

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study 24
(Day 146)**

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Friday, 3 July 2015 at 10am

Before
The Presiding Member: Justice Jennifer Ann Coate
Commissioners: Robert Fitzgerald AM
Professor Helen Milroy

Counsel Assisting: Ms Gail Furness SC

1 MS FURNESS: Good morning, your Honour. Your Honour and
2 Commissioners, today we have Steve Kinmond, who is the
3 Deputy Ombudsman in New South Wales; Phil Clarke, who is
4 the Queensland Ombudsman; and Deborah Glass, who is the
5 Victorian Ombudsman.

6
7 <STEVE KINMOND, sworn: [10.05am]

8
9 <PHIL CLARKE, sworn: [10.05am]

10
11 <DEBORAH GLASS, sworn: [10.05am]

12
13 MS FURNESS: Thank you, your Honour. If I can start with
14 you, Mr Kinmond. How long have you been Deputy Ombudsman?

15
16 MR KINMOND: About 10 years.

17
18 MS FURNESS: And your responsibility is particularly for
19 the area that includes out-of-home care?

20
21 MR KINMOND: That's correct.

22
23 MS FURNESS: There are a number of functions that the
24 Ombudsman's office, and you as Deputy Ombudsman, have in
25 relation to out-of-home care, and perhaps if we can just
26 deal with the topics for the moment, and we will come back
27 to the detail. One of the significant areas under your
28 responsibility is reportable conduct matters?

29
30 MR KINMOND: That's correct.

31
32 MS FURNESS: Can you describe what a reportable conduct
33 scheme looks like in your office?

34
35 MR KINMOND: The reportable conduct scheme involves
36 a range of agencies - for example, government and
37 non-government schools; government and non-government
38 out-of-home care providers; private childcare centres;
39 local health districts and a range of other agencies -
40 notifying the Ombudsman of matters that involve allegations
41 against their employees - and it is important to bear in
42 mind that employees includes those who are engaged to
43 provide services to children.

44
45 MS FURNESS: So contractors?

46
47 MR KINMOND: Yes - well, yes, if they are engaged to

1 provide services to children, yes, and engaged by the firm.
2 So yes. It requires the reporting of allegations against
3 employees that are defined as reportable allegations. So
4 if there is an allegation, for example, of a sexual
5 offence, sexual misconduct, an assault, ill treatment of
6 a child, neglect or any behaviour that causes psychological
7 harm to a child, if there is an allegation of that type
8 that is made, that either alleges that conduct occurred or,
9 indeed, alleges that it may have occurred, then there is
10 a requirement on the head of the agency, generally the
11 chief executive, to within 30 days notify the Ombudsman of
12 the allegation.

13
14 MS FURNESS: Does it matter how the chief executive
15 officer came to know about the allegation?

16
17 MR KINMOND: As to whether it needs to be notified?

18
19 MS FURNESS: Yes.

20
21 MR KINMOND: No, it doesn't.

22
23 MS FURNESS: If it is a rumour that something has
24 happened, is that captured by the scheme?

25
26 MR KINMOND: It's very important to bear in mind that it
27 is an allegation-based scheme. So if, for example, the
28 matter may ultimately be proved to be without foundation,
29 but if the allegation is made, then there is a requirement
30 to report it.

31
32 MS FURNESS: So the term "allegation" is used in the
33 legislation?

34
35 MR KINMOND: Yes, yes.

36
37 MS FURNESS: So in the event that there were kids in the
38 playground talking among themselves about "Don't go near
39 teacher X because he does terrible things", and a teacher
40 overheard that and reported it to the principal or CEO,
41 would the CEO be obliged to notify you?

42
43 MR KINMOND: Yes, if he receives that information and he
44 believes that it either constitutes an allegation of
45 reportable conduct or that it may involve reportable
46 conduct, then there is a requirement for it to be notified
47 to us.

1
2 MS FURNESS: So it is based on that person's belief that
3 what they have heard constitutes an allegation?
4

5 MR KINMOND: That's right.
6

7 MS FURNESS: And, no doubt, you would encourage them to
8 take a broad view of "allegation".
9

10 MR KINMOND: Indeed.
11

12 MS FURNESS: Is it the case that, from time to time, you
13 receive information which could, in a commonsense term, be
14 classed as rumours?
15

16 MR KINMOND: Yes, that would be correct.
17

18 MS FURNESS: How are they to notify you of this
19 allegation?
20

21 MR KINMOND: There is a requirement that they provide
22 advice to us as to obviously the nature of it. We have
23 a particular form in place which ensures that the
24 information is presented in a systematic fashion, so it
25 will include basic details which will allow us to assess
26 whether it meets the reportable conduct threshold. In
27 addition, there is information that we receive in terms of
28 the characteristics of the victim and information also in
29 relation to the person the subject of allegation. So we
30 have a form in place which is easily accessible on our
31 website and so that provides guidance to agencies.
32

33 MS FURNESS: If a CEO doesn't know the name of the
34 purported victim and doesn't have a name of the alleged
35 perpetrator, are they still to report?
36

37 MR KINMOND: Well, that's not an allegation against an
38 employee. However - however - by virtue of our broader
39 jurisdiction, and by virtue of the fact that agencies are
40 very aware that we are willing to help and assist, if they
41 had a matter which wasn't fully formed but they had
42 concerns about it, then we would encourage them to make
43 contact with us.
44

45 MS FURNESS: So if, as has often been the case that the
46 Royal Commission has heard, a child can't identify the name
47 of a person because they all look the same, and if the

1 information that was overheard was a group of children
2 talking about not wanting to do something because of what
3 they had heard others had experienced, you would not have
4 a perpetrator or a victim named, would that fall within the
5 definition, bearing in mind that it must have been an
6 employee by the nature of the circumstances of the
7 discussion?

8
9 MR KINMOND: I think I would take the view that the legal
10 question as to whether it sufficiently identified an
11 employee is one thing. The benefit of a matter of that
12 type coming to our organisation in order for us to review
13 it and to provide practical assistance in relation to how
14 it might be moved forward, together with the risk
15 management strategies that might be in place, our
16 particular view is, once again, given this is about
17 protecting children, the preference would be for them to
18 notify us for the purpose then of having a look at what
19 could be done with the matter.

20
21 MS FURNESS: Thank you. Now, in addition to the
22 reportable conduct jurisdiction, you have the capacity to
23 investigate of your own motion or at your own initiative?

24
25 MR KINMOND: That's correct.

26
27 MS FURNESS: Is there a provision in your legislation that
28 you can be directed by minister or parliament to undertake
29 a particular investigation?

30
31 MR KINMOND: No. I think it's very important for me to
32 note that we are independent of government.

33
34 MS FURNESS: I understand that. But, nevertheless, can
35 you be directed to undertake any investigation?

36
37 MR KINMOND: No.

38
39 MS FURNESS: You have a parliamentary committee as an
40 oversight mechanism?

41
42 MR KINMOND: That's correct.

43
44 MS FURNESS: Any other?

45
46 MR KINMOND: No.

1 MS FURNESS: You also, as I understand it, undertake
2 auditing work?

3
4 MR KINMOND: That's correct. In addition, under our
5 legislation, it refers to the importance of the Ombudsman
6 in addition to dealing with individual matters and ensuring
7 that they are appropriately handled, the responsibility of
8 our office to keep under scrutiny the systems for the
9 reporting of matters - that includes the systems for
10 preventing reportable conduct and for reporting and
11 responding to reportable conduct. So we carry out that
12 function via a range of auditing activities, but, in
13 addition, the use of, for example, consultations and also
14 review of data is critical in terms of us monitoring the
15 health of the system, monitoring, recording trends and
16 making decisions about where we might need to apply our
17 resources because of potential vulnerabilities in terms of
18 the operation of the scheme.

19
20 MS FURNESS: And you have a broader responsibility and
21 function to receive complaints that fall outside of the
22 reportable conduct scheme against government agencies?

23
24 MR KINMOND: Yes, against both government and
25 non-government agencies. So I have a dual function of
26 Deputy Ombudsman and Community and Disability Services
27 Commissioner, and there are eight functions pertaining to
28 my role as Community and Disability Services Commissioner.
29 I won't take you through each of them, but it is important
30 to bear in mind that I have a broad monitoring review and
31 inquiry role in connection with principally children's
32 services, and that includes the out-of-home care sector,
33 the early intervention sector, the child protection system
34 and, also, the provision of disability services as well.
35 So there is an ongoing responsibility that we have to look
36 at the health of those systems, and it is the strategic use
37 of that function combined with the reportable conduct
38 function that assists us in terms of identifying issues
39 that need to be pursued and achieving outcomes.

40
41 MS FURNESS: So I take it that the data you collect under
42 the reportable conduct scheme can be married up with the
43 data under your broader complaint handle responsibilities,
44 including the disability matters you referred to, so as to
45 gain one picture.

46
47 MR KINMOND: Absolutely. And complaint data is very

1 important, but, in addition to that, we facilitate the
2 operation of the community visitor scheme. The visitor
3 scheme involves visits to both disability services, but, in
4 addition to that, the visitor scheme operates in relation
5 to children who are in residential out-of-home care. So
6 that's another important source of information. We have
7 a child death review function, which, once again, is
8 another important source of information.

9
10 So there is the complaints function, the community
11 visiting function, the reportable conduct function. We
12 have a community education function, and one thing that we
13 find is absolutely vital is that it is important not to
14 carry out one's functions simply sitting within the office.
15 It's essential that one builds good relationships with
16 those who are most important in relation to service
17 delivery, namely, the service providers themselves. So we
18 invest quite heavily in terms of ensuring that we have good
19 business relationships and good connections with those
20 people who are at the coalface doing the very important
21 work of serving people with disabilities and serving
22 children and, of course, for the purposes of this hearing,
23 that includes children in out-of-home care.

24
25 MS FURNESS: With the official visitors scheme, has that
26 always been under the Ombudsman's umbrella?

27
28 MR KINMOND: The visiting scheme was a part of the
29 Community Services Commission, which was - the functions of
30 the Community Services Commission were rolled into the
31 Ombudsman's Office early this century. That sounds like
32 a long time ago.

33
34 MS FURNESS: So about a decade or so ago.

35
36 MR KINMOND: A little bit over a decade ago. So the
37 visiting scheme was a part of the Community Services
38 Commission and it's an invaluable source of information and
39 I think it's a very important safeguard for children in
40 out-of-home care as well as people with disabilities living
41 in disability accommodation environments.

42
43 MS FURNESS: Just concentrating on children in out-of-home
44 care in residential facilities, how has the operation of
45 the visitors scheme changed from when you were involved
46 with it about a decade ago to today?

1 MR KINMOND: I think a number of things. We, for example,
2 have done some work around this critical issue of data, and
3 so we engaged a number of years ago Roger West's firm, from
4 WestWood Spice, to look at aligning the information that
5 visitors capture with various standards in the disability
6 area and in the out-of-home care area, so that there was
7 a much more systematic collection of information holdings.
8 We've introduced a very strong mentoring scheme for new
9 visitors, so that they feel supported and they get the very
10 solid advice from experienced visitors about visiting.

11
12 A great deal of investment also in the area of
13 education for visitors - a lot of training, so that we're
14 providing support to them. So there are many elements -
15 because the Commission did a good job, in my opinion -
16 there are many elements of the visiting scheme that are the
17 same as the operation under the Commission, but as one
18 would expect, in the last 10 years we've looked to continue
19 to improve the operation of that scheme.

20
21 MS FURNESS: Are they volunteers?

22
23 MR KINMOND: No, the remuneration is not - it is not
24 a situation where the remuneration levels are high. They
25 are a little bit over \$30 an hour, and for \$30 an hour we
26 have the benefit of attracting a whole range of people with
27 exceptional skills. So it's often, but not always,
28 a situation where you can have a very experienced person
29 who has worked in the community services area, they are
30 either towards the end of their career or they have
31 retired, and this is something they would like to do by way
32 of giving back to the community.

33
34 MS FURNESS: Do you have a benchmark as to how frequently
35 community visitors should visit children in out-of-home
36 care in residential facilities?

37
38 MR KINMOND: I could give you information on that. I have
39 a couple of staff who - it is not simply a situation where
40 we leave it up to the visitors. So we will allocate visits
41 to visitors with expectations as to the number of visits.
42 I don't have those details at the ready, but I'm happy to
43 provide that to the Commission.

44
45 MS FURNESS: Does that suggest that there is not a set
46 period of time or frequency; it depends upon the nature of
47 the child and the nature of the facility?

1
2 MR KINMOND: It is a combination of - there are certain
3 parameters, and so we send out a visiting schedule, the
4 visitors are aware of which particular services they are
5 required to visit under that schedule, and there is an
6 expectation as to a certain level of frequency of visits.
7 But we have made it very, very clear to visitors that if
8 they have information that indicates that a particular
9 service needs to receive additional visits, then we are
10 very keen for them to conduct additional visits. So we
11 build within the budget a significant amount of leeway, so
12 that visitors who have concerns about particular services
13 can invest heavily in more visiting in those services.
14

15 MS FURNESS: Thank you. Mr Clarke, can I turn to you.
16 How long have you been the Queensland Ombudsman?
17

18 MR CLARKE: About four and a half years.
19

20 MS FURNESS: But the office has been there for some
21 significant time.
22

23 MR CLARKE: 41 years, the Ombudsman has existed in
24 Queensland.
25

26 MS FURNESS: What are your functions in relation to
27 children in out-of-home care in Queensland?
28

29 MR CLARKE: Broadly, they are the functions of the
30 Parliamentary Ombudsman. I have no particular child safety
31 responsibilities. After the recent inquiry undertaken by
32 the Honourable Justice Carmody, the changes that were made
33 to the system gave me a role in enhanced complaints
34 oversight, which was formerly the responsibility of the
35 Children's Commission, it's existed until the middle of
36 last year. But other than that, my responsibilities in
37 child safety are broadly those that relate to a normal
38 Parliamentary Ombudsman jurisdiction. I can look at
39 complaints, I can receive complaints, I can investigate
40 complaints, I can refer complaints, I can undertake matters
41 under my own initiative and I can put in place
42 administrative improvement arrangements with agencies if
43 I believe that is necessary. For example, immediately
44 prior to adopting the new system in Queensland, we
45 undertook an audit of the Department of Communities, Child
46 Safety and Disability Services complaints management
47 process. We did that in preparation for the new system

1 commencing and made some recommendations to them about
2 that.

3
4 MS FURNESS: Does your complaint-handling capacity extend
5 to the non-government sector?

6
7 MR CLARKE: It can. There is a particular section under
8 my Act, under section 10(c), which allows me to undertake
9 certain complaints management and investigations related to
10 bodies that perform a function on behalf of government.
11 There are legal and practical limits to that, but there is
12 some capacity for me to do that work.

13
14 MS FURNESS: Have you exercised that function in respect
15 of children in out-of-home care?

16
17 MR CLARKE: No, I haven't.

18
19 MS FURNESS: How long have you had that capacity?

20
21 MR CLARKE: It's been in the Act - certainly it's in the
22 current legislation. I can't absolutely indicate that it
23 was in the previous legislation, but at least since 2000.

24
25 MS FURNESS: Does anyone else in Queensland have
26 a responsibility to receive and deal with complaints about
27 children in out-of-home care?

28
29 MR CLARKE: The department would be the principal
30 mechanism for receiving complaints about out-of-home care.

31
32 MS FURNESS: Is the department required to cooperate with
33 you, forward to you, or otherwise inform you of complaints?

34
35 MR CLARKE: No. No, there is no structured arrangement
36 that requires that to occur.

37
38 MS FURNESS: Does it happen?

39
40 MR CLARKE: Matters may come to my attention. If a person
41 is dissatisfied with their handling by the department, they
42 would bring the matter to my attention and I would make
43 a decision about it then.

44
45 MS FURNESS: But that would be a complaint about how the
46 department handled a complaint?

47

1 MR CLARKE: It would be a complaint about the department,
2 yes, but it's also extremely likely to include the content
3 of the originating complaint.
4

5 MS FURNESS: So it is possible, is it, that a complainant
6 would report both to the department and to you about an
7 event in relation to a child in out-of-home care, and there
8 would be no requirement for each of you to exchange that
9 information with the other?
10

11 MR CLARKE: There is no requirement in legislation. As
12 a matter of policy in my office we, as part of determining
13 what action we will take, seek from the complainant the
14 history of that complaint - in other words, have they dealt
15 with the agency, have they not dealt with the agency?
16 That's a standard practice in the office. So we are very
17 likely, unless the complainant misleads us, to become aware
18 of that through that process.
19

20 MS FURNESS: Having become aware of it, what do you do?
21

22 MR CLARKE: If the matter has been dealt with by the
23 department through its full complaints process, we will
24 then assess it for whether we would choose to take any
25 further action. So we would look at the handling of it by
26 the department. If we deem that handling to be fair and
27 reasonable, comprehensive, then we may in fact decline to
28 take it any further. If we determine that there is some
29 deficiency in the department's handling of it, then we
30 would refer it in-house for investigation and consider the
31 matter through our normal processes.
32

33 MS FURNESS: The answer you have given assumes that your
34 involvement is to scrutinise the handling of the complaint
35 by the department rather than the department's conduct that
36 may have given rise to the complaint.
37

38 MR CLARKE: The content of the complaint is contained
39 within that. Yes, we do look at the process. That is
40 a substantial part of what we do.
41

42 If we determine that the department's analysis,
43 whether they have comprehensively dealt with the evidence,
44 provided natural justice to any party involved, et cetera,
45 they are important elements to the overall investigation,
46 but they are not the limits of the investigation. For
47 example, if there was important evidence that was not

1 considered, we would be at liberty to investigate that in
2 our own right and include it in and make an alternative
3 decision in regard to the content of the complaint in its
4 own right.

5

6 MS FURNESS: Do you keep data on complaints received about
7 children in out-of-home care?

8

9 MR CLARKE: We keep data in regard to complaints received
10 about the department. That's broken down. I can provide
11 the information. I don't have it to hand at the moment,
12 but that would include complaints about children in
13 out-of-home care.

14

15 MS FURNESS: What about children in the care of
16 a non-government organisation by way of a contract to the
17 department?

18

19 MR CLARKE: If it is done through a contract to the
20 department, I believe section 10(c) of my Act would allow
21 me to look at that, yes, if it comes to my attention. And
22 that is an important distinction I think between the
23 New South Wales system and the Queensland system: matters
24 have to come to my attention for me to deal with them.

25

26 MS FURNESS: Why is that a difference with New South Wales
27 that they have to come to --

28

29 MR CLARKE: The practical application of the reportable
30 conduct scheme is somewhat of a pull model, that matters
31 are pulled to the Ombudsman's attention, whereas in
32 Queensland's circumstance, unless a complaint is made or
33 a matter comes to my attention by some other process, then
34 I am unlikely to be aware of that.

35

36 MS FURNESS: So what you are saying is no-one is required
37 to make a complaint to you or tell you of an allegation?

38

39 MR CLARKE: That's exactly right.

40

41 MS FURNESS: Has there been any consideration given in
42 Queensland to a scheme similar to the reportable conduct
43 scheme?

44

45 MR CLARKE: I haven't participated in any discussions
46 about it, no.

47

1 MS FURNESS: What do you think?

2

3 MR CLARKE: I think it would be a very positive addition
4 to the operation of the system in Queensland. What I know
5 of the New South Wales system is that it adds a level of -
6 it creates a comprehensive oversight framework, which is
7 perhaps its greatest feature. The linkages between
8 reportable conduct and working with children certification
9 processes I think are important ones, and I think the
10 working with children arrangements in Queensland could be
11 strengthened with a reportable conduct regime.

12

13 I have to say, I would not necessarily be convinced
14 that my office would be the place to put it, because of the
15 other structures that exist. It would be a matter of
16 determining the best place for it. But, in the absence of
17 any other position, certainly my office could undertake
18 that function, and I think it would add value.

19

20 MS FURNESS: The Royal Commission heard yesterday from two
21 offices, who work in areas relevant to the safety of
22 children. Would either of those offices be appropriate, do
23 you think, to house that function?

24

25 MR CLARKE: We have had some preliminary discussions
26 between the Family and Child Commissioner and the Public
27 Guardian and myself. I think the most reasonable
28 alternative would be the Public Guardian's office, but
29 there are some issues with advocacy - being able to
30 undertake individual advocacy on behalf of children and be
31 the guardian of a reportable conduct scheme. I think there
32 is an inherent conflict in that space, and there are also
33 some inherent conflicts in an Ombudsman overseeing these
34 things. Being part of a regulatory regime and then being
35 able to receive complaints about the outcomes of that
36 regulatory regime also has some inherent conflicts in it,
37 but I think they would be manageable with reasonable
38 approaches.

39

40 MS FURNESS: Did the Carmody Inquiry comment on the
41 benefits or otherwise of a reportable conduct scheme?

42

43 MR CLARKE: I don't recall that being commented on, no.

44

45 MS FURNESS: Just returning to data, you say that your
46 office has the breakdown of complaints received about the
47 department. Do those figures break down further into

1 sexual assault or other matters in out-of-home care?

2

3 MR CLARKE: We can do that. It requires an analysis at
4 the individual file level. The data capture processes
5 don't do it, but I can do that work, yes.

6

7 MS FURNESS: So what do the data processes capture
8 without going to the files?

9

10 MR CLARKE: Broad categorisations of complaints are
11 generally captured in the data.

12

13 MS FURNESS: Tell me what it means.

14

15 MR CLARKE: Well, for example, in the 2014/2015 year,
16 which is just completed, the categorisation would be child
17 protection intervention, officer conduct, child protection
18 intake, foster or kinship care, child protection
19 investigation and assessment. They are the categories that
20 we use to collect data.

21

22 MS FURNESS: They are the categories of the institution or
23 agency with respect to which the complaint is being made.
24 What about the nature of the complaint made?

25

26 MR CLARKE: The nature of the complaint requires a file
27 assessment, in my office. So we would drill down into
28 a complaint, say if it was, for example, about foster care
29 or kinship care. We would then look at those files to
30 determine the nature of the complaint and whether it
31 involved, for example, sexual misconduct or abuse, or some
32 other form of inappropriate behaviour.

33

34 MS FURNESS: Has consideration been given to expanding the
35 categories of data you collect electronically?

36

37 MR CLARKE: It is a case in terms of the volume. In the
38 last year we had, for the child safety department, in
39 regard to child safety matters, 334 complaints. So there
40 is not a vast volume of complaints. So being able to break
41 them down into further categories probably just means those
42 categories have fewer numbers of complaints in them.

43

44 For example, yesterday you asked one of the other
45 witnesses about whether they had referred matters to the
46 police service as part of their functioning. Last night
47 I was able to get that - a question of my officers as to

1 whether we had referred any matters to the police in the
2 last 12 months. So they could look at the whole 334 files
3 in a couple of hours.
4

5 MS FURNESS: But you didn't think to ask them about the
6 child sexual assault allegations?
7

8 MR CLARKE: I asked them specifically about child sexual
9 abuse allegations and whether we had referred them. We had
10 in fact about two dozen matters out of the 334 that could
11 be categorised as having some element of child abuse
12 associated with it - sexual abuse associated with it. And
13 of those two dozen matters, we were able to conduct that
14 analysis quite quickly from the files that we have - the
15 file information that we have.
16

17 MS FURNESS: So that's 24 complaints out of 300-odd
18 against the department, and the complaints were
19 specifically about some form of sexual conduct in
20 out-of-home care; is that right?
21

22 MR CLARKE: They had some - it may not have been in
23 out-of-home care. It may have been in other circumstances.
24 But, yes, there were about two dozen matters. I don't
25 recall the exact number at the moment. It is about two
26 dozen matters.
27

28 MS FURNESS: You weren't told, of those two dozen matters,
29 how many were in out-of-home care?
30

31 MR CLARKE: I didn't collect that information, no. I can
32 collect it, and I am happy to provide it to the Commission,
33 but I don't have it to hand.
34

35 MS FURNESS: We would appreciate it if you would. It
36 doesn't seem that it would be an onerous task, given you
37 are looking at 24 files.
38

39 MR CLARKE: No, it won't be an onerous task.
40

41 MS FURNESS: Would there be any other department through
42 which a complaint may be made that would be an allegation
43 of sexual assault against a child in out-of-home care?
44

45 MR CLARKE: Through the department itself, the Department
46 of Communities, Child Safety and Disability Services, and
47 through the Public Guardian role as an advocate and through

1 the visiting program.

