
26 necessary.
27

28 Q. I think part of his point is, and I'm sure he'll tell
29 me if I'm wrong about this, that it might enable, in very
30 serious cases, for matters to be brought to a conclusion
31 more swiftly than is currently possible under the ED5
32 process?

33 A. I suppose the delay I see in the system happens at
34 their end so I'm not sure what is slowing things down in
35 the current system.
36

37 Q. I understand.

38 A. We try and get back to them as quickly as possible, so
39 I'm not sure - I don't - that doesn't work for me, I'm
40 afraid.
41

42 Q. And I don't understand there to be any criticism that
43 unions are delaying matters, but just the requirements of
44 that ED5 process naturally prolong it.

45 A. But the only real requirement of it is an
46 investigation and the ability for the accused person to
47 respond. It's not a very complicated system.

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Q. And yet, would you agree that it often takes a long time for ED5 processes to reach their conclusion?

A. Absolutely, yeah, members are constantly, "What do you mean it's going to take a year?"

Q. Thank you, Mr Smith. Can I move on to ask you about, and you started talking about this earlier on and I want to return to it, and that is the union's role in supporting members accused of child sexual abuse. You talk about this in your statement at around paragraphs 17 and following. Can you just outline in broad terms for the Commissioners and for the benefit of people here today how you approach supporting your members in circumstances where they are accused of child sexual abuse?

A. The matters usually come to us where they have been asked to come along for an interview or to see the principal and somebody from Learning Services and we will go there and support them at that initial interview. As the information becomes known to us of what's going on we will then provide support to that member, firstly in terms of suggesting they contact their own medical practitioner and psychiatrist and reminding them of EAP being available; and then we assist them to develop their own responses to the allegations that are being made and support them through the process to respond appropriately to the allegations that are being made.

It's a relatively straightforward role that we have. We endeavour as much as possible to have them draft their own work; we then provide comments and make suggestions about changes where we see it is relevant, but we're in essence there to facilitate them putting their best foot forward.

Q. And so, would you agree in broad terms that the role you've just described is supporting your members through a process and to ensure that the process is fair and that your members are heard as part of that process?

A. Yes.

Q. Is that an accurate description?

A. Yes.

Q. Would you also agree that the approach you take falls short of advocacy, which is something that lawyers might ordinarily do in respect of their clients?

- 1 A. Most of the time, yes. There are some occasions where
2 we might step into a more advocacy role, but generally
3 speaking we're trying to get them to advocate for
4 themselves.
5
- 6 Q. Is stepping into an advocacy role appropriate in any
7 circumstances where a member's accused of child sexual
8 abuse?
9 A. It would be in relation to advocating that the process
10 hasn't been dealt with properly or an issue like that, so
11 it's limited to the process-related issues.
12
- 13 Q. I see, thank you. I'd just like to call up a
14 document on the screen, it's TPOL.0002.0004.0128. Now,
15 this is a letter which is dated 2 February 2009. Have you
16 got a copy of that letter in front of you, Mr Smith?
17 A. Just hold on a sec, I'll see if I can find it.
18
- 19 Q. Thank you. Just tell me when you've got it.
20 A. No, I do apologise.
21
- 22 Q. No, take your time.
23 A. Can you remind me who sent that to me?
24
- 25 Q. It would have been from Jessie Jin. It may be up on
26 the screen in front of you, I'm not sure what you can see.
27 A. I've got it.
28
- 29 Q. Thank you. Now, that's a letter that appears on
30 Australian Education Union letterhead?
31 A. Yep.
32
- 33 Q. And it's addressed to the Teachers Registration Board?
34 A. Yes.
35
- 36 Q. Now, I appreciate it's a long time ago, it's
37 2 February 2009, and I'll also note, Commissioners, that
38 this is not a letter that Mr Smith wrote. The name of the
39 member on whose behalf this letter is being written is
40 redacted. He's a person who's been the subject of some
41 evidence this morning and we're referring to him by the
42 pseudonym "Wayne". You won't know him by that pseudonym,
43 but are you in general terms familiar with this particular
44 member?
45 A. No.
46
- 47 Q. Right. Perhaps if I just give you some very brief

1 facts, just to sort of orient this example. It's a member
2 against whom allegations were made in 2005, that member was
3 "cleared", and I use that term in inverted commas. There
4 was an investigation which concluded two years later in
5 2007.

6
7 The story doesn't end there, in that, it seems that
8 the investigation that was conducted in 2007 was not
9 comprehensive and is now currently being looked at, but in
10 terms of a timeline this letter in February 2009 is written
11 after the Department of Education's investigation
12 concluded. And I think, as part of an appeal to the
13 Teachers Registration Board, to reinstate this particular
14 teacher's registration. That's the context in which this
15 letter was sent.

16
17 Would you agree that this is a letter - I should ask
18 you: have you read this letter recently?

19 A. Yes, I read the letter yesterday.

20
21 Q. Is this letter - and I'll take you to some specific
22 points in it in a minute, but generally speaking would you
23 like to offer any reflections on whether the approach taken
24 by the AEU in this letter is consistent with the type of
25 approach you've just outlined as being appropriate --

26 A. No, it's not.

27
28 Q. Would you like to talk to the Commissioners about why?

29 A. Absolutely. The difficulty I have with this is that
30 in it the AEU is making a statement about this teacher
31 being fit and ready to return to teaching. That's
32 something, in my view, that we shouldn't be doing. The way
33 in which I would have supported this person, if I
34 considered it appropriate at the time, would have been to
35 have suggested that they get statements from people who
36 actually know them and work with them as to the changes
37 that have seen - and to meet the concerns of the Teachers
38 Registration Board. I would also have been suggesting to
39 them that they get a psychologist or a psychiatrist's
40 report because, at the end of the day, if somebody has
41 changed, I think that that's going to be more accurately
42 reflected by a professional's opinion than by your
43 acquaintances. But certainly, I don't think it's
44 appropriate for the union to be providing, in essence, a
45 good character check without knowing the person intimately,
46 and clearly we could not - I didn't write the letter so I
47 don't know if the author knew the person concerned

1 intimately, but even then I don't think it's something that
2 the union should be doing.

3
4 Q. Can I just go to page 4 of that letter. And, just to
5 give a bit of an example for people who haven't read this
6 letter some of the language that's used in it. There's a
7 statement on page 4 that:

8
9 *[The teacher] has demonstrated current*
10 *understanding of the professional*
11 *requirements of a teacher. There is an*
12 *appropriate level of remorse, contrition*
13 *and significant personal and professional*
14 *learning.*

15
16 Would you agree that that's crossing well into the
17 realm of advocacy rather than support with procedural
18 matters?

19 A. Yes.

20
21 Q. And further down the page and it's the last sentence,
22 in fact:

23
24 *We are confident [we, the Australian*
25 *Education Union] are confident from the*
26 *evidence that the Board can be satisfied*
27 *that Wayne has learned his lesson and will*
28 *not re-offend in the future.*

29
30 Would you agree that's going even beyond advocacy,
31 it's really more in the nature of a character reference?

32 A. Yeah, that's my primary concern about the letter. A
33 character reference should be provided by somebody who
34 actually knows the person, has some real engagement with
35 them, and I don't think it's appropriate for an
36 organisation to provide a character reference. Officers
37 within that, if they have a personal view about somebody,
38 that's fine, but I don't think that is something that is
39 appropriate for an organisation to do at all.

40
41 Q. Thank you. And, just to be clear, is it your position
42 that the Australian Education Union would not today send a
43 letter of this nature to the Teachers Registration Board?

44 A. Well, I would hope so; if we did, I would be reviewing
45 the matter and trying to find out where we'd stuffed up,
46 for want of a better expression, because that's certainly
47 not the approach we try to take.

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Q. Thank you, Mr Smith.

A. If I may?

Q. Yes.

A. Sometimes, obviously, we would be a more vigorous advocate than we probably should be for our members, but I would hope that we wouldn't make this sort of mistake again.

Q. I've just got one final question for you, Mr Smith, and it relates to some evidence that was given by a witness, Professor Eccleston, last week. In the course of his evidence - he's a political scientist at the University of Tasmania - and he made a reference to unions in that evidence and I just want to put to you what he said.

He said:

I'm sure that, in terms of the important work that unions do in protecting and defending employee rights, that they too must be, and I'm sure they're willing to be, part of the solution in terms of dealing with some of these issues around conduct and criminal abuse.

Can I ask you, is your union willing to be part of the solution as Mr Eccleston suggests?

A. Oh, absolutely, without question, and I think we have endeavoured to support the processes that have been - we've been involved in as best possible.

Q. And this is my final question: can you tell us how you do that? What does the union being part of the solution look like?

A. I see it in - currently in a couple of senses: suggestions we've made in terms of - and my evidence today are part of that - but also, we endeavour to support members to respond in as timely a fashion as possible and to keep the processes going so that these matters can be resolved as quickly as possible because that is important both for resolution of the matters and protecting kids in the schools as soon as possible, but it's also important for those children that have been - these processes relate to; you want these processes resolved and completed as soon as practicable. But I do note, I don't know the extent to

1 which the victims in these situations are ever informed of
2 the processes that go on in the ED5; my assumption is, they
3 actually don't get much feedback from the department about
4 the actions that are taken in these processes.

5
6 I'm not sure where the process is up to in that
7 respect. It was one of those things that occurred to me
8 last night, that it seems to me to be something that's
9 very - should be looked at is how the victim, the person
10 that's been abused, is informed of the outcome of
11 disciplinary processes.

12
13 Q. Thank you, Mr Smith, I just have one final question.
14 Sometimes the line can get a bit blurred. I'm conscious
15 that, although you are a lawyer, you have been a lawyer,
16 you're currently working for a union. Lawyers act on
17 instructions, the position of a union is somewhat
18 different. Does the union ever make decisions not to
19 support its members in certain circumstances?

20 A. Yes.

21
22 Q. Can you just outline briefly some examples of the
23 circumstances in which you might refuse to act for a
24 member - or sorry, I'm falling into the trap myself - where
25 you might refuse to support a member?

26 A. We have limited resources so we have to pick our
27 battles to a certain extent, but certainly if we are of the
28 view that there's no reasonable prospect of success in an
29 application that a member might want us to make or in
30 relation to an issue that a member might not want to -
31 might want resolved, we certainly won't go and - sorry,
32 we'll look at our resourcing before we'll take on matters
33 like that. We would also look at the conduct of that
34 person in that situation that's led to that situation and
35 review our support accordingly. This --

36
37 Q. Can I ask - sorry, you finish your answer.

38 A. At this point, in relation to the matters that have
39 come before us that relate to child sexual abuse in the
40 broad sense, we have not provided - we've been requested to
41 provide funding in some situations and not provided that,
42 but we haven't actually outright rejected supporting any
43 particular member that's contacted us so far in my period
44 of working for the union.

45
46 Q. So you haven't thus far refused to assist a member
47 accused of child sexual abuse?

1 A. Not thus far.

2

3 Q. Is that something that you would reserve the right to
4 do in future?

5 A. Absolutely.

6

7 Q. Going back to lines, where do you draw a line, and it
8 might be an unfair question, I'm asking you to deal with
9 hypotheticals, but if you can draw a line?

10 A. I could be cheeky and say that. It is really
11 difficult to draw the line; I don't know where it gets
12 drawn, and it's certainly something that, when these
13 matters come before us, I'm alert to. But, yeah, I just
14 - I'm very reticent to throw a hypothetical where I just -
15 just don't know what the situation is.

16

17 Q. I understand.

18 A. And context is so important in all of these things,
19 that I think we'd approach each matter on its merits at the
20 time, and I would like to give you a much more clear answer
21 that's broken down, but unfortunately - and Commissioners,
22 but unfortunately I don't think that's appropriate.

23

24 MS NORTON: Thank you very much, Mr Smith. Commissioners,
25 I have no further questions for the witness.

26

27 COMMISSIONER BROMFIELD: I have no questions, thank you,
28 Mr Smith.

29

30 COMMISSIONER BENJAMIN: I have no questions.

31

32 PRESIDENT NEAVE: Thank you very much, Mr Smith, your
33 evidence was very helpful.

34

35 THE WITNESS: Thank you. Good luck.

36

37 **LUNCHEON ADJOURNMENT**

38

39 PRESIDENT NEAVE: Thank you, Ms Bennett.

40

41 MS BENNETT: Thank you, Commissioners. Commissioners, the
42 next witnesses are Ms Emily Sanders, the Director
43 Regulation, Commission for Children and Young People
44 Victoria, and Ms Alana Girvin, the former Director of the
45 Incident Management Directorate, Department for Education,
46 South Australia, and if I can ask the witnesses to come and
47 be sworn in.

1
2 <ALANA SUSAN GIRVIN, affirmed: [1.39pm]
3
4 <EMILY KATE SANDERS, affirmed: [1.39pm]
5
6 <EXAMINATION BY MS BENNETT:
7
8 MS BENNETT: Q. Ms Girvin, can you tell the
9 Commissioners your full name and professional address?
10
11 MS GIRVIN: Certainly. Alana Susan Girvin. I was the
12 Director of Incident Management Directorate in the South
13 Australian Education Department. I am now retired as
14 of August last year and have some leave before then.
15
16 MS BENNETT: You've made a statement to assist this
17 Commission.
18
19 MS GIRVIN: Yes.
20
21 MS BENNETT: Have you read that statement recently?
22
23 MS GIRVIN: Yes.
24
25 MS BENNETT: Is it true and correct to the best of your
26 knowledge and belief?
27
28 MS GIRVIN: Yes, it is.
29
30 MS BENNETT: Ms Sanders, can you tell the Commissioners
31 your full name and professional address?
32
33 MS SANDERS: Emily Kate Sanders, I'm the Director of
34 Regulation at the Commission for Children and Young People
35 in Melbourne. The address is Level 18, 570 Bourke Street
36 in Melbourne.
37
38 MS BENNETT: You've made a statement to assist this
39 Commission, is that right?
40
41 MS SANDERS: Yes, that's correct.
42
43 MS BENNETT: Have you read that lately?
44
45 MS SANDERS: Yes.
46
47 MS BENNETT: Are its contents true and correct to the best

1 your knowledge?

2

3 MS SANDERS: Yes.

4

5 MS BENNETT: Thank you. Ms Girvin, I'd just like to start
6 with you to identify your role until your retirement and
7 the structure generally in operations in South Australia.
8 I understand from your evidence that the system within
9 which you worked arose out of the DeBelle Inquiry, can you
10 tell the Commissioners about what that is?

11

12 MS GIRVIN: Certainly. In 2010 a child was abused in an
13 outside of school hours care setting, and unfortunately, or
14 there's a stronger word, devastatingly it wasn't managed in
15 the best way and the school community was never actually
16 informed of the allegations, and an arrest happened two
17 years later and, when the arrest became public, the school
18 community realised that was our school and a child had been
19 abused, sexually abused and we hadn't been informed.

20

21 All the way through between 2010 and 2012 there was
22 certainly concerns from the, particularly the governing
23 council about, shouldn't we be notifying the community
24 about this, and there was a lot of difficulty in the
25 department about, no, that would be breaching suppressions
26 and that would be potentially identifying the victim and,
27 no, we shouldn't be sending out letters. And it also
28 showed that there was a lot of miscommunication, obviously
29 not deliberately, but from officers within the department
30 to the Chief Executive and to the Minister at the time.

31

32 So, the Minister, after the sentence for Mark Harvey,
33 the Minister realised all of the issues that had happened
34 and that we needed to do better, so asked The Honourable
35 Bruce DeBelle to conduct an Independent Inquiry, and that
36 was formally given a Royal Commission status. From those
37 recommendations, Incident Management Division or
38 Directorate was established.

39

40 MS BENNETT: That's a Directorate that operates in and
41 around the Department of Education; is that right?

42

43 MS GIRVIN: That's correct.

44

45 MS BENNETT: So it's not a whole-of-state scheme, it's a
46 department-focused scheme?

47

1 MS GIRVIN: Absolutely, yes.

2

3 MS BENNETT: It has three units as I understand it, the
4 Incident Report Management Unit, the Investigations Unit,
5 and the Misconduct, Disciplinary and Advice Unit; is that
6 right?

7

8 MS GIRVIN: Correct, yes.

9

10 MS BENNETT: Can you briefly tell us, while we're in this
11 framing moment about why there are those three arms?

12

13 MS GIRVIN: Certainly. Part of the DeBelle
14 recommendation was to bring all of those people who would
15 manage such a situation together, so any allegations of
16 sexual abuse, bring that into one area, one unit, because
17 during the Mark Harvey situation, some people,
18 investigators in one unit were dealing with part of it, and
19 the, what used to be the School Care Unit was dealing with
20 part of it, and other directors were dealing with part; so,
21 bring all the units that would manage this situation
22 together under the same umbrella.

23

24 The Response Unit is the unit that has an IRM System,
25 an Incident Response Management System, where schools
26 report any critical incidents online, and there are two
27 managers who look through each report daily and has the
28 school responded correctly, and do we need to inform
29 anybody else from that. That unit also has a Case Manager
30 specifically designated to follow through our policy of
31 managing allegations of sexual misconduct; the policy was
32 written because of the DeBelle recommendation.

33

34 And so, if there is an allegation of sexual misconduct
35 or indeed an arrest of an employee because of child sexual
36 misconduct, then that case manager is the person who
37 contacts the school, liaises with the school, holds the
38 principal's hands, steps through the policy and keeps a
39 single file, because we realised that there were either
40 notes hadn't been taken or that there were files all over
41 the Education Department and people didn't pull them
42 together. So, that's primarily the Incident Report
43 Management Unit's function, case management being the most
44 critical thing in the allegations of sexual misconduct for
45 children - involving children and young people.

46

47 The Investigations Unit has investigators who will

1 investigate serious misconduct of employees, and they will
2 have interviews, talk to the respondent, talk to the person
3 who the allegations are about, take witness statements,
4 compile all of the evidence, and then they will make, with
5 evidence, a report to our third unit which is the
6 Misconduct Disciplinary and Advice Unit. That unit has
7 adjudicators who have a law background. The investigators
8 have a law background as far as policing. That unit has
9 lawyers who look at all that evidence with an independent
10 eye; they haven't met the person who is accused, they
11 haven't met the witnesses, they look at the evidence that's
12 been brought before them and then they make a
13 recommendation through the Director of Incident Management
14 Directorate to the Chief Executive, this is the evidence,
15 these are the allegations, this is the evidence. The
16 person gets to respond obviously, procedural fairness.
17 Yes, we substantiate the evidence from all we have and then
18 the Adjudicator through the Director recommends the
19 disciplinary action under the Education Act, so, reprimand
20 to termination.

21

22 MS BENNETT: Thank you, and can you tell us where support
23 for children, families and the community fits into that
24 structure?

25

26 MS GIRVIN: So, if there's an allegation of sexual
27 misconduct the case manager will lead the principal through
28 obtaining support for a child and their family and the
29 staff of the school. Obviously, a devastating thing if
30 there's an allegation or a proven arrest of somebody who's
31 sexually abused a child. The wrap-around support, the case
32 manager leads the principal through it; the wrap-around
33 support comes from other sections of our department, so our
34 social workers, psychologists, employee support for staff,
35 but we make sure that that's happening and we ask the
36 principal to offer the support verbally but follow-up in
37 writing, because we know a family doesn't hear everything
38 at first and then we want to know, has your child access to
39 support, what else do they need other than counselling; do
40 they need their curriculum modified, do they need even
41 where they're going to access toilets modified, things like
42 that.

43

44 MS BENNETT: Thank you for that very helpful overview.
45 I'm going to drill into some of those parts in a moment.
46 Ms Sanders, I'd like to turn to you now in Victoria.
47 There's a slightly different model in Victoria. First,

1 your organisation operates across whole-of-state; is that
2 right?

3

4 MS SANDERS: Yes, that's correct. There's about 12,500
5 organisations that are subject to the Reportable Conduct
6 Scheme in Victoria across a range of sectors, from
7 education sector, early childhood education, religious
8 organisations, government departments, Out-of-Home Care,
9 Youth Justice, a range of organisations.

10

11 MS BENNETT: And, it's part of that, isn't it, that
12 organisations need to comply - organisations under your
13 jurisdiction need to comply with Child Safe Standards and
14 they've got to have policies and procedures in place as
15 part of that?

16

17 MS SANDERS: Yes, so there's a separate regulatory scheme
18 called the Child Safe Standards which applies to a much
19 broader group of organisations, we estimate about 50,000 or
20 60,000, and the Child Safe Standards requires organisations
21 to have policies, procedures and practices in place which
22 prevent child abuse, ensure that there are good systems in
23 place to report allegations of child abuse, and that also
24 had that there are systems in place to respond to those
25 allegations as well. And so, you'll have many
26 organisations who will have to comply with both, and then a
27 bigger group that just has to comply with the Child Safe
28 Standards, which means they have a less intensive oversight
29 from regulators, and then you have a smaller group with
30 much more intensive oversight focused on responses to
31 allegations and investigations.

32

33 MS BENNETT: And does that include responses that - does
34 that encompass investigation and support for the child,
35 family, the community?

36

37 MS SANDERS: So, the obligation to support children, young
38 people and families is much more about the organisation,
39 seeing that as part of their child safety systems, but
40 certainly we ask questions of organisations to understand
41 whether they are providing the appropriate support.
42 Parents, children, families, community members, can also
43 contact the Commission if they're worried about the
44 investigation or support and we can also provide advice to
45 them about where they can turn.

46

47 MS BENNETT: Ms Girvin was talking about it in the South

1 Australian scheme that there's somewhere for principals to
2 go for guidance if they've got questions about what to do
3 next. How does that fit into the Victorian scheme?
4

5 MS SANDERS: What we would call heads of organisations, so
6 the head of the organisation has got the obligation to
7 respond to the allegation, can absolutely contact the
8 Commission for advice and guidance and we spend a fair bit
9 of our time in fact answering questions from organisations
10 about what to do if they're unsure.
11

12 In the Victorian education system you've got different
13 sectors, so you have Catholic and independent schools, and
14 then you've got state schools. So, for state schools they
15 have their own systems within the Education Department that
16 also provide schools with advice and guidance. Independent
17 and Catholic schools are much, much more usually single
18 entities, so we do see a bit of a difference in the sort of
19 questions for advice that comes to us between sectors in
20 the education sector.
21

22 MS BENNETT: Have you found a shift over the years - this
23 has now been functioning for a few years, and as I
24 understand your evidence there's been a focus on capacity
25 building for the last few years. Have you noticed that
26 bearing fruit in terms of the kinds of questions or the
27 kinds of queries that are coming to your office?
28

29 MS SANDERS: Very much so. I would say that at the start
30 of the scheme you had organisations who were probably
31 unused to having oversight of their investigations and
32 perhaps took a quite combative approach with respect to us,
33 but over time I think they learnt to value the sort of
34 advice and guidance and support that we can give them, and
35 so, we now see quite routinely organisations calling us up
36 when they're at a tricky spot in an investigation and
37 they're not quite sure what to do next, or something's
38 fallen apart in the investigation, they're trying to work
39 out how to step forward.
40

41 I would say also that the practice has shifted over
42 time too. So, some of the issues we were very concerned
43 about in organisations at the start of the scheme have
44 dramatically improved. We've really seen an uplift, I
45 think, in the quality of investigations - not universally
46 by any stretch, but certainly in some areas and by some
47 organisations.

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MS BENNETT: It's part of your role, isn't it, to scrutinise investigations; is that right?

MS SANDERS: Yes, that's correct.

MS BENNETT: And you don't direct them but you oversee them?

MS SANDERS: Yes.

MS BENNETT: You can conduct your own investigations; when does that happen?

MS SANDERS: That's correct. Under our Act we can conduct our own investigation into a reportable allegation in certain circumstances. We can also conduct an investigation into the handling of an allegation by an organisation or a response to an allegation.

So, you would typically see an investigation by the Commission into a reportable allegation in and of itself reasonably rarely; it would be if there was particular risk factors where we felt that we needed to step in and do the investigation ourselves.

MS BENNETT: I'd like to now just unpack a bit about what makes a good investigation and I want to talk to you both about it from the perspectives of your own schemes.

First of all I'd like to understand where the line is, and I'll speak for a while about education, if we can focus in there. Starting with you, Ms Girvin, what's your understanding of the distinction, if any, between on-school conduct and outside school conduct when we're looking at a teacher's suitability to be around children?

MS GIRVIN: As far as a public service and being public servants, we tell our employees that it's 24/7. So, if you're an employee and you have committed serious misconduct, and particularly if it's a child sexual abuse allegation and it's on the weekend at the coaching committee, we will investigate that matter. It's not just your conduct that happens within the classroom or within the school or any of the other services that we provide as an Education Department. It's 24/7.

1 COMMISSIONER BROMFIELD: Just to double-check, sorry,
2 Ms Bennett. Does serious misconduct include grooming
3 behaviours?
4

5 MS GIRVIN: Yes, and when have policy, the Protective
6 Practices Policy, that makes that very clear for employees
7 that that's part of misconduct, serious misconduct, and
8 that is a breach of the Professional Conduct Standards and
9 subject to disciplinary action.
10

11 COMMISSIONER BROMFIELD: Thank you. Sorry, Ms Bennett.
12

13 MS BENNETT: Ms Sanders, what about from the Victorian
14 perspective focusing in on school, conduct outside of the
15 school environment on the weekend at the sporting club; how
16 does that land in terms of the scheme that you operate?
17

18 MS SANDERS: So, the Reportable Conduct Scheme covers all
19 conduct by what we would call the subject of allegation; it
20 doesn't matter if it's in the home, if it's in a sporting
21 club, if it's in another unrelated organisation, the
22 connection that the Reportable Conduct Scheme is looking
23 for is that that subject of allegation is engaged by an
24 organisation that's subject to the scheme.
25

26 MS BENNETT: And, is there a threshold of seriousness for
27 the conduct to be investigated in that connection?
28

29 MS SANDERS: So, the Reportable Conduct Scheme has five
30 conduct types: physical violence, sexual misconduct,
31 behaviour that causes significant psychological and
32 emotional harm, significant neglect, and sexual offences.
33 So, there is a threshold within each of those conduct types
34 that seeks to grab only certain sorts of conduct. Each one
35 has a slightly different focus, but you do see some focus
36 on significance in behaviour that causes significant
37 psychological and emotional harm and significant neglect
38 placing it perhaps above other forms of mere neglect or
39 psychological or emotional harm. At the end of the day all
40 of these can be harmful for children and young people, but
41 I guess the Parliament has pulled out certain ones that
42 require notification to us as an independent body and
43 independent oversight of those investigations.
44

45 We would say that there can be other sorts of child
46 safety issues or child harm issues that under Child Safe
47 Standards should still be looked at and should still be

1 dealt with, but again, it's this perhaps hierarchy, if you
2 like, of seriousness in terms of oversight of those as
3 well.

4
5 MS BENNETT: So, the standards would still call for
6 investigation even if - or consideration even if short of
7 the Reportable Conduct Scheme; is that fair?

8
9 MS SANDERS: Yes, we would say that if a child comes
10 forward and raises an issue about their safety, then an
11 organisation should respond to that and their policies and
12 procedures should cater for that. Likewise, if you've got
13 a child that may be harmed in some way, again, whether
14 you've got a subject of allegation in particular or whether
15 it's a practice perhaps within an organisation that's
16 harmful, you need to have a response to that as an
17 organisation, for sure.

18
19 MS BENNETT: And, is grooming caught within either or both
20 of those schemes?

21
22 MS SANDERS: Yes, absolutely. It's caught in two ways: so
23 we have a list of sexual offences, and obviously there's a
24 grooming offence in Victoria which has got quite
25 necessarily prescriptive requirements because it's a
26 criminal offence. But we also see grooming within what we
27 call sexual misconduct, so that category brings up a much
28 broader group of potentially harmful practices by subjects
29 of allegations as well. And it may capture some of that
30 behaviour that is inappropriately personal and intimate
31 towards a child, but not necessarily reaching that criminal
32 standard.

33
34 MS BENNETT: Can I ask about conduct that someone might
35 describe as "touchy-feely", how does that land with you in
36 your respective roles, Ms Girvin? Teachers touchy-feely,
37 how does that --

38
39 MS GIRVIN: Do not touch the children. We always talked
40 about, we should print a t-shirt, but in all seriousness,
41 no, touchy-feely is not okay. And it took a while for
42 teachers, when Protective Practices came out, and
43 particularly when the Professional Standards of, no,
44 holding a hand is not okay, and asking the child to massage
45 your shoulders: that's not okay, it's misconduct.

46
47 MS BENNETT: Ms Sanders, do you take any different view?

1
2 MS SANDERS: I guess I would add to that, that we would
3 say it's important for organisations to actually define
4 what is inappropriate and also appropriate conduct with
5 children and young people, so they should have a Code of
6 Conduct which clearly sets out what the boundaries are so
7 that staff really have that proper understanding and it
8 makes it a lot easier to then take action, as you describe,
9 Alana, when there's something that crosses the boundaries.

10
11 But the other thing you're doing with that is you're
12 actually educating children and young people as well, so
13 they need to be told what's appropriate and inappropriate
14 so they can put their hand up and say if an adult's
15 behaving inappropriately.

16
17 MS BENNETT: We've heard some evidence this morning about
18 a young woman who talked about being so deeply confused
19 about the abuse she was suffering and she felt responsible
20 for that abuse. Is that part of what you're talking about,
21 empowering children from a young age to understand that
22 they're all right to refuse that kind of touch? Can you
23 tell us about your experience around those education
24 matters?

25
26 MS SANDERS: Look, absolutely. I think it comes in a
27 couple of ways: (1) you need to have an organisation that
28 actually listens to children, that responds to the concerns
29 that they raise so that they understand that if they're
30 worried about something they can actually speak up and
31 adults will take action in response to that.

32
33 The other thing you need to do is be educating, as I
34 said, both the adults and the children about what is
35 appropriate between them, so from a very young age you're
36 teaching about people's ability to refuse physical contact,
37 and you're also teaching adults about, you know, perhaps
38 when they don't need to have contact. I think there's some
39 really outdated philosophies out there, and this is not
40 sector-specific, I think we see this across the board about
41 the way adults perceive as perhaps their need to show
42 physical affection towards children as opposed to what the
43 child might need.

44
45 MS BENNETT: And do some people say to you, "It's just
46 generational, that's okay", is that part of the feedback?
47 How do you change people's embedded ideas around that? How

1 do you change the culture on that?

2

3 MS SANDERS: Changing culture is, for sure, a challenging
4 thing but it requires persistence and it requires
5 dedication and systems. So, to think that you can have a
6 leader get up and say, "This is not on and that's the end
7 of it", that doesn't change culture; what is required is
8 persistent action by an organisation year after year, it
9 needs to be threaded through their systems, it needs to be
10 threaded through their HR policies, it needs to be threaded
11 through their responses to safety concerns when they are
12 raised: that's how you start to shift culture.

13

14 MS BENNETT: Ms Girvin, I was really struck in your
15 earlier evidence about the plain impact of that case you
16 talked about in 2010 that triggered the DeBelle Inquiry.
17 Is it fair to say that set off a cultural shift in South
18 Australia? Can you tell the Commissioners about that?

19

20 MS GIRVIN: Absolutely. The media was more honest and
21 disclosed more than the department because of the confusion
22 about, is there a suppression order, what can you say, what
23 is permissible? And, to the point where the governing
24 council were actually in conflict, great conflict, with the
25 principal and the department, and the principal was taking
26 guidance from the department. And, that incredible
27 misunderstanding about, there wasn't a suppression order,
28 of course you can't disclose anything that would identify
29 the victim, but there wasn't a suppression order, and if
30 somebody had checked that you would have been able to send
31 a letter to the community, and the reason you would send a
32 letter to the community is to identify if there were any
33 other children who were subject to risk or harm because of
34 the behaviour of the employee.

35

36 So, once we had DeBelle's recommendations, and he gave
37 us a very detailed step-by-step procedure that you can't
38 misunderstand, that we make everyone attend training (holds
39 up document)and know it inside out.

40

41 Q. Carry it with you.

42

43 MS GIRVIN: Yes, carry it with us. This is what we refer
44 to as our Bible. And we hope for many principals or site
45 leaders they wouldn't have to open it to find out what step
46 is on page 19 when you have to send the letter to the
47 community, but that real understanding of what we need to

1 do to change the culture, and change the culture to the
2 point of, I remember getting a phone call late one evening
3 from a person that we had directed away from the work site
4 leading to suspension because an allegation had been made,
5 and he said, "I hear you're going to send a letter; well,
6 I'll get my lawyers on to you", and I said, "That's fine,
7 you can get your lawyers on to us, we are going to send a
8 letter. At this stage you wouldn't be named. If it goes
9 through to this stage you would be named, and if you need
10 to find out the steps, please refer to the policy. You
11 would remember, you were trained in it". So, everyone
12 knows about it, very clear, and the protective practice is
13 very clear about what grooming looks like, and that, in
14 fact you are obliged as a colleague to report any grooming
15 that you see. So, I think that changed the culture
16 immediately; whether people thought it was right or wrong,
17 didn't matter, it wasn't a debate.

18
19 MS BENNETT: Commissioners, the Protective Practices
20 Policy is the third exhibit to Ms Girvin's statement so
21 it's before you at the moment. Let's talk about
22 investigators for a moment because it sounds like under
23 both schemes there's a significant role for investigators
24 and that there are some different approaches.

25
26 So, first, starting with you, Ms Girvin, do you have
27 any specific qualifications that are required to be an
28 investigator?

29
30 MS GIRVIN: We certainly do. We had those qualifications
31 previously for our investigators before DeBelle, but
32 Justice DeBelle clearly made it easy for us to keep
33 insisting on that, and that was to have some sort of
34 background, policing background, and so all our
35 investigators either have a SA Pol, South Australian Police
36 background, a Queensland Police, British police, Australian
37 Federal, I'm just thinking of the people that are there
38 working, that background. So, they have skills that we
39 educators, I was a principal, I wouldn't have been able to
40 conduct an effective investigation, I didn't have those
41 skills as an educator. I could see what was wrong and I
42 would need to report to somebody, but when I was a
43 principal I might have had to conduct an investigation, I
44 wouldn't have the skill that a police officer has.

45
46 MS BENNETT: Ms Sanders, are there any qualification
47 requirements under the Victorian scheme?

1
2 MS SANDERS: Not specific qualification requirements, no.
3 What we do have is under our legislation the requirement is
4 that the investigation is independent, and also, the
5 investigation needs to be appropriately conducted, and so,
6 within that we give advice and guidance to our
7 organisations about how to select an investigator,
8 remembering that the breadth of conduct covered is quite
9 broad in terms of things that are not about sexual abuse as
10 well.

11
12 What we'd say is an appropriate qualification might be
13 a, what we call a Certificate IV in government
14 investigations. Depending upon the investigation though it
15 may be absolutely appropriate for that person to be a
16 licensed investigator. They could be a lawyer, they could
17 be a barrister, we see a whole range of people conducting
18 investigations. Those investigators could be within the
19 organisation, they could also be external as well.

20
21 MS BENNETT: I'll come back and tease out some of those
22 factors in a moment. The first is, I think you talked
23 about the appropriate qualifications or the appropriate
24 process.

25
26 Ms Girvin, starting with you, how do you make sure
27 that whoever's interviewing children knows how to do it,
28 children or any vulnerable witness, how do we know they're
29 going to do that in an appropriate way?

30
31 MS GIRVIN: Our investigators have been trained through a
32 university training system about questioning vulnerable
33 witnesses, including children who have experienced child
34 abuse, and we think that's critical.

35
36 MS BENNETT: And in Victoria, again, it will be less
37 prescriptive because you're covering broader categories but
38 what's your office's general approach to that question?
39 How do you know someone can interview children properly?

40
41 MS SANDERS: So, we would suggest that consideration be
42 given to appropriate training, and that's been a focus for
43 us and we've produced some specific guidance material in
44 that to help organisations know how to properly and safely
45 interview children and young people, and so, we would look
46 much more for the practice.

1 We advise organisations about how to select somebody
2 who's going to interview the child, and so, we ask them to
3 think about things like, what's the relationship between
4 the investigator and the child, can they establish a
5 relationship of trust such that the child will feel
6 comfortable to tell their story? We ask them to think
7 about a range of matters around how to make that process
8 safe.

9
10 MS BENNETT: Let me just test you with a few things. So,
11 would it be appropriate to check that the child, perhaps a
12 teenager, feels comfortable with the people who are
13 interviewing them? Ms Girvin?

14
15 MS GIRVIN: Absolutely. For younger children, I know you
16 said a teenager, but for younger children we would have a
17 parent with them, so long as it wasn't the parent who was
18 the alleged abuser. But we also for our teenagers, and I'm
19 thinking of a 16-year-old female who we obviously chose a
20 woman to go and investigate that matter. But, you built a
21 rapport and then went back and then checked in, "Are you
22 happy to disclose?" Then checked in again later, "Are you
23 happy to disclose more?" That relationship is really
24 important, and also culturally we need to be careful too
25 that we are culturally sensitive about.

26
27 MS BENNETT: A culturally safe --

28
29 MS GIRVIN: Environment, yeah.

30
31 MS BENNETT: Ms Sanders, can you tell us your reaction to
32 those kinds of precautions and approaches?

33
34 MS SANDERS: So, we would ask an organisation to plan very
35 carefully around how to interview a child. So, you need to
36 understand the individual child. They may have a trauma
37 background, the incident in and of itself may be traumatic
38 and you need to understand how that child can be best
39 supported before, during and after the interview.

40
41 Usually you would ask the parents what they can tell
42 you as well about the child; perhaps others in the
43 organisation who know that child, work out how to make that
44 point in time safe for them. You need to plan the
45 questioning as well. So, getting the right person, setting
46 it up, and then how are you going to introduce the topics
47 of concern. Following good investigative practice and good

1 interviewing practice around children and young people
2 ultimately should reduce the trauma load on the child as
3 well.
4

5 During the interview in and of itself you don't want
6 to have too many people in the room because that can
7 actually impact, negatively impact the nature of the
8 evidence given, but for some child it may be absolutely the
9 right thing to have a support person in there. Maybe if
10 the child is Aboriginal or Torres Strait Islander you might
11 want to think whether it's appropriate to have another
12 Aboriginal or Torres Strait Islander with an appropriate
13 cultural connection to that child in the room so that
14 you're really creating a space where they can feel like
15 they can be themselves.
16

17 After an interview you also need to think about how to
18 leave that in a way that's then safe for the child. Simply
19 closing the door and saying, that was it, that's not an
20 appropriate way to leave a young person who's just
21 disclosed something that's very personal and very traumatic
22 for them. How are you going to connect them with support
23 services straight after. Is their parent or carer or
24 someone they're close to there to receive them after they
25 leave the room, are you going to check back in on them, so
26 you really need to think about it as a bit of an end-to-end
27 process about supporting that child.
28

29 PRESIDENT NEAVE: Can I ask a question there. You're
30 dealing with a very wide range of organisations, I think
31 12,000 you said, and there will be small organisations.
32 How will they - maybe partly staffed by volunteers,
33 et cetera, et cetera - how will they satisfy those
34 requirements? Do they contract out the job, do you have
35 recommended investigators, how do they do it? I'm just
36 imagining a small body, a small school in the country or
37 somebody that may not have any of those skills?
38

39 MS SANDERS: It's an excellent question and we really have
40 an immense diversity of organisation types. Probably the
41 ones that I see that where it can be most challenging to
42 conduct an appropriate investigation might be small
43 entirely volunteer-run organisations with very limited
44 financial resources. I think even small schools can mount
45 an appropriate investigation. I think they usually have
46 appropriate resources. So, for me it's not about schools,
47 it's maybe about the very small religious organisation

1 where it becomes a bit more challenging, where they may
2 need more advice and guidance.

3
4 What we would say there is, I mean, (1) we've produced
5 lots of guidance material, we have webinar sessions, all
6 sorts of bulk ways for them to get some support. They can
7 also call us along the way, so sometimes we do get that
8 call to say, look, we're about to interview the child, this
9 is the person we're thinking of setting up to have the
10 conversation, you know, how do we do this? And we might
11 have a bit more of a conversation with that organisation to
12 support them.

13
14 It's also a learning process. They do it once, they
15 get some support from us, we give them feedback and we tell
16 them, "Look, you probably could have done this a bit
17 better. You might have been able to support the child to
18 feel more comfortable in this way", we'll give them that
19 support, that guidance, and then see what happens next time
20 as well. So, it's never just the one investigation, it's a
21 bit of a lifelong investigation with that organisation to
22 keep them improving.

23
24 There are some investigations where a small
25 organisation simply won't be able to muster it up, and
26 that's where we do have the power to conduct the
27 investigation ourselves. That does happen rarely and we
28 have to think about very carefully, but we may see cases
29 where you've got complex sexual abuse allegations, for
30 example, a very small organisation with very limited means
31 to do that, and in those cases the Commission might conduct
32 the investigation themselves.

33
34 PRESIDENT NEAVE: Thank you.

35
36 MS SANDERS: Sometimes we also see small organisations
37 reaching out to their peak bodies or their associations to
38 help them if they realise it's beyond them. They may seek
39 that external support to do it, and that's another way that
40 that can be dealt with.

41
42 MS BENNETT: When you say, in paragraph 97 of your
43 statement, that you've "seen some evidence from
44 investigators contributing reduced weight to a child's
45 evidence compared to an adult's evidence", can you tell us
46 about how that manifests itself and what you do in
47 response?

1
2 MS SANDERS: Absolutely, and I think at the start of the
3 scheme that was particularly an issue that we saw. We
4 would see children not even asked for their version of
5 events because you had three adults in the room, they've
6 seen it all, why would you ask the child? Real myths about
7 children being less trustworthy in the evidence that they
8 provide, that they are prone to lie, that children make
9 things up, and that's the starting mindset that an
10 organisation might go into an investigation, and so, we
11 would try and make it very clear that that child's evidence
12 needs to be weighted just like any other adult's evidence.
13 Just because they are a child doesn't mean that it is
14 inherently less trustworthy.

15
16 I think we're starting to get there with many
17 organisations but we still have a little way to go in that
18 regard.

19
20 MS BENNETT: Ms Girvin, is that your experience in South
21 Australia? Have you seen that phenomenon?

22
23 MS GIRVIN: No. I honestly haven't. I think we have
24 been training our teachers in protective practices for a
25 very long time, so when a - and then in the reporting of
26 any sexual concerns that a child discloses and its concerns
27 or abuse to our report line. Because of that training I
28 truly believe that - and because of the culture we're in -
29 I truly believe that teachers believe children in the main
30 and respond immediately. And, even if they have doubts,
31 that whole thing, it's not for me to make a judgment, it's
32 for somebody else to make a judgment, so they report.

33
34 MS BENNETT: I'd like to return - we've touched on
35 independence a few times, I want to return to that.

36
37 Ms Girvin, do you think that investigators need to be
38 independent, can they be internal? What's the position
39 about that in South Australia?

40
41 MS GIRVIN: I think, because the investigators are not in
42 schools or the site where the matter is connected to, and
43 that they are in the department but in a specific area, an
44 Incident Management Directorate where their purpose is
45 investigations, that's independence. But that we want that
46 independence to go even further, and so, we don't say - we
47 don't allow the investigator to say that this evidence

1 equals misconduct; that's why we then refer to an
2 adjudicator, so more independence above that. I've
3 gathered all this information, now you work out whether
4 that's misconduct.

5
6 MS BENNETT: So you actually separate out that process,
7 the information gathering has a degree of independence
8 because it's separated from the school?

9
10 MS GIRVIN: Yes.

11
12 MS BENNETT: And then the decision based on that evidence
13 is made by an entirely separate person again?

14
15 MS GIRVIN: Absolutely.

16
17 MS BENNETT: What about in the Victorian context,
18 Ms Sanders, do you see the need for independence in
19 investigations?

20
21 MS SANDERS: Yes, we would say, and the legislation
22 requires, that the investigation needs to be independent
23 but that doesn't mean to say it needs to be external, so
24 that's the distinction that we would draw. We see
25 organisations who can mount appropriate investigations with
26 an internal investigations person or team, and in fact some
27 very good internal investigations that do just that.

28
29 There are some matters, however, where we would say
30 it's entirely inappropriate for that to be done internally
31 and we provide advice and guidance on how to pick those
32 situations.

