



TRANSCRIPT OF PROCEEDINGS

THE HON RONALD SACKVILLE AO QC, Chair
THE HON ROSLYN ATKINSON AO, Commissioner
MS ANDREA JANE MASON OAM, Commissioner
MR ALASTAIR JAMES McEWIN AM, Commissioner

**THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND
EXPLOITATION OF PEOPLE WITH DISABILITY**

10:30 AM, THURSDAY, 25 FEBRUARY 2021

DAY 8

Dr Kerri Mellifont QC, Senior Counsel Assisting
Ms Janice Crawford, Counsel Assisting
Mr Ben Power, Counsel Assisting

CHAIR: Good morning, everybody, and welcome to the final day of Public Hearing 11 of the Royal Commission.

I shall invite Commissioner Mason, as always, to give the Acknowledgment of Country.

5

COMMISSIONER MASON: Thank you, Chair. We acknowledge the First Nations people as the original inhabitants of the lands on which this hearing is sitting.

10 Nganana tjukarurungku kalkuni Anangu kuwaripa tjara nyinantja tjuta, ngura nyangangka.

We recognise Meeanjin, Brisbane.

15 Nganana ngurkantananyi ngura Meeanjin-nga Brisbane-ta.

We recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations.

20 Nganana ngurkantananyi karu panya Brisbane River-nya alintjara munu ulparira Anangu nguraritja tjuta nyinantja munu kuwari nyinanyi Turrbal-nga munu Jagera-nya.

25 And we pay respect to the Gadigal people of the Eora Nation. Their land is where the City of Sydney is now located. We pay deep respects to all Elders past, present and future and especially Elders, parents and young people with disability.

I would now like to read the First Nations content warning.

30 This hearing will include evidence that may bring about different responses for people. It will include accounts of violence, abuse, neglect and exploitation of First Nations people with disability. It will also include references to First Nations people who are deceased.

35 If the evidence raises concerns for you, please contact the National Counselling and Referral Service a 1800 421 468. You can also contact Lifeline on 13 11 14, Beyond Blue on 1300 224 636, or, for First Nations viewers, your local Aboriginal Medical Services for social and emotional wellbeing support.

40 Thank you.

CHAIR: Thank you, Commissioner Mason.

Mr Power, I think.

45 MR POWER: Yes. Thank you, Chair. The first witness today will be Justen Thomas. You will find his written statement at Tab 16 of Tender Bundle A. I ask to tender his statement into evidence and for it to be marked as Exhibit 11.33.1.

CHAIR: Yes, thank you, that will be done.

5 **EXHIBIT #11.33.1 - STATEMENT OF MR JUSTEN THOMAS**

MR POWER: Thank you. I call Justen Thomas.

10 Chair, Justen Thomas will take an oath on the Bible.

CHAIR: Good morning, Mr Thomas.

MR THOMAS: Good morning.

15

CHAIR: Thank you very much for coming to the Royal Commission to give evidence. Before you take the oath, I will explain where everybody is. You are, I believe, in the Brisbane hearing room, so you can see Mr Power and you will also see Commissioners Mason and Atkinson in the hearing room. Commissioner
20 McEwin is with me in the Sydney hearing room, so that is where we are scattered today. I will now ask you to take the oath. If you would be good enough to follow the instructions of Commissioner Atkinson's Associate. Thank you.

25 **MR JUSTEN THOMAS, SWORN**

CHAIR: Thank you very much, Mr Thomas. Now Mr Power will ask you some questions.

30

EXAMINATION-IN-CHIEF BY MR POWER

35 MR POWER: What is your name?

MR THOMAS: My name is Justen Thomas and I'm 43 years old and I'm from a place called [?] in Sydney.

40 MR POWER: Did you give a statement to the Royal Commission that talks about your life experience?

MR THOMAS: I sure did.

45 MR POWER: Are you a proud Aboriginal man?

MR THOMAS: I'm a Darugman from the mob of Eora.

MR POWER: Have you recently been exploring, with the help of IDRS, your First Nations ancestors?

5 MR THOMAS: That's right, I believe my grandfather is from the Stolen Generation.

MR POWER: Okay. Do you have any disabilities?

MR THOMAS: I do.

10

MR POWER: What are they?

MR THOMAS: Brain function, thinking, I need help making decisions, epilepsy, yep.

15

MR POWER: Dealing with each of those, did you find out or did you have your first experience with epilepsy when you were about 11 or 12 years of age?

MR THOMAS: That's exactly right, as a result of my abuse as a child.

20

MR POWER: With the intellectual functioning that you have talked about, was that known to you as a child or did you find that out much later in life?

MR THOMAS: I was having brain scans and at that age when the first seizure, to find out what it was. I was put on Epilim 500 for a while, it didn't do me any good. But I didn't know I had other disabilities, other than epilepsy, until later in the stage.

25

MR POWER: How old were you when you found that out? How old --- were you in your 30s when you ---

30

MR THOMAS: I would say probably like 20s or 30s I discovered I had other disabilities.

MR POWER: You would like to ask you about your advocacy first. Are you an advocate for people with disabilities?

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MR THOMAS: I sure am, because I do a lot of advocacy and motivational speaking, talking to young generation Aboriginal kids and that. Because they don't want to fall into the contribution like I've experienced.

40

MR POWER: Is that work as an advocate for people with disability important to you?

MR THOMAS: I do it with passion, you know.

45

MR POWER: We're going to come back to this part of your life, but is there something that's the highlight for of you that advocacy that you have done?

MR THOMAS: It's got me nominated as Australian delegate in 2019 in the United Nations in Geneva.

5 MR POWER: Did you go to Geneva and speak to the UN?

MR THOMAS: I sure did.

10 MR POWER: You mentioned to me that part of that process of being selected, you were in contact with Pat McGee, who has given evidence?

MR THOMAS: That's right.

15 MR POWER: You have got two sons?

MR THOMAS: I do, a 14-year-old and an 18-year-old.

MR POWER: Do you also have a passion for V8 car racing?

20 MR THOMAS: Yes, as a hobby, things to do on weekends and sport to get into.

MR POWER: You volunteer for some of the big V8 car races around Australia?

25 MR THOMAS: Yes.

MR POWER: I want to start with your childhood. Where were you born?

MR THOMAS: I was born in Canterbury in Sydney.

30 MR POWER: Did you live with your family until you were about 11 or 12?

MR THOMAS: Yes, I did, and I think from then DOCS took me away in the end and put me in a children's refuge, which made my trauma trigger much heavier than it was when I got moved away from home.

35

MR POWER: When you were with your family, your mother and brother and half-sister, was there a cultural --- an Aboriginal cultural centre that you used to go to as a small child with your family?

40 MR THOMAS: It was called Tharawal, which is based in Airds in Campbelltown.

MR FOGARTY:

45 MR THOMAS: I was more or less part of the Aboriginal community of Aboriginal families there.

MR POWER: When you went into a children's home, were you able to keep up that

cultural connection or was that ---

MR THOMAS: No, that was taken away. I was never recognised --- I didn't have ---
Aboriginal until later in life.

5

MR POWER: But you remember that connection from your early childhood?

MR THOMAS: Yes, personal connection with the families and that.

10 MR POWER: You mentioned about your epilepsy. Is it the case that that epilepsy
started after you first went into a children's home?

MR THOMAS: Yes. It got worse, escalated from there. I had one seizure at
school --

15

MR POWER: Okay.

MR THOMAS: --- and all the rest was escalating as I was getting older and in the
juvenile justice system.

20

MR POWER: Did you find being in a children's home very hard?

MR THOMAS: It can be very triggering, very --- trauma, at the time I didn't
recognise my own trauma, I realised that I had --- never saw me as behaviour
25 problems, I was never --- I had any kind of help, but I had to fend for myself as a
child.

25

MR POWER: Did you run away from children's homes to try and get back to your
family?

30

MR THOMAS: I did, and I was worried that if I got back to my family, the sheriff
or someone would come and look for me at Mum's door or something like that. So
I ended sleeping on trains and train stations and parks.

35 MR POWER: This is as quite a young teenager, you were homeless, sleeping in
parks and on trains?

MR THOMAS: Yes.

40 MR POWER: From sleeping rough and being on trains sleeping, did you come to
the attention of the police?

MR THOMAS: I did because eventually I was charged with trespassing and fare
evading, and ended up escalating a lot of fines and I couldn't deal with my fines, so
45 they found a reason to lock me up, to lock me up for fines, unpaid fines and that, and
that made me a lot worse. Inside me, I started resilience and my trauma was getting
worse and, yeah.

MR POWER: Sometimes when you were arrested, were you held on charges because you didn't have a place to go to?

5 MR THOMAS: Yes. A lot of times I have been remanded in custody because I didn't have a place to go to and a home address or sometimes I've been in there for alleged to have done stuff I've never been found guilty of.

MR POWER: After you turned 18, did those problems continue?

10

MR THOMAS: They did. I've always been maintained a target, because I was vulnerable on the streets and they continued to approach me and target me.

MR POWER: You say in your statement that there you fell into a bad crowd because you were a young person.

15

MR THOMAS: I was easily led, because it is part of my disability, I have been easily misguided to do a lot of stuff, a lot of crime, which I don't tend to do initially, but I didn't have any help, I had to fend for myself as a repeat. And I had no role model with me either.

20

MR POWER: During this time were you sometimes in boarding houses, sometimes on the streets and then sometimes held in jail?

MR THOMAS: I never had a fixed address for about 10 to 12 years, something like that.

25

MR POWER: When you were charged and you were given paperwork, were you able to understand what the paperwork was and what was required of?

30

MR THOMAS: No. No. And that's a --- that's where they took advantage of me, because they needed to try and read me bail conditions, give me service orders, things like that, and other things, and I never understand it because it was never explained to me properly. And I just signed the paper and that was it.

35

MR POWER: When you were outside, whether it was the prison or the watchhouse, did you have a problem keeping track of the dates of what you were meant to go to?

MR THOMAS: Yes, because every week I was guaranteed I got a search warrant, a warrant out for me arrest, because fail-to-appears, I've had numerous fail-to-appears. I wasn't the type of person who would turn up to court because I didn't know the dates.

40

MR POWER: When you ---

45

MR THOMAS: And also my homelessness came into play as well.

MR POWER: Up to this time, you knew you had epilepsy. When you went into jail were you in any special unit or were you just in the mainstream?

MR THOMAS: No, they threw me in the main --- with the main criminals.

5 Sometimes they used to take my medication off me where I'd go without medication in prison numerous times as well. And so eventually I've gone off my medication for like eight years or something because there's no point them not feeding me in prison my medication, there's no point when I got out getting back on it, because the gap.

10 MR POWER: Whilst you were in jail did you have seizures?

MR THOMAS: I did.

MR POWER: What happened from these seizures?

15

MR THOMAS: I woke up in hospital getting another CAT scan on my head and I had a swollen tongue numerous times from the fits.

MR POWER: The last time you went to prison was in 2004. That was for about 12
20 months?

MR THOMAS: Yes.