2

3 MS FURNESS: In terms of the data you have that would
4 enable the Royal Commission to have an understanding of
5 allegations about child sexual assault in out-of-home care,
6 you have spoken of the department being your main source,
7 and that is the Department of Communities --

8

9 MR CLARKE: Child Safety and Disability Services.

10

11 MS FURNESS: Is there any other department in Queensland
12 that you would expect would receive allegations of the sort
13 we're discussing?

14

15 MR CLARKE: The Department of Education could certainly
16 receive allegations, and there are mandatory reporting
17 arrangements that would apply - that do apply in the
18 department. The Department of Health also is likely to
19 generate those sorts of complaints and information, and
20 there is mandatory reporting arrangements for medical
21 practitioners and nurses which are in place.

22

23 MS FURNESS: But the mandatory reporting notifications go
24 direct to the department; they are not complaints, as it
25 were.

26

27 MR CLARKE: That's correct.

28

29 MS FURNESS: In terms of education and health, do you
30 inquire into the complaint handling of each of those in
31 respect of complaints about out-of-home care?

32

33 MR CLARKE: Not in recent history. We can do it. If
34 a complaint comes to my attention, we will go through our
35 processes of determining whether we would investigate it
36 further, and we do undertake work in terms of
37 administrative improvement around complaints handling in
38 agencies in a general sense, but not specific to
39 out-of-home care and not specific to child sexual abuse.

40

41 MS FURNESS: I take it from your description of the data
42 you keep that you would not be able to indicate trends in
43 the area of interest to this Royal Commission at all?

44

45 MR CLARKE: Not at this point in time. I can provide the
46 Commission with my office's historical information about
47 child safety complaints and could break them down to quite

1 a significant level in terms of the content of those
2 complaints. But during the term of the Children's
3 Commission, until 12 months ago, most of that information
4 would have been held in the Children's Commission. We
5 would have to do historical archival work with the records
6 from the Children's Commission to be able to provide that.
7 Those records currently sit with the Public Guardian's
8 office.

9
10 MS FURNESS: And you have access to them, I take it?

11
12 MR CLARKE: I can access them, yes.

13
14 MS FURNESS: Currently, you would have to go to another
15 agency to enable you to understand historic trends in an
16 area that is now within your function?

17
18 MR CLARKE: I would for anything before 1 July last year -
19 2014. From now on, I can, and intend, to observe or put in
20 place a process for doing an annual review of complaints
21 about child safety matters, since it is now a more
22 significant part of my normal responsibilities. But, yes,
23 prior to that, I would have had to have gone to the
24 Children's Commission, and will now have to access those
25 records through the Public Guardian's office, if I choose
26 to.

27
28 MS FURNESS: How effective do you think are the mechanisms
29 currently for protecting children in out-of-home care,
30 being split between you and two other agencies?

31
32 MR CLARKE: The roles and responsibilities --

33
34 MS FURNESS: Three other agencies.

35
36 MR CLARKE: Three other agencies, yes. The
37 responsibilities that the Public Guardian has in regard to
38 advocacy, visiting and child guardianship are quite
39 specific and, in my view, the powers that exist for the
40 Public Guardian are comprehensive in terms of questioning
41 persons involved with the child, being able to demand
42 records, et cetera, from organisations that provide
43 services to children. So they have quite a comprehensive
44 framework to work within.

45
46 The work of the Commission, the Family and Child
47 Commission, is in very early stages, so it is a bit

1 difficult for me to make a decision about the effectiveness
2 of that work. We will cooperate with the Commission to
3 support its functioning, but at this early stage, it is
4 a very early conversation.

5
6 The department has a long history. There have been
7 identified failings over time, and, indeed, the Carmody
8 Inquiry made a number of recommendations about particularly
9 the degree to which the department engages with children,
10 the effectiveness of the complaints management process in
11 the department, and the degree to which children use that
12 complaints management process was significantly commented
13 on by the inquiry. Indeed, in the last 12 months, we've
14 been working with the department - I have officers who are
15 involved in the working party - about improving that
16 complaints handling process within the department.

17
18 I'm optimistic that the system can work well, but with
19 the current arrangements for the Family and Child
20 Commission in particular, it is just very early on to be
21 able to determine whether that oversight function is
22 effective.

23
24 Perhaps the most significant element of it is the
25 reporting element, and then close behind that would be the
26 workforce element. The Family and Child Commission has
27 a particular responsibility in overseeing the workforce
28 in child safety and being able to make recommendations
29 about the degree to which the workforce meets its
30 obligations.

31
32 MS FURNESS: How would you best describe the way you work
33 that contributes to preventing child sexual abuse in
34 out-of-home care?

35
36 MR CLARKE: As I said in my opening comments, my role is
37 a very traditional Parliamentary Ombudsman role. The
38 degree to which we are able to, in a very timely way, refer
39 matters to the department, which is the usual place for us
40 to refer matters, and then to undertake our own assessments
41 and investigations of matters that we deem have been
42 unsatisfactorily dealt with, is the greatest contribution,
43 I think, that we can make at this point in time, apart from
44 the new - not new function, but the emphasis that we now
45 place upon oversight and complaints management. So
46 complaints are a very, very important source of information
47 about the effective operation of the system, and while it

1 is early in the operation of the new arrangements in
2 Queensland, if I can call them the new arrangements in
3 Queensland, I am again optimistic that that will be made to
4 work effectively.

5
6 MS FURNESS: You say that complaints are a very, very
7 important source of information, but the source of
8 information is only as good as the data that you seek to
9 collect electronically from those complaints; isn't that
10 right?

11
12 MR CLARKE: Yes, I would agree with that.

13
14 MS FURNESS: And can I suggest that your description of
15 the extent to which you collect data indicates that it is
16 at a very low level?

17
18 MR CLARKE: As I said, we received, in the last financial
19 year, 334 complaints. We were able to analyse those
20 complaints very quickly for a specific question. The
21 ongoing analysis of those complaints is yet to be done in
22 my office, for the effectiveness of last year.

23
24 MS FURNESS: Just leaving aside the analysis for the
25 moment, which required you to go to the files, as you have
26 said --

27
28 MR CLARKE: It did.

29
30 MS FURNESS: -- you currently collect information about
31 the institution about which the complaint is made; you
32 don't collect anything about the nature of the complaint?

33
34 MR CLARKE: Well, I think the categorisation is more about
35 nature of complaint than it is about institution. So, for
36 example, foster and kinship care, while it is the nature of
37 that - it is a foster or kinship care complaint, it is not
38 about a particular body. Now, whether that flows to
39 a particular body is about the structure that underpins
40 foster and kinship caring in our state.

41
42 MS FURNESS: Foster and kinship care is a method of
43 delivering out-of-home care services. So it is the
44 institution in which the complaint is made. It doesn't
45 tell you anything about the complaint itself, does it?

46
47 MR CLARKE: It doesn't tell me about the content of the

1 complaint, no. It doesn't tell me whether it is about
2 sexual abuse or whether it is about other abuse or whether
3 it is about some other aspect of kinship care - that is
4 true.

5

6 MS FURNESS: Wouldn't that be, at the very least, useful
7 in your determining how best to use your resources to
8 improve areas under your jurisdiction?

9

10 MR CLARKE: That may flow from my analysis of the
11 complaints from last year. The current system is the
12 historic system that has been in the office for quite
13 a long time, and it has existed during the period of time
14 when there was a Children's Commission in Queensland. The
15 Children's Commission had a much more comprehensive role in
16 terms of the protection of children than my office does now
17 or did then. So whether I change those categorisations
18 will depend upon the analysis I do of the complaints
19 received in each subsequent year.

20

21 It's quite possible that they will change, and from
22 time to time we do change them, right across the whole
23 spectrum of my jurisdiction. But, at the moment, that's
24 the historical context that I have. As I said, the number
25 of complaints is relatively small and is conducive to quite
26 a detailed analysis in any given 12-month period.

27

28 MS FURNESS: By going to the files?

29

30 MR CLARKE: By going to the files.

31

32 COMMISSIONER FITZGERALD: Can I just clarify something,
33 Mr Clarke. In response to a question by Ms Furness - two
34 things. You indicated you have these enhanced complaint
35 handling mechanisms since the Carmody report. Does that
36 mean that you have an oversight of the department's
37 complaint handling processes? Are you the agency, at the
38 end of the day, that will oversight those complaint
39 handling processes?

40

41 MR CLARKE: Commissioner, I think it's a statement of fact
42 that I've always had an opportunity to do that work, but
43 what the Carmody Inquiry brought through its
44 recommendations was that I should focus on complaints
45 handling systems and processes. That is what I intend to
46 do.

47

1 COMMISSIONER FITZGERALD: Also in response to a question
2 from Ms Furness, you indicated you are now going to do
3 a 12-monthly or annual review. Am I correct in
4 understanding that that is a systemic review of the
5 efficiency and effectiveness of the complaint handling
6 processes, including that of the department? Is that the
7 correct position?

8
9 MR CLARKE: That is true. It being the first year in
10 which this new arrangement has been in place, I have done
11 a very, very broad - just collection of numbers in the last
12 couple of days, but I do intend to look at the
13 effectiveness and efficiency of the complaints handling
14 system in the department, the Public Guardian's office and,
15 indeed, in my own office.

16
17 COMMISSIONER FITZGERALD: Thank you.

18
19 MS FURNESS: Ms Glass, how long have you been the
20 Victorian Ombudsman?

21
22 MS GLASS: About 15 months.

23
24 MS FURNESS: Before that?

25
26 MS GLASS: Deputy Chair of the Independent Police
27 Complaints Commission in England and Wales.

28
29 MS FURNESS: What are the functions of the Ombudsman in
30 relation to children in out-of-home care in Victoria?

31
32 MS GLASS: Unlike my colleague in New South Wales, I have
33 no specific functions in this area. I am essentially
34 a traditional Parliamentary Ombudsman. So I have a broad
35 jurisdiction over some thousand government departments and
36 agencies. I deal with traditional complaints handling
37 functions and I have the traditional powers of the
38 Ombudsman around launching own-motion investigations into
39 systemic issues.

40
41 MS FURNESS: In the period of time that you have been
42 Ombudsman, have you done any particular work in relation to
43 out-of-home care?

44
45 MS GLASS: I haven't. This was an area covered in some
46 detail by my predecessor, who did quite a bit of work in
47 it, and I'm obviously - was looking into areas that had not

1 been covered quite so recently.

2

3 MS FURNESS: What has he done, more recently?

4

5 MS GLASS: Well, I'm happy to give you a brief overview of
6 the investigations he looked into. I will keep it very
7 brief. He did an own motion investigation into child
8 protection in 2009. He followed that with an own motion
9 investigation into out-of-home care in 2010. There were
10 a number of subsequent investigations into failures of
11 agencies to manage registered sex offenders in 2011 - he
12 carried out an investigation into the failure of agencies
13 to manage registered sex offenders in February 2011. There
14 was an investigation, also in that year, into child
15 protection in a particular region in Victoria, and all of
16 these fed into a number of parliamentary inquiries that
17 subsequently took place, including a substantial report
18 into protecting Victoria's vulnerable children, which was
19 a parliamentary inquiry reporting in January 2012, and
20 another inquiry in late 2013 by the Family and Community
21 Development Committee. So there has been quite a bit of
22 attention in this area in the State of Victoria - various
23 Auditor-General reports as well. I have no doubt they are
24 all on the public record.

25

26 MS FURNESS: Do you consider that you have any function in
27 relation to monitoring whether recommendations made by your
28 office, albeit your predecessor, have been implemented?

29

30 MS GLASS: My office certainly reviews whether
31 recommendations made have been implemented. We do that.
32 In fact, of the recommendations made by my predecessor,
33 almost all of them were accepted.

34

35 What we haven't done - and I don't think you can do
36 without actually launching a fresh investigation - is to
37 determine whether they are effective.

38

39 MS FURNESS: It is one thing to be accepted, it is another
40 thing to be effective, but in the middle is being
41 implemented.

42

43 MS GLASS: The reports back are that they are implemented.
44 Things change, of course, over the period, and the system
45 now is different from the one that my predecessor was
46 investigating in 2009. I think to look at the
47 effectiveness of the system, you would have to launch

1 a fresh own motion investigation.

2

3 MS FURNESS: I understand in relation to the effectiveness
4 of the changes, but reports come to you about whether or
5 not, probably subjectively by the agency, they have
6 implemented the recommendations; is that right?

7

8 MS GLASS: They will report that they have implemented
9 them, yes.

10

11 MS FURNESS: Do you have any concerns now, bearing in mind
12 you have only been in the position for 15 months, about the
13 area of children in out-of-home care based on what you know
14 about what has or has not been implemented?

15

16 MS GLASS: I think it's difficult to make an assessment
17 without actually carrying out an investigation yourself.
18 There has clearly been a lot of work in this area. I have
19 an overall impression, I have to say, from having looked at
20 reports and reviews, that this is - and I've recently
21 completed a investigation into disability - oversight of
22 the disability sector.

23

24 MS FURNESS: I am sorry?

25

26 MS GLASS: The effectiveness of oversight in the
27 disability sector, a report I tabled last week. But there
28 is something of an impression that I have of this that
29 mirrors the impression - well, the evidence, in fact - that
30 I had in that one, that this is an area where there are
31 significant numbers of reports that result in reviews which
32 confirm the existence of the problem.

33

34 MS FURNESS: What problem is that?

35

36 MS GLASS: That there is a problem in the area that
37 necessarily results in effective change.

38

39 MS FURNESS: How would you describe that problem from the
40 work that you have done or the observations you have made?

41

42 MS GLASS: Again, it is not the work that I have done; it
43 is work that has been done. You see a succession of
44 reports that will say that the system is not working. What
45 is the solution to this? You see a succession of
46 recommendations which you see being implemented, but that
47 results in a further report and a further review and

1 a further set of recommendations.

2

3 MS FURNESS: And the system you are describing is the
4 out-of-home care system?

5

6 MS GLASS: Well, the reports that I've described are much
7 broader than that. They looked at the whole range of child
8 protection mechanisms, the issues affecting vulnerable
9 children, but that includes out-of-home care.

10

11 MS FURNESS: You clearly don't have a reportable conduct
12 function that is --

13

14 MS GLASS: No.

15

16 MS FURNESS: -- in existence in New South Wales. Has that
17 been an issue that has come to your attention in the last
18 15 months?

19

20 MS GLASS: It hasn't, but if I may draw your attention to
21 the recommendation of the Family and Community Development
22 Committee in November 2013, it actually recommended that
23 the Victorian government authorise an independent statutory
24 body, with relevant investigative powers and legal and
25 operational resources, to oversee and monitor the handling
26 of allegations of child abuse, and undertake independent
27 investigations into systems and processes. I think their
28 intention was to recommend that Victoria mirror the
29 New South Wales scheme.

30

31 I did actually ask for an update on what had happened
32 in response to that. I understand that the previous
33 government intended to legislate for this function to be
34 given to the Children's Commission. As far as - it
35 certainly hasn't happened yet, but that is obviously
36 a question that would need to be put to the government.

37

38 MS FURNESS: Do you have a view as to whether it would
39 assist in protecting children in out-of-home care in
40 Victoria to have such a system?

41

42 MS GLASS: I have no doubt that mandatory reporting and
43 a greater degree of oversight would assist.

44

45 MS FURNESS: By "mandatory reporting", you mean reporting
46 matters such as Mr Kinmond has described to a statutory
47 body?

1
2 MS GLASS: Yes, yes. That was - again, there are
3 parallels here with disability abuse, and the key
4 recommendation that I've made in that investigation is that
5 there be a single oversight body that receives mandatory
6 reports of abuse.
7
8 MS FURNESS: The Commissioner for Children and Young
9 People gave evidence yesterday. Were you here when
10 Mr Geary gave evidence?
11
12 MS GLASS: I wasn't, no.
13
14 MS FURNESS: Are you aware generally of the evidence he
15 gave?
16
17 MS GLASS: I did hear some of it, and I'm aware that he
18 gave evidence that his office receives some hundreds of
19 complaints of abuse.
20
21 MS FURNESS: Yes. He said that he didn't have any
22 legislative power with respect to those complaints, but he
23 nevertheless received them. I think he indicated that
24 generally he passed them on to your organisation?
25
26 MS GLASS: He doesn't, no. I haven't received any
27 complaints that I'm aware of from the Commissioner for
28 Children and Young People.
29
30 MS FURNESS: Would you expect to?
31
32 MS GLASS: I would, yes.
33
34 MS FURNESS: Your expectation would be on the basis that,
35 if he received them and he was not the primary complaint
36 handling body, he would hand them to you?
37
38 MS GLASS: Well, I expect him to do the appropriate thing
39 with them. It obviously depends on the nature of the
40 complaint. Some you would - some could be dealt with by
41 department directly, but I would expect that a significant
42 allegation would be referred to the Ombudsman, because
43 I have a complaint handling responsibility and I have the
44 powers and functions to deal with complaints.
45
46 MS FURNESS: Are you the only agency in Victoria that has
47 the legislative responsibility to handle complaints of

1 child sexual abuse in out-of-home care?

2

3 MS GLASS: Well, the police would be the principal agency
4 to deal with this. Obviously, it depends on the nature of
5 the allegation.

6

7 MS FURNESS: By "complaints", I'm referring to of an
8 administrative nature rather than a person going to the
9 police to provide information that a crime had been
10 committed.

11

12 MS GLASS: Yes.

13

14 MS FURNESS: If you understand that?

15

16 MS GLASS: Yes, I would be.

17

18 MS FURNESS: Is that a function that you have discussed
19 with the Commissioner?

20

21 MS GLASS: Well, there have been discussions that there
22 should be more of an information flow between our offices.
23 I think in an ideal world what you would expect to see
24 would be any specific complaints that came in to the
25 Commissioner's office, that he clearly doesn't have the
26 powers to deal with, would be referred to my office, and
27 similarly, I would expect to be providing sort of
28 systemic - he has a monitoring role which is very
29 important, the preventative role doesn't sit with my
30 office, it sits with his - but I would expect that I would
31 be able to provide de-identified trends, information that
32 would allow him to fulfil his functions.

33

34 MS FURNESS: Did you or your office have any involvement
35 into his recent, but yet to be completed, inquiry into
36 residential care?

37

38 MS GLASS: No, not that I'm aware of.

39

40 MS FURNESS: Do you know whether your office provided any
41 information, given your complaint handling responsibility?

42

43 MS GLASS: We actually get very few complaints. Almost
44 none. I mean, we do get some hundreds of complaints
45 broadly in the child protection area, and I've asked for
46 some information around how much of that would involve
47 abuse. Information I have got back is that the numbers are

1 minimal. So we simply don't get the information.

2

3 MS FURNESS: So you don't receive any significant numbers
4 of complaints about children in out-of-home care; is that
5 right?

6

7 MS GLASS: Not at present, no.

8

9 MS FURNESS: Is that something you think is reflective of
10 the conduct of people in out-of-home care, or it says more
11 about the level of reporting or complaining?

12

13 MS GLASS: I think it's difficult to say. I mean,
14 I reflect on this anyway, you know, coming new into the
15 role. How do you determine that people in the State of
16 Victoria know they can complain to their Ombudsman and what
17 they can complain about? So, you know, I've embarked on
18 a much broader program of engagement with the public and
19 with community organisations, with third party advocates
20 and the like, but it is very early stages, because I think
21 there is a much broader piece of work about people
22 understanding what the Ombudsman does.

23

24 MS FURNESS: Did your predecessor engage in a community
25 education program, that you are aware of?

26

27 MS GLASS: No, he didn't.

28

29 MS FURNESS: So you don't have any basis for, at this
30 stage, indicating whether such a program has been in the
31 past successful in increasing complaint rates?

32

33 MS GLASS: No. Clearly, an Ombudsman's office, and
34 I include my predecessor, always does a certain amount of
35 this. They do what they can. But the reality is, as
36 a Parliamentary Ombudsman - and I'm sure I speak along with
37 my colleagues both in Australia and around the world - we
38 inevitably run minimally resourced and, dare I say, unloved
39 offices in public sector terms, where you are constantly
40 having to juggle your resources and identify the issues
41 that you should be focusing on.

42

43 MS FURNESS: Do you have jurisdiction over the Public
44 Guardian and the Commissioner?

45

46 MS GLASS: I do, yes.

47

1 MS FURNESS: So complaints could be made to you about
2 them.

3
4 MS GLASS: They could be.

5
6 MS FURNESS: Has that happened?

7
8 MS GLASS: Occasionally. Not something that crops up as
9 a major theme that would attract your attention as
10 a potential subject of a future investigation.

11
12 MS FURNESS: Does your office operate any community
13 visitors program?

14
15 MS GLASS: My office doesn't, no. There is a community
16 visitors program that is run by the Office of the Public
17 Advocate.

18
19 MS FURNESS: Do you have any view as to where such
20 a function should sit?

21
22 MS GLASS: I have looked at this in the context of
23 disability. I can't comment in relation to the child abuse
24 area. Certainly, with disability, the Public Advocate
25 scheme seems to be very effective. They do good work.
26 I have been both complimentary and slightly critical of it
27 in my last report. The criticism is only around their -
28 that they will sometimes cling on to things rather than -
29 you know, because they are passionate about them and
30 concerned about them. So they will receive reports of
31 abuse that they could very helpfully send to my office, but
32 they try to resolve them themselves, which is not
33 necessarily the best outcome.

34
35 MS FURNESS: And that is a question of educating or
36 training the visitors as to what you consider their role to
37 be?

38
39 MS GLASS: It is, yes.

40
41 MS FURNESS: Can I come back to you, Mr Kinmond, about
42 data. Now, I understand that you have put together some
43 data to assist us, and some of the language that you used,
44 which of course suits your purpose, is somewhat less clear
45 for our purpose. Perhaps if I can ask you to indicate, in
46 whatever period of time you choose, how many allegations
47 you have received - or notifications, as you describe

1 them - in relation to sexual misconduct or a sexual offence
2 in out-of-home care?

3

4 MR KINMOND: Yes. So a notification relates to
5 a reportable conduct matter that is sent to our office
6 under the legislation. So if one looks, for example, at
7 the 2013/2014 period, in terms of sexual misconduct in the
8 non-out-of-home care environment, 191; in the out-of-home
9 care environment, 63. Sexual offences, in the
10 non-out-of-home care environment - and these are closed
11 matters - 39; in the out-of-home care environment, 28.

12

13 So we have a situation where sexual misconduct in the
14 non-out-of-home care environment, for example, sits at
15 38 per cent of all complaints; in the out-of-home care
16 environment, 14 per cent; sexual offence allegations,
17 8 per cent in the non-out-of-home care environment and
18 6 per cent in the out-of-home care environment.

19

20 MS FURNESS: Firstly, can I ask you what you mean by
21 "closed"?

22

23 MR KINMOND: These are cases that have been finished.

24

25 MS FURNESS: What does that tell you about the
26 preponderance of those allegations in out-of-home care
27 compared with non-out-of-home care?

28

29 MR KINMOND: Well, the major contributor to sexual
30 misconduct and sexual offence matters being, in percentage
31 terms, larger in the non-out-of-home care environment is
32 the fact that it's quite high in the education sector, and
33 the education sector is a major reporter.

34

35 MS FURNESS: So let's just go back to that. 38 per cent
36 of all notifications about sexual misconduct come from the
37 non-out-of-home care sector?

38

39 MR KINMOND: That's correct.

40

41 MS FURNESS: And 14 per cent come from the out-of-home
42 care sector?

43

44 MR KINMOND: That's right.

45

46 MS FURNESS: If you can help us with the relative size of
47 each of those sectors and indicate your observation as to

1 what those figures mean, given the relative size.