33
34 MS BENNETT: And in a school context would that be - how
35 would that manifest itself in a school context?

36
37 MS SANDERS: So, in Victoria we have three different
38 sectors: state schools, independent schools and Catholic
39 schools. With respect to Victorian Government schools
40 there is an internal unit within the Department of
41 Education, Employee Misconduct Unit, they will on occasion
42 conduct investigations themselves if they're particularly
43 serious.

44
45 Within individual Victorian Government schools they
46 will conduct investigations themselves depending upon the
47 seriousness of it, so those investigations might be

1 conducted by the principal or it could be an HR person, it
2 could be a range of people.

3
4 Within the independent schools, you would typically
5 see someone internally or they might engage an external
6 single investigator.

7
8 Within the Catholic School system there is a central
9 unit that many Catholic schools use, and then some of the
10 Catholic schools are individuals as well, so a range of
11 responses across there.

12
13 Interestingly, we've seen some of the faith traditions
14 actually set up independent bodies to do their
15 investigations, so that's another way that organisations
16 have sought to do that and they're very much at
17 arm's-length from the faith tradition as well.

18
19 PRESIDENT NEAVE: Can I ask a follow-up question on that.
20 We've certainly heard evidence about schools, for example,
21 prioritising their reputational issues ahead of concerns
22 about children. Do you think that that has been an issue
23 in Victoria and, if not, why not?

24
25 MS SANDERS: Recognising the education sector is very
26 diverse, I would say that we have absolutely seen some
27 matters where schools or education institutions have
28 prioritised their reputation over the safety of children
29 and young people.

30
31 It's difficult to say how widespread it is. As an
32 oversight body you see a particular sliver of what's going
33 on in any individual matter. Certainly we've had to give
34 nudges to organisations where we can see that perhaps the
35 decision-making is not in accordance with our legislated
36 fundamental principle, which is, the protection of children
37 is paramount.

38
39 We also see, not just about the reputation of the
40 organisation, but the reputation of the subject of
41 allegation perhaps given priority as well, where there are
42 concerns that arise about the damage this may cause to
43 their career or their standing either within the
44 institution or within the sector that they work. So, I'd
45 say it's not uniquely about the institution.

46
47 PRESIDENT NEAVE: Thank you.

1
2 MS BENNETT: Just so I understand. There's been an
3 allegation at a school and it's initially reported by, for
4 example, the principal. An investigator is appointed and
5 that's someone who might be an employee of the department.
6 Could it be someone who works on site at the school who
7 could carry out that investigation, Mrs Sanders? Should it
8 be, perhaps, might be the better way of putting it?
9

10 MS SANDERS: I think it really depends upon the nature of
11 the allegation. For something that is perhaps something
12 where the harm load on the child is not significant, where
13 the person who is on site is seen as able to be independent
14 and trusted by children to do so, there may be
15 circumstances where that's okay, but there will be
16 absolutely circumstances where that's not appropriate as
17 well where you need to think about the impact on the child,
18 how the investigation is going to be seen by others, is it
19 going to be trusted if that's the case? But fundamentally,
20 is it actually going to generate the evidence needed to
21 come up with the appropriate and evidence-based finding?
22 And, if the nature of that person is going to impact that
23 negatively, then they're not going to be the right person
24 to do the investigation.
25

26 At all times the whole point of this is about, we're
27 prioritising the protection of children here, that's got to
28 be the number one thought when you're working out which
29 investigator to choose.
30

31 MS BENNETT: Ms Girvin, do you have anything to add about
32 that? I understand the nature of your system is it almost
33 certainly would not be someone embedded on site; is that
34 correct?
35

36 MS GIRVIN: That's correct.
37

38 MS BENNETT: And that's because of the centralised nature
39 of your Investigations Unit?
40

41 MS GIRVIN: And because being on site, we have clearly
42 seen that many of the teachers or employees who have
43 sexually abused children have been the teacher that is the
44 most favoured, that everyone wants the child in their
45 class, they're very good at grooming a whole community.
46

47 And understandably when I've phoned principals to say,

1 "Your staff member has just been arrested by police for
2 this", they're devastated and, you know, they're a
3 colleague and they're respected, so to try and investigate
4 an allegation when you clearly don't know the person and
5 your immediate response is, "I'm so shocked", I don't think
6 that's a suitable on site investigation suitable.

7
8 MS BENNETT: It's interesting, I can only assume that
9 people, if they suspected somebody on site, they would have
10 raised it well beforehand.

11
12 MS GIRVIN: Correct.

13
14 MS BENNETT: So it must almost always be it's a surprise
15 to a person on site?

16
17 MS GIRVIN: Usually. There are obviously incidents where
18 the site is concerned because of either the grooming
19 they've seen or those issues that raise concern, and so,
20 notify us really early and presumably prevent any sexual
21 abuse; the preventative stuff is fantastic, we're glad that
22 you're so concerned about what might seem minor, and we're
23 going to investigate that and we're going to keep that on
24 file and build a profile.

25
26 MS BENNETT: Keep that on file. Do you have a system that
27 allows you to keep that on file in relation to specific
28 teachers?

29
30 MS GIRVIN: Absolutely. So, if we investigate someone and
31 the allegation hasn't been substantiated but we're still
32 concerned about the allegation, because we go through a
33 process and there's a briefing and the CE is notified, then
34 we will recommend that HR or people in culture hold that
35 briefing, put a prompt - what we would call a prompt up
36 against, or a file note up against that employee to say
37 that, this allegation was made and check the suitability of
38 this person, and if there is a further allegation - and we
39 have the one file system - that person's name comes up
40 straight away: ah, that's a second matter.

41
42 MS BENNETT: Ms Sanders, is that a system that exists in
43 Victoria in any sense are you able to say?

44
45 MS SANDERS: So, I guess we maintain records of every
46 single allegation and investigation that's submitted
47 through to us and so what that means is that we have

1 information about subjects of allegation and that may even
2 cross sectors. So, we might see somebody who perhaps they
3 were in the education sector, they've had a couple of
4 investigations into them, maybe even some substantiated
5 findings but for whatever reason they still retain their
6 Working with Children Check. They leave the teaching
7 profession, they go to the disability sector. We, at the
8 end of the day, will have a full record of any allegation
9 that's been lodged with us, and in circumstances where we
10 can put that together if we're worried about an individual,
11 in certain circumstances we can share that information with
12 other regulators as well.

13

14 MS BENNETT: We might come back to information sharing in
15 a moment, I just wanted to ask one or two more things about
16 investigations. What about where you come across new
17 investigations in the course of carrying out your functions
18 or the investigator. So, it starts out being about
19 inappropriate language or boundary breaches, those sorts of
20 things, then in the course of the investigation the
21 investigator uncovers things that go well beyond the
22 initial complaint; is that outside the scope of what the
23 investigator's doing, what happens, Ms Girvin?

24

25 MS GIRVIN: That's right in scope: if we hear more
26 allegations we add them to the investigation, and really
27 importantly because, hence, if there's been a situation of
28 child sexual abuse and you send it to the community and
29 then some child talks about, "Well, that teacher" - you
30 know, it's just the same when you're investigating and one
31 of the witnesses comes forward and says, "Oh, I saw them do
32 this but I didn't think there was anything in that", you
33 know, it builds a picture and we would definitely follow
34 up.

35

36 MS BENNETT: Ms Sanders?

37

38 MS SANDERS: Look, absolutely the same in the Victorian
39 system. Because we're not focused on misconduct, we're
40 focused on allegations of Reportable Conduct. At the end
41 of the day if a new allegation arises the obligation on the
42 organisation is (1) to tell the Commission about it even if
43 it arises during the investigation; (2) if it's potentially
44 criminal they must tell police, they must investigate it.
45 We do see some organisations who would seek to say, well,
46 no, I'm conducting a misconduct investigation here, that
47 wasn't what you originally started with, but we would say,

1 no, that's entirely inappropriate, you need to go through
2 the whole lot.

3

4 MS BENNETT: Let me pick you up there about: you've gone
5 to the police and the police say, we need to investigate
6 this; what happens to your investigation?

7

8 MS SANDERS: So the Reportable Conduct Scheme
9 investigation needs to be put on hold. So if there's any
10 allegation of potentially criminal conduct, that gets
11 provided to police. The police, their legislation rather
12 requires our investigation to go on hold. They then tell
13 us when they've finished investigating and are happy for
14 the Reportable Conduct Scheme to go forward. They may also
15 put particular conditions, for want of a better word, on an
16 investigation. So, let's say they're still looking at some
17 matters, they may say go ahead with that piece but please
18 don't start on that piece over there.

19

20 MS BENNETT: What about you, Ms Girvin?

21

22 MS GIRVIN: We would certainly put it on hold. If it's an
23 allegation of sexual misconduct we will have directed the
24 employee away from the work site, and on pay at some stage
25 until there are bail conditions, and we would put ours on
26 hold and still have the employee directed away from the
27 work site.

28

29 MS BENNETT: I take it that's the same, Ms Sanders, you
30 wouldn't let them back on the work site.

31

32 MS SANDERS: So those decisions are at the end of the day
33 ones for organisations to make. We would ask the
34 organisation, what risk management steps have you taken
35 with respect to that individual the subject of allegation.
36 If we're concerned that those risk management measures are
37 insufficient, then we would potentially raise that back
38 with the organisation, we may raise that with other bodies
39 too if we're worried about that. So, the Reportable
40 Conduct Scheme in and of itself is not prescriptive about
41 that, individual sectors may have something that's much
42 more specific, so the Department of Education may have
43 something a bit more specific in that regard, for example.

44

45 MS BENNETT: A person's acquitted, what happens to your
46 investigation?

47

1 MS GIRVIN: SA Pol --

2

3 MS BENNETT: So the South Australia Police have
4 investigated, they take it to trial, the person's been
5 acquitted; what happens to your investigation?

6

7 MS GIRVIN: So all along the community would have got
8 letters at every stage of that, including the outcome. And
9 so, if the person has been acquitted we would still look at
10 the suitability of employment because our threshold is
11 about boundary breaches and misconduct breaches and
12 professional standard breaches, so we still may terminate
13 their employment, because of the balance of probabilities
14 we're concerned about their suitability.

15

16 MS BENNETT: And there might be things that fall well
17 short of criminal misconduct?

18

19 MS GIRVIN: Absolutely.

20

21 MS BENNETT: And, Ms Sanders, what's your expectation of
22 organisations?

23

24 MS SANDERS: In Victoria the obligation to conduct an
25 investigation needs to happen whether the matter goes
26 through the criminal courts and results in a guilty finding
27 or whether it's acquitted, so either way it needs to come
28 back for a Reportable Conduct Scheme investigation, it's
29 balance of probabilities, so we certainly do see some
30 matters that don't result in a guilty finding in the court
31 but do result in a substantiated Reportable Conduct
32 finding. At the end of the day the scheme's not about
33 punishment, it's about making decisions informed by child
34 safety needs.

35

36 COMMISSIONER BROMFIELD: Sorry, can I just add, and if the
37 person resigns and moves to New South Wales, for either of
38 you, do you continue the investigation?

39

40 MS GIRVIN: Yes, we do. If they resign we continue the
41 investigation and we make a determination of their
42 suitability on the evidence that we have. We also then
43 would put a prompt on our system and we would notify the
44 Catholic or independent systems, we would notify the public
45 sector, Commissioner of Public Sector, and our other
46 jurisdictions.

47

1 MS SANDERS: In Victoria, yes, the investigation continues
2 even if they resign. Findings once made, if there's a
3 substantiated findings, still gets shared with the Working
4 with Children Check unit. If they're a registered teacher
5 would still get shared with the teaching regulator and that
6 then triggers off their process.

7
8 MS BENNETT: Can I continue my hypothetical. The person's
9 been charged, they've been acquitted, they have been
10 investigated and it's been non-substantiated. Six months
11 later another child comes forward with a very similar
12 story. Is your power exhausted to look at the earlier
13 complaint? Ms Girvin, is that a clear enough example; do
14 you know what I mean?

15
16 MS GIRVIN: And we would re-open the earlier complaint and
17 add the new information to it and we will often let the
18 employee know that, should you re-apply, we will open the
19 complaint as well, if they resign. But yes, if they're an
20 employee and there is an additional misconduct allegation,
21 we would re-open using the first investigation as
22 background information.

23
24 MS BENNETT: And would it be open, to return to the
25 original, so the index complaint that was found to be
26 unsubstantiated, could that complaint later be converted
27 into substantiated based on your new evidence?

28
29 MS GIRVIN: Yes. Because on the balance of probability if
30 we've got additional evidence, that would suggest that the
31 first lot of evidence ...

32
33 MS BENNETT: So it's quite different to a criminal
34 proceeding where you acquit someone and it's autrefois
35 acquit and you're done?

36
37 MS GIRVIN: Yes.

38
39 MS BENNETT: Ms Sanders, is there any difference in
40 Victoria?

41
42 MS SANDERS: Very similar. So, Reportable Conduct Scheme
43 investigations can be re-opened if there's new evidence
44 that's brought forward. Sometimes you might see a child,
45 for example, who doesn't wish to participate in the
46 investigation first time round, it's a couple of years
47 later and they do feel ready and in that circumstance the

1 investigation can be re-opened again and that new evidence
2 adduced and a new finding reached.

3
4 In relation to new allegations as well, certainly if
5 there's new allegations, maybe you've only exposed a couple
6 of elements of potential grooming but then the child brings
7 forward the full extent of the behaviour, those are new
8 allegations and that needs to be investigated as well, and
9 potentially the old matters might need to be swept up.

10
11 We have what we call, I guess, a course of conduct
12 where you might have lots of elements which together make
13 up the grooming and so sometimes you don't see that picture
14 for some time.

15
16 MS BENNETT: And is it the core of both of what you're
17 really saying is, because it's protective and not punitive,
18 it's not unfair to go back and protect children; is that a
19 reasonable way of summarising that?

20
21 MS GIRVIN: Yes.

22
23 MS SANDERS: Yes, absolutely, and there's ways to afford
24 procedural fairness, so just because you're re-opening and
25 you're investigating these things doesn't mean that you are
26 precluding it from being a procedurally fair investigation.

27
28 MS BENNETT: Thank you. We've heard this afternoon from a
29 representative of one of the unions talking about the
30 importance of procedural fairness, which I think we would
31 all here accept. Has part of your educative and cultural
32 change function encompassed those organisations that
33 surround the education system, like the unions, like
34 parents, Ms Girvin and then Ms Sanders?

35
36 MS GIRVIN: So, obviously the union was most aware of
37 what happened in the DeBelle Report, and so, seemed to be
38 silent on it, if not supportive, and we have a union rep -
39 a union officer who will come and meet with the Incident
40 Management Directorate once or twice a term to go through
41 matters and to ask any questions if they think there's any
42 concerns on behalf of their member. But, because of the
43 procedural fairness in a misconduct investigation, and
44 people have an opportunity to respond and there is a formal
45 process, the relationship with the union is quite amicable
46 and the union, when I was in the department as the
47 director, the union officer was quite happy to phone and

1 say, "Tell me about this and what are you doing next?", and
2 "how is that working?"

3
4 MS BENNETT: Ms Sanders, in Victoria?

5
6 MS SANDERS: So there are certainly obviously a very
7 diverse group of sectors but we certainly have some unions
8 in some sectors that are very involved in Reportable
9 Conduct Scheme investigations. I think it did take some
10 time for unions, like everyone, to adjust from a misconduct
11 frame, a purely misconduct frame, to a protection of
12 children frame and understand that they're different
13 concepts at heart.

14
15 I think there's been a very good dialogue between the
16 Commission and unions around procedural fairness, and
17 indeed sometimes unions have picked up where organisations
18 haven't conducted procedurally fair investigations. But
19 equally, yes, I think there has been a learning regime
20 across all of the different parts of this sector to
21 understand what it really means to prioritise child safety.

22
23 MS BENNETT: Is your experience that everyone's been
24 content to embrace that prioritising children's interests
25 as the core feature of that scheme?

26
27 MS SANDERS: I wouldn't say universally. I think, perhaps
28 understanding the ramifications. So, you're starting
29 something off, you've got a piece of legislation, you've
30 got a bunch of obligations; it can actually take a little
31 while for people to see what that actually means in
32 practice, and that a substantiated finding doesn't
33 necessarily mean that someone's going to lose their job.
34 That substantiated finding sends a signal to others who
35 need to make decisions about child safety to encourage them
36 to take action, so it's kind of a long process, not
37 necessarily long - it's got a few steps, perhaps, and so, I
38 think in some matters the fight, if you like, for the
39 subject of allegation has been thrown at the Reportable
40 Conduct Scheme right at the start, but actually now in
41 terms of the ramifications for a subject of allegation it
42 may be the misconduct process or the Working with Children
43 Check process or those other things that actually are much
44 more determinative.

45
46 You can have in some sectors, let's say it's physical
47 violence where in the education sector you've got a lot of

1 physical activity between workers and children and young
2 people, and sometimes this behaviour is stuff that workers
3 will remedy and rectify, so it doesn't mean the end of
4 their career; what it means is that others need to have a
5 look at their behaviour and decide what action needs to be
6 taken

7
8 COMMISSIONER BROMFIELD: Do you mind if I just interrupt
9 for a minute? Ms Sanders, you talked a lot about the
10 changes, you know, "At the beginning we got pushback about
11 this or at the beginning people weren't quite up there with
12 this kind of practice". We've heard a bit from a few
13 different witnesses last week about how ready the Tasmanian
14 sector and organisations were for the implementation of
15 Child Safe Organisations and Reportable Conduct. Can I
16 gather from your evidence that really the process for
17 increasing readiness is enhanced through implementation?

18
19 MS SANDERS: I would say that we've contributed a lot to
20 organisations' development in terms of their Child Safe
21 practices. Was everybody completely compliant when the
22 Reportable Conduct Scheme and Child Safe Standards were
23 switched on? Absolutely not. But what you then create is
24 a dialogue between the regulated organisation and the
25 regulator, which means that they're held to account for
26 that development and that improvement, and also that they
27 can access advice and guidance from a body that's got
28 specialist understanding about how to do that. I think
29 it's the holding to account piece that's really important
30 to generate that change. We do public reporting on certain
31 aspects of Child Safe Standards and the Reportable Conduct
32 Scheme as well, so it's really clear what is going on
33 amongst these institutions. That transparency has a very
34 powerful change element as well, I think.

35
36 COMMISSIONER BROMFIELD: Thank you.

37
38 PRESIDENT NEAVE: I just wanted to think about the
39 relationship with the various industrial tribunals that
40 might exist. Have you had to do work to bring them along
41 because theirs way well not be as conscious of the harm to
42 children issue as they are with the fairness to employees
43 issue. Is that something that either of you have had to
44 confront?

45
46 MS SANDERS: Certainly from our end, I think we're in the
47 early stages of that process, we're five years in and in

1 one sense I'm surprised that we've appeared not more
2 frequently in relation to these matters in either the
3 Victorian Civil and Administrative Tribunal or Fair Work
4 and those kind of bodies. So, whether that shows some of
5 the good work perhaps of the New South Wales Ombudsman who
6 have obviously been doing this for 20-odd years and some of
7 those bodies are more used to these systems; it could be
8 that. Or it might simply be, you know, it's only been five
9 years, I know five years is still a long time, but it's
10 only been five years and these matters are really yet to
11 work through all of those systems.

12
13 COMMISSIONER BROMFIELD: Thank you.

14
15 MS GIRVIN: I can't recall an issue of child sexual abuse
16 that has gone to the South Australian Employment Tribunal.
17 I can recall some other issues of employment decisions that
18 we've had to defend and we may have lost, but not of child
19 sexual abuse.

20
21 COMMISSIONER BROMFIELD: Thank you.

22
23 MS BENNETT: I think it's right to say, correct me if I'm
24 wrong, that both South Australia and Victoria have
25 introduced protocols or procedures which attempt to
26 prohibit or recommend there be no sexual relationships
27 between teachers and their former students, or teachers and
28 students for two years after the end of the teacher's
29 relationship. Can you speak to us about why that's been
30 thought necessary and how that's worked? Ms Sanders, is
31 that right in Victoria?

32
33 MS SANDERS: Yes, you'll excuse me, this is not something
34 that we've introduced ourselves but our teaching
35 registration body, the Victorian Institute of Teaching, did
36 recently change their teaching Code of Conduct to introduce
37 something like that. What I can comment on is the sorts of
38 matters that we see.

39
40 Certainly we see clear indications of grooming before
41 a young person turns 18, and then the sexual "relationship"
42 starts after they're 18. I'm sorry.

43
44 MS BENNETT: Let the transcript reflect the quoted
45 comments.

46
47 MS SANDERS: Yes, we do really unfortunately and

1 dreadfully see some of these things referred to as "sexual
2 relationships" as if there's some sort of equality in the
3 power dynamic there. It's somebody who has authority over
4 a child and our system doesn't have restriction on that
5 being 16, it is absolutely a failure under the authority of
6 that person and it is considered to be either sexual abuse
7 or sexual misconduct under the Reportable Conduct Scheme.
8

9 So, recognising that behaviour occurs over a period of
10 time, something which talks to the conduct after that
11 person turns 18 makes a lot of sense.
12

13 MS BENNETT: Ms Girvin, I'll ask you in a moment, but we
14 heard again this morning from a witness about how her
15 abuser told her, "When you get to this age we'll be
16 together and it will be okay", is that part of the
17 experience that's led to the South Australian --
18

19 MS GIRVIN: Absolutely.
20

21 MS BENNETT: Can you tell us about that?
22

23 MS GIRVIN: And because of that very common, grooming
24 starts earlier, and then the student is no longer a
25 student, we have that recommendation in our Protective
26 Practices that you don't establish a relationship with a
27 previous student.
28

29 MS BENNETT: The final thing I'm going to ask you about,
30 unless my policy and legal colleagues tell me I've missed
31 something enormously substantive, is around how you
32 evaluate the success of the work that you've been doing,
33 how do you evaluate the work that you've been doing? So,
34 starting with you, Ms Girvin, this program, this scheme,
35 has been in place for about a decade?
36

37 MS GIRVIN: Yes.
38

39 MS BENNETT: How do you evaluate it?
40

41 MS GIRVIN: We evaluate on timeliness, our response; have
42 we notified the community in a timely manner; have we
43 notified the Minister and the chief executive in a timely
44 manner, have we let everyone know; has our coordination
45 been what Justice DeBelle described, and in all matters we
46 ensure that that's the case.
47

1 We also look at our investigation - so, it's much
2 easier to measure that for a criminal matter, but in our
3 own investigations we look at the timeliness of that. So,
4 we have a time period of 13 weeks for the investigation and
5 then 13 weeks for the adjudication, and the 13 weeks in
6 adjudication is because of the procedural fairness; the
7 person has 28 days to respond to each - the letter of
8 allegations, et cetera. So, if we had been able to finish
9 the misconduct investigation within that time, we also
10 think that we've met our KPIs. So, it's the timeliness and
11 the effectiveness, but also the community response; they
12 feel assured that there won't be a cover up, even though
13 they're devastated if they ever receive a letter, but there
14 won't be a cover up.

15
16 MS BENNETT: Ms Sanders, your statement goes into some
17 detail about the statistic, the number of notifications,
18 it's from paragraph 57 and following; that your number of
19 notifications are increasing. Is that a matter of concern?
20

21 MS SANDERS: So, over time numbers of managed
22 notifications have increased year-upon-year, and they're
23 absolutely following it up with trajectory. Some of that
24 we feel is attributed to increasing awareness of the scheme
25 in and of itself and also avenues to complain, and also,
26 people learning what is inappropriate behaviour with
27 children and young people.
28

29 So, if I think about sexual misconduct in an
30 educational setting, for example, mandatory notifications
31 in that area have increased over the last three years and
32 for the first time in the last financial year was the
33 number one conduct type that was submitted to the
34 Commission. So, things like that show us that there - you
35 know, we can't prove this with certainty, but the
36 awareness, for example, of, say, what is grooming; the
37 education of children and young people about, it's okay to
38 complain and this is how you do it; the trust of parents,
39 children and others to actually step forward, so that trust
40 element is really important to encourage survivors of abuse
41 to step forward and take that step.
42

43 So, there's a lot going on there, there's also
44 increased confidence from some very brave victim-survivors
45 to actually step forward in the public and tell their
46 story, and we see where some of that media attention comes
47 for those issues, we see an increase immediately after to

1 people coming to us with concerns as well and going to
2 organisations.

3
4 So, you have this emerging relationship of trust
5 between the community institutions and the Commission which
6 means that that number is increasing.

7
8 MS BENNETT: Just to pick up on that last point, does
9 responsible media reporting contribute to a healthy
10 integrity ecosystem in that sense?

11
12 MS SANDERS: Look, where you've got victim-survivors who
13 make the decision that they need to tell their story and
14 they need to share what's happened to them you can see some
15 really good strength given to others to step forward, so
16 that's a very challenging journey for people to take, and I
17 think if others see that things happen, there are
18 responses, you can get dealt with sensitively, it can give
19 them confidence as well.

20
21 MS BENNETT: Commissioners, other than to thank these
22 witnesses for their thoughtful and interesting evidence, I
23 have nothing further.

24
25 COMMISSIONER BROMFIELD: I had one question for Ms Girvin.
26 I know that your policy is called, "Professional
27 Practices", not "Grooming Practices".

28
29 MS GIRVIN: Within the professional practices, because
30 it's about all sorts of professional practices. Grooming
31 is one of them and it's highlighted. But also taking of
32 photos of a child without the permission from the site
33 leader and not using the school camera, so it's a range of
34 boundaries; transporting a child without permission.

35
36 COMMISSIONER BROMFIELD: I guess my question here is, does
37 intent matter? When you're doing an investigation do you
38 need to prove that there was sexual intent behind the
39 boundary breaches, or do you just need to prove the
40 boundary breaches?

41
42 MS GIRVIN: Just need to prove the boundary breaches.

43
44 COMMISSIONER BROMFIELD: And, is that important?

45
46 MS GIRVIN: Yes.

47

1 COMMISSIONER BROMFIELD: And, could you maybe talk about
2 why?

3
4 MS GIRVIN: And I think that's really important. I'm
5 thinking about a matter when a personal camera was used and
6 somebody may well have just assumed that was what you would
7 do as a classroom teacher when your children went swimming.
8 It was reported to us and it was obvious, and reported then
9 to the police when we looked at the evidence, it was
10 obvious that there definitely was a sexual allegation of
11 misconduct.

12
13 COMMISSIONER BROMFIELD: Thank you.

14
15 MS GIRVIN: So, that's why I don't think we should
16 determine the intent.

17
18 COMMISSIONER BROMFIELD: Thank you, that's helpful.

19
20 COMMISSIONER BENJAMIN: Yes, Ms Sanders, I read your
21 paragraphs on the standard of proof and the Briginshaw
22 test, and my questions are asked in the light where you
23 very carefully add at the end that:

24
25 *The protection of the child is a paramount*
26 *consideration.*

27
28 But it seems kind of oxymoronic, if that's the right
29 word, that as the danger increases, the level of proof
30 increases. Can you explain that to me? I wonder if that's
31 just lawyers being lawyers in terms of putting that in?

32
33 MS SANDERS: So, Briginshaw doesn't change the standard of
34 proof, the standard of proof is still the balance of
35 probabilities. I guess it's just, the way I colloquially
36 think about it in my mind is, the decision-maker is asked
37 to be sure that that's the finding that they want to make
38 given the potential ramifications for the subject of
39 allegation. I realise that's a shortform, and I have many
40 legal colleagues around me who will know that law better
41 than me, but we do see it misapplied sometimes by
42 organisations.

43
44 I know that the civil standard is not saying
45 50 per cent or 51 per cent, it's not taking that view, but
46 we do see some organisations who almost interpret
47 Briginshaw to say, well, it must be 75 per cent, it's got

1 to be much more than that, so we do have to counsel
2 organisations sometimes where we feel they have overstepped
3 that mark.
4

5 I think it is a fairness element, I think it does give
6 some comfort to subjects of allegations that organisations
7 take this seriously and, at the end of the day, yes, this
8 is about the priority being given to child safety, no doubt
9 about it, but that doesn't mean that fairness can't be
10 achieved. I do see sometimes that put in opposition, I
11 actually don't think that they are mutually exclusive
12 concepts, I think you can achieve both together.
13

14 It's important to take this seriously, this is not a
15 throwaway thing. We see in the early childhood sector when
16 they first came into the scheme we would get the mandatory
17 notification on one day and the very next day we'd get the
18 investigation report and the finding and the worker will
19 have already been terminated and there has been no proper
20 process. So, that's got ramifications, so I think
21 Briginshaw helps to reinforce that seriousness of the
22 decision that's before them.
23

24 COMMISSIONER BENJAMIN: Thank you.
25

26 PRESIDENT NEAVE: Thank you very, very much, that's been
27 really enlightening. Thank you.
28

29 SHORT ADJOURNMENT

30
31 MS NORTON: Commissioners, there's a restricted
32 publication order to be made in advance of this afternoon's
33 session.
34

35 PRESIDENT NEAVE: Thank you, Ms Norton. The Commissioners
36 will make a restricted publication order in relation to the
37 evidence of the next witness in order to avoid identifying
38 particular schools and other relevant people.
39

40 In the context of the scope of this inquiry the
41 Commission makes this order because it is satisfied that
42 the public interest on the reporting of the identities of
43 particular people who may be discussed during this hearing,
44 as well as the identity of any particular schools, is
45 outweighed by other considerations, namely, the potential
46 impact of the evidence on the wellbeing of the relevant
47 school communities and relevant privacy considerations.

1
2 The order requires that anyone who watches or reads
3 the evidence given by the next witness to the Commission
4 must not share any information which may identify the
5 people who will be referred to as "Brad, Jeremy, John,
6 Justin, Mark and Wayne".
7

8 In addition, the order also requires that anyone who
9 watches or reads the information must not share any
10 information which may identify any school which may be
11 referred to during the evidence unless the Commission
12 advises otherwise.
13

14 I make the order which will now be published. I
15 encourage any journalists wishing to report on this hearing
16 to discuss the scope of the order with the Commission's
17 media liaison officer. A copy of the order will be placed
18 outside the hearing room and is available to anyone who
19 needs a copy.
20

21 Thank you, Ms Norton.
22

23 MS NORTON: Thank you. The next witness is Mr Tim
24 Bullard, the Secretary of the Department of Education. I
25 ask that the witness be sworn in.
26

27 <TIMOTHY JOHN BULLARD, affirmed and examined: [3.21pm]
28

29 <EXAMINATION BY MS NORTON:
30

31 MS NORTON: Q. Mr Bullard, would you like to begin,
32 please, by restating your name, your professional address
33 and your occupation?

34 A. Yes, my name is Timothy John Bullard. My professional
35 address is 4 Salamanca Place, and my profession is
36 Secretary of the Department of Education.
37

38 Q. Thank you. Just to run through your background,
39 you're a lawyer by training; is that correct?

40 A. That's right, yes.
41

42 Q. And you began your career at the Office of the
43 Solicitor-General?

44 A. I did, yes.
45

46 Q. How long did you work in that office, can you recall?

47 A. I believe that I worked there between either '95 or

1 '96 and 2000.

2

3 Q. Thank you. You then spent some time working in London
4 as a lawyer?

5 A. I did, yes, as a paralegal.

6

7 Q. Thank you. Were you an admitted lawyer when you were
8 working at the Office of the Solicitor-General?

9 A. Yes, I was admitted to both the Supreme Court of
10 Tasmania and the High Court.

11

12 Q. Thank you. And then, you returned to Australia and
13 you worked at the Department of Premier and Cabinet for
14 about 10 years; does that sound correct?

15 A. I worked at the Department of Premier and Cabinet from
16 2004 to 2016.

17

18 Q. Thank you, and you spent two years of that time as
19 Deputy Secretary?

20 A. That's correct, yes.

21

22 Q. And then you moved across to the Department of
23 Education in 2016, I believe?

24 A. Yes, I did.

25

26 Q. And how long have you been Secretary of that
27 department?

28 A. I commenced as Acting Secretary in a longer term role
29 in December 2017, and I was permanently appointed to the
30 position at the end of March 2018.

31

32 Q. Thank you. You have provided numerous statements to
33 the Commission in response to notices - requests for
34 statements?

35 A. Yes, I have.

36

37 Q. I'm not going to take you to all those statements
38 today. I should begin, Commissioners, and for the benefit
39 of those listening, that this is the first of three
40 attendances that Secretary Bullard will make this week. I
41 have some questions for him this afternoon and then
42 Ms Bennett will ask him some questions tomorrow in relation
43 to some specific case studies, and then he will return on
44 Friday to answer questions about civil litigation and
45 redress schemes.

46

47 I'm mindful that Secretary Bullard has sworn

1 statements in relation to a range of matters. I think they
2 include, Secretary Bullard, a statement that responds to a
3 request from the Commission of Inquiry in relation to,
4 among other things, ED5 investigations, employee stand
5 downs, et cetera.

6 A. That's correct.

7
8 Q. I understand you have a correction that you would like
9 to make to that statement, this is in request to TRFS.0008
10 and it's paragraph 308, as I understand.

11 A. I did believe, when we spoke earlier, that I needed to
12 amend that. I've since been advised that that information
13 is correct. The employee that I thought had been
14 terminated is in fact still on suspension pending an appeal
15 to the Industrial Commission.

16
17 Q. I understand. Can I ask you a general question about
18 this paragraph while we're here?

19 A. Yes.

20
21 Q. I understand that this is a point in time snapshot
22 about the progress of certain stand downs which we'll speak
23 about in more detail later. But as a point in time
24 snapshot it's liable to change. Am I able to ask you:
25 following your evidence today, or this week, will your
26 department keep the Commission of Inquiry updated as to the
27 status of those various investigations?

28 A. Absolutely, I think it would be very useful if at
29 points in time we were able to update those
30 paragraphs relating to those matters. Obviously, they're
31 live and they're still at different points of the
32 investigation process, so they can change quickly.

33
34 Q. Mr Bullard, you would be aware that already this week
35 the Commission has heard from three courageous
36 victim-survivors in relation to the ways that they were
37 sexually abused by Department of Education teachers, and
38 also in relation to their anger at the way that their abuse
39 was handled at the time it occurred and also subsequently.

40
41 Were you able to watch the evidence of Ms Collins and
42 Ms Munting earlier in the week?

43 A. I was absolutely able to watch that evidence and I
44 would like to open by saying how sorry I am and how much I
45 personally regret our past failings, and I want to
46 acknowledge the lasting, ongoing and negative impact that
47 that has had on victims and survivors.

1
2 I am really sorry that historical abuse has occurred
3 in our schools, and I have to apologise unreservedly; every
4 day those children and young people go to school and they
5 have a right to feel safe and happy and learn.
6

7 And, I did watch, and it was very confronting evidence
8 to watch, but I want those people who've been courageous
9 and brave enough to give evidence to know that I have heard
10 them, I believe them, I apologise that the way in which
11 they've interacted with the department has not always been
12 respectful, but we are committed, absolutely committed, to
13 learning from this Commission and correcting, so far as we
14 possibly can, the wrongs of the past and ensuring, so far
15 as we possibly can, that we safeguard and protect the
16 interests of children and young people who are in our care.
17

18 Q. You said that your apology just now was unreserved.
19 Can I just ask you: the impact that those witnesses have
20 spoken about extends beyond the actual abuse that they
21 suffered under your department's watch; they've also spoken
22 about the ways in which that trauma was exacerbated by the
23 Department of Education's response or non-response in some
24 cases to their abuse. Does your apology extend to the harm
25 done by your department in that respect?

26 A. Absolutely, absolutely. We have heard about
27 opportunities that we had, not to put things right because
28 we could never do that, but to in some way assist in the
29 healing and recovery of those individuals and I accept that
30 that has not happened. We have heard quite clearly, we
31 have heard quite clearly that that has not happened and my
32 apology absolutely extends to that.
33

34 Q. I mentioned before Ms Collins and Ms Munting, there's
35 also a third victim-survivor who's also given evidence this
36 week and she's been referred to as Rachel. I know that you
37 wished to be in the room to hear Rachel's evidence and out
38 of respect for her wishes you left the room and it wasn't
39 telecast. Have you been briefed about her evidence?

40 A. I have, yes.
41

42 Q. And, do you extend that apology to her also?

43 A. Absolutely extend my apology to the person who
44 I believe was named Rachel. I have a good understanding,
45 having reviewed that matter, about what happened to Rachel
46 and also the way in which she was subsequently treated and
47 her allegations were treated, and I extend my apology to

1 Rachel.

2

3 Q. Ms Collins gave evidence both as a victim-survivor and
4 also as a current employee of the department, and she told
5 the Commission that she has concerns about the potential
6 repercussions for her career progression that may follow
7 from giving evidence to the Commission, and in addition to
8 Ms Collins, Ms Drake, Ms Carter and Mr Russell gave
9 evidence yesterday. Do you have anything that you'd like
10 to say publicly in relation to the department's attitude
11 towards those witnesses and any other Department of
12 Education employees who may wish to speak with the
13 Commission in future?

14 A. So, I've been very clear in my communications to all
15 staff that I encourage them to come forward and provide
16 evidence to this Commission. We need to be learning from
17 people on the ground. I was very concerned about the
18 reflections that there might be repercussions and I've
19 actually contacted each of the witnesses to assure - to
20 thank them for their participation and assure them that
21 that will not be the case.

22

23 And, in terms of Ms Collins because she was direct
24 about that, I've asked what evidence she might base that on
25 or what concern she holds. So, I'm happy to maintain that
26 dialogue but it's really important that people feel free to
27 come forward and participate; we want this to be an
28 opportunity where we can learn and improve.

29

30 Q. Thank you, Secretary Bullard. You speak in your most
31 recent statement about the roles and duties of your
32 department as educators in relation to child safety, and
33 you've referred to the department acting in loco parentis
34 to the rights of children, not only to an education, but
35 also to be kept safe from harm, and you also refer to the
36 importance of the National Principles for Child Safe
37 Organisations.

38

39 You've said before that you've been the Secretary
40 since about 2018 --

41 A. That's right.

42

43 Q. -- in a permanent capacity at least. Now, those
44 National Principles were endorsed by COAG in 2019?

45 A. Yes, that's right.

46

47 Q. And they're endorsed on behalf of this state, among

1 others. You say in your statement that you are committed
2 to embedding practices that safeguard children and young
3 people. Ms Bennett asked this question of Ms Webster and
4 Ms Gale on Friday, and so out of fairness I'd like to ask
5 it of you.

6 A. Yes.

7
8 Q. Standing here or sitting here today how confident are
9 you that the commitment to child safety that you discuss in
10 your statement is embedded at the most senior levels within
11 your department?

12 A. Absolutely embedded at the most senior levels. In
13 terms of a commitment, and I think when you look at those
14 standards they're really dense. We've heard other
15 witnesses explain that 10 standards sitting there are
16 great, but to actually get that cultural embedding within
17 an agency the size of our agency is complicated; that's not
18 an excuse but it's an observation.

19
20 Now, we are as an agency executive committed to child
21 safeguarding; we talk about it every week at our executive
22 meeting, we receive regular updates, but we also
23 acknowledge we're at the beginning of a very long journey.

24
25 Q. So, in answer to my question, how confident are you
26 that these attitudes are embedded, you said "absolutely".
27 How do you measure that, how do you have that confidence
28 that these Child Safe principles are not just on paper but
29 actually are given life and true meaning through the work
30 of your executive?

31 A. So, at the moment we can only measure it by outputs,
32 because really, it is, are we discussing them regularly as
33 an executive? Are we discussing them regularly with our
34 Minister? Yes, we are. Are we talking about them to staff
35 and are we communicating openly about their importance?
36 Yes, we are.

37
38 Have we got a senior leader in my agency through the
39 executive director of child safeguarding whose only job in
40 that agency is to work with her team around improving the
41 safety of children within our organisation? Yes, we do.

42
43 But, until I can go out and absolutely say to you that
44 every person in my organisation understands those
45 principles and how they relate to their context, whether
46 you're Secretary of the department or you're an education
47 facility attendant or canteen manager, I can't tell you

1 that the organisation has met the objective that those
2 principles set out.

3
4 Q. I appreciate your candour. Is it a fair summary of
5 the position that you've just stated to say that, while you
6 are confident that there is a deep understanding of the
7 principles at the executive level, the work ahead is to
8 ensure that that understanding transcends or permeates,
9 spreads, throughout the state, throughout the schools at
10 the state to deliver real and lasting change?

11 A. Absolutely. So, we're an organisation that's almost
12 made up of mini organisations. Our schools are entities
13 that work within the broad framework, guidance, supports
14 and funding provided by the agency, but there are
15 principals in charge of those schools; there are senior
16 leaders in charge of those schools; we need to make sure
17 everyone has the skills, capabilities, knowledge and
18 attributes necessary to acquit those in every single
19 setting.

20
21 Q. I want to ask you some questions about the machinery
22 of government changes that were announced in February, and
23 I've read what you've said in your statement recently, I
24 appreciate that there's many details to be worked out in
25 relation to those changes. But in broad terms you'd agree
26 that what is proposed is the merging of your department and
27 aspects of the work done by the Department of Communities?

28 A. Yes, that's correct.

29
30 Q. And the result of that will be the Department of
31 Education, Children and Young People?

32 A. Yes.

33
34 Q. You talk in your most recent statement at 29 about
35 this being an opportunity to build closer links for all
36 areas working to safeguard children?

37 A. That's correct, yes.

38
39 Q. I'd like to take you to some evidence that was given
40 again by Ms Collins, a social worker within your
41 department. She gave evidence earlier in the week about
42 the demands that are already being placed on department, of
43 employee social workers, and the fact that they're already
44 unable to meet the learning needs or support the learning
45 needs of students at Department of Education schools
46 because they're largely occupied with protecting,
47 safeguarding, the safety of children outside of school.

1
2 And she said in respect of the new department that's
3 contemplated, she said:

4
5 *You've got a core business of education*
6 *that's learning, supposedly. We're already*
7 *not great at that in Tasmania, and then*
8 *you've got risk and safety. Put them*
9 *together, risk and safety and learning,*
10 *what's that going to look like? One's*
11 *going to take over from the other; it*
12 *already does in a social work sense now.*

13
14 Her point being that the concerns of safety are going
15 to take over from the concerns of learning. Do you have
16 any comments to offer in respect of Ms Collins' concern?

17 A. Absolutely. We're very alert to the opportunities
18 that the bringing together of the two agencies provides in
19 terms of being able to have a much more child-centric and
20 coordinated approach but also the risks, and part of the
21 work that we are doing now through the Culture and Growth
22 Team that's looking at how we're going to bring the
23 agencies together is understanding the roles,
24 responsibilities and functions of everyone in the agency,
25 and we are going to have to ringfence those to some degree.

26
27 I think that there are absolute opportunities in
28 making safety everyone's business in the agency. We've got
29 10,500 people that need so understand part of their role is
30 safety. But when we get to that more immediate support
31 around what people may now see as Child Safety doing, or
32 when we get around that supporting the wellbeing of
33 children to learn, we are absolutely going to have to put
34 some fences around those roles. I note the reflections of
35 staff and we need to be working to mitigate that risk.

36
37 Q. I'd like to ask you about the Independent Inquiry that
38 was commissioned in, I think, August 2020. Now, Professors
39 Smallbone and McCormack who gave evidence earlier this week
40 delivered a report, I think it was in June 2021.

41 A. Yes.

42
43 Q. I'm going to have some questions which I'll direct to
44 Ms Jack later in the week about the implementation of the
45 recommendations of that inquiry. But in November last year
46 you offered a public apology for the abuse and the failures
47 of your department that were uncovered by that inquiry, and

1 you said:

2
3 *As an organisation we are deeply sorry for*
4 *the historical abuse that happened in our*
5 *schools and apologise unreservedly to the*
6 *victims and survivors.*
7

8 The Commission's heard a lot about the importance of
9 apologies, including from Ms Munting yesterday. What do
10 you see as being the significance of that apology?

11 A. The significance of that apology is the department's
12 recognition of the harm that it's caused, and that is the
13 significance: I can't then assert that victim-survivors
14 should even accept it or respond to it positively. It just
15 needs to be made so that there is a clear statement about
16 how we see our failings. So, the significance is to each
17 and every person that receives that; they will make a
18 determination about how important or not, how much validity
19 or not they provide to that; all I can do is lead with my
20 heart and provide that apology.
21

22 Q. And when you provided that apology back in November
23 and again today, do you need to - do you have free rein to
24 make an apology like that as Secretary of the Department,
25 or do you need to have it cleared by, for example, the
26 Office of the Solicitor-General?