MR POWER: Was there anything that happened during that last time you were in
25 jail that ---

MR THOMAS: Yes, unfortunately I had to say goodbye to my grandad when he passed away and a week later my oldest son was born and I didn't get to go to the funeral or the birth to my son.

30

MR POWER: Did that make you really, really sad?

MR THOMAS: That got my --- yeah.

35 MR POWER: Did you say to yourself, "I just don't want to be in prison again"?

MR THOMAS: I kept on saying that. And I had my Nan visit me on the last one, and she prayed for me too. So me and my Nan still had the connection, but she prayed for me last time, and that really told my Nan, "This is it".

40

MR POWER: When you got out, was it still really hard, even though you had made this commitment to your Nan, was it still really hard?

MR THOMAS: Yeah, like, it's always been a struggle to adapt back to society after
45 being in prison, yeah, and I find --- I was getting less court appearances, when Jane Sanders from Shopfront took over and representing me, so she's - she's made a big impact in my change, in the way --- I didn't have a warrant for my arrest, my fines ---

no, I still had outstanding fines, but just stopped failing to appear at court. So she made sure I turned up, she picked me up on the day and she would give me a reminder the day before. She made sure I turned up at court, I was getting a few section 32s under the *Mental Health Act*.

5

MR POWER: Jane Sanders was from Shopfront Legal, which is a community legal centre in Sydney?

10 MR THOMAS: That's right. She is still doing it with passion today, trying to save kids.

MR POWER: When she took over your case, you just described how she did more than just being a lawyer for you: she helped remind you of court dates, she gave you a lift to court sometimes?

15

MR THOMAS: That's right.

MR POWER: And went through the court orders, so that you really understood them and knew what you had to do?

20

MR THOMAS: That's right.

MR POWER: Was she able to be somebody who you could talk to if you had a problem and she would help you sort it out?

25

MR THOMAS: Yes.

MR POWER: The other lawyer you talk about in your statement is Peter McGhee from IDRS. Could you just talk about how Peter helped you?

30

MR THOMAS: So when I got to the age limit for Jane Sanders, she introduced me to Peter McGhee from IDRS, and he started to appear for me at courts. And he's --- he's been to numerous court cases with me again, and mind you, it's over small matters, but yes, big --- he's represented me in court numerous times. But he is a good man and he started --- he started to see my behaviour was getting better and he waived my fines, which gave a bit of ease off my back for a while. And now, so he's --- he waived the fines away, if I didn't get another fine within the next five years, and then all the fines would be waived permanently.

35

40 MR POWER: You talked about the fines that you got right from being a young person. Did you feel it was a real weight on you, those fines?

MR THOMAS: It did, it sunk me a lot. And knowing that I wouldn't have any kind of accreditation as an adult if I still hadn't paid those fines off.

45

MR POWER: At the time Peter McGhee helped you get a fine waiver, there was about \$8,000 in fines?

MR THOMAS: Yep.

MR POWER: And that was a real weight on you?

5

MR THOMAS: It was a heavy weight. I made three attempts to pay it but I couldn't pay it all.

MR POWER: After you had had that help and there was --- you had finished with jail, you became an advocate for people with disability. How did that start? How did you come to that?

10

MR THOMAS: When Peter McGhee was leaving IDRS as a lawyer and he was going to the next stage of his life, he was introducing me to Ben Garcia, he was there --- actually, he took over from a bloke called Spencer. He was running peaceful groups with Jonathon, Jonathon was a student, and Tina was there. I found it interesting every Thursday, the peaceful group that they were running, and it actually helped me reflect, reflecting on my past and make changes, and I was able to get that guidance.

15

20

MR POWER: From being part of that peer support group, was it organised that you would visit some juvenile detention centres, to speak there?

MR THOMAS: Yes. It wasn't that long ago, actually, I think it was about three or four years ago. I had done some training in the Juvenile Justice Centre at Wagga Wagga and also in Dubbo.

25

MR POWER: How did it make you feel to be someone who was going as a teacher to juvenile detention centres where you had been held as a prisoner? How did that make you feel?

30

MR THOMAS: Very fond good memories, sometimes. It's good to be able to talk and the officers would listen. Having that voice and being motivated to be able to do it.

35

MR POWER: In your statement you say that, whilst things are not perfect, things look better than they were when you were there, in terms of art and connection to culture; is that right?

MR THOMAS: Yes.

40

MR POWER: But you said to me that you think there's a lot more work to be done, particularly with police understanding how hard it is to be someone with a disability and then the police should help those people, not just arrest them?

45

MR THOMAS: As I say, I don't like to say things about the kids, because it's no fault of their own, but I give advice on law enforcement is that you never

underestimate a child, you never know where they come from and you don't know what kind of trauma they are bringing. Please talk to them like they are talking to your friend, and try and be mindful, try and be a role model for good, instead of using tactics on kids.

5

MR POWER: You mentioned earlier --- we mentioned earlier that you had spoken at the UN. Could you tell the Commission a little bit more about what you were there for and how that came about?

10 MR THOMAS: When I was at the UN, I actually realised that --- and people see this from the other side of the world, that Australia is a number 1 country and we should be leading by an example in the world of how we can deal with things and be on top of things. And we should be really, because Australia is, like they say it's a lucky country, and we should be appreciating and living together and working together,
15 instead of using tactics on people.

MR POWER: You were there representing Australian Indigenous people and particularly Australian Indigenous people with a disability, with the justice system?

20 MR THOMAS: What was that?

MR POWER: Sorry. You were there for two things. One was to be an Aboriginal man and the other was a person with disability who had personal experience?

25 MR THOMAS: That's right, lived experience and me being an Aboriginal man.

MR POWER: I'm going to finish off with things that you think need to change. What are things that you can tell us about?

30 MR THOMAS: What I really want to see is that --- sorry, I didn't get to this part. Let's talk about this. That back in (inaudible), my court appearances were section 32. I think instead of using that, we need to rethink about the CIDP plan throughout the nation, because --- and we need long-term planning, maybe reviewed every 10 years, because across the nation there's disability everywhere and disability in mental health
35 is never going to go away because it's going to be there for generations. I think we found that having CIDP would save a lot of money and a lot of people --- court appearances by people. And if you don't know what that is, it's called Cognitive Impairment Diversion Program, which is very important and a lot of Indigenous and non-Indigenous people with a disability.

40

MR POWER: You were going through the justice system without CIDP. But you were lucky to have these really great people, Jane Sanders and Peter McGhee and others. They were helping you, similar to what CIDP did, but without that sort of program.

45

MR THOMAS: Yes. So I think we need to make a person placing for a strategy in August connecting together and working together, like I say, and being Australian,

and that would be a great resource, and it also helps people with disability live to their potential, instead of --- instead of seeing them go to jail and locking them away.

5 MR POWER: In your statement you say that people shouldn't be sent to jail simply because they don't have somewhere to live; is that right?

10 MR THOMAS: Yeah. And another thing too is that people like me and my generation falling through the cracks all those years ago, no fault of me own, but I believe at some stage we should have our criminal records pardoned because we need to move on and everyone wants to move on to do the things in the communities in Australia, instead of judging people with their criminal records. And it affects my employment, it affects a lot of other lifestyles, too.

15 MR POWER: The last thing I wanted to ask you about, is in your statement you talk about training for people in government to understand and to help people with intellectual disabilities. Could you talk about that?

20 MR THOMAS: Yes, and that's still yet to do more. But yes, we do need the governments to understand people with disability with mental health needs.

MR POWER: Is part of that having people like yourself who have that lived experience speaking directly to those people, so that they can see through you ---

25 MR THOMAS: That's right, I think lived experience is the best way to go about things, and then they can give you an insight on what's going on with people with disability with mental health problems. As the - it's good for the United Nations having people with lived experience and tell their inside story, and I think basically that's how we can actually make changes together.

30 MR POWER: I finally should mention, in your statement there's a link to the film of you giving evidence at the UN. So that's there on the web. That's something you must be very proud of.

35 MR THOMAS: I'm very proud and always will remember that day, yep.

MR POWER: Thank you.

Chair, those are the questions I have.

40 CHAIR: Thank you very much. Thank you, Mr Thomas.

45 I'll ask the Commissioners if they have any questions, and I'll start with Commissioner Mason, who is in the Brisbane hearing room with you and you ask Commissioner Mason whether she has any questions.

QUESTIONS BY THE COMMISSION

COMMISSIONER MASON: Yes, thank you, Chair.

5 Thank you for coming today to give your evidence, Mr Thomas.

We heard from a young man, a young Aboriginal man here, actually, last year, his name is Quaden Bayles. When he was asked how he thinks people should treat people with disability, because he has a disability, he said that he wants people to be
10 nice to people with disability.

MR THOMAS: Yes, that's right.

COMMISSIONER MASON: I'm going to ask you that same question. How do you
15 think Australians should treat people who have cognitive disability? What would you say to Australians?

MR THOMAS: Don't look down on people. I think we want to be treated evenly, like everyone else. Like I said, it's about being nice and being considerate, being
20 open-minded and, you know, in regards to law enforcement, they should be a bit more understanding than what they have been.

COMMISSIONER MASON: Thank you.

25 CHAIR: Thank you, Commissioner Mason.

Commissioner Atkinson, do you have any questions?

COMMISSIONER ATKINSON: I do, thank you.
30

Mr Thomas, thank you for coming in today, and it is a privilege to have you in the hearing room with us. You were talking about going to juvenile detention centres and speaking to the staff and also to the kids who are there. Do you want to give us some insight into what you say to them?

35 MR THOMAS: Say to, sorry?

COMMISSIONER ATKINSON: Say to the staff there, and say to the boys who are there.

40 MR THOMAS: I've never really --- I've always kept a distance from a lot of people because back then it was about me, all about me, and the less people you get involved with, the better it was, so it was kind of a like a --- (inaudible) thing --- I would only say yes at muster or something like that, hello at dinnertime, so that's
45 about it. I've always been the type to keep to myself.

COMMISSIONER ATKINSON: When you go now, as an adult, what do you say to

the boys?

MR THOMAS: What do I say to the boys?

5 COMMISSIONER ATKINSON: Yes.

MR THOMAS: Actually, I said, my experience, I wouldn't be talking to the boys, I would be talking about the law enforcements and the Juvenile Justice staff, you know, because --- for some reason, if you are a survivor like me, a lot of things
10 trigger your behaviour, and that triggers from the abuse, you know, and so I'm not going to blame kids. I think it's about how law enforcement can make ends meet with the kids and talk to the kids.

COMMISSIONER ATKINSON: Okay, thank you.

15

Those are the questions I have. Thank you very much for coming. As I said today to this hearing room, it's been a privilege to have you here. Thank you.

CHAIR: Commissioner McEwin?

20

COMMISSIONER McEWIN: Thank you, Chair. I have one question.

Mr Thomas, thank you very much for your evidence. You talked about people like Jane and Peter who helped you through the justice system. How important is it that
25 we have people like them, do we need more people like to that help people who are in the justice system?