2
3 MR KINMOND: In terms of the - well, obviously the
4 education sector is a very large sector with a large number
5 of employees, and in terms of its impact on the reportable
6 conduct scheme it represents a very large percentage of the
7 reportable conduct matters. But if you combine the
8 out-of-home care sector and the education sector, it is
9 somewhere between about 85 to 95 per cent of matters that
10 come in. So very large numbers of sexual misconduct,
11 sexual offence matters in the education sector are going to
12 push the issues up in terms of the percentage of matters
13 that are sexual misconduct and sexual offence. And so, for
14 example - and this is also reflected in the charges - 122
15 current open matters, and by an "open matter", it hasn't
16 been finalised, 122 open matters which have been charged.
17 70 of the 122 --

18
19 MS FURNESS: Let me stop you there. When you say "have
20 been charged", are you referring to an individual having
21 been charged with a sexual offence in respect of all
22 agencies who provide notifications?

23
24 MR KINMOND: The charging relates to one or more offence
25 of any kind and then to break that down - so of 122
26 individuals who have been charged, we have 70 of those,
27 57 per cent of all the charges, from the education sector.
28 So I think that illustrates the extent to which the
29 education sector plays a major part of the overall mix in
30 the reportable conduct area. But 62 of the 70 who were
31 charged from the education sector were charged with sexual
32 offences.

33
34 MS FURNESS: That is very high.

35
36 MR KINMOND: It is very high. If we look at the
37 out-of-home care sector, so we have 122 people have been
38 charged overall; 30 of those who have been charged with one
39 or more offences are from the out-of-home care sector. So
40 that represents 24 per cent of the total number of charges.

41
42 MS FURNESS: Just let me stop you there. This is
43 information that the police have provided to you or you
44 have obtained from COPS as to people being charged arising
45 from notifications, or in relation to notifications, or
46 entirely separate from notifications?
47

1 MR KINMOND: These are matters that are inextricably
2 linked with notifications, and in a number of these cases -
3 and, in fact, we recently did an assessment of matters that
4 have been charged, and in a significant number of cases,
5 very significant number, we have played a role, for
6 example, whether it be by way of risk management action,
7 whether it be by way of a requirement for further
8 investigative steps to be taken by the agency, or in
9 certain cases it's a matter of pulling together holdings
10 from the child protection system, information system, from
11 the police information system, providing information to the
12 police, which has assisted them in relation to their
13 investigation.

14
15 MS FURNESS: Let me just go back, then, to the 38 per cent
16 and 14 per cent of sexual misconduct in non-out-of-home
17 care and out-of-home care. What conclusions do you draw
18 from that in order for you to properly direct your
19 resources in looking at systemic issues in out-of-home
20 care?

21
22 MR KINMOND: Well, look, the figures don't surprise me,
23 because if one thinks about the issue of sexual misconduct
24 and sexual offences in an out-of-home care setting, the
25 difficulty is that that setting, given that most of these
26 placements are foster carer placements, is quite an
27 intimate setting, and there is an enormous challenge in the
28 out-of-home care environment in terms of ensuring that we
29 have the best systems in place to ensure that these types
30 of matters come to light.

31
32 Now, obviously, if we have a child who is vulnerable -
33 and, of course, many children in out-of-home care are very
34 vulnerable - then we need to have the best systems in place
35 in terms of seeking to encourage and seeking to, where
36 matters come to light - and sometimes you might not have
37 a fully fledged allegation - to act on those cases.

38
39 In the education sector, of course, it's a very
40 different context. The behaviour is less intimate; it's
41 much more open, and breaches of codes of conduct are going
42 to be more obvious. So it does not surprise me that the
43 sexual misconduct/sexual offence percentages are higher as
44 a proportion of notifications in the education sector as
45 compared to the out-of-home care sector.

46
47 MS FURNESS: Which is not necessarily a reflection of what

1 happens in those sectors; it's only a reflection of the
2 notifications you receive.

3
4 MR KINMOND: Indeed, indeed. But can I make another
5 point, too. The benefit of the mandatory system of
6 notifying these matters is that there is a cultural element
7 to that. I mean, it sends a very clear message that this
8 sort of behaviour is unacceptable and it needs to be not
9 swept under the carpet and it needs to see the light of
10 day. Now, if one was to rely on a complaints system, on
11 the other hand - and, for example, a complaints system to
12 our organisation - our data tells us that in terms of
13 complaints which are about people who are victims of abuse,
14 the complaint system is not a particularly good indicator
15 at all, because that requires, quite frankly, either the
16 child, or someone on their behalf, to have the confidence
17 to bring the matter forward to an Ombudsman's office.

18
19 I think, quite frankly, if we're talking about
20 cultural change, to put the responsibility on the
21 organisation to be vigilant in terms of identifying this
22 type of behaviour and for there to be some openness and
23 transparency - I think that's the great benefit - for it
24 not to be dealt with, then, in-house within the
25 organisation, but then for an external player to have
26 a look at how those matters are dealt with, is essential in
27 this area.

28
29 MS FURNESS: That's the policy underpinning your
30 reportable conduct function, isn't it?

31
32 MR KINMOND: Absolutely. Then the next question is:
33 well, could not that process be carried out by a government
34 department? And my argument would be, well, government
35 departments do not have the same level of independence;
36 they certainly don't have the powers; they don't have the
37 access to information - for example, no other government
38 agency in New South Wales, to my knowledge, has both access
39 to the police information systems and the child protection
40 information systems.

41
42 MS FURNESS: COPS and KiDS, you are referring to?

43
44 MR KINMOND: COPS and KiDS. So there is a lack of
45 openness and transparency about it and, in addition, there
46 is no other government agency in New South Wales that has
47 the jurisdictional reach. That reach includes - and is

1 absolutely essential - a strong interface with the police.

2

3 MS FURNESS: There is no suggestion, is there, in
4 New South Wales, that the function would be removed from
5 you to somewhere else?

6

7 MR KINMOND: None that I'm aware of. Can I also say that
8 on 3 December last year - and this perhaps reflects the
9 view of government, but not only the view of government but
10 the view of parliament in New South Wales - the reportable
11 disability incidents scheme commenced in New South Wales,
12 and that involves the mandatory reporting of abuse and
13 neglect and ill treatment matters and also, interestingly
14 enough, serious unexplained injuries in a disability
15 context, and in addition, it requires - which is different
16 than the reportable conduct scheme - serious
17 client-to-client abuse matters to be reported.

18

19 Now, since 3 December, the number of reports is
20 averaging a little bit over 50 a month, and of interest
21 is --

22

23 MS FURNESS: Is that higher or lower than you would
24 expect?

25

26 MR KINMOND: It's about 50 per cent above what we
27 estimated. And the matters - yes, I have got to say, we
28 are not dealing with trivial matters. So, for example, the
29 client-to-client matters that we are receiving have to meet
30 the criteria of serious fractures, bruises, obviously
31 sexual assault, or matters where there is an ongoing
32 pattern of physical abuse. So many of these matters, if
33 they concerned children, would be notified to the Child
34 Abuse Squad. In fact, we use that as a bit of a guide.

35

36 But notwithstanding that, the reports are significant,
37 and the point I made earlier is that it is a slightly
38 different scheme than the reportable conduct scheme,
39 because there is line of sight in relation to serious
40 client-on-client abuse matters.

41

42 MS FURNESS: So this scheme relates to people with
43 a disability in a State-run facility?

44

45 MR KINMOND: It relates to people with a disability who
46 are in funded disability accommodation services as well as
47 government-operated services.

1
2 MS FURNESS: Who has the obligation to report?
3

4 MR KINMOND: Once again, the head of agency. So it is
5 modelled quite closely on the reportable conduct scheme.
6

7 Can I also say, one of the strong advocates for this
8 new system has been national disability services. So there
9 has been very strong acceptance from the disability service
10 sector and, also, of course, hardly surprising, from the
11 advocacy bodies.
12

13 We keep waiting for somebody to express concern about
14 the system, but it is very encouraging for me to say there
15 is a great deal of support for it.
16

17 MS FURNESS: What features are there of the disability
18 scheme that are not in the reportable conduct scheme but
19 you think would strengthen the reportable conduct scheme?
20

21 MR KINMOND: I think in New South Wales, whether it's via
22 the reportable conduct scheme or via another process, we
23 need to have a good understanding of serious
24 client-on-client incidents. The next question is: well,
25 what should be the process to give effect to that? It is
26 a different issue. I noted the evidence given yesterday,
27 and agree with it, that there are issues pertaining to
28 serious client-on-client matters that belong in the
29 criminal justice system, but it is very important to
30 recognise that there are also very much issues pertaining
31 to good behaviour support and good casework practice - the
32 notion of therapeutic work.
33

34 MS FURNESS: But you would receive allegations of
35 peer-to-peer or child-on-child abuse in out-of-home care if
36 it amounted to a serious assault, for example, wouldn't
37 you?
38

39 MR KINMOND: The line of sight that we have via the
40 reportable conduct scheme --
41

42 MS FURNESS: Is an employee?
43

44 MR KINMOND: -- in terms of client-on-client abuse via the
45 reportable conduct scheme is in connection with neglect.
46 So if there is an allegation or a reasonable inference that
47 can be drawn that a child was sexually abused or the

1 subject of sexual harassment as a result of neglect on
2 behalf of the carer - and of course our guidelines raise
3 the bar in terms of the definition. You know, there is an
4 element of culpability, a suggestion of culpability, then
5 we will receive the notification. That does constitute
6 a significant percentage of reportable conduct matters.
7 About 9 per cent of the out-of-home care reportable conduct
8 matters are in the neglect area. What is interesting about
9 that - and perhaps not surprising - is that the sustained
10 finding, so the finding that the carer has failed in their
11 duty, is about 42 per cent.

12
13 MS FURNESS: Would you take the view that an allegation of
14 sexual abuse or sexual conduct by a child on a child
15 necessarily reflects a lack of supervision and, therefore,
16 would fit the definition of neglect?

17
18 MR KINMOND: No.

19
20 MS FURNESS: Why not?

21
22 MR KINMOND: Well, I think there has to be some
23 information - some information to indicate unacceptable
24 inaction by the carer. There will be circumstances where
25 that kind of conduct can take place and the carer, quite
26 reasonably, had no knowledge.

27
28 The other thing that is --

29
30 MS FURNESS: Just let me stop you there on that point.
31 The carer, in a home-based foster care situation, would be
32 the person responsible under the reportable conduct to
33 report; is that right?

34
35 MR KINMOND: No, in those circumstances, it would be the
36 head of agency. So the carer, in that foster care
37 situation, will be linked to an agency, and --

38
39 MS FURNESS: So let's assume for the moment the carer is
40 the only person in the home-based care. It would need the
41 carer to have identified the conduct and to have reported
42 it to the agency, and the agency formed the view that it
43 indicated some form of neglect in respect of the child?

44
45 MR KINMOND: That's correct. One would think, though, if
46 a child has been sexually abused or there's been police
47 involvement of any type, it would be a poor out-of-home

1 care service that would not be aware of that, and we would
2 expect the out-of-home care service then to turn its mind
3 to the question as to whether there has been carer neglect.
4

5 Can I make the point on this, though: if one sees
6 that the only way into examining these issues of
7 child-on-child sexual abuse is under the umbrella of
8 whether or not there's been carer neglect, I think that's
9 not a good basis to look at this issue. So my view would
10 be - and I think it goes back to my earlier comments -
11 I think serious child-on-child abuse matters - there needs
12 to be a system, and I note that Victoria has a system that
13 operates within the department, of I think it is called
14 category 1 matters - there needs to be a system that
15 ensures that those matters are examined.
16

17 Just one final point on this: I also think there
18 needs to be a system in New South Wales that encourages
19 agencies, out-of-home care agencies, when there are
20 placements where a child's welfare and wellbeing is not
21 being appropriately supported, that it's good practice, it
22 is seen as good practice by agencies to out themselves.
23 I would like to see this potentially operating at the
24 district level. So an agency, for example - it might be
25 a child in residential care and you have potentially
26 a dangerous unacceptable situation in play or,
27 alternatively, you have no guarantee that the children's
28 welfare is being maintained. It would be a good situation,
29 then, for agencies to feel comfortable to bring before
30 a panel of experts these cases on a systematic basis to
31 share the challenges that they are facing, so that at one
32 end of the spectrum we can look at the question as to
33 whether, via support, these children's rights can be
34 protected and supported; at the other end of the spectrum,
35 to look at whether the placement is incompatible with the
36 human rights to those children, and therefore placement
37 changes need to be made.
38

39 MS FURNESS: Let's just leave the panel of experts for the
40 moment and go back to the first point. What would the
41 system look like, do you think, that had serious
42 child-to-child sexual abuse come to the attention of the
43 State and be dealt with?
44

45 MR KINMOND: Obviously, one would need some guidelines and
46 a starting point could be the JIRT criteria together with,
47 I would suggest, a pattern of ongoing abuse. So you might

1 not have a matter that meets the Joint Investigative
2 Response Team criteria; it might be of a lower order. But
3 if there is evidence of a pattern of abuse, and I would
4 also suggest, as well, serious unexplained injuries, and so
5 agencies would be aware that if a matter of that type were
6 to take place within a care situation, there would be
7 a responsibility on them to bring it to the attention of an
8 appropriate entity and those matters, there would be an
9 expectation, then, that there be a review of the
10 circumstances that took place and, of course, if
11 investigative action is required because the matter may
12 warrant criminal action, that appropriate action is taken -
13 but, in addition, a very strong emphasis on the issues of
14 behaviour management, solid case practice, looking at the
15 issue of child-centred analysis as to the circumstances and
16 what is required in terms of the child or children in that
17 placement.

18
19 MS FURNESS: Who is the appropriate entity? I'm happy for
20 you, Mr Kinmond, to take this broader issue on notice. As
21 you know, there is going to be a consultation paper in due
22 course published. Perhaps you might - in fact, the entire
23 panel might - wish to think about the issues that
24 Mr Kinmond has raised and give considered thought to them
25 and perhaps respond by way of a submission to the
26 consultation paper.

27
28 MR KINMOND: Thank you.

29
30 MS FURNESS: The same probably arises in relation to your
31 expert panel. There is a lot that might be said now about
32 that panel, but subject to the evidence you want to give
33 now, Mr Kinmond, that might also be a matter that is best
34 the subject of thought and a submission.

35
36 MR KINMOND: Thank you.

37
38 MS FURNESS: Unless there is anything more you would like
39 to say now about it.

40
41 MR KINMOND: No.

42
43 MS FURNESS: Just turning back to the data, you have told
44 us the number of notifications in the area of sexual
45 misconduct and sexual offence within and out of the
46 out-of-home care sector. What were the findings made in
47 respect of those notifications?

1
2 MR KINMOND: If we look, for example, at the period 1 July
3 2011 to 30 June 2014, in connection with sexual misconduct
4 and sexual events matters, 15 per cent of those matters
5 were sustained and a further 15 per cent were deemed to be
6 not sustained on the basis of insufficient evidence. Now,
7 one might say, "Well, Mr Kinmond, why would you draw
8 attention to not sustained on the basis of insufficient
9 evidence?" The reason why is because that determination is
10 a determination where one can't be confident, one way or
11 the other, whether the conduct took place.
12

13 MS FURNESS: We wouldn't ask you that, Mr Kinmond, but I'm
14 glad you answered it.
15

16 MR KINMOND: And so that is very important, because we
17 would be looking in those cases to see that there were good
18 sophisticated risk management strategies in place, because
19 this isn't just about whether a charge is laid, whether
20 somebody is removed from care. This is about ensuring that
21 appropriate and justifiable safeguards are in place in
22 relation to the affected children.
23

24 What is interesting is that, if you look at the
25 sustained finding in terms of sexual misconduct/sexual
26 offence findings in the out-of-home care area, which is at
27 15 per cent, it is less than the overall sustained finding
28 across all sectors. So, for example, the sustained finding
29 in relation to sexual misconduct/sexual offence matters in
30 relation to all matters is at 25 per cent. So that
31 highlights, I think, the need to ensure that there is
32 rigour in relation to sexual assault/sexual misconduct
33 matters in an out-of-home care setting. It probably also
34 highlights the challenges.
35

36 MS FURNESS: Doesn't it indicate as well the closed nature
37 of a foster carer agency, probably few witnesses, whereas
38 in other areas, including education, there are lots of
39 people around and there may well be more evidence,
40 circumstantial or otherwise, that the misconduct occurred?
41

42 MR KINMOND: Yes, that's correct. That is correct. Look,
43 I'm very confident of the level of rigour that we apply to
44 these matters. I have a number of principal investigation
45 officers, and the individual who provides the lead in
46 relation to the out-of-home care files is a very
47 experienced operator and she will pursue lines of inquiry,

1 if she's not satisfied. So it is a troubling figure, the
2 lower rate of sustained findings, and I think you are
3 right: it does reflect the fact that this is happening
4 within a home environment and so it can be more
5 challenging.

6
7 MS FURNESS: It's the case too, I think, from your figures
8 that the "not sustained" percentage in relation to
9 out-of-home care is 57 per cent, whereas the "not
10 sustained" across the board in relation to sexual
11 misconduct is only 37 per cent.

12
13 MR KINMOND: That's right.

14
15 MS FURNESS: That's reflective of similar matters which we
16 have been discussing.

17
18 MR KINMOND: I agree.

19
20 THE PRESIDING MEMBER: Mr Kinmond, the use of the word
21 "sustained", are we to understand from that language that
22 this is your agency's finding?

23
24 MR KINMOND: If one finds a sexual offence, for example,
25 my rule of thumb with my staff is that if you are going to
26 find that somebody has engaged in a sexual offence, and in
27 the absence of a criminal conviction, then one ought to
28 have very solid grounds.

29
30 Now, there will be occasions - there will be
31 occasions, for example, where, for one reason or another,
32 the matter doesn't proceed to court, notwithstanding that
33 there may be an admission. Now, it is rare. So, generally
34 speaking, when we are talking about a sustained finding in
35 terms of sexual offence, we're talking about there having
36 been a charge and conviction.

37
38 THE PRESIDING MEMBER: Thank you.

39
40 MS FURNESS: Your Honour, I note the time.

41
42 THE PRESIDING MEMBER: Yes, we will take the mid-morning
43 break now for 20 minutes. Thank you.

44
45 **SHORT ADJOURNMENT**

46
47 MS FURNESS: Ms Glass, I was asking you questions earlier

1 in relation to complaint handling, and you gave evidence
2 that you understood from Mr Geary's evidence that he
3 received complaints and referred them to the department; is
4 that right?

5
6 MS GLASS: Yes.

7
8 MS FURNESS: And that you thought, or had an expectation,
9 that those complaints should come to you; is that right?

10
11 MS GLASS: I certainly expect a fair number of those
12 complaints to be referred to my office, yes.

13
14 MS FURNESS: By Mr Geary, or by the department?

15
16 MS GLASS: By Mr Geary.

17
18 MS FURNESS: And you hadn't received complaints by him or
19 via the department?

20
21 MS GLASS: I wouldn't expect to receive them from the
22 department. I would get complaints about the department.

23
24 MS FURNESS: Thank you. Now, Mr Kinmond, back to you.
25 You were giving evidence in relation to the findings that
26 you had made, and you indicated that in relation to
27 a complaint which would amount to a criminal offence -
28 sexual misconduct or sexual offence - in order to sustain
29 it, there would need to be a conviction against the
30 perpetrator?

31
32 MR KINMOND: In the vast majority of cases. If one had an
33 admission and, for some reason, for example, if a child is
34 abused and the child is so traumatised that the parent
35 insists, or a professional may give advice that the court
36 process itself would be too traumatic, then, in those
37 circumstances, that would be a rare case, where, if you had
38 a clear admission and for a reason of that type the matter
39 did not proceed to trial, that might be an exceptional case
40 where I form the view that one was entitled to conclude
41 sexual offence.

42
43 Sexual misconduct, though, is much broader. That is
44 conduct that involves an inappropriate and overly personal
45 or intimate conduct towards, relationship with, or focus on
46 an individual child or a group of children.

47

1 MS FURNESS: But wouldn't amount to grooming, or would
2 amount to grooming?

3
4 MR KINMOND: The difficulty, of course, with grooming -
5 I shouldn't say it is a good question, but it is a very
6 important question, because early on we used the grooming
7 label as the primary advice as to sexual misconduct matters
8 that needed to be notified. The difficulty with grooming
9 is, of course, one has to demonstrate that grooming -
10 implicit within the notion of grooming is grooming for
11 a purpose --

12
13 MS FURNESS: Intent.

14
15 MR KINMOND: Yes, precursor to a sexual assault. So that
16 was highly problematic, because often with these matters,
17 very early on in the investigation, one can show that the
18 individual is engaging in inappropriate or overly personal
19 conduct towards a child, or a relationship with a child,
20 but you can't get firm evidence to demonstrate what the
21 motive behind that conduct is. So early on, when I took
22 over the responsibility in this area, I redefined sexual
23 misconduct along the lines that I've just outlined.

24
25 That has very significant implications, because the
26 investigator, of course, will continue to chase lines of
27 inquiry until such time that they think either that the
28 matter is going to be proven, or that there is no point in
29 continuing to chase rabbits down burrows.

30
31 Now, if you have a requirement that you need to prove
32 that somebody intended to form a sexual relationship with
33 a child, then you are not going to chase many of these
34 matters very far, notwithstanding the disturbing behaviour,
35 because you know you are not going to be able to prove it.

36
37 MS FURNESS: What about sexual exploitation? How do you
38 deal with that?

39
40 MR KINMOND: Well, depending upon the context, you would
41 argue that, depending on a particular behaviour, it could
42 involve conduct towards or relationship with a child, so
43 you would look at it through that lens. It would depend on
44 the nature of the behaviour.

45
46 MS FURNESS: If the allegation is of child sexual abuse
47 amounting to a criminal offence that is notified to you,

1 does that mean that automatically it goes to the Joint
2 Investigative Response Team and is dealt with as a criminal
3 matter?
4

5 MR KINMOND: In the main, but we have had matters where
6 that hasn't been the case, and so we have ensured that that
7 has been remedied. Let me also say --
8

9 MS FURNESS: Let me stop you there. So either by some
10 other mechanism it goes to JIRT, perhaps through FACS, or
11 because of your intervention, it goes to JIRT.
12

13 MR KINMOND: That's right.
14

15 MS FURNESS: But any matter that is reported to you that
16 amounts to, for our purposes, indecent assault or sexual
17 assault, would find its way very quickly to the police.
18

19 MR KINMOND: Ought to find its way to the police, but we,
20 of course, are on the record as demonstrating, via a number
21 of investigations, that there has been a failure to refer
22 matters to the police and, unfortunately, that failure on
23 a number of occasions has been on the part of the statutory
24 child protection authority failing to ensure the referral
25 of matters.
26

27 MS FURNESS: Do you consider that it's your obligation, as
28 the receiver of notifications, when the allegation amounts
29 to a criminal offence, to tell the police?
30

31 MR KINMOND: It's absolutely our obligation to make sure
32 that the police are advised, and that they are advised
33 promptly. If that then requires us to notify the police,
34 then we will notify the police. On occasions, we will
35 simply indicate to the agency, because it has the holdings,
36 that - well, they might have the full holdings - for them
37 to make contact. But we will always - always - follow
38 these matters up.
39

40 Now, it would be fair to say that practice of some
41 years ago tended to be a more hands-off approach by my
42 office, and quite frankly, that's unacceptable. My mantra
43 to my staff is risk times time equals tragedy. And so if
44 we have information that indicates that a child is at risk
45 or an investigation is at risk and we don't satisfy
46 ourselves that the matter has been moved forward, moved
47 forward quickly, and the relevant information has been

1 provided, if we don't ensure that, then we are failing in
2 our responsibilities.

3

4 MS FURNESS: Assuming, then, that the allegation is of
5 a criminal nature - child sexual abuse in our language;
6 assault or indecent assault in criminal language - it must
7 be made to your agency; is that right?