27 A. I make the apology that I want to make.
28

29 Q. Can you explain to the Commission, or provide any
30 insight into why the apology followed some five or
31 so months after the report was released by the professors?

32 A. So, in relation to that, that really is a question for
33 the Secretary of the Department of Justice. In terms of
34 the governance that was set up --
35

36 Q. So, can I just interrupt you there. Why is your
37 apology as the Head of Department of Education a matter
38 that we should be talking --

39 A. Sorry, I thought it was around the release of the
40 professors' report, so maybe I need to come back a step.
41 So, the apology was made in light of the information that
42 was released as part of the professors' report. In terms
43 of the architecture, the Minister for Education, then
44 Minister for Education, and I thought that it was not a
45 good use - it was not good governance to be reviewing
46 ourselves, and so, the Attorney was requested to commission
47 and oversee the report being made. The report was

1 provided, I understand, around June and then there was a
2 period of time until its release.

3
4 Q. The report hasn't been released in full to the public;
5 is that correct?

6 A. That's my understanding, yes.

7
8 Q. Who made the decision to release only part of the
9 report publicly?

10 A. That was a decision, I understand, that was made
11 either in Justice or by the Attorney. There are elements
12 of the way in which the report was drafted; I understand
13 that had some legal complexity around them being published,
14 and so, there was a decision made to redact those elements
15 of the report.

16
17 Q. Thank you. Can I take you to the Royal Commission and
18 the recommendations of the National Royal Commission. Now,
19 you've been Secretary since those recommendations were
20 handed down in December 2017?

21 A. Yes, that's correct, yes, Acting Secretary and then
22 Secretary, yes.

23
24 Q. Acting Secretary. And would it be fair to say that
25 the implementation of those recommendations is or will be
26 one of the defining features of your time as Secretary?
27 Would you like it to be?

28 A. Of the Royal Commission recommendation? I actually
29 think the implementation of the recommendations of this
30 Commission will be one of the defining elements of my time
31 as Secretary.

32
33 The Royal Commission recommendations are useful,
34 they're a useful guide around national responses to child
35 sexual abuse in institutional settings, but for a
36 jurisdiction of our size and within the organisational
37 culture that we have, some of them are difficult to
38 translate into a reality. So, what we welcome from this
39 Commission is something that is tangible and appropriate to
40 the Tasmanian context.

41
42 Q. Can I talk about something else that's tangible,
43 Secretary Bullard. Have you got in front of you a
44 document that is a summary of the current status of the
45 National Royal Commission recommendations that have been
46 assigned to the Department of Education?

47 A. Is that a document that you've provided me with or one

- 1 that I --
- 2
- 3 Q. Yes. I think it's the document with blue shading.
- 4 A. Yes.
- 5
- 6 Q. This is an exhibit to your own annexure to your
- 7 statement.
- 8 A. Yes.
- 9
- 10 Q. Do you recognise that document?
- 11 A. I do, yes.
- 12
- 13 Q. And, do you agree that it is a record of the current
- 14 status of the recommendations that your department is
- 15 responsible for?
- 16 A. Yes, I do.
- 17
- 18 Q. Now, I've counted those recommendations; by my
- 19 counting there are 17 that are allocated to your
- 20 department; does that sound about right?
- 21 A. I've got 23, but we could --
- 22
- 23 Q. All right, I'll take 23.
- 24 A. -- we could go through if we like. I'm only going on
- 25 my advice, you're counting might be better.
- 26
- 27 Q. How many of the 23 have been implemented?
- 28 A. My understanding is that, in terms of what we've done,
- 29 I think that it's seven that are remaining that we have
- 30 responsibility for. I also note that there are a number
- 31 which, although they are allocated to us, are national
- 32 recommendations which it notes would occur either through
- 33 the Committee of Secretaries or through the ministerial
- 34 meetings.
- 35
- 36 Q. Three of those outstanding recommendations, and I'll
- 37 take you to one of them by way of example. If you go to
- 38 Recommendation 13.1?
- 39 A. 13.1, yes.
- 40
- 41 Q.
- 42 *All schools should implement Child Safe*
- 43 *Standards identified by the Royal*
- 44 *Commission.*
- 45
- 46 A. Yes.
- 47

1 Q. Now, we've already talked about the National
2 Principles for Child Safe Organisations endorsed by COAG at
3 the beginning of 2019. Now, this is one of three
4 recommendations that are allocated to your department which
5 are commenced but not yet completed.

6 A. That's right.

7
8 Q. And as I understand it, the reason for that is that
9 they can't be implemented until the Department of Justice
10 led Child Safe Organisations legislation is enacted and
11 implemented; is that correct?

12 A. No, that's not correct. I think that certainly in the
13 early days --

14
15 Q. Well, sorry, can I just ask you, you say that's not
16 correct; isn't that effectively what your document says?
17 This work is on --

18 A. So what I have stated there is in terms of having a
19 state-aligned approach.

20
21 Q. Right.

22 A. I wouldn't want the Commission to think that we are
23 sitting around waiting for that piece of legislation to go
24 through Parliament. We have now the 10 standards, the 10
25 principles, and so, we've made a decision that whilst we
26 await the passage of that Bill through Parliament in
27 whatever manifestation, that we'll get on with the work we
28 need to do in terms of revising and reviewing our policies
29 and our approaches.

30
31 Now, the risk of course is we get to the end and the
32 Bill says something very different, but I believe we're
33 agile enough as an organisation to change our direction if
34 that should be the case.

35
36 Q. When Ms Webster and Ms Gale gave evidence last Friday,
37 Ms Webster was asked some questions about the progress of
38 that particular reform bearing in mind that the National
39 Royal Commission recommendations are now about four years
40 old. She wasn't able to give an exact timeframe, I think
41 the most specific she got was she thought that a revised
42 Bill would be introduced to Parliament by the end of
43 the year. Do you have any concerns about the progress of
44 that particular reform in terms of timeliness?

45 A. My concern was that we were waiting for that to
46 happen, and I don't have a concern now that we've - we're
47 getting on with the work.

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Q. When was that decision to just get on with the work in the absence of legislative reform made?

A. Well, certainly following the professors' report and recommendations and the establishment of the Office of Safeguarding Children and Young People. It's really important that to respond to a number of the recommendations in the professors' report we've got a frame of reference for doing that work and the Child Safe Principles naturally provide that frame, and so certainly from our perspective that was when we decided that we would take what was nationally available and work within that framework until such time as there's a Tasmanian response.

Q. Were you surprised - I know that your department provided feedback to the Department of Justice in relation to that Bill. Were you surprised, having regard to the fact that principles had been nationally agreed by COAG and endorsed by COAG, were you surprised to see a Bill which effectively rewrote the standards?

A. Surprised might not be the right response; I think that from the Department of Education's perspective some concern that then you start to enter into an environment of complexity, because nationally you have a framework which has been established and the Tasmanian response looks slightly different, and where are you pointing people for what really matters or what's important? So, it was really around simplicity. We know in a large organisation like ours, the more messages that are coherent and consistent that people are hearing nationally, at a state level, in a school, the easier it's going to be to implement.

PRESIDENT NEAVE: Q. I just have a question about that. So, when you've been working on implementation, anticipating the legislation ultimately being passed, have you - maybe it doesn't make a difference, but have you been working on the basis that it's the principles that were laid down in the National Royal Commission or on the slightly different standards that are in the legislation?

A. Knowing that the Department of Justice had made a decision to revisit its approach, we've gone with the National Principles as stated.

PRESIDENT NEAVE: Okay, thank you.

COMMISSIONER BROMFIELD: Q. Can I just follow up with that? You noted before about the importance of thinking

1 about implementation in the Tasmanian context. Do you
2 consider that aligning with the National Principles would
3 in any way support or assist your implementation in the
4 Tasmanian context?

5 A. I do, because where we benefit most is where other
6 states and territories are doing something similar. We are
7 not shy of beg, borrowing and stealing the work that's been
8 done by others. So, even when you look at the expanded
9 principles as they stand where it says, this will look
10 like, you know, when it's working this will look like, and
11 they've got definitions of success: work done, we don't
12 need to sit down and do that.

13
14 Also, too, just a reflection in terms of, we are a
15 small jurisdiction and we have some really great
16 partnerships with other states and territories, for
17 example, South Australian Education, so wherever we can be
18 leveraging off their approach, because we've got a smaller
19 workforce, it just means that we can implement faster and
20 with a higher degree of integrity

21
22 COMMISSIONER BROMFIELD: Ms Norton.

23
24 MS NORTON: Thank you.

25
26 Q. Again, out of fairness, I'll ask you this question
27 because it was put to the Secretaries of Justice and
28 Premier and Cabinet last week. It was put both to
29 Ms Webster and Ms Gale that the lack of progress on the
30 implementation of the Child Safe Organisations framework
31 reflected that it's not been given sufficient priority or
32 high priority by this government. Do you have any comment
33 that you'd like to offer on that proposition?

34 A. I think, in terms of the Royal Commission work more
35 broadly, including implementations of aspects such as the
36 principles it has been taken seriously. The Attorney has
37 led that work and we are regularly required to report on
38 our implementation and update, and I know that that's then
39 publicly reported as well.

40
41 So, certainly from the department's view, there are
42 structures and accountabilities in place that are keeping
43 agencies in check to ensure that that is happening. That's
44 not the reason we should be doing it though, the reason
45 that we should be doing is because there is a lot that we
46 can learn from that work.

1 Q. I want to pause to say in respect - I'm sure it's
2 frustrating when you've done a lot of work on the
3 implementation of the recommendations to have focus paid to
4 the work that hasn't been done, so I do acknowledge that
5 work, and I also want to acknowledge that as the parent of
6 some of the students at one of your schools.

7 A. Thank you.

8
9 Q. So, I think that's important. Can I ask you some
10 questions now about investigations? The Commission has
11 heard evidence earlier today from Steven Smith from the
12 Australian Education Union, and he was asked to explain the
13 role of a union in circumstances where allegations of child
14 sexual abuse are made against its members, and he accepted
15 that it would be inappropriate in that circumstance for the
16 union to engage in advocacy on behalf of the member; that
17 instead their role should be limited to ensuring that the
18 process was fair, that the member was heard, observing
19 procedural fairness.

20
21 I'd like to give you an opportunity, if you have a
22 comment you'd like to offer, about whether in your
23 experience the Australian Education Union takes that
24 approach in dealing with allegations of child sexual abuse
25 made against members?

26 A. Yes, they do; it hasn't always historically been the
27 case, and it's certainly though in more recent times, and
28 certainly my time as Secretary that's the role that they've
29 played. So, two things: one is, in terms of the
30 investigation processes as set out for Code of Conduct
31 matters, are you following them? I think that's always a
32 useful check to have in place, but also too, I do value
33 their support for the wellbeing of people who are still my
34 employees who are going through this process.

35
36 So, as much as we need to be responsive and keep
37 children safe, and we have processes and procedures in
38 place, we also need to recognise that, until I've made a
39 determination, that person has not breached the Code of
40 Conduct and so needs to be really well supported as an
41 employee of my agency and the AEU are very good at drawing
42 to my attention those employees who might not be travelling
43 well so that we can organise some additional support.

44
45 Q. Thank you. You address in your most recent statement
46 some ways in which investigations within your department
47 have fallen short of community expectations, and I'd like

1 to explore a couple of the deficiencies that you identify.
2 One of them is concerned with a lack of expediency, and I
3 want to read to you - I'm conscious you weren't in the room
4 when Rachel gave evidence today.

5 A. No.

6
7 Q. But Rachel made complaints or allegations about a
8 teacher in 2005 and a two-year investigation followed and
9 she had this to say about the process. She said:

10
11 *... two years is a very long time to be*
12 *investigated. I wasn't coping at all. I*
13 *started drinking. I hated myself. I would*
14 *see him...*

15
16 She lives in a small community or did at the time:

17
18 *... and when I saw him I was so fearful of*
19 *running into him. I did run into him, he*
20 *smiled arrogantly and I had to run away*
21 *from him.*

22
23 It was a really powerful description of just how hard
24 that two year period was during which time her allegations
25 were investigated. What are you doing to address concerns
26 about delay, or lack of timeliness, in relation to
27 investigations?

28 A. It's a really good question because under the ED and
29 in relation to the Code of Conduct we have to undertake a
30 thorough investigation, and that actually is what is
31 important for all parties involved, and the delay is
32 compounded at a number of points in that process.

33
34 The investigation itself can take a period of time;
35 the time that it then comes to Workplace Relations to
36 undertake a review of what's been done, me making a
37 determination; if I terminate the employee there's periods
38 of time that I then have to leave for them to respond to
39 that, consultation with the State Service Management
40 Office.

41
42 So, we absolutely know that we need to provide - do
43 the - undertake those investigations in a timely manner,
44 but at every point in that process to ensure that it's done
45 properly there's time.

46
47 Can I just reflect on something that I believe is

1 absolutely absent and in terms of the evidence that was
2 provided this morning pertinent, and that is, because of
3 the requirements of the Personal Information Protection Act
4 at no time can we update the person who's made a complaint
5 as to what stage that investigation's at; nor can we tell
6 them that that investigation's complete or of the finding
7 that's been made in relation to that, and that really
8 concerns me.

9
10 Q. I understand that and I know you make reference to
11 that in one of your statements. Can I just focus, though,
12 on matters that are within the control or within the
13 purview of the department?

14
15 You've said in your statement, this is at
16 paragraph 24, that:

17
18 *Investigations should be completed within a*
19 *reasonable time and free from unreasonable*
20 *delay.*

21
22 And yet, it seems to be the case that when you appoint
23 an independent investigator to conduct an ED5
24 investigation, you place no timeframe on that
25 investigation?

26 A. No, we don't.

27
28 Q. Why not?

29 A. Because we don't want to be seen as fettering the
30 independence of that investigator to undertake the work,
31 and we also need to be cognisant of the fact that we
32 operate in a very small market when it comes to people who
33 are able to undertake these investigations, so in terms of
34 the investigators that we use, they've got a queue of
35 investigations.

36
37 So, from time to time we do go and say, "Can you
38 prioritise this one over that one, or is there any way you
39 can get this one back to us faster?" But we really are
40 fettered, I think, by the number of investigators available
41 and also careful not to be seen in any way to be rushing or
42 putting our fingers on what we want to be an independent
43 review of what's occurred.

44
45 Q. Well, there's a few points there that I just want to
46 unpack. So, I understand your point about not having a
47 timeframe that acts as a fetter on the proper investigation

1 of a matter, but does that mean that it's appropriate to
2 have no timeframe whatsoever? Couldn't you, for example,
3 request that an investigation be completed, let's say
4 within two months - it would need to, of course, be
5 proportionate to the allegations involved, the number of
6 people that might need to be spoken to, I appreciate that -
7 but when an investigator is engaged couldn't you set an
8 initial timeframe and then effectively put the onus on the
9 investigator to come to you towards the end of that
10 timeframe and explain to you whether and why they need more
11 time?

12 A. Yeah, I think we could, yes.

13

14 Q. Or, even still, just have an investigator update you
15 at certain points so that you can be confident as a
16 department that those investigations are on track and are
17 being pursued with appropriate diligence?

18 A. So, we certainly do do that. So, in terms of our team
19 in Workplace Relations checking in where matters are, that
20 work, that does occur. But I absolutely take your
21 point around, I suppose, saying, "This is our expectation
22 but come back and talk to us if you believe that you're not
23 able to meet that", yes.

24

25 Q. Some sense of urgency?

26 A. Yes.

27

28 Q. Commensurate with the importance of the matter?

29 A. Yes.

30

31 Q. Both for the student who's made the allegations and
32 your employee?

33 A. Well, I think, and as you would be aware, the range of
34 what we're actually dealing with, albeit talking here
35 around child sexual abuse, goes from fraud, to sexual
36 harassment, to inappropriate comments to other teachers, to
37 using photocopying paper.

38

39 So, yes, I think absolutely looking at the claim being
40 made, but also too to be student-centric and understand
41 that, where there are children and young people involved,
42 giving those some priority is absolutely something that we
43 should look to do.

44

45 PRESIDENT NEAVE: Q. I have a question about that. So,
46 is there any sort of triage process in deciding which
47 investigations should be handled quickly and which - you

1 used as an example misuse of photocopying paper, that could
2 probably be left until a bit later. So, do you have some
3 sort of systematic guidance with a triage component in it?
4 A. So, that's an excellent question. I think under the
5 current ED each matter comes to you and you make a
6 determination that there may have been a breach, and then
7 you have to provide into that investigation, and it has to
8 be expedient and undertaken within a reasonable time
9 without any comparison.

10
11 If we move back into the past under a Commissioner's
12 direction, which I believe was in place around 2002, a Head
13 of Agency could come to a matter and make a decision about
14 the pathway that that matter should take: which could go
15 from, "Look, you had your hand in the petty cash, you've
16 said you did, we're going to move straight to a sanction";
17 to "Actually, I'm going to refer the matter to the State
18 Service Commissioner to make a determination because it is
19 so serious". And that in itself, I understand, acted as a
20 triage for putting things into different lanes which would
21 have sped parts of the process up.

22
23 Q. But now it's driven solely by the time when the matter
24 comes to you?

25 A. The matter comes to me and everything needs to be done
26 as a fast as possible, but of course, it then goes into a
27 queue, yeah.

28
29 COMMISSIONER BROMFIELD: Q. So it's a one-size-fits-all?
30 A. It is at the moment, yes, certainly.

31
32 MS NORTON: Q. You mentioned before that you are limited
33 in terms of options, in terms of the independent
34 investigators who are available to you, and I think you say
35 in your most recent statement, and this is again in respect
36 of stand downs which I'm about to come to, that - and I'll
37 just find the quote. You say:

38
39 *The vast majority of recent investigations*
40 *have been conducted by a single*
41 *investigator.*

42
43 Now, I don't need you to name that investigator --
44 A. Yes.

45
46 Q. -- but, are you able to estimate how many - or I
47 should just ask: I believe that it's a single, not

1 investigation company, but a single person conducting those
2 investigations?

3 A. No, it's a - it's a - the company trades under the
4 name of a single person but has a number of investigators.

5

6 Q. And, do you know how many investigators off the top of
7 your head?

8 A. No, I do not.

9

10 Q. Are you able to tell the Commissioners or estimate how
11 many investigations currently sit with that organisation?

12 A. In terms of child sexual abuse?

13

14 Q. No, just any ED5 or other investigations?

15 A. No, I'm not, but I would - I'd be able to get that
16 information and provide that to the Commission.

17

18 Q. Could you hazard a guess here?

19 A. No, look, I wouldn't want to hazard a guess; I'm sure
20 I'll be out, so...

21

22 Q. Well, if you could provide that information, that
23 would be useful. The Commission has heard evidence --

24

25 COMMISSIONER BENJAMIN: Just bear with me a moment.

26

27 Q. Earlier today we heard some evidence about the type of
28 investigator who was allocated. Do you or your human
29 resources office consider the type of investigator and the
30 gender of the investigator in terms of the allegations made
31 at any stage, or is that left to the company to do?

32 A. Certainly, in terms of the company that we use, we use
33 that company because they have people who are experienced
34 investigators; in fact, the lead investigator was
35 previously a detective in the Tasmanian Police Force, so
36 comes credentialed to undertake investigations to a
37 standard that we know is required for some of these matters
38 which are highly complex and sensitive.

39

40 Certainly, though, in terms of attributes such as
41 gender; no, I would need to take advice on whether we've
42 ever asked or whether they have access to that; that's not
43 within my knowledge at the moment.

44

45 Q. And do you know if any of the investigators are
46 trained in taking statements or gaining information from
47 children? Is that a requirement or a consideration that

1 you have --

2 A. No.

3

4 Q. -- or does that go to the investigation company?

5 A. No, it is - it has not historically been a
6 requirement; albeit given the number of investigations that
7 this firm has undertaken for us, and a number of those
8 involving children, certainly in terms of the advice that
9 we have received, you know, they do have experience in
10 sensitive investigations such as those with children, but
11 I'm not aware of any particular training that those
12 investigators have.

13

14 COMMISSIONER BENJAMIN: Thank you.

15

16 MS NORTON: Q. Secretary Bullard, you've spoken about
17 limited investigative resources being available locally,
18 perhaps there's an issue also with appropriate expertise in
19 terms of dealing - or skills in interviewing and training
20 and interviewing students, young people. Do you think that
21 your department might need some more help in terms of
22 carrying this investigative load and finding appropriate
23 resources?

24 A. Yes, I do. I believe that it's not in terms either of
25 financial resources, it's actually in terms of skills and
26 capabilities more broadly in the Tasmanian community or
27 workforce to assist, yes.

28

29 Q. The previous session involved evidence being given by
30 people who work in Victoria and who previously worked in
31 South Australia about the models in those two states for
32 investigating child sexual abuse allegations, among others.
33 In Victoria it's a Reportable Conduct Scheme and in South
34 Australia it's a particular unit which includes an
35 investigative unit that sits within their Department for
36 Education.

37

38 You may not be across the detail of those models, and
39 I wouldn't expect you to be, but do those sorts of models
40 sound like models that might assist your department to
41 provide more timely investigations?

42 A. So, two - could I just make two reflections on what I
43 understand of those two models, and I don't know them in
44 detail?

45

46 Q. Yes.

47 A. One, in terms of Reportable Conduct, is the ability to

1 have someone who is providing some third party oversight
2 that the way in which you're conducting the investigation
3 meets the accepted standard; and, in terms of child sexual
4 abuse in particular, I'm very alert to the requirement to
5 do that.
6

7 At the moment we would use the Integrity Commission as
8 the body that we use to, if you like, provide a check and
9 balance that what I've done in terms of the investigation
10 that's been undertaken is appropriate. Now, they don't
11 have a formal role, but we do provide a notice that we are
12 commencing an investigation and we provide information when
13 we've concluded it. So, the Reportable Conduct Scheme, I
14 think, provides a really good third party eye on what's
15 going on in terms of the investigations of Code of Conduct
16 breaches with child sexual abuse.
17

18 In terms then of specialist investigation, we moved
19 from that model over a number of years. We had internal
20 investigators, if you like, they're employed by the
21 department and deployed out. The strength there is
22 obviously that they come with the skills and disposition
23 and understanding of the agency in which they work, but
24 over time it was felt that their independence could be
25 questioned or in fact compromised because they were out and
26 about all the time in a very small community investigating
27 schools.
28

29 I wonder if there's a middle way, in a State Service
30 the size of Tasmania, that there could be some centralised
31 investigation unit that, if you like, services more broadly
32 the investigation of Code of Conduct breaches, so it's at
33 arm's-length but still part of government and able to do
34 that in a way that is trauma-informed and meets the
35 expectations of the government.
36

37 Q. Mr Bullard, I'd like to take you now to this document;
38 it's a document that I'll ask you to speak to, but perhaps
39 just by way of introduction: it's the case, is it not, that
40 in the last 12 or 18 months your department has stood down
41 32 employees in relation to historical allegations?
42

43 A. That's correct, yes.
44

45 Q. Can you explain to the Commissioners why that's
46 happened, why it's happened at the point of time it has and
47 the process that you've gone through?
48

49 A. Yes. So, just as a point of clarification, when I

1 said "stood down 32", there are two categories of employee
2 that this list reflects: one are people who are still in
3 permanent employment with us, and the other are people who
4 are on a relief register, so you might conceptualise as
5 being casual employees.
6

7 Where they are the latter we can't stand them down
8 because they're not really employed by us, but we can
9 indicate that we won't employ again. So, I just need to
10 make that distinction.
11

12 Q. Yes, I understand.
13

14 COMMISSIONER BROMFIELD: Q. Removed from the register?

15 A. Removed from the register, thank you.
16

17 In terms then of those 32, would you like me to
18 explain how we came to that? Yes?
19

20 MS NORTON: Q. If you wouldn't mind.

21 A. So, I think, in terms of what the Commission's heard
22 in evidence, I know from the professors is, there is a
23 document that is variously referred to as a database, a
24 spreadsheet, documentation or records. It is in fact, or
25 was, in fact an Excel spreadsheet of matters that were
26 known to the department; it's really important to frame how
27 that came into existence.
28

29 So, that spreadsheet was collated after discussions
30 with, I understand, the Solicitor-General and with the
31 Redress Scheme coming up to say, what's the kind of quantum
32 that we might be looking at in terms of matters that are
33 known to the department that have or may have occurred?
34

35 And so, the net was spread very, very broadly, and in
36 its original iteration it contained everything from -
37 there's an RTI request that we think's a bit curious; that,
38 why is someone asking about, was I with this teacher at
39 this time; through to an allegation, an historical
40 allegation that had been made and investigated; through to
41 some things that didn't belong there, there was a sexual
42 harassment matter on there; adult-to-adult, for example.
43

44 When that record, which was kept for the purpose that
45 I described was brought to my attention, I asked if I could
46 see it, the spreadsheet. And, just on my first very
47 cursory glance of that spreadsheet there were names that I

1 recognised. So, they were people that I knew were in our
2 system. And so, I asked that, could we go off and
3 reconcile every name on that spreadsheet with the
4 employment database or the payroll system so that I can
5 understand who is still employed in some capacity, whether
6 it's as a relief teach or a permanent employee?
7

8 And out of that, I think that the professors referred
9 to 21; once the full work was done on that, including an
10 internal audit reviewing it, there were 32 employees that
11 had what I would describe as a matter of concern sitting
12 against them. So, again, for something - an allegation
13 full-blown, down to a curiosity or a concern.
14

15 I then asked that work was done to extract for me each
16 of the, what I will call management actions that had been
17 taken on each of those matters. And, I call them
18 management actions because they went from, the principals
19 had a conversation with the person concerned, right through
20 to a CD5, so the old version of an ED5 or an ED5 Code of
21 Conduct, and each of those matters were sent to me in turn
22 to review.
23

24 So, the advice that I had on those matters was this:
25 that was, where an investigation had been exhausted, that
26 is, that a full ED5 or CD5 had been undertaken, I could
27 take no further disciplinary action in relation to that
28 matter. Where a matter had been inform - let's call it
29 informally investigated, then I --
30

31 Q. Sorry, just to interrupt you: does that mean
32 investigated internally at a school rather than elevated to
33 the department?

34 A. No, this is after it's elevated, so it was a mosaic of
35 approaches. The Secretary had a look at some, might have
36 written a letter. In one case, I think there was a panel
37 convened internally outside any process that was
38 established in the State Service: decision made not to
39 proceed; in others, nothing had been done. So on each of
40 those matters I then made a decision about whether or not I
41 could, and then, if I could, I should proceed with an ED5
42 investigation.
43

44 Q. I appreciate that you're going to give us some updated
45 information, and so, we might come back and have some
46 questions on another occasion in relation to the outcome of
47 those matters.

1
2 You said initially it was 21, then it grew to 32. How
3 confident are you now that all matters of historical
4 concern have been identified by your department and have
5 been or are being looked at?

6 A. So, I am confident that the matters that are known to
7 us have been looked at, and I say that because the
8 spreadsheet was all matters known at a particular point in
9 time. Now, already since that process was undertaken two
10 other matters have come to our attention: one through the
11 media and one from police, but they were not known at the
12 time that we did this work.

13
14 Q. Can I ask one final question? This is going back to
15 the role of investigators, I just want to put to you this.
16 You'd accept that, in the course of conducting an
17 investigation new information may come to light that sits
18 outside the four corners of the allegations that an
19 investigator has been asked to look at. Do you give your
20 investigators any specific instructions about how they
21 should deal with new information?

22 A. Absolutely, and there's been a recent matter in regard
23 to child sexual abuse which probably provides a good
24 example of that. So, one student raising allegations of
25 inappropriate touching, hitting on the bottom with a ruler,
26 being - you know, touching the upper arm, et cetera. So,
27 the allegation's absolutely framed around that, but when we
28 went out and spoke - asked the investigator to speak to
29 other students who may have seen or known, they said, "He
30 does that to me too". The instruction the investigator
31 holds is to return those - return that evidence back to
32 Workplace Relations. I can, in the course of an
33 investigation, either amend or add new allegations and
34 that's what I did in this case.

35
36 Q. Is it your expectation that in that situation an
37 independent investigator would come to you and say
38 something along the lines of, "Look, I've got new
39 information, I think we need to expand the allegations",
40 and there's flexibility in your process to do so?

41 A. Yeah, so our advice is, "If you come across other
42 things that are of concern refer those back so we can make
43 a decision about how we deal with them". Now, in that case
44 it was to add to the allegations; in another case we
45 started a whole new process so there were two ED5s sitting
46 against a person.

1 Q. And that advice to investigators, is that in writing,
2 is that an engagement letter to the investigator?

3 A. I would need to take advice on that.

4

5 Q. Do you think, if it's not in writing, that it ought
6 be?

7 A. Absolutely, yes, it should be.

8

9 COMMISSIONER BROMFIELD: Ms Norton, can I follow up on
10 that a bit more?

11

12 MS NORTON: Yes, of course.

13

14 COMMISSIONER BROMFIELD: Q. Because that's one where the
15 ED5 is open and you're adding things to it.

16

17 Say, for example, there was an ED5 in relation to
18 student complaints, that a teacher had been brushing
19 against them, perhaps touching their breasts but in a way
20 that it had come across as an accident and, you know, there
21 hadn't been witnesses and that was not substantiated in the
22 ED5 process, so it was complete at ED5. If you then had
23 subsequent students making the same allegation about that
24 teacher, could you append the old ED5?

25 A. In terms of, could we go back and re-examine ED5?

26

27 Q. Or could you provide it as background information to
28 support an MO as such?

29 A. We would take that into account at the point of - take
30 that into - just, I'm pausing because I'm thinking of an
31 example. So, we've exhausted process 1 in relation to
32 activity 1, we can't go back and look at that. Certainly,
33 because we're not bound by the rules of evidence, you might
34 look at that first allegation in light of the second in
35 terms of, well, there's a tendency there.

36

37 There's another example whereby allegation 1 was
38 substantiated but overturned by the Industrial Commission;
39 allegation 2 some 10 years later came to light with me: I
40 certainly took those original allegations into account when
41 I got to sanction because there was a correlation in
42 behaviour.

43

44 COMMISSIONER BROMFIELD: That's really helpful, thank you
45 for that clarification.

46

47 MS NORTON: I have no further questions, Commissioners.

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PRESIDENT NEAVE: Thank you.

COMMISSIONER BROMFIELD: I don't have any additional questions, I've interrupted throughout, thank you.

MS NORTON: President Neave, I should say, because Mr Bullard is coming back to give evidence again tomorrow, I think the proposal is that he not be formally stood down overnight but he can, of course, speak to the state's lawyers overnight.

PRESIDENT NEAVE: Thank you. And, thank you very much, and we look forward to seeing you again tomorrow.

THE WITNESS: Thank you.

**AT 4.24PM THE COMMISSION WAS ADJOURNED TO
THURSDAY, 12 MAY 2022 AT 10.00AM**

	818:38, 819:15, 820:9, 820:17, 823:12, 847:5, 847:8	5	Aboriginal [2] - 866:10, 866:12	882:40, 888:38, 889:2, 889:20, 889:24, 893:46, 894:4, 895:35, 900:14, 900:24, 903:35, 905:12, 906:32, 907:4, 907:16, 910:23
'95 [1] - 886:47 '96 [1] - 887:1	2008 [3] - 821:2, 821:9, 823:15 2009 [3] - 846:15, 846:37, 847:10 2010 [3] - 853:12, 853:21, 862:16 2012 [1] - 853:21 2016 [2] - 887:16, 887:23 2017 [2] - 887:29, 895:20 2018 [2] - 887:30, 890:40 2019 [2] - 890:44, 897:3 2020 [1] - 893:38 2021 [1] - 893:40 2022 [3] - 799:34, 827:1, 912:19 21 [2] - 909:9, 910:2 22 [1] - 826:47 23 [3] - 896:21, 896:23, 896:27 24 [1] - 902:16 24/7 [2] - 858:39, 858:46 28 [1] - 882:7 29 [1] - 892:34	50 [1] - 884:45 50,000 [1] - 856:19 51 [1] - 884:45 57 [1] - 882:18 570 [1] - 852:35 58 [1] - 827:15	absence [2] - 843:42, 898:3 absent [1] - 902:1 absolute [2] - 813:35, 893:27 Absolutely [1] - 854:1 absolutely [6] - 806:38, 806:46, 808:47, 809:15, 809:38, 811:33, 814:35, 815:2, 815:5, 815:32, 816:19, 819:46, 822:3, 830:31, 830:41, 832:24, 834:16, 835:30, 845:4, 847:29, 849:30, 851:5, 857:7, 860:22, 861:26, 862:20, 864:15, 865:15, 866:8, 868:2, 869:15, 870:26, 871:16, 872:30, 873:38, 875:19, 877:23, 879:23, 881:5, 881:19, 882:23, 888:28, 888:43, 889:12, 889:26, 889:32, 889:43, 891:12, 891:43, 892:11, 893:17, 893:33, 901:42, 902:1, 903:20, 903:39, 903:42, 910:22, 910:27, 911:7 absolutely " [1] - 891:26 abuse [53] - 805:24, 805:25, 809:8, 813:12, 820:45, 824:7, 826:15, 829:20, 831:26, 832:19, 836:41, 838:19, 841:29, 843:13, 844:2, 844:10, 845:10, 845:15, 846:8, 849:26, 850:39, 850:47, 854:16, 856:22, 856:23, 858:41, 861:19, 861:20, 864:9, 864:34, 867:29, 868:27, 872:21, 873:28, 880:15, 880:19, 881:6,	ABUSE [1] - 799:12 abused [7] - 850:10, 853:12, 853:19, 855:31, 871:43, 888:37 abuser [2] - 865:18, 881:15 abusing [2] - 806:39, 839:17 academically [1] - 801:37 accept [6] - 830:36, 877:31, 889:29, 894:14, 910:16 acceptable [1] - 839:4 accepted [2] - 900:14, 907:3 access [6] - 812:46, 812:47, 855:38, 855:41, 879:27, 905:42 accident [1] - 911:20 accidentally [1] - 830:3 accordance [2] - 800:40, 870:35 accordingly [1] - 850:35 account [4] - 879:25, 879:29, 911:29, 911:40 accountabilities [1] - 899:42 accurate [1] - 845:42 accurately [1] - 847:41 accused [11] - 832:18, 836:44, 839:15, 839:16, 841:28, 844:46, 845:10, 845:15, 846:7, 850:47, 855:10 achieve [3] - 801:41, 836:21, 885:12 achieved [2] - 801:44, 885:10 achievement [1] - 825:44 achieving [1] - 801:43 acknowledge [5] - 841:28, 888:46, 891:23, 900:4, 900:5
1		6		
1 [6] - 861:27, 867:4, 873:42, 911:31, 911:32, 911:37 1.39pm [2] - 852:2, 852:4 10 [7] - 808:24, 816:5, 887:14, 891:15, 897:24, 911:39 10,500 [1] - 893:29 10.00AM [1] - 912:19 10.08am [1] - 799:34 10.10am [1] - 801:13 11 [1] - 799:34 11.36am [1] - 826:33 12 [5] - 825:6, 825:9, 825:12, 907:40, 912:19 12,000 [1] - 866:31 12,500 [1] - 856:4 120 [1] - 804:12 13 [3] - 882:4, 882:5 13.1 [2] - 896:38, 896:39 15 [4] - 804:29, 806:44, 808:12, 825:8 15-year-old [1] - 802:42 16 [6] - 804:28, 805:6, 805:8, 806:44, 810:16, 881:5 16-year-old [1] - 865:19 17 [2] - 845:11, 896:19 18 [5] - 852:35, 880:41, 880:42, 881:11, 907:40 19 [1] - 862:46	2008 [3] - 821:2, 821:9, 823:15 2009 [3] - 846:15, 846:37, 847:10 2010 [3] - 853:12, 853:21, 862:16 2012 [1] - 853:21 2016 [2] - 887:16, 887:23 2017 [2] - 887:29, 895:20 2018 [2] - 887:30, 890:40 2019 [2] - 890:44, 897:3 2020 [1] - 893:38 2021 [1] - 893:40 2022 [3] - 799:34, 827:1, 912:19 21 [2] - 909:9, 910:2 22 [1] - 826:47 23 [3] - 896:21, 896:23, 896:27 24 [1] - 902:16 24/7 [2] - 858:39, 858:46 28 [1] - 882:7 29 [1] - 892:34	6 [1] - 844:13 60,000 [1] - 856:20 6A [1] - 799:18		
		7		
		73 [1] - 827:15 75 [1] - 884:47 7A [1] - 799:18		
		8		
		8 [2] - 799:37, 825:9 83 [1] - 827:15 85(c)(i) [1] - 827:16		
		9		
		9 [2] - 825:9, 840:7 97 [1] - 867:42		
	3	A		
	3 [1] - 802:30 3.21pm [1] - 886:27 308 [1] - 888:10 31 [1] - 828:15 32 [8] - 826:44, 828:15, 829:22, 907:41, 908:1, 908:17, 909:10, 910:2 34 [1] - 832:26 35 [1] - 832:26 37 [2] - 834:32, 834:37 378 [1] - 843:40 38 [2] - 799:20, 824:41	ability [4] - 811:12, 844:46, 861:36, 906:47 able [35] - 800:45, 803:17, 803:44, 804:18, 809:23, 809:25, 811:29, 815:23, 817:36, 818:21, 821:13, 821:17, 824:9, 827:21, 829:43, 833:7, 862:30, 863:39, 867:17, 867:25, 871:13, 872:43, 882:8, 888:24, 888:29, 888:41, 888:43, 893:19, 897:40, 902:33, 903:23, 904:46, 905:10, 905:15, 907:33 abolished [1] - 825:8		
		4		
	4 [3] - 848:4, 848:7, 886:35 4.24PM [1] - 912:18 42 [1] - 827:15			
2				
2 [4] - 846:15, 846:37, 873:43, 911:39 20-odd [1] - 880:6 2000 [3] - 804:42, 819:12, 887:1 2002 [1] - 904:12 2004 [1] - 887:16 2005 [4] - 807:43, 821:5, 847:2, 901:8 2007 [8] - 813:28,				

<p>acquaintances [1] - 847:43</p> <p>acquit [3] - 876:34, 876:35, 892:18</p> <p>acquitted [5] - 874:45, 875:5, 875:9, 875:27, 876:9</p> <p>Act [8] - 814:31, 819:12, 824:47, 839:46, 843:41, 855:19, 858:15, 902:3</p> <p>act [2] - 850:16, 850:23</p> <p>acted [3] - 815:6, 823:6, 904:19</p> <p>acting [3] - 827:36, 827:37, 890:33</p> <p>Acting [3] - 887:28, 895:21, 895:24</p> <p>action [11] - 823:3, 839:11, 855:19, 859:9, 861:8, 861:31, 862:8, 878:36, 879:5, 909:27</p> <p>actions [3] - 850:4, 909:16, 909:18</p> <p>active [2] - 833:26, 833:47</p> <p>activities [3] - 801:36, 804:41, 829:34</p> <p>activity [13] - 804:1, 804:3, 804:19, 804:22, 804:25, 804:31, 804:36, 804:43, 804:46, 805:2, 805:20, 879:1, 911:32</p> <p>acts [1] - 902:47</p> <p>actual [1] - 889:20</p> <p>add [8] - 861:2, 871:31, 873:26, 875:36, 876:17, 884:23, 910:33, 910:44</p> <p>adding [2] - 820:47, 911:15</p> <p>addition [3] - 800:35, 886:8, 890:7</p> <p>additional [4] - 876:20, 876:30, 900:43, 912:4</p> <p>address [9] - 826:41, 826:44, 852:9, 852:31, 852:35, 886:32, 886:35, 900:45, 901:25</p> <p>addressed [1] - 846:33</p>	<p>adduced [1] - 877:2</p> <p>ADJOURNED [1] - 912:18</p> <p>ADJOURNMENT [3] - 826:26, 851:37, 885:29</p> <p>adjudication [2] - 882:5, 882:6</p> <p>adjudicator [1] - 869:2</p> <p>Adjudicator [1] - 855:18</p> <p>adjudicators [1] - 855:7</p> <p>adjust [1] - 878:10</p> <p>admin [1] - 810:28</p> <p>Administrative [2] - 799:19, 880:3</p> <p>admitted [3] - 814:46, 887:7, 887:9</p> <p>adult [4] - 810:18, 822:40, 908:42</p> <p>adult's [3] - 861:14, 867:45, 868:12</p> <p>adult-to-adult [1] - 908:42</p> <p>adults [5] - 861:31, 861:34, 861:37, 861:41, 868:5</p> <p>advance [1] - 885:32</p> <p>advice [16] - 856:44, 857:8, 857:16, 857:19, 857:34, 864:6, 867:2, 869:31, 879:27, 896:25, 905:41, 906:8, 909:24, 910:41, 911:1, 911:3</p> <p>Advice [2] - 854:5, 855:6</p> <p>advise [1] - 865:1</p> <p>advised [1] - 888:12</p> <p>advises [1] - 886:12</p> <p>advising [1] - 827:43</p> <p>advocacy [6] - 845:46, 846:2, 846:6, 848:17, 848:30, 900:16</p> <p>advocate [7] - 824:24, 824:25, 825:7, 825:43, 826:3, 846:3, 849:7</p> <p>Advocate [1] - 826:42</p> <p>advocating [4] - 806:47, 808:20, 813:1, 846:9</p> <p>AEU [4] - 826:43, 847:24, 847:30, 900:41</p> <p>affect [2] - 811:12, 823:27</p>	<p>affected [1] - 824:7</p> <p>affection [1] - 861:42</p> <p>affects [1] - 825:42</p> <p>affirmed [4] - 826:33, 852:2, 852:4, 886:27</p> <p>afford [2] - 841:31, 877:23</p> <p>afraid [1] - 844:40</p> <p>afternoon [2] - 877:28, 887:41</p> <p>afternoon's [1] - 885:32</p> <p>age [5] - 823:31, 825:9, 861:21, 861:35, 881:15</p> <p>agencies [4] - 822:44, 893:18, 893:23, 899:43</p> <p>Agency [1] - 904:13</p> <p>agency [10] - 891:17, 891:20, 891:38, 891:40, 892:14, 893:24, 893:28, 900:41, 907:23</p> <p>agile [1] - 897:33</p> <p>ago [2] - 827:41, 846:36</p> <p>agree [15] - 829:47, 830:8, 830:24, 830:47, 832:16, 832:19, 837:32, 845:2, 845:36, 845:45, 847:17, 848:16, 848:30, 892:25, 896:13</p> <p>agreed [2] - 819:5, 898:18</p> <p>ahead [4] - 814:19, 870:21, 874:17, 892:7</p> <p>air [1] - 828:29</p> <p>Alana [3] - 851:44, 852:11, 861:9</p> <p>ALANA [1] - 852:2</p> <p>alarming [1] - 805:28</p> <p>albeit [2] - 903:34, 906:6</p> <p>alcohol [2] - 805:37, 805:40</p> <p>alert [3] - 851:13, 893:17, 907:4</p> <p>aligned [1] - 897:19</p> <p>aligning [1] - 899:2</p> <p>allegation [50] - 828:28, 828:29, 828:31, 830:29, 831:12, 831:40, 840:20, 841:16, 842:5, 842:6, 854:34, 855:26,</p>	<p>855:30, 857:7, 858:16, 858:18, 858:19, 858:22, 858:42, 859:19, 859:23, 860:14, 863:4, 870:41, 871:3, 871:11, 872:4, 872:31, 872:32, 872:37, 872:38, 872:46, 873:1, 873:8, 873:41, 874:10, 874:23, 874:35, 876:20, 878:39, 878:41, 884:10, 884:39, 908:39, 908:40, 909:12, 911:23, 911:34, 911:37, 911:39</p> <p>allegation's [1] - 910:27</p> <p>allegations [50] - 806:21, 809:6, 828:21, 828:27, 828:32, 831:26, 831:44, 832:3, 832:5, 832:22, 838:26, 839:13, 844:9, 845:25, 845:27, 847:2, 853:16, 854:15, 854:31, 854:44, 855:3, 855:15, 856:23, 856:25, 856:31, 860:29, 867:29, 873:26, 873:40, 877:4, 877:5, 877:8, 882:8, 885:6, 889:47, 900:13, 900:24, 901:7, 901:24, 903:5, 903:31, 905:30, 906:32, 907:41, 910:18, 910:24, 910:33, 910:39, 910:44, 911:40</p> <p>alleged [2] - 841:25, 865:18</p> <p>alleging [1] - 831:13</p> <p>allocated [4] - 896:19, 896:31, 897:4, 905:28</p> <p>allow [4] - 837:41, 839:16, 844:7, 868:47</p> <p>allowed [5] - 808:42, 816:20, 819:28, 824:47, 825:24</p> <p>allowing [1] - 803:14</p>	<p>allows [1] - 872:27</p> <p>almost [4] - 871:32, 872:14, 884:46, 892:11</p> <p>AM [1] - 799:29</p> <p>amend [2] - 888:12, 910:33</p> <p>amicable [1] - 877:45</p> <p>anger [1] - 888:38</p> <p>angry [1] - 815:2</p> <p>ankle [1] - 805:42</p> <p>Anne [2] - 800:31, 804:4</p> <p>annexure [2] - 817:14, 896:6</p> <p>announced [1] - 892:22</p> <p>answer [9] - 817:29, 838:34, 842:20, 843:22, 844:16, 850:37, 851:20, 887:44, 891:25</p> <p>answered [2] - 807:23, 832:9</p> <p>answering [1] - 857:9</p> <p>anticipating [1] - 898:35</p> <p>anyway [1] - 835:8</p> <p>AO [1] - 799:27</p> <p>apart [3] - 824:28, 857:38</p> <p>apartment [1] - 805:32</p> <p>apologies [1] - 894:9</p> <p>apologise [6] - 831:47, 832:9, 846:20, 889:3, 898:10, 894:5</p> <p>apology [16] - 889:18, 889:24, 889:32, 889:42, 889:43, 889:47, 893:46, 894:10, 894:11, 894:20, 894:22, 894:24, 894:27, 894:30, 894:37, 894:41</p> <p>appeal [5] - 821:24, 821:31, 821:32, 847:12, 888:14</p> <p>appear [1] - 828:45</p> <p>appeared [1] - 880:1</p> <p>append [1] - 911:24</p> <p>applaud [1] - 826:19</p> <p>applauded [1] - 837:24</p> <p>application [2] - 833:37, 850:29</p> <p>applications [1] - 840:44</p> <p>applies [2] - 836:9,</p>
---	--	---	--	--