MR THOMAS: This is what I recommend for, we need that CIDP and JAS Program running throughout Australia, so we all of us, vulnerable disability people, can get that kind of advocate, or help within the system. Because if you don't, things can seriously go wrong later on. And the more we can do things, the better our country can be living together instead of being isolating and judging each other and things like that. And, you know, CIDP is probably the best thing going, and I recommend it to probably all states should be accepting the CIDP and JAS.

35

COMMISSIONER McEWIN: Thank you.

CHAIR: Mr Thomas, before we finish, I'll just ask Ms Furness, who appears for the State of New South Wales, whether she has any questions for you.

40

MS FURNESS: No, I don't, thank you, Chair.

CHAIR: In that case, Mr Thomas, I add my thanks and appreciation to you for coming to the Commission to give the evidence and for making the statement and for explaining to us the things that you have. It's been enormously helpful to the work of
45 the Commission. Thank you so much for coming.

THE WITNESS WITHDREW

5 CHAIR: Mr Power, what are we to do now?

MR POWER: Chair, could we adjourn until 10.30 for the next witness? Sorry, 10.30 Queensland time, 11.30 New South Wales time.

10 CHAIR: Yes, we will adjourn until then. Thank you very much.

ADJOURNED

[11.05 AM]

15

RESUMED

[11.34 AM]

20 CHAIR: Mr Coutts-Trotter, welcome back. Thank you for coming to the Commission once again to give evidence. As you can see, we are in our usual state of complete efficiency and smooth operations. Dr Mellifont.

MR COUTTS-TROTTER: Thank you, Chair.

25 DR MELLIFONT: Thank you, Chair. You will find Mr Coutts-Trotter's written statement at Tab 12 of Tender Bundle C. I ask for that statement to be tendered into evidence as Exhibit 11.34.1.

30 CHAIR: Yes, that can be done.

**EXHIBIT #11.34.1 - STATEMENT OF MR MICHAEL PAUL
COUTTS-TROTTER**

35

DR MELLIFONT: Thank you. I call Mr Coutts-Trotter.

CHAIR: Thank you.

40 Again, thank you, Mr Coutts-Trotter, for coming to the Commission. Just to explain where everybody is today, we have in the Brisbane hearing room, of course, Dr Mellifont and she is in the Brisbane hearing room together with Commissioners Atkinson and Mason, and Commissioner McEwin is with me in the Sydney hearing room and you are in a separate location in Sydney. I will now ask you, if you
45 wouldn't mind, to follow the instructions of my Associate, who will administer the oath.

MR COUTTS-TROTTER: Certainly.

MR MICHAEL PAUL COUTTS-TROTTER, SWORN

5

CHAIR: Thank you. Dr Mellifont will now ask you some questions.

MR COUTTS-TROTTER: Thank you.

10

EXAMINATION-IN-CHIEF BY DR MELLIFONT

15 DR MELLIFONT: Thank you.

Could you state your full name?

MR COUTTS-TROTTER: Michael Paul Coutts-Trotter.

20

DR MELLIFONT: Have you provided a statement to the Commission?

MR COUTTS-TROTTER: I have.

25 DR MELLIFONT: And is that statement true and correct to the best of your ability?

MR COUTTS-TROTTER: Yes, it is.

30 DR MELLIFONT: Thank you. You are the Secretary of the New South Wales Department of Communities and Justice?

MR COUTTS-TROTTER: Yes.

35 DR MELLIFONT: That is a role you have had since 2019?

MR COUTTS-TROTTER: Yes.

40 DR MELLIFONT: That is when the Department was created, following New South Wales Government changes that merged Department of Family and Community Services and the Department of Justice?

MR COUTTS-TROTTER: Yes.

45 DR MELLIFONT: You were previously the Director-General, that is from 2013 to 2014, and then Secretary from 2014 to July 2019 of the Department of Family and Community Services, is that correct?

MR COUTTS-TROTTER: Yes, it is.

DR MELLIFONT: Apart from your statement, you have also signed a letter to the Commission dated 2 July 2020 in response to a letter from the Royal Commission
5 requesting information about the CIDP. Is that correct?

MR COUTTS-TROTTER: Yes, it is.

DR MELLIFONT: I want to go through some background about the program that is
10 the CIDP Program, and let me know if you agree with these propositions.

It was a pilot introduced by the New South Wales Government in response to recommendations in the 2012 New South Wales Law Reform Commission, Number 135, which recommended strategies for diverting people with mental illness and
15 cognitive impairment from the criminal justice system.

MR COUTTS-TROTTER: Yes, that's correct.

DR MELLIFONT: Okay. I appreciate this was before your time as the Secretary of
20 DCJ, but do you know why it took five years to get a program up and running from the 2012 recommendations up until 2017?

MR COUTTS-TROTTER: To the best of my understanding, there was a second related report from the New South Wales Law Reform Commission, and at the same
25 time, of course, New South Wales was with the Commonwealth implementing in a staged way the National Disability Insurance Scheme in New South Wales. And I think that those things in combination explain the gap in time between the 2012 Law Reform Commission Report and the pilot beginning in 2017.

DR MELLIFONT: In the Second Law Reform Commission Report you make reference to the 2013 Report, "People with cognitive and mental health impairments in the criminal justice system: Criminal responsibility and consequences" Report?

MR COUTTS-TROTTER: Yes.
35

DR MELLIFONT: In the documents we see that there was NDIS transition funding for this pilot; that is, that funding was obtained in May 2017 for a two-year pilot by the NDIS Transition Board and then the pilot started in October 2017. Can you assist us by a practical explanation of how the NDIS transition funding works from
40 your perspective?

MR COUTTS-TROTTER: Of course. The NDIS Transition Board was a group of New South Wales Department heads that was chaired by me in my role as the head of the Department of Family and Community Services. The funding available to that
45 group was authorised by the Government through the Expenditure Review Committee and it aimed to identify functions that were needed during the transition into the National Disability Insurance Scheme in New South Wales.

So the Board was authorised to identify projects of that nature and make recommendations to Government about their funding, which is what the board did in relation to the Cognitive Impairment Diversion Program.

5

DR MELLIFONT: Is there or was there a date by which that transition period is regarded to be at an end, to your understanding?

MR COUTTS-TROTTER: From memory, the periods of funding at their longest were three years from 2017 or early 2018, so two or three years as a guide.

10

DR MELLIFONT: That NDIS transition funding ended in June 2019, that's correct?

MR COUTTS-TROTTER: The decisions to allocate money from that transition funding ended at that point, yes.

15

DR MELLIFONT: There was actually an underspend in that first two years which could keep the program going with that existing funding for a few more months?

MR COUTTS-TROTTER: In relation to the Cognitive Impairment Diversion Program, yes, that's right.

20

DR MELLIFONT: But is it correct to say that DCJ recognised a need for that program to continue even beyond those extra few months?

25

MR COUTTS-TROTTER: Yes, we recognised the need for it to continue and we also wanted to try, in the second iteration of the program, to adjust the way it operated, to try and learn from some of the lessons of the first iteration; in other words, to improve its operation.

30

I should say as well that at that point it was anticipated that a proposal for a model to replace the CIDP could have been considered by Government during the usual course of the Budget cycle but, of course, the COVID pandemic in late 2019 into early 2020 completely disrupted all the usual processes of Government decision-making.

35

DR MELLIFONT: I will come back to that, Mr Coutts-Trotter. Can I just come back to this period in the beginning of 2020. Was there capacity to go back to the NDIS at that stage to ask for more funding for the program to continue?

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MR COUTTS-TROTTER: Sorry, just to clarify, although it was called the NDIS Transition Fund, it was New South Wales Government funding aimed at supporting the transition into the NDIS in New South Wales. So funding for the NDIS is subject to separate agreements between governments, so the CIDP was not funded by the NDIA or the NDIS, it was funded by the State Government through its own arrangements.

45

DR MELLIFONT: Yes, I'm sorry, it was a very poorly asked question. Was there capacity to tap back into that transition funding to try and keep that program going?

5 MR COUTTS-TROTTER: No. No, the transition funding, there was no more transition funding at that point.

DR MELLIFONT: I want to go through the two iterations of the program, we will step through them. The first phase was October 2017 through June 2019.

10 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: And Penrith and Gosford were chosen as the test sites?

15 MR COUTTS-TROTTER: They were.

DR MELLIFONT: Can I ask, please, that document NSW.0033.0278.0001 be brought up, at page 0018.

20 Just to orient you, Mr Coutts-Trotter, this is at Tab 29 of Bundle D.1. It is the Final Process Evaluation Report.

MR COUTTS-TROTTER: Yes.

25 DR MELLIFONT: We are going to go to page 18.

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: This report tells us that:

30 *Gosford and Penrith Local Courts were chosen as both were in Year 1 NDIS rollout sites. Each of these locations was expected to have capacity to accept new clients into the NDIS from the 2017/2018 financial year.*

35 Does that reflect your understanding as to why these two sites were selected?

MR COUTTS-TROTTER: My understanding is there were three reasons that Gosford and Penrith were chosen. The first was that, as this document points out, the NDIS was available to people in those locations, the NDIS was implemented location by location in a sequential fashion in New South Wales over a number of years. So, 40 firstly, the NDIS was available.

Secondly, those sites represented a metropolitan and a regional site, and that was a request, as I understand it, from the then Department of Justice. And, thirdly, the statewide Community and Court Liaison Service, a service operated by Justice 45 Health to provide support for people with mental health and cognitive impairment, was also operating in those two sites, so those three reasons together apparently explains why Gosford and Penrith were chosen.

DR MELLIFONT: Can you explain to me the last point a little bit more, why was that seen to be a benefit, the co-location of the statewide service?

5 MR COUTTS-TROTTER: To be honest, I don't know, but it is my advice that that was a factor in decision-making at the time but I can't explain it to you. I am happy to take that on notice in it is of help to the Commission.

10 DR MELLIFONT: Yes, it would be, and there may be a number of matters for you to take on notice. Could you assist me with who within the Department --- and again, you can take this on notice --- would have direct operational knowledge of that?

15 MR COUTTS-TROTTER: Yes, I would have to take that on notice.

DR MELLIFONT: Thank you.

MR COUTTS-TROTTER: And will.

20 DR MELLIFONT: Thank you.

Can I take it that, given that what we see up on the screen here was at least one of the rationales for the choice of location, that the availability of connection with and uptake of NDIS services was considered an important aspect of the program?

25

MR COUTTS-TROTTER: Yes, I think you can conclude that, and also obviously --- yes. And the ability to learn about the interaction between a state service system, the justice system, and the new national service system, the National Disability Insurance Scheme, as well.

30 DR MELLIFONT: Thank you.

Is that aim, that objective, of NDIS uptake and its collaboration, still the case with respect to the proposed Connect to Divert Program?

35 MR COUTTS-TROTTER: Yes, it is.

DR MELLIFONT: I will come back to that a little later.

40 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: I want to speak about evaluations of the CIDP. In respect of the first phase of the CIDP, DCJ commissioned an independent process evaluation, which is the document we were just looking at. That's correct?