8

9 MR KINMOND: That's correct.

10

11 MS FURNESS: Your agency would ensure, one way or another,
12 that it got to the police. In those circumstances, you
13 wouldn't investigate it, would you?

14

15 MR KINMOND: No, we wouldn't. But let me give a variation
16 on that theme.

17

18 MS FURNESS: Just before you vary it, you wouldn't
19 investigate it?

20

21 MR KINMOND: We would conduct certain inquiries. So it is
22 routine in those matters that we will look at the police
23 system and have a look at where the matter is at.

24

25 MS FURNESS: But it wouldn't come to a finding of
26 sustained/not sustained?

27

28 MR KINMOND: We wouldn't complete an investigation, but we
29 may do some inquiries on the basis of information that we
30 have that perhaps the police don't have.

31

32 MS FURNESS: That's all right. But in terms of your
33 outcomes and findings that you have given evidence of
34 earlier this morning, no matter, where it is an allegation
35 of a criminal assault that has gone to the police, will
36 find its way into the findings that you have told us about.

37

38 MR KINMOND: No, that will include the matters where the
39 police have laid charges.

40

41 MS FURNESS: So the "sustained" is in relation to an
42 outcome of the police, that is, a person has been charged
43 and ultimately convicted?

44

45 MR KINMOND: If, for example, that is a criminal matter.
46 If, on the other hand, it is sexual misconduct --

47

1 MS FURNESS: No, no, let's just limit ourselves to
2 criminal matters. We need to understand the pathway where
3 a criminal complaint is made in out-of-home care. So your
4 evidence so far is it must come to you, and you will tell
5 the police, if no-one else does, and you will make sure
6 that someone tells the police if it is not you.

7
8 MR KINMOND: Yes.

9
10 MS FURNESS: If the police then, following their
11 investigation, charge a person and there is a conviction,
12 it will be a sustained finding in your findings.

13
14 MR KINMOND: That's correct.

15
16 MS FURNESS: If the police do not charge a person, is the
17 finding that you come to based on your own criteria,
18 regardless of the police action?

19
20 MR KINMOND: The finding that we will very carefully
21 consider is whether there should be a sexual misconduct
22 findings.

23
24 MS FURNESS: That is a lesser offence, as it were?

25
26 MR KINMOND: A lesser offence. What we need to find then
27 is that there was some conduct of an inappropriate nature
28 which doesn't go to the heart of what was needed to prove
29 the offence but which clearly shows somebody who behaved in
30 an inappropriate way with the police.

31
32 Just one other point I might make, too - and this is
33 important - is that historical allegations, so allegations
34 that are made by people as adults that indicate that they
35 were abused as children, of course, find their way -
36 a significant number of those matters would find their way
37 into our scheme. For historical allegations, they are not
38 matters that are dealt with by JIRT; they are matters that
39 are dealt with at the local area command. Quite often,
40 with historical matters, one might go back a number of
41 years in terms of relevant holdings, and one might be in a
42 position to suggest to police, based on our review of both
43 the child protection system and of the police system, that
44 there are certain lines of inquiry that they can pursue.

45
46 Let me say, I cannot think of one case where we have
47 taken it up with the police, put suggestions, and they

1 haven't pursued it and they haven't done so willingly. So
2 it is a good cooperative system that is in place.

3
4 MS FURNESS: Thank you. As part of your keeping under
5 scrutiny, for our purposes, the out-of-home care system,
6 you recently worked in the Aboriginal out-of-home care
7 sector. Can you tell us about the work you did there?

8
9 MR KINMOND: Yes. This is a combination of using our data
10 and other information to determine a course of action.

11
12 We conducted an analysis of reportable conduct matters
13 coming from the Aboriginal out-of-home care sector and we
14 noted that the reporting rate was lower than one would
15 expect. We then entered into discussions with AbSec,
16 individual Aboriginal agencies, with the Children's
17 Guardian, and with FACS.

18
19 So there is the consultation process. One doesn't
20 jump to conclusions.

21
22 The important aspect of the consultation process, too,
23 is about building consensus and assuring people that our
24 focus is on system improvement rather than going on
25 a fault-finding expedition.

26
27 In addition - and this is something that came as
28 a result of a request from the Aboriginal agencies
29 themselves - we conducted a significant amount of training
30 activity to individual Aboriginal services.

31
32 As a part of that training, we used our connections
33 with NSW Police to bring senior people from local area
34 commands, where the Aboriginal organisations were working,
35 to have a session with the Aboriginal providers as to the
36 respective role and relationship that they could have with
37 the police in relation to particularly difficult -
38 difficult - matters that agencies needed to deal with - for
39 example, matters involving criminal behaviour.

40
41 The good thing about that relationship, too, was
42 Aboriginal out-of-home care services are also interested in
43 their community, and so that, then, allowed a very good
44 discussion between police and those organisations around
45 broader child protection issues that are in play within
46 Aboriginal communities.

1 It occurred to me, though, that with these one-off
2 training sessions I might well be retired before I finished
3 the exercise, so we needed to accelerate the process. I'm
4 not about to retire. And so what we thought we would do is
5 put on a fairly major forum and we had over 150 attendees.
6 AbSec absolutely backed it, which was fantastic. All of
7 the Aboriginal organisations were represented. We had
8 senior representation from the Child Abuse Squad and we had
9 senior representation from the police - a number of
10 assistant commissioners attended - and the Aboriginal
11 sponsor for the police, Geoff McKechnie, attended and was
12 very supportive.

13
14 We were particularly interested, too, in having all of
15 the commands represented where the Aboriginal organisations
16 were located. So there was some general training that took
17 place, but our major focus was relationship building, and
18 not just relationship building for the sake of it but
19 relationship building that was targeted on the Aboriginal
20 agencies in particular locations and the local area
21 commanders having a focused discussion on what they needed
22 to do moving forward, so that the interface between
23 Aboriginal organisations and police was a solid one, so
24 that whether a reportable conduct matter arose, or
25 a serious client-on-client abuse matter arose or,
26 alternatively, there were concerns about sexual abuse
27 within an Aboriginal community more broadly, the
28 relationship existed and the Aboriginal organisation was
29 able to work with the police.

30
31 MS FURNESS: What has the outcome been of that,
32 Mr Kinmond?

33
34 MR KINMOND: The outcome, in terms of reportable conduct
35 matters, is that we received 71 reportable conduct matters
36 from the Aboriginal out-of-home care sector for this
37 financial year, as of 25 May - 71 - which is more than
38 a three-fold increase in the number of reportable conduct
39 matters.

40
41 MS FURNESS: You put that down, at least in part, to the
42 work you did in that community?

43
44 MR KINMOND: To the range of activities. The other thing
45 which I'm very keen to see unfold - and I'm on the police
46 Aboriginal Strategic Advisory Council - the police have
47 a performance management framework in place and the

1 assistant commissioner, Geoff McKechnie, was very keen to
2 see that the forum was not just a talkfest and that he will
3 hold commanders to account in terms of them demonstrating
4 concrete action by way of ongoing relationship building
5 with those Aboriginal organisations. So that will be
6 monitored through the police performance framework.

7
8 MS FURNESS: Mr Clarke, have you done any work in the
9 Aboriginal community in relation to out-of-home care?

10
11 MR CLARKE: No.

12
13 MS FURNESS: Is that something that's on your future
14 agenda?

15
16 MR CLARKE: If it related to my normal function as
17 Ombudsman or, indeed, as I alluded to earlier, the
18 additional priority of looking at complaints. I think it
19 falls more reasonably, under the Queensland system, into
20 the role of the Family and Child Commission, and I know
21 that the Family and Child Commission has plans to engage
22 with the Aboriginal and Torres Strait Islander communities
23 and, indeed, there is a Commissioner position within the
24 Family and Child Commission which is specifically related
25 to Aboriginal and Torres Strait Islander communities.

26
27 MS FURNESS: Ms Glass?

28
29 MS GLASS: Similarly, it is not an area that my office has
30 looked at, as far as I'm aware, but there is, as I believe
31 you have already heard evidence from yesterday, a
32 Commissioner for Aboriginal Children and Young People in
33 place in Victoria, who I understand does good work in this
34 area.

35
36 MS FURNESS: You would expect him to work in the area that
37 Mr Kinmond has just described his agency as --

38
39 MS GLASS: That's essentially the role of the Commission
40 in any event. My office does not have a specific function
41 in dealing with out-of-home care.

42
43 MS FURNESS: Mr Kinmond, as you know, kinship placements
44 occur in New South Wales where it is considered appropriate
45 for the child to be placed. There has been some evidence
46 about, firstly, the nature of the assessment of kinship
47 carers and, secondly, and probably more relevant to you, is

1 the support that kinship carers receive and the
2 consequences of that for the safety of children in their
3 care. Is that a matter that has come to your attention?
4

5 MR KINMOND: It has, and this I think reflects the benefit
6 of a wide range of functions complementing each other in
7 terms of being able to put the focus on issues in terms of
8 vulnerable members of the community. So, for example, in
9 the in-care review area, we looked at the level of casework
10 support provided by community services in terms of
11 out-of-home care placements and we reported that, for
12 example, in some cases, 80 per cent of out-of-home care
13 placements were not receiving casework support. Of course,
14 that --
15

16 MS FURNESS: Sorry, what percentage did you say?
17

18 MR KINMOND: About 80 per cent of cases were not receiving
19 any casework support. That kind of information fed into
20 the Wood Special Commission of Inquiry and formed part of
21 a broader evidence base of the transfer of children from
22 government care to the non-government sector.
23

24 But one of the things that we noticed from our in-care
25 review work was particularly poor levels of support
26 provided in the kinship care space.
27

28 MS FURNESS: Support by those agencies responsible for
29 placing the child there?
30

31 MR KINMOND: That's right. And poor levels of caseworker
32 monitoring. And our concerns were heightened by the fact
33 that our review of quite a number of those placements
34 indicated that they were quite high-risk cases.
35

36 MS FURNESS: What did you do with that information?
37

38 MR KINMOND: We completed a report, put the spotlight on
39 that issue, along with the issue, of course, of the poor
40 casework supervision generally, and that information, of
41 course, was fed into the Wood Special Commission of Inquiry
42 and, along with the evidence of others, helped to inform
43 the government accepting the recommendations of Justice
44 Wood that children should be transferred from the
45 government out-of-home care sector to the non-government
46 sector.
47

1 MS FURNESS: Children who have been subject to a criminal
2 act would have, in New South Wales, a prima facie
3 entitlement to compensation under the victims compensation
4 scheme. Did you look at that?

5
6 MR KINMOND: Once again, through our in-care review work,
7 we came across a number of children, many of whom were
8 eligible for victims compensation as a result of the
9 circumstances that gave rise to them coming into care. But
10 there are also cases that we saw where children had been
11 abused in care and so, in reviewing the files of those
12 children, we were interested to see whether victims
13 compensation claims had been submitted. From the in-care
14 reviews, we could not see good practice in that regard, so
15 that led to a broader investigation where I looked at
16 a fairly large cohort, where there was prima facie evidence
17 to indicate that the child was eligible for victims
18 compensation, and the investigation clearly showed very
19 poor practice.

20
21 MS FURNESS: And you reported on that as well?

22
23 MR KINMOND: We reported on it and that led to substantial
24 work by the department in terms of improving its practices,
25 so they invested significant resources in seeking to
26 identify children eligible and in terms of progressing
27 their victims compensation claims, and of course, this is
28 essential in terms of children's rights and their right to
29 redress.

30
31 Some recent work that we have done in this area would
32 indicate that whilst there have been improvements - and it
33 is important for me to stress that there have been
34 improvements - we are still having children who are
35 eligible for victims compensation who are leaving care
36 without their application having been adequately
37 progressed.

38
39 MS FURNESS: Thank you. You have indicated that you have
40 the power, as do the other Ombudsmen, to initiate
41 investigations. Do you have any current investigations
42 under way in relation to out-of-home care?

43
44 MR KINMOND: Can I take that on notice?

45
46 MS FURNESS: Certainly. Can you tell us a recent
47 investigation that you have done that has affected the

1 protection of children in out-of-home care?

2

3 MR KINMOND: There is a matter that, only a couple of
4 weeks ago, I completed. It looked at the whole issue in
5 detail - information, critical information assessment,
6 critical information exchange, in a whole range of
7 contexts, including, for example, information assessment in
8 relation to carer assessments; information exchange by
9 community services with non-government agencies who are
10 conducting care assessments using chapter 16A; the issue
11 which I've referred to earlier of information exchange with
12 the police where there is an allegation of criminality. So
13 within the context of that report, we outlined the fact
14 that for quite a number of years there has been a range of
15 issues pertaining to information exchange which go to the
16 safety of children and that further progress is needed in
17 relation to improving practice in connection with a number
18 of those areas.

19

20 MS FURNESS: Chapter 16A was introduced into your
21 legislation as a result of Justice Wood's recommendation in
22 2008?

23

24 MR KINMOND: Yes.

25

26 MS FURNESS: It was designed, according to his report, to
27 significantly improve the exchange of information between
28 relevant agencies in order to better protect children. Has
29 it achieved that?

30

31 MR KINMOND: I think it has been a big game changer -
32 a big game changer.

33

34 MS FURNESS: So is it the case that what is now needed is
35 a cultural change in relation to the willingness to, rather
36 than any legal impediment?

37

38 MR KINMOND: 16A is a wonderful provision. We had put on
39 the table I think as early as about 2003/2004 the need for
40 a provision of that type, and we are very grateful for
41 his Honour's recommendations, and so it has been of
42 enormous value in terms of facilitating information, and
43 I am confident, absolutely confident, that there have been
44 major changes in practice. For example, we were able to
45 reach an agreement with police concerning standard
46 operating procedures which the police commissioner signed
47 off. Now, at the heart of those standard operating

1 procedures is the acceptance that NSW Police is able to
2 exchange information to bodies that are dealing with
3 reportable conduct matters to assist those agencies to know
4 what the current risks are and for them to be apprised of
5 ongoing developments in relation to the investigation, and
6 at the end of the investigation, to be apprised of relevant
7 evidence.

8
9 MS FURNESS: What's the situation with the exchange of
10 information between States about children in care and the
11 protection of those children - so exchanging information
12 for the purpose of protecting children in care? What are
13 the impediments to that?

14
15 MR KINMOND: We have looked at a number of matters where
16 information ought to have been exchanged and it wasn't.
17 The good thing about 16A is that it sends a very clear
18 message that this is the way business should be done. So,
19 often the argument is put that, "Well, look, if one had an
20 intimate knowledge of the law, one might be able to find
21 a way to facilitate the exchange of the information." Now,
22 I'm not sure that that should be the benchmark. I think
23 what is incumbent on us as a community is to determine what
24 ought to be exchanged and to have some legislation which
25 promotes the exchange of information across borders.

26
27 MS FURNESS: But just turning back to interstate exchange
28 of information, if Mr Clarke rang you and wanted to know
29 about a carer who had moved to Queensland and was the
30 subject of a complaint that he was aware of, whether you
31 had any information about that person, could you tell him?

32
33 MR KINMOND: The process that I would use in those
34 circumstances would be to use the police. So if I had some
35 information, for example, suggesting potential criminality,
36 my starting point would be, first of all, I look on -
37 I'd make sure I had complete holdings. I would then, in
38 those circumstances, if it is potential criminal behaviour
39 in place, be picking up the telephone and having
40 a discussion with a senior person within the Child Abuse
41 Squad and indicating to them, if I felt that it fell under
42 a legitimate law enforcement exemption in terms of
43 information exchange - or I'd be on the phone and indicate,
44 "Look, I think for a legitimate law enforcement purpose" -
45 which can be read quite broadly, and should be, in my
46 opinion - information may need to be provided to
47 a particular police counterpart in Queensland, with a view,

1 then, if that individual felt that that was information
2 that Mr Clarke needed to have, to provide that information.
3

4 Now, you see, I claim some expertise in this area.
5 But can you imagine, for example, if you are
6 a practitioner, and you might be a chief executive, but you
7 are not particularly familiar with the legislative
8 provisions, and nor do you actually have the level of
9 contacts that I have --

10
11 MS FURNESS: I understand, Mr Kinmond, you are saying that
12 there should be a simpler system that doesn't require
13 inside knowledge.
14

15 MR KINMOND: Yes, and sometimes, for example, no matter
16 whether one knows the tricks of the trade or not, there
17 isn't an opening. Can I give you an illustration?
18

19 MS FURNESS: For the moment, let me leave your
20 illustration and turn, if I can, to Ms Glass. Are you
21 satisfied within your jurisdiction that you could obtain
22 information relevant to the protection of a child in
23 out-of-home care from a child-related agency in Victoria?
24

25 MS GLASS: I could obtain that information if I knew where
26 to - what to ask. I think the issue in my jurisdiction is
27 that I don't get the complaints, I don't get the
28 allegations, and without that, you don't have the raw
29 material upon which to investigate.
30

31 MS FURNESS: Leaving aside how you obtained the
32 information, but if there was information available to you
33 that meant that you, to exercise one of your functions,
34 needed to access information held elsewhere in the state
35 bureaucracy, do you believe that the position in Victoria
36 means that you would be able to get that?
37

38 MS GLASS: Yes, I do.
39

40 MS FURNESS: What about exchange of information with
41 interstate colleagues?
42

43 MS GLASS: I have particularly stringent confidentiality
44 provisions in my Act. I think they are too stringent and
45 I have already made this point to government. But I do
46 have some gateways in relation to my fellow parliamentary
47 colleagues. I have to look rather more closely at what

1 those gateways are.

2

3 MS FURNESS: When you say parliamentary colleagues --

4

5 MS GLASS: Other state Ombudsmen.

6

7 MS FURNESS: Mr Clarke?

8

9 MR CLARKE: It's with me making it clear I have no
10 operational responsibility for police in Queensland, so any
11 operational matter of police I'm specifically not entitled
12 under my Act to inquire about or into. So that does
13 create, I think, some significant limitations. If it was
14 with any other public sector agency in Queensland - the
15 department, the Public Guardian and the like - and, as
16 I said, through section 10(c) of my Act, an external body
17 potentially, I do think my powers are quite significant in
18 terms of obtaining that information, to the extent that
19 legal privilege also doesn't apply to that information. So
20 a department cannot seek to withhold it from me on the
21 basis of legal privilege. They can't do that, either.

22

23 MS FURNESS: Have you had experience interstate seeking to
24 give or obtain information relevant to the protection of
25 a child?

26

27 MR CLARKE: I can't recall anything, no.

28

29 MS FURNESS: What about give or exchange information
30 relevant to your other functions?

31

32 MR CLARKE: With my interstate colleagues?

33

34 MS FURNESS: With other interstate agencies.

35

36 MR CLARKE: With other interstate agencies? There's
37 nothing - there's no matter that I can recall at the
38 moment. The nearest thing, which is not particularly near,
39 would be in regard to transport regulation for heavy
40 vehicles, for example.

41

42 MS FURNESS: No, that is somewhat distant from our
43 concerns.

44

45 MR CLARKE: It is.

46

47 MS FURNESS: Mr Kinmond, the Royal Commission heard

1 evidence from Ms Boland yesterday about the establishment
2 of a carers register. Does your organisation have any role
3 in relation to the operation of that, leaving aside its
4 establishment?

5
6 MR KINMOND: Yes, we do. First of all, matters that
7 aren't sustained but where there is some evidence of
8 concern are matters that will be kept on the register,
9 first of all.

10
11 Secondly, if we hold information of significant
12 concerns in relation to an individual, and we might be
13 concerned that they might move from a particular agency, or
14 even if we're not concerned, even if it's just
15 a possibility that they could move from one care agency
16 with a problematic history, and then move to another, then
17 we can put on the system a flag, and so that when the
18 person then seeks to be approved by another agency and they
19 go on to the carer register, they will note that there is
20 a flag on the system and that that will indicate to them
21 that they need to contact ourselves.

22
23 In addition, there will be a small number of matters
24 where the openness and transparency of the carer register
25 might present a problem, and those types of matters might
26 be cases where there is a sensitive police operation in
27 play and, therefore, the dissemination of any information
28 to an agency that is considering somebody to be a carer
29 might prejudice the police inquiries. And so therefore, in
30 those cases as well, we have the option - because we do
31 have access to the police system; we will know those cases
32 where there are covert inquiries in play, or we will know
33 many of those - in those circumstances of putting a flag on
34 the system which will mean the agency that is considering
35 somebody to be a carer will not have access to information,
36 they will know to contact us, and then we will liaise with
37 the police and the individual agency on the question of
38 what information, if any, should be disseminated.

39
40 MS FURNESS: I think the relevant agencies who select and
41 use carers have some months before they have to put all of
42 their information on the system; is that right?

43
44 MR KINMOND: That's correct.

45
46 MS FURNESS: Are you responsible for putting any material
47 on the system independently of a carer that is already

1 there?

2

3 MR KINMOND: No, I think - I hope it works. The principle
4 is the flag is all that is needed. So that lets them know
5 that they need to make contact with us, and it is at that
6 stage that relevant information, depending upon the
7 circumstances - we can assess what information needs to be
8 provided - relevant information will be provided.

9

10 MS FURNESS: A key issue for the Royal Commission is
11 disclosure of allegations by children or by adults about
12 abuse when they were children. There has been a deal of
13 evidence about, and from, young people who say why they
14 don't disclose, and commonly, the evidence is that they
15 won't be believed, they might otherwise like the placement
16 and will be moved from the placement, and they don't want
17 to upset the apple cart. You have done some work in that
18 area, haven't you?

19

20 MR KINMOND: We haven't done a great deal of extensive
21 work in this area and I have to say it is an area where we
22 ought to do some substantial work. But we have looked at
23 a snapshot of matters. For example, 23 matters, quick
24 snapshot of matters finalised involving 46 children where
25 sexual offence was the primary reported allegation.
26 I don't think this will come as a surprise to anyone. The
27 analysis revealed that the alleged victims predominantly
28 disclosed to subsequent carers after the allegedly abusive
29 placement had finished, and of the 46 children, that was
30 eight cases; biological parents in seven cases; caseworkers
31 in five cases; other professionals such as psychologists or
32 teachers in eight cases; and then you had a sprinkling of
33 other matters - to a friend or a peer; disclosures made by
34 another child.

35

36 I think that supports the evidence that has been
37 provided to this Commission at various points in time, that
38 in terms of natural safeguards for kids we really do need
39 to look to ensure that there are a range of opportunities
40 for children in terms of making disclosures and that, yes,
41 good casework supervision is important, but children having
42 individuals who they trust, whether it be a caseworker or
43 somebody within the community, is absolutely vital.
44 I mean, the idea of a child being abused and not having
45 anyone to talk to about it is a terrible thought. And, of
46 course, for good reasons, children will very often not talk
47 to the person who is providing the care; they will need

1 other individuals, or there will be other individuals with
2 whom they will share their private thoughts.

3
4 So from a child-centric perspective, the child not
5 only belonging in the carer situation, but really belonging
6 in the community and having people who they trust is
7 absolutely vital.

8
9 MS FURNESS: Thank you. Ms Glass, the Royal Commission is
10 also interested in complaint handling systems in the area
11 the subject of its terms of reference. Has any work been
12 done by your predecessor or by you in relation to
13 determining best practice in complaint handling processes?

14
15 MS GLASS: We have done quite a lot of work in best
16 practice in complaint handling processes, but I think in
17 this particular context I look very much to the New South
18 Wales model. What they have been able to do there is marry
19 up the complaints handling with the mandatory reporting,
20 which is something that either Ombudsman's offices don't
21 have, and I think that gives a richness to the data that we
22 lack.

23
24 MS FURNESS: What would be your view of there being
25 a nationally consistent approach to the handling of
26 complaints in, again, the area the subject of this Royal
27 Commission?