<p>856:18 apply [5] - 834:14, 836:3, 839:9, 839:37, 876:18 appoint [1] - 902:22 appointed [3] - 819:13, 871:4, 887:29 appointment [1] - 835:17 appreciate [10] - 828:41, 829:28, 830:10, 830:24, 842:36, 846:36, 892:4, 892:24, 903:6, 909:44 appreciating [1] - 841:35 appreciation [1] - 833:36 apprehensive [1] - 812:22 approach [16] - 828:46, 831:25, 837:18, 845:13, 845:45, 847:23, 847:25, 848:47, 851:19, 857:32, 864:38, 893:20, 897:19, 898:41, 899:18, 900:24 approaches [5] - 837:23, 863:24, 865:32, 897:29, 909:35 appropriate [44] - 823:29, 830:47, 831:9, 835:34, 836:13, 837:22, 837:34, 838:31, 841:41, 844:8, 846:6, 847:25, 847:34, 847:44, 848:12, 848:35, 848:39, 851:22, 856:41, 861:4, 861:13, 861:35, 864:12, 864:15, 864:23, 864:29, 864:42, 865:11, 866:11, 866:12, 866:20, 866:42, 866:45, 866:46, 869:25, 871:16, 871:21, 895:39, 903:1, 903:17, 906:18, 906:22, 907:10 appropriately [3] - 823:6, 845:26, 864:5</p>	<p>April [1] - 826:47 architecture [1] - 894:43 area [10] - 804:2, 813:20, 827:37, 829:31, 832:7, 836:32, 838:4, 854:16, 868:43, 882:31 areas [4] - 809:20, 840:41, 857:46, 892:36 arise [1] - 870:42 arises [2] - 873:41, 873:43 arising [3] - 840:42, 840:46, 843:14 arm [1] - 910:26 arm's [2] - 870:17, 907:33 arm's-length [2] - 870:17, 907:33 arms [1] - 854:11 arose [1] - 853:9 arranged [2] - 805:13, 842:45 arrest [4] - 853:16, 853:17, 854:35, 855:30 arrested [1] - 872:1 arrive [1] - 811:20 arrogant [1] - 813:24 arrogantly [1] - 901:20 arse [1] - 805:35 asbestos [1] - 827:34 asbestos-related [1] - 827:34 ascertained [1] - 831:18 aspects [4] - 804:33, 879:31, 892:27, 899:35 assault [3] - 825:5, 829:33, 829:37 assert [1] - 894:13 assigned [1] - 895:46 assist [12] - 801:20, 826:47, 840:40, 840:45, 845:24, 850:46, 852:16, 852:38, 889:28, 899:3, 906:27, 906:40 assistants [2] - 835:10, 836:4 assisted [1] - 841:1 assisting [2] - 831:24, 842:14 Assisting [2] - 801:5, 825:47</p>	<p>associated [2] - 805:1, 843:35 associations [1] - 867:37 assume [3] - 835:21, 840:15, 872:8 assumed [1] - 884:6 assumption [2] - 840:35, 850:2 assure [2] - 890:19, 890:20 assured [3] - 821:17, 821:36, 882:12 AT [2] - 912:18, 912:19 attempt [4] - 828:18, 828:38, 828:47, 880:25 attend [1] - 862:38 attendances [1] - 887:40 attendant [1] - 891:47 attended [1] - 842:37 attention [8] - 802:46, 804:26, 806:3, 838:39, 882:46, 900:42, 908:45, 910:10 attitude [1] - 890:10 attitudes [1] - 891:26 Attorney [3] - 894:46, 895:11, 899:36 attributed [1] - 882:24 attributes [2] - 892:18, 905:40 audit [1] - 909:10 August [3] - 807:42, 852:14, 893:38 Australia [10] - 851:46, 853:7, 862:18, 868:21, 868:39, 875:3, 880:24, 887:12, 906:31, 906:34 Australian [14] - 826:29, 827:19, 846:30, 848:24, 848:42, 852:13, 857:1, 863:35, 863:36, 880:16, 881:17, 899:17, 900:12, 900:23 author [1] - 847:47 authority [2] - 881:3, 881:5 automatically [1] - 830:15 autrefois [1] - 876:34 available [10] - 800:43, 801:2,</p>	<p>830:11, 844:6, 845:23, 886:18, 898:12, 902:40, 904:34, 906:17 avenues [1] - 882:25 avoid [1] - 885:37 await [1] - 897:26 Award [1] - 801:43 awards [1] - 801:42 Awards [1] - 801:44 aware [10] - 807:29, 829:27, 832:6, 832:35, 834:7, 840:29, 877:36, 888:34, 903:33, 906:11 awareness [2] - 882:24, 882:36</p> <p style="text-align: center;">B</p> <p>background [11] - 805:24, 855:7, 855:8, 863:34, 863:36, 863:38, 865:37, 876:22, 886:38, 911:27 bad [3] - 824:14, 828:35, 828:37 bail [1] - 874:25 balance [6] - 823:4, 875:13, 875:29, 876:29, 884:34, 907:9 Barrack [1] - 799:20 barrister [1] - 864:17 Barry [2] - 827:42, 827:45 base [1] - 890:24 based [8] - 820:43, 828:10, 832:39, 832:40, 833:32, 869:12, 871:21, 876:27 bashing [1] - 839:16 basis [3] - 832:42, 839:5, 898:37 battles [1] - 850:27 bawling [2] - 813:47, 815:32 bay [1] - 823:38 bear [1] - 905:25 bearing [3] - 834:18, 857:26, 897:38 beating [2] - 807:34, 813:44 became [3] - 803:46, 811:16, 853:17 become [4] - 828:35,</p>	<p>829:42, 842:13, 843:30 becomes [3] - 836:34, 845:20, 867:1 bed [4] - 805:29, 806:8, 806:11, 811:21 bedⁿ [1] - 806:9 bedroom [1] - 805:31 BEFORE [1] - 799:25 beforehand [1] - 872:10 beg [1] - 899:7 began [2] - 804:28, 886:42 begin [3] - 828:9, 886:31, 887:38 beginning [7] - 807:1, 831:12, 835:13, 879:10, 879:11, 891:23, 897:3 behalf [4] - 846:39, 877:42, 890:47, 900:16 behaving [1] - 861:15 behaviour [20] - 829:4, 829:18, 829:20, 829:29, 835:31, 836:14, 837:30, 837:31, 837:32, 839:2, 859:31, 859:36, 860:30, 862:34, 877:7, 879:2, 879:5, 881:9, 882:26, 911:42 behaviours [9] - 828:18, 828:42, 829:35, 831:45, 832:4, 833:2, 837:42, 838:27, 859:3 behind [2] - 803:29, 883:38 belief [2] - 827:6, 852:26 belong [1] - 908:41 benefit [4] - 842:1, 845:13, 887:38, 899:5 Benjamin [2] - 799:29, 839:24 BENJAMIN [9] - 826:7, 839:27, 840:39, 841:7, 851:30, 884:20, 885:24, 905:25, 906:14 Bennett [6] - 800:1, 851:39, 859:2,</p>
--	---	---	---	---

<p>859:11, 887:42, 891:3 BENNETT [91] - 800:3, 801:9, 801:15, 801:17, 809:32, 810:33, 818:37, 823:26, 825:46, 839:24, 851:41, 852:6, 852:8, 852:16, 852:21, 852:25, 852:30, 852:38, 852:43, 852:47, 853:5, 853:40, 853:45, 854:3, 854:10, 855:22, 855:44, 856:11, 856:33, 856:47, 857:22, 858:2, 858:7, 858:12, 858:27, 859:13, 859:26, 860:5, 860:19, 860:34, 860:47, 861:17, 861:45, 862:14, 863:19, 863:46, 864:21, 864:36, 865:10, 865:27, 865:31, 867:42, 868:20, 868:34, 869:6, 869:12, 869:17, 869:34, 871:2, 871:31, 871:38, 872:8, 872:14, 872:26, 872:42, 873:14, 873:36, 874:4, 874:20, 874:29, 874:45, 875:3, 875:16, 875:21, 876:8, 876:24, 876:33, 876:39, 877:16, 877:28, 878:4, 878:23, 880:23, 880:44, 881:13, 881:21, 881:29, 881:39, 882:16, 883:8, 883:21 best [15] - 801:27, 801:34, 801:37, 823:34, 824:28, 826:21, 827:6, 835:8, 837:19, 845:33, 849:32, 852:25, 852:47, 853:15, 865:38 betrayed [2] - 819:23, 820:3 better [8] - 834:9, 848:46, 853:34, 867:17, 871:8,</p>	<p>874:15, 884:40, 896:25 between [17] - 807:25, 819:6, 822:44, 828:44, 829:22, 838:14, 853:21, 857:19, 858:34, 861:35, 865:3, 878:15, 879:1, 879:24, 880:27, 883:5, 886:47 beyond [4] - 848:30, 867:38, 873:21, 889:20 Bible [1] - 862:44 big [2] - 835:42, 835:46 bigger [2] - 824:20, 856:27 Bill [5] - 897:26, 897:32, 897:42, 898:17, 898:19 biosecurity [1] - 837:33 bit [27] - 805:5, 805:17, 809:9, 821:43, 836:15, 836:39, 836:40, 841:45, 842:35, 842:39, 843:6, 843:30, 848:5, 850:14, 857:8, 857:18, 858:27, 866:26, 867:1, 867:11, 867:16, 867:21, 874:43, 879:12, 904:2, 908:37, 911:10 blame [1] - 811:33 blaming [1] - 811:28 blown [1] - 909:13 blue [1] - 896:3 blunt [2] - 836:15, 837:4 blurred [1] - 850:14 board [1] - 861:40 Board [11] - 820:13, 820:16, 820:37, 821:9, 839:1, 840:43, 846:33, 847:13, 847:38, 848:26, 848:43 bodies [5] - 867:37, 870:14, 874:38, 880:4, 880:7 body [9] - 803:30, 824:31, 859:42, 866:36, 870:32, 879:27, 880:35, 907:8</p>	<p>bold [1] - 819:3 born [1] - 819:40 borrowing [1] - 899:7 bottom [10] - 828:30, 830:2, 830:3, 830:7, 830:13, 830:20, 830:21, 830:28, 831:14, 910:25 bound [1] - 911:33 boundaries [3] - 861:6, 861:9, 883:34 boundary [10] - 829:19, 829:23, 833:2, 835:23, 836:14, 873:19, 875:11, 883:39, 883:40, 883:42 Bourke [1] - 852:35 box [2] - 833:34, 834:30 boys [1] - 815:28 Brad [1] - 886:5 brave [2] - 882:44, 889:9 bravery [1] - 826:8 breach [6] - 807:29, 825:32, 828:22, 842:17, 859:8, 904:6 breached [4] - 814:31, 819:11, 823:5, 900:39 breaches [14] - 829:20, 829:23, 833:2, 835:23, 836:14, 873:19, 875:11, 875:12, 883:39, 883:40, 883:42, 907:16, 907:32 breaching [3] - 817:32, 836:28, 853:25 breadth [1] - 864:8 breaks [3] - 811:40, 811:41 breasts [1] - 911:19 bridge [1] - 824:19 brief [1] - 846:47 briefed [1] - 889:39 briefing [2] - 872:33, 872:35 briefly [4] - 800:21, 808:11, 850:22, 854:10 Briginshaw [4] - 884:21, 884:33, 884:47, 885:21 bring [6] - 840:27, 854:14, 854:16, 854:21, 879:40,</p>	<p>893:22 bringing [3] - 823:40, 836:27, 893:18 brings [2] - 860:27, 877:6 British [1] - 863:36 broad [10] - 837:6, 837:27, 839:38, 840:11, 845:12, 845:36, 850:40, 864:9, 892:13, 892:25 broader [5] - 830:39, 832:21, 856:19, 860:28, 864:37 broadly [4] - 899:35, 906:26, 907:31, 908:35 broke [1] - 814:46 broken [1] - 851:21 Bromfield [1] - 799:28 BROMFIELD [25] - 809:11, 823:18, 826:2, 851:27, 859:1, 859:11, 875:36, 879:8, 879:36, 880:13, 880:21, 883:25, 883:36, 883:44, 884:1, 884:13, 884:18, 898:46, 899:22, 904:29, 908:14, 911:9, 911:14, 911:44, 912:4 brought [5] - 838:39, 844:30, 855:12, 876:44, 908:45 Bruce [1] - 853:35 brush [2] - 803:30, 815:21 brushing [1] - 911:18 bubbly [1] - 801:47 build [3] - 813:11, 872:24, 892:35 building [1] - 857:25 builds [1] - 873:33 built [1] - 865:20 bulk [1] - 867:6 BULLARD [1] - 886:27 Bullard [14] - 842:16, 843:37, 886:24, 886:31, 886:34, 887:40, 887:47, 888:2, 888:34, 890:30, 895:43, 906:16, 907:37, 912:8 bunch [1] - 878:30 bus [2] - 813:21</p>	<p>business [5] - 809:16, 809:17, 831:22, 893:5, 893:28 BY [4] - 801:15, 826:35, 852:6, 886:29</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>Cabinet [3] - 887:13, 887:15, 899:28 calm [1] - 823:38 camera [2] - 883:33, 884:5 CAMHS [1] - 841:11 candour [1] - 892:4 canteen [1] - 891:47 capabilities [2] - 892:17, 906:26 capacity [6] - 809:26, 844:11, 844:19, 857:24, 890:43, 909:5 capture [1] - 860:29 captured [1] - 837:30 car [3] - 804:8, 807:22, 823:46 card [1] - 838:41 Care [2] - 854:19, 856:8 care [8] - 822:1, 823:33, 829:3, 838:5, 838:7, 839:6, 853:13, 889:16 career [9] - 824:6, 831:36, 835:13, 835:25, 836:26, 870:43, 879:4, 886:42, 890:6 careful [2] - 865:24, 902:41 carefully [6] - 831:31, 836:44, 838:35, 865:35, 867:28, 884:23 caregivers [1] - 824:26 carer [1] - 866:23 carry [5] - 829:24, 862:41, 862:43, 871:7 carrying [2] - 873:17, 906:22 Carter [1] - 890:8 case [28] - 808:43, 823:6, 825:18, 825:34, 827:18, 830:8, 835:12, 841:4, 841:14,</p>
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<p>841:20, 844:16, 854:36, 854:43, 855:27, 855:31, 862:15, 871:19, 881:46, 887:43, 890:21, 897:34, 900:27, 902:22, 907:39, 909:36, 910:34, 910:43, 910:44</p> <p>Case [1] - 854:29</p> <p>cases [5] - 837:27, 844:30, 867:28, 867:31, 889:24</p> <p>cash [1] - 904:15</p> <p>casual [1] - 908:5</p> <p>catch [1] - 839:2</p> <p>categories [2] - 864:37, 908:1</p> <p>category [1] - 860:27</p> <p>cater [1] - 860:12</p> <p>Catholic [8] - 827:38, 857:13, 857:17, 869:38, 870:8, 870:9, 870:10, 875:44</p> <p>caught [2] - 860:19, 860:22</p> <p>caused [1] - 894:12</p> <p>causes [3] - 843:44, 859:31, 859:36</p> <p>CD5 [2] - 909:20, 909:26</p> <p>CE [1] - 872:33</p> <p>cent [3] - 884:45, 884:47</p> <p>central [2] - 832:23, 870:8</p> <p>centralised [2] - 871:38, 907:30</p> <p>centre [2] - 821:45, 832:21</p> <p>centred [1] - 841:12</p> <p>centric [2] - 893:19, 903:40</p> <p>certain [15] - 800:16, 804:33, 809:20, 812:27, 819:37, 824:7, 850:19, 850:27, 858:17, 859:34, 859:41, 873:11, 879:30, 888:22, 903:15</p> <p>certainly [46] - 802:39, 816:22, 829:45, 830:8, 831:14, 833:9, 835:15, 837:21, 838:3, 843:12, 843:26, 847:43, 848:46,</p>	<p>850:27, 850:31, 851:12, 852:11, 853:12, 853:22, 854:13, 856:40, 857:46, 863:30, 870:20, 870:33, 871:33, 874:22, 875:29, 877:4, 878:6, 878:7, 879:46, 880:40, 897:12, 898:4, 898:10, 899:41, 900:27, 900:28, 903:18, 904:30, 905:32, 905:40, 906:8, 911:32, 911:40</p> <p>certainty [1] - 882:35</p> <p>Certificate [1] - 864:13</p> <p>cetera [10] - 836:25, 836:30, 837:20, 838:3, 844:25, 866:33, 882:8, 888:5, 910:26</p> <p>chain [2] - 822:42, 822:43</p> <p>chair [1] - 803:28</p> <p>challenge [2] - 824:15, 842:44</p> <p>challenges [2] - 824:12, 840:45</p> <p>challenging [4] - 862:3, 866:41, 867:1, 883:16</p> <p>chance [2] - 804:24, 833:14</p> <p>change [19] - 824:38, 831:25, 835:46, 837:21, 842:5, 861:47, 862:1, 862:7, 863:1, 877:32, 879:30, 879:34, 880:36, 884:33, 888:24, 888:32, 892:10, 897:33</p> <p>changed [5] - 824:44, 835:33, 840:9, 847:41, 863:15</p> <p>changes [5] - 845:32, 847:36, 879:10, 892:22, 892:25</p> <p>changing [1] - 862:3</p> <p>character [6] - 821:37, 821:41, 847:45, 848:31, 848:33, 848:36</p> <p>charge [2] - 892:15, 892:16</p> <p>charged [3] - 840:45,</p>	<p>841:4, 876:9</p> <p>charges [3] - 838:1, 838:2, 841:2</p> <p>charismatic [1] - 802:16</p> <p>chat [1] - 803:26</p> <p>chatting [1] - 842:40</p> <p>Check [3] - 873:6, 876:4, 878:43</p> <p>check [9] - 812:42, 847:45, 859:1, 865:11, 866:25, 872:37, 899:43, 900:32, 907:8</p> <p>checked [5] - 808:31, 808:32, 862:30, 865:21, 865:22</p> <p>checking [1] - 903:19</p> <p>Checks [1] - 838:47</p> <p>cheeky [1] - 851:10</p> <p>cheese [1] - 817:37</p> <p>chest [1] - 807:34</p> <p>Chief [2] - 853:30, 855:14</p> <p>chief [1] - 881:43</p> <p>Child [17] - 856:13, 856:18, 856:20, 856:27, 859:46, 879:15, 879:20, 879:22, 879:31, 890:36, 891:28, 893:31, 896:42, 897:2, 897:10, 898:9, 899:30</p> <p>CHILD [1] - 799:12</p> <p>child [99] - 801:34, 809:26, 824:20, 824:23, 829:13, 829:20, 829:33, 829:37, 830:20, 831:26, 831:33, 832:18, 836:41, 838:31, 840:16, 840:17, 840:18, 841:12, 841:15, 841:29, 841:39, 843:13, 844:10, 845:10, 845:15, 846:7, 850:39, 850:47, 853:12, 853:18, 854:35, 855:28, 855:31, 855:38, 856:22, 856:23, 856:34, 856:39, 858:41, 859:45, 859:46, 860:9, 860:13, 860:31, 860:44, 861:43, 864:33, 865:2, 865:4, 865:5,</p>	<p>865:11, 865:35, 865:36, 865:38, 865:42, 865:43, 866:2, 866:8, 866:10, 866:13, 866:18, 866:27, 867:8, 867:17, 868:6, 868:13, 868:26, 871:12, 871:17, 871:44, 873:28, 873:29, 875:33, 876:11, 876:44, 877:6, 878:21, 878:35, 880:15, 880:18, 881:4, 883:32, 883:34, 884:25, 885:8, 890:32, 891:9, 891:20, 891:39, 893:19, 895:34, 900:13, 900:24, 903:35, 905:12, 906:32, 907:3, 907:16, 910:23</p> <p>child's [4] - 831:14, 841:22, 867:44, 868:11</p> <p>child-centred [1] - 841:12</p> <p>child-centric [1] - 893:19</p> <p>childhood [2] - 856:7, 885:15</p> <p>Children [7] - 851:43, 852:34, 873:6, 876:4, 878:42, 892:31, 898:6</p> <p>children [73] - 823:29, 823:31, 824:22, 824:24, 824:29, 824:30, 826:10, 826:20, 832:6, 834:43, 837:13, 838:28, 838:29, 839:10, 840:32, 842:28, 842:42, 843:9, 849:45, 854:45, 855:23, 856:37, 856:42, 858:36, 859:40, 860:39, 861:5, 861:12, 861:21, 861:28, 861:34, 861:42, 862:33, 864:27, 864:28, 864:33, 864:39, 864:45, 865:15, 865:16, 866:1, 868:4, 868:7, 868:8,</p>	<p>868:29, 870:22, 870:28, 870:36, 871:14, 871:27, 871:43, 877:18, 878:12, 879:1, 879:42, 882:27, 882:37, 882:39, 884:7, 889:4, 889:16, 890:34, 891:2, 891:41, 892:36, 892:47, 893:33, 900:37, 903:41, 905:47, 906:8, 906:10</p> <p>children's [5] - 826:3, 832:20, 832:23, 836:43, 878:24</p> <p>choice [3] - 810:35, 810:39, 811:46</p> <p>choose [2] - 810:40, 871:29</p> <p>chose [1] - 865:19</p> <p>Christmas [1] - 822:27</p> <p>circulating [1] - 809:32</p> <p>circumstance [2] - 876:47, 900:15</p> <p>circumstances [14] - 831:18, 836:37, 837:37, 839:12, 845:14, 846:7, 850:19, 850:23, 858:17, 871:15, 871:16, 873:9, 873:11, 900:13</p> <p>Citizen [1] - 801:44</p> <p>Civil [2] - 799:19, 880:3</p> <p>civil [2] - 884:44, 887:44</p> <p>claim [1] - 903:39</p> <p>claims [1] - 827:43</p> <p>clarification [5] - 827:4, 828:13, 829:17, 907:47, 911:45</p> <p>clarified [1] - 839:22</p> <p>clarify [2] - 818:27, 832:13</p> <p>clarifying [1] - 835:1</p> <p>class [3] - 804:38, 829:10, 871:45</p> <p>classroom [2] - 858:44, 884:7</p> <p>clause [1] - 825:5</p> <p>clear [19] - 802:29, 802:34, 824:30, 824:32, 828:21, 828:33, 829:27, 835:41, 848:41,</p>
--	--	---	---	---

<p>851:20, 859:6, 863:12, 863:13, 868:11, 876:13, 879:32, 880:40, 890:14, 894:15 cleared [3] - 841:4, 847:3, 894:25 clearly [10] - 807:23, 836:43, 837:17, 847:46, 861:6, 863:32, 871:41, 872:4, 889:30, 889:31 clicked [1] - 812:24 clients [1] - 845:47 close [6] - 802:8, 809:7, 816:34, 818:38, 825:11, 866:24 close-out [1] - 818:38 closer [1] - 892:35 closing [2] - 813:31, 866:19 closure [1] - 825:13 club [5] - 804:38, 804:40, 840:17, 859:15, 859:21 coaching [1] - 858:42 COAG [4] - 890:44, 897:2, 898:18, 898:19 code [2] - 836:28, 837:41 Code [24] - 814:31, 817:32, 819:12, 823:5, 825:32, 828:16, 836:7, 837:3, 837:9, 837:11, 837:30, 838:1, 839:46, 840:41, 840:42, 842:17, 861:5, 880:36, 900:30, 900:39, 901:29, 907:15, 907:32, 909:20 cognisant [1] - 902:31 coherent [1] - 898:29 collated [1] - 908:29 colleague [2] - 863:14, 872:3 colleagues [2] - 881:30, 884:40 collected [1] - 843:19 college [2] - 813:42, 815:42 Collins [6] - 888:41, 889:34, 890:3, 890:8, 890:23, 892:40</p>	<p>Collins' [1] - 893:16 colloquially [1] - 884:35 combative [1] - 857:32 combination [1] - 804:37 comfort [1] - 885:6 comfortable [5] - 833:18, 840:31, 865:6, 865:12, 867:18 coming [14] - 801:17, 806:4, 808:35, 819:25, 824:21, 831:38, 831:39, 837:42, 839:18, 840:1, 857:27, 883:1, 908:31, 912:8 commas [1] - 847:3 commenced [2] - 887:28, 897:5 commencing [1] - 907:12 commend [1] - 824:42 commensurate [1] - 903:28 comment [3] - 880:37, 899:32, 900:22 comments [6] - 836:12, 841:36, 845:31, 880:45, 893:16, 903:36 commission [1] - 894:46 COMMISSION [2] - 799:11, 912:18 Commission [54] - 800:10, 800:14, 800:29, 801:21, 824:36, 826:18, 826:38, 826:47, 838:44, 842:36, 851:43, 852:17, 852:34, 852:39, 853:36, 856:43, 857:8, 858:22, 867:31, 873:42, 878:16, 882:34, 883:5, 885:41, 886:3, 886:11, 887:33, 888:3, 888:15, 888:26, 888:35, 889:13, 890:5, 890:7, 890:13, 890:16, 894:29, 895:17, 895:18, 895:28, 895:30, 895:33, 895:39, 895:45,</p>	<p>896:44, 897:22, 897:39, 898:38, 899:34, 900:10, 905:16, 905:23, 907:7, 911:38 Commission's [3] - 886:16, 894:8, 908:21 commissioned [1] - 893:38 COMMISSIONER [34] - 809:11, 823:18, 826:2, 826:7, 839:27, 840:39, 841:7, 851:27, 851:30, 859:1, 859:11, 875:36, 879:8, 879:36, 880:13, 880:21, 883:25, 883:36, 883:44, 884:1, 884:13, 884:18, 884:20, 885:24, 898:46, 899:22, 904:29, 905:25, 906:14, 908:14, 911:9, 911:14, 911:44, 912:4 Commissioner [8] - 799:27, 799:28, 799:29, 839:24, 839:45, 842:45, 875:45, 904:18 Commissioner's [1] - 904:11 Commissioners [43] - 800:3, 800:6, 801:9, 801:20, 803:12, 803:45, 805:5, 805:17, 811:35, 814:10, 817:15, 821:28, 822:13, 822:38, 824:42, 824:43, 825:47, 826:28, 827:29, 829:44, 834:38, 841:10, 842:2, 845:12, 846:37, 847:28, 851:21, 851:24, 851:41, 852:9, 852:30, 853:10, 862:18, 863:19, 883:21, 885:31, 885:35, 887:38, 905:10, 907:44, 911:47 commit [1] - 804:2 commitment [2] - 891:9, 891:13 commits [1] - 839:38</p>	<p>committed [6] - 815:9, 858:40, 889:12, 891:1, 891:20 committee [2] - 801:35, 858:43 Committee [1] - 896:33 common [2] - 835:12, 881:23 communicated [1] - 817:30 communicating [1] - 891:35 communication [2] - 817:6, 820:29 communications [1] - 890:14 communities [1] - 885:47 Communities [1] - 892:27 community [31] - 801:43, 805:20, 809:12, 809:14, 809:17, 809:20, 819:33, 819:35, 819:37, 819:40, 826:10, 853:15, 853:18, 853:23, 855:23, 856:35, 856:42, 862:31, 862:32, 862:47, 871:45, 873:28, 875:7, 881:42, 882:11, 883:5, 900:47, 901:16, 906:26, 907:26 company [6] - 905:1, 905:3, 905:31, 905:32, 905:33, 906:4 compared [1] - 867:45 comparison [1] - 904:9 compensation [2] - 827:34, 827:44 compile [1] - 855:4 complain [2] - 882:25, 882:38 complaining [1] - 830:27 complaint [12] - 807:42, 808:7, 820:5, 820:8, 820:25, 873:22, 876:13, 876:16, 876:19, 876:25, 876:26, 902:4 complaints [3] - 831:43, 901:7,</p>	<p>911:18 complete [2] - 902:6, 911:22 completed [4] - 849:46, 897:5, 902:18, 903:3 completely [10] - 806:32, 810:44, 810:46, 811:2, 811:33, 822:42, 825:12, 826:18, 838:28, 879:21 complex [2] - 867:29, 905:38 complexion [1] - 830:40 complexity [2] - 895:13, 898:24 compliance [2] - 833:33, 834:29 compliant [2] - 819:45, 879:21 complicated [2] - 844:47, 891:17 comply [5] - 807:16, 856:12, 856:13, 856:26, 856:27 component [1] - 904:3 composition [1] - 811:45 compound [1] - 843:10 compounded [1] - 901:32 comprehend [1] - 809:26 comprehensive [1] - 847:9 compromised [1] - 907:25 computer [2] - 803:16, 803:19 concentration [1] - 815:23 concepts [6] - 832:32, 837:27, 837:28, 837:29, 878:13, 885:12 conceptualise [1] - 908:4 concern [25] - 808:19, 829:4, 831:35, 833:32, 834:37, 834:39, 835:19, 839:5, 841:23, 841:40, 842:31, 842:34, 848:32, 865:47, 872:19, 882:19, 890:25, 893:16, 897:45,</p>
---	---	--	--	--

<p>897:46, 898:23, 909:11, 909:13, 910:4, 910:42</p> <p>concerned [13] - 806:14, 831:26, 833:11, 847:47, 857:42, 872:18, 872:22, 872:32, 874:36, 875:14, 890:17, 901:2, 909:19</p> <p>concerns [32] - 828:10, 828:22, 832:20, 833:9, 834:34, 834:42, 836:2, 837:1, 838:13, 838:45, 838:46, 839:3, 841:46, 843:16, 843:33, 843:34, 847:37, 853:22, 861:28, 862:11, 868:26, 870:21, 870:42, 877:42, 883:1, 890:5, 893:14, 893:15, 897:43, 901:25, 902:8</p> <p>concluded [4] - 844:17, 847:4, 847:12, 907:13</p> <p>conclusion [2] - 844:30, 845:3</p> <p>conditions [2] - 874:15, 874:25</p> <p>conduct [43] - 829:24, 830:37, 830:39, 831:1, 831:8, 831:40, 838:12, 838:26, 838:32, 840:1, 842:47, 843:44, 849:26, 850:33, 853:35, 858:12, 858:15, 858:17, 858:35, 858:44, 859:14, 859:19, 859:27, 859:30, 859:33, 859:34, 860:34, 861:4, 863:40, 863:43, 864:8, 866:42, 867:26, 867:31, 869:42, 869:46, 874:10, 875:24, 877:11, 881:10, 882:33, 902:23</p> <p>Conduct [45] - 814:32, 817:32, 819:12, 823:5, 825:33,</p>	<p>828:16, 836:7, 837:3, 837:10, 837:11, 837:30, 838:1, 840:41, 840:43, 842:18, 856:5, 859:8, 859:18, 859:22, 859:29, 860:7, 861:6, 873:40, 874:8, 874:14, 874:40, 875:28, 875:31, 876:42, 878:9, 878:40, 879:15, 879:22, 879:31, 880:36, 881:7, 900:30, 900:40, 901:29, 906:33, 906:47, 907:13, 907:15, 907:32, 909:21</p> <p>conducted [6] - 843:9, 847:8, 864:5, 870:1, 878:18, 904:40</p> <p>conducting [6] - 837:23, 864:17, 873:46, 905:1, 907:2, 910:16</p> <p>confidence [3] - 882:44, 883:19, 891:27</p> <p>confident [9] - 840:34, 848:24, 848:25, 891:8, 891:25, 892:6, 903:15, 910:3, 910:6</p> <p>confidential [2] - 800:27, 817:14</p> <p>confidently [1] - 829:43</p> <p>confirmed [1] - 801:9</p> <p>conflict [2] - 862:24</p> <p>confront [2] - 813:37, 879:44</p> <p>confronting [1] - 889:7</p> <p>confused [4] - 806:2, 807:1, 807:38, 861:18</p> <p>confusion [1] - 862:21</p> <p>connect [1] - 866:22</p> <p>connected [5] - 804:31, 809:5, 838:15, 838:21, 868:42</p> <p>connection [4] - 822:44, 859:22, 859:27, 866:13</p> <p>connotation [1] - 829:38</p> <p>conscious [3] -</p>	<p>850:14, 879:41, 901:3</p> <p>consent [3] - 805:39, 825:16</p> <p>consequence [1] - 831:32</p> <p>consequences [4] - 829:12, 829:14, 832:18, 837:12</p> <p>consider [4] - 814:38, 840:21, 899:2, 905:29</p> <p>consideration [5] - 811:45, 860:6, 864:41, 884:26, 905:47</p> <p>considerations [3] - 800:19, 885:45, 885:47</p> <p>considered [3] - 839:41, 847:34, 881:6</p> <p>consisted [1] - 814:47</p> <p>consistent [3] - 833:3, 847:24, 898:29</p> <p>constantly [1] - 845:4</p> <p>consultation [1] - 901:39</p> <p>contact [7] - 807:13, 807:33, 845:22, 856:43, 857:7, 861:36, 861:38</p> <p>contacted [3] - 834:40, 850:43, 890:19</p> <p>contacts [1] - 854:37</p> <p>contained [1] - 908:36</p> <p>contemplated [1] - 893:3</p> <p>contemporary [1] - 833:1</p> <p>content [2] - 834:36, 878:24</p> <p>contents [2] - 827:5, 852:47</p> <p>context [19] - 809:22, 830:17, 830:24, 830:25, 830:33, 837:29, 839:8, 840:16, 841:42, 847:14, 851:18, 869:17, 869:34, 869:35, 885:40, 891:45, 895:40, 899:1, 899:4</p> <p>continue [6] - 804:40, 812:33, 839:42, 875:38, 875:40, 876:8</p> <p>continues [1] - 876:1</p>	<p>continuing [1] - 840:32</p> <p>contract [1] - 866:34</p> <p>contribute [1] - 883:9</p> <p>contributed [1] - 879:19</p> <p>contributing [1] - 867:44</p> <p>contrition [1] - 848:12</p> <p>control [1] - 902:12</p> <p>convened [1] - 909:37</p> <p>conversation [4] - 843:25, 867:10, 867:11, 909:19</p> <p>conversations [1] - 833:32</p> <p>converted [1] - 876:26</p> <p>convicted [2] - 839:39</p> <p>conviction [2] - 840:4, 840:22</p> <p>convictions [2] - 832:7, 840:6</p> <p>convinced [1] - 804:3</p> <p>cool [5] - 802:17, 802:20, 802:44, 802:45, 842:22</p> <p>coordinated [1] - 893:20</p> <p>coordination [1] - 881:44</p> <p>coping [2] - 813:18, 901:12</p> <p>copy [6] - 800:47, 801:2, 828:6, 846:16, 886:17, 886:19</p> <p>core [5] - 831:22, 877:16, 878:25, 893:5</p> <p>corner [2] - 810:46, 811:2</p> <p>corners [1] - 910:18</p> <p>correct [33] - 801:22, 801:27, 807:47, 808:5, 818:33, 818:45, 822:11, 827:5, 852:25, 852:41, 852:47, 853:43, 854:8, 856:4, 858:5, 858:15, 871:34, 871:36, 872:12, 880:23, 886:39, 887:14, 887:20, 888:6, 888:13, 892:28, 892:37, 895:5, 895:21, 897:11, 897:12, 897:16, 907:42</p> <p>correcting [1] - 889:13</p>	<p>correction [1] - 888:8</p> <p>correctly [2] - 825:33, 854:28</p> <p>correlation [1] - 911:41</p> <p>corresponding [1] - 833:36</p> <p>corridor [1] - 828:45</p> <p>cost [1] - 836:22</p> <p>cost-effective [1] - 836:22</p> <p>council [2] - 853:23, 862:24</p> <p>Counsel [2] - 801:5, 825:47</p> <p>counsel [1] - 885:1</p> <p>counselling [3] - 808:19, 808:30, 855:39</p> <p>counted [1] - 896:18</p> <p>counting [2] - 896:19, 896:25</p> <p>country [1] - 866:36</p> <p>couple [11] - 808:22, 810:8, 811:41, 815:22, 834:23, 849:37, 861:27, 873:3, 876:46, 877:5, 901:1</p> <p>courage [6] - 813:11, 813:39, 816:30, 817:41, 825:3, 826:19</p> <p>courageous [2] - 888:35, 889:8</p> <p>course [20] - 800:43, 831:20, 834:18, 835:43, 837:31, 837:39, 841:29, 849:13, 862:28, 873:17, 873:20, 877:11, 897:31, 903:4, 904:26, 910:16, 910:32, 911:12, 912:10</p> <p>courses [1] - 835:9</p> <p>court [1] - 875:30</p> <p>Court [2] - 887:9, 887:10</p> <p>courts [1] - 875:26</p> <p>cover [4] - 807:35, 838:1, 882:12, 882:14</p> <p>covered [3] - 837:46, 838:3, 864:8</p> <p>covering [1] - 864:37</p> <p>covers [2] - 840:12, 859:18</p> <p>CPSU [1] - 827:26</p> <p>create [2] - 829:1,</p>
---	---	---	--	---