45 MR COUTTS-TROTTER: Yes, that's correct.

DR MELLIFONT: As well as cost benefit analysis work; correct?

MR COUTTS-TROTTER: Yes.

5 DR MELLIFONT: And you are familiar with both the draft and final reports in that respect?

MR COUTTS-TROTTER: Yes, I am.

10 DR MELLIFONT: I'm not sure, did you get to see the evidence of Mr Walsh yesterday?

MR COUTTS-TROTTER: No, I'm afraid I didn't.

15 DR MELLIFONT: All right.

MR COUTTS-TROTTER: I did read Mr Walsh's submission to the Commission, though.

20 DR MELLIFONT: Thank you. His statement?

MR COUTTS-TROTTER: Yes, his statement, I'm sorry, yes.

DR MELLIFONT: Thank you.

25 I want to take you to some other pages within this Final Process Evaluation Report. Can I go, please, to page 0005 of that document.

MR COUTTS-TROTTER: Is there a page reference?

30 DR MELLIFONT: Yes, page 5.

MR COUTTS-TROTTER: Oh, page 5. I'm sorry. Okay, got it. Yes.

35 DR MELLIFONT: If I could ask the operator to bring up into focus the middle of the page which starts with the paragraph "Out of a total". Actually, just up a little further, please, this report reports to Government that:

40 *In its first 12 months of operation, [the program] has achieved significant results in its two core goals of:*

1. Diverting people with a cognitive impairment from the criminal justice system

45 *2. Connecting people with the National Disability Insurance Scheme (NDIS) and other services.*

And achieved a 87 per cent diversion rate. Is that your understanding in respect of the findings with respect to the first 12 months of the CIDP?

MR COUTTS-TROTTER: Yes.

5

DR MELLIFONT: At page 72 of that document, page 0072, are you familiar with the conclusions reached and set out in this evaluation report?

MR COUTTS-TROTTER: I've read it, yes.

10

DR MELLIFONT: I'll just take a couple of minutes to go through some of them, because I want to ask some specific questions.

We see a repetition on this page of the conclusion that CIDP is achieving diversion with 87 per cent of finalised matters. If we go to the next point, which also found that:

15

People with cognitive impairment eligible for diversion are being identified

20

- Two-thirds of individuals recorded as screened for CIDP in its first 12 months of operation were deemed eligible for the program.

On that point, it was an important priority for DCJ that people who were entering into the criminal justice system do have their impairment identified so that that can trigger the provision of supports?

25

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Similarly, the next point, they found that:

30

CIDP is providing participants with a clinical diagnosis.

.... (almost 25%) received a clinical diagnosis for the first time in their life.

That was an important achievement from the Department's perspective?

35

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Then:

40

Participants are being supported to access the NDIS.

I will take you to first dot point because it is relevant for the first and second versions of the model:

45

60% of NDIS eligible participants now have an active implemented plan.

That is an important achievement from the Department's perspective?

MR COUTTS-TROTTER: Yes, it is.

5 DR MELLIFONT: Next:

CIDP is improving the health and welfare of a cohort of people with a cognitive impairment and complex needs

10 Then we see some dot points under that:

Participants who have previously missed out on services are now receiving support.

15 *Participants can access a range of services to build a network, rather than single source of support.*

Participants report feeling respected and valued in a way not previously experienced.

20

What I want to ask about is that they speak to me as being very significant health benefits.

MR COUTTS-TROTTER: Yes.

25

DR MELLIFONT: When the Department was looking for money to try and get the program extended, did it go to Health and ask for money?

MR COUTTS-TROTTER: No. Not to my knowledge.

30

DR MELLIFONT: Okay. Do you know why (audio dropped out).

MR COUTTS-TROTTER: I'm sorry, I missed that.

35 DR MELLIFONT: Do you know why? Do you know it didn't go to Health?

MR COUTTS-TROTTER: No. No, I don't. I could make a supposition but I don't know why.

40 DR MELLIFONT: I am going to ask you to make a supposition, if you don't mind.

MR COUTTS-TROTTER: Because the Department of Communities and Justice had responsibility for the program and felt that it was something that we needed to deliver within the resources available to us, rather than the resources allocated to other agencies.

45

DR MELLIFONT: In the course of this hearing we have heard evidence from a

number of witnesses, and they speak to or advocate for the breaking down of silos from Department to Department, so that the benefits that might come out of something being run by one Department is recognised by another Department, so that there can be a whole-of-government approach to fixing the problem and, I take by that, funding.

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Do you agree with the need for that to happen in order for us to move forward in a truly transformative way?

MR COUTTS-TROTTER: Yes, I do.

DR MELLIFONT: You may want to have a think about this, but do you, from your years of experience within Government, have any ideas or insight as to how that might be practically achieved? What we as a Commission could recommend that would actually get traction in that respect?

MR COUTTS-TROTTER: I would respond by saying, when I think about the examples of excellent collaboration across agencies --- so for example, in the justice system it might be the Youth Koori Court, it might be the Drug Court, both of those projects engage staff from Health, from Education, from Youth Justice, from Child Protection, together with Corrective Services and on occasion Housing and other agencies. So there are really good practical examples where collaboration happens very effectively on a day-to-day basis.

I think the framework that encourages that to happen is a framework that establishes, where a government establishes clear outcomes that they wish to achieve that are broad but measurable, and then challenges its agencies to find the best way to deliver that outcome, which of course enables organisations like mine to think about how we can contribute to an outcome that also requires the contribution of Health or another agency.

But if agencies are given very narrow measures of performance, they quite properly drive hard to achieve those measures of performance. So, if the performance measure is narrow, agencies remain quite narrow in their scope and thinking; if the outcome is broader, then that does encourage the agencies to work together in different ways.

DR MELLIFONT: Thank you.

Can I come back also to the question of looking for money when there is a call for the CIDP to be extended beyond 30 June. Was there any consideration by your Department of perhaps looking to call on some of the prison budget into the program, on the basis that if there was investment in the program, then at some point in time that would see benefit to the number of people in prison, that is, a reduction? Was that a consideration?

MR COUTTS-TROTTER: Well, the consideration was a consideration across the whole of the Department's budget, which includes the prison system and the budgets associated with that. But you are talking about June 2020?

5

DR MELLIFONT: Yes.

MR COUTTS-TROTTER: June 2020, we were --- the usual process of planning for and delivering a State Budget had been suspended in response to COVID. The organisation was obviously quite properly occupied in trying to provide essential services during the pandemic. The aim with the CIDP pilot was always to try and learn some lessons that would enable us to put a model of diversion to government that was capable of being scaled up beyond two court locations and be made available to more people with cognitive impairment in more courts.

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We had planned for that to happen through the usual process of state Budget decision-making, which was suspended amid the COVID crisis in 2020. So we had a way to approach it, but COVID obliterated that, to be honest.

DR MELLIFONT: If COVID hadn't happened --- I am going to ask you to speculate about this --- would the ordinary process of budgetary consideration have involved thinking, "If we put money in now, then that might actually have an immediate, medium and long-term benefit on the number of people in prisons, so we should be really thinking about that in our budget consideration"? Would that ordinarily be done or is it the case that it is a more siloed approach, that is the CIDP program within the particular part of the Department was considered in that pocket, and the budgetary considerations wouldn't have gone so far as thinking more broadly about, "Hang on, if we do this now, we're going to save some coin for prisons sooner or later"?

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MR COUTTS-TROTTER: No, we would have approached it broadly because one of the outcomes for the Department through, in this case the Minister for Corrective Services has been charged to deliver, is a reduction in the rate of re-offending, and there are a range of initiatives inside and outside prisons that aim to achieve that target, a 5 per cent reduction in the rate of recidivism. The CIDP would have been considered --- would be considered along with a range of other initiatives that aim towards that goal, but at the same time the genesis of this was the Law Reform Commission Report from 2012 that identified the need for more effective identification and potential diversion of people with cognitive impairment. So it would be seen as a potential contribution to a broader outcome, but it would always be seen as a targeted response to some clear and accepted recommendations from that New South Wales Law Reform Commission Report.

DR MELLIFONT: I am going to move on the formal evaluation process of the first stage of the CIDP. It is correct, isn't it, that as a consequence of that process some areas were identified for improvement?

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MR COUTTS-TROTTER: Yes, that's correct.

DR MELLIFONT: And changes were made in the second iteration of the program to take into account the findings of that formal evaluation?

5

MR COUTTS-TROTTER: Yes, that's correct.

DR MELLIFONT: And that included removing the court reporting monitoring function?

10

MR COUTTS-TROTTER: Yes, it did.

DR MELLIFONT: And other changes around coordinating clinical assessments and support planning, timeliness issues?

15

MR COUTTS-TROTTER: The original model was premised on Justice Health recruiting neuropsychologists who would both screen and assess people for cognitive impairment and the experience of the first iteration of the CIDP was that it was very difficult to recruit and retain neuropsychologists to do that function, and so it took too long for people who needed screening and assessment to get it. So that was changed to a different approach in the second iteration of the CIDP.

20

DR MELLIFONT: If I can take you to June of last year, with that funding end date of 30 June 2020, even up to June the Department was having meetings with the IDRS?

25

MR COUTTS-TROTTER: Yes, we were, and also from memory the Council on Intellectual Disability and others.

DR MELLIFONT: To your understanding, is it correct that even in that last month, a last-ditch attempt was made to try to persuade the Attorney-General to continue funding for the CIDP beyond 30 June?

30

MR COUTTS-TROTTER: No, I don't think that's a fair characterisation. The advice that we provided as a Department to the Attorney-General was that there had been many positive outcomes from CIDP 1 and 2, but the second iteration was in a phase of wind-up, in other words decisions were being made and arrangements made to support people who were current participants in the program, and given the uncertainty of when decisions about the State Budget would be made, my recommendation to the Attorney-General was not to reverse the decision to wind up the second phase CIDP pilot. But the advice to the Attorney-General, of course, went on to say there were many lessons that were learnt from CIDP phase 1 and phase 2 and that they would be drawn on to develop a model for hopefully a more effective and larger system of diversion for people with cognitive impairment before the courts.

40

45

DR MELLIFONT: Okay.

CHAIR: Mr Coutts-Trotter, from the perspective of the Department, what were the main objectives that were sought to be achieved by this or any replacement program? What was the interest of the Department?

5

MR COUTTS-TROTTER: Thank you, Chair. It was to respond to the recommendations of the 2012 Law Reform Commission report and establish a competent service to support magistrates in deciding whether someone was appropriate to be considered for diversion and to create a service system that screened people, identified where possible from existing records evidence of someone's cognitive impairment, designed and arranged a plan to put supports around that person, so that they could be safely diverted away from prison or the justice system, and supported in the community.

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15 CHAIR: They are means to an end, I would have thought.

MR COUTTS-TROTTER: Yes.

CHAIR: What was the end from the Department's point of view?