28
29 MS GLASS: I think that always sounds very attractive and,
30 in principle, it is attractive. I think there is always
31 a danger with nationally consistent approaches that it
32 becomes the lowest common denominator rather than the best
33 practice. So yes in principle, but when you look at the
34 range of approaches across States, one of the things that
35 you will already have seen from this morning is that we
36 have an Ombudsman's office - and I'm very admiring of the
37 work of my New South Wales colleagues - that has a very
38 specific statutory function in this area, that is very
39 specifically resourced, and that allows them to do things
40 that other offices don't do. So it is a package. You
41 know, it is the sort of thing that, in principle, I think
42 is very worthy of exploring. I think these are important
43 initiatives and I think it is a very good solution in
44 New South Wales; it is potentially a good solution
45 everywhere. But it's not about simply giving the function
46 to an Ombudsman's office or giving the function to
47 a particular agency. It is that whole package of activity

1 that sits with it that is important.

2

3 MS FURNESS: Mr Clarke?

4

5 MR CLARKE: I think Deborah's comments are very
6 appropriate. I think the distinct difference between the
7 broad ombudsman jurisdiction and that which exists in
8 New South Wales is the specific legislative - not only
9 opportunity but obligation to do that work, and the
10 specific resources associated with doing that are really
11 critical to being successful in the complaints management
12 process and the linkages to other aspects of the system,
13 whether that be mandatory reporting schemes or other
14 aspects of it.

15

16 Without that specific obligation and without the
17 specific resourcing and potentially additional legislative
18 provisions, there is always the risk that it will be simply
19 overtaken by the huge volume of other work that Ombudsman's
20 offices in general deal with.

21

22 MS FURNESS: Mr Kinmond, is there anything you wish to say
23 about national consistency in relation to complaint
24 handling?

25

26 MR KINMOND: In the disability area, the Victorian
27 Disability Commissioner has developed, with a firm by the
28 name of Orima, a very good tool, and it is a disability
29 complaints tool. We, instead of doing our own thing - my
30 view is that if I see something good, I will grab it, and
31 so we had a look at the complaints tool and we then spoke
32 to Ageing Disability and Home Care about it and they
33 embraced the idea and there is now available to all
34 disability service providers in New South Wales the Orima
35 tool, and at very low cost.

36

37 My hope would be, in terms of that particular tool,
38 that with the National Disability Insurance Scheme, that
39 tool or a variation on it could be used as the platform for
40 a national complaints tool.

41

42 It seems to me that there is no reason why we couldn't
43 have both an IT system and policies and procedures that
44 enunciate best practice - and best practice in relation to
45 reaching out to kids - under a national complaints tool.

46

47 Let me also say, we're doing work with Orima in

1 connection with our reportable disability incident function
2 and also in relation to our reportable conduct function.
3 So we're hoping that perhaps other States and Territories
4 might adopt the New South Wales system and, in anticipation
5 of that, what we want to do is to make available, in terms
6 of reportable disability incidents and reportable conduct
7 matters, an IT tool that would deliver national
8 consistency. There's no good reason why that can't be
9 delivered.

10
11 MS FURNESS: Thank you, your Honour.

12
13 THE PRESIDING MEMBER: Mr Kinmond, can I start with you.
14 With respect to the nature of the investigations that your
15 office is conducting, have we understood correctly that the
16 first thing that happens is that some sort of definition is
17 applied to the nature of the complaint, so that you are
18 making an assessment about whether or not what you are
19 receiving is in fact a matter that must be referred
20 straightaway to the police?

21
22 MR KINMOND: Yes, absolutely.

23
24 THE PRESIDING MEMBER: Who is responsible for that
25 decision?

26
27 MR KINMOND: Within my organisation? These matters will
28 go generally to the principal investigator. We have
29 various principal investigators who are responsible for
30 portfolio areas and they will ensure that one of the early
31 issues that is considered is is there prima facie evidence
32 of criminal behaviour. What is important to bear in mind
33 there is that you might not have, in terms of the
34 particulars of the allegations, an allegation of a criminal
35 offence, but you might have information that gives one
36 reasonable cause to suspect that you might have criminal
37 behaviour in play.

38
39 One is likely to reach that conclusion, too, if one
40 has looked at the police system and noted a range of
41 disturbing behaviour on the police system in connection
42 with that individual across time. And obviously what we
43 also look at is the child protection system, and if one has
44 disturbing information on that system as well, or on its
45 own, which might be indicative of criminal behaviour, then
46 we will pull together a brief, and whether it is a local
47 area command or the Child Abuse Squad, we will then make

1 a telephone call, we will explain the circumstances and we
2 will then send the information across to the police.

3
4 In some cases, it's not just sending information to
5 the police, it also involves a call to Family and Community
6 Services. I have contact from time to time with the deputy
7 secretary and I have always found her more than willing to
8 take my call on those matters and more than willing to
9 assist.

10
11 THE PRESIDING MEMBER: So you are not identifying at the
12 moment any gaps or shortfalls in that process?

13
14 MR KINMOND: I'm extremely encouraged by the level of
15 cooperation that we receive.

16
17 THE PRESIDING MEMBER: And similarly with respect to the
18 cooperation with the police - both with respect to the
19 provision of information to you for the purposes of your
20 investigation and then in the wake of any police
21 investigation that falls short of a criminal prosecution,
22 do you identify any shortfalls or problems in that area?

23
24 MR KINMOND: I know that there is a perception that
25 Ombudsman's offices are in the business of criticism, but
26 I would be giving inaccurate evidence if I indicated that
27 I had any concerns. I have to say I am impressed with the
28 response of NSW Police to the calls that we make. And
29 I would be happy to provide evidence in support of that.

30
31 THE PRESIDING MEMBER: All right. We have heard - and it
32 was intimated in some of the questions that Ms Furness
33 put - that sometimes issues around privacy and
34 confidentiality will work as bars or barriers to the
35 successful progress of an investigation or, indeed, an
36 entire system. You are obviously not identifying that as
37 a problem?

38
39 MR KINMOND: That's correct, your Honour.

40
41 THE PRESIDING MEMBER: Are you aware as to whether or not,
42 in comparable systems across State and Territory borders,
43 those problems do exist for those agencies?

44
45 MR KINMOND: I don't have detailed familiarity with the
46 provisions in each of the jurisdictions, but I'm reasonably
47 confident that chapter 16A of the Children and Young

1 Persons (Care and Protection) Act is a model piece of
2 legislation which makes the decision concerning whether one
3 is entitled to exchange information very easy, and because
4 of the broad range of agencies that are able, under that
5 legislation, to exchange information, we simply don't have
6 a problem in relation to intrastate information. But
7 cross-border information is another issue.

8
9 THE PRESIDING MEMBER: More complex. Thank you. Could
10 I ask you a question that has been touched upon about the
11 carers register - and we have heard evidence about it being
12 quite a new initiative. In the area of allegations of
13 child-on-child abuse in a care environment - so an
14 allegation that is not being directed at the carer -
15 I probably should have asked this question of Ms Boland and
16 didn't, but would the carers register pick up that
17 child-on-child allegation, to the best of your knowledge?
18

19 MR KINMOND: To the best of my knowledge, no, unless, for
20 example, there was an indication that the relevant carer
21 had failed in connection with a child-on-child abuse
22 matter.
23

24 THE PRESIDING MEMBER: And who would be making that
25 assessment?
26

27 MR KINMOND: If, for example, the matter was reported as
28 a neglect matter to my organisation - and I think I gave
29 evidence earlier concerning the significant number of
30 reports of neglect - then that decision would be made by
31 the agency with responsibility for investigating the
32 alleged neglect under our oversight, and I think the
33 earlier evidence I gave was that for neglect matters that
34 are notified to us, that typically involve an alleged
35 failure by a carer to provide an adequate response to
36 safety risks to a child, 42 per cent of those during the
37 period that I quoted earlier lead to sustained findings.
38 So that would be relevant information that should be on the
39 care register.
40

41 THE PRESIDING MEMBER: Thank you. You also gave evidence
42 in answer to a question from Ms Furness about the
43 shortfalls in the referral of matters to the police inside
44 the child protection authority in New South Wales, so you
45 touched upon that. I just want to come back to that with
46 you to ask you to elaborate on that, please, for us.
47

1 MR KINMOND: There have been a number of occasions where
2 community services has information that indicates potential
3 criminality and there has been a failure to notify the
4 matter to the police.

5
6 More recently, FACS, Family and Community Services,
7 has issued guidelines to indicate that where there is
8 a serious violent offence, then there ought to be
9 a referral to the police. One would think that that makes
10 sense.

11
12 THE PRESIDING MEMBER: Could I just interrupt for
13 a moment. Specifically in the area that we are looking at,
14 in the out-of-home care area and the sexual abuse of
15 children in the out-of-home care area, are you saying that
16 your agency has uncovered circumstances where referrals
17 that should have been made to the police have not been
18 made?

19
20 MR KINMOND: My understanding is yes in the out-of-home
21 care area, certainly in relation to - my understanding -
22 the reportable conduct area. We would be happy to provide
23 evidence in support of that claim.

24
25 THE PRESIDING MEMBER: Thank you. Again, just to clarify,
26 you are talking now, again, in terms of recent years?

27
28 MR KINMOND: Yes, we are talking about recent years.
29 I would have to say that I think there's been some progress
30 made in this area, but I'm not at all confident that we
31 have got best practice in play.

32
33 THE PRESIDING MEMBER: How have those matters come to the
34 attention of your office?

35
36 MR KINMOND: Well, they have come either via the
37 reportable conduct scheme; sometimes they may have come
38 from complaints or we might have contact with a stakeholder
39 who has brought concerns to our attention and as a result
40 of us then having a look at both the police system and the
41 child protection system, we are then very well placed to
42 form an assessment as to whether the information ought to
43 have been sent to the police.

44
45 One of the difficulties in this area, of course, is
46 that sometimes, people tend to write policies in terms of
47 whether one "believes" that there's been a serious

1 indictable offence. Well, how would one know whether one
2 can believe whether such an offence has been committed
3 without there having been adequate inquiries? And so there
4 needs to be a very clear understanding that where there is
5 criminal behaviour and there are associated child
6 protection risks, there is no good reason for that not to
7 be referred to NSW Police.

8
9 THE PRESIDING MEMBER: Thank you.

10
11 Mr Clarke, in the course of answering questions from
12 Ms Furness you made reference to developments in complaint
13 handling processes inside your agency in the last
14 12 months, and I understood your evidence to be that you
15 are working on improving and developing complaint handling
16 processes; is that correct?

17
18 MR CLARKE: Yes, your Honour.

19
20 THE PRESIDING MEMBER: So one assumes that shortfalls have
21 been identified; is that correct?

22
23 MR CLARKE: Not so much shortfalls, but opportunities,
24 I guess, is the way I would say it. And the reason I would
25 choose to use different language is that, for example, of
26 the matters that I alluded to earlier, where we did a very
27 cursory analysis in the last couple of days, there are,
28 I don't believe, in regard to the matters of concern to
29 this Commission, any complaints from a child; they all come
30 from adults. So whether, in fact, our system actually is
31 reasonably accessible to children is one of the matters
32 I would like to investigate.

33
34 THE PRESIDING MEMBER: Yes. I was going to ask you about
35 that - in fact, both you and Ms Glass.

36
37 MR CLARKE: Yes, and I think there are opportunities for
38 us to do that much better. Officers from my office have
39 participated with the department in the recent working
40 parties that have looked at child-friendly complaints
41 management systems in the department, and I think there are
42 lessons for us from that process, which I'm eager to
43 consider and apply, if we can make it work.

44
45 THE PRESIDING MEMBER: So there is work being done in your
46 agency in that area?

1 MR CLARKE: There will be done this year. It will be part
2 of my review of what happened in the last 12 months and -
3 my comment before about including my office in that review.
4

5 THE PRESIDING MEMBER: Mr Clarke, are you specifically
6 looking anywhere, either inside the borders of Australia or
7 in other international places, for assistance and guidance?
8

9 MR CLARKE: At this stage, I haven't set a scope to the
10 review, other than that it will specifically include
11 agencies within my jurisdiction, so notably, that will be
12 the department and the Public Guardian's office in
13 Queensland; my own office. Beyond that, I haven't set
14 a scope and I haven't done the research that is necessary
15 to underpin that review, but it will be something for the
16 near future.
17

18 THE PRESIDING MEMBER: Thank you. Ms Glass, I was going
19 to ask you to talk to us about exactly the same issue.
20

21 MS GLASS: Accessibility to the complaints system is
22 a major piece of work in my office. I am not comfortable
23 with the level of knowledge within the State of Victoria
24 about the Ombudsman's services and what my office can do
25 for them, and I think the numbers bear that out.
26

27 So it's already something that I'm looking at. The
28 accessibility of children to the complaints system I think
29 is an important part of that. It's not the only part of
30 that. But there is a broad theme for me about
31 vulnerability, and I'm looking at the access of my office
32 to people who are vulnerable, and that clearly includes
33 children and it includes children in out-of-home care.
34

35 It's a major piece of work. It has numbers of
36 elements including developing a single complaints portal
37 across the public sector in Victoria, working with
38 third-party advocates, and it's something that I think
39 we're going to be developing for some considerable time to
40 come. It is part of a broad 10-year vision I have, in
41 coming into the role. I don't think this is one I'm going
42 to be able to solve very quickly.
43

44 THE PRESIDING MEMBER: You gave evidence to us about the
45 piece of work that your office has recently done in the
46 disability area and the report that you have tabled, and
47 I understood your evidence to be that one of the

1 recommendations that came out of that report was
2 a recommendation to have one oversight agency in the
3 disability area.

4
5 MS GLASS: Yes.

6
7 THE PRESIDING MEMBER: The rationale behind that
8 recommendation?

9
10 MS GLASS: The system is much too fragmented, and what we
11 have found, looking at the different elements of the
12 system, is that it has gaps and it has overlaps in the
13 boundaries, and the problem with that is that nobody owns
14 the problem; nobody takes responsibility; nobody gives
15 leadership to that. What we have found is that there are
16 a lot of well-meaning players in the system who have
17 something to say, but no real responsibility for fixing it.
18 So you need that single oversight body to actually carry
19 that responsibility, and if you can marry that with
20 features such as mandatory reporting - and we have looked
21 very much at the New South Wales model for that - then you
22 can actually bring the powers, the functions, the
23 information together in a way that will make a real
24 difference.

25
26 THE PRESIDING MEMBER: I assume you consulted with
27 relevant agencies about the development of that
28 recommendation and whether or not it would create problems
29 or issues for those agencies?

30
31 MS GLASS: Well, it actually was a recommendation that
32 I made, if you like, in principle, because a real issue, of
33 course, is the introduction of the National Disability
34 Insurance Scheme, and I was very mindful, and I included in
35 that report, that that has to be a factor. If we didn't
36 have the NDIS coming ahead in some years time, then it
37 would have been a much broader recommendation for systemic
38 reform within the State. Clearly, we're looking at
39 a national system, we don't know what the safeguards in
40 that system are going to look like, so it was a principle
41 for me about saying these are the elements of safeguarding
42 that need to exist in Victoria, but which include
43 strengthening our existing systems to ensure that when
44 there is a transfer of responsibility to the Commonwealth,
45 that we sign up to safeguarding arrangements that are no
46 less than the ones we have in place or need to have in
47 place at present.

1
2 THE PRESIDING MEMBER: Thank you.

3
4 Commissioner Fitzgerald?

5
6 COMMISSIONER FITZGERALD: Just one question, and it goes
7 to historic abuse, given that we have you here. One of the
8 issues that has arisen in the Commission's inquiries more
9 generally has been about the way in which past residents of
10 out-of-home care - and those might actually be recent
11 leavers - have had difficulties dealing with government and
12 non-government agencies in relation to their complaints
13 about abuse whilst they were in care. Very few of the
14 people who have come to us have ever said that they have
15 taken a matter to the Ombudsman, but in Queensland and in
16 Victoria, are there matters that have come to your
17 attention, where people are not complaining about their
18 current circumstance in care but their previous
19 circumstance in care and have found their dealings with
20 either government departments, in the case of Queensland
21 and Victoria, unsatisfactory?

22
23 MS GLASS: It is certainly possible that we have had some
24 complaints of that nature. I can't answer that question
25 directly, I'm afraid, because I'm not aware of any
26 individual instances. But it wouldn't surprise me to hear
27 that, and it certainly wouldn't surprise me that people on
28 the whole do not feel confident about taking complaints to
29 the Ombudsman or they don't know that the Ombudsman can
30 actually assist them in these circumstances. That's not
31 just a problem in this area, that's a much broader problem
32 about lack of understanding of Ombudsman's services.

33
34 COMMISSIONER FITZGERALD: And for Queensland?

35
36 MR CLARKE: Commissioner, I cannot recall any matters.
37 Certainly in the analysis in the last few days of last
38 year's complaints I did not see anything that related to
39 historic abuse, but, like my Victorian colleague, there may
40 well be examples in the files which, if we searched, we
41 could find.

42
43 COMMISSIONER FITZGERALD: The second thing is, if I could
44 just take the issue about the reportable conduct, both
45 Mr Clarke and Ms Glass you have indicated that you support
46 a reportable conduct regime of some description. That
47 regime has now been in place for well over a decade. All

1 States other than New South Wales have failed to introduce
2 a reportable conduct regime of the nature that we have
3 talked about.
4

5 Having listened to Mr Kinmond, is there anything that
6 he has said that jumps out at you as an impediment to the
7 implementation of any reportable conduct regime in your
8 jurisdictions? Because the concept and the practice has
9 been well known for a very long time, so is there anything
10 that has been said that jumps out at you that would pose an
11 impediment, realising that you do not set policy for
12 government?
13

14 MS GLASS: If I could just respond by saying there is
15 mandatory reporting in Victoria and has been for some time.
16 The reporting is to the department. It is not to my
17 office, it is not to independent agency, and it is not on
18 the same basis as exists in New South Wales.
19

20 I don't think that there is any impediment other than
21 resources and political will.
22

23 MR CLARKE: In my case, Commissioner, I think my current
24 jurisdiction would not allow me to deal with the police,
25 which would be a significant impediment to the way that the
26 system operates in New South Wales; with other agencies,
27 less of a problem.
28

29 The information sharing arrangements in my own Act
30 would probably need some attention, because there are very
31 limited provisions under which I can share information with
32 another body. I can get information from other bodies with
33 impunity, pretty much, but I can't give it back, and that
34 would be an issue that we would have to deal with.
35

36 MS GLASS: If I could add, I do have a similar set of
37 problems about information sharing and, indeed, the police
38 jurisdiction, but none of these are ones that can't be
39 solved.
40

41 COMMISSIONER FITZGERALD: It goes without saying that
42 legislative changes are absolutely required if you are
43 going to introduce that regime. Thank you for that.
44

45 THE PRESIDING MEMBER: Ms Furness, anything arising out of
46 any of that for you?
47

1 MS FURNESS: I have nothing further.

2

3 THE PRESIDING MEMBER: Thank you very much to the panel
4 this morning. Thank you for your attendance and
5 cooperation with us, and you are otherwise excused and we
6 will have a new panel at 2pm.

7

8 MS FURNESS: We will, your Honour. That will be the last
9 panel for the hearing.

10

11 THE PRESIDING MEMBER: Thank you.

12

13 **LUNCHEON ADJOURNMENT**

14

15 MS FURNESS: Your Honour, we have Chris Field, the Western
16 Australian Ombudsman, on video-link.

17

18 Can you hear me, Mr Field?

19

20 MR FIELD: Yes, counsel, I can, thank you.

21

22 MS FURNESS: Can you see me?

23

24 MR FIELD: No, I understand there has been - well, I
25 should say that we sincerely appreciate this opportunity to
26 appear before the Commission by video-link. Your staff
27 have been outstanding in terms of organising the matter.
28 I understand there has just been a technical problem this
29 morning. You can see me but I can't see you.

30

31 MS FURNESS: As long as you can hear me.

32

33 MR FIELD: I can absolutely hear you.

34

35 MS FURNESS: I will just introduce the other members of
36 the panel. Mr Wayne Lines is the South Australian
37 Ombudsman, Mr Richard Connock, who is the Tasmanian
38 Ombudsman, and Dr Helen Watchirs, who is the ACT Human
39 Rights and Discrimination Commissioner and formerly the
40 Public Advocate.

41

42 I understand that Mr Field will take an affirmation,
43 your Honour.

44

45 <CHRIS FIELD, affirmed: [2.05pm]

46

47 <WAYNE LINES, affirmed: [2.05pm]

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<RICHARD CONNOCK, affirmed: [2.05pm]

<HELEN WATCHIRS, affirmed: [2.05pm]

MS FURNESS: Your Honour, I might start with Mr Lines.
How long have you been the Ombudsman, Mr Lines?

MR LINES: I was appointed on 18 December last year.

MS FURNESS: What did you do before that?

MR LINES: I was the South Australian WorkCover Ombudsman
for six-and-a-half years.

MS FURNESS: The position of Ombudsman, I take it, in
South Australia, has been going for a very long time?

MR LINES: Yes, since 1972.

MS FURNESS: What obligations do you, as Ombudsman, have
in relation to children in out-of-home care?

MR LINES: Virtually none.

MS FURNESS: Who has them, if you don't?

MR LINES: The Health and Community Services Complaints
Commissioner has that jurisdiction.

MS FURNESS: That person has jurisdiction over all
complaints about or arising from out-of-home care in
relation to children?

MR LINES: Yes.

MS FURNESS: Do you have any residual functions in
relation to complaints in the out-of-home care sector?

MR LINES: My jurisdiction would cover any complaints
about the Health and Community Services Complaints
Commissioner, so each year my office receives a couple of
dozen complaints about the Commissioner's involvement.
Having checked our records, we've not had to concern
ourselves with any handling of a complaint by that
Commissioner relating to out-of-home care arrangements.

1 MS FURNESS: So your role is effectively that of oversight
2 of the agency in South Australia that is the complaint
3 handling body?
4
5 MR LINES: Yes, that's correct.
6
7 MS FURNESS: You have power to do an own-motion
8 investigation, I take it?
9
10 MR LINES: Yes, I do.
11
12 MS FURNESS: You could exercise that power in relation to
13 the Commission?
14
15 MR LINES: Yes.
16
17 MS FURNESS: Have you?
18
19 MR LINES: No.
20
21 MS FURNESS: Has your predecessor?
22
23 MR LINES: No.
24
25 MS FURNESS: From the few complaints that you have
26 received, no systemic issue arose that you considered
27 significant in relation to the out-of-home care sector?
28
29 MR LINES: No.
30
31 MS FURNESS: Other than complaint handling in relation to
32 the Commission and your own-motion investigation, are you
33 involved with any other agency that delivers services to
34 out-of-home care?
35
36 MR LINES: Not directly involved. I do have jurisdiction
37 over the Guardian for Children and Young People, so
38 complaints about the Guardian's involvement would be able
39 to come to my office, but again, checking our records, we
40 have had no recent need to do that.
41
42 MS FURNESS: When you say "recent need to do that", you
43 have had no complaints of substance?
44
45 MR LINES: That's correct.
46
47 MS FURNESS: How long has the Commissioner been in place?

1
2 MR LINES: The Health and Community Services Complaints
3 Commissioner? Since 2005.
4
5 MS FURNESS: Are you aware, from the work you have done
6 before in South Australia, what precipitated that agency
7 being established?
8
9 MR LINES: No, I couldn't say with any confidence about
10 that.
11
12 MS FURNESS: Have you, in your current role, formed any
13 views about the operation of the out-of-home care with
14 respect to children?
15
16 MR LINES: No, I haven't.
17
18 MS FURNESS: Is there any requirement or arrangement
19 whereby trends in complaints received by the Commission
20 come to your attention?
21
22 MR LINES: Perhaps only through the annual report of that
23 Commissioner, but nothing has been evident in the annual
24 report to require me to delve further into that area.
25
26 MS FURNESS: Are there other bodies in South Australia
27 that have complaint handling functions other than you and
28 the Commission?
29
30 MR LINES: The department that covers this area,
31 Families SA, which is joined to the Department for
32 Education and Child Development in South Australia, would
33 receive complaints, or has a complaint handling and
34 investigation function in regard to out-of-home care.
35
36 MS FURNESS: And you oversight that department in the same
37 way that you oversight the Guardian and the Commission?
38
39 MR LINES: It's a little bit awkward in that primarily
40 it's the Health and Community Services Complaints
41 Commissioner that has oversight of that function, whereas
42 my office deals with the Education Department part of that
43 department.
44
45 MS FURNESS: So you don't have jurisdiction over the child
46 protection department, if I can refer to it as that, in
47 terms of its functions generally; is that right?