<p>879:23 created [3] - 803:23, 806:30, 820:43 creating [1] - 866:14 credentialed [1] - 905:36 crime [3] - 839:38, 839:39, 839:40 criminal [16] - 838:1, 838:2, 840:4, 840:5, 840:22, 840:46, 841:2, 849:26, 860:26, 860:31, 873:44, 874:10, 875:17, 875:26, 876:33, 882:2 criterias [1] - 821:38 critical [3] - 854:26, 854:44, 864:34 criticism [1] - 844:42 cross [2] - 813:23, 873:2 crosses [1] - 861:9 crossing [1] - 848:16 cry [1] - 811:21 crying [2] - 814:46, 823:39 cultural [4] - 862:17, 866:13, 877:31, 891:16 culturally [3] - 865:24, 865:25, 865:27 culture [14] - 833:28, 833:33, 834:25, 834:29, 862:1, 862:3, 862:7, 862:12, 863:1, 863:15, 868:28, 872:34, 895:37 Culture [1] - 893:21 curiosity [1] - 909:13 curious [1] - 908:37 current [9] - 823:10, 824:6, 836:13, 844:35, 848:9, 890:4, 895:44, 896:13, 904:5 curriculum [1] - 855:40 cursory [1] - 908:47 cut [2] - 801:10, 842:21</p>	<p>dangers [1] - 832:31 database [2] - 908:23, 909:4 date [1] - 822:16 dated [2] - 826:47, 846:15 daughters [2] - 823:32, 824:19 days [5] - 801:32, 817:10, 824:8, 882:7, 897:13 deaf [2] - 814:36, 823:2 deal [10] - 831:20, 832:41, 832:42, 838:8, 841:38, 844:8, 844:19, 851:8, 910:21, 910:43 dealing [14] - 828:10, 829:8, 836:24, 837:35, 839:10, 841:5, 849:25, 854:18, 854:19, 854:20, 866:30, 900:24, 903:34, 906:19 dealt [6] - 832:5, 837:46, 846:10, 860:1, 867:40, 883:18 debate [1] - 863:17 Debelle [9] - 853:9, 853:35, 854:13, 854:32, 862:16, 863:31, 863:32, 877:37, 881:45 Debelle's [1] - 862:36 decade [1] - 881:35 December [2] - 887:29, 895:20 decide [1] - 879:5 decided [2] - 800:10, 898:11 decides [1] - 844:15 deciding [1] - 903:46 decision [15] - 869:12, 870:35, 883:13, 884:36, 885:22, 895:8, 895:10, 895:14, 897:25, 898:2, 898:41, 904:13, 909:38, 909:40, 910:43 decision-maker [1] - 884:36 decision-making [1] - 870:35 decisions [5] - 850:18, 874:32,</p>	<p>875:33, 878:35, 880:17 dedication [1] - 862:5 deep [1] - 892:6 deeply [2] - 861:18, 894:3 defamation [1] - 808:43 defence [1] - 841:2 defend [1] - 880:18 defending [1] - 849:22 deficiencies [1] - 901:1 define [2] - 843:43, 861:3 defining [2] - 895:26, 895:30 definitely [10] - 802:7, 802:45, 803:9, 809:18, 811:7, 822:47, 824:29, 825:23, 873:33, 884:10 definition [2] - 829:28, 829:30 definitions [1] - 899:11 degree [3] - 869:7, 893:25, 899:20 delay [5] - 843:35, 844:33, 901:26, 901:31, 902:20 delaying [1] - 844:43 deliberate [1] - 828:38 deliberately [2] - 830:7, 853:29 deliver [1] - 892:10 delivered [1] - 893:40 demands [2] - 833:45, 892:42 demonstrated [1] - 848:9 demonstrates [1] - 815:36 dense [1] - 891:14 denying [1] - 841:25 department [58] - 808:35, 808:41, 813:38, 818:39, 819:14, 822:15, 834:42, 835:47, 837:41, 839:4, 839:15, 839:19, 840:20, 840:29, 840:33, 841:5, 842:27, 844:6, 850:3, 853:25, 853:29, 853:46, 855:33, 862:21, 862:25, 862:26,</p>	<p>868:43, 871:5, 877:46, 887:27, 888:26, 889:11, 889:25, 890:4, 890:32, 890:33, 891:11, 891:46, 892:26, 892:41, 892:42, 893:2, 893:47, 896:14, 896:20, 897:4, 898:15, 900:46, 902:13, 903:16, 906:21, 906:40, 907:21, 907:40, 908:26, 908:33, 909:33, 910:4 Department [51] - 809:42, 813:10, 813:29, 814:15, 818:7, 819:6, 819:10, 820:11, 823:27, 827:31, 827:38, 828:11, 830:46, 832:32, 835:29, 837:9, 838:27, 838:32, 838:40, 839:2, 842:15, 843:38, 847:11, 851:45, 852:13, 853:41, 854:41, 857:15, 858:46, 869:40, 874:42, 886:24, 886:36, 887:13, 887:15, 887:22, 888:37, 889:23, 890:11, 892:27, 892:30, 892:45, 894:24, 894:33, 894:37, 895:46, 897:9, 898:16, 898:22, 898:40, 906:35 department's [4] - 889:21, 890:10, 894:11, 899:41 department-focused [1] - 853:46 departments [1] - 856:8 dependent [1] - 831:17 deployed [1] - 907:21 depressive [1] - 823:43 Deputy [1] - 887:19 deregistered [1] - 821:36 deregistering [1] - 821:35</p>	<p>describe [4] - 817:21, 860:35, 861:8, 909:11 described [5] - 837:1, 840:25, 845:37, 881:45, 908:45 describing [1] - 829:18 description [2] - 845:42, 901:23 deserves [2] - 830:13, 831:2 deserving [1] - 830:9 designated [1] - 854:30 designed [2] - 836:20, 843:29 detail [4] - 882:17, 888:23, 906:38, 906:44 detailed [1] - 862:37 detailing [1] - 816:44 details [1] - 892:24 detective [1] - 905:35 determination [7] - 842:16, 875:41, 894:18, 900:39, 901:37, 904:6, 904:18 determinative [1] - 878:44 determine [1] - 884:16 determined [1] - 819:10 determining [1] - 817:31 devastated [2] - 872:2, 882:13 devastating [1] - 855:29 devastatingly [1] - 853:14 develop [1] - 845:24 developed [1] - 828:35 developing [3] - 827:44, 828:37, 837:43 development [2] - 879:20, 879:26 diagnosed [2] - 823:42 dialogue [3] - 878:15, 879:24, 890:26 difference [6] - 828:43, 828:44, 843:7, 857:18, 876:39, 898:36 different [23] - 818:24, 829:8, 830:21,</p>
D				
<p>daily [3] - 825:43, 832:42, 854:27 damage [1] - 870:42 danger [1] - 884:29</p>	<p>decision-maker [1] - 884:36 decision-making [1] - 870:35 decisions [5] - 850:18, 874:32,</p>	<p>875:33, 878:35, 880:17 dedication [1] - 862:5 deep [1] - 892:6 deeply [2] - 861:18, 894:3 defamation [1] - 808:43 defence [1] - 841:2 defend [1] - 880:18 defending [1] - 849:22 deficiencies [1] - 901:1 define [2] - 843:43, 861:3 defining [2] - 895:26, 895:30 definitely [10] - 802:7, 802:45, 803:9, 809:18, 811:7, 822:47, 824:29, 825:23, 873:33, 884:10 definition [2] - 829:28, 829:30 definitions [1] - 899:11 degree [3] - 869:7, 893:25, 899:20 delay [5] - 843:35, 844:33, 901:26, 901:31, 902:20 delaying [1] - 844:43 deliberate [1] - 828:38 deliberately [2] - 830:7, 853:29 deliver [1] - 892:10 delivered [1] - 893:40 demands [2] - 833:45, 892:42 demonstrated [1] - 848:9 demonstrates [1] - 815:36 dense [1] - 891:14 denying [1] - 841:25 department [58] - 808:35, 808:41, 813:38, 818:39, 819:14, 822:15, 834:42, 835:47, 837:41, 839:4, 839:15, 839:19, 840:20, 840:29, 840:33, 841:5, 842:27, 844:6, 850:3, 853:25, 853:29, 853:46, 855:33, 862:21, 862:25, 862:26,</p>	<p>868:43, 871:5, 877:46, 887:27, 888:26, 889:11, 889:25, 890:4, 890:32, 890:33, 891:11, 891:46, 892:26, 892:41, 892:42, 893:2, 893:47, 896:14, 896:20, 897:4, 898:15, 900:46, 902:13, 903:16, 906:21, 906:40, 907:21, 907:40, 908:26, 908:33, 909:33, 910:4 Department [51] - 809:42, 813:10, 813:29, 814:15, 818:7, 819:6, 819:10, 820:11, 823:27, 827:31, 827:38, 828:11, 830:46, 832:32, 835:29, 837:9, 838:27, 838:32, 838:40, 839:2, 842:15, 843:38, 847:11, 851:45, 852:13, 853:41, 854:41, 857:15, 858:46, 869:40, 874:42, 886:24, 886:36, 887:13, 887:15, 887:22, 888:37, 889:23, 890:11, 892:27, 892:30, 892:45, 894:24, 894:33, 894:37, 895:46, 897:9, 898:16, 898:22, 898:40, 906:35 department's [4] - 889:21, 890:10, 894:11, 899:41 department-focused [1] - 853:46 departments [1] - 856:8 dependent [1] - 831:17 deployed [1] - 907:21 depressive [1] - 823:43 Deputy [1] - 887:19 deregistered [1] - 821:36 deregistering [1] - 821:35</p>	<p>describe [4] - 817:21, 860:35, 861:8, 909:11 described [5] - 837:1, 840:25, 845:37, 881:45, 908:45 describing [1] - 829:18 description [2] - 845:42, 901:23 deserves [2] - 830:13, 831:2 deserving [1] - 830:9 designated [1] - 854:30 designed [2] - 836:20, 843:29 detail [4] - 882:17, 888:23, 906:38, 906:44 detailed [1] - 862:37 detailing [1] - 816:44 details [1] - 892:24 detective [1] - 905:35 determination [7] - 842:16, 875:41, 894:18, 900:39, 901:37, 904:6, 904:18 determinative [1] - 878:44 determine [1] - 884:16 determined [1] - 819:10 determining [1] - 817:31 devastated [2] - 872:2, 882:13 devastating [1] - 855:29 devastatingly [1] - 853:14 develop [1] - 845:24 developed [1] - 828:35 developing [3] - 827:44, 828:37, 837:43 development [2] - 879:20, 879:26 diagnosed [2] - 823:42 dialogue [3] - 878:15, 879:24, 890:26 difference [6] - 828:43, 828:44, 843:7, 857:18, 876:39, 898:36 different [23] - 818:24, 829:8, 830:21,</p>

<p>830:39, 835:9, 837:11, 838:29, 850:18, 855:47, 857:12, 859:35, 860:47, 863:24, 869:37, 876:33, 878:12, 878:20, 879:13, 888:31, 897:32, 898:26, 898:39, 904:20</p> <p>difficult [11] - 816:31, 818:19, 819:25, 824:35, 826:16, 829:31, 829:40, 841:35, 851:11, 870:31, 895:37</p> <p>difficulty [4] - 828:41, 830:44, 847:29, 853:24</p> <p>diligence [1] - 903:17</p> <p>direct [3] - 858:7, 890:23, 893:43</p> <p>directed [3] - 863:3, 874:23, 874:26</p> <p>direction [3] - 807:16, 897:33, 904:12</p> <p>Director [6] - 851:42, 851:44, 852:12, 852:33, 855:13, 855:18</p> <p>director [2] - 877:47, 891:39</p> <p>Directorate [7] - 851:45, 852:12, 853:38, 853:40, 855:14, 868:44, 877:40</p> <p>directors [1] - 854:20</p> <p>disability [1] - 873:7</p> <p>disaster [1] - 842:36</p> <p>disciplinary [8] - 830:9, 830:10, 830:15, 837:33, 850:11, 855:19, 859:9, 909:27</p> <p>Disciplinary [2] - 854:5, 855:6</p> <p>discipline [1] - 836:25</p> <p>disclose [3] - 862:28, 865:22, 865:23</p> <p>disclosed [2] - 862:21, 866:21</p> <p>discloses [1] - 868:26</p> <p>disclosure [7] - 808:16, 816:27, 817:41, 819:17, 821:45, 830:26, 841:16</p> <p>disclosures [2] - 818:38, 841:13</p>	<p>discuss [2] - 886:16, 891:9</p> <p>discussed [2] - 800:16, 885:43</p> <p>discussing [2] - 891:32, 891:33</p> <p>discussions [5] - 824:30, 832:39, 832:40, 832:46, 908:29</p> <p>disjointed [1] - 822:42</p> <p>dismiss [1] - 830:38</p> <p>disorder [1] - 823:43</p> <p>disposition [1] - 907:22</p> <p>disproportionate [2] - 836:34, 836:35</p> <p>disputes [2] - 840:42</p> <p>distinction [6] - 829:21, 829:25, 832:8, 858:34, 869:24, 908:10</p> <p>diverse [2] - 870:26, 878:7</p> <p>diversity [1] - 866:40</p> <p>Division [1] - 853:37</p> <p>document [10] - 846:14, 862:39, 895:44, 895:47, 896:3, 896:10, 897:16, 907:37, 907:38, 908:23</p> <p>documentation [1] - 908:24</p> <p>documents [1] - 813:2</p> <p>done [30] - 807:36, 812:25, 813:34, 815:28, 816:43, 819:27, 821:2, 824:26, 825:33, 833:34, 834:30, 836:35, 838:9, 867:16, 869:30, 876:35, 889:25, 892:27, 896:28, 899:8, 899:11, 900:2, 900:4, 901:36, 901:44, 904:25, 907:9, 909:9, 909:15, 909:39</p> <p>door [1] - 866:19</p> <p>double [1] - 859:1</p> <p>double-check [1] - 859:1</p> <p>doubt [1] - 885:8</p> <p>doubts [1] - 868:30</p> <p>down [16] - 805:34, 814:46, 816:1, 816:4, 827:41,</p>	<p>844:34, 848:21, 851:21, 895:20, 898:38, 899:12, 907:40, 908:1, 908:7, 909:13, 912:9</p> <p>downs [3] - 888:5, 888:22, 904:36</p> <p>dozen [2] - 827:41, 834:23</p> <p>DPIPWE [1] - 837:34</p> <p>draft [1] - 845:30</p> <p>drafted [1] - 895:12</p> <p>Drake [1] - 890:8</p> <p>dramatically [1] - 857:44</p> <p>draw [8] - 829:40, 829:43, 831:7, 851:7, 851:9, 851:11, 869:24</p> <p>drawing [5] - 805:42, 829:22, 829:25, 830:44, 900:41</p> <p>drawn [1] - 851:12</p> <p>dreadfully [1] - 881:1</p> <p>drill [1] - 855:45</p> <p>drinking [3] - 805:40, 813:18, 901:13</p> <p>drive [3] - 804:8, 815:24, 824:1</p> <p>driven [1] - 904:23</p> <p>driver's [1] - 804:25</p> <p>driving [6] - 804:11, 814:47, 815:15, 815:20, 819:38, 823:47</p> <p>drop [1] - 823:39</p> <p>due [1] - 800:43</p> <p>during [11] - 800:16, 800:38, 805:27, 835:32, 854:17, 865:39, 866:5, 873:43, 885:43, 886:11, 901:24</p> <p>duties [1] - 890:31</p> <p>duty [1] - 809:34</p> <p>dynamic [1] - 881:3</p>	<p>835:45, 861:8, 882:2, 898:31</p> <p>easy [5] - 818:17, 830:37, 835:17, 843:21, 863:32</p> <p>Eccleston [2] - 849:13, 849:29</p> <p>ecosystem [1] - 883:10</p> <p>ED [2] - 901:28, 904:5</p> <p>ED4 [1] - 844:13</p> <p>ED5 [21] - 837:2, 843:35, 844:16, 844:18, 844:31, 844:44, 845:3, 850:2, 888:4, 902:23, 905:14, 909:20, 909:26, 909:41, 911:15, 911:17, 911:22, 911:24, 911:25</p> <p>ED5s [1] - 910:45</p> <p>educating [3] - 836:26, 861:12, 861:33</p> <p>education [20] - 808:27, 825:15, 835:32, 837:29, 840:31, 856:7, 857:12, 857:20, 858:32, 861:23, 870:25, 870:27, 873:3, 877:33, 878:47, 882:37, 890:34, 891:46, 893:5</p> <p>Education [49] - 809:43, 813:29, 814:16, 818:7, 819:6, 819:10, 820:11, 823:28, 826:29, 827:19, 827:31, 827:38, 827:39, 828:11, 830:46, 832:32, 835:29, 837:9, 838:27, 838:32, 839:3, 843:38, 846:30, 848:25, 848:42, 851:45, 852:13, 853:41, 854:41, 855:19, 857:15, 858:46, 869:41, 874:42, 886:24, 886:36, 887:23, 888:37, 890:12, 892:31, 892:45, 894:37, 894:43, 894:44, 895:46, 899:17,</p>	<p>900:12, 900:23, 906:36</p> <p>Education's [4] - 813:10, 847:11, 889:23, 898:22</p> <p>Education-specific [1] - 837:9</p> <p>educational [2] - 823:28, 882:30</p> <p>educative [1] - 877:31</p> <p>educator [8] - 828:34, 829:14, 830:6, 830:28, 835:2, 835:13, 836:33, 863:41</p> <p>educators [7] - 827:14, 827:20, 834:34, 835:16, 841:21, 863:39, 890:32</p> <p>EDWARD [1] - 826:33</p> <p>Edward [1] - 826:39</p> <p>effect [3] - 807:24, 819:22, 819:33</p> <p>effective [3] - 836:22, 836:42, 863:40</p> <p>effectively [3] - 897:16, 898:20, 903:8</p> <p>effectiveness [1] - 882:11</p> <p>effects [1] - 826:15</p> <p>either [16] - 825:25, 854:39, 860:19, 863:35, 870:43, 872:18, 875:27, 875:37, 879:43, 880:2, 881:6, 886:47, 895:11, 896:32, 906:24, 910:33</p> <p>element [4] - 844:23, 879:34, 882:40, 885:5</p> <p>elements [5] - 877:6, 877:12, 895:11, 895:14, 895:30</p> <p>elevated [2] - 909:32, 909:34</p> <p>elsewhere [1] - 841:32</p> <p>embarrassed [1] - 806:32</p> <p>embedded [5] - 861:47, 871:33, 891:10, 891:12, 891:26</p> <p>embedding [2] - 891:2, 891:16</p> <p>embrace [1] - 878:24</p> <p>emerging [1] - 883:4</p>
		<p>E</p>		
		<p>EAP [1] - 845:23</p> <p>early [10] - 801:32, 804:42, 821:2, 829:29, 843:19, 856:7, 872:20, 879:47, 885:15, 897:13</p> <p>ears [2] - 814:36, 823:2</p> <p>easier [5] - 812:19,</p>		

<p>Emily [2] - 851:42, 852:33 EMILY [1] - 852:4 emotional [4] - 829:11, 859:32, 859:37, 859:39 emotions [1] - 823:38 employ [1] - 908:9 employed [4] - 827:30, 907:20, 908:8, 909:5 employee [21] - 838:28, 849:22, 854:35, 855:34, 858:40, 862:34, 871:5, 872:36, 874:24, 874:26, 876:18, 876:20, 888:4, 888:13, 890:4, 892:43, 900:41, 901:37, 903:32, 908:1, 909:6 Employee [1] - 869:41 employees [13] - 832:17, 832:35, 855:1, 858:39, 859:6, 871:42, 879:42, 890:12, 900:34, 900:42, 907:41, 908:5, 909:10 Employment [1] - 880:16 employment [13] - 836:19, 837:31, 838:12, 838:16, 838:22, 839:41, 839:42, 840:42, 875:10, 875:13, 880:17, 908:3, 909:4 employment-related [1] - 836:19 empowering [1] - 861:21 enable [1] - 844:29 enabled [1] - 836:44 enabling [1] - 844:24 enacted [1] - 897:10 encompass [1] - 856:34 encompassed [1] - 877:32 encountered [1] - 840:16 encourage [4] - 878:35, 882:40, 886:15, 890:15 encouraged [1] - 802:37 end [30] - 804:3,</p>	<p>812:41, 814:42, 816:37, 817:3, 829:19, 831:36, 831:38, 831:43, 838:5, 844:34, 847:7, 847:40, 859:39, 862:6, 866:26, 873:8, 873:40, 874:32, 875:32, 879:3, 879:46, 880:28, 884:23, 885:7, 887:30, 897:31, 897:42, 903:9 end-to-end [1] - 866:26 endeavour [2] - 845:30, 849:39 endeavoured [1] - 849:31 ended [7] - 801:43, 805:42, 810:28, 815:4, 815:41, 819:35, 820:1 ending [2] - 831:37, 836:25 endorsed [4] - 890:44, 890:47, 897:2, 898:19 endure [1] - 813:16 enduring [1] - 813:9 engage [3] - 834:13, 870:5, 900:16 engaged [3] - 809:42, 859:23, 903:7 engagement [3] - 834:1, 848:34, 911:2 engages [1] - 831:1 engaging [3] - 809:44, 834:35, 838:30 enhanced [1] - 879:17 enlightening [1] - 885:27 enormously [1] - 881:31 ensure [7] - 837:16, 845:38, 856:22, 881:46, 892:8, 899:43, 901:44 ensuring [5] - 825:33, 831:30, 836:42, 889:14, 900:17 enter [1] - 898:23 entirely [5] - 837:21, 866:43, 869:13, 869:30, 874:1 entities [2] - 857:18, 892:12 entitled [2] - 838:33, 841:29</p>	<p>environment [4] - 841:32, 859:15, 865:29, 898:23 equality [1] - 881:2 equally [1] - 878:19 equals [1] - 869:1 especially [1] - 811:44 ESS [2] - 827:14, 835:9 essence [2] - 845:33, 847:44 establish [2] - 865:4, 881:26 established [3] - 853:38, 898:25, 909:38 establishment [1] - 898:5 estimate [3] - 856:19, 904:46, 905:10 et [10] - 836:25, 836:30, 837:20, 838:3, 844:25, 866:33, 882:8, 888:5, 910:26 evaluate [4] - 881:32, 881:33, 881:39, 881:41 evening [1] - 863:2 event [8] - 803:46, 804:5, 804:40, 805:30, 805:38, 806:32, 807:27, 816:8 events [2] - 805:47, 868:5 eventually [3] - 803:13, 803:22, 814:27 eventuate [1] - 806:24 evidence [81] - 800:12, 800:38, 800:41, 800:43, 800:46, 820:29, 823:8, 838:45, 841:10, 841:36, 843:19, 846:41, 848:26, 849:12, 849:14, 849:16, 849:38, 851:33, 853:8, 855:4, 855:5, 855:9, 855:11, 855:14, 855:15, 855:17, 857:24, 861:17, 862:15, 866:8, 867:43, 867:45, 868:7, 868:11, 868:12, 868:47, 869:12, 870:20, 871:20,</p>	<p>871:21, 875:42, 876:27, 876:30, 876:31, 876:43, 877:1, 879:16, 883:22, 884:9, 885:37, 885:46, 886:3, 886:11, 888:25, 888:41, 888:43, 889:7, 889:9, 889:35, 889:37, 889:39, 890:3, 890:7, 890:9, 890:16, 890:24, 892:39, 892:41, 893:39, 897:36, 900:11, 901:4, 902:1, 905:23, 905:27, 906:29, 908:22, 910:31, 911:33, 912:8 evidence-based [1] - 871:21 exacerbated [1] - 889:22 exact [1] - 897:40 exactly [5] - 805:41, 812:28, 813:35, 813:46, 838:38 exaggerated [1] - 839:14 EXAMINATION [4] - 801:15, 826:35, 852:6, 886:29 examine [1] - 911:25 examined [3] - 801:13, 826:33, 886:27 example [29] - 828:29, 830:1, 830:12, 830:18, 834:3, 838:11, 838:19, 840:14, 840:16, 847:1, 848:5, 867:30, 870:20, 871:4, 874:43, 876:13, 876:45, 882:30, 882:36, 894:25, 896:37, 899:17, 903:2, 904:1, 908:42, 910:24, 911:17, 911:31, 911:37 examples [3] - 833:18, 834:20, 850:22 Excel [1] - 908:25 excellent [2] - 866:39, 904:4 except [1] - 824:32 exclude [1] - 829:1 exclusive [1] - 885:11</p>	<p>exclusively [1] - 841:22 excuse [5] - 809:11, 822:24, 822:25, 880:33, 891:18 excuses [1] - 822:18 executive [7] - 881:43, 891:20, 891:21, 891:30, 891:33, 891:39, 892:7 Executive [2] - 853:30, 855:14 exhausted [3] - 876:12, 909:25, 911:31 exhibit [2] - 863:20, 896:6 exist [1] - 879:40 existence [1] - 908:27 exists [1] - 872:42 expand [2] - 842:35, 910:39 expanded [1] - 899:8 expect [3] - 819:44, 838:39, 906:39 expectation [3] - 875:21, 903:21, 910:36 expectations [2] - 900:47, 907:35 expecting [1] - 814:23 expediency [1] - 901:2 expedient [1] - 904:8 experience [11] - 827:30, 828:10, 835:3, 835:4, 843:7, 861:23, 868:20, 878:23, 881:17, 900:23, 906:9 experienced [3] - 835:31, 864:33, 905:33 experiences [2] - 824:13, 826:21 expertise [1] - 906:18 explain [12] - 800:21, 812:15, 828:24, 834:38, 842:1, 884:30, 891:15, 894:29, 900:12, 903:10, 907:44, 908:18 explore [2] - 831:6, 901:1 exposed [2] - 838:2, 877:5 express [1] - 841:46 expression [3] - 836:21, 844:20, 848:46</p>
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<p>extend [4] - 889:24, 889:42, 889:43, 889:47</p> <p>extends [2] - 889:20, 889:32</p> <p>extension [1] - 822:26</p> <p>extensions [2] - 822:21</p> <p>extensive [1] - 819:9</p> <p>extent [7] - 806:18, 813:12, 832:36, 836:12, 849:47, 850:27, 877:7</p> <p>external [7] - 808:18, 837:40, 837:45, 864:19, 867:39, 869:23, 870:5</p> <p>externally [1] - 838:2</p> <p>extract [1] - 909:15</p> <p>extracurricular [1] - 804:36</p> <p>extremely [1] - 818:19</p> <p>eye [2] - 855:10, 907:14</p> <p>eyes [2] - 813:47, 815:32</p>	<p>862:17, 877:26, 878:18, 892:4, 895:24, 900:18</p> <p>Fair [2] - 843:43, 880:3</p> <p>fairness [12] - 855:16, 877:24, 877:30, 877:43, 878:16, 879:42, 882:6, 885:5, 885:9, 891:4, 899:26, 900:19</p> <p>faith [2] - 870:13, 870:17</p> <p>fall [2] - 835:30, 875:16</p> <p>fallen [2] - 857:38, 900:47</p> <p>falling [2] - 823:2, 850:24</p> <p>falls [1] - 845:45</p> <p>familiar [2] - 803:7, 846:43</p> <p>families [3] - 855:23, 856:38, 856:42</p> <p>family [3] - 855:28, 855:37, 856:35</p> <p>fan [1] - 833:25</p> <p>fantastic [1] - 872:21</p> <p>far [9] - 807:29, 838:5, 850:43, 850:46, 851:1, 855:8, 858:38, 889:13, 889:14</p> <p>fashion [1] - 849:40</p> <p>fashioned [1] - 834:29</p> <p>fast [2] - 813:45, 904:26</p> <p>faster [2] - 899:19, 902:39</p> <p>fault [1] - 811:26</p> <p>favour [1] - 815:17</p> <p>favoured [1] - 871:44</p> <p>fear [2] - 806:38, 808:45</p> <p>feared [1] - 810:3</p> <p>fearful [7] - 812:26, 812:32, 813:20, 815:5, 819:37, 824:11, 901:18</p> <p>feature [1] - 878:25</p> <p>features [1] - 895:26</p> <p>February [5] - 819:15, 846:15, 846:37, 847:10, 892:22</p> <p>Federal [1] - 863:37</p> <p>feedback [4] - 850:3, 861:46, 867:15, 898:16</p> <p>feely [4] - 828:36, 860:35, 860:36,</p>	<p>860:41</p> <p>felt [28] - 805:22, 805:33, 806:46, 808:34, 809:17, 809:37, 810:1, 810:6, 810:35, 810:44, 811:44, 812:21, 812:32, 813:34, 814:27, 815:39, 815:41, 817:6, 819:23, 819:24, 820:3, 820:28, 822:3, 822:5, 858:24, 861:19, 907:24</p> <p>female [3] - 811:47, 814:17, 865:19</p> <p>fences [1] - 893:34</p> <p>fetter [1] - 902:47</p> <p>fettered [1] - 902:40</p> <p>fettering [1] - 902:29</p> <p>few [11] - 808:17, 809:33, 817:10, 843:2, 857:23, 857:25, 865:10, 868:35, 878:37, 879:12, 902:45</p> <p>fight [1] - 878:38</p> <p>figure [1] - 813:3</p> <p>file [6] - 854:39, 872:24, 872:26, 872:27, 872:36, 872:39</p> <p>files [1] - 854:40</p> <p>filled [1] - 835:42</p> <p>final [5] - 849:11, 849:34, 850:13, 881:29, 910:14</p> <p>finally [2] - 816:38, 825:3</p> <p>financial [3] - 866:44, 882:32, 906:25</p> <p>findings [3] - 873:5, 876:2, 876:3</p> <p>fine [4] - 816:18, 824:31, 848:38, 863:6</p> <p>finger [2] - 815:15, 815:18</p> <p>fingers [1] - 902:42</p> <p>finish [2] - 850:37, 882:8</p> <p>finished [4] - 802:30, 816:33, 842:20, 874:13</p> <p>firm [5] - 823:33, 827:33, 827:36, 827:42, 906:7</p> <p>first [29] - 800:4, 800:11, 802:14,</p>	<p>803:35, 803:36, 803:42, 803:45, 806:40, 808:7, 813:47, 821:44, 831:32, 838:8, 840:35, 841:38, 843:6, 855:38, 855:47, 858:31, 863:26, 864:22, 876:21, 876:31, 876:46, 882:32, 885:16, 887:39, 908:46, 911:34</p> <p>firstly [2] - 830:16, 845:21</p> <p>fit [10] - 821:37, 821:40, 829:30, 839:32, 840:8, 840:10, 840:24, 840:34, 847:31, 857:3</p> <p>fitness [1] - 840:26</p> <p>fits [3] - 828:46, 855:23, 904:29</p> <p>five [7] - 834:22, 859:29, 879:47, 880:8, 880:9, 880:10, 894:30</p> <p>fix [1] - 817:37</p> <p>flashbacks [1] - 823:44</p> <p>flex [1] - 805:43</p> <p>flexibility [1] - 910:40</p> <p>flow [1] - 824:29</p> <p>focus [15] - 802:16, 821:37, 822:1, 825:17, 831:22, 831:30, 841:21, 841:39, 857:24, 858:32, 859:35, 864:42, 900:3, 902:11</p> <p>focused [7] - 831:11, 831:34, 841:33, 853:46, 856:30, 873:39, 873:40</p> <p>focusing [2] - 825:17, 859:14</p> <p>follow [8] - 833:14, 854:30, 855:36, 870:19, 873:33, 890:6, 898:46, 911:9</p> <p>follow-up [2] - 855:36, 870:19</p> <p>followed [3] - 819:18, 894:30, 901:8</p> <p>following [8] - 819:5, 845:11, 865:47, 882:18, 882:23, 888:25, 898:4,</p>	<p>900:31</p> <p>foot [2] - 805:43, 845:33</p> <p>footage [1] - 803:19</p> <p>Force [1] - 905:35</p> <p>forehead [1] - 806:11</p> <p>form [2] - 836:13, 844:2</p> <p>formal [2] - 877:44, 907:11</p> <p>formally [2] - 853:36, 912:9</p> <p>formed [2] - 838:16, 838:17</p> <p>former [2] - 851:44, 880:27</p> <p>forms [1] - 859:38</p> <p>forth [2] - 805:43, 815:16</p> <p>fortunate [1] - 842:39</p> <p>forward [20] - 806:6, 826:17, 836:29, 841:15, 841:35, 845:34, 857:39, 860:10, 873:31, 874:14, 876:11, 876:44, 877:7, 882:39, 882:41, 882:45, 883:15, 890:15, 890:27, 912:14</p> <p>four [4] - 812:3, 834:22, 897:39, 910:18</p> <p>frame [6] - 878:11, 878:12, 898:8, 898:10, 908:26</p> <p>framed [1] - 910:27</p> <p>framework [5] - 836:13, 892:13, 898:13, 898:24, 899:30</p> <p>framing [1] - 854:11</p> <p>fraud [1] - 903:35</p> <p>free [5] - 808:36, 841:22, 890:26, 894:23, 902:19</p> <p>Freeman [1] - 827:33</p> <p>frequently [1] - 880:2</p> <p>Friday [3] - 887:44, 891:4, 897:36</p> <p>friend [9] - 802:4, 802:8, 802:15, 802:17, 802:27, 802:28, 803:20, 809:7, 813:23</p> <p>friends [3] - 802:3, 802:37, 824:14</p> <p>front [5] - 805:34, 805:35, 846:16,</p>
F				
<p>f [1] - 827:16</p> <p>facade [1] - 825:19</p> <p>face [4] - 800:42, 813:24, 830:17, 831:44</p> <p>Facebook [1] - 837:44</p> <p>faced [1] - 824:15</p> <p>facilitate [1] - 845:33</p> <p>facility [1] - 891:47</p> <p>fact [19] - 805:23, 813:22, 820:1, 825:32, 828:16, 842:45, 844:16, 848:22, 857:9, 863:14, 869:26, 888:14, 892:43, 898:18, 902:31, 905:34, 907:25, 908:24, 908:25</p> <p>factors [3] - 817:31, 858:24, 864:22</p> <p>facts [1] - 847:1</p> <p>failings [2] - 888:45, 894:16</p> <p>failure [1] - 881:5</p> <p>failures [1] - 893:46</p> <p>fair [13] - 806:18, 836:21, 839:11, 839:14, 845:38, 857:8, 860:7,</p>	<p>862:17, 877:26, 878:18, 892:4, 895:24, 900:18</p> <p>Fair [2] - 843:43, 880:3</p> <p>fairness [12] - 855:16, 877:24, 877:30, 877:43, 878:16, 879:42, 882:6, 885:5, 885:9, 891:4, 899:26, 900:19</p> <p>faith [2] - 870:13, 870:17</p> <p>fall [2] - 835:30, 875:16</p> <p>fallen [2] - 857:38, 900:47</p> <p>falling [2] - 823:2, 850:24</p> <p>falls [1] - 845:45</p> <p>familiar [2] - 803:7, 846:43</p> <p>families [3] - 855:23, 856:38, 856:42</p> <p>family [3] - 855:28, 855:37, 856:35</p> <p>fan [1] - 833:25</p> <p>fantastic [1] - 872:21</p> <p>far [9] - 807:29, 838:5, 850:43, 850:46, 851:1, 855:8, 858:38, 889:13, 889:14</p> <p>fashion [1] - 849:40</p> <p>fashioned [1] - 834:29</p> <p>fast [2] - 813:45, 904:26</p> <p>faster [2] - 899:19, 902:39</p> <p>fault [1] - 811:26</p> <p>favour [1] - 815:17</p> <p>favoured [1] - 871:44</p> <p>fear [2] - 806:38, 808:45</p> <p>feared [1] - 810:3</p> <p>fearful [7] - 812:26, 812:32, 813:20, 815:5, 819:37, 824:11, 901:18</p> <p>feature [1] - 878:25</p> <p>features [1] - 895:26</p> <p>February [5] - 819:15, 846:15, 846:37, 847:10, 892:22</p> <p>Federal [1] - 863:37</p> <p>feedback [4] - 850:3, 861:46, 867:15, 898:16</p> <p>feely [4] - 828:36, 860:35, 860:36,</p>	<p>860:41</p> <p>felt [28] - 805:22, 805:33, 806:46, 808:34, 809:17, 809:37, 810:1, 810:6, 810:35, 810:44, 811:44, 812:21, 812:32, 813:34, 814:27, 815:39, 815:41, 817:6, 819:23, 819:24, 820:3, 820:28, 822:3, 822:5, 858:24, 861:19, 907:24</p> <p>female [3] - 811:47, 814:17, 865:19</p> <p>fences [1] - 893:34</p> <p>fetter [1] - 902:47</p> <p>fettered [1] - 902:40</p> <p>fettering [1] - 902:29</p> <p>few [11] - 808:17, 809:33, 817:10, 843:2, 857:23, 857:25, 865:10, 868:35, 878:37, 879:12, 902:45</p> <p>fight [1] - 878:38</p> <p>figure [1] - 813:3</p> <p>file [6] - 854:39, 872:24, 872:26, 872:27, 872:36, 872:39</p> <p>files [1] - 854:40</p> <p>filled [1] - 835:42</p> <p>final [5] - 849:11, 849:34, 850:13, 881:29, 910:14</p> <p>finally [2] - 816:38, 825:3</p> <p>financial [3] - 866:44, 882:32, 906:25</p> <p>findings [3] - 873:5, 876:2, 876:3</p> <p>fine [4] - 816:18, 824:31, 848:38, 863:6</p> <p>finger [2] - 815:15, 815:18</p> <p>fingers [1] - 902:42</p> <p>finish [2] - 850:37, 882:8</p> <p>finished [4] - 802:30, 816:33, 842:20, 874:13</p> <p>firm [5] - 823:33, 827:33, 827:36, 827:42, 906:7</p> <p>first [29] - 800:4, 800:11, 802:14,</p>	<p>803:35, 803:36, 803:42, 803:45, 806:40, 808:7, 813:47, 821:44, 831:32, 838:8, 840:35, 841:38, 843:6, 855:38, 855:47, 858:31, 863:26, 864:22, 876:21, 876:31, 876:46, 882:32, 885:16, 887:39, 908:46, 911:34</p> <p>firstly [2] - 830:16, 845:21</p> <p>fit [10] - 821:37, 821:40, 829:30, 839:32, 840:8, 840:10, 840:24, 840:34, 847:31, 857:3</p> <p>fitness [1] - 840:26</p> <p>fits [3] - 828:46, 855:23, 904:29</p> <p>five [7] - 834:22, 859:29, 879:47, 880:8, 880:9, 880:10, 894:30</p> <p>fix [1] - 817:37</p> <p>flashbacks [1] - 823:44</p> <p>flex [1] - 805:43</p> <p>flexibility [1] - 910:40</p> <p>flow [1] - 824:29</p> <p>focus [15] - 802:16, 821:37, 822:1, 825:17, 831:22, 831:30, 841:21, 841:39, 857:24, 858:32, 859:35, 864:42, 900:3, 902:11</p> <p>focused [7] - 831:11, 831:34, 841:33, 853:46, 856:30, 873:39, 873:40</p> <p>focusing [2] - 825:17, 859:14</p> <p>follow [8] - 833:14, 854:30, 855:36, 870:19, 873:33, 890:6, 898:46, 911:9</p> <p>follow-up [2] - 855:36, 870:19</p> <p>followed [3] - 819:18, 894:30, 901:8</p> <p>following [8] - 819:5, 845:11, 865:47, 882:18, 882:23, 888:25, 898:4,</p>	<p>900:31</p> <p>foot [2] - 805:43, 845:33</p> <p>footage [1] - 803:19</p> <p>Force [1] - 905:35</p> <p>forehead [1] - 806:11</p> <p>form [2] - 836:13, 844:2</p> <p>formal [2] - 877:44, 907:11</p> <p>formally [2] - 853:36, 912:9</p> <p>formed [2] - 838:16, 838:17</p> <p>former [2] - 851:44, 880:27</p> <p>forms [1] - 859:38</p> <p>forth [2] - 805:43, 815:16</p> <p>fortunate [1] - 842:39</p> <p>forward [20] - 806:6, 826:17, 836:29, 841:15, 841:35, 845:34, 857:39, 860:10, 873:31, 874:14, 876:11, 876:44, 877:7, 882:39, 882:41, 882:45, 883:15, 890:15, 890:27, 912:14</p> <p>four [4] - 812:3, 834:22, 897:39, 910:18</p> <p>frame [6] - 878:11, 878:12, 898:8, 898:10, 908:26</p> <p>framed [1] - 910:27</p> <p>framework [5] - 836:13, 892:13, 898:13, 898:24, 899:30</p> <p>framing [1] - 854:11</p> <p>fraud [1] - 903:35</p> <p>free [5] - 808:36, 841:22, 890:26, 894:23, 902:19</p> <p>Freeman [1] - 827:33</p> <p>frequently [1] - 880:2</p> <p>Friday [3] - 887:44, 891:4, 897:36</p> <p>friend [9] - 802:4, 802:8, 802:15, 802:17, 802:27, 802:28, 803:20, 809:7, 813:23</p> <p>friends [3] - 802:3, 802:37, 824:14</p> <p>front [5] - 805:34, 805:35, 846:16,</p>

<p>846:26, 895:43 frontline [1] - 841:19 fruit [1] - 857:26 frustrated [1] - 833:6 frustrating [1] - 900:2 frustration [1] - 833:23 fuck [1] - 806:31 full [14] - 806:18, 813:12, 820:10, 825:35, 826:37, 835:17, 852:9, 852:31, 873:8, 877:7, 895:4, 909:9, 909:13, 909:26 full-blown [1] - 909:13 full-time [1] - 835:17 function [3] - 824:8, 854:43, 877:32 functioning [1] - 857:23 functions [2] - 873:17, 893:24 fundamental [1] - 870:36 fundamentally [1] - 871:19 funding [2] - 850:41, 892:14 future [5] - 824:44, 826:22, 848:28, 851:4, 890:13</p>	<p>879:30 generational [1] - 861:46 generations [1] - 824:21 gifts [1] - 816:10 giggly [1] - 806:2 girls [1] - 826:9 Girvin [21] - 851:44, 852:8, 852:11, 853:5, 856:47, 858:33, 860:36, 862:14, 863:26, 864:26, 865:13, 868:20, 868:37, 871:31, 873:23, 874:20, 876:13, 877:34, 881:13, 881:34, 883:25 GIRVIN [50] - 852:2, 852:11, 852:19, 852:23, 852:28, 853:12, 853:43, 854:1, 854:8, 854:13, 855:26, 858:38, 859:5, 860:39, 862:20, 862:43, 863:30, 864:31, 865:15, 865:29, 868:23, 868:41, 869:10, 869:15, 871:36, 871:41, 872:12, 872:17, 872:30, 873:25, 874:22, 875:1, 875:7, 875:19, 875:40, 876:16, 876:29, 876:37, 877:21, 877:36, 880:15, 881:19, 881:23, 881:37, 881:41, 883:29, 883:42, 883:46, 884:4, 884:15 Girvin's [1] - 863:20 given [22] - 800:28, 807:28, 820:44, 821:21, 821:33, 832:12, 834:3, 849:12, 853:36, 864:42, 866:8, 870:41, 883:15, 884:38, 885:8, 886:3, 889:35, 891:29, 892:39, 899:31, 906:6, 906:29 glad [2] - 832:12, 872:21</p>	<p>glance [1] - 908:47 global [1] - 834:35 gosh [1] - 807:37 governance [2] - 894:34, 894:45 governed [1] - 825:38 governing [2] - 853:22, 862:23 Government [2] - 869:39, 869:45 government [6] - 856:8, 864:13, 892:22, 899:32, 907:33, 907:35 GOVERNMENT'S [1] - 799:11 grab [2] - 803:29, 859:34 graduate [1] - 835:19 graduated [1] - 844:25 grandfather [1] - 826:8 great [9] - 824:34, 825:44, 826:19, 833:25, 841:38, 862:24, 891:16, 893:7, 899:15 green [1] - 815:8 grew [2] - 819:41, 910:2 groom [1] - 828:39 grooming [35] - 804:28, 828:18, 828:43, 828:47, 829:5, 829:9, 829:20, 829:28, 829:30, 829:34, 831:45, 832:4, 832:31, 832:33, 833:2, 835:23, 836:14, 838:27, 840:15, 840:30, 859:2, 860:19, 860:24, 860:26, 863:13, 863:14, 871:45, 872:18, 877:6, 877:13, 880:40, 881:23, 882:36, 883:30 Grooming [1] - 883:27 grooming-related [1] - 829:34 ground [2] - 833:3, 890:17 grounds [1] - 838:20 group [9] - 802:3, 804:42, 834:7, 842:47, 856:19, 856:27, 856:29, 860:28, 878:7</p>	<p>groups [3] - 834:5, 834:23, 834:24 Growth [1] - 893:21 guardian [1] - 805:19 guess [20] - 802:16, 804:1, 804:16, 808:27, 814:2, 821:36, 824:9, 825:5, 825:6, 825:30, 841:46, 859:41, 861:2, 872:45, 877:11, 883:36, 884:35, 905:18, 905:19 guidance [14] - 857:2, 857:8, 857:16, 857:34, 862:26, 864:6, 864:43, 867:2, 867:5, 867:19, 869:31, 879:27, 892:13, 904:3 guide [2] - 813:5, 895:34 guiding [1] - 808:21 guilty [2] - 875:26, 875:30 guitar [1] - 803:16 guttled [1] - 819:23 guys [1] - 842:44 gym [2] - 830:19, 830:22</p>	<p>823:12, 831:7, 839:7, 840:22, 901:23 harder [2] - 812:19, 812:21 hardest [2] - 813:36, 817:20 harm [10] - 859:32, 859:37, 859:39, 859:46, 862:33, 871:12, 879:41, 889:24, 890:35, 894:12 harmed [1] - 860:13 harmful [3] - 859:40, 860:16, 860:28 Harvey [2] - 853:32, 854:17 hat [1] - 823:39 hated [2] - 813:19, 901:13 hazard [2] - 905:18, 905:19 Head [2] - 894:37, 904:12 head [3] - 834:9, 857:6, 905:7 heads [1] - 857:5 healing [1] - 889:29 health [5] - 833:43, 834:27, 841:11, 843:45, 844:3 healthy [1] - 883:9 hear [11] - 807:31, 818:37, 818:39, 820:8, 822:46, 838:45, 839:27, 855:37, 863:5, 873:25, 889:37 heard [24] - 808:7, 808:45, 814:1, 819:18, 836:43, 841:10, 845:39, 861:17, 870:20, 877:28, 879:12, 881:14, 888:35, 889:9, 889:26, 889:30, 889:31, 891:14, 894:8, 900:11, 900:18, 905:23, 905:27, 908:21 Hearing [1] - 799:18 hearing [10] - 800:17, 800:41, 800:45, 800:46, 801:1, 817:6, 885:43, 886:15, 886:18, 898:30 heart [4] - 807:34,</p>	
G				H	
<p>gaining [1] - 905:46 Gale [3] - 891:4, 897:36, 899:29 game [2] - 830:19 gaol [1] - 831:37 gap [1] - 835:42 gaps [1] - 843:30 gather [2] - 813:31, 879:16 gathered [1] - 869:3 gathering [1] - 869:7 gear [1] - 838:37 gender [2] - 905:30, 905:41 General [4] - 886:43, 887:8, 894:26, 908:30 general [5] - 802:14, 831:23, 846:43, 864:38, 888:17 generally [6] - 809:43, 827:20, 834:34, 846:2, 847:22, 853:7 generate [2] - 871:20,</p>			<p>half [1] - 827:46 hand [5] - 803:29, 815:21, 860:44, 861:14, 904:15 handed [1] - 895:20 handle [2] - 815:24, 824:7 handled [2] - 888:39, 903:47 handling [1] - 858:18 hands [3] - 813:44, 814:26, 854:38 handwrite [1] - 818:14 happily [1] - 809:23 happy [10] - 801:34, 801:44, 810:37, 812:16, 865:22, 865:23, 874:13, 877:47, 889:5, 890:25 harassment [2] - 903:36, 908:42 hard [8] - 806:36, 816:30, 818:18,</p>		

