

**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.

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

MR KINMOND: That's right.

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

MR KINMOND: Indeed.

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

MR KINMOND: Yes, that would be correct.

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

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

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

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

MS FURNESS: So if, as has often been the case that the Royal Commission has heard, a child can't identify the name 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.  
47

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?

47

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.

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MS FURNESS: Who has the obligation to report?

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

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

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

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

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

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

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

MS FURNESS: Is an employee?

MR KINMOND: -- in terms of client-on-client abuse via the reportable conduct scheme is in connection with neglect. So if there is an allegation or a reasonable inference that 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.

47

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?

47

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.



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THE PRESIDING MEMBER: Thank you.

Commissioner Fitzgerald?

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

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

COMMISSIONER FITZGERALD: And for Queensland?

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

COMMISSIONER FITZGERALD: The second thing is, if I could just take the issue about the reportable conduct, both Mr Clarke and Ms Glass you have indicated that you support a reportable conduct regime of some description. That 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]

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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?

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MR LINES: The Health and Community Services Complaints Commissioner? Since 2005.

MS FURNESS: Are you aware, from the work you have done before in South Australia, what precipitated that agency being established?

MR LINES: No, I couldn't say with any confidence about that.

MS FURNESS: Have you, in your current role, formed any views about the operation of the out-of-home care with respect to children?

MR LINES: No, I haven't.

MS FURNESS: Is there any requirement or arrangement whereby trends in complaints received by the Commission come to your attention?

MR LINES: Perhaps only through the annual report of that Commissioner, but nothing has been evident in the annual report to require me to delve further into that area.

MS FURNESS: Are there other bodies in South Australia that have complaint handling functions other than you and the Commission?

MR LINES: The department that covers this area, Families SA, which is joined to the Department for Education and Child Development in South Australia, would receive complaints, or has a complaint handling and investigation function in regard to out-of-home care.

MS FURNESS: And you oversight that department in the same way that you oversight the Guardian and the Commission?

MR LINES: It's a little bit awkward in that primarily it's the Health and Community Services Complaints Commissioner that has oversight of that function, whereas my office deals with the Education Department part of that department.

MS FURNESS: So you don't have jurisdiction over the child protection department, if I can refer to it as that, in 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.

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

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

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

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

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

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

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

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

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          oversighting 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.

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

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

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

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

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

MR CONNOCK: That's right.

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

MR CONNOCK: That's right.

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

MR CONNOCK: It depends what the action is that you wish to complain about. It would have to come within the definition of a health service and to have been provided by 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.

47

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?

47

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?

47

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.

47

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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