1
2 MR LINES: Yes, although there is a limit on my
3 jurisdiction wherever there is another review body that
4 could take the complaint. So I have to assess with any
5 complaint that comes into my office whether another review
6 body exists that could deal with that particular complaint.
7 There are possibly instances where practices or procedures
8 of Families SA could come to my office because no other
9 review body could deal with them.

10
11 MS FURNESS: But generally speaking, most complaints in
12 out-of-home care that would be about the department's
13 responsibility as a provider would be dealt with by the
14 Commission?

15
16 MR LINES: That's correct.

17
18 MS FURNESS: And you are the review body of last resort,
19 as it were?

20
21 MR LINES: That's correct.

22
23 MS FURNESS: To an outsider, Mr Lines, it sounds complex.

24
25 MR LINES: It is.

26
27 MS FURNESS: Does it work effectively?

28
29 MR LINES: It's a bit hard to gauge. There are comments
30 on both sides of the argument about that. Currently, in
31 South Australia, there is the Child Protection Systems
32 Royal Commission, which is looking into the best - what
33 would be the best arrangements for the oversight of child
34 protection procedures, laws, systems. That Commission is
35 due to provide its report by the end of this year. So
36 I think it's fair to say that there are concerns that it is
37 an inefficient set up at the moment and that's part of the
38 reason for this Royal Commission being set up.

39
40 MS FURNESS: I take it you don't have any reportable
41 conduct scheme similar to that of New South Wales?

42
43 MR LINES: No. Obviously there is a mandatory reporting
44 regime, but nothing like the New South Wales Ombudsman.

45
46 MS FURNESS: Because the mandatory reporting regime is
47 reporting a child who may be at risk of harm or significant

1 harm to the child protection body?

2

3 MR LINES: That's correct.

4

5 MS FURNESS: Do you know whether that's a matter that is
6 under consideration by the Royal Commission?

7

8 MR LINES: It definitely is.

9

10 MS FURNESS: You or others have brought it to its
11 attention, I take it?

12

13 MR LINES: Yes, the government's actually put it fair and
14 squarely within the Commission's ambit, having made
15 submissions that the current system is inefficient and the
16 system is not bearing under the weight of the level of
17 reporting that is occurring at the present time.

18

19 MS FURNESS: I take it in South Australia the
20 non-government sector provides some out-of-home care
21 services?

22

23 MR LINES: That's correct.

24

25 MS FURNESS: Is that sector under the jurisdiction of the
26 Commission as well?

27

28 MR LINES: It is, yes.

29

30 MS FURNESS: Are there any circumstances in which you can
31 handle complaints from conduct of the non-government
32 sector?

33

34 MR LINES: Yes. My jurisdiction does extend to
35 non-government parties that have contractual arrangements
36 with government agencies, subject to whether the subject
37 matter of the complaint is not reviewable by another body.

38

39 MS FURNESS: Usually that would be by the Commission in
40 terms of out-of-home care and children?

41

42 MR LINES: Yes, that's so.

43

44 MS FURNESS: Thank you. Mr Connock, how long have you
45 been the Tasmanian Ombudsman.

46

47 MR CONNOCK: Just short of 12 months. I was the director

1 of the office prior to that, effectively, the deputy.

2

3 MS FURNESS: How long were you the deputy for?

4

5 MR CONNOCK: Six years.

6

7 MS FURNESS: What are the functions of the
8 Tasmanian Ombudsman in relation to children in out-of-home
9 care?

10

11 MR CONNOCK: There's no specific function in relation to
12 children in out-of-home care. The Ombudsman jurisdiction
13 in Tasmania is a traditional Parliamentary Ombudsman, very
14 similar to the likes that you have heard about already from
15 Queensland and Victoria. I have other functions under
16 other pieces of legislation but the Ombudsman jurisdiction
17 is a traditional one and there is no specific function in
18 relation to out-of-home care.

19

20 MS FURNESS: Is it excluded from the work you do?

21

22 MR CONNOCK: No, it is not.

23

24 MS FURNESS: Are there any other agencies in Tasmania that
25 have responsibilities in relation to complaints arising
26 from the out-of-home care sector.

27

28 MR CONNOCK: Not at the present time, apart from the
29 department. My office would be the only external avenue of
30 complaint.

31

32 MS FURNESS: The department has a capacity to receive
33 complaints?

34

35 MR CONNOCK: It does. People do complain to the
36 department.

37

38 MS FURNESS: And you oversight the department generally?

39

40 MR CONNOCK: Generally. We take complaints in relation to
41 the department. We have also conducted own-motions in
42 relation to the department in the past.

43

44 MS FURNESS: You receive complaints directly from people
45 about out-of-home care?

46

47 MR CONNOCK: No. No. Very few, no.

1
2 MS FURNESS: Do you receive complaints from people about
3 out-of-home care services?
4

5 MR CONNOCK: I think we have but not in recent memory and
6 not to a very high degree at all.
7

8 MS FURNESS: But your jurisdiction does not, as a matter
9 of legislation, exclude those complaints?
10

11 MR CONNOCK: No, I have the same provisions in relation to
12 contractors or people acting under instruction from
13 government, so they could complain to my office if they
14 wanted to.
15

16 MS FURNESS: Do you in any way disseminate information to
17 that sector indicating that you have a function of
18 receiving those complaints?
19

20 MR CONNOCK: Not specifically to that sector, no, but we
21 do have a close working relationship with the department.
22 It is one of the benefits of a small jurisdiction. Most
23 people do know about the existence of our office. We do
24 have these close working relationships. I am reasonably
25 confident, if there was a problem that was more than
26 a passing issue, it would be brought to our attention.
27 That has happened in the past. Yes.
28

29 MS FURNESS: Are you satisfied that the department is and
30 should be the first port of call for someone complaining
31 about the out-of-home care system?
32

33 MR CONNOCK: I can't say that that would always be the
34 case. Again, like other Ombudsmen you have heard from,
35 complainants are expected to take up their issues with the
36 agency concerned in the first instance and we would
37 ordinarily - in fact, our Act specifically provides for
38 that - if they hadn't given the department an opportunity
39 to respond in the first instance, refer them off. There
40 are, and I can imagine, situations where that might not be
41 appropriate. I can't think of a particular example at the
42 moment, but I know it has happened in the past. That's
43 a discretionary matter, whether we require that or not, and
44 I think we haven't always stuck with it, but I can't give
45 you a particular example at the moment, I must say.
46

47 MS FURNESS: What oversight do you have about the way in

1 which the department handles complaints about its services
2 in out-of-home care?

3

4 MR CONNOCK: We can review the way that they handle
5 complaints, yes.

6

7 MS FURNESS: What do you actually do in relation to those
8 complaints?

9

10 MR CONNOCK: If a complainant comes to us and they have
11 already been to the department, we will review the manner
12 in which the department has responded to that complaint.
13 We have, in fact, published guidelines to agencies as to
14 model complaint handling, and we look at them roughly
15 against those to see whether all the usual things have been
16 done - whether it's been appropriate and fair and thorough.
17 If it hasn't, we will move in to it, but if it has, like my
18 colleague from Queensland said, we may say that that was
19 a thorough, fair investigation and not vary the outcome.

20

21 MS FURNESS: But your evidence is that very few complaints
22 come to you via that way, and most go directly to the
23 department.

24

25 MR CONNOCK: I don't know how many go to the department.
26 They don't always come back to us.

27

28 MS FURNESS: My question is: with those complaints that
29 go to the department, what do you do in relation to
30 overlooking the way the department deals with those
31 complaints, when they are about the department's own
32 conduct in out-of-home care?

33

34 MR CONNOCK: I won't necessarily know about them unless
35 the complainant comes, then, to my office.

36

37 MS FURNESS: Is there any obligation on the department to
38 inform you of complaints that it receives?

39

40 MR CONNOCK: No. No.

41

42 MS FURNESS: You have general oversight as to the work of
43 the department.

44

45 MR CONNOCK: Yes, generally speaking, yes.

46

47 MS FURNESS: How do you determine that complaints that the

1 department has received are dealt with in an appropriate
2 way?

3
4 MR CONNOCK: Firstly, it needs to be brought to our
5 attention, so that will normally be by way of a complaint,
6 or there may be a number of complaints, in which case, we
7 might consider looking at the systems on an own-motion
8 basis, but the first thing is it does need to be brought to
9 our attention. We don't go on a regular basis and ask the
10 department to produce all the complaints it has received
11 and look at how they have handled that. We are just not in
12 a position to be able to do that.

13
14 MS FURNESS: Do you have any relationship with the
15 department whereby it provides you with aggregated
16 information about complaints?

17
18 MR CONNOCK: Not on a formal basis, no. We did used to
19 have, with Child Protective Services, as it was then
20 called, an understanding about how complaints would be
21 handled when they were received, but we don't have that
22 formal exchange on a regular basis, no, but again, as
23 I say, it is a very few number of complaints. The
24 complaints that we get are few in number.

25
26 MS FURNESS: That you get?

27
28 MR CONNOCK: Yes, that we get.

29
30 MS FURNESS: I understand that.

31
32 MR CONNOCK: Or that we are made aware of.

33
34 MS FURNESS: I am interested in the way in which you
35 exercise your oversight functions in relation to the
36 department's complaint handling. I understand that those
37 complaints don't necessarily come to your attention as
38 a complaint, but given your broader oversight jurisdiction,
39 how you exercise that jurisdiction in relation to those
40 complaints?

41
42 MR CONNOCK: We would either pick up a complaint and
43 investigate it, which would involve looking at that
44 complaint, how the department responded to it, not only in
45 terms of the processes that the department would use, but
46 how it assessed that complaint - did it take into account
47 all relevant considerations.

1
2 MS FURNESS: I understand that, and you gave that answer
3 before. My question is directed at what do you have by way
4 of a system that allows you to oversee the work of the
5 department in its complaint handling, particularly in the
6 out-of-home care system?

7
8 MR CONNOCK: It is not systemised in the sense that we do
9 this on a regular basis. As I indicated before, we are not
10 really able to do that. We are dependent upon complaints
11 or matters coming to our attention by other means, and then
12 we will look at the way that the department has responded.

13
14 THE PRESIDING MEMBER: Mr Connock, is there a requirement
15 from the department, for example, if a complainant to the
16 department is unhappy with the way in which the complaint
17 has been resolved - a requirement of the department to
18 advise then of their ability to pursue that complaint with
19 your office?

20
21 MR CONNOCK: I'm not sure if "requirement" is the right
22 word, but they do do that, yes. It's good practice to let
23 complainants know that if they are unhappy with the outcome
24 there they can come to us, and in practice that is what
25 happens, but in terms of any specific provision, there is
26 not.

27
28 COMMISSIONER FITZGERALD: You also exercise the power as
29 Health Complaints Commissioner.

30
31 MR CONNOCK: That's right.

32
33 COMMISSIONER FITZGERALD: That was introduced in 1995 as
34 a separate function.

35
36 MR CONNOCK: That's right.

37
38 COMMISSIONER FITZGERALD: If I was a consumer of health
39 services and I wished to complain about the government
40 agency, how would that differ if I'm a child or a recipient
41 of services from the very same department in relation to
42 human services such as child safety?

43
44 MR CONNOCK: It depends what the action is that you wish
45 to complain about. It would have to come within the
46 definition of a health service and to have been provided by
47 a health service provider to a health service user; so

1 that's a specific sort of jurisdiction. The Ombudsman,
2 General Ombudsman jurisdiction is much broader.

3
4 COMMISSIONER FITZGERALD: I understand they are separate
5 and they have separate legislative arrangements, but in a
6 practical sense, would it be fair to say that a consumer of
7 a health service would have a different, potentially more
8 robust, complaint handling arrangement for them than
9 a child or family subject to the same department in
10 relation to child or other services?

11
12 MR CONNOCK: A more robust response by the department?

13
14 COMMISSIONER FITZGERALD: By the department and/or your
15 office.

16
17 MR CONNOCK: The only difference in response from my
18 office is dictated by the different legislation. The
19 response from the department would be much the same, but
20 health complaints operate in a different environment in
21 that they involve medical practitioners and health service
22 providers, they involve the private sector and the public
23 sector, hospitals, all sorts of things come within the
24 definition of health service provider, so it is a much
25 broader sort of scope, but they receive the same attention;
26 just where they fit in the legislative scheme determines
27 what happens.

28
29 COMMISSIONER FITZGERALD: But going back to Ms Furness's
30 question, do you monitor the health aspects of the
31 Department of Health and Human Services differently to the
32 way you monitor the complaint handling arrangements in
33 relation to the human services aspect of that same
34 department?

35
36 MR CONNOCK: It is the same approach to both.

37
38 COMMISSIONER FITZGERALD: But you have indicated to
39 Ms Furness that you have almost no monitoring of the
40 complaint handling process --

41
42 MR CONNOCK: I don't have systematic monitoring. I don't
43 go and visit or look at files or do regular audits or that
44 sort of thing.

45
46 COMMISSIONER FITZGERALD: Is that a weakness in the
47 system?

1
2 MR CONNOCK: I'm not sure that it is in a jurisdiction the
3 size of Tasmania. I don't think we've missed anything
4 dramatic down there. I can't speak for other larger
5 jurisdictions, but no, I don't know whether it is
6 a weakness or not. I'm not sure if we did a more regular
7 systemic sort of audit, that we would turn up a lot more
8 that we don't hear about anyway. As I've indicated before,
9 our relationships with departments and providers, and in
10 the health sphere with AHPRA, the national body, are all
11 good. The exchange of information is, I'm satisfied, very
12 good. I think if there are problems, we do find out about
13 them, but that is a product of the small jurisdiction.

14
15 MS FURNESS: Do you require the child protection
16 department to provide you with any information on a regular
17 or irregular basis?

18
19 MR CONNOCK: No, not on a regular basis. If issues come
20 to our attention, again, we might make general requests.

21
22 MS FURNESS: You have an own-motion power?

23
24 MR CONNOCK: I do.

25
26 MS FURNESS: Have you exercised that in relation to the
27 child protection department?

28
29 MR CONNOCK: We did - yes, we have.

30
31 MS FURNESS: When was that?

32
33 MR CONNOCK: That was about, from memory - which is not
34 great - two years ago, and it didn't involve out-of-home
35 care, it was in relation to kinship assessments.

36
37 MS FURNESS: Aren't kinship assessments --

38
39 MR CONNOCK: Yes, I suppose so, but this was more the
40 involvement of police in the processes of the department
41 and department employees allowing the police to control the
42 process. That report has been published.

43
44 MS FURNESS: What information came to your attention and
45 how did it come to your attention to have you initiate an
46 own-motion investigation of that sort.
47

1 MR CONNOCK: It was in the press. The Premier was making
2 announcements. We already had a complaint of a different
3 nature - and I'm sorry, I can't recall what it was - from
4 one of the parties involved in this, and I'm sorry,
5 thinking about it, it did involve out-of-home care. I was
6 sort of focused on the sexual abuse, though. There was no
7 suggestion of that, so I apologise, but we had the
8 complainant. It then became a political matter with it
9 being talked about in parliament. This was a fairly
10 high-profile matter in Tasmania, where a child had died
11 whilst at a sleepover. It was in the press and we decided
12 that that was something that we had to look at. We already
13 had the complainant and we were concerned, too, that the
14 way that it was being reported was not necessarily correct,
15 so we thought it was appropriate to do an own-motion
16 inquiry.

17
18 THE PRESIDING MEMBER: The way it was being reported in
19 the media or reported by the department?

20
21 MR CONNOCK: No, in the media. And the department were
22 very cooperative with that inquiry, I must say.

23
24 MS FURNESS: I take it you don't have any responsibilities
25 in terms of reviewing child deaths more generally?

26
27 MR CONNOCK: No.

28
29 MS FURNESS: The fact that the child died at a sleepover
30 was relevant to out-of-home care because the child was in
31 out-of-home care?

32
33 MR CONNOCK: No, the child wasn't in out-of-home care, he
34 was in the care of a relative, and there was police
35 involvement fairly quickly, as you would imagine, following
36 the death. The woman who had been looking after the kids
37 was charged and that child went into care, and the
38 complaint was that there were family members in the
39 background who weren't consulted soon enough about the
40 placement of the child.

41
42 MS FURNESS: The placement of the child at what stage?

43
44 MR CONNOCK: It was taken in on an emergency - forgive me,
45 I can't remember this in chapter and verse. It was taken
46 in on an emergency order and was placed with a carer, and
47 the police officer who was involved seemed to be having an

1 inordinate amount of control over the department's
2 processes - the offices that he was dealing with.

3
4 MS FURNESS: Can I stop you there: the child died.

5
6 MR CONNOCK: Sorry, I know, it is confusing. There was
7 a sibling - not a sibling. The child of the woman who was
8 looking after the child that died. Yes, I am sorry.
9 I will step back.

10
11 MS FURNESS: That child went into out-of-home care.

12
13 MR CONNOCK: That child went into out-of-home care, yes,
14 because the mother had been arrested.

15
16 MS FURNESS: I see. The care that that child received was
17 at the hands of a kin?

18
19 MR CONNOCK: No, it wasn't. It was placed with a carer
20 and there were kin involved, and had been involved in
21 reports prior to the death of the other child, but there
22 had been, obviously, police involvement at the point of the
23 death of that child. The police had been giving directions
24 to the department as to where the child should or should
25 not be placed, and that had effectively excluded a large
26 number of kin. And assessments had not been done in a
27 timely fashion and in accordance with the procedures and
28 protocols that were established by the department. It was
29 individual officers rather than a system break down, but it
30 was significant enough for us to do an own-motion on it,
31 and we found that there had been a failure in the systems.

32
33 MS FURNESS: Did you make recommendations?

34
35 MR CONNOCK: We did. The systems that were in existence
36 were adequate. It was a question of training and it was
37 also a question of demarcation between the involvement and
38 responsibilities of police when there is a criminal matter,
39 on one hand, and the responsibilities of care workers, on
40 the other hand, where there is a child involved and the
41 interests of that child have to be met.

42
43 MS FURNESS: Thank you, Mr Connock.

44
45 COMMISSIONER FITZGERALD: Could I ask one question,
46 Ms Furness? Could you just tell us what you believe to be
47 the role of the Commissioner for Children vis-à-vis your

1 agency or the oversight of the out-of-home care system in
2 Tasmania?

3
4 MR CONNOCK: My understanding - I can tell you what the
5 current state of affairs is. In Tasmania, the full role of
6 the Commissioner is still under consideration. At the
7 present time, the Commissioner, who is a man, has an
8 advocacy role and can make inquiries on direction from the
9 Minister and has an own-motion function. He can't take
10 individual complaints. Those complaints remain within the
11 jurisdiction of the Ombudsman. That has been the
12 recommendation of at least one Parliamentary committee that
13 looked into this, that there is a problem with too many
14 people dealing with complaints and again, it's a small
15 jurisdiction. The Commissioner has never had a complaint
16 handling activity, it has always been the Ombudsman, and we
17 have received them, small in number though they be. And
18 that there was a problem with too many agencies for people
19 to go to. So one of the recommendations was that it be
20 made clearer that the reference is to the Ombudsman if
21 there is a complaint; if it is an advocacy issue, it is the
22 Commissioner.

23
24 COMMISSIONER FITZGERALD: Thank you.

25
26 MS FURNESS: When you say it is a reference to the
27 Ombudsman if there is a complaint, that's subject to your
28 arrangements internally whereby you would give that
29 complaint to the department about whom the complaint was
30 made for them to investigate initially; is that right?

31
32 MR CONNOCK: No, the recommendation was after the
33 department has dealt with it and if they are not happy then
34 the referral is to us as the external review, not to the
35 Commissioner.

36
37 MS FURNESS: So this is the review of the complaint
38 handling --

39
40 MR CONNOCK: The complaint handling, yep.

41
42 MS FURNESS: -- by the department, not the initial
43 consideration of the complaint.

44
45 MR CONNOCK: No, although that would form part of the
46 review, as I indicated before.

1 MS FURNESS: Ms Watchirs, your current position?
2
3 DR WATCHIRS: I am the ACT Human Rights and Discrimination
4 Commissioner and I've been in that role for 11 years.
5
6 MS FURNESS: What functions do you have in that role in
7 relation to children in out-of-home care in the Territory?
8
9 DR WATCHIRS: The Commission was formed in 2006. It is
10 a merger of the Health Complaints Commissioner and
11 Disability Services Commissioner, as well as the Children
12 and Young Persons Commissioner. In relation to the
13 Children and Young Persons Commissioner, he takes all
14 complaints relating to children. He receives about 30
15 a year and the Ombudsman's jurisdiction is specifically
16 excluded in relation to children.
17
18 MS FURNESS: So the three functions were combined, but you
19 retain individual Commissioners; is that right.
20
21 DR WATCHIRS: That's correct.
22
23 MS FURNESS: You sit above the three - is that how we
24 should see you?
25
26 DR WATCHIRS: No, it is a three-boss Commission.
27
28 MS FURNESS: So administratively you are together.
29
30 DR WATCHIRS: That's correct.
31
32 MS FURNESS: Each of you have responsibility for different
33 complaints?
34
35 DR WATCHIRS: That's correct.
36
37 MS FURNESS: Is there any coordination in relation to
38 systems issues and the like between the three of you.
39
40 DR WATCHIRS: Absolutely. We have monthly meetings and
41 we're a small office of 20 people, so we regularly
42 interact. For example, we did a review of the youth
43 justice system, the Children Commissioner led the review,
44 whereas I did the human rights audit of the Children's
45 Detention Centre. So I did one in 2005 called Quamby, and
46 2011 of the newer one, called Bimberi, and that work was
47 done jointly between two Commissioners.

1
2 MS FURNESS: The Children's Commissioner receives
3 complaints about children in out-of-home care?
4
5 DR WATCHIRS: Yes, but they are normally lodged by carers
6 or parents. The children's complaints he receives usually
7 are in relation to youth justice issues, so children who
8 are being held in detention.
9
10 MS FURNESS: Complaints about children in out-of-home care
11 go to that Commissioner?
12
13 DR WATCHIRS: Yes, and he has a policy of requiring
14 internal review by the Community Services Directorate
15 before he will handle those complaints.
16
17 MS FURNESS: Are there any out-of-home care service
18 providers who are not part of the government?
19
20 DR WATCHIRS: Yes, it's a combination of the longer-term
21 foster carers are NGOs and some residential care is also
22 NGO and the rest is departmental, but they are moving out
23 of that space under the new strategy for out-of-home care
24 2015 to 2020.
25
26 MS FURNESS: So the Children's Commissioner handles all
27 complaints in the out-of-home care sector regardless of
28 whether it is NGO run or State-run?
29
30 DR WATCHIRS: Absolutely.
31
32 MS FURNESS: Is there any other body in the ACT that has
33 the function of handling complaints in that area?
34
35 DR WATCHIRS: Not that I'm aware of.
36
37 MS FURNESS: So you say the Ombudsman is specifically
38 excluded by legislation?
39
40 DR WATCHIRS: By the Human Rights Commission Act 2005.
41
42 MS FURNESS: The Public Advocate, that's a position in the
43 ACT?
44
45 DR WATCHIRS: Yes, it has been there for over 20 years.
46 For the previous 18 months - I finished on Tuesday -
47 I've held two dual roles, Human Rights and Discrimination

1 Commissioner as well as Public Advocate, which includes the
2 duties of the Public Guardian as well.

3
4 MS FURNESS: What functions did you have as
5 Public Advocate that are relevant to children in
6 out-of-home care?