<p>813:44, 878:13, 894:20 heck [1] - 823:13 held [2] - 823:8, 879:25 help [8] - 804:7, 812:13, 817:35, 824:19, 825:43, 864:44, 867:38, 906:21 helped [1] - 811:3 helpful [5] - 844:24, 851:33, 855:44, 884:18, 911:44 helping [4] - 804:15, 804:16, 804:18, 808:21 helps [2] - 824:36, 885:21 hence [1] - 873:27 hidden [1] - 806:25 hide [1] - 819:35 hierarchy [1] - 860:1 High [1] - 887:10 high [2] - 820:42, 899:32 higher [1] - 899:20 highlighted [1] - 883:31 highly [1] - 905:38 Hillcrest [2] - 842:36, 843:11 him.. [1] - 901:14 himself [2] - 803:22, 809:21 hindered [1] - 824:46 historical [5] - 889:2, 894:4, 907:41, 908:39, 910:3 historically [3] - 817:38, 900:26, 906:5 hitting [1] - 910:25 Hobart [2] - 799:20, 826:44 hold [6] - 846:17, 872:34, 874:9, 874:12, 874:22, 874:26 holding [2] - 860:44, 879:29 holds [4] - 854:37, 862:38, 890:25, 910:31 holes [1] - 817:38 holiday [1] - 807:20 Home [1] - 856:8 home [6] - 807:23, 810:8, 811:16, 815:43, 839:16,</p>	<p>859:20 homework [1] - 803:15 honest [1] - 862:20 honestly [1] - 868:23 Honourable [3] - 799:27, 799:29, 853:34 hop [1] - 823:46 hope [6] - 824:33, 824:36, 839:1, 848:44, 849:8, 862:44 hopefully [1] - 825:30 hour [1] - 804:2 hours [6] - 804:8, 804:12, 811:38, 811:42, 838:21, 853:13 hovering [1] - 810:2 HR [3] - 862:10, 870:1, 872:34 huge [1] - 828:41 human [1] - 905:28 Hunt [2] - 827:42 hypervigilant [1] - 824:18 hypothetical [2] - 851:14, 876:8 hypotheticals [2] - 831:21, 851:9 hysterical [1] - 823:40</p>	<p>831:29, 863:16, 868:30, 882:47 immense [1] - 866:40 immensely [1] - 824:6 imminent [2] - 843:45, 844:3 impact [12] - 836:33, 843:8, 843:9, 843:17, 862:15, 866:7, 871:17, 871:22, 885:46, 888:46, 889:19 impacting [3] - 824:22, 824:23 impacts [1] - 829:12 impartial [1] - 810:44 implement [3] - 896:42, 898:31, 899:19 implementation [11] - 879:14, 879:17, 893:44, 895:25, 895:29, 898:34, 899:1, 899:3, 899:30, 899:38, 900:3 implementations [1] - 899:35 implemented [3] - 896:27, 897:9, 897:11 implicate [1] - 822:20 implications [1] - 841:24 importance [9] - 841:12, 841:14, 842:8, 877:30, 890:36, 891:35, 894:8, 898:47, 903:28 important [27] - 829:7, 829:11, 829:12, 830:18, 830:24, 833:28, 835:27, 838:9, 843:23, 849:20, 849:42, 849:44, 851:18, 861:3, 865:24, 879:29, 882:40, 883:44, 884:4, 885:14, 890:26, 894:18, 898:7, 898:27, 900:9, 901:31, 908:26 importantly [1] - 873:27 imposes [1] - 837:11 impressed [1] - 834:27 impression [2] -</p>	<p>821:16, 832:33 impressions [2] - 802:14, 808:9 improve [2] - 836:27, 890:28 improved [1] - 857:44 improvement [1] - 879:26 improving [2] - 867:22, 891:40 IN [1] - 799:12 inadvertent [2] - 828:45, 829:23 inadvertently [1] - 829:10 inappropriate [18] - 803:18, 814:38, 815:10, 816:19, 829:35, 830:17, 838:26, 838:31, 839:17, 861:4, 861:13, 869:30, 873:19, 874:1, 882:26, 900:15, 903:36, 910:25 inappropriately [4] - 832:5, 833:12, 860:30, 861:15 incident [1] - 865:37 Incident [9] - 851:45, 852:12, 853:37, 854:4, 854:25, 854:42, 855:13, 868:44, 877:39 incidents [2] - 854:26, 872:17 include [6] - 800:32, 827:14, 837:42, 856:33, 859:2, 888:2 includes [1] - 906:34 including [9] - 827:30, 827:38, 827:44, 843:44, 864:33, 875:8, 894:9, 899:35, 909:9 increase [1] - 882:47 increased [4] - 832:30, 882:22, 882:31, 882:44 increases [2] - 884:29, 884:30 increasing [4] - 879:17, 882:19, 882:24, 883:6 increasingly [1] - 828:17 incredible [1] - 862:26 indecent [1] - 825:5 indeed [3] - 838:26, 854:35, 878:17</p>	<p>independence [8] - 868:35, 868:45, 868:46, 869:2, 869:7, 869:18, 902:30, 907:24 independent [18] - 808:13, 855:9, 857:13, 857:16, 859:42, 859:43, 864:4, 868:38, 869:22, 869:38, 870:4, 870:14, 871:13, 875:44, 902:23, 902:42, 904:33, 910:37 Independence [2] - 853:35, 893:37 index [1] - 876:25 indicate [1] - 908:9 indications [1] - 880:40 individual [7] - 840:41, 865:36, 869:45, 870:33, 873:10, 874:35, 874:41 individuals [2] - 870:10, 889:29 induction [1] - 834:45 Industrial [2] - 888:15, 911:38 industrial [2] - 841:24, 879:39 inform [4] - 829:3, 833:22, 854:28, 909:28 informally [1] - 909:29 Information [5] - 822:9, 822:14, 822:16, 822:17, 902:3 information [39] - 800:26, 800:28, 800:29, 800:31, 800:32, 800:36, 800:37, 816:34, 820:44, 821:20, 821:32, 821:34, 822:9, 822:20, 822:34, 827:6, 833:8, 845:20, 869:3, 869:7, 873:1, 873:11, 873:14, 876:17, 876:22, 886:4, 886:9, 886:10, 888:12, 894:41, 905:16, 905:22, 905:46, 907:12, 909:45, 910:17, 910:21,</p>
---	---	---	---	--

<p>910:39, 911:27 informed [13] - 837:18, 841:12, 841:15, 841:34, 841:43, 843:2, 843:26, 850:1, 850:10, 853:16, 853:19, 875:33, 907:34 inherently [1] - 868:14 initial [11] - 806:7, 806:24, 808:11, 814:2, 828:26, 831:11, 842:11, 842:25, 845:19, 873:22, 903:8 injuries [1] - 827:37 inner [1] - 813:39 innocuous [1] - 830:38 inquiry [3] - 885:40, 893:45, 893:47 Inquiry [7] - 801:21, 853:9, 853:35, 862:16, 888:3, 888:26, 893:37 INQUIRY [1] - 799:11 inside [1] - 862:39 insight [3] - 820:32, 833:12, 894:30 insinuating [1] - 815:16 insisting [1] - 863:33 instead [1] - 900:17 Institute [1] - 880:35 institution [2] - 870:44, 870:45 institutional [1] - 895:35 INSTITUTIONAL [1] - 799:12 institutions [3] - 870:27, 879:33, 883:5 instration [1] - 910:30 instructions [3] - 827:37, 850:17, 910:20 instrument [4] - 828:17, 836:8, 836:15, 837:4 insufficient [1] - 874:37 insurers [2] - 827:37, 827:43 integrity [2] - 883:10, 899:20 Integrity [1] - 907:7 intend [1] - 833:30</p>	<p>intensive [2] - 856:28, 856:30 intent [6] - 825:5, 829:24, 829:25, 883:37, 883:38, 884:16 interacted [1] - 889:11 interactions [1] - 837:13 interest [2] - 800:15, 885:42 interesting [3] - 843:4, 872:8, 883:22 interestingly [1] - 870:13 interests [3] - 831:24, 878:24, 889:16 interim [1] - 835:33 internal [6] - 868:38, 869:26, 869:27, 869:40, 907:19, 909:10 internally [5] - 822:33, 869:30, 870:5, 909:32, 909:37 interpret [1] - 884:46 interprets [1] - 837:41 interrupt [3] - 879:8, 894:36, 909:31 interrupted [1] - 912:5 intervention [1] - 824:9 interview [10] - 845:17, 845:19, 864:39, 864:45, 865:2, 865:35, 865:39, 866:5, 866:17, 867:8 interviewers [1] - 812:3 interviewing [10] - 811:46, 837:23, 842:28, 842:42, 843:17, 864:27, 865:13, 866:1, 906:19, 906:20 interviews [8] - 811:9, 811:16, 841:42, 842:25, 842:38, 842:47, 843:10, 855:2 intimate [2] - 824:4, 860:30 intimately [2] - 847:45, 848:1 intimidated [1] - 824:12 INTO [1] - 799:11 introduce [2] - 865:46, 880:36</p>	<p>introduced [3] - 880:25, 880:34, 897:42 introduction [1] - 907:39 inverted [1] - 847:3 investigate [11] - 814:39, 830:16, 840:21, 855:1, 858:43, 865:20, 872:3, 872:23, 872:30, 873:44, 874:5 investigated [16] - 806:7, 813:18, 820:10, 825:28, 825:30, 825:35, 842:6, 859:27, 875:4, 876:10, 877:8, 901:12, 901:25, 908:40, 909:29, 909:32 investigating [5] - 873:30, 874:13, 877:25, 906:32, 907:26 investigation [97] - 807:41, 808:4, 813:10, 814:20, 816:33, 816:35, 817:30, 817:43, 819:9, 819:18, 823:12, 823:14, 825:31, 831:16, 841:47, 842:3, 842:14, 843:20, 844:46, 847:4, 847:8, 847:11, 856:34, 856:44, 857:36, 857:38, 858:16, 858:18, 858:21, 858:25, 858:28, 860:6, 863:40, 863:43, 864:4, 864:5, 864:14, 866:42, 866:45, 867:20, 867:21, 867:27, 867:32, 868:10, 869:22, 871:7, 871:18, 871:24, 872:6, 872:46, 873:20, 873:26, 873:43, 873:46, 874:6, 874:9, 874:12, 874:16, 874:46, 875:5, 875:25, 875:28, 875:38, 875:41, 876:1, 876:21,</p>	<p>876:46, 877:1, 877:26, 877:43, 882:1, 882:4, 882:9, 883:37, 885:18, 888:32, 900:30, 901:8, 901:30, 901:34, 902:24, 902:25, 902:47, 903:3, 904:7, 905:1, 906:4, 907:2, 907:9, 907:12, 907:18, 907:31, 907:32, 909:25, 909:42, 910:17, 910:33 investigation's [2] - 902:5, 902:6 investigations [47] - 813:32, 817:28, 856:31, 857:31, 857:45, 858:3, 858:12, 859:43, 864:14, 864:18, 867:24, 868:45, 869:19, 869:25, 869:26, 869:27, 869:42, 869:46, 869:47, 870:15, 873:4, 873:16, 873:17, 876:43, 878:9, 878:18, 882:3, 888:4, 888:27, 900:10, 900:46, 901:27, 901:43, 902:18, 902:33, 902:35, 903:16, 903:47, 904:39, 905:2, 905:11, 905:14, 905:36, 906:6, 906:10, 906:41, 907:15 Investigations [3] - 854:4, 854:47, 871:39 investigative [5] - 828:12, 865:47, 906:17, 906:22, 906:35 investigator [27] - 808:13, 863:28, 864:7, 864:16, 865:4, 868:47, 870:6, 871:4, 871:29, 873:18, 873:21, 902:23, 902:30, 903:7, 903:9, 903:14, 904:41, 904:43, 905:28, 905:29, 905:30, 905:34,</p>	<p>910:19, 910:28, 910:30, 910:37, 911:2 investigator's [1] - 873:23 investigators [36] - 808:11, 808:18, 809:41, 809:44, 810:22, 812:41, 814:14, 814:15, 815:31, 816:27, 818:28, 854:18, 854:47, 855:7, 863:22, 863:23, 863:31, 863:35, 864:18, 864:31, 866:35, 867:44, 868:37, 868:41, 902:34, 902:40, 904:34, 905:4, 905:6, 905:34, 905:45, 906:12, 907:20, 910:15, 910:20, 911:1 invitations [1] - 802:46 invite [3] - 803:13, 803:26, 827:10 invited [2] - 813:28, 814:5 involved [21] - 801:42, 803:47, 804:19, 805:21, 818:23, 829:14, 829:15, 836:31, 837:16, 837:22, 840:15, 840:30, 842:9, 842:13, 842:43, 849:32, 878:8, 901:31, 903:5, 903:41, 906:29 involvement [3] - 803:1, 812:37, 840:17 involving [4] - 836:41, 843:44, 854:45, 906:8 IRM [1] - 854:24 Islander [2] - 866:10, 866:12 isolated [6] - 803:22, 804:2, 804:6, 808:30, 808:34, 819:38 isolation [1] - 830:37 issue [22] - 823:40, 829:13, 831:32, 833:7, 833:8, 836:30, 836:34, 838:8, 839:21,</p>
--	---	---	---	---

<p>840:12, 840:28, 841:40, 846:10, 850:30, 860:10, 868:3, 870:22, 879:42, 879:43, 880:15, 906:18 issues [20] - 817:35, 822:18, 822:19, 822:29, 822:33, 832:43, 834:25, 836:24, 836:41, 843:13, 846:11, 849:25, 853:33, 857:42, 859:46, 870:21, 872:19, 880:17, 882:47 it [1] - 863:11 iteration [1] - 908:36 itself [10] - 836:18, 858:22, 865:37, 866:5, 867:46, 869:35, 874:40, 882:25, 901:34, 904:19 IV [1] - 864:13</p>	<p>856:9, 863:32, 881:45, 894:33, 895:11, 897:9, 898:16, 898:40, 899:27 justice [3] - 841:25, 841:30, 841:31 justifiable [1] - 839:8 Justin [1] - 886:6</p>	<p>853:1, 892:17, 905:43 known [9] - 801:47, 803:39, 845:20, 908:26, 908:33, 910:6, 910:8, 910:11, 910:29 knows [3] - 848:34, 863:12, 864:27 KPIs [1] - 882:10</p>	<p>lead [5] - 805:20, 843:21, 855:27, 894:19, 905:34 leader [3] - 862:6, 883:33, 891:38 leaders [2] - 862:45, 892:16 leading [1] - 863:4 leads [1] - 855:32 lean [1] - 803:29 leant [1] - 815:7 learn [4] - 889:5, 890:28, 893:33, 899:46 learned [1] - 848:27 learners [2] - 804:7, 804:11 Learning [6] - 842:9, 842:12, 842:13, 842:26, 842:28, 845:18 learning [12] - 835:27, 848:14, 867:14, 878:19, 882:26, 889:13, 890:16, 892:44, 893:6, 893:9, 893:15 learnt [2] - 835:26, 857:33 least [3] - 825:39, 839:20, 890:43 leave [6] - 852:14, 866:18, 866:20, 866:25, 873:6, 901:38 leaving [1] - 819:35 led [4] - 850:34, 881:17, 897:10, 899:37 left [4] - 841:3, 889:38, 904:2, 905:31 leg [3] - 815:21, 815:29, 815:35 legal [5] - 826:42, 841:24, 881:30, 884:40, 895:13 legislated [1] - 870:35 legislation [9] - 825:38, 864:3, 869:21, 874:11, 878:29, 897:10, 897:23, 898:35, 898:39 legislative [2] - 824:45, 898:3 legs [1] - 823:44 length [2] - 870:17, 907:33 less [5] - 829:36, 856:28, 864:36,</p>	<p>868:7, 868:14 lesson [1] - 848:27 lessons [2] - 803:17 letter [30] - 816:7, 816:9, 823:9, 828:26, 846:15, 846:16, 846:29, 846:38, 846:39, 847:10, 847:15, 847:17, 847:18, 847:19, 847:21, 847:24, 847:46, 848:4, 848:6, 848:32, 848:43, 862:31, 862:32, 862:46, 863:5, 863:8, 882:7, 882:13, 909:36, 911:2 letterhead [1] - 846:30 letters [2] - 853:27, 875:8 level [11] - 828:44, 833:3, 835:44, 842:7, 842:8, 842:25, 842:26, 848:12, 884:29, 892:7, 898:30 Level [1] - 852:35 levels [2] - 891:10, 891:12 leveraging [1] - 899:18 liable [1] - 888:24 liaises [1] - 854:37 liaison [1] - 886:17 liars [1] - 809:30 library [1] - 827:14 licence [1] - 804:25 licensed [1] - 864:16 lie [1] - 868:8 life [6] - 802:23, 820:46, 823:30, 824:3, 824:13, 891:29 lifelong [1] - 867:21 light [6] - 815:8, 884:22, 894:41, 910:17, 911:34, 911:39 likely [1] - 839:39 likewise [1] - 860:12 limit [1] - 825:9 limitation [1] - 825:6 limitations [1] - 843:41 limited [10] - 800:31, 837:10, 837:31, 846:11, 850:26, 866:43, 867:30,</p>
J	K	L		
<p>Jack [1] - 893:44 jacket [1] - 806:33 Jeremy [1] - 886:5 Jessie [1] - 846:25 Jin [1] - 846:25 job [7] - 806:45, 835:10, 835:26, 835:28, 866:34, 878:33, 891:39 job" [1] - 806:42 jobs [1] - 804:4 John [2] - 886:5, 886:34 JOHN [1] - 886:27 joins [1] - 826:30 journalists [1] - 886:15 journey [3] - 824:46, 883:16, 891:23 judgment [2] - 868:31, 868:32 June [2] - 893:40, 895:1 junior [1] - 835:2 jurisdiction [3] - 856:13, 895:36, 899:15 jurisdictions [1] - 875:46 just.. [1] - 811:47 Justice [10] - 838:40,</p>	<p>Kate [1] - 852:33 KATE [1] - 852:4 keep [11] - 809:19, 822:25, 823:37, 849:41, 863:32, 867:22, 872:23, 872:26, 872:27, 888:26, 900:36 keeping [1] - 899:42 keeps [1] - 854:38 kept [5] - 800:27, 807:6, 809:8, 890:35, 908:44 key [1] - 833:24 kicked [1] - 808:23 kicks [1] - 838:37 kid [2] - 801:33, 829:10 kids [5] - 839:8, 839:17, 843:21, 849:43 Kim [2] - 841:10, 841:30 Kim's [1] - 841:36 kind [11] - 802:43, 812:20, 830:9, 832:22, 839:3, 861:22, 878:36, 879:12, 880:4, 884:28, 908:31 kinds [4] - 823:27, 857:26, 857:27, 865:32 kiss [5] - 803:32, 803:35, 803:36, 806:11, 815:4 kissed [5] - 803:42, 803:45, 805:10, 815:1, 815:7 knowing [5] - 805:38, 809:16, 817:29, 847:45, 898:40 knowledge [11] - 801:28, 827:6, 835:8, 841:1, 842:24, 842:27, 842:29, 852:26,</p>	<p>lab [1] - 827:14 lack [4] - 820:28, 899:29, 901:2, 901:26 lacking [1] - 833:5 ladies [1] - 810:28 laid [1] - 898:38 land [2] - 859:16, 860:35 lanes [1] - 904:20 language [3] - 827:10, 848:6, 873:19 large [3] - 805:44, 835:15, 898:28 largely [1] - 892:46 last [23] - 813:34, 813:35, 817:16, 822:16, 833:14, 833:45, 842:37, 843:2, 843:10, 843:12, 848:21, 849:13, 850:8, 852:14, 857:25, 879:13, 882:31, 882:32, 883:8, 893:45, 897:36, 899:28, 907:40 lasting [3] - 826:14, 888:46, 892:10 late [1] - 863:2 lately [2] - 801:24, 852:43 latter [1] - 908:7 laughing [2] - 806:34, 815:22 law [3] - 855:7, 855:8, 884:40 lawyer [7] - 843:16, 850:15, 864:16, 886:39, 887:4, 887:7 lawyers [10] - 840:10, 843:39, 845:46, 850:16, 855:9, 863:6, 863:7, 884:31, 912:11 lazy [1] - 843:30</p>		

<p>900:17, 904:32, 906:17 limiting [2] - 837:27, 837:32 line [14] - 824:31, 829:41, 829:43, 830:44, 831:5, 831:6, 831:7, 831:10, 850:14, 851:7, 851:9, 851:11, 858:31, 868:27 lines [5] - 809:34, 823:10, 837:5, 851:7, 910:38 links [1] - 892:35 list [2] - 860:23, 908:2 listened [2] - 809:27, 819:26 listening [4] - 808:29, 815:40, 823:3, 887:39 listens [1] - 861:28 literally [1] - 828:28 litigation [1] - 887:44 live [7] - 800:33, 800:40, 801:4, 801:7, 801:10, 825:42, 888:31 lived [4] - 802:7, 809:12, 819:33, 819:41 lives [2] - 819:42, 901:16 load [3] - 866:2, 871:12, 906:22 local [4] - 809:19, 813:20, 818:43, 819:30 locally [2] - 806:32, 906:17 loco [1] - 890:33 lodge [2] - 805:30, 805:31 lodged [1] - 873:9 log [1] - 804:7 London [1] - 887:3 longest [2] - 811:37, 811:38 look [38] - 820:33, 823:4, 824:33, 830:2, 838:33, 844:23, 849:36, 850:32, 850:33, 854:27, 855:9, 855:11, 861:26, 864:45, 867:8, 867:16, 873:38, 875:9, 876:12, 879:5, 882:1, 882:3,</p>	<p>883:12, 891:13, 893:10, 899:8, 899:9, 899:10, 903:43, 904:15, 905:19, 909:35, 910:19, 910:38, 911:32, 911:34, 912:14 looked [9] - 821:8, 831:9, 833:44, 847:9, 850:9, 859:47, 884:9, 910:5, 910:7 looking [12] - 802:41, 823:45, 825:34, 828:42, 832:22, 840:5, 858:35, 859:22, 874:16, 893:22, 903:39, 908:32 looks [4] - 828:38, 829:5, 863:13, 898:25 loopholes [2] - 817:38, 825:23 lose [2] - 806:42, 878:33 losing [1] - 831:36 lost [1] - 880:18 love [2] - 816:7, 816:24 loved [1] - 816:4 luck [1] - 851:35 LUNCHEON [1] - 851:37</p>	<p>854:43, 874:34, 874:36, 909:16, 909:18 Management [10] - 851:45, 852:12, 853:37, 854:4, 854:25, 854:43, 855:13, 868:44, 877:40, 901:39 Manager [1] - 854:29 manager [4] - 854:36, 855:27, 855:32, 891:47 managers [2] - 841:19, 854:27 managing [1] - 854:31 mandatory [2] - 882:30, 885:16 manifest [1] - 869:35 manifestation [1] - 897:27 manifests [1] - 867:46 manner [3] - 881:42, 881:44, 901:43 March [1] - 887:30 Mark [3] - 853:32, 854:17, 886:6 mark [2] - 838:30, 885:3 market [1] - 902:32 marks [1] - 801:39 massage [1] - 860:44 material [2] - 864:43, 867:5 matter [33] - 807:28, 831:30, 831:35, 836:26, 848:45, 851:19, 858:43, 859:20, 863:17, 865:20, 868:42, 870:33, 872:40, 875:25, 882:2, 882:19, 883:37, 884:5, 889:45, 894:37, 903:1, 903:28, 904:5, 904:13, 904:14, 904:17, 904:23, 904:25, 908:42, 909:11, 909:28, 910:22 matters [47] - 807:10, 819:17, 827:35, 829:8, 832:6, 835:27, 836:17, 844:30, 844:43, 845:16, 848:18, 849:41, 849:43, 850:32, 850:38, 851:13, 861:24,</p>	<p>865:7, 869:29, 870:27, 874:17, 875:30, 877:9, 877:41, 878:38, 880:2, 880:10, 880:38, 881:45, 888:1, 888:30, 898:27, 900:31, 902:12, 903:19, 905:37, 908:25, 908:32, 909:17, 909:21, 909:24, 909:40, 909:47, 910:3, 910:6, 910:8, 910:10 MAY [1] - 912:19 McCormack [1] - 893:39 mean [26] - 807:26, 810:43, 811:15, 812:14, 812:25, 813:4, 815:46, 816:33, 818:22, 823:14, 824:19, 824:45, 825:42, 829:47, 845:5, 867:4, 868:13, 869:23, 876:14, 877:25, 878:33, 879:3, 885:9, 903:1, 909:31 meaning [1] - 891:29 meaningful [2] - 834:14, 834:36 means [16] - 800:22, 800:27, 806:30, 807:9, 816:19, 816:20, 833:37, 856:28, 867:30, 872:47, 878:21, 878:31, 879:4, 879:25, 883:6, 899:19 meant [7] - 804:1, 804:6, 807:32, 812:16, 816:16, 816:23, 816:32 measurable [1] - 821:39 measure [3] - 882:2, 891:27, 891:31 measures [1] - 874:36 mechanism [1] - 844:7 media [7] - 833:11, 833:21, 862:20, 882:46, 883:9, 886:17, 910:11 medical [2] - 824:9, 845:22</p>	<p>medication [1] - 823:37 meet [5] - 820:36, 847:37, 877:39, 892:44, 903:23 meeting [9] - 813:29, 813:30, 813:31, 814:6, 814:7, 817:4, 818:38, 820:9, 891:22 meetings [4] - 810:7, 810:8, 820:27, 896:34 meets [2] - 907:3, 907:34 Melbourne [2] - 852:35, 852:36 member [17] - 822:6, 828:26, 845:21, 846:39, 846:44, 847:1, 847:2, 850:24, 850:25, 850:29, 850:30, 850:43, 850:46, 872:1, 877:42, 900:16, 900:18 member's [1] - 846:7 members [36] - 813:29, 826:43, 827:21, 827:25, 827:26, 827:30, 829:3, 831:23, 831:24, 831:25, 831:28, 831:39, 831:43, 831:44, 832:4, 832:7, 832:39, 832:40, 832:42, 832:43, 838:33, 840:41, 841:3, 842:38, 845:4, 845:10, 845:14, 845:37, 845:39, 849:7, 849:40, 850:19, 856:42, 900:14, 900:25 memory [6] - 808:8, 810:19, 812:8, 814:6, 820:26, 828:6 men [6] - 809:45, 810:2, 811:37, 813:37, 824:6, 824:13 mental [2] - 809:26, 841:11 mentally [1] - 808:47 mentioned [4] - 836:8, 837:26, 889:34, 904:32 mere [1] - 859:38</p>
M				
<p>m'hmm [1] - 830:4 machinery [1] - 892:21 main [3] - 803:21, 803:23, 868:29 maintain [2] - 872:45, 890:25 major [1] - 823:43 majority [1] - 904:39 maker [1] - 884:36 male [2] - 811:47, 824:12 males [1] - 824:15 man [1] - 811:44 manage [2] - 854:15, 854:21 managed [7] - 801:41, 813:39, 813:45, 822:14, 836:17, 853:14, 882:21 management [5] -</p>				

<p>merging [1] - 892:26 merits [1] - 851:19 message [1] - 816:2 messages [1] - 898:29 messaging [1] - 815:47 met [6] - 823:18, 823:22, 855:10, 855:11, 882:10, 892:1 middle [1] - 907:29 might [67] - 802:11, 812:14, 828:2, 829:9, 829:22, 829:30, 829:36, 830:2, 830:6, 830:11, 830:37, 830:46, 831:6, 833:7, 834:14, 836:20, 837:34, 839:47, 842:18, 843:18, 844:7, 844:29, 845:46, 846:2, 850:23, 850:25, 850:29, 850:30, 850:31, 851:8, 860:34, 861:43, 863:43, 864:12, 866:10, 866:42, 867:10, 867:17, 867:31, 868:10, 869:47, 870:5, 871:5, 871:8, 872:22, 873:2, 873:14, 875:16, 876:44, 877:9, 877:12, 879:40, 880:8, 890:18, 890:24, 896:25, 898:21, 900:42, 903:6, 906:21, 906:40, 908:4, 908:32, 909:35, 909:45, 911:33 MILF [4] - 806:26, 806:30, 816:10, 816:14 mind [12] - 812:23, 834:18, 838:11, 840:11, 840:24, 840:27, 843:24, 843:27, 879:8, 884:36, 897:38, 908:20 mindful [1] - 887:47 mindset [1] - 868:9 mini [1] - 892:12 Minister [7] - 853:30, 853:32, 853:33, 881:43, 891:34,</p>	<p>894:43, 894:44 ministerial [1] - 896:33 minor [1] - 872:22 minute [2] - 847:22, 879:9 minutes [1] - 808:12 misapplied [1] - 884:41 miscommunication [1] - 853:28 misconduct [35] - 843:42, 843:43, 844:7, 844:9, 844:22, 844:23, 854:31, 854:34, 854:36, 854:44, 855:1, 855:27, 858:41, 859:2, 859:7, 859:30, 860:27, 860:45, 869:1, 869:4, 873:39, 873:46, 874:23, 875:11, 875:17, 876:20, 877:43, 878:10, 878:11, 878:42, 881:7, 882:9, 882:29, 884:11 Misconduct [3] - 854:5, 855:6, 869:41 misled [1] - 831:46 missed [1] - 881:30 mistake [1] - 849:8 misunderstand [1] - 862:38 misunderstanding [1] - 862:27 misuse [1] - 904:1 mitigate [1] - 893:35 MO [1] - 911:28 model [5] - 817:37, 824:34, 837:19, 855:47, 907:19 models [5] - 906:31, 906:38, 906:39, 906:40, 906:43 modified [2] - 855:40, 855:41 moment [13] - 802:41, 854:11, 855:45, 863:21, 863:22, 864:22, 873:15, 881:13, 891:31, 904:30, 905:25, 905:43, 907:7 money [1] - 805:22 month [1] - 822:36 months [9] - 808:17, 817:7, 825:6, 825:9,</p>	<p>825:12, 876:10, 894:31, 903:4, 907:40 morning [6] - 800:3, 801:17, 846:41, 861:17, 881:14, 902:2 mortified [1] - 814:35 mosaic [1] - 909:34 most [20] - 813:36, 817:20, 817:26, 835:10, 836:24, 838:9, 843:40, 846:1, 854:43, 866:41, 871:44, 877:36, 890:30, 891:10, 891:12, 892:34, 897:41, 899:5, 900:45, 904:35 mother [19] - 804:17, 805:19, 805:24, 805:27, 805:38, 805:39, 806:6, 806:30, 807:25, 808:22, 808:42, 810:9, 813:43, 814:16, 818:8, 819:41, 820:25, 823:9, 824:27 mother's [4] - 807:42, 808:16, 808:17, 814:37 mount [2] - 866:44, 869:25 mouse [2] - 803:29, 803:30 mouth [2] - 815:16, 815:18 move [6] - 807:41, 829:36, 833:47, 845:7, 904:11, 904:16 moved [2] - 887:22, 907:18 moves [1] - 875:37 moving [1] - 841:47 MS [202] - 800:3, 801:9, 801:15, 801:17, 809:32, 810:33, 818:37, 823:26, 825:46, 826:28, 826:35, 826:37, 839:24, 841:9, 851:24, 851:41, 852:6, 852:8, 852:11, 852:16, 852:19, 852:21, 852:23, 852:25, 852:28,</p>	<p>852:30, 852:33, 852:38, 852:41, 852:43, 852:45, 852:47, 853:3, 853:5, 853:12, 853:40, 853:43, 853:45, 854:1, 854:3, 854:8, 854:10, 854:13, 855:22, 855:26, 855:44, 856:4, 856:11, 856:17, 856:33, 856:37, 856:47, 857:5, 857:22, 857:29, 858:2, 858:5, 858:7, 858:10, 858:12, 858:15, 858:27, 858:38, 859:5, 859:13, 859:18, 859:26, 859:29, 860:5, 860:9, 860:19, 860:22, 860:34, 860:39, 860:47, 861:2, 861:17, 861:26, 861:45, 862:3, 862:14, 862:20, 862:43, 863:19, 863:30, 863:46, 864:2, 864:21, 864:31, 864:36, 864:41, 865:10, 865:15, 865:27, 865:29, 865:31, 865:34, 866:39, 867:36, 867:42, 868:2, 868:20, 868:23, 868:34, 868:41, 869:6, 869:10, 869:12, 869:15, 869:17, 869:21, 869:34, 869:37, 870:25, 871:2, 871:10, 871:31, 871:36, 871:38, 871:41, 872:8, 872:12, 872:14, 872:17, 872:26, 872:30, 872:42, 872:45, 873:14, 873:25, 873:36, 873:38, 874:4, 874:8, 874:20, 874:22, 874:29, 874:32, 874:45, 875:1, 875:3, 875:7, 875:16, 875:19, 875:21, 875:24, 875:40, 876:1,</p>	<p>876:8, 876:16, 876:24, 876:29, 876:33, 876:37, 876:39, 876:42, 877:16, 877:21, 877:23, 877:28, 877:36, 878:4, 878:6, 878:23, 878:27, 879:19, 879:46, 880:15, 880:23, 880:33, 880:44, 880:47, 881:13, 881:19, 881:21, 881:23, 881:29, 881:37, 881:39, 881:41, 882:16, 882:21, 883:8, 883:12, 883:21, 883:29, 883:42, 883:46, 884:4, 884:15, 884:33, 885:31, 886:23, 886:29, 886:31, 889:24, 904:32, 906:16, 908:20, 911:12, 911:47, 912:7 multiple [1] - 822:21 mum [15] - 805:33, 805:35, 806:5, 806:13, 807:8, 807:22, 807:35, 809:27, 810:12, 810:42, 813:46, 815:43, 816:24, 822:40, 824:34 mum's [1] - 815:43 Munting [3] - 888:42, 889:34, 894:9 must [10] - 800:29, 800:36, 816:30, 849:23, 872:14, 873:44, 884:47, 886:4, 886:9 muster [1] - 867:25 mutually [1] - 885:11 muzzled [1] - 809:24 myths [1] - 868:6</p>
N				
<p>nah [1] - 811:20 name [15] - 800:24, 802:31, 814:11, 816:14, 816:15, 826:38, 846:38, 852:9, 852:31, 872:39, 886:32, 886:34, 904:43, 905:4, 909:3</p>				

<p>named [3] - 863:8, 863:9, 889:44 namely [1] - 885:45 names [2] - 800:32, 908:47 national [2] - 895:34, 896:31 National [9] - 890:36, 890:44, 895:18, 895:45, 897:1, 897:38, 898:38, 898:42, 899:2 nationally [4] - 898:12, 898:18, 898:24, 898:30 natural [3] - 841:25, 841:29, 841:31 naturally [2] - 844:44, 898:10 nature [10] - 827:29, 830:45, 842:34, 848:31, 848:43, 866:7, 871:10, 871:22, 871:32, 871:38 Neave [2] - 799:27, 912:7 NEAVE [24] - 800:1, 800:8, 810:25, 810:31, 818:27, 818:35, 826:14, 840:4, 840:14, 840:37, 851:32, 851:39, 866:29, 867:34, 870:19, 870:47, 879:38, 885:26, 885:35, 898:33, 898:44, 903:45, 912:2, 912:13 necessarily [11] - 803:21, 824:13, 830:15, 831:11, 834:35, 836:18, 837:28, 860:25, 860:31, 878:33, 878:37 necessary [4] - 844:23, 844:26, 880:30, 892:18 need [77] - 803:43, 804:11, 822:46, 823:30, 823:43, 825:11, 830:11, 830:46, 831:7, 831:10, 833:25, 833:36, 834:21, 837:10, 837:20, 838:8, 841:23, 843:12, 843:24,</p>	<p>854:28, 855:39, 855:40, 856:12, 856:13, 860:16, 861:13, 861:27, 861:33, 861:38, 861:41, 861:43, 862:47, 863:9, 863:42, 865:24, 865:35, 865:38, 865:44, 866:17, 866:26, 867:2, 868:37, 869:18, 871:17, 874:1, 874:5, 877:9, 878:35, 879:4, 883:13, 883:14, 883:38, 883:39, 883:42, 890:16, 892:16, 893:29, 893:35, 894:23, 894:25, 894:40, 897:28, 899:12, 900:36, 900:38, 901:42, 902:31, 903:4, 903:6, 903:10, 904:43, 905:41, 906:21, 908:9, 910:39, 911:3 needed [5] - 803:40, 853:34, 858:24, 871:20, 888:11 needs [32] - 801:2, 830:29, 831:8, 831:15, 832:20, 832:23, 835:42, 836:39, 838:8, 839:10, 839:11, 840:9, 841:33, 862:9, 862:10, 864:5, 868:12, 869:22, 869:23, 874:9, 875:25, 875:27, 875:34, 877:8, 879:5, 886:19, 892:44, 892:45, 894:15, 900:40, 904:25 negative [1] - 888:46 negatively [2] - 866:7, 871:23 neglect [3] - 859:32, 859:37, 859:38 neglected [1] - 819:23 nephews [1] - 824:23 nervous [2] - 807:35, 814:27 net [1] - 908:35 network [1] - 809:5 never [9] - 801:37, 812:34, 817:22,</p>	<p>821:17, 825:35, 829:36, 853:15, 867:20, 889:28 New [4] - 827:32, 842:46, 875:37, 880:5 new [18] - 824:21, 825:35, 873:16, 873:41, 876:17, 876:27, 876:43, 877:1, 877:2, 877:4, 877:5, 877:7, 893:2, 910:17, 910:21, 910:33, 910:38, 910:45 newspaper [2] - 819:45, 820:2 next [14] - 802:42, 816:39, 817:42, 826:28, 831:16, 851:42, 857:3, 857:37, 867:19, 878:1, 885:17, 885:37, 886:3, 886:23 nice [2] - 805:35, 818:20 nieces [1] - 824:22 night [4] - 805:29, 805:40, 811:21, 850:8 nightmares [1] - 823:44 Nilsson [2] - 827:42, 827:45 no-one [10] - 808:20, 808:21, 808:31, 808:32, 810:7, 817:30, 822:44, 823:3, 824:32 nobody [1] - 810:20 noises [1] - 824:7 non [3] - 800:5, 876:10, 889:23 non-publication [1] - 800:5 non-response [1] - 889:23 non-substantiated [1] - 876:10 none [1] - 832:6 Northern [1] - 827:35 NORTON [16] - 826:28, 826:35, 826:37, 841:9, 851:24, 885:31, 886:23, 886:29, 886:31, 899:24, 904:32, 906:16, 908:20, 911:12,</p>	<p>911:47, 912:7 Norton [4] - 885:35, 886:21, 899:22, 911:9 note [8] - 838:35, 839:45, 840:8, 846:37, 849:47, 872:36, 893:34, 896:30 noted [1] - 898:47 notes [2] - 854:40, 896:32 nothing [8] - 813:4, 813:34, 817:5, 817:7, 819:18, 821:30, 883:23, 909:39 nothing's [1] - 837:45 notice [4] - 819:44, 839:3, 839:31, 907:11 noticed [1] - 857:25 notices [1] - 887:33 notification [2] - 859:42, 885:17 notifications [4] - 882:17, 882:19, 882:22, 882:30 notified [3] - 872:33, 881:42, 881:43 notify [3] - 872:20, 875:43, 875:44 notifying [1] - 853:23 November [2] - 893:45, 894:22 nudges [1] - 870:34 number [19] - 800:4, 807:21, 821:43, 827:12, 835:15, 871:28, 882:17, 882:18, 882:33, 883:6, 896:30, 898:7, 901:32, 902:40, 903:5, 905:4, 906:6, 906:7, 907:19 numbers [1] - 882:21 numerous [1] - 887:32 nurse [1] - 841:11</p>	<p>837:11, 878:30 obliged [1] - 863:14 observation [1] - 891:18 observing [2] - 830:28, 900:18 obtaining [1] - 855:28 obvious [3] - 841:14, 884:8, 884:10 obviously [18] - 829:11, 829:14, 830:16, 831:17, 831:32, 836:29, 849:6, 853:28, 855:16, 855:29, 860:23, 865:19, 872:17, 877:36, 878:6, 880:6, 888:30, 907:22 occasion [2] - 869:41, 909:46 occasions [1] - 846:1 occupation [2] - 826:41, 886:33 occupied [1] - 892:46 occur [4] - 838:12, 838:41, 836:32, 903:20 occurred [6] - 842:37, 850:7, 888:39, 889:2, 902:43, 908:33 occurring [2] - 841:41, 841:42 occurs [1] - 881:9 October [5] - 808:3, 818:40, 818:43, 820:17, 822:16 OF [2] - 799:3, 799:11 Offence [1] - 824:47 offence [2] - 860:24, 860:26 offences [3] - 840:46, 859:32, 860:23 offend [1] - 848:28 offer [5] - 847:23, 855:36, 893:16, 899:33, 900:22 offered [2] - 805:32, 893:46 offering [1] - 804:24 offers [2] - 808:18, 817:4 Office [6] - 827:39, 886:42, 887:8, 894:26, 898:5, 901:40 office [11] - 802:46, 803:11, 803:14, 803:21, 803:23,</p>
O				
<p>o'clock [1] - 802:30 Oasis [1] - 803:31 objective [1] - 892:1 obligation [4] - 856:37, 857:6, 873:41, 875:24 obligations [2] -</p>				

<p>803:40, 803:43, 809:46, 857:27, 886:46, 905:29 office's [1] - 864:38 officer [8] - 818:13, 837:33, 843:5, 843:25, 863:44, 877:39, 877:47, 886:17 officers [9] - 823:19, 823:22, 832:41, 842:40, 842:45, 843:1, 848:36, 853:29 offices [1] - 820:28 official [1] - 818:7 officials [3] - 808:29, 808:41 often [4] - 834:28, 842:10, 845:2, 876:17 old [9] - 804:26, 810:12, 810:13, 810:15, 834:29, 877:9, 897:40, 909:20, 911:24 old-fashioned [1] - 834:29 older [3] - 802:10, 808:22, 843:4 Ombudsman [2] - 822:31, 880:5 omissions [1] - 818:47 on-school [1] - 858:34 once [9] - 818:13, 821:35, 831:7, 831:15, 862:36, 867:14, 876:2, 877:40, 909:9 one [95] - 801:38, 802:4, 802:8, 803:1, 803:11, 803:17, 805:1, 805:29, 805:40, 806:23, 808:20, 808:21, 808:31, 808:32, 809:7, 810:7, 810:28, 813:36, 815:1, 815:33, 817:30, 818:13, 818:27, 819:19, 820:27, 822:44, 823:3, 824:32, 824:33, 829:2, 829:19, 830:44, 831:27, 834:3, 836:15, 836:19, 837:29, 837:46, 838:35, 838:38,</p>	<p>840:10, 840:39, 841:4, 842:40, 843:27, 843:33, 844:13, 849:11, 850:7, 850:13, 854:16, 854:18, 859:34, 863:2, 867:20, 871:28, 872:39, 873:15, 873:30, 877:29, 880:1, 882:33, 883:25, 883:31, 885:17, 895:26, 895:30, 895:47, 896:37, 897:3, 900:6, 900:29, 901:2, 902:11, 902:38, 902:39, 904:29, 906:47, 908:2, 909:36, 910:10, 910:11, 910:14, 910:24, 911:14 one's [1] - 893:10 one-on-one [6] - 803:1, 803:11, 803:17, 818:13, 820:27, 829:2 one-size-fits-all [1] - 904:29 ones [3] - 859:41, 866:41, 874:33 ongoing [1] - 888:46 online [1] - 854:26 onus [1] - 903:8 open [10] - 813:11, 816:32, 824:29, 862:45, 876:16, 876:18, 876:21, 876:24, 888:44, 911:15 opened [2] - 876:43, 877:1 opening [1] - 877:24 openly [1] - 891:35 operate [2] - 859:16, 902:32 operates [2] - 853:40, 856:1 operations [1] - 853:7 opinion [2] - 814:40, 847:42 opportunities [3] - 889:27, 893:17, 893:27 opportunity [6] - 813:35, 832:12, 877:44, 890:28, 892:35, 900:21 opposed [3] - 828:37,</p>	<p>828:45, 861:42 opposition [1] - 885:10 options [1] - 904:33 order [23] - 800:8, 800:11, 800:14, 800:21, 800:22, 800:26, 800:35, 800:40, 800:47, 801:1, 807:28, 862:22, 862:27, 862:29, 885:32, 885:36, 885:37, 885:41, 886:2, 886:8, 886:14, 886:16, 886:17 orders [1] - 800:5 ordinarily [1] - 845:47 organisation [36] - 848:36, 848:39, 856:1, 856:38, 857:6, 858:19, 859:21, 859:24, 860:11, 860:15, 860:17, 861:27, 862:8, 864:19, 865:34, 865:43, 866:40, 866:47, 867:11, 867:21, 867:25, 867:30, 868:10, 870:40, 873:42, 874:34, 874:38, 879:24, 891:41, 891:44, 892:1, 892:11, 894:3, 897:33, 898:28, 905:11 organisation's [1] - 841:19 organisational [1] - 895:36 Organisations [5] - 879:15, 890:37, 897:2, 897:10, 899:30 organisations [39] - 856:5, 856:8, 856:9, 856:12, 856:19, 856:20, 856:26, 856:40, 857:5, 857:9, 857:30, 857:35, 857:43, 857:47, 861:3, 864:7, 864:44, 865:1, 866:30, 866:31, 866:43, 867:36, 868:17, 869:25, 870:15, 870:34, 873:45, 874:33, 875:22,</p>	<p>877:32, 878:17, 879:14, 883:2, 884:42, 884:46, 885:2, 885:6, 892:12 organisations' [1] - 879:20 organise [1] - 900:43 organised [2] - 804:41, 805:31 organisers [1] - 832:40 orient [1] - 847:1 original [3] - 876:25, 908:36, 911:40 originally [3] - 832:10, 837:47, 873:47 otherwise [2] - 808:43, 886:12 ought [4] - 838:33, 841:31, 841:32, 911:5 ourselves [4] - 858:25, 867:27, 880:34, 894:46 Out-of-Home [1] - 856:8 out-sourced [1] - 808:4 outburst [1] - 829:11 outcome [9] - 813:32, 814:20, 814:30, 818:24, 820:8, 825:37, 850:10, 875:8, 909:46 outdated [1] - 861:39 outline [6] - 817:10, 827:28, 828:9, 842:34, 845:12, 850:22 outlined [1] - 847:25 outputs [1] - 891:31 outright [1] - 850:42 outside [14] - 801:1, 802:23, 803:5, 837:42, 838:20, 840:30, 853:13, 858:35, 859:14, 873:22, 886:18, 892:47, 909:37, 910:18 outsourced [1] - 808:13 outstanding [1] - 896:36 outweighed [2] - 800:18, 885:45 over-protective [1] - 824:18 overarching [1] - 836:8</p>	<p>overnight [2] - 912:10, 912:11 oversee [2] - 858:7, 894:47 oversight [7] - 856:28, 856:30, 857:31, 859:43, 860:2, 870:32, 907:1 overstating [1] - 844:18 overstepped [1] - 885:2 overturned [1] - 911:38 overview [1] - 855:44 own [14] - 803:23, 822:6, 826:20, 835:32, 845:22, 845:24, 845:31, 857:15, 858:12, 858:16, 858:29, 882:3, 896:6 oxymoronic [1] - 884:28</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page [4] - 848:4, 848:7, 848:21, 862:46 paid [1] - 900:3 pain [1] - 824:36 painful [2] - 817:20, 817:26 panel [1] - 909:36 pants [2] - 816:2, 816:4 paper [7] - 818:43, 819:1, 819:19, 819:30, 891:28, 903:37, 904:1 paragraph [13] - 817:16, 824:41, 829:22, 834:32, 834:37, 843:36, 843:40, 867:42, 882:18, 888:10, 888:18, 902:16 paragraphs [8] - 827:12, 827:15, 828:3, 828:15, 832:26, 845:11, 884:21, 888:30 paralegal [1] - 887:5 paramount [2] - 870:37, 884:25 parent [6] - 823:26, 840:31, 865:17, 866:23, 900:5</p>
--	--	--	--	---