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MR COUTTS-TROTTER: Firstly, that people who don't need to be imprisoned, people with cognitive impairment who, under law, have available to them an option other than prison, are more likely to obtain that option because obviously it's better for them, and evidence suggests that for people who are appropriate for diversion, if they obtain that diversion they are less likely to appear before the courts. So there's a broader benefit there to obviously the justice system but the community as a whole. And then in connecting people with cognitive impairment to reasonable and necessary supports through the NDIS, it offers the prospect of people being supported to enjoy genuine inclusion in the community, to the benefit of their own health and wellbeing and to the broader benefit of the community.

25

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CHAIR: Do we find those objectives from the Department's point of view articulated anywhere?

35 MR COUTTS-TROTTER: In relation to CIDP, Chair?

CHAIR: Yes.

MR COUTTS-TROTTER: Well, the request for --- yes, I think you do and I also think they were contained in the process of selecting an independent organisation to evaluate the impact of CIDP. So explicit in that was a desire to have some analysis of the broader health and welfare outcomes as well as an impact on contact with the justice system and re-offending.

40

45 CHAIR: I understand that, but that is ex post facto, in a way, isn't it? An evaluation takes place after the program is already underway. My question is: were those goals articulated with clarity before the program got underway, as far as the Department

was concerned?

MR COUTTS-TROTTER: To the extent the program attempted to deliver on the recommendations of the Law Reform Commission Report and that articulated both,
5 as you say, the means but also the reason why you would try and divert appropriately people from the justice system, yes, I think that objective was clear, the choice of the Intellectual Disability Rights Service as a provider, again, I think indicated some understanding of what was trying to be achieved.

10 CHAIR: The aims went beyond reducing re-offending and reducing the numbers of people who would go through the criminal justice system and proceed perhaps to custody. The aims were also to improve the wellbeing, the welfare, the independence, autonomy of people with cognitive disability themselves.

15 MR COUTTS-TROTTER: Yes. Yes, thank you, that's what would --- yes.

CHAIR: Is that what the Law Reform Commission said?

MR COUTTS-TROTTER: Well, the Law Reform Commission Report preceded the
20 implementation of the National Disability Insurance Scheme and what you have just described of course is an excellent description of the objectives of the National Disability Insurance Scheme, so the extent to which CIDP attempted to divert people from the justice system but also connect them to the supports, reasonable and necessary supports available through the NDIS, it is about trying to achieve a whole
25 range of health, wellbeing, safety and employment outcomes for people, by providing reasonable and necessary supports, identifying those people with cognitive impairment and moving them out of the justice system into the community with appropriate supports.

30 CHAIR: I don't want to sound unduly cynical about anything, but the choice of two local courts in areas that were going to be covered by the NDIS, were there financial factors affecting the State that were taken into account? In other words, once one diverts people into the NDIS who might be eligible for it, presumably there would be cost satisfaction for New South Wales? They may not be cost savings for the NDIS,
35 but was that a factor to take into account?

MR COUTTS-TROTTER: No, because the NDIS is jointly funded by States, Territories and the Commonwealth, and in the areas where the NDIS was implemented it involved the full commitment of all of the State's funding for
40 disability services in that area, through the National Disability Insurance Agency, back to individuals with individual support packages. So it was about maximising the services and supports available through the NDIS, and it wouldn't have had regard to the financial position of the State in relation to disability services.

45 CHAIR: Thank you.

Yes, Dr Mellifont.

DR MELLIFONT: Thank you, Chair.

Can I take you to another topic for a moment.

5

Ms Cootes gave evidence yesterday and spoke about the approach sometimes taken in the CIDP which was in part an express preference of the magistrates to adjourn proceedings to enable supports to be in place and to be working, so that when the magistrate was faced with making a decision about whether or not to grant a diversion order, they could have some confidence that it would work.

10

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Do you see the logic in that?

15

MR COUTTS-TROTTER: Yes, I do.

DR MELLIFONT: You regard that as being a meritorious approach, consistent with the spirit of the intention of the program?

20

MR COUTTS-TROTTER: Yes, I do.

DR MELLIFONT: Can I take you, please, to your letter to the Commission of 3 July 2020, which is NSW.0028.0001.0001, at page 0002. I will take you to a particular part of that document in a moment.

25

Of course, we are now aware that there was an evaluation, a formal evaluation for the first stage of the program but there was no formal evaluation for the second stage of the program. Is that correct?

30

MR COUTTS-TROTTER: Yes. Yes, that is correct.

DR MELLIFONT: At the bottom of this page, under heading 3, "The rationale" ---

35

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: If we could have the last paragraph brought up please, which commences "As noted, a revised model".

40

You will see there some issues that were said to be identified with the modified CIDP model are set out.

MR COUTTS-TROTTER: Yes.

45

DR MELLIFONT: Where do we look to find the primary source material which identified these issues?

MR COUTTS-TROTTER: So these are issues identified by staff of my Department in discussions with the Intellectual Disability Rights Service, other government agencies, the National Disability Insurance Agency, so there are a range of people who our Department has been in discussions with, to try and understand the
5 experience of the --- the perspectives of people about the operation and experience of the second iteration of CIDP.

DR MELLIFONT: What I'm going to ask you and/or the State of New South Wales to take on notice for the Commission is an identification of the source documents
10 which formed the briefing for these three dot points that we see in your letter. Are you content for that to be taken on notice, please?

MR COUTTS-TROTTER: Yes, certainly. We will do that.

15 DR MELLIFONT: Thank you.

Can I take you, please, to the third page of that letter.

MR COUTTS-TROTTER: Yes.
20

DR MELLIFONT: If we can bring up the first paragraph, you were informing the Commission, I take it --- sorry, I'll ask the question. Is the purpose of this paragraph in the letter to inform the Commission that the reasoning for discontinuance of the CIDP was based on cost?
25

MR COUTTS-TROTTER: The decision to instigate the second iteration of the CIDP?

DR MELLIFONT: No, I'm sorry. The decision for there not to be a continuation of the pilot program beyond 30 June 2020.
30

MR COUTTS-TROTTER: Oh, okay. Cost was one consideration, but the points made that you had just highlighted was the other. We, in discussion with the Intellectual Disability Rights Service and others, thought that there were further
35 opportunities to improve on the operating model of the second version of CIDP, but it is true that while the average cost for clients of the service was lower in the second model of the CIDP, it was still from memory I think around \$4,500 per referral and so still above the estimates that were established for the program when the first pilot was put in place. So, yes, there is a consideration about trying to get the best value
40 for money, but it's not the only consideration. The other consideration is the effectiveness of the operating model in achieving the aims of screening assessment and connecting people with cognitive impairment to supports.

DR MELLIFONT: The success features that we saw in the evaluation report for the first phase of the program, those features still carried across in respect of the second
45 iteration of the program. That's correct, isn't it?

MR COUTTS-TROTTER: And --- sorry, just to be clear, you are talking about the evaluation, the cost benefit evaluation or the process that ---

5 DR MELLIFONT: I'm talking about the process evaluation, so those conclusions of achieving diversion, identifying cognitive impairment, being supported by NDIS, all of those, we saw all of those benefits continue in the second model? That's correct, isn't it?

10 MR COUTTS-TROTTER: Yes. Yes, we did.

CHAIR: Can we just come back to the costs. I'm asking this --- I thought Dr Mellifont might ask you a couple more questions on this and I just want to be clear about it.

15 That first paragraph on the page deals with an average cost of \$32,780 in relation to each diversion over a period of the pilot, 2017 to 2020. Have I got that right?

MR COUTTS-TROTTER: Yes, that's my understanding, Chair, yes.

20 CHAIR: In your answer to Dr Mellifont a little earlier, I think you said that in the second iteration of the program the cost per referral was \$4,500, and I wasn't quite sure what you meant by that. Is that the same thing as the cost of a section 32 diversion or is that something else?

25 MR COUTTS-TROTTER: No, Chair. So there are a variety of steps in the process. The first is a referral to the service. But only a share of people who are referred are identified as people with cognitive impairment, and then only a share of those people who are so identified receive a section 32 diversion. So the figures are referencing different things, different points in the process. The referral is at the very front end
30 of the program; the successful diversion, of course, is an output, the desired output of the program.

CHAIR: I follow that, thank you. If we go then to the third paragraph, the estimated diversion cost of the statewide Community and Court Liaison Service is said to be
35 between \$1,100 and \$1,700 per client. Is that a reference to \$1,100 to \$1,700 per diversion or per referral? In other words, is it comparable to what is being posited in the first paragraph?

40 MR COUTTS-TROTTER: I think it's referring to diversion, so the output. But I don't think it is comparable to --- it would not be fair or accurate to compare the two programs because the statewide Community and Court Liaison Service is something that operates within a day in the court, it operates to a different model, it doesn't involve the same kind of case coordination or case management and follow-on as the CIDP in both its iterations involved.

45 So it's a model, but it's a different model of achieving diversion, in this case for --- fundamentally for people who experience poor mental health.

CHAIR: Thank you for that very fair answer, if I may say so. But that means, doesn't it, that the implicit comparison between the first and third paragraphs is inappropriate?

5

MR COUTTS-TROTTER: Well, I regret that the way the letter is constructed suggests that comparison and so I completely acknowledge that and, as I say, I don't think the two services --- the two services, in my judgment, are not comparable for the reasons I have outlined.

10

CHAIR: Let me be clear. I'm not suggesting this was done deliberately, I'm just saying the way it reads, it looks as though there is a comparison between \$32,000 and \$1,700, but as you have explained, that comparison is not really one that is either intended or fair.

15

MR COUTTS-TROTTER: Exactly, Chair. Thank you.

CHAIR: Thank you.

20

DR MELLIFONT: Thank you. I am going to come back to some additional questions on the costs of the program as part of the reasons for the decision a little later, but I want to take you, please, to the second paragraph of that letter, which says:

25

There are other court based programs which have similar functions as the CIDP pilot, albeit without all of the same benefits, which are less expensive to run.

30

Can I ask you this? Is it to be expected that the CIDP was more expensive, given that it goes beyond what those other two programs do and provide by way of support? That's correct?

MR COUTTS-TROTTER: Yes. Yes, that's correct.

35

DR MELLIFONT: And one of the very specific features of the model recognised by New South Wales Government was that it did provide intensive engagement with people with cognitive impairments to establish trust and support through NDIS and court diversion processes; correct?

40

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: And in fact you recognise and acknowledge that neither the SCCLS or the JAS provide that service for people with cognitive impairment; correct?

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MR COUTTS-TROTTER: Correct.

DR MELLIFONT: Can you help me to understand another aspect of funding, please. The SCCLS is funded through Justice Health and Forensic Mental Health Network. Does that sit ---

5 MR COUTTS-TROTTER: That's correct.

DR MELLIFONT: Does that sit within and under your rubric?

10 MR COUTTS-TROTTER: No. That is a function, a division, of New South Wales Health.

DR MELLIFONT: Okay. Can you explain to me how that funding arrangement works?

15 MR COUTTS-TROTTER: The funding of the State-wide Community and Court Liaison Service?

20 DR MELLIFONT: Yes. Maybe I'll ask the question in a better way. Is that service funded and operated by Health?

MR COUTTS-TROTTER: Yes, it is.