7
8 DR WATCHIRS: We have general oversight and that is in
9 relation to documentation. That is set out in the Children
10 and Young People Act 2008; so under section 507 we receive
11 reports of abuse in care. Last year we received 48; this
12 year I think we received about 61; the statistics are not
13 fully documented yet. We receive annual reports of all
14 children in care. This year we received 523 under
15 section 497 and we can make requests under section 879 of
16 anything arising within those annual reports or reports of
17 abuse. We also receive section 408 emergency actions -
18 that is, the initiating affidavits and care plans. There
19 are over 100 of those a year. We have very very generic
20 powers, the Public Advocate, that we come into contact with
21 children, so we are an advocate for a child, we promote
22 their protection from abuse and exploitation.

23
24 We will do investigations and reports and
25 recommendations to the Minister, but we are required to
26 refer systemic matters to the Children's Commissioner. We
27 advocate from a best interests point and that is defined in
28 section 10 as the least intrusive, most normalising, least
29 restrictive and concerning the safety, quality of life,
30 overall wellbeing and looking at the long-term outcomes for
31 young people.

32
33 MS FURNESS: How is "systemic" defined?

34
35 DR WATCHIRS: That's the subject of a recommendation by
36 the Auditor-General in 2013. She thought that there was
37 not enough delineation of the roles between the
38 Public Advocate and the Children's Commissioner, so that
39 hasn't had a legislative change, but --

40
41 MS FURNESS: I am sorry, just let me understand that. Are
42 you saying that the requirement that systemic matters go to
43 the Children's Commission other than the Public Guardian
44 arose because of a perceived lack of clear boundaries
45 between the two roles back in 2005?

46
47 DR WATCHIRS: No, it was the practice in 2013. The

1 Auditor-General found - I don't think there had been
2 referrals from the Public Advocate to the
3 Children's Commissioner. In my time we've done two
4 referrals to the Children's Commissioner of systemic
5 matters specifically in relation to Aboriginal children and
6 the Children's Commissioner issued a recent discussion
7 paper, in late 2014, called "Message Sticks", where they
8 looked at all services for Aboriginal children and
9 reflected that consultation and gave it to the government.

10
11 MS FURNESS: When was the systemic provision provided?

12
13 DR WATCHIRS: That was in the Public Advocate Act.

14
15 MS FURNESS: Recently or some time ago?

16
17 DR WATCHIRS: No, 2005. Initially, there was a community
18 advocate, in the 1990s, and that title was changed to the
19 Public Advocate in 2005.

20
21 MS FURNESS: You have said that there is a requirement for
22 the Public Advocate to send off systemic matters to the
23 Children's Commission, and that in 2013 there hadn't been
24 any referrals as found by the Auditor-General; is that
25 right?

26
27 DR WATCHIRS: I think there had only been limited
28 referrals.

29
30 MS FURNESS: Why was that a problem?

31
32 DR WATCHIRS: There seemed to be a lack of cooperation
33 between the agencies.

34
35 MS FURNESS: By "cooperation", you mean that the
36 Public Advocate didn't refer matters to the
37 Children's Commissioner in circumstances where objectively
38 they may have been systemic matters?

39
40 DR WATCHIRS: Possibly. The Public Advocate actually, in
41 2011 and 2012, did two reports on emergency action by the
42 Community Services Directorate, so to me that is a fairly
43 systemic matter, but that was done under legislation and
44 with funds from the directorate.

45
46 MS FURNESS: So the current system now is that the
47 Public Advocate has an advocacy jurisdiction plus receives

1 various reports and the like, but stops at doing anything
2 that has a systemic focus; is that right?

3
4 DR WATCHIRS: That's correct, and it's not really
5 resourced to do systemic work. We are called to courts
6 where a child is a respondent in domestic violence or
7 personal protection orders; we're regularity in litigation
8 for young people; children who have been in out-of-home
9 care claiming victims of crime compensation; the case
10 against the Marist Brothers, personal injury litigation, we
11 were also litigation guardian for that matter.

12
13 MS FURNESS: By "we" you mean the Public Advocate?

14
15 DR WATCHIRS: I am sorry, the Public Advocate, yes. The
16 Public Advocate also visits Bimberi and residential
17 facilities regularly and at Bimberi checks registers in
18 relation to segregation, search, including strip searches,
19 and use of force by staff. There are also official
20 visitors, I should have said --

21
22 MS FURNESS: Being in the position of advocate and being
23 in the position of the Commissioner that you are currently
24 working closely with, amongst others, the
25 Children's Commissioner, how effective is the system in a
26 very small Territory like the ACT in protecting children in
27 out-of-home care?

28
29 DR WATCHIRS: I think it's a fairly solid system, but in
30 terms of there is room for continuous improvement. I think
31 the community is vigilant about child protection matters
32 and being a small jurisdiction, we have a high level of
33 reporting because people tend to know more and care more
34 about what's happening, and it is seen as a community
35 responsibility.

36
37 MS FURNESS: Can you see any reasons of policy or practice
38 why the one office couldn't handle advocacy matters,
39 reports and investigations and be responsible for a visitor
40 scheme?

41
42 DR WATCHIRS: I absolutely agree and, in fact, there was
43 a discussion paper --

44
45 MS FURNESS: No, hang on, the question was can you see any
46 reasons why one office couldn't handle it?

1 DR WATCHIRS: No, I don't see reasons, unless there were
2 conflicts of interest, and I just wanted to elaborate that
3 there is a discussion paper suggesting that the
4 Public Advocate's Office be split in half and the advocacy
5 side to go to the Human Rights Commission and the
6 guardianship side to go to the Public Trustee, who also
7 oversees official visitors. The plan would be to have
8 a President of the Commission, a Children's Commissioner
9 with advocacy plus systemic role, and then
10 a Complaints Commissioner, and to transfer the Victims of
11 Crime Commissioner to the Human Rights Commission as well.
12

13 MS FURNESS: So the President of the Commission, which is
14 the Commission of which you are now a Commissioner; is that
15 right?
16

17 DR WATCHIRS: That's correct.
18

19 MS FURNESS: And there isn't currently a president?
20

21 DR WATCHIRS: No, there has never been a president.
22

23 MS FURNESS: So you would create a position?
24

25 DR WATCHIRS: That's the government's discussion paper and
26 there have been 41 submissions --
27

28 MS FURNESS: I understand that it is a discussion paper.
29 Let's talk about it on the basis that you have said it's
30 a discussion paper. So there is a president, which is
31 a new position; there is the Children's Commissioner, which
32 is an existing position. It would have advocacy capacity
33 that it doesn't have now; is that right?
34

35 DR WATCHIRS: Yes.
36

37 MS FURNESS: And it would retain its capacity to look at
38 systemic matters?
39

40 DR WATCHIRS: Yes, but not complaints. The
41 recommendations are for a separate Complaints Commissioner
42 and that that be quarantined from advocacy and systemic
43 work.
44

45 MS FURNESS: Who is the author of the discussion paper?
46

47 DR WATCHIRS: The Justice and Community Safety

1 Directorate.

2

3 MS FURNESS: In your role as Public Advocate, what is your
4 view of the discussion paper's suggested approach?

5

6 DR WATCHIRS: I did have concerns about the guardianship
7 role going to the Public Trustee in relation to the
8 advocacy side going to the Human Rights Commission.

9 I supported the proposal but with a number of significant
10 amendments, like the Commissioners are to have names; in
11 the discussion paper the Commissioners didn't have names.

12

13 MS FURNESS: Again, to an outsider, doctor, the discussion
14 paper's content seems not to be simplifying what sounds to
15 be a complex arrangement in a small jurisdiction.

16

17 DR WATCHIRS: I do agree, but the ultimate aim is to have
18 a single entry body for all those significant issues and to
19 make a simpler and less top-heavy organisation with more
20 frontline staff.

21

22 MS FURNESS: Is your view of the ultimate aim one that is
23 reflected in the discussion paper?

24

25 DR WATCHIRS: I think the discussion paper doesn't quite
26 get there, so there are a number of recommendations I made
27 in my submission.

28

29 MS FURNESS: So when you say "single-entry body" -
30 complaints, reports and the like would go to the one
31 agency, and within that agency, there would be people with
32 responsibility for complaint handling, advocacy and the
33 like?

34

35 DR WATCHIRS: Under the model, all incoming would go to
36 the President and the President would allocate complaints
37 to the Complaints Commissioner and there would be
38 negotiated systemic matters and other issues between
39 Commissioners, but the President is not the boss of the
40 other Commissioners; it would operate similarly to the
41 Federal Human Rights Commission which has separate
42 Commissioners.

43

44 MS FURNESS: And there would be no Public Advocate?

45

46 DR WATCHIRS: No, it would be absorbed in the Children and
47 Young People Commissioner and Disability Services

1 Commissioner.

2

3 MS FURNESS: And in your view, that structure would not
4 suffer from the need for any Chinese walls, given the
5 nature of the jurisdiction that each has?

6

7 DR WATCHIRS: That's certainly an issue that needs to be
8 addressed in terms of minimising conflicts of interest and
9 having robust policies and procedures that there was public
10 confidence in the independence and integrity of the
11 Commission.

12

13 MS FURNESS: How many children are in out-of-home care in
14 the ACT?

15

16 DR WATCHIRS: The statistic I was given, and that was
17 presented by the Directorate in the hearing before the
18 Royal Commission, was 626: so 229 in foster carer, 196 in
19 kinship and 31 in residential.

20

21 MS FURNESS: And the official visitor you spoke of - among
22 other responsibilities - in Juvenile Justice has the
23 responsibility of visiting the children in residential
24 care?

25

26 DR WATCHIRS: Yes. They used to visit a residential care
27 called Marlow, but now there are other smaller facilities
28 run by Richmond Fellowship, so there is an Aboriginal
29 official visitor for young people and a general official
30 visitor for young people, and I think there is a suggestion
31 that a third official visitor be appointed specifically for
32 residential placements.

33

34 MS FURNESS: Where does the official visitor currently sit
35 in the structure?

36

37 DR WATCHIRS: They are appointed by the minister and
38 report directly to the minister and they are auspiced by
39 the Public Trustee. The Public Trustee, I must say, took
40 over as Public Advocate on Wednesday this week.

41

42 MS FURNESS: So the Public Advocate's functions are
43 subsumed by a new role; is that right?

44

45 DR WATCHIRS: The person has changed, so I'm not
46 Public Advocate, the Public Trustee has taken on the
47 position of additionally being Public Advocate.

1
2 MS FURNESS: So the Public Advocate's duties fall within
3 the Public Trustee's area now; is that right?
4
5 DR WATCHIRS: He has a dual appointment. The
6 Public Trustee is a public service position and the
7 Public Advocate is a statutory office holder.
8
9 MS FURNESS: Under the discussion paper's content where
10 does the official visitor sit?
11
12 DR WATCHIRS: There is no change to that recommended; it
13 is to stay with the Public Trustee.
14
15 MS FURNESS: What is your view of that?
16
17 DR WATCHIRS: I don't have a strong view. The main thing
18 is that we meet regularly with the official visitors, once
19 a month for children and young people. The Aboriginal
20 official visitor is also an official visitor for the adult
21 prison and we meet with that person regularly; so the
22 information sharing is very open.
23
24 MS FURNESS: Thank you. Can I turn to you, Mr Field. How
25 long have you been Ombudsman in Western Australia?
26
27 MR FIELD: Just over eight years.
28
29 MS FURNESS: What are your functions in relation to
30 children in out-of-home care?
31
32 MR FIELD: I think similar to other Ombudsman. We don't
33 have a specific legislative function in relation to
34 out-of-home care, but we certainly do have oversight and
35 can take complaints about those agencies that are otherwise
36 involved with out-of-home care and more specifically the
37 Department of Child Protection and Family Support within
38 Western Australia.
39
40 MS FURNESS: Who else can receive complaints about
41 children in out-of-home care?
42
43 MR FIELD: We would be the principal body, obviously
44 leaving aside the internal complaints handling processes of
45 the department that is the principal external body, but
46 obviously we also have in our State - as others do -
47 a Corruption and Crime Commission, so depending on what the

1 allegation was, they could take a complaint, and from
2 1 July the Public Sector Commission in Western Australia
3 can also take complaints regarding less-serious conduct.
4 So they would be two other obvious complaint handling
5 bodies, but we would be the principal body in relation to
6 the matter.

7
8 MS FURNESS: If the complaint was of sexual abuse or
9 assault, therefore, a criminal matter, would that end up
10 with the Corruption and Crime Commission?

11
12 MR FIELD: Yes, look, I think - well, it is an important
13 point in relation to - so yes, and to perhaps make that
14 more specific, there is, of course, mandatory reporting in
15 this State, but we also have another form of reporting
16 which is under section 28 of the Corruption and Crime
17 Commission Act, so, indeed, we would be compelled, if we
18 believed the matter otherwise met the tests of that, as
19 would any director-general or CEO in the State, if we felt
20 that was a matter that had to be referred, it would be
21 referred accordingly.

22
23 Those matters would be referred to the CCC, if they
24 otherwise met that, and of course, given the seriousness of
25 the allegation, those matters could well be referred to the
26 CCC accordingly.

27
28 MS FURNESS: I'm not clear on whether they could well or
29 they are required to. If the allegation is of child sexual
30 assault in out-of-home care - that is a criminal offence -
31 is it the case that complaints of that nature must end up
32 with the Crime and Corruption Commission?

33
34 MR FIELD: It would depend on otherwise meeting the
35 definition of the relevant legislation, which is, in this
36 case, section 28 of the Commission's Act.

37
38 MS FURNESS: But what is that? What is the test other
39 than a criminal offence in out-of-home care?

40
41 MR FIELD: Well, yes, in other words, if a person - well,
42 one of the tests, for example, is that you would otherwise,
43 if a matter was proven, be at risk of termination of
44 employment. I would expect that if there were allegations
45 against a government employee of child sexual abuse, that
46 those matters, if proven, would ultimately end whereby you
47 could have a reasonable belief and you would refer them

1 accordingly.

2

3 MS FURNESS: When you say "if proven", it is just an
4 allegation.

5

6 MR FIELD: Oh, no, yes, but in terms of the test, it would
7 be - look, to make - perhaps to make the answer shorter,
8 I would expect that they would be referred to the CCC.

9

10 MS FURNESS: You would refer it as Ombudsman if it came to
11 you first?

12

13 MR FIELD: Yes. We would refer - well, we would have two
14 ways of referring matters to the CCC, one because we felt
15 they were the most appropriate agency to deal with the
16 matter, or, alternatively, because I felt it had to be
17 reported to the CCC, otherwise under section 28, and we
18 would do both, and other agencies in the State would also
19 do both as well.

20

21 MS FURNESS: When you say "do both", it's just two
22 pathways to the one agency, isn't it?

23

24 MR FIELD: Well, it's a question of, in one pathway, what
25 do you believe is the most appropriate agency to handle
26 a matter, and that may well be, given the circumstances of
27 a complaint, to another body, in this case the Corruption
28 and Crime Commission - that would be the case in each of
29 the jurisdictions where one exists, or to other complaint
30 handling agencies, as the case may be; and then, of course,
31 those which otherwise must be reported, and, as I say, that
32 allegation, and the seriousness of the allegation, would be
33 one where, for example, if it was made in such a way
34 against a government employee, we would believe the matter
35 ought to be referred.

36

37 MS FURNESS: And the expectation would be that the
38 Corruption and Crime Commission would investigate that
39 complaint?

40

41 MR FIELD: It would be a matter for them and their
42 investigatory processes.

43

44 MS FURNESS: But that's what you would expect, Mr Field?

45

46 MR FIELD: Yes, correct.

47

1 MS FURNESS: Would it also go to the police?

2
3 MR FIELD: The principal pathway, of course, for child
4 sexual abuse complaints, is going to be the police, and
5 that will certainly be the case that you would expect the
6 allegations - the Ombudsman, the Office of the Ombudsman
7 obviously doesn't investigate allegations of child sexual
8 abuse. They are allegations of the most serious criminal
9 behaviour and they are investigated by the police.

10
11 MS FURNESS: So is it the case that if a complaint came to
12 your agency of child sexual abuse amounting to a criminal
13 act, alleged to be being perpetrated by a government
14 agency, you would send it both to the police and the
15 Corruption and Crime Commission?

16
17 MR FIELD: Well, we would certainly - there are basically
18 two ways, keeping in mind that much, again, like most of
19 the Ombudsmen who have appeared before you today, we would
20 receive very, very few complaints raising these issues, and
21 where they are raised, it is very unusual for these
22 complaints to be raised in such a way that they are a child
23 approaching our agency making an allegation about child
24 sexual abuse.

25
26 What is more likely is that when an allegation is made
27 about, say, for example, a Department of Child Protection
28 and Family Support, it might be an agency not within my
29 jurisdiction, say the Family Court, they may, as part of
30 raising that complaint, raise an issue which gives rise to
31 a concern that we would have reading information that
32 potentially a child was either at risk or an assertion
33 allegation has been made about child sexual abuse.

34
35 Under those circumstances, we will make a decision
36 under our legislation - and in that case it is section 23
37 of our legislation on information sharing provisions -
38 about the release of that information, and the two places
39 that we could refer that information generally would be to
40 the police and to the Department of Child Protection and
41 Family Support.

42
43 MS FURNESS: With the expectation that the Department of
44 Child Protection and Family Support would have the best
45 interests of the child at heart and, therefore, act to
46 protect the child; is that right?

1 MR FIELD: Absolutely. So the view we will take is - and
2 look, this goes to all matters where a person raises an
3 issue with our agency. We have a fairly sophisticated
4 process internally of escalation, of identification of that
5 matter and escalation of that matter for its referral to
6 the most appropriate agency, but often - well, often, but
7 it's certainly the case in complaints, that complainants
8 will raise an issue that is not actually the specific
9 complaint they are making, but within that complaint they
10 will raise an issue of, for example, self-harm: "If this
11 matter is not dealt with, I will harm myself." Harm to
12 others and raising other issues. Now, on each occasion
13 those matters are taken very seriously, as you would hope
14 and expect, and although we may not be the agency to
15 necessarily investigate that particular matter, or
16 necessarily to offer that immediate - beyond the immediate
17 protection that we will offer to people and the support
18 that we will offer them, we will refer those matters, so,
19 for example, to the Department of Health, the Department of
20 Child Protection and Family Support, and the police, and
21 depending on the response we initially receive and the
22 gravity of the matter, that may be a very proactive process
23 that we're involved in, so following through very carefully
24 what the response has been.

25
26 MS FURNESS: You have the capacity to conduct inquiries of
27 your own motion?

28
29 MR FIELD: Yes, we absolutely do, yes.

30
31 MS FURNESS: And the Commissioner for Children and Young
32 People also has that capacity, don't they?

33
34 MR FIELD: They don't have a complaint handling function
35 but they certainly have a function in relation to the
36 systemic review --

37
38 MS FURNESS: Just let me stop you there, Mr Field. My
39 question is that they have the capacity to conduct
40 inquiries of their own motion; isn't that right?

41
42 MR FIELD: Well, as described - I'm not sure how they
43 specifically describe that function, whether they describe
44 it as an own-motion investigation function. Certainly,
45 they have a capacity to, as I understand their legislation,
46 look at systemic issues across systems, yes.

1 MS FURNESS: And you also have a capacity to look at
2 systemic issues across systems, don't you?

3
4 MR FIELD: Yes, absolutely, and we certainly do that
5 arising out of our complaint function and other functions,
6 and we certainly would refer to that as an own-motion
7 function.

8
9 MS FURNESS: And have you exercised that function in
10 respect of out-of-home care?

11
12 MR FIELD: Counsel, we haven't exercised it specifically
13 in relation to out-of-home care matters, but certainly we
14 have undertaken investigations where the subject matter of
15 the investigations may ultimately have some relevance to
16 the efficacy, effectiveness, oversight of out-of-home care
17 in the State.

18
19 MS FURNESS: Well, what are those?

20
21 MR FIELD: Yes, I'm certainly happy to refer to the most
22 obvious one and that was an investigation we undertook just
23 a couple of years ago now in relation to the care planning
24 arrangements in the State, and particularly looking at
25 government departments that had a role in relation to
26 planning for children who came into the care of the CEO of
27 the Department of Child Protection and Family Support, and
28 although out-of-home care wasn't a specific and significant
29 focus of that report, certainly the matters that we looked
30 at in that report, and the recommendations that arise out
31 of it, went to the effectiveness of the planning for
32 children in care, including education, residential, and
33 a range of other needs that they have.

34
35 MS FURNESS: Did you discuss with the Commissioner for
36 Children and Young People which was the most appropriate
37 body, you or it, to conduct that inquiry?

38
39 MR FIELD: No, I don't remember at that time. That would
40 have been the former Commissioner. I certainly don't
41 remember a specific discussion about who was the most
42 appropriate body to do that. I don't think there would
43 have been any disagreement at the time. I certainly don't
44 want to speak for the former Commissioner, but I don't
45 think there would have been any disagreement at the time
46 that we would have been the most appropriate body to do it.
47 Certainly, though, in relation to matters where we are

1 examining either own-motion investigations or other matters
2 in relation to issues that are relevant to children, we
3 certainly do, and would, consult with the
4 Children's Commissioner and their staff.

5
6 MS FURNESS: Why do you say that the topic of care plans
7 was one that you would have been the most appropriate body
8 to investigate, as between you and the Commission for
9 Children and Young People?

10
11 MR FIELD: That is a good question, counsel. The reason
12 would be because that investigation arose out of our
13 legislated child death review function, which commenced in
14 2009. So we've undertaken a number of major own-motion
15 investigations arising out of that, three to date, and we
16 have just commenced a fourth. I am mindful of not taking
17 up too much time with the answer, but I simply say that
18 particular jurisdiction has three requirements. One is to
19 identify the circumstances in which and why children die;
20 second, identify patterns and trends arising out of those
21 or from those deaths; and third of all, to make
22 recommendations to government departments and public
23 authorities about ways to reduce or prevent deaths.

24
25 One of the matters that we identified, particularly
26 relating to the cohort of children at primary school age
27 level, was the effectiveness of care planning. So after
28 doing individual child death reviews, the reviews of
29 individual deaths, systemically, as a pattern, we
30 identified that that would be an area which would be
31 appropriate, sensible and useful to do a more major and
32 specific and systemic investigation in that space.

33
34 In that sense, I don't think there would have been any
35 doubt or question that we were the most appropriate agency
36 to do it, because it did arise out of that specific
37 legislated function.

38
39 MS FURNESS: So in addition to your role and your
40 complaint handling role, including your own-motion
41 investigation, you have the Commissioner for Children and
42 Young People who has an advocacy role as well as a capacity
43 to initiate inquiries; you have the advocate for children
44 in care as well?

45
46 MR FIELD: Yes.
47

1 MS FURNESS: And that person has some role in relation to
2 assisting people accessing the complaint handling functions
3 available in the State?

4
5 MR FIELD: Yes, that's exactly the way I would describe
6 the role.

7
8 MS FURNESS: In your view is the arrangement whereby each
9 of you have the relevant functions we have discussed an
10 effective way of protecting children in out-of-home care?

11
12 MR FIELD: Yes, look, I think it is, an effective
13 arrangement in Western Australia, and certainly in the
14 international context a very effective system. That's not
15 to say, though, like those otherwise giving evidence to the
16 Commission today, that the system shouldn't be subject to
17 both, I think, continuous improvement but also ongoing
18 consideration of and review where it can be improved, and
19 I think there's no doubt that that is always beneficial,
20 but in this area, because it is so fundamental, even more
21 so.

22
23 MS FURNESS: Where do you think it can be improved,
24 Mr Field?

25
26 MR FIELD: There's certainly consideration being given at
27 the moment to further matters that can be done in relation
28 to --

29
30 MS FURNESS: No, no, let me interrupt you, Mr Field.
31 I just want to know what you think can be improved?

32
33 MR FIELD: At this stage, I think the system is working
34 well. You have, effectively, a single complaints -
35 Children and Young Person's Commission doesn't take
36 complaints, so we are the portal for complaints in relation
37 to these areas. We certainly do receive complaints about
38 out-of-home care and are able to investigate them, and we
39 certainly do undertake very significant work arising out of
40 our child death review and family and domestic violence
41 review jurisdiction in relation to the wellbeing of
42 children and young people in the State, and that,
43 of course, includes in out-of-home care.

44
45 We do have very developed accountability systems
46 specifically, despite the matter that the Commission will
47 come to later, but there are clearly matters that can be

1 considered, for example, the reportable conduct regime in
2 New South Wales. There can certainly be matters that could
3 be considered that might well be matters that might improve
4 or make even more robust the system that we have at the
5 moment.

6
7 MS FURNESS: Mr Field, do you think that a reportable
8 conduct system in Western Australia would improve the
9 safety of children in out-of-home care?

10
11 MR FIELD: I'm not intimately familiar with the reportable
12 conduct regime in New South Wales, but I can say this:
13 I certainly heard evidence that has been given to the
14 Commission, read evidence that has been given to the
15 Commission, and also apprised myself more generally of it.
16 Of course, it is a matter for government policy and
17 a matter for parliament, because it would require
18 legislative change, but what I would say is this, though,
19 from what I understand of the system, I think there would
20 be much value in giving very strong consideration to the
21 potential for such a system to be a nationally consistent
22 scheme that would add extra comfort, support, in relation
23 to identifying matters.

24
25 What we don't want in this area is any unmet demand.
26 First of all, we want to prevent it, but any child who has
27 ever suffered abuse, they can't be lost from the system and
28 that could be an additional way of ensuring that those
29 matters don't occur.

30
31 MS FURNESS: Mr Field, I asked you if you could tell us of
32 any improvements and your response was that there was an
33 effective complaint handling system which was accountable,
34 which you operate, and that you believe that very strong
35 consideration to the potential of a reportable conduct
36 scheme should be given that was nationally consistent. Is
37 there any area where you now would say to the
38 Royal Commission that improvements should be made to
39 improve the safety of children?

40
41 MR FIELD: From the perspective of complaints handling and
42 oversight specifically, there is nothing as of today -
43 reportable conduct issues aside - that I would be
44 necessarily best placed to comment upon. I would add this,
45 though, and it is specific to your question, counsel, that
46 there is current consideration in Western Australia in
47 relation to further support for the raising of complaints

1 that arose out of - and the Commission is familiar with
2 this work - the Blaxell Inquiry and it is also a matter on
3 the public record that is currently being considered by the
4 Joint Standing Committee on the Commissioner for Children
5 and Young People, so I think those matters could properly
6 inform the Commission's thinking, and no doubt will, as to,
7 once again, beyond prevention, which is obviously the first
8 and primary goal, ensuring that (a) children are
9 identified, children who have an allegation, that that
10 allegation is taken in an unquestioning way, in a way that
11 is accepted, and then they are supported through the
12 complaints handling system, which is very much specific to
13 the matters that Mr Blaxell was referring to and are
14 subsequently being considered and are still being
15 considered.

16
17 At the moment, that would be partly the role of the
18 Child Advocate, the Department of Child Protection and
19 Family Support, the police and others in that system. What
20 we want to do is ensure ultimately, of course, that every
21 child's complaint, any matter that a child raises is, as I
22 say, accepted without question. Now, the police can't do
23 that. The police obviously need to be impartial in
24 investigation, but that is a role for support for the child
25 and in ensuring that they are supported through the system,
26 including that they get to the right place as quickly as
27 possible in terms of their matter being thoroughly and
28 properly investigated.

29
30 MS FURNESS: Thank you, Mr Field, I've nothing further.

31
32 THE PRESIDING MEMBER: Thank you. Mr Lines, just one
33 question: with respect to what I would describe as the
34 residual power that your office holds, how does that work
35 in practice?

36
37 MR LINES: With regard to out-of-home care arrangements,
38 your Honour?

39
40 THE PRESIDING MEMBER: Yes.

41
42 MR LINES: In practice, we have had no involvement with
43 investigating complaints about children in out-of-home care
44 who have made allegations of sexual abuse.

45
46 THE PRESIDING MEMBER: I am sorry, I might have led you to
47 a misunderstanding. I understood your evidence to be that

1 your agency will only come in to investigate in response to
2 allegations of child sexual abuse in an out-of-home care
3 setting in circumstances where no other body has been
4 identified as a body responsible for undertaking the
5 investigation; is that correct?
6

7 MR LINES: In theory, that's correct, yes.
8

9 THE PRESIDING MEMBER: So I'm asking you about, in
10 practice, how does that work? Who is making the decision
11 that no other body is investigating?
12

13 MR LINES: That could be made by my office, if the
14 complaint comes to us and we've inquired about whether
15 there is any other body to deal with it, but, by and large,
16 those complaints are part of the mandatory reporting
17 regime. That would go to Families SA. If there was
18 a complaint about the way Families SA dealt with that
19 complaint, then that would go to the Health and Community
20 Services Complaints Commissioner. Only if there was an
21 issue with the way that that Commissioner dealt with the
22 complaint about Families SA would the matter come to my
23 attention.
24

25 THE PRESIDING MEMBER: All right. Is this correct: it's
26 subject to the complainant continuing to pursue his or her
27 complaint through the system?
28

29 MR LINES: Yes, that's correct.
30

31 THE PRESIDING MEMBER: Rather than there being any
32 mandatory oversight requirement with your agency making
33 a decision about where the appropriate matter should be
34 resolved?
35

36 MR LINES: Yes, that's correct.
37

38 THE PRESIDING MEMBER: That's the structure?
39

40 MR LINES: Yes.
41

42 THE PRESIDING MEMBER: Thank you. I have just one other
43 matter really for each of you and including you, Mr Field.
44 I am assuming that you have been watching the evidence
45 being given by the like bodies before the Commission this
46 week on this topic and I really want to give each of you
47 the opportunity, I assume having reflected on what you have

1 heard, to say anything to the Commission relevant to your
2 various functions and powers and the structure of your
3 roles, as to whether or not there are matters that you want
4 to bring to the attention of the Commission that you think
5 would improve the situation for children and young people
6 in out-of-home care in the area of child sexual assault.
7 It is really a very broad invitation.

8
9 MR LINES: Your Honour, if I may jump in first, my
10 observation and comment would be that it would be helpful
11 if there was an independent body, perhaps an Ombudsman or
12 perhaps some other body, but a body that had an ongoing
13 systems review function specific to child protection which
14 would encapsulate out-of-home care. I think one of the
15 comments in the previous panel was that it is a good thing
16 for there to be a specific function of that nature and with
17 the proper resourcing for it. That is something that is
18 lacking certainly in my State and is one of the reasons
19 that we currently have a royal commission looking into
20 that. So if that was a development that resulted in there
21 being a specific function for systemic and systems review
22 in child protection, that would be a good result.

23
24 THE PRESIDING MEMBER: Would that of necessity require
25 compulsory reporting to that oversight body of,
26 effectively, conduct that fell within the purview of this
27 particular issue, in other words, children either at risk
28 or who have actually been sexually abused in out-of-home
29 care?

30
31 MR LINES: I think logically that would be the case.
32 I couldn't speak from any expertise in terms of experience,
33 but what you suggest makes a lot of sense.

34
35 THE PRESIDING MEMBER: It is not something that happens at
36 the moment in South Australia?

37
38 MR LINES: No, that's correct.

39
40 MR CONNOCK: The only thing I would add is that I agree
41 entirely with my colleague from Victoria in relation to the
42 New South Wales scheme. I think it's a good model but they
43 are able to do it there because it is a dedicated function
44 and it is adequately resourced.

45
46 It would improve the system in Tasmania, as indeed
47 would the addition of community sector complaints. I think

1 the dual functions in the New South Wales Ombudsman are
2 very useful, but again, that has to be mandated and it has
3 to be resourced.

4
5 The only other thing I was going to add is just
6 because we don't get the complaints doesn't mean it's not
7 happening and the only way really that you do get that is
8 through a reporting system.

9
10 THE PRESIDING MEMBER: That compels the complaint --

11
12 MR CONNOCK: It's probably going to be a part of it, yes.
13 If they're not coming forward now, they won't come forward
14 under a reporting system either.

15
16
17 THE PRESIDING MEMBER: Dr Watchirs?

18
19 DR WATCHIRS: Something that may not have come through my
20 evidence, and that I wanted to highlight, the Public
21 Advocate is a mandatory reporter themselves. Also, the
22 Children's Commissioner has an own-motion power, as well as
23 being on the child death review team that has a legislative
24 basis.

25
26 In relation to gaps in the ACT, I like the look of the
27 New South Wales Joint Investigative Response Team. I think
28 that would strengthen the relationship between ACT policing
29 and care and protection, but I am attracted to the
30 reportable conduct model of New South Wales.

31
32 In the ACT we have the complex system that the Federal
33 Ombudsman is the ACT Ombudsman, so you would have to give
34 that jurisdiction to the Federal Ombudsman. Whether that
35 would gel in a national system I'm not sure. If it wasn't,
36 then definitely the Human Rights Commission, I would
37 recommend, could take that jurisdiction and handle that.

38
39 Currently, within the legislation, that would be the
40 Children's Commissioner. If the reforms go ahead, then it
41 would be the Advocate, who is also the Children's
42 Commissioner.

43
44 There have been some recommendations that we have made
45 to government that haven't been picked up. One is in our
46 review of the Bimberi Youth Justice Detention Centre -
47 there are no section 507 notices there of abuse, because it

1 is not defined as out-of-home care, and we recommended that
2 that also be notified to the Public Advocate. So I think
3 that would be a further oversight protection.
4

5 I do have concerns about the new out-of-home care
6 strategy in relation to its impact on the Public Advocate's
7 office. There is only one Child Advocate, and currently we
8 are overwhelmed with the amount of documentation review we
9 do, as well as appearances in the Children's Court,
10 Magistrates Court, Supreme Court and ACAT, and under the
11 new regime, that will be NGOs, so we would be fielding all
12 these NGOs reporting on compliance to us, whereas in the
13 past it has all been through the directorate. That has
14 improved over time with the benefit of Public Advocate
15 reviews and the Auditor-General's reporting to care and
16 protection. So that is a concern, but one that could be
17 fixed.
18

19 In relation to working with vulnerable people checks,
20 the ACT is a jurisdiction that came more recently to that
21 scheme, and we have actually expanded it to vulnerable
22 people, and that is in a staged implementation. So in a
23 national scheme, we wouldn't want vulnerable people to drop
24 off - so that is people with disabilities, particularly
25 intellectual impairments and older people.
26

27 THE PRESIDING MEMBER: Thank you. With respect to the
28 evidence you gave about the recent restructure --
29

30 DR WATCHIRS: Proposed restructure.
31

32 THE PRESIDING MEMBER: Proposed restructure.
33

34 MS WATCHIRS: And I didn't emphasise that all
35 Commissioners would lose their jobs. They would all have
36 to reapply. So there is no-one who would have a stake in
37 it.
38

39 THE PRESIDING MEMBER: What drove the proposed
40 restructure?
41

42 DR WATCHIRS: Three Commissioners were all given a payrise
43 by the remuneration tribunal, and to my view, when the
44 Commission was first established it was recommended to have
45 a president, the functional review cut resources, we lost
46 400,000 - that would have paid for a president and staff.
47 So now, effectively, we have three presidents, in the view

1 of the government.

2

3 THE PRESIDING MEMBER: Thank you. Mr Field, can I invite
4 you in to similarly make general comments?

5

6 MR FIELD: Your Honour, thank you for that opportunity.
7 Yes, I would certainly echo comments that have been made by
8 colleagues. I heard and noted the comments made by the
9 Victorian Ombudsman in the previous session regarding when
10 we have an aspiration - which I think is generally, in most
11 areas, very sensible - to have nationally consistent
12 approaches, that we need to ensure that they are best
13 practice as opposed to a lowest-common-denominator
14 approach. I think that is one - amongst, obviously, many -
15 of the great values of this particular Commission, that it
16 can look across the entire country and, hopefully, take all
17 of the best practice examples; there are also obviously
18 international experiences as well.

19

20 I suppose my second sense is that these matters of
21 child sexual abuse in out-of-home care ultimately aren't
22 resolved by any single system, neither prevention, the
23 identification or the investigation of them, so it is
24 ultimately always going to be a combination of things, and
25 where we have a combination of things, it's critical that
26 there is fundamental coordination between them and the
27 systems in place to do that, and information sharing.

28

29 Once again, without wanting to be overly elaborate,
30 your Honour, from my personal experience since we commenced
31 both our child death review and family domestic violence
32 review functions in this office, that has given us a very
33 substantial capacity, in the overall scheme things, with
34 a relatively small amount of public resourcing, and an
35 opportunity to do very significant systemic investigations
36 of a range of agencies - because it is not just child
37 protection in any given State, it will be corrective
38 services, police, health, education and many others that
39 have a critical role to play in prevention and
40 identification of child sexual abuse, but I just point to
41 one particular investigation, that is our most recent major
42 tabled own-motion investigation, tabled in the Western
43 Australian Parliament, and that was in relation to ways
44 that we can reduce or prevent youth suicide. We examined,
45 amongst a range of other things, in particular a cohort of
46 36 young people who had otherwise died, and those matters
47 had been investigated by my office. Out of that cohort of

1 36, nine young people had experienced or were alleged to
2 have experienced child sexual abuse prior to their deaths.
3

4 So it reminds us of two things, apart from the obvious
5 heinous and criminal nature of child sexual abuse, the
6 other tragic consequences that can flow from that abuse.
7 But it also meant that it was a factor in consideration,
8 and some of those nine young people were in the care of the
9 CEO and in out-of-home care potentially. There are many
10 different ways of continuing to ensure that legislation,
11 policy and practice is best practice, and, as I say, my
12 sense is multiple tools, properly coordinated, with proper
13 information sharing, is something that always should be
14 kept in mind.
15

16 THE PRESIDING MEMBER: Thank you, Mr Field. Commissioner
17 Fitzgerald?
18

19 COMMISSIONER FITZGERALD: Just a couple of matters. One
20 is in relation to advocates, individual advocates for
21 children and young people. Some jurisdictions have
22 advocates that only deal with systemic issues and some
23 jurisdictions have individual advocates, and I was just
24 wanting to understand what the experience has been, for
25 good or otherwise, in relation to individual advocacy.
26

27 So could I just start with Mr Field in WA - you have
28 an Advocate for Children. Is that an individual advocacy
29 role?
30

31 MR FIELD: Well, there is an advocacy role within the
32 department, and that, as I understand the role, is to
33 ensure that complaints that children have are brought to
34 the department's attention and considered in an appropriate
35 way.
36

37 The second obvious advocacy role for those
38 particularly vulnerable children who don't otherwise have
39 parent or guardianship advocacy, both potentially
40 individually and certainly systemically, would be the
41 Children and Young Persons Commission.
42

43 COMMISSIONER FITZGERALD: Do you think it is an essential
44 part of the system that there be individual advocacy to
45 assist children and young people making and pursuing
46 complaints or other matters of concern?
47

1 MR FIELD: Well, I think that's an excellent question.
2 I think the answer is yes. Obviously, we are dealing with
3 children, in most instances, who will be highly vulnerable,
4 and that level of advocacy and support is critical, and it
5 will be critical at every stage of the process.
6

7 It should never be, however, that advocacy is the
8 reason why an agency who handles complaints, who is
9 otherwise impartial in relation to the handling of
10 complaints, should not be absolutely - have the strongest
11 sensibilities around the vulnerability of those who make
12 complaints to it. So certainly the existence of the
13 advocate, be it a non-government organisation advocate,
14 a departmental advocate, an independent advocate, but
15 otherwise government advocate in the case of, say,
16 a Children's Commissioner - as I say, that would never be
17 a reason why my agency, by the existence of those
18 advocacies, would not want to have a very strong
19 responsibility and sensitivity around those sorts of
20 complaints.
21

22 COMMISSIONER FITZGERALD: The panel? Obviously in ACT you
23 have the individual advocate model.
24

25 DR WATCHIRS: Certainly the Public Advocate is the
26 individual advocate for young people, but there is a role
27 of the Children's Commissioner to consult and listen to
28 people, and both the Public Advocate and Children's
29 Commissioner to improve services, chiefly moving towards
30 a trauma-informed service delivery model, where there is
31 hope of recovery, where children are believed, validated
32 and respected and not blamed and punished like they have
33 been in the past.
34

35 COMMISSIONER FITZGERALD: Are there any evaluations on the
36 public advocacy model as it relates to children in the
37 child protection and out-of-home care system to indicate
38 whether or not it has made a significant difference in
39 outcomes for those children?
40

41 MS WATCHIRS: Not that I'm aware of, I'm sorry.
42

43 COMMISSIONER FITZGERALD: If the Commission were of a mind
44 to recommend an advocacy role for children on an individual
45 basis, what would be the evidence that would support that
46 proposition?
47

1 MS WATCHIRS: Certainly in the ACT it would only be our
2 effectiveness in terms of meeting our key performance
3 indicators. I think you would need independent research to
4 back that up, and that's something that I didn't get
5 a chance to talk about earlier, is the data nationally, the
6 ROGS data and the Australian Institute of Health and
7 Welfare - it's kind of unclear how much we're improving.
8 To me, the substantiation rate of child sexual abuse tends
9 to be sitting at this 2 per cent level. In the ACT it has
10 gone up to 2 or 3 per cent, but it is driven year by year,
11 whether there is one or two, or at the maximum I think
12 three complaints per year, of allegations of sexual abuse.

13
14 COMMISSIONER FITZGERALD: Just being clear, to your
15 knowledge, there is no evaluation available that has been
16 done in relation to your own scheme, your own public
17 advocacy scheme, that gives an indication as to the
18 outcomes that have been achieved by that scheme?

19
20 MS WATCHIRS: Not that I'm aware of, but if I could take
21 that on notice and I will check with the Children's
22 Commissioner who is the expert in the area.

23
24 COMMISSIONER FITZGERALD: And I am going to just ask the
25 same question of Tasmania and South Australia - in
26 Tasmania, I don't think there is a Public Advocate?

27
28 MR CONNOCK: There is not, there's only the Commissioner
29 for Children.

30
31 COMMISSIONER FITZGERALD: Would he have a view about
32 whether or not that is a deficiency, or was a
33 satisfactory --

34
35 MR CONNOCK: It is still under consideration in Tasmania,
36 as I say, so we will have to wait and see how that pans
37 out.

38
39 COMMISSIONER FITZGERALD: What do you think?

40
41 MR CONNOCK: I think some form of advocacy probably is an
42 important part of the system. Children don't complain to
43 my office, just as they don't complain to other Ombudsman.
44 I have had some discussions with our current Commissioner
45 who seems keen on an exchange of information, and he will
46 certainly become aware of things that we won't because he
47 is actively going out and speaking to children and young

1 people; so yes, I think it probably is.

2

3 MR LINES: In South Australia we have the Guardian who
4 advocates for children under guardianship orders. I'm not
5 aware of any evidence to indicate whether that role is
6 effective in changing outcomes, but perhaps the Guardian
7 could be pressed on that point.

8

9 COMMISSIONER FITZGERALD: What about just an advocate for
10 a child who wants to make a complaint, as
11 a complaint-handling agency, would that make a difference
12 to the outcomes, or do you think it's an unnecessary
13 additional piece of infrastructure, if you want to use
14 those terms?

15

16 MR LINES: I think that it would be essential for a child
17 to have an advocate if a complaint was to be processed by
18 an Ombudsman's office.

19

20 COMMISSIONER FITZGERALD: But it hasn't existed in most
21 jurisdictions for some considerable time, has it? The
22 notion of a public advocate as distinct from a guardian has
23 not existed in many jurisdictions, has it?

24

25 MR CONNOCK: Not historically, no.

26

27 MS WATCHIRS: Queensland does have one.

28

29 COMMISSIONER FITZGERALD: Can I just ask Mr Field one last
30 question. You have a monitoring role in relation to
31 complaints handling mechanisms within government agencies;
32 is that correct?

33

34 MR FIELD: Yes.

35

36 COMMISSIONER FITZGERALD: Can I ask you what is your view
37 about the Department of Child Protection and Family Support
38 in WA in relation to the effectiveness of their complaint
39 handling arrangements?

40

41 MR FIELD: I might just answer that effectively broadly
42 and then more specifically. I think the Commissioner would
43 have a familiarity with this, but certainly there has been
44 a very significant shift in the last decade or so to more
45 sophisticated and I think much more effective complaint
46 handling models, particularly in major government
47 departments that are dealing with vulnerable clients and

1 have significant service delivery. That is a trend,
2 I think, all around the world, it's certainly a trend in
3 Australia and New Zealand and it goes across most major
4 government departments, Corrective Services, Health,
5 Education and others.
6

7 In that sense, the Department of Child Protection and
8 Family Support is no different and they do have
9 a reasonably elaborate model of internal complaint handling
10 and, like other Ombudsmen - not always, it will be where
11 appropriate - we will refer complainants back to the
12 Department of Child Protection and Family Support in the
13 first instance to resolve complaints and, of course, always
14 on the basis that a complainant can come back to this
15 agency.
16

17 How is it performing? We have certainly not had any
18 reason at this stage to do any major systemic own-motion
19 investigation work in relation to either the timeliness or
20 effectiveness of that complaint handling system and,
21 broadly speaking, my observation would be that, as with
22 most of the agencies, it is a system that works well.
23

24 COMMISSIONER FITZGERALD: But if I can just clarify this,
25 you don't, on a regular basis, do a monitoring or auditing
26 process of the complaint handling processes of individual
27 departments; you wait for the evidence to arise from the
28 complaints that you are dealing with; would that be
29 correct, Mr Field?
30

31 MR FIELD: Yes. Look, similar to others, I think that's
32 broadly the correct answer, but it is true to say that
33 depending on - I mean, we certainly could, and we would, if
34 we felt, from any complaints that were being investigated
35 by us that there was clearly, over a period of time, or
36 even only a short period of time, a particularly major -
37 obviously, either a systemic issue or a single serious
38 issue where we felt that there was a lack of confidence in
39 those systems in terms of being effective, efficient and
40 timely, but I would say the reason I just wanted to give
41 a qualification to it is not strictly by that. Through our
42 child deaths review and family domestic violence review
43 jurisdictions, we certainly undertake very close
44 examination of the files of relevant agencies, going into
45 the agencies, examining them, and it may be in that process
46 that we would actually undertake examination of how matters
47 could have otherwise been dealt with.

1
2 That certainly, once again, could be something that we
3 do and it would just depend on the nature of the particular
4 investigation, whether that was something that would be
5 relevant to that particular investigation.
6

7 COMMISSIONER FITZGERALD: Thank you.
8

9 THE PRESIDING MEMBER: Anything arising, Ms Furness?
10

11 MS FURNESS: No, your Honour.
12

13 THE PRESIDING MEMBER: Thank you very much to the panel,
14 thank you for your attendance at the Royal Commission and
15 your cooperation with the inquiry, you are otherwise
16 excused. I think that completes the panels for the week,
17

18 <THE WITNESSES WITHDREW
19

20 MS FURNESS: It does, your Honour. There was just one
21 matter that I neglected to say when I announced my
22 appearance, that those assisting me are Mr Camporeale,
23 Ms McNair and Ms Wan.
24

25 THE PRESIDING MEMBER: Thank you for the work that has
26 been done for the purposes of bringing to the Commission
27 the information that it has had before it this week.
28

29 MS FURNESS: I might just indicate that the next stage
30 will be the release of a consultation paper, which will
31 take place in due course, and submissions will be sought
32 from all those who have given evidence and all those
33 interested in the work in this area.
34

35 THE PRESIDING MEMBER: Submissions with respect to the
36 consultation paper. I think you made it clear in your
37 opening that unlike the normal course of a forensic case
38 study, this won't be the subject of a report but, rather,
39 a consultation paper for the continuing work of the
40 Commission in this area.
41

42 MS FURNESS: That's right and there will be no submission
43 process in relation to this hearing.
44

45 THE PRESIDING MEMBER: Thank you. We will adjourn.
46

47 AT 3.37PM THE COMMISSION ADJOURNED ACCORDINGLY

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