<p>parentis [1] - 890:33 parents [5] - 824:26, 856:42, 865:41, 877:34, 882:38 park [1] - 807:23 Parliament [4] - 859:41, 897:24, 897:26, 897:42 part [35] - 801:36, 803:22, 803:23, 804:19, 822:10, 824:20, 829:21, 829:29, 830:38, 843:36, 844:28, 845:39, 847:12, 849:24, 849:28, 849:35, 849:39, 854:13, 854:18, 854:20, 856:11, 856:15, 856:39, 858:2, 859:7, 861:20, 861:46, 877:31, 881:16, 893:20, 893:29, 894:42, 895:8, 907:33 partially [1] - 829:7 participant [1] - 832:21 participate [2] - 876:45, 890:27 participation [1] - 890:20 particular [21] - 800:17, 834:33, 834:37, 835:38, 842:46, 846:43, 847:13, 850:43, 858:23, 860:14, 870:32, 874:15, 885:38, 885:43, 885:44, 897:38, 897:44, 906:11, 906:34, 907:4, 910:8 particularly [8] - 833:21, 835:43, 836:32, 853:22, 858:41, 860:43, 868:3, 869:42 parties [1] - 901:31 partly [1] - 866:32 partnerships [1] - 899:16 parts [5] - 812:27, 836:16, 855:45, 878:20, 904:21 party [2] - 907:1, 907:14 pass [2] - 813:19, 817:35</p>	<p>passage [1] - 897:26 passed [4] - 815:46, 817:7, 818:22, 898:35 passion [2] - 812:33, 812:35 passionate [1] - 804:20 passive [1] - 833:26 past [5] - 813:32, 819:38, 888:45, 889:14, 904:11 path [1] - 835:12 pathway [1] - 904:14 patient [1] - 822:25 Patrick [1] - 826:44 pattern [2] - 829:4, 830:39 patterns [2] - 829:29, 835:31 pause [4] - 805:46, 813:15, 814:5, 900:1 pausing [1] - 911:30 pay [2] - 839:21, 874:24 paying [1] - 804:25 payroll [1] - 909:4 peace [2] - 825:39 peak [1] - 867:37 penalties [2] - 837:20, 844:25 pending [1] - 888:14 penetrate [1] - 815:16 penis [2] - 805:42, 815:16 people [85] - 800:9, 800:16, 800:30, 806:34, 807:2, 808:36, 809:21, 809:42, 822:2, 822:46, 822:47, 824:5, 824:11, 825:43, 831:37, 831:39, 832:3, 832:18, 833:21, 833:28, 833:45, 834:12, 836:29, 836:44, 839:9, 839:15, 841:28, 843:17, 843:18, 843:24, 845:13, 847:35, 848:5, 854:14, 854:17, 854:41, 854:45, 856:38, 859:40, 861:5, 861:12, 861:45, 863:16, 863:37, 864:17, 864:45, 865:12, 866:1, 866:6, 870:2,</p>	<p>870:29, 872:9, 872:34, 877:44, 878:31, 879:2, 879:11, 882:26, 882:27, 882:37, 883:1, 883:16, 885:38, 885:43, 886:5, 889:4, 889:8, 889:16, 890:17, 890:26, 891:3, 893:29, 893:31, 898:26, 898:30, 900:33, 902:32, 903:6, 903:41, 905:33, 906:20, 906:30, 908:2, 908:3, 909:1 People [8] - 838:37, 838:41, 838:47, 840:44, 851:43, 852:34, 892:31, 898:6 people's [2] - 861:36, 861:47 people-pleaser [1] - 807:2 per [3] - 884:45, 884:47 perceive [1] - 861:41 perhaps [25] - 829:19, 829:23, 837:10, 837:27, 842:26, 846:47, 857:32, 859:38, 860:1, 860:15, 861:37, 861:41, 865:11, 865:42, 870:34, 870:41, 871:8, 871:11, 873:2, 878:27, 878:37, 880:5, 906:18, 907:38, 911:19 period [6] - 850:43, 881:9, 882:4, 895:2, 901:24, 901:34 periods [1] - 901:37 permanent [3] - 890:43, 908:3, 909:6 permanently [1] - 887:29 permeates [1] - 892:8 permissible [1] - 862:23 permission [3] - 817:15, 883:32, 883:34 permit [1] - 804:11 perpetrator [5] - 802:12, 812:23, 820:4, 825:32,</p>	<p>841:26 persistence [1] - 862:4 persistent [1] - 862:8 person [60] - 810:2, 810:26, 810:27, 810:36, 811:46, 823:22, 825:10, 825:31, 834:44, 835:37, 839:33, 840:8, 840:11, 840:24, 840:32, 840:35, 843:45, 844:4, 844:46, 846:40, 847:33, 847:45, 847:47, 848:34, 850:9, 850:34, 854:36, 855:2, 855:10, 855:16, 863:3, 864:15, 865:45, 866:9, 866:20, 867:9, 869:13, 869:26, 870:1, 871:13, 871:22, 871:23, 872:4, 872:15, 872:38, 875:9, 875:37, 880:41, 881:6, 881:11, 882:7, 889:43, 891:44, 894:17, 900:39, 902:4, 905:1, 905:4, 909:19, 910:46 person's [6] - 838:41, 840:26, 872:39, 874:45, 875:4, 876:8 personal [7] - 827:36, 829:1, 848:13, 848:37, 860:30, 866:21, 884:5 Personal [1] - 902:3 personally [3] - 823:37, 839:19, 888:45 perspective [5] - 820:24, 822:40, 859:14, 898:11, 898:22 perspectives [1] - 858:29 persuade [1] - 821:34 pertinent [1] - 902:2 petitions [4] - 809:19, 809:24, 809:32, 809:33 petty [1] - 904:15 phenomenon [1] - 868:21 philosophies [1] -</p>	<p>861:39 phone [6] - 803:19, 807:23, 816:1, 816:4, 863:2, 877:47 phoned [1] - 871:47 photocopying [2] - 903:37, 904:1 photos [1] - 883:32 phrase [3] - 829:26, 833:39, 833:41 phrased [1] - 832:9 physical [5] - 859:30, 861:36, 861:42, 878:46, 879:1 physically [1] - 824:27 pick [5] - 828:28, 850:26, 869:31, 874:4, 883:8 picked [1] - 878:17 picking [1] - 806:5 picture [2] - 873:33, 877:13 piece [5] - 874:17, 874:18, 878:29, 879:29, 897:23 pieces [1] - 814:2 piggyback [1] - 805:32 Place [1] - 886:35 place [17] - 805:6, 809:47, 810:5, 832:47, 835:29, 837:9, 838:19, 856:14, 856:21, 856:23, 856:24, 881:35, 899:42, 900:32, 900:38, 902:24, 904:12 placed [3] - 801:1, 886:17, 892:42 places [1] - 819:38 placing [1] - 859:38 plain [1] - 862:15 plaintiff [1] - 827:34 plan [2] - 865:34, 865:44 played [1] - 900:29 playing [1] - 830:19 pleaser [1] - 807:2 point [37] - 805:10, 806:33, 809:44, 815:25, 815:33, 817:43, 820:11, 822:41, 824:45, 827:9, 828:25, 830:26, 830:43, 831:18, 831:21, 832:17, 833:13, 837:19, 844:6, 844:28, 850:38,</p>
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<p>862:23, 863:2, 865:44, 871:26, 883:8, 888:21, 888:23, 893:14, 901:44, 902:46, 903:21, 907:45, 907:47, 910:8, 911:29</p> <p>pointing [1] - 898:26</p> <p>points [8] - 806:38, 811:15, 847:22, 888:29, 888:31, 901:32, 902:45, 903:15</p> <p>Pol [2] - 863:35, 875:1</p> <p>Police [5] - 824:47, 863:35, 863:36, 875:3, 905:35</p> <p>police [22] - 817:45, 817:47, 818:3, 818:13, 818:23, 818:32, 825:4, 842:38, 842:40, 843:1, 843:4, 843:25, 863:36, 863:44, 872:1, 873:44, 874:5, 874:11, 884:9, 910:11</p> <p>policies [14] - 832:31, 832:36, 832:47, 833:26, 833:29, 833:43, 834:23, 834:36, 856:14, 856:21, 860:11, 862:10, 897:28</p> <p>policing [2] - 855:8, 863:34</p> <p>policy [17] - 825:38, 833:35, 833:37, 834:6, 834:7, 834:12, 834:14, 834:24, 854:30, 854:31, 854:38, 859:5, 863:10, 881:30, 883:26</p> <p>Policy [2] - 859:6, 863:20</p> <p>political [1] - 849:14</p> <p>poorly [2] - 832:9, 843:9</p> <p>popular [1] - 809:13</p> <p>population [1] - 834:35</p> <p>portrayed [2] - 804:17, 809:30</p> <p>poses [1] - 844:2</p> <p>position [9] - 809:35, 819:13, 819:15, 826:43, 848:41,</p>	<p>850:17, 868:38, 887:30, 892:5</p> <p>positively [1] - 894:14</p> <p>possible [10] - 836:22, 836:42, 844:31, 844:38, 845:30, 849:32, 849:40, 849:42, 849:44, 904:26</p> <p>possibly [2] - 889:14, 889:15</p> <p>potential [7] - 829:13, 831:32, 836:41, 877:6, 884:38, 885:45, 890:5</p> <p>potentially [7] - 831:36, 853:26, 860:28, 873:43, 874:10, 874:37, 877:9</p> <p>power [4] - 824:6, 867:26, 876:12, 881:3</p> <p>powerful [3] - 843:8, 879:34, 901:23</p> <p>practicable [1] - 849:47</p> <p>practical [6] - 804:39, 833:22, 834:15, 834:18, 835:3, 835:4</p> <p>practically [1] - 836:21</p> <p>practice [11] - 827:32, 827:44, 833:38, 837:19, 857:41, 860:15, 863:12, 864:46, 865:47, 866:1, 878:32</p> <p>practice [1] - 879:12</p> <p>Practices [6] - 834:45, 859:6, 860:42, 863:19, 881:26, 883:27</p> <p>practices [17] - 828:35, 828:37, 834:28, 834:43, 835:23, 835:33, 836:28, 843:2, 843:26, 856:21, 860:28, 868:24, 879:21, 883:29, 883:30, 891:2</p> <p>Practices [1] - 883:27</p> <p>practised [1] - 827:35</p> <p>practitioner [1] - 845:22</p> <p>precautions [1] - 865:32</p> <p>precluding [1] -</p>	<p>877:26</p> <p>predominantly [1] - 827:36</p> <p>preference [1] - 800:18</p> <p>pregnant [2] - 808:25, 808:26</p> <p>preliminary [5] - 831:16, 841:47, 842:2, 842:7, 842:14</p> <p>Premier [3] - 887:13, 887:15, 899:28</p> <p>prepare [1] - 842:15</p> <p>prepared [2] - 826:46, 843:37</p> <p>prescriptive [3] - 860:25, 864:37, 874:40</p> <p>present [3] - 810:9, 810:10, 810:12</p> <p>President [2] - 799:27, 912:7</p> <p>PRESIDENT [24] - 800:1, 800:8, 810:25, 810:31, 818:27, 818:35, 826:14, 840:4, 840:14, 840:37, 851:32, 851:39, 866:29, 867:34, 870:19, 870:47, 879:38, 885:26, 885:35, 898:33, 898:44, 903:45, 912:2, 912:13</p> <p>presumably [1] - 872:20</p> <p>pretty [2] - 814:43, 825:11</p> <p>prevent [2] - 856:22, 872:20</p> <p>preventative [1] - 872:21</p> <p>previous [2] - 881:27, 906:29</p> <p>previously [4] - 844:14, 863:31, 905:35, 906:30</p> <p>primarily [1] - 854:42</p> <p>primary [1] - 848:32</p> <p>principal [12] - 834:4, 842:11, 845:18, 855:27, 855:32, 855:36, 862:25, 863:39, 863:43, 870:1, 871:4</p> <p>principal's [1] - 854:38</p> <p>principals [5] - 857:1, 862:44, 871:47,</p>	<p>892:15, 909:18</p> <p>principle [1] - 870:36</p> <p>Principles [6] - 890:36, 890:44, 897:2, 898:10, 898:42, 899:2</p> <p>principles [9] - 891:28, 891:45, 892:2, 892:7, 897:25, 898:18, 898:37, 899:9, 899:36</p> <p>print [1] - 860:40</p> <p>printed [1] - 819:1</p> <p>prioritise [3] - 831:30, 878:21, 902:38</p> <p>prioritised [1] - 870:28</p> <p>prioritising [3] - 870:21, 871:27, 878:24</p> <p>priority [5] - 870:41, 885:8, 899:31, 899:32, 903:42</p> <p>privacy [2] - 800:19, 885:47</p> <p>private [1] - 807:21</p> <p>probabilities [3] - 875:13, 875:29, 884:35</p> <p>probability [2] - 823:4, 876:29</p> <p>problem [3] - 803:40, 832:47, 833:5</p> <p>procedural [8] - 848:17, 855:16, 877:24, 877:30, 877:43, 878:16, 882:6, 900:19</p> <p>procedurally [2] - 877:26, 878:18</p> <p>procedure [1] - 862:37</p> <p>procedures [5] - 856:14, 856:21, 860:12, 880:25, 900:37</p> <p>proceed [2] - 909:39, 909:41</p> <p>proceeding [1] - 876:34</p> <p>PROCEEDINGS [1] - 799:3</p> <p>process [62] - 808:21, 809:43, 814:42, 817:21, 817:26, 818:17, 820:23, 820:32, 821:29, 822:10, 822:39, 831:31, 832:21, 834:13, 835:16,</p>	<p>836:45, 837:2, 837:23, 840:18, 841:47, 842:3, 842:14, 843:35, 844:8, 844:32, 844:44, 845:26, 845:38, 845:39, 846:9, 846:11, 850:6, 864:24, 865:7, 866:27, 867:14, 869:6, 872:33, 876:6, 877:45, 878:36, 878:42, 878:43, 879:16, 879:47, 885:20, 888:32, 900:18, 900:34, 901:9, 901:32, 901:44, 903:46, 904:21, 907:46, 909:37, 910:9, 910:40, 910:45, 911:22, 911:31</p> <p>process-related [1] - 846:11</p> <p>processes [19] - 821:44, 828:12, 831:28, 835:42, 837:17, 842:10, 842:11, 843:29, 843:30, 845:3, 849:31, 849:41, 849:45, 849:46, 850:2, 850:4, 850:11, 900:30, 900:37</p> <p>produced [2] - 864:43, 867:4</p> <p>profession [2] - 873:7, 886:35</p> <p>professional [12] - 826:41, 826:43, 848:10, 848:13, 852:9, 852:31, 875:12, 883:26, 883:29, 883:30, 886:32, 886:34</p> <p>Professional [2] - 859:8, 860:43</p> <p>professional's [1] - 847:42</p> <p>Professor [2] - 799:28, 849:13</p> <p>Professors [1] - 893:38</p> <p>professors [3] - 894:31, 908:22, 909:8</p> <p>professors' [4] - 894:40, 894:42,</p>
--	---	--	---	--

<p>898:4, 898:8 profile [1] - 872:24 program [1] - 881:34 progress [4] - 888:22, 897:37, 897:43, 899:29 progression [1] - 890:6 prohibit [1] - 880:26 prolong [1] - 844:44 prompt [3] - 872:35, 875:43 prone [1] - 868:8 proof [4] - 884:21, 884:29, 884:34 proper [8] - 839:33, 840:8, 840:11, 840:24, 840:34, 861:7, 885:19, 902:47 properly [8] - 827:13, 831:31, 837:16, 840:33, 846:10, 864:39, 864:44, 901:45 proportionate [4] - 830:12, 830:47, 836:36, 903:5 proposal [1] - 912:9 proposed [1] - 892:26 proposition [1] - 899:33 prospect [1] - 850:28 protect [8] - 800:8, 800:42, 806:46, 807:39, 826:20, 831:24, 877:18, 889:15 protecting [9] - 807:1, 812:23, 820:4, 820:5, 822:6, 826:9, 849:21, 849:43, 892:46 Protection [1] - 902:3 protection [4] - 870:36, 871:27, 878:11, 884:25 Protective [5] - 834:44, 859:5, 860:42, 863:19, 881:25 protective [5] - 824:18, 835:23, 863:12, 868:24, 877:17 protocols [1] - 880:25 prove [5] - 825:31, 882:35, 883:38, 883:39, 883:42 proven [1] - 855:30</p>	<p>provide [25] - 812:46, 816:40, 845:21, 845:31, 848:36, 850:41, 856:44, 857:16, 858:45, 868:8, 869:31, 890:15, 894:19, 894:20, 894:29, 898:10, 901:42, 904:7, 905:16, 905:22, 906:41, 907:8, 907:11, 907:12, 911:27 provided [14] - 809:4, 817:10, 834:44, 848:33, 850:40, 850:41, 874:11, 887:32, 892:14, 894:22, 895:1, 895:47, 898:16, 902:2 provides [4] - 836:13, 893:18, 907:14, 910:23 providing [3] - 847:44, 856:41, 907:1 provision [3] - 839:46, 840:5, 840:7 provisions [1] - 843:42 PSEUDONYM [1] - 801:13 pseudonym [4] - 800:5, 800:22, 846:42 psychiatrist [1] - 845:23 psychiatrist's [1] - 847:39 psychological [3] - 859:31, 859:37, 859:39 psychologist [1] - 847:39 psychologists [1] - 855:34 PTSD [1] - 823:42 public [12] - 800:15, 807:20, 836:34, 853:17, 858:38, 875:44, 879:30, 882:45, 885:42, 893:46, 895:4 Public [1] - 875:45 publication [4] - 800:5, 800:10, 885:32, 885:36 publicly [3] - 890:10, 895:9, 899:39 published [3] -</p>	<p>800:47, 886:14, 895:13 pull [1] - 854:41 pulled [1] - 859:41 punishment [1] - 875:33 punitive [1] - 877:17 purely [1] - 878:11 purpose [3] - 814:19, 868:44, 908:44 purposes [1] - 835:21 pursue [1] - 804:21 pursued [1] - 903:17 purview [1] - 902:13 push [2] - 805:42, 825:7 pushback [1] - 879:10 put [24] - 805:34, 809:19, 815:15, 816:1, 829:19, 833:43, 834:9, 849:16, 861:14, 872:35, 873:10, 874:9, 874:15, 874:22, 874:25, 875:43, 885:10, 889:27, 893:8, 893:33, 899:27, 899:28, 903:8, 910:15 putting [8] - 815:17, 816:3, 830:44, 845:33, 871:8, 884:31, 902:42, 904:20 puzzles [1] - 814:2</p>	<p>851:27, 851:30, 856:40, 857:2, 857:9, 857:19, 857:26, 877:41, 884:22, 887:41, 887:42, 887:44, 892:21, 893:43, 897:37, 900:10, 909:46, 911:47, 912:5 queue [2] - 902:34, 904:27 quick [1] - 836:42 quickly [5] - 813:23, 844:38, 849:42, 888:32, 903:47 quiet [2] - 809:19, 809:24 quite [15] - 801:44, 823:38, 835:41, 837:26, 857:32, 857:35, 857:37, 860:24, 864:8, 876:33, 877:45, 877:47, 879:11, 889:30, 889:31 quote [1] - 904:37 quoted [1] - 880:44</p>	<p>ran [1] - 804:38 random [1] - 820:45 range [12] - 830:10, 831:40, 856:6, 856:9, 864:17, 865:7, 866:30, 870:2, 870:10, 883:33, 888:1, 903:33 rape [2] - 825:11 rapport [1] - 865:21 rarely [2] - 858:23, 867:27 rather [7] - 800:23, 810:42, 832:43, 833:26, 848:17, 874:11, 909:32 re [8] - 848:28, 876:16, 876:18, 876:21, 876:43, 877:1, 877:24, 911:25 re-apply [1] - 876:18 re-examine [1] - 911:25 re-offend [1] - 848:28 re-open [2] - 876:16, 876:21 re-opened [2] - 876:43, 877:1 re-opening [1] - 877:24 reach [2] - 809:8, 845:3 reached [1] - 877:2 reaching [2] - 860:31, 867:37 react [1] - 814:45 reaction [1] - 865:31 read [22] - 801:24, 817:14, 817:16, 818:47, 819:1, 821:37, 823:13, 828:47, 833:27, 833:35, 833:46, 834:12, 843:36, 847:18, 847:19, 848:5, 852:21, 852:43, 884:20, 892:23, 901:3 readiness [1] - 879:17 reading [1] - 840:40 reads [4] - 800:28, 800:36, 886:2, 886:9 ready [7] - 808:47, 809:2, 811:43, 836:20, 847:31, 876:47, 879:13 real [10] - 800:24, 800:32, 834:1, 840:25, 842:44,</p>
R				
<p>race [2] - 804:43, 804:46 RACHEL [1] - 801:13 Rachel [20] - 800:23, 800:28, 800:30, 800:41, 801:5, 801:10, 801:31, 809:11, 811:17, 817:15, 817:25, 825:46, 826:7, 826:14, 889:36, 889:44, 889:45, 890:1, 901:4, 901:7 Rachel's [4] - 800:27, 800:42, 800:43, 889:37 raise [4] - 861:29, 872:19, 874:37, 874:38 raised [6] - 805:21, 833:7, 833:14, 842:6, 862:12, 872:10 raises [1] - 860:10 raising [1] - 910:24 ramifications [4] - 878:28, 878:41, 884:38, 885:20</p>				
Q				
<p>qualification [3] - 863:46, 864:2, 864:12 qualifications [3] - 863:27, 863:30, 864:23 quality [2] - 843:18, 857:45 quantum [1] - 908:31 Queensland [1] - 863:36 queries [1] - 857:27 questioned [2] - 811:36, 907:25 questioning [2] - 864:32, 865:45 questions [26] - 806:8, 825:46, 826:2, 826:7, 828:2, 840:25, 851:25,</p>				

<p>844:45, 848:34, 862:47, 868:6, 892:10</p> <p>realise [5] - 807:20, 815:24, 842:8, 867:38, 884:39</p> <p>realised [7] - 806:4, 808:28, 812:24, 812:34, 853:18, 853:33, 854:39</p> <p>reality [1] - 895:38</p> <p>really [7] - 801:37, 802:17, 804:20, 805:21, 806:2, 809:22, 809:27, 811:15, 811:43, 817:44, 820:46, 820:47, 822:23, 822:24, 824:46, 825:7, 825:15, 829:27, 829:31, 830:18, 831:5, 831:7, 832:20, 834:11, 837:17, 839:7, 841:33, 843:4, 848:31, 851:10, 857:44, 861:7, 861:39, 862:14, 865:23, 866:14, 866:26, 866:39, 871:10, 872:20, 873:26, 877:17, 878:21, 879:16, 879:29, 879:32, 880:10, 880:47, 882:40, 883:15, 884:4, 885:27, 889:2, 890:26, 891:14, 891:32, 894:32, 898:6, 898:27, 899:15, 900:40, 901:23, 901:28, 902:7, 902:39, 907:14, 908:8, 908:26, 911:44</p> <p>realm [1] - 848:17</p> <p>reason [6] - 839:19, 862:31, 873:5, 897:8, 899:44</p> <p>reasonable [5] - 839:12, 850:28, 877:19, 902:19, 904:8</p> <p>reasonably [1] - 858:23</p> <p>reasons [2] - 817:31, 841:14</p> <p>receive [4] - 822:14, 866:24, 882:13,</p>	<p>891:22</p> <p>received [4] - 816:39, 823:9, 833:10, 906:9</p> <p>receives [2] - 828:26, 894:17</p> <p>recent [8] - 843:40, 890:31, 892:34, 900:27, 900:45, 904:35, 904:39, 910:22</p> <p>recently [8] - 827:1, 833:10, 834:40, 843:37, 847:18, 852:21, 880:36, 892:23</p> <p>recognise [3] - 843:29, 896:10, 900:38</p> <p>recognised [1] - 909:1</p> <p>recognising [2] - 870:25, 881:9</p> <p>recognition [1] - 894:12</p> <p>recommend [2] - 872:34, 880:26</p> <p>recommendation [5] - 854:14, 854:32, 855:13, 881:25, 895:28</p> <p>Recommendation [1] - 896:38</p> <p>recommendations [19] - 824:38, 853:37, 862:36, 893:45, 895:18, 895:19, 895:25, 895:29, 895:33, 895:45, 896:14, 896:18, 896:32, 896:36, 897:4, 897:39, 898:5, 898:8, 900:3</p> <p>recommended [1] - 866:35</p> <p>recommends [1] - 855:18</p> <p>reconcile [1] - 909:3</p> <p>record [4] - 823:11, 873:8, 896:13, 908:44</p> <p>recorded [5] - 812:4, 812:16, 812:17, 812:22</p> <p>recording [2] - 812:10, 812:11</p> <p>records [2] - 872:45, 908:24</p> <p>recovery [1] - 889:29</p> <p>rectify [1] - 879:3</p> <p>redact [1] - 895:14</p> <p>REDACTED [4] -</p>	<p>816:11, 816:15, 816:23</p> <p>redacted [1] - 846:40</p> <p>Redress [1] - 908:31</p> <p>redress [2] - 825:33, 887:45</p> <p>reduce [1] - 866:2</p> <p>reduced [1] - 867:44</p> <p>refer [1] - 802:11, 827:13, 828:2, 828:15, 835:20, 862:43, 863:10, 869:1, 890:35, 904:17, 910:42</p> <p>reference [7] - 821:41, 848:31, 848:33, 848:36, 849:15, 898:9, 902:10</p> <p>referred [10] - 800:30, 800:38, 807:27, 881:1, 886:5, 886:11, 889:36, 890:33, 908:23, 909:8</p> <p>referring [2] - 827:13, 846:41</p> <p>refers [1] - 843:42</p> <p>reflect [3] - 833:1, 880:44, 901:47</p> <p>reflected [3] - 837:47, 847:42, 899:31</p> <p>reflecting [1] - 809:47</p> <p>reflection [1] - 899:14</p> <p>reflections [4] - 847:23, 890:18, 893:34, 906:42</p> <p>reflective [1] - 840:9</p> <p>reflects [1] - 908:2</p> <p>reform [3] - 897:38, 897:44, 898:3</p> <p>refuse [4] - 850:23, 850:25, 861:22, 861:36</p> <p>refused [1] - 850:46</p> <p>regard [5] - 834:46, 868:18, 874:43, 898:17, 910:22</p> <p>regardless [3] - 830:25, 830:33, 832:19</p> <p>regime [1] - 878:19</p> <p>register [3] - 908:4, 908:14, 908:15</p> <p>registered [1] - 876:4</p> <p>Registration [10] - 820:13, 820:16, 820:37, 821:8, 839:1, 840:43, 846:33, 847:13, 847:38, 848:43</p>	<p>registration [3] - 821:40, 847:14, 880:35</p> <p>regret [1] - 888:45</p> <p>regular [2] - 837:12, 891:22</p> <p>regularly [5] - 839:10, 844:15, 891:32, 891:33, 899:37</p> <p>regulated [1] - 879:24</p> <p>Regulation [2] - 851:43, 852:34</p> <p>Regulations [1] - 843:43</p> <p>regulator [3] - 839:1, 876:5, 879:25</p> <p>regulators [2] - 856:29, 873:12</p> <p>regulatory [1] - 856:17</p> <p>rein [1] - 894:23</p> <p>reinforce [1] - 885:21</p> <p>reinstate [2] - 809:21, 847:13</p> <p>reinstated [2] - 809:23, 809:35</p> <p>rejected [1] - 850:42</p> <p>relate [4] - 829:9, 849:45, 850:39, 891:45</p> <p>related [4] - 827:34, 829:34, 836:19, 846:11</p> <p>relates [1] - 849:12</p> <p>relating [4] - 828:31, 828:32, 840:5, 888:30</p> <p>relation [37] - 800:11, 800:26, 827:43, 828:11, 832:32, 833:8, 834:1, 836:41, 838:28, 841:4, 842:41, 844:10, 846:9, 850:30, 850:38, 872:27, 877:4, 880:2, 885:36, 887:42, 888:1, 888:3, 888:36, 888:38, 890:10, 890:32, 892:25, 894:32, 898:16, 901:26, 901:29, 902:7, 907:41, 909:27, 909:46, 911:17, 911:31</p> <p>Relations [3] - 901:35, 903:19, 910:32</p> <p>relationship [15] - 815:11, 816:5, 824:3, 837:44,</p>	<p>838:14, 838:15, 865:3, 865:5, 865:23, 877:45, 879:39, 880:29, 880:41, 881:26, 883:4</p> <p>relationships [4] - 824:4, 829:2, 880:26, 881:2</p> <p>relatively [1] - 845:29</p> <p>release [3] - 894:39, 895:2, 895:8</p> <p>released [3] - 894:31, 894:42, 895:4</p> <p>relevant [9] - 800:9, 800:19, 818:47, 827:29, 834:25, 845:32, 885:38, 885:46, 885:47</p> <p>relief [8] - 834:38, 834:40, 835:14, 835:25, 835:44, 836:3, 908:4, 909:6</p> <p>religious [2] - 856:7, 866:47</p> <p>reliving [1] - 818:19</p> <p>remain [1] - 839:33</p> <p>remaining [1] - 896:29</p> <p>remarkable [1] - 826:3</p> <p>remedy [1] - 879:3</p> <p>remember [11] - 805:41, 808:10, 809:45, 814:6, 814:7, 814:16, 817:6, 825:16, 837:5, 863:2, 863:11</p> <p>remembering [1] - 864:8</p> <p>remind [1] - 846:23</p> <p>reminded [2] - 833:25, 834:24</p> <p>reminding [1] - 845:23</p> <p>remorse [1] - 848:12</p> <p>remotely [1] - 826:30</p> <p>removed [2] - 908:14, 908:15</p> <p>rep [1] - 877:38</p> <p>repeat [1] - 826:37</p> <p>repeated [1] - 822:32</p> <p>repercussions [2] - 890:6, 890:18</p> <p>rephrase [1] - 831:46</p> <p>replacement [1] - 810:18</p> <p>report [33] - 806:7, 806:14, 806:25, 807:8, 808:16, 814:3, 833:10, 834:5, 842:15, 847:40, 854:26,</p>
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<p>854:27, 855:5, 856:23, 863:14, 863:42, 868:27, 868:32, 885:18, 886:15, 893:40, 894:31, 894:40, 894:42, 894:47, 895:4, 895:9, 895:12, 895:15, 898:4, 898:8, 899:37 Report [3] - 854:4, 854:42, 877:37 reportable [2] - 858:16, 858:22 Reportable [21] - 856:5, 859:18, 859:22, 859:29, 860:7, 873:40, 874:8, 874:14, 874:39, 875:28, 875:31, 876:42, 878:8, 878:39, 879:15, 879:22, 879:31, 881:7, 906:33, 906:47, 907:13 reported [5] - 806:20, 871:3, 884:8, 899:39 reporting [5] - 800:15, 868:25, 879:30, 883:9, 885:42 representative [2] - 831:22, 877:29 representatives [1] - 820:36 representing [2] - 818:21, 827:30 reprimand [1] - 855:19 reputation [3] - 870:28, 870:39, 870:40 reputational [1] - 870:21 request [5] - 822:9, 888:3, 888:9, 903:3, 908:37 requested [2] - 850:40, 894:46 requests [1] - 887:33 require [2] - 835:46, 859:42 required [4] - 862:7, 863:27, 899:37, 905:37 requirement [5] - 844:45, 864:3, 905:47, 906:6, 907:4 requirements [7] - 844:43, 848:11, 860:25, 863:47,</p>	<p>864:2, 866:34, 902:3 requires [11] - 800:22, 800:26, 800:35, 835:43, 856:20, 862:4, 869:22, 874:12, 886:2, 886:8 requiring [1] - 834:12 reserve [1] - 851:3 resign [5] - 825:29, 875:40, 876:2, 876:19 resigns [1] - 875:37 resolution [1] - 849:43 resolved [4] - 839:21, 849:42, 849:46, 850:31 resources [7] - 850:26, 866:44, 866:46, 905:29, 906:17, 906:23, 906:25 resourcing [2] - 835:43, 850:32 respect [12] - 841:37, 845:47, 850:7, 857:32, 869:39, 874:35, 889:25, 889:38, 893:2, 893:16, 900:1, 904:35 respected [1] - 872:3 respectful [1] - 889:12 respective [1] - 860:36 respond [16] - 816:8, 828:18, 828:34, 844:47, 845:26, 849:40, 855:16, 856:24, 857:7, 860:11, 868:30, 877:44, 882:7, 894:14, 898:7, 901:38 responded [2] - 815:6, 854:28 respondent [1] - 855:2 responding [3] - 832:22, 836:14, 841:34 responds [2] - 861:28, 888:2 Response [2] - 854:24, 854:25 response [21] - 830:9, 830:13, 830:45, 831:2, 831:15, 837:33, 841:13, 841:15, 858:19, 860:16, 861:31,</p>	<p>867:47, 872:5, 881:41, 882:11, 887:33, 889:23, 898:13, 898:21, 898:25 RESPONSES [1] - 799:12 responses [8] - 830:11, 845:24, 856:30, 856:33, 862:11, 870:11, 883:18, 895:34 responsibilities [2] - 832:17, 893:24 responsibility [5] - 811:25, 822:43, 831:23, 841:31, 896:30 responsible [4] - 806:45, 861:19, 883:9, 896:15 responsive [1] - 900:36 restating [1] - 886:32 restless [1] - 823:44 restricted [3] - 800:10, 885:31, 885:36 restriction [1] - 881:4 restrictions [1] - 833:22 result [5] - 835:30, 838:42, 875:30, 875:31, 892:30 results [2] - 836:21, 875:26 retain [1] - 873:5 reticent [1] - 851:14 retired [1] - 852:13 retirement [1] - 853:6 return [9] - 815:17, 845:9, 847:31, 868:34, 868:35, 876:24, 887:43, 910:31 returned [1] - 887:12 review [7] - 833:26, 833:27, 836:40, 850:35, 901:36, 902:43, 909:22 reviewed [2] - 827:1, 889:45 reviewing [4] - 848:44, 894:45, 897:28, 909:10 revised [1] - 897:41 revising [1] - 897:28 revisit [1] - 898:41 rewrote [1] - 898:20 ridiculous [1] - 843:6 rights [3] - 836:43,</p>	<p>849:22, 890:34 ringfence [1] - 893:25 ripped [2] - 824:27, 824:28 risk [10] - 843:45, 844:3, 858:23, 862:33, 874:34, 874:36, 893:8, 893:9, 893:35, 897:31 risking [1] - 806:40 risks [1] - 893:20 road [1] - 813:24 role [19] - 824:34, 835:14, 837:13, 844:9, 845:9, 845:29, 845:36, 846:2, 846:6, 853:6, 858:2, 863:23, 887:28, 893:29, 900:13, 900:17, 900:28, 907:11, 910:15 roles [4] - 860:36, 890:31, 893:23, 893:34 rolls [1] - 839:33 room [17] - 800:45, 800:46, 801:1, 811:37, 813:42, 815:42, 818:12, 820:27, 824:5, 866:6, 866:13, 866:25, 868:5, 886:18, 889:37, 889:38, 901:3 Rooms [1] - 799:18 rough [1] - 836:20 rough-and-ready [1] - 836:20 roughly [4] - 807:42, 807:46, 814:7, 821:2 round [1] - 876:46 routinely [1] - 857:35 Royal [10] - 853:36, 895:17, 895:18, 895:28, 895:33, 895:45, 896:43, 897:39, 898:38, 899:34 RTI [1] - 908:37 rub [1] - 815:34 ruler [1] - 910:25 rules [1] - 911:33 run [11] - 804:37, 813:22, 813:23, 813:25, 835:45, 837:17, 842:11, 866:43, 886:38, 901:19, 901:20</p>	<p>running [1] - 901:19 rushing [1] - 902:41 Russell [1] - 890:8</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>SA [2] - 863:35, 875:1 Safe [16] - 856:13, 856:18, 856:20, 856:27, 859:46, 879:15, 879:20, 879:22, 879:31, 890:36, 891:28, 896:42, 897:2, 897:10, 898:9, 899:30 safe [11] - 809:46, 810:6, 811:6, 811:9, 865:8, 865:27, 865:44, 866:18, 889:5, 890:35, 900:37 safeguard [3] - 889:15, 891:2, 892:36 Safeguarding [1] - 898:6 safeguarding [3] - 891:21, 891:39, 892:47 safely [1] - 864:44 safety [25] - 824:20, 826:3, 833:43, 834:28, 841:22, 843:45, 844:4, 856:39, 859:46, 860:10, 862:11, 870:28, 875:34, 878:21, 878:35, 885:8, 890:32, 891:9, 891:41, 892:47, 893:8, 893:9, 893:14, 893:28, 893:30 Safety [1] - 893:31 Salamanca [1] - 886:35 sanction [2] - 904:16, 911:41 Sanders [20] - 851:42, 852:33, 855:46, 859:13, 860:47, 863:46, 865:31, 869:18, 871:7, 872:42, 873:36, 874:29, 875:21, 876:39, 877:34, 878:4, 879:9, 880:30, 882:16, 884:20</p>
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<p>sanders [1] - 852:30 SANDERS [47] - 852:4, 852:33, 852:41, 852:45, 853:3, 856:4, 856:17, 856:37, 857:5, 857:29, 858:5, 858:10, 858:15, 859:18, 859:29, 860:9, 860:22, 861:2, 861:26, 862:3, 864:2, 864:41, 865:34, 866:39, 867:36, 868:2, 869:21, 869:37, 870:25, 871:10, 872:45, 873:38, 874:8, 874:32, 875:24, 876:1, 876:42, 877:23, 878:6, 878:27, 879:19, 879:46, 880:33, 880:47, 882:21, 883:12, 884:33 sang [1] - 803:31 sat [1] - 812:15 satisfied [3] - 800:15, 848:26, 885:41 satisfy [1] - 866:33 saw [7] - 805:27, 805:28, 806:13, 818:43, 868:3, 873:31, 901:18 scared [2] - 810:3, 812:25 scenario [2] - 830:20, 840:25 Scheme [18] - 856:6, 859:18, 859:22, 859:29, 860:7, 874:8, 874:14, 874:40, 875:28, 876:42, 878:9, 878:40, 879:22, 879:32, 881:7, 906:33, 907:13, 908:31 scheme [15] - 853:45, 853:46, 856:17, 857:1, 857:3, 857:30, 857:43, 859:16, 859:24, 863:47, 868:3, 878:25, 881:34, 882:24, 885:16 scheme's [1] - 875:32 schemes [4] - 858:29, 860:20, 863:23,</p>	<p>887:45 school [83] - 800:37, 801:32, 801:42, 801:46, 802:10, 802:13, 802:24, 802:30, 802:34, 802:43, 803:4, 803:5, 803:7, 803:8, 803:14, 803:22, 803:24, 803:27, 804:32, 804:37, 804:39, 804:43, 806:29, 808:23, 808:25, 808:26, 809:46, 810:7, 810:29, 823:31, 823:33, 823:34, 825:18, 830:14, 830:30, 830:45, 834:3, 837:42, 837:45, 837:46, 838:15, 838:20, 838:29, 839:18, 840:18, 841:20, 841:32, 841:33, 842:7, 842:11, 842:25, 844:13, 853:13, 853:15, 853:17, 853:18, 854:28, 854:37, 855:29, 858:34, 858:35, 858:45, 859:14, 859:15, 866:36, 869:8, 869:34, 869:35, 871:3, 871:6, 883:33, 885:47, 886:10, 889:4, 892:47, 898:31, 909:32 School [2] - 854:19, 870:8 schools [37] - 800:18, 833:4, 833:34, 840:47, 842:27, 849:44, 854:25, 857:13, 857:14, 857:16, 857:17, 866:44, 866:46, 868:42, 869:38, 869:39, 869:45, 870:4, 870:9, 870:10, 870:20, 870:27, 885:38, 885:44, 889:3, 892:9, 892:12, 892:15, 892:16, 892:45, 894:5, 896:42, 900:6, 907:27 scientist [1] - 849:14</p>	<p>scope [5] - 838:12, 873:22, 873:25, 885:40, 886:16 screen [4] - 839:47, 840:2, 846:14, 846:26 scrutinise [1] - 858:3 sec [1] - 846:17 second [3] - 830:8, 872:40, 911:34 secondly [1] - 840:43 secret [1] - 815:9 Secretaries [2] - 896:33, 899:27 Secretary [26] - 823:10, 842:16, 843:38, 886:24, 886:36, 887:19, 887:26, 887:28, 887:40, 887:47, 888:2, 890:30, 890:39, 891:46, 894:24, 894:33, 895:19, 895:21, 895:22, 895:24, 895:26, 895:31, 895:43, 900:28, 906:16, 909:35 secretary [2] - 844:12, 844:14 section [1] - 840:7 sections [1] - 855:33 Sector [1] - 875:45 sector [12] - 856:7, 857:20, 861:40, 870:25, 870:44, 873:3, 873:7, 875:45, 878:20, 878:47, 879:14, 885:15 sector-specific [1] - 861:40 sectors [9] - 856:6, 857:13, 857:19, 869:38, 873:2, 874:41, 878:7, 878:8, 878:46 see [67] - 802:42, 805:47, 808:31, 808:32, 811:32, 822:41, 824:44, 826:30, 834:8, 834:27, 837:15, 838:21, 839:7, 839:19, 839:47, 843:8, 844:9, 844:33, 845:17, 845:32, 846:13, 846:17, 846:26, 849:37, 857:18,</p>	<p>857:35, 858:21, 859:35, 860:26, 861:40, 863:15, 863:41, 864:17, 866:41, 867:19, 867:28, 867:36, 868:4, 869:18, 869:24, 870:5, 870:32, 870:34, 870:39, 873:2, 873:45, 875:29, 876:44, 877:13, 878:31, 880:38, 880:40, 881:1, 882:46, 882:47, 883:14, 883:17, 884:41, 884:46, 885:10, 885:15, 893:31, 894:10, 894:16, 898:19, 901:14, 908:46 seeing [2] - 856:39, 912:14 seek [3] - 808:36, 867:38, 873:45 seeks [1] - 859:34 seem [1] - 872:22 select [2] - 864:7, 865:1 selected [1] - 803:47 send [7] - 848:42, 862:30, 862:31, 862:46, 863:5, 863:7, 873:28 sending [1] - 853:27 sends [1] - 878:34 senior [9] - 801:41, 841:11, 842:7, 842:12, 842:40, 891:10, 891:12, 891:38, 892:15 Senior [1] - 826:42 sense [21] - 814:3, 820:46, 828:35, 831:23, 831:27, 831:29, 832:46, 833:4, 834:36, 838:13, 839:38, 839:45, 841:38, 850:40, 872:43, 880:1, 881:11, 883:10, 893:12, 903:25 senses [2] - 806:4, 849:37 sensible [1] - 834:26 sensitive [3] - 865:25, 905:38, 906:10 sensitively [1] - 883:18</p>	<p>sent [3] - 846:23, 847:15, 909:21 sentence [2] - 848:21, 853:32 separate [8] - 818:31, 834:23, 836:17, 837:15, 837:21, 856:17, 869:6, 869:13 separated [1] - 869:8 separates [1] - 834:4 serious [23] - 802:16, 829:9, 829:33, 829:41, 829:42, 831:38, 831:43, 832:18, 843:42, 843:43, 843:44, 844:3, 844:7, 844:9, 844:20, 844:22, 844:23, 844:30, 855:1, 858:40, 859:2, 859:7, 869:43 serious" [1] - 904:19 seriously [5] - 820:6, 830:29, 885:7, 885:14, 899:36 seriousness [5] - 859:26, 860:2, 860:40, 869:47, 885:21 servants [2] - 837:12, 858:39 Service [13] - 814:31, 817:32, 819:11, 823:5, 825:32, 828:17, 836:9, 839:46, 843:41, 901:39, 904:18, 907:29, 909:38 service [1] - 858:38 Service-wide [1] - 828:17 Services [6] - 842:9, 842:12, 842:13, 842:26, 842:28, 845:18 services [3] - 858:45, 866:23, 907:31 session [3] - 812:41, 885:33, 906:29 sessions [4] - 811:36, 812:3, 812:10, 867:5 set [6] - 862:17, 870:14, 892:2, 894:34, 900:30, 903:7 sets [1] - 861:6 setting [5] - 853:13, 865:45, 867:9, 882:30, 892:19</p>
---	--	---	---	---