25 DR MELLIFONT: To what extent is there collaboration or integration between Health and your Department as to that program?

30 MR COUTTS-TROTTER: I think there's very --- in operational terms, day-to-day within courts, but both in operational terms, day-to-day in courts and another a sort of policymaking, policy evaluation level, I think there's very good collaboration both on this program and indeed the services offered by Justice Health.

DR MELLIFONT: I need to get some content around that answer, Mr Coutts-Trotter, that is, what is --- as opposed to a description that it's good, what is the actual interaction in terms of policy and policy development for diversion?

35 MR COUTTS-TROTTER: I think I'm best to take that on notice so I can give you a clearer and more comprehensive answer, but taking my earlier observation about the government establishing as a goal, trying to reduce recidivism, we know that effective diversion in the right circumstances lowers the risk that someone will re-offend compared to imprisonment. So while it is a health service seeking to
40 identify people who need mental health services and support, by its operation it helps to achieve broader outcome --- a shared outcome of reducing re-offending. So there is discussion at a policy level about the various contributions of programs within my own Department and other departments to these desired outcomes of government. But, as I say, I should take it on notice and give you hopefully a more comprehensive
45 and illuminating description of how things work in detail.

DR MELLIFONT: Thank you. Can I ask the second part of that, which is: then how

is it determined, as between Health and Justice, who might ask for budget share?

MR COUTTS-TROTTER: The New South Wales Government is moving from the more traditional way of funding departments, which I suppose is siloed, towards
5 so-called outcome budgeting, where an outcome is identified and then resources not just within an individual agency but, as this matures, across agencies, are identified that are linked towards delivering that outcome. You then will --- the government's plan, of course, is to move to a situation where the outcome is what matters, the contribution of different agencies is important, but what is important is the outcome
10 and therefore resources would be moved between activities and interventions, depending on the evidence of impact in achieving that outcome.

So that system of outcomes budgeting is relatively new, it is yet to be fully implemented and realised, but it is an attempt to move away from some of the
15 problems you have been describing.

DR MELLIFONT: Do you have any particular insight as to when that new system or approach will be implemented and realised?

20 MR COUTTS-TROTTER: I will take it on notice. There are timeframes available and I think published through the New South Wales Treasury, but I will take that on notice and provide it to the Commission.

DR MELLIFONT: Thank you.
25

The SCCLS operates in 22 local courts across New South Wales, so far as I understand. Is that your understanding?

MR COUTTS-TROTTER: Yes, that's my understanding.
30

DR MELLIFONT: How many local courts are there across the state, approximately?

MR COUTTS-TROTTER: There are around 160 local courts. But many of those courts are very low volume courts, very few matters are heard there. There's a ---
35 small number of courts account for about 75 per cent of the volume of criminal matters through the local courts system in New South Wales. And the State-wide Community and Court Liaison Service is located in high-volume courts, so it might be 22 locations but it would be a much larger share of activity than 22 compared to 160 courts suggests.
40

DR MELLIFONT: In respect to the program or programs currently under consideration --- for example, Connect to Divert --- what is in contemplation in terms of how many courts that is to operate in?

45 MR COUTTS-TROTTER: That is still subject to finalisation. There was contemplation over a number of years --- a scale-up over a number of years for it to operate, I think from memory, in 18 busy courts. But, as I say, the business case for

Connect to Divert is being finalised because it has as a key input the evaluation of the Justice Advocacy Service, which was only received, I think the final report was received on 4 February.

5 DR MELLIFONT: Is it in contemplation that it will be co-located with where the SCCLS programs are in place?

MR COUTTS-TROTTER: I don't know that for certain. I'm happy to take that on notice and confirm it for you.

10

DR MELLIFONT: Thank you.

15 Just before we move off the SCCLS, as you state in your statement, it is designed to support diversion of people with mental health needs. Do you know whether that includes personality disorders?

MR COUTTS-TROTTER: I don't know with certainty, and I again could take that on notice and confirm it for you.

20 DR MELLIFONT: Thank you.

25 But it is your understanding that if you are a person with cognitive impairment or cognitive disability, you are only eligible for assistance under that program if you have an existing diagnosis of the cognitive impairment or cognitive disability and a co-existing mental health need; is that correct?

MR COUTTS-TROTTER: That is my understanding, but I again would need to confirm it on notice. Yes.

30 DR MELLIFONT: Building on that, even with those things, it's only if there's service capacity?

MR COUTTS-TROTTER: Yes, that's right.

35 DR MELLIFONT: So, to your understanding, is it the case that sometimes provision of support is not given to people who fit that criteria on the basis of lack of capacity or lack of resources?

40 MR COUTTS-TROTTER: Obviously the service is available in 22 courts and so not available in other courts, so, clearly, if someone who needs the service appears before a court where the service isn't available, they don't get access to the constraints that apply to --- in the 22 sites, I don't know, but I could seek information and respond on notice.

45 DR MELLIFONT: Thank you.

In your letter --- this is back to NSW.0028.0001.0003 --- at paragraph 3 you speak

about that service as resulting in "reduced court contact for participants". I'm just trying to understand what that phrase means, "reduced court contact". Is that a decrease in recidivism or is it something else?

5 MR COUTTS-TROTTER: It would be broader than recidivism. It would be contacts of all types with the court.

DR MELLIFONT: Do you know or can you take on notice what the primary information is for that statement about reduced court contact?

10

MR COUTTS-TROTTER: I would need to take that on notice.

DR MELLIFONT: Thank you.

15 Just a couple more questions on this topic. I do appreciate it comes under Health, but we, that is the Commission, are aware of a study conducted by UNSW, published in 2019, looking at New South Wales court diversion for those with psychotic disorder and its impact on re-offending rates.

20 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: It speaks about 26 per cent receiving diversion and 74 per cent receiving punitive outcomes. Are you aware of any study within the Government that looks more broadly at the effectiveness of that service?

25

MR COUTTS-TROTTER: Of the State-wide Community and Court Liaison Service?

DR MELLIFONT: Yes.

30

MR COUTTS-TROTTER: No, I'm not, and I would need to take that on notice.

DR MELLIFONT: All right.

35 CHAIR: Mr Coutts-Trotter, can I ask you this: in our earlier exchange, I think you helpfully identified the objectives of the pilot program and they included the maximising the use of the diversion option within the legislation so that people with cognitive disability are not dealt with in the criminal justice system and thus not subject to imprisonment but rather diverted into other programs and other ways of
40 dealing with their complex issues. And also, the object of the pilot scheme, as I understood your evidence, was to improve the quality of life, the independence of people with cognitive disability, primarily through assisting them to get the assistance available under the NDIS.

45 Is there any program ---

MR COUTTS-TROTTER: Yes.

CHAIR: Is there any program within New South Wales which in your opinion seeks to attain those objectives which were the objectives of the pilot program?

5 MR COUTTS-TROTTER: No, neither the State-wide Community and Court Liaison Service nor the Justice Advocacy Service directly address those objectives. In the absence of a CIDP, there is a gap in doing that.

CHAIR: Thank you. I appreciate, of course, that you cannot commit the State
10 Government to funding. I understand, I think, the difficulties associated with that.

MR COUTTS-TROTTER: Yes.

CHAIR: But just putting the funding aside for one moment, do you agree that it
15 would be a very good thing for New South Wales and for people with cognitive disability to have a program that sought to achieve the objectives we have identified?

MR COUTTS-TROTTER: Yes, I would.

20 CHAIR: Thank you.

DR MELLIFONT: Thank you.

I want to move on to the JAS. As you have indicated, it provides --- you regard it as
25 providing an essential service to people with cognitive impairment, whether they are witnesses, defendants or victims, to exercise their rights and participate in the legal process?

MR COUTTS-TROTTER: Yes.
30

DR MELLIFONT: It's not primarily a diversion program; correct?

MR COUTTS-TROTTER: No, it provides a reasonable adjustment for people with
35 disability in contact with the court.

DR MELLIFONT: You have spoken about having received the Ernst & Young 2020 evaluation of JAS. It is very positive, isn't it?

MR COUTTS-TROTTER: As I say, I have not read it fully. Yes, it is positive, from
40 my early reading of it.

DR MELLIFONT: You have in fact extracted some of the key findings of it into your statement which was provided this week --

45 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: --- that is at paragraphs 43 and 44, which is

STAT.0322.0001.0011.

MR COUTTS-TROTTER: Yes.

5 DR MELLIFONT: At paragraph 43 it sets out the aims the program achieves. At
paragraph 44, one key finding was that clients, suspects and defendants with a
cognitive impairment supported by the JAS were less likely to be found guilty and
more likely to receive a section 32 diversion order. That's your understanding of the
finding?

10

MR COUTTS-TROTTER: That's an aspect of the findings, yes.

DR MELLIFONT: When will a decision be made about whether funding for JAS
extends beyond 30 June 2021?

15

MR COUTTS-TROTTER: Certainly within --- between now and June. But we have
not yet had an opportunity to present this evaluation to the Attorney-General. We
will be doing that promptly, and so we are conscious of the fact that a decision about
whether or not to continue the Justice Advocacy Service needs to be made ahead of
20 June, because the program would have to scale itself down if there was no ongoing
funding. So from a Department's perspective, we will try and equip Government to
make a decision in the next couple of months.

DR MELLIFONT: It is correct that JAS, apart from providing assistance to people
25 with cognitive impairment who are suspects or defendants, also provides assistance
to people who are victims of crime or witnesses --- witnesses for the prosecution?

MR COUTTS-TROTTER: Yes, that's right.

30 DR MELLIFONT: Were you able to listen to or have you read the evidence of
Ms Cootes from yesterday?

MR COUTTS-TROTTER: I have read some of the evidence of Ms Cootes from
yesterday, I'm afraid I didn't have a chance to listen to what she had had to say.

35

DR MELLIFONT: That's okay, I just needed to know how much to put to you in
terms of content.

MR COUTTS-TROTTER: Yes.

40

DR MELLIFONT: She spoke very respectfully about the challenges that her service
faces, not knowing if funding will continue, and she included within those challenges
that even staff start to look elsewhere.

45 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: They are at this point in time starting to look --- some are

thinking about looking elsewhere because there is no funding decision by now.

MR COUTTS-TROTTER: Yes, I am familiar with that dynamic and I'm --- yes, absolutely. I understand ---

5

DR MELLIFONT: You'd accept that as a valid concern?

MR COUTTS-TROTTER: Absolutely.

10 DR MELLIFONT: And that to lose good and experienced staff is not good for people with cognitive impairment or for the community at large?

MR COUTTS-TROTTER: No, that's right.

15 DR MELLIFONT: What can be done in your experience, your insight, about the timing of Government Budget decisions so that services like the IDRS know well in advance of the end of financial year whether they will continue to get funding? What can be done?

20 MR COUTTS-TROTTER: Well, usually the cycle of Budget decision-making sees decisions about the Budget beginning in July being made between February and April. That tends to be the cycle. So that there is from time to time a sort of pressure and anxiety that I'm sure some staff of the IDRS are facing. In its last Budget, the government did in relation to our own Department, for example, provide guaranteed
25 four-year funding for a range of the human service system, so the specialist homeless service system, a variety of family support services. So it is an issue understood by political decision makers, they appreciate the practical challenges for non-government organisations if they don't have funding certainty.

30 But equally, in some areas of social policy, because of a lack of evidence, there are experiments, there are pilots that are time-limited that are evaluated, that have no ongoing certainty but are necessary things to do in order to build understanding, determine what works best, and enable governments to make better informed decisions.

35

So the issue I think is understood by governments and by and largely they do what they can to accommodate those kinds of pressures, but it's not always possible to do so.

40 DR MELLIFONT: Let me get a little bit more specific. JAS has been around for quite a long time now; correct?

MR COUTTS-TROTTER: Initiated in 2019, I think, yes.

45 DR MELLIFONT: It was the expansion of that program occurred in 2019 but it was in existence before then.

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: If the political will is there, is there capacity within the Department for the Budget decision to be made earlier?

5

MR COUTTS-TROTTER: Look, it's the decision for Government. Government can ---

DR MELLIFONT: Okay.

10

MR COUTTS-TROTTER: Yes, it's a decision for Government.

DR MELLIFONT: I might go for another five minutes or so, Mr Coutts-Trotter, and then take a short break.

15

I want to take you, please, to paragraph 37 of your statement.

MR COUTTS-TROTTER: Yes.

20 DR MELLIFONT: What you set out here is that if the Connect to Divert Program is adopted, what the anticipated features are. Can you tell me, please, what's different, if anything, about what's contemplated for the Connect to Divert Program compared to the CIDP?

25 MR COUTTS-TROTTER: The second iteration of the CIDP?

DR MELLIFONT: Yes.

30 MR COUTTS-TROTTER: I think the key area where we are trying to get better clarity of roles is the role of, in this instance, the Intellectual Disability Rights Service in providing case management and the coordination for people with cognitive impairment of the whole variety of support services that they need, with the role that --- under agreements between governments to establish the NDIS is clearly a function and a responsibility of the National Disability Insurance Scheme to provide specialist support coordinators. So specialist support coordinators aim to be people who are funded through a participant's NDIS package where the package involves a broad and valuable range of complex but necessary support services, so there's a degree of sophistication and capability required there to coordinate the services that are funded through the package. That is a role that is properly the role of the NDIS, and what we are trying to achieve here with our colleagues at the NDIA is a maximisation of the proper roles of the State Government and State services and the proper role of the NDIA and its NDIS special support coordinators.

45 DR MELLIFONT: Okay. How are you trying to do that?

MR COUTTS-TROTTER: By having clarity about the expectations of that role and, I guess, at a very operational level, ensuring the NDIA has available sufficient and

expert specialist support coordinators, and that there are good operational protocols in place to enable that partnership to be formed --- and I should stress that if there was a decision of Government to fund Connect to Divert, there is still a really critical process of the final design both with the National Disability Insurance Agency but
5 most importantly with people with cognitive impairment and their representatives or organisations that support them, who have contact with the justice system.

So the principles are outlined in my statement, there is an operational design, but there is still a level of more detailed work to be done to maximise the different roles
10 of the NDIA and state agencies.

DR MELLIFONT: At what level are these discussions happening, that is, at what level of New South Wales Government and at what level of NDIA? Who is talking to who?
15

MR COUTTS-TROTTER: Within my Department, it's a team --- forgive the Public Service jargon --- led by a director, so that's an executive. So it is a person authorised to and capable of having negotiations about how an operating model would work and who does what within that arrangement. But if you want more fine
20 grain detail, I'm really happy to take it on notice and provide it to you.

DR MELLIFONT: Thank you. At what level do you understand the engagement is coming from NDIA?

25 MR COUTTS-TROTTER: I would need to confirm that on notice for you.

DR MELLIFONT: Okay. When did these negotiations start and when is it expected they might come to fruition?

30 MR COUTTS-TROTTER: Again, I would need to take that on notice, but there's been really quite regular --- I wouldn't say constant --- but very regular discussion between all agencies and IDRS and other organisations through the various --- through the two iterations of CIDP and since June 2020 in trying to develop a model to build on the lessons and the many successes of CIDP.
35

DR MELLIFONT: Apart from that issue you have identified, which is better clarity of roles as regards case management and coordination and that specialist support coordinator function of the NDIS, is that the only change or difference from the CIDP?
40

MR COUTTS-TROTTER: The other challenge to resolve is the first version of CIDP had problems recruiting, retaining and therefore getting access to neuropsychologists. The second iteration of the CIDP brokering --- providing the IDRS with capacity to purchase those assessments improved upon that, but there
45 remained challenges with that, that meant that people who needed an assessment waited too long to get one. So I'm sure that is another focus of this latest iteration and an attempt to resolve some of those challenges.

DR MELLIFONT: Can you take on notice for me, please, who has the greatest operational knowledge, planning knowledge, in respect of identifying features of the current Connect to Divert Program in contemplation, compared to CIDP?

5

MR COUTTS-TROTTER: Yes, certainly.

COMMISSIONER McEWIN: Dr Mellifont, could I ask a question to Mr Coutts-Trotter on that.

10

At clauses 59, 60, 61 and 62 of your statement, you talk about the Justice Liaison Officers. Can you explain and help me understand the interface between those roles and what you have just described about support coordination?

15 MR COUTTS-TROTTER: Thanks, Commissioner. They are a relatively new feature. These are roles that have been put in place by the National Disability Insurance Agency progressively nationwide and their function is to work with the system, the justice system, to try and identify these kinds of systemic issues and challenges in the interface between the National Disability Insurance Scheme and the
20 justice system. So it could be about how we better facilitate the connection between participants in the NDIS who may be incarcerated, who are then transitioning back out into the community and need to have their plan reassessed, how does that best happen inside the prison system, how do you best support the transition of people in that circumstance from the primary responsibility of Justice to the community with
25 the supports of the NDIS?

So it is a focus on systemic operational improvements, obviously informed by the experience of individuals, but it is a sort of systemic operational improvement is the chief objective of those roles, as I understand it.

30

COMMISSIONER McEWIN: Okay. Just so that I understand more, is that a more collaborative relationship between your Department and the NDIA?

35 MR COUTTS-TROTTER: It's an attempt to deepen that collaboration, yes, absolutely.

COMMISSIONER McEWIN: Okay. Thank you.

40 DR MELLIFONT: Quickly picking up on that topic, the JLOs don't provide assistance directly to the people with disability rather training and assisting those working within the system?

45 MR COUTTS-TROTTER: Yes, and trying to identify these systemic issues across the boundary between a --- the state service and the NDIS.

DR MELLIFONT: Okay. Four out of the five intended JLO positions have been appointed; is that correct?

MR COUTTS-TROTTER: That's my advice, yes.

DR MELLIFONT: Have been told by the NDIA when you will get the fifth?

5

MR COUTTS-TROTTER: No, but we are very enthusiastic for the appointment to be made because they are very valuable roles.

DR MELLIFONT: Is five enough for the state?

10

MR COUTTS-TROTTER: In truth, I don't know, and I think in fairness they are a relatively new feature and it could be too early to tell. I could take that one on notice and seek advice from people who might have a more informed view within my agency, if you would like.

15

DR MELLIFONT: Thank you, I appreciate that. I appreciate your homework list is getting long.

Could we, please, Chair, have a very short break of 5 or 10 minutes at this stage?

20

CHAIR: How long are you going to be with Mr Coutts-Trotter?

DR MELLIFONT: I think probably another 20 minutes or so, but I might be able to rationalise my examination plan with that break.

25

CHAIR: Ms Furness, are you likely to want to ask Mr Coutts-Trotter any questions?

MS FURNESS: No, I'm not at this stage, Chair.

30 CHAIR: Yes, I appreciate that the questioning hasn't finished, thank you for that.

CHAIR: I suggest we adjourn until 12.10 Queensland time and 1.10 Sydney time, with the expectation that Dr Mellifont will conclude with Mr Coutts-Trotter very close to 12.30 Queensland time.

35

DR MELLIFONT: Yes, thank you.

CHAIR: If you don't mind, Mr Coutts-Trotter, we will take a short break and then hopefully you will be able to get away.

40

MR COUTTS-TROTTER: Of course. Thank you very much.

ADJOURNED

[1.01 PM]

45

RESUMED

[1.10 PM]

CHAIR: Thank you, Mr Coutts-Trotter.

5 Yes, Dr Mellifont.

DR MELLIFONT: Commissioner Atkinson has a question.

10 COMMISSIONER ATKINSON: Thank you. I should have asked you this a long time ago, Mr Coutts-Trotter, but I missed the moment.

You agreed with the Chair some time ago, in the questioning, about the value of having a diversionary service such as with the objectives of CIDP throughout New South Wales.

15

MR COUTTS-TROTTER: Yes.

COMMISSIONER ATKINSON: I haven't misstated that?

20 MR COUTTS-TROTTER: No, no.

COMMISSIONER ATKINSON: Of course, we live in a federation and of course the NDIA has added a layer of complexity to that. But in fact, our criminal justice system exists in the States and Territories on a State and Territory basis. Can you think of any reason why the value of having a diversionary service like the CIDP would not apply to every State and Territory?

25

MR COUTTS-TROTTER: No.

30 COMMISSIONER ATKINSON: Thank you.

DR MELLIFONT: Thank you, Commissioner.

35 Can I have document NSW.0033.0007.0001? This is a briefing note to the Attorney-General in respect of cessation of the Cognitive Impairment Diversion Program, date-stamped 15 May 2020.

MR COUTTS-TROTTER: Yes.

40 DR MELLIFONT: If we go to the last page momentarily, page 0004, this is a document that you approved to go to the Attorney?

MR COUTTS-TROTTER: Yes, it is.

45 DR MELLIFONT: In so doing, you were endorsing the contents of it?

MR COUTTS-TROTTER: Yes, I was.

DR MELLIFONT: Does it set out a briefing to the Attorney-General in respect of the cessation of the CIDP?

5 MR COUTTS-TROTTER: Yes, it does.

DR MELLIFONT: Do we see on the first page of it, page 0001, that the key facts ---

CHAIR: Could that be expanded?

10

DR MELLIFONT: Could we have the fourth and fifth points, "CIDP model is costly". Thank you very much.

15 So, two of the key facts put to the Attorney-General in respect of the recommendation for cessation of funding was that it was:

.... costly, resource-intensive and not scalable state-wide. The services provided replicate services provided under NDIS.

20 *- CIDP costs \$4,600 per client, which is four times more than that the court per client for the [SCCLS].*

Do you agree with the two reasons put to the Attorney-General?

25 MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Going over to page 0002, under the heading "Cost benefit analysis", in the second paragraph, "However a cost benefit analysis", you will see there is reliance upon the second of the cost benefit analysis conducted by the analysts in support of the recommendation. Is that correct?

30

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: So the cost benefit analysis and economic considerations were really prime drivers in the reason for cessation of the program; is that correct?

35

MR COUTTS-TROTTER: They were among the considerations, yes, absolutely.

DR MELLIFONT: Can I suggest to you they were significantly weighted in the consideration?

40

MR COUTTS-TROTTER: Well, as to briefing note outlines, there were a range of issues with the model of operation that were improved from CIDP 1 to CIDP 2, that we aimed to improve further with a better model to replace CIDP 2.

45

DR MELLIFONT: To your mind, was there a consideration of more weight in this process than the economic consideration?

MR COUTTS-TROTTER: The financial or economic analysis obviously was an important input, but the views of and experience of people who participated in the two programs, as well as the views of stakeholders and indeed the Department, are also considerations. There is a need for an effective mechanism to identify and divert appropriately people with cognitive impairment.

The background to this, of course, is that the Department is working with disability sector stakeholders, with other agencies, with the NDIA, to develop an improved model, Connect to Divert, that we will put before Government. I suppose I'm trying to draw the distinction between the need to have an effective mechanism for diversion and support and then what we learnt from the operating experience of CIDP 1 and CIDP 2.

DR MELLIFONT: Is one of the considerations for the potential new program Connect to Divert that it will be less costly than the CIDP? Is that one of the goals of the Connect to Divert Program?

MR COUTTS-TROTTER: Well, it would be desirable and one way of --- there's the lessons learnt from CIDP itself, but also the Justice Advocacy Service, while different to a diversionary service, is very complementary with a diversionary service for people with cognitive impairment.

There is an opportunity there, we think, in concert with various stakeholders, to think about bringing those two things together within Connect to Divert so that you could both maintain the quality and reach of Justice Advocacy but reduce the total cost of a Justice Advocacy-like service and a diversionary service to replace CIDP.

DR MELLIFONT: That thinking assumes the continuation of JAS beyond 30 June this year, does it?

MR COUTTS-TROTTER: Yes, it does, either as a standalone initiative or ultimately as part of a Connect to Divert.

DR MELLIFONT: I want to take you to a couple more topics before I finish up by 12.30. Your statement says the tender documentation required the analyst --- that is, the analysts who were doing the cost benefit --- to include the health and welfare benefits?

MR COUTTS-TROTTER: Yes.

DR MELLIFONT: Do I take it that the tender documents included that requirement to take into account health and welfare benefits because that was considered to be an important consideration; is that correct?

MR COUTTS-TROTTER: Yes, that's correct.

DR MELLIFONT: Paragraph 34 of your statement says that:

5 *Comments on the second draft of the cost-benefit analysis supported the inclusion of more benefits to the analysis to support a better cost-benefit ratio, and a more robust overall analysis. This included offers to provide specific research articles and assist with further data provision.*

10 I suspect you will need to take on notice what research articles and what further data was being offered, or can you answer that here?

MR COUTTS-TROTTER: No, I can't. I will need to take that on notice. Thank you.

15 DR MELLIFONT: In doing so, I will ask you to see whether Professor Baldry's work on the cost of criminalisation was part of the research which was offered.

20 Your statement goes on to say that the analysts were unable to attribute health and welfare benefits due to the unreliability of estimations and the lack of baseline data. My question is: why, in circumstances where the analysts did not, for their stated reasons, or did not take into account health and welfare benefits and the Department thought that was important --- why was there reliance upon that cost benefit analysis when briefing the Attorney-General in respect of the decision to cease?

25 MR COUTTS-TROTTER: So I think, in fairness, the briefing to the Attorney-General --- and I take accountability for it --- would have been improved by adding in that very observation. But I would also say that the work to identify the costs and benefits of a model to replace CIDP absolutely does seek to identify and quantify a range of health and welfare benefits that would flow from such a diversionary program.

30 DR MELLIFONT: Can I suggest to you that there was really --- it was more than really just identifying that feature; that the recommendation to the Attorney-General has the heading:

35 *Cost benefit analysis confirms that the pilot CIDP model expensive and limited throughput.*

40 In circumstances where cost benefit analysis didn't take into account health and welfare benefits and you wanted it to, the Department wanted it to, that's a real problem, isn't it?

45 MR COUTTS-TROTTER: I think in hindsight we, the Department, should have been more directive or demanding of the organisation producing the evaluation. They took the view they took and I'm sure it was reasoned and grounded but, given what we know about the broader benefits beyond those justice system benefits, I think we should have been more insistent in trying to include a better assessment, albeit a difficult to quantify assessment, of those health and welfare benefits.

DR MELLIFONT: Thank you.

5 MR COUTTS-TROTTER: And we are certainly doing that with the Connect to Divert work.

10 DR MELLIFONT: Can I ask you also, Mr Coutts-Trotter, how, precisely, was a disability lens applied to this decision-making? That is, how did the Department take into account the human rights of the persons with disability who were getting the benefit of this program, in deciding to cease it, including deciding to cease it at the very difficult period of everybody's lives, the COVID pandemic?

15 MR COUTTS-TROTTER: That's a very difficult question to answer. There are a range --- a whole range of interests, human rights interests, other interests, that the Department has to try and balance each and every day in our operations and our response to some of those is, of course, imperfect. And there are difficult decisions and trade-offs. Our aim always through this was to establish, and our aim remains to establish an effective mechanism for diversion away from the justice system for people with cognitive impairment. We initiated the --- the then Department of

20 Justice initiated the CIDP, we extended it to try and modify its operation to better demonstrate or learn its impact, and we have worked with other agencies inside and outside government to put another model, we think an improved model, in front of government for consideration.

25 So that's not a crisp answer to your question but we are --- we are dealing in worlds of difficult trade-offs each and every day of the week, I'm afraid.

30 DR MELLIFONT: Mr Coutts-Trotter, it may be that there is a document which does record, as part of its decision-making process within the Department, that a specific disability lens was applied. If there is, I haven't seen it, but if there is one, we would be very glad to receive it. We have received thousands and thousands of documents; it's possible I have missed it, but if I could ask you to take that on notice, please.

35 MR COUTTS-TROTTER: Certainly.

DR MELLIFONT: Thank you.

40 The feedback from the analysts about a lack of baseline data, are you of the view that there is a lack of baseline data, robust and complete enough?

45 MR COUTTS-TROTTER: Yes, and it's an issue that's come up, I know, in a number of hearings of the Commission, and it is an issue both in New South Wales and nationally which in part is being addressed by the National Disability Asset work between jurisdictions.

DR MELLIFONT: In addition to the work of that group, what is, so far as you are aware of, your Department doing in terms of increasing data capture and analysis for

people with cognitive disability engaging in the criminal justice system?

MR COUTTS-TROTTER: So I think, as pointed out in Professor Baldry's evidence --- actually, my colleagues in Corrections in New South Wales have for a long time
5 built a capacity to screen, on entry, people into the prison system, to try and then additionally screen and then identify people with disability, including intellectual disability and cognitive impairment.

The Department, under our Disability Inclusion Action Plan, is trying to build the
10 capability of our frontline workforces in Child Protection, in Housing and Homelessness, to be able to better screen people who may have disability, may have cognitive impairment or intellectual disability, and we have a range of functions inside the organisation that can provide more specialist assessment to support
15 frontline staff who might --- who have identified someone they think might be a person with disability in need of additional supports.

That process will build a better quality of administrative data, from which you can begin to make better decisions as a policymaker about the experience of people with
20 disability in various service systems and their access to services, their access to responses, and most importantly the outcomes achieved.

DR MELLIFONT: And the timing for that?

MR COUTTS-TROTTER: So the National Disability Data Asset work has a
25 published timeframe, that I will take on notice and respond to you. But I do know the Justice element of the work which New South Wales is involved in aims to report between July and September this year. The work inside our organisation is ongoing, it's a process of ongoing improvement.

30 DR MELLIFONT: I just want to check a couple of things about timing, please, to see if I have a correct understanding.

Was the intention that CIDP clients would transition to Connect to Divert, that is the
35 initial plan was that Connect to Divert would be up and running by 30 June 2020?

MR COUTTS-TROTTER: I will take that on notice. That's my understanding.

DR MELLIFONT: Can I ask you, please, to have a look at NSW.0033.047.0001,
40 which is in F.3 at tab 4. I'm back to this briefing note, I should have asked you this before.

Can you go to page 0003, please, and can we bring up the paragraph
45 "Risks/contentious issues". I'm going to read that into the record. I'm going to ask you what the last half of the last sentence means, or what you understand it to mean:

The recent incidents of persons with an MHCI

Is that a mental health or cognitive impairment?

MR COUTTS-TROTTER: Yes.

5 DR MELLIFONT:

10 *.... and the CJS means that there is a higher focus on this area of DCJ operations. There may be mixed community sentiment on diversion of persons alleged to have committed offences, this will be addressed through the C2D program design and eligibility, but also can be mitigated through the gap analysis to ensure preventative supports are in place.*

What does that mean?

15 MR COUTTS-TROTTER: I take that to mean that, just as magistrates want to know that the necessary supports are in place for a person they are considering for diversion, that that is going to be an issue of interest in the broader community. If someone is before a court and they are then diverted rather than being dealt with under law, both the magistrate and the community needs to have some confidence
20 that one of the issues and interests in that decision, community safety, is adequately attended to.

DR MELLIFONT: My last two questions and then, if you are agreeable to this, Mr Coutts-Trotter, provide additional ones to your Counsel and Crown Solicitor,
25 given the time.

Paragraph 36 of your statement --- withdraw that. In terms of the Connect to Divert Program, if it goes ahead, what's the earliest time you think we will see it on the ground and operational?
30

MR COUTTS-TROTTER: Later this year, October.

DR MELLIFONT: Why October?

35 MR COUTTS-TROTTER: Because of the work to finalise the operational design with people with cognitive impairment, their representatives, the NDIA and others, and I offer that based on advice I have read in preparing for this hearing. That's the view --- (overspeaking) ---

40 DR MELLIFONT: Thank you. I should clarify my question to make sure we are on the same page. By "operation", I mean service providers engaged by the Department and actually in court starting to do this. That's October?

MR COUTTS-TROTTER: Yes, up and running, based on the advice I've seen.

45 DR MELLIFONT: Okay, and paragraph 36 of your statement says that:

The Department is developing options for alternative programs for defendants with cognitive impairments.

5 And you speak about one such alternative being the Connect to Divert. Are there others; if so, what are they?

10 MR COUTTS-TROTTER: I think the issue is whether the Justice Advocacy Service is incorporated into Connect to Divert or whether the Justice Advocacy Service is separate from it. I think that's what's meant by that. But I will confirm that on notice for you.

DR MELLIFONT: Thank you. Is it your expectation that decision-making with respect to that will also be prior to October?

15 MR COUTTS-TROTTER: Yes, absolutely. But as we discussed earlier, obviously a whole variety of people, including the Intellectual Disability Rights Service, would welcome an indication on that much sooner.

20 DR MELLIFONT: Thank you.

Chair, I see I have gone over time, but I will stop now.

CHAIR: Thank you, Dr Mellifont.