<p>settings [1] - 895:35 SETTINGS [1] - 799:12 seven [2] - 806:21, 896:29 sexual [59] - 811:45, 828:22, 829:20, 829:24, 829:25, 829:33, 829:37, 831:26, 832:18, 836:41, 838:26, 841:29, 843:13, 844:2, 844:10, 845:10, 845:15, 846:7, 850:39, 850:47, 850:16, 854:31, 854:34, 854:35, 854:44, 855:26, 858:41, 859:30, 859:32, 860:23, 860:27, 864:9, 867:29, 868:26, 872:20, 873:28, 874:23, 880:15, 880:19, 880:26, 880:41, 881:1, 881:6, 881:7, 882:29, 883:38, 884:10, 895:35, 900:14, 900:24, 903:35, 905:12, 906:32, 907:3, 907:16, 908:41, 910:23 SEXUAL [1] - 799:12 sexually [4] - 853:19, 855:31, 871:43, 888:37 shading [1] - 896:3 shadowed [1] - 825:19 shaking [2] - 813:44, 814:26 share [6] - 800:29, 800:36, 873:11, 883:14, 886:4, 886:9 shared [2] - 876:3, 876:5 sharing [1] - 873:14 shift [3] - 857:22, 862:12, 862:17 shifted [1] - 857:41 shirt [5] - 806:23, 806:26, 816:11, 816:14, 860:40 shirts [1] - 816:9 shocked [1] - 872:5 short [5] - 822:24, 845:46, 860:6, 875:17, 900:47</p>	<p>SHORT [2] - 826:26, 885:29 short-staffed [1] - 822:24 shortform [1] - 884:39 shoulder [1] - 835:40 shoulders [1] - 860:45 show [4] - 803:18, 815:34, 861:41, 882:34 showed [1] - 853:28 shows [1] - 880:4 shy [2] - 802:1, 899:7 sick [1] - 822:23 side [2] - 821:33, 830:44 sign [1] - 833:46 signal [1] - 878:34 signed [1] - 823:15 significance [7] - 828:24, 835:24, 859:36, 894:10, 894:11, 894:13, 894:16 significant [8] - 841:39, 848:13, 859:31, 859:32, 859:36, 859:37, 863:23, 871:12 signing [1] - 809:21 signs [1] - 833:27 silent [1] - 877:38 similar [4] - 826:21, 876:11, 876:42, 899:6 simplicity [1] - 898:28 simply [3] - 866:18, 867:25, 880:8 sing [1] - 803:18 single [9] - 854:39, 857:17, 870:6, 872:46, 892:18, 904:40, 904:47, 905:1, 905:4 sister [1] - 820:26 sit [4] - 841:31, 841:32, 899:12, 905:11 site [15] - 862:44, 863:3, 868:42, 871:6, 871:13, 871:33, 871:41, 872:6, 872:9, 872:15, 872:18, 874:24, 874:27, 874:30, 883:32 sites [1] - 832:44 sits [3] - 831:1, 906:35, 910:17 sitting [9] - 803:28,</p>	<p>813:43, 814:36, 833:6, 891:8, 891:15, 897:23, 909:11, 910:45 situation [18] - 818:23, 823:2, 828:34, 834:15, 838:25, 838:36, 838:38, 839:9, 843:11, 843:13, 850:34, 851:15, 854:15, 854:17, 854:21, 873:27, 910:36 situations [6] - 834:19, 839:12, 844:16, 850:1, 850:41, 869:32 six [1] - 876:10 size [5] - 806:30, 891:17, 895:36, 904:29, 907:30 skill [1] - 863:44 skills [7] - 863:38, 863:41, 866:37, 892:17, 906:19, 906:25, 907:22 sleeping [1] - 823:43 slightly [4] - 855:47, 859:35, 898:26, 898:39 sliver [1] - 870:32 slowing [1] - 844:34 small [23] - 802:4, 802:6, 802:7, 805:44, 809:12, 809:13, 809:46, 812:37, 819:33, 822:24, 866:31, 866:36, 866:42, 866:44, 866:47, 867:24, 867:30, 867:36, 899:15, 901:16, 902:32, 907:26 Smallbone [1] - 893:39 smaller [3] - 827:20, 856:29, 899:18 smile [1] - 813:24 smiled [1] - 901:20 smiley [1] - 801:47 Smith [23] - 826:29, 826:30, 826:37, 826:39, 826:46, 827:18, 828:1, 829:17, 832:27, 839:27, 840:39, 841:9, 843:33, 845:7, 846:16, 846:38, 849:2,</p>	<p>849:11, 850:13, 851:24, 851:28, 851:32, 900:11 SMITH [1] - 826:33 snapshot [2] - 888:21, 888:24 so.. [1] - 905:20 social [7] - 809:5, 833:11, 833:21, 855:34, 892:40, 892:43, 893:12 society [2] - 838:6, 838:7 softly [1] - 839:28 solely [1] - 904:23 solicitor [5] - 827:32, 839:31, 839:32, 839:33 Solicitor [4] - 886:43, 887:8, 894:26, 908:30 Solicitor-General [4] - 886:43, 887:8, 894:26, 908:30 solution [3] - 849:24, 849:29, 849:35 someone [28] - 810:33, 810:44, 810:46, 811:2, 811:6, 812:13, 813:5, 816:33, 817:36, 818:21, 822:23, 823:5, 825:8, 825:24, 825:29, 830:28, 839:6, 860:34, 864:39, 866:24, 870:5, 871:5, 871:6, 871:33, 872:30, 876:34, 907:1, 908:38 something's [1] - 857:37 sometimes [15] - 803:20, 810:19, 833:23, 839:28, 849:6, 850:14, 867:7, 867:36, 876:44, 877:13, 878:17, 879:2, 884:41, 885:2, 885:10 somewhat [1] - 850:17 somewhere [1] - 857:1 song [1] - 803:31 soon [3] - 802:30, 849:44, 849:46 sorry [22] - 803:38,</p>	<p>810:13, 815:29, 816:11, 816:15, 823:20, 823:32, 831:40, 842:20, 850:24, 850:31, 850:37, 859:1, 859:11, 875:36, 880:42, 888:44, 889:2, 894:3, 894:39, 897:15, 909:31 sort [31] - 802:23, 802:27, 803:35, 803:36, 805:33, 805:34, 806:36, 806:47, 810:35, 815:41, 820:28, 821:25, 822:4, 822:22, 824:3, 828:46, 829:1, 831:10, 833:33, 835:41, 838:36, 838:38, 839:44, 847:1, 849:8, 857:18, 857:33, 863:33, 881:2, 903:46, 904:3 sorted [1] - 840:33 sorts [8] - 833:42, 859:34, 859:45, 867:6, 873:19, 880:37, 883:30, 906:39 sought [1] - 870:16 sound [3] - 887:14, 896:20, 906:40 sounds [2] - 801:46, 863:22 sourced [1] - 808:4 South [19] - 827:32, 842:46, 851:46, 852:12, 853:7, 856:47, 862:17, 863:35, 868:20, 868:39, 875:3, 875:37, 880:5, 880:16, 880:24, 881:17, 899:17, 906:31, 906:33 space [1] - 866:14 spare [1] - 803:15 speaking [5] - 807:4, 833:18, 843:16, 846:3, 847:22 specialist [2] - 879:28, 907:18 specially [1] - 806:29 specific [14] - 824:38, 837:9, 847:21, 861:40, 863:27,</p>
---	---	--	---	--

<p>864:2, 864:43, 868:43, 872:27, 874:42, 874:43, 887:43, 897:41, 910:20</p> <p>specifically [1] - 854:30</p> <p>spectrum [5] - 829:18, 829:19, 829:41, 831:2, 831:8</p> <p>sped [1] - 904:21</p> <p>speedy [1] - 844:8</p> <p>spend [2] - 842:39, 857:8</p> <p>spent [2] - 887:3, 887:18</p> <p>spoken [9] - 808:10, 812:10, 820:41, 833:9, 842:24, 889:20, 889:21, 903:6, 906:16</p> <p>sport [1] - 812:38</p> <p>sporting [20] - 801:36, 803:46, 804:5, 804:18, 804:21, 804:24, 804:31, 804:40, 805:2, 805:13, 805:20, 805:30, 805:38, 806:32, 807:26, 812:35, 816:8, 840:17, 859:15, 859:20</p> <p>spot [1] - 857:36</p> <p>spread [1] - 908:35</p> <p>spreads [1] - 892:9</p> <p>spreadsheet [7] - 908:24, 908:25, 908:29, 908:46, 908:47, 909:3, 910:8</p> <p>squad [2] - 842:46, 842:47</p> <p>SRC [1] - 801:35</p> <p>staff [15] - 810:28, 822:6, 827:14, 835:7, 841:20, 842:7, 842:13, 842:27, 855:29, 855:34, 861:7, 872:1, 890:15, 891:34, 893:35</p> <p>staffed [1] - 866:32</p> <p>staffed" [1] - 822:24</p> <p>stage [15] - 804:27, 806:44, 808:15, 812:22, 813:42, 814:36, 829:30, 831:11, 831:14, 863:8, 863:9, 874:24, 875:8,</p>	<p>902:5, 905:31</p> <p>stages [2] - 843:19, 879:47</p> <p>stand [5] - 888:4, 888:22, 899:9, 904:36, 908:7</p> <p>standard [9] - 836:18, 860:32, 875:12, 884:21, 884:33, 884:34, 884:44, 905:37, 907:3</p> <p>standards [6] - 860:5, 891:14, 891:15, 897:24, 898:20, 898:39</p> <p>Standards [10] - 856:13, 856:18, 856:20, 856:28, 859:8, 859:47, 860:43, 879:22, 879:31, 896:43</p> <p>standing [2] - 870:43, 891:8</p> <p>start [11] - 828:13, 835:25, 835:28, 853:5, 857:29, 857:43, 862:12, 868:2, 874:18, 878:40, 898:23</p> <p>started [6] - 813:18, 827:32, 845:8, 873:47, 901:13, 910:45</p> <p>starting [9] - 803:7, 834:45, 858:33, 863:26, 864:26, 868:9, 868:16, 878:28, 881:34</p> <p>starts [4] - 829:42, 873:18, 880:42, 881:24</p> <p>State [13] - 814:31, 817:32, 819:11, 823:5, 825:32, 828:17, 836:9, 839:46, 843:41, 901:39, 904:17, 907:29, 909:38</p> <p>state [14] - 823:33, 823:34, 837:12, 853:45, 856:1, 857:14, 869:38, 890:47, 892:9, 892:10, 897:19, 898:30</p> <p>state's [2] - 843:39, 912:10</p> <p>state-aligned [1] - 897:19</p> <p>statement [60] -</p>	<p>801:20, 801:24, 808:2, 812:2, 813:7, 816:40, 816:41, 817:10, 818:14, 818:28, 818:31, 819:5, 820:12, 820:43, 820:47, 821:1, 821:12, 822:5, 823:14, 824:41, 826:46, 826:47, 827:1, 827:5, 827:10, 827:12, 828:2, 828:3, 828:9, 828:15, 832:27, 834:32, 838:46, 840:40, 841:17, 841:46, 843:34, 843:37, 843:40, 845:11, 847:30, 848:7, 852:16, 852:21, 852:38, 863:20, 867:43, 882:16, 888:2, 888:9, 890:31, 891:1, 891:10, 892:23, 892:34, 894:15, 896:7, 900:45, 902:15, 904:35</p> <p>statements [9] - 822:45, 847:35, 855:3, 887:32, 887:34, 887:37, 888:1, 902:11, 905:46</p> <p>states [3] - 899:6, 899:16, 906:31</p> <p>statistic [1] - 882:17</p> <p>status [4] - 853:36, 888:27, 895:44, 896:14</p> <p>statute [1] - 825:6</p> <p>stay [2] - 800:46, 819:36</p> <p>stealing [1] - 899:7</p> <p>step [15] - 816:39, 817:42, 821:43, 846:2, 857:39, 858:24, 862:37, 862:45, 882:39, 882:41, 882:45, 883:15, 894:40</p> <p>step-by-step [1] - 862:37</p> <p>stepping [2] - 822:38, 846:6</p> <p>steps [5] - 839:20, 854:38, 863:10, 874:34, 878:37</p>	<p>Steven [3] - 826:29, 826:39, 900:11</p> <p>STEVEN [1] - 826:33</p> <p>still [35] - 804:18, 809:8, 811:32, 812:24, 813:19, 815:39, 816:32, 819:28, 819:42, 821:3, 822:5, 822:17, 825:37, 859:47, 860:5, 868:17, 872:31, 873:5, 874:16, 874:26, 875:9, 875:12, 876:3, 876:5, 880:9, 884:34, 888:14, 888:31, 900:33, 903:14, 907:33, 908:2, 909:5</p> <p>stood [3] - 907:40, 908:1, 912:9</p> <p>stop [3] - 815:13, 831:42, 835:1</p> <p>stopped [1] - 815:3</p> <p>story [10] - 817:35, 817:36, 818:14, 820:10, 824:36, 847:7, 865:6, 876:12, 882:46, 883:13</p> <p>straight [6] - 801:38, 813:25, 835:17, 866:23, 872:40, 904:16</p> <p>straightforward [1] - 845:29</p> <p>Strait [2] - 866:10, 866:12</p> <p>stream [3] - 800:40, 801:4, 801:7</p> <p>stream's [1] - 801:10</p> <p>Street [3] - 799:20, 826:44, 852:35</p> <p>strength [3] - 826:9, 883:15, 907:21</p> <p>stretch [1] - 857:46</p> <p>strict [1] - 838:13</p> <p>stronger [1] - 853:14</p> <p>struck [1] - 862:14</p> <p>structure [2] - 853:7, 855:24</p> <p>structures [1] - 899:42</p> <p>struggle [3] - 824:4, 824:5</p> <p>strutting [1] - 813:25</p> <p>stuck [1] - 809:24</p> <p>student [19] - 815:10, 828:30, 828:31, 830:1, 830:3, 830:7,</p>	<p>830:12, 837:44, 838:14, 839:5, 841:13, 841:34, 881:24, 881:25, 881:27, 903:31, 903:40, 910:24, 911:18</p> <p>student-centric [1] - 903:40</p> <p>students [11] - 804:42, 828:33, 842:42, 843:18, 880:27, 880:28, 892:45, 900:6, 906:20, 910:29, 911:23</p> <p>studies [1] - 887:43</p> <p>stuff [6] - 803:35, 807:25, 833:21, 835:41, 872:21, 879:2</p> <p>stuffed [1] - 848:45</p> <p>subject [15] - 827:4, 835:34, 846:40, 856:5, 859:9, 859:19, 859:23, 859:24, 860:14, 862:33, 870:40, 874:35, 878:39, 878:41, 884:38</p> <p>subjects [3] - 860:28, 873:1, 885:6</p> <p>submit [1] - 820:12</p> <p>submitted [6] - 820:18, 820:20, 820:25, 822:15, 872:46, 882:33</p> <p>subsequent [1] - 911:23</p> <p>subsequently [2] - 888:39, 889:46</p> <p>subset [1] - 827:20</p> <p>substantiate [1] - 855:17</p> <p>substantiated [10] - 872:31, 873:4, 875:31, 876:3, 876:10, 876:27, 878:32, 878:34, 911:21, 911:38</p> <p>substantive [1] - 881:31</p> <p>success [3] - 850:28, 881:32, 899:11</p> <p>sued [2] - 808:43, 808:46</p> <p>suffered [2] - 813:13, 889:21</p> <p>suffering [2] - 824:36, 861:19</p> <p>sufficient [1] - 899:31</p>
---	--	--	---	--

<p>suggest [2] - 864:41, 876:30</p> <p>suggested [1] - 847:35</p> <p>suggesting [2] - 845:22, 847:38</p> <p>suggestions [2] - 845:31, 849:38</p> <p>suggests [1] - 849:29</p> <p>suitability [5] - 858:36, 872:37, 875:10, 875:14, 875:42</p> <p>suitable [2] - 872:6</p> <p>suits [2] - 809:45, 810:2</p> <p>summerising [1] - 877:19</p> <p>summary [2] - 892:4, 895:44</p> <p>support [48] - 808:19, 808:20, 808:31, 808:35, 808:36, 810:26, 817:3, 817:4, 823:28, 831:28, 835:7, 842:10, 842:37, 845:19, 845:21, 845:25, 848:17, 849:31, 849:39, 850:19, 850:25, 850:35, 855:22, 855:28, 855:31, 855:33, 855:34, 855:36, 855:39, 856:34, 856:37, 856:41, 856:44, 857:34, 866:9, 866:22, 867:6, 867:12, 867:15, 867:17, 867:19, 867:39, 892:44, 893:30, 899:3, 900:33, 900:43, 911:28</p> <p>supported [6] - 818:11, 841:3, 841:21, 847:33, 865:39, 900:40</p> <p>supporting [8] - 826:43, 831:25, 845:9, 845:14, 845:37, 850:42, 866:27, 893:32</p> <p>supportive [1] - 877:38</p> <p>supports [5] - 808:15, 809:4, 812:42, 812:46, 892:13</p> <p>suppose [7] - 814:11,</p>	<p>829:17, 831:5, 840:26, 840:28, 844:33, 903:21</p> <p>supposedly [1] - 893:6</p> <p>suppression [3] - 862:22, 862:27, 862:29</p> <p>suppressions [1] - 853:25</p> <p>Supreme [1] - 887:9</p> <p>surely [2] - 828:44, 839:17</p> <p>surprise [1] - 872:14</p> <p>surprised [5] - 880:1, 898:15, 898:17, 898:19, 898:21</p> <p>surround [1] - 877:33</p> <p>survivor [4] - 800:9, 800:19, 889:35, 890:3</p> <p>survivors [7] - 882:40, 882:44, 883:12, 888:36, 888:47, 894:6, 894:13</p> <p>SUSAN [1] - 852:2</p> <p>Susan [1] - 852:11</p> <p>suspected [1] - 872:9</p> <p>suspend [3] - 839:20, 844:12, 844:15</p> <p>suspended [6] - 800:41, 801:4, 801:7, 807:10, 809:13, 809:34</p> <p>suspending [1] - 840:21</p> <p>suspension [3] - 838:40, 863:4, 888:14</p> <p>swearing [1] - 829:10</p> <p>swept [1] - 877:9</p> <p>swiftly [1] - 844:31</p> <p>swimming [1] - 884:7</p> <p>Swiss [1] - 817:37</p> <p>switched [1] - 879:23</p> <p>sworn [6] - 801:11, 801:13, 826:31, 851:47, 886:25, 887:47</p> <p>system [31] - 824:24, 829:8, 835:45, 836:17, 836:18, 836:39, 836:40, 837:15, 837:22, 838:37, 838:44, 839:14, 840:31, 844:24, 844:33, 844:35, 844:47, 853:8, 857:12, 864:32, 870:8,</p>	<p>871:32, 872:26, 872:39, 872:42, 873:39, 875:43, 877:33, 881:4, 909:2, 909:4</p> <p>System [2] - 854:24, 854:25</p> <p>systematic [1] - 904:3</p> <p>systemic [1] - 817:35</p> <p>systems [10] - 836:19, 856:22, 856:24, 856:39, 857:15, 862:5, 862:9, 875:44, 880:7, 880:11</p>	<p>833:10, 834:40, 835:10, 835:12, 837:43, 838:14, 838:30, 838:42, 839:20, 839:38, 840:15, 840:21, 840:24, 841:16, 842:12, 847:30, 848:9, 848:11, 871:43, 873:29, 876:4, 884:7, 901:8, 908:38, 911:18, 911:24</p> <p>teacher's [6] - 802:31, 821:40, 847:14, 858:36, 880:28</p> <p>teacher-student [1] - 815:10</p> <p>Teachers [10] - 820:13, 820:16, 820:36, 821:8, 838:47, 840:43, 846:33, 847:13, 847:37, 848:43</p> <p>teachers [26] - 825:17, 827:13, 827:21, 829:35, 833:11, 834:4, 834:38, 835:20, 835:39, 835:44, 836:3, 837:35, 838:7, 839:37, 840:45, 844:15, 860:36, 860:42, 868:24, 868:29, 871:42, 872:28, 880:27, 888:37, 903:36</p> <p>teachers' [1] - 836:3</p> <p>Teaching [1] - 880:35</p> <p>teaching [14] - 809:35, 824:1, 825:20, 835:14, 835:25, 839:8, 839:18, 847:31, 861:36, 861:37, 873:6, 876:5, 880:34, 880:36</p> <p>team [4] - 804:19, 869:26, 891:40, 903:18</p> <p>Team [1] - 893:22</p> <p>tease [1] - 864:21</p> <p>techs [1] - 827:14</p> <p>teenager [2] - 865:12, 865:16</p> <p>teenagers [1] - 865:18</p> <p>telecast [1] - 889:39</p> <p>Tenacity [1] - 801:43</p> <p>tend [3] - 831:37, 831:38, 832:42</p>	<p>tendency [2] - 833:44, 911:35</p> <p>term [3] - 847:3, 877:40, 887:28</p> <p>terminate [2] - 875:12, 901:37</p> <p>terminated [3] - 836:29, 885:19, 888:14</p> <p>termination [1] - 855:20</p> <p>terms [55] - 823:4, 829:41, 839:40, 845:12, 845:21, 845:36, 846:43, 847:10, 849:20, 849:24, 849:38, 857:26, 859:16, 860:2, 864:9, 878:41, 879:20, 884:31, 890:23, 891:13, 892:25, 893:19, 894:33, 894:42, 896:28, 897:18, 897:28, 897:44, 899:14, 899:34, 900:29, 902:1, 902:33, 903:18, 904:33, 905:12, 905:30, 905:32, 905:40, 906:8, 906:19, 906:21, 906:24, 906:25, 906:47, 907:3, 907:9, 907:15, 907:18, 908:17, 908:21, 908:32, 911:25, 911:35</p> <p>territories [2] - 899:6, 899:16</p> <p>Territory [1] - 827:35</p> <p>test [12] - 808:8, 814:6, 828:6, 834:20, 839:33, 839:37, 839:40, 839:45, 840:8, 840:9, 865:10, 884:22</p> <p>THE [7] - 799:11, 826:5, 826:12, 826:24, 851:35, 912:16, 912:18</p> <p>theft [1] - 836:30</p> <p>theirs [1] - 879:41</p> <p>them" [1] - 910:43</p> <p>themselves [7] - 820:5, 841:23, 846:4, 866:15, 867:32, 869:42,</p>
T				
<p>t-shirt [3] - 806:23, 806:26, 860:40</p> <p>TA [1] - 835:44</p> <p>tablets [1] - 823:43</p> <p>tag [1] - 830:19</p> <p>talk" [1] - 807:27</p> <p>talks [2] - 873:29, 881:10</p> <p>tangible [2] - 895:39, 895:42</p> <p>Tas [2] - 835:46, 836:9</p> <p>Tasmania [8] - 806:15, 823:45, 824:44, 827:41, 849:15, 887:10, 893:7, 907:30</p> <p>TASMANIAN [1] - 799:11</p> <p>Tasmanian [11] - 799:19, 828:16, 843:1, 879:13, 895:40, 898:13, 898:25, 899:1, 899:4, 905:35, 906:26</p> <p>taught [1] - 835:22</p> <p>teach [10] - 803:16, 804:39, 819:28, 821:13, 821:18, 838:42, 840:26, 840:32, 840:35, 909:6</p> <p>teacher [44] - 802:10, 802:12, 802:17, 802:18, 802:20, 802:43, 809:13, 815:10, 821:38, 825:28, 828:34, 830:1, 830:2, 830:6, 830:18, 830:21, 831:1, 831:34,</p>				

<p>869:46 theory [2] - 804:39, 834:20 there'd [1] - 810:9 they've [17] - 828:35, 830:27, 833:27, 836:35, 844:17, 856:14, 857:2, 868:5, 872:19, 873:3, 874:13, 876:9, 889:11, 889:21, 899:11, 900:28, 902:34 thickest [1] - 834:9 think's [1] - 908:37 thinking [12] - 807:37, 823:46, 823:47, 824:1, 835:37, 843:31, 863:37, 865:19, 867:9, 884:5, 898:47, 911:30 third [5] - 855:5, 863:20, 889:35, 907:1, 907:14 thirdly [1] - 840:44 this [1] - 812:11 thorough [1] - 901:30 thoughtful [1] - 883:22 thoughts [1] - 839:43 threaded [3] - 862:9, 862:10 three [9] - 854:3, 854:11, 868:5, 869:37, 882:31, 887:39, 888:35, 896:36, 897:3 threshold [3] - 859:26, 859:33, 875:10 throat [1] - 813:45 throughout [3] - 892:9, 912:5 throw [1] - 851:14 throwaway [1] - 885:15 thrown [2] - 813:3, 878:39 THURSDAY [1] - 912:19 tick [1] - 834:29 ticking [1] - 833:34 Tim [1] - 886:23 timeframe [6] - 897:40, 902:24, 902:47, 903:2, 903:8, 903:10 timeline [1] - 847:10 timeliness [5] - 881:41, 882:3,</p>	<p>882:10, 897:44, 901:26 timely [5] - 849:40, 881:42, 881:43, 901:43, 906:41 TIMOTHY [1] - 886:27 Timothy [1] - 886:34 tired [1] - 811:42 TO [2] - 799:12, 912:18 today [22] - 800:8, 808:23, 817:34, 817:38, 818:25, 819:36, 823:38, 824:9, 824:10, 824:19, 824:43, 825:40, 845:13, 848:42, 849:38, 887:38, 888:25, 891:8, 894:23, 900:11, 901:4, 905:27 together [11] - 834:4, 854:15, 854:22, 854:42, 873:10, 877:12, 881:16, 885:12, 893:9, 893:18, 893:23 toilets [1] - 855:41 tomorrow [3] - 887:42, 912:8, 912:14 too [1] - 910:30 took [5] - 813:9, 819:14, 857:32, 860:41, 911:40 top [3] - 805:40, 810:2, 905:6 topics [2] - 812:20, 865:46 torn [1] - 807:2 Torres [2] - 866:10, 866:12 totally [2] - 818:24, 843:21 touch [7] - 815:35, 820:16, 820:17, 824:32, 835:39, 860:39, 861:22 touched [8] - 815:28, 823:47, 828:30, 830:27, 831:13, 831:14, 835:40, 868:34 touches [3] - 830:3, 830:7, 830:20 touching [7] - 830:1, 830:12, 830:21, 834:43, 910:25, 910:26, 911:19</p>	<p>touchy [4] - 828:36, 860:35, 860:36, 860:41 touchy-feely [4] - 828:36, 860:35, 860:36, 860:41 towards [6] - 801:41, 813:25, 860:31, 861:42, 890:11, 903:9 town [3] - 802:6, 802:7, 812:37 TPOL.0002.0004.0128 [1] - 846:14 track [1] - 903:16 trades [1] - 905:3 tradition [1] - 870:17 traditions [1] - 870:13 trained [7] - 837:16, 842:28, 843:1, 843:24, 863:11, 864:31, 905:46 training [15] - 806:31, 816:11, 833:34, 834:45, 835:8, 835:10, 835:29, 862:38, 864:32, 864:42, 868:24, 868:27, 886:39, 906:11, 906:19 training [1] - 806:26 trajectory [1] - 882:23 transcends [1] - 892:8 TRANSCRIPT [1] - 799:3 transcript [2] - 800:42, 880:44 translate [1] - 895:38 transparency [1] - 879:33 transporting [1] - 883:34 trap [1] - 850:24 trapped [1] - 805:22 trauma [12] - 837:18, 841:12, 841:15, 841:34, 841:43, 843:2, 843:10, 843:26, 865:36, 866:2, 889:22, 907:34 trauma-informed [8] - 837:18, 841:12, 841:15, 841:34, 841:43, 843:2, 843:26, 907:34 traumatic [2] - 865:37, 866:21 travelling [2] - 804:1, 900:42</p>	<p>TRB [10] - 820:42, 821:17, 822:16, 822:19, 822:33, 823:11, 823:23, 840:8, 840:34, 841:4 TRB [1] - 823:15 treated [3] - 835:38, 889:46, 889:47 TRFS.0008 [1] - 888:9 triage [3] - 903:46, 904:3, 904:20 trial [1] - 875:4 Tribunal [3] - 799:19, 880:3, 880:16 tribunals [1] - 879:39 tricky [1] - 857:36 tried [2] - 801:37, 822:8 triggered [1] - 862:16 triggers [1] - 876:6 trip [8] - 805:1, 805:13, 805:18, 805:20, 805:21, 805:22, 805:23, 805:27 trouble [1] - 835:35 true [5] - 801:27, 827:5, 852:25, 852:47, 891:29 truly [2] - 868:28, 868:29 trust [6] - 804:17, 820:3, 865:5, 882:38, 882:39, 883:4 trusted [3] - 810:34, 871:14, 871:19 trusting [1] - 824:5 trustworthy [2] - 868:7, 868:14 truth [4] - 811:22, 819:24, 819:25, 825:4 truthfully [1] - 811:12 try [7] - 801:36, 801:38, 807:39, 844:38, 848:47, 868:11, 872:3 trying [16] - 803:27, 807:35, 809:20, 815:25, 822:3, 822:34, 826:20, 828:33, 828:42, 831:6, 837:5, 838:34, 840:1, 846:3, 848:45, 857:38 tuck [2] - 806:8, 806:10 tucked [1] - 806:9</p>	<p>tucking [1] - 805:29 turn [5] - 812:42, 839:13, 855:46, 856:45, 909:21 Turner [1] - 827:33 turning [1] - 843:5 turns [2] - 880:41, 881:11 twice [1] - 877:40 twisted [1] - 816:25 two [41] - 802:34, 804:4, 805:31, 809:45, 811:37, 811:38, 811:42, 812:3, 812:4, 813:9, 813:17, 813:32, 813:37, 814:11, 814:12, 814:15, 815:46, 817:28, 818:22, 821:38, 827:46, 847:4, 853:16, 854:26, 860:22, 873:15, 880:28, 887:18, 893:18, 900:29, 901:8, 901:11, 901:24, 903:4, 906:31, 906:42, 906:43, 908:1, 910:9, 910:45 two-bedroom [1] - 805:31 two-year [1] - 901:8 type [6] - 804:21, 805:28, 847:24, 882:33, 905:27, 905:29 types [3] - 859:30, 859:33, 866:40 typically [2] - 858:21, 870:4</p>
U				
<p>ultimately [5] - 822:5, 822:8, 831:35, 866:2, 898:35 umbrella [1] - 854:22 unable [2] - 838:42, 892:44 uncomfortable [2] - 805:33, 829:26 uncovered [1] - 893:47 uncovers [1] - 873:21 under [17] - 844:13, 844:31, 854:22, 855:19, 856:12, 858:15, 859:46,</p>				

<p>863:22, 863:47, 864:3, 881:5, 881:7, 889:21, 901:28, 904:4, 904:11, 905:3 understandably [1] - 871:47 understandings [1] - 833:1 understood [4] - 813:30, 821:28, 821:30, 833:3 undertake [6] - 901:29, 901:36, 901:43, 902:30, 902:33, 905:36 undertaken [7] - 831:16, 831:31, 904:8, 906:7, 907:10, 909:26, 910:9 undertaking [1] - 827:33 unfair [3] - 825:12, 851:8, 877:18 unfortunately [4] - 851:21, 851:22, 853:13, 880:47 unfounded [1] - 839:13 union [22] - 827:21, 827:45, 831:22, 832:41, 840:40, 840:45, 847:44, 848:2, 849:28, 849:35, 850:16, 850:17, 850:18, 850:44, 877:36, 877:38, 877:39, 877:45, 877:46, 877:47, 900:13, 900:16 Union [7] - 826:29, 827:19, 846:30, 848:25, 848:42, 900:12, 900:23 union's [1] - 845:9 unions [9] - 844:43, 849:15, 849:21, 877:29, 877:33, 878:7, 878:10, 878:16, 878:17 uniquely [1] - 870:45 Unit [9] - 854:4, 854:5, 854:19, 854:24, 854:47, 855:6, 869:41, 871:39 unit [13] - 854:16, 854:18, 854:24, 854:29, 855:5, 855:6, 855:8,</p>	<p>869:40, 870:9, 876:4, 906:34, 906:35, 907:31 Unit's [1] - 854:43 units [2] - 854:3, 854:21 universally [2] - 857:45, 878:27 university [4] - 835:14, 835:24, 835:27, 864:32 University [1] - 849:14 unjust [1] - 825:13 unless [2] - 881:30, 886:11 unnatural [1] - 816:24 unpack [2] - 858:27, 902:46 unreasonable [1] - 902:19 unrelated [2] - 838:28, 859:21 unreserved [1] - 889:18 unreservedly [2] - 889:3, 894:5 unsubstantiated [1] - 876:26 unsure [1] - 857:10 untrained [1] - 843:17 unused [1] - 857:31 up [73] - 801:43, 803:28, 804:5, 804:8, 804:42, 805:20, 805:42, 806:5, 806:33, 807:4, 807:35, 809:19, 810:28, 813:11, 815:4, 815:14, 815:21, 815:29, 815:34, 819:14, 819:35, 819:41, 820:1, 820:27, 820:42, 822:18, 823:40, 827:35, 831:36, 831:37, 833:14, 839:47, 840:1, 840:27, 842:5, 846:13, 846:25, 848:45, 850:6, 855:36, 857:35, 860:27, 861:14, 861:30, 862:6, 862:39, 865:46, 867:9, 867:25, 868:9, 870:14, 870:19, 871:21, 872:35, 872:36, 872:39, 873:34,</p>	<p>874:4, 877:9, 877:13, 878:17, 879:11, 882:12, 882:14, 882:23, 883:8, 892:12, 894:34, 898:46, 904:21, 908:31, 911:9 upbringing [1] - 835:32 update [4] - 888:29, 899:38, 902:4, 903:14 updated [4] - 833:1, 833:35, 888:26, 909:44 updates [1] - 891:22 uplift [1] - 857:44 upper [1] - 910:26 upset [1] - 815:39 urgency [1] - 903:25 useful [6] - 834:19, 888:28, 895:33, 895:34, 900:32, 905:23 uses [1] - 844:14</p> <p style="text-align: center;">V</p> <p>vagina [3] - 815:21, 815:35, 816:3 validity [1] - 894:18 value [4] - 834:1, 837:20, 857:33, 900:32 variable [1] - 832:37 varied [1] - 834:19 variety [1] - 827:43 various [2] - 879:39, 888:27 variously [1] - 908:23 vast [1] - 904:39 vastly [1] - 830:21 vehicle [7] - 804:2, 804:6, 804:8, 806:39, 815:1, 815:15, 815:21 verbal [1] - 820:30 verbally [1] - 855:36 version [3] - 814:37, 868:4, 909:20 vibrate [1] - 816:2 victim [12] - 800:9, 800:19, 829:13, 850:9, 853:26, 862:29, 882:44, 883:12, 888:36, 889:35, 890:3, 894:13</p>	<p>victim-survivor [4] - 800:9, 800:19, 889:35, 890:3 victim-survivors [4] - 882:44, 883:12, 888:36, 894:13 victims [3] - 850:1, 888:47, 894:6 Victoria [17] - 851:44, 855:46, 855:47, 856:6, 860:24, 864:36, 869:37, 870:23, 872:43, 875:24, 876:1, 876:40, 878:4, 880:24, 880:31, 906:30, 906:33 Victorian [10] - 857:3, 857:12, 859:13, 863:47, 869:17, 869:39, 869:45, 873:38, 880:3, 880:35 videoing [1] - 805:44 view [13] - 809:44, 817:43, 820:11, 822:39, 822:41, 824:45, 833:47, 847:32, 848:37, 850:28, 860:47, 884:45, 899:41 vigorous [1] - 849:6 violence [2] - 859:30, 878:47 voice [2] - 800:42, 823:1 voices [1] - 836:43 volunteer [1] - 866:43 volunteer-run [1] - 866:43 volunteers [1] - 866:32 Vulnerable [5] - 838:37, 838:41, 838:47, 840:44, 841:5 vulnerable [4] - 836:32, 838:36, 864:28, 864:32</p> <p style="text-align: center;">W</p> <p>waiting [2] - 897:23, 897:45 Wales [4] - 827:32, 842:46, 875:37, 880:5 walked [2] - 805:34, 815:41</p>	<p>walking [1] - 805:30 Wall [1] - 803:31 wants [1] - 871:44 wardrobe [1] - 806:26 warranted [1] - 838:4 WAS [1] - 912:18 watch [6] - 800:46, 888:41, 888:43, 889:7, 889:8, 889:21 watches [4] - 800:28, 800:36, 886:2, 886:9 watching [1] - 800:45 Wayne [11] - 800:31, 802:11, 802:29, 802:37, 804:41, 806:29, 809:34, 819:7, 819:11, 819:12, 848:27 Wayne" [2] - 846:42, 886:6 ways [9] - 838:31, 860:22, 861:27, 867:6, 877:23, 888:36, 889:22, 900:46 wear [2] - 806:30, 806:31 wearing [1] - 806:33 webinar [1] - 867:5 Webster [4] - 891:3, 897:36, 897:37, 899:29 week [15] - 833:9, 833:14, 841:9, 849:13, 879:13, 887:40, 888:25, 888:34, 888:42, 889:36, 891:21, 892:41, 893:39, 893:44, 899:28 weekend [3] - 804:3, 858:42, 859:15 weekly [1] - 804:7 weeks [4] - 822:36, 882:4, 882:5 weight [1] - 867:44 weighted [1] - 868:12 welcome [1] - 895:38 welfare [2] - 832:20, 832:23 wellbeing [3] - 885:46, 893:32, 900:33 whatever" [1] - 810:37 whatever's [1] - 825:34 whatsoever [2] - 834:46, 903:2 whereby [1] - 911:37 whichever [1] - 844:13 whilst [4] - 803:19,</p>
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<p>825:30, 836:42, 897:25 who've [1] - 889:8 whoever's [1] - 864:27 whole [13] - 815:3, 822:39, 822:41, 825:34, 837:36, 853:45, 856:1, 864:17, 868:31, 871:26, 871:45, 874:2, 910:45 whole-of-state [2] - 853:45, 856:1 wholly [3] - 836:33, 836:35, 836:36 wide [2] - 828:17, 866:30 wider [2] - 824:20, 834:7 widespread [1] - 870:31 willing [5] - 807:38, 809:47, 822:25, 849:23, 849:28 wish [6] - 810:43, 810:44, 817:22, 826:21, 876:45, 890:12 wished [1] - 889:37 wishes [1] - 889:38 wishing [1] - 886:15 witness [14] - 800:4, 800:11, 800:23, 822:45, 826:28, 849:13, 851:25, 855:3, 864:28, 881:14, 885:37, 886:3, 886:23, 886:25 WITNESS [5] - 826:5, 826:12, 826:24, 851:35, 912:16 witnessed [3] - 805:29, 807:37, 822:47 witnesses [13] - 836:31, 851:42, 851:46, 855:11, 864:33, 873:31, 879:13, 883:22, 889:19, 890:11, 890:19, 891:15, 911:21 woman [2] - 861:18, 865:20 women [1] - 823:32 Wonder [1] - 803:31 wonder [2] - 884:30, 907:29 word [8] - 813:16,</p>	<p>816:14, 816:24, 817:21, 853:14, 874:15, 884:29 words [2] - 807:24, 817:21 worker [2] - 885:18, 892:40 workers [4] - 855:34, 879:1, 879:2, 892:43 workers' [2] - 827:34, 827:44 workforce [2] - 899:19, 906:27 Workplace [3] - 901:35, 903:19, 910:32 works [2] - 843:7, 871:6 world [1] - 824:20 worried [6] - 808:46, 812:26, 856:43, 861:30, 873:10, 874:39 worthy [1] - 837:32 wrap [2] - 855:31, 855:32 wrap-around [2] - 855:31, 855:32 write [5] - 816:40, 818:28, 818:31, 821:41, 847:46 writing [5] - 816:45, 817:1, 855:37, 911:1, 911:5 written [6] - 817:10, 820:29, 846:39, 847:10, 854:32, 909:36 wrongs [1] - 889:14 wrote [2] - 816:7, 846:38</p>	<p>813:17, 813:33, 815:46, 817:28, 818:22, 827:41, 827:46, 839:32, 843:2, 847:4, 853:17, 857:22, 857:23, 857:25, 876:46, 879:47, 880:6, 880:9, 880:10, 880:28, 882:31, 887:14, 887:18, 897:39, 901:11, 907:19, 911:39 yesterday [3] - 847:19, 890:9, 894:9 young [24] - 835:15, 835:37, 843:18, 854:45, 856:37, 859:40, 861:5, 861:12, 861:18, 861:21, 861:35, 864:45, 866:1, 866:20, 870:29, 879:1, 880:41, 882:27, 882:37, 889:4, 889:16, 891:2, 903:41, 906:20 Young [5] - 801:44, 851:43, 852:34, 892:31, 898:6 younger [2] - 865:15, 865:16 yourself [4] - 811:28, 816:38, 817:9, 835:35 Youth [1] - 856:9</p>
	Y	Z
	<p>year [18] - 801:41, 808:3, 822:16, 833:25, 833:45, 834:1, 842:37, 845:5, 852:14, 862:8, 882:22, 882:32, 893:45, 897:43, 901:8, 901:24 Year [2] - 808:24, 816:5 year-upon-year [1] - 882:22 years [31] - 802:10, 808:22, 813:9,</p>	<p>zipped [1] - 806:33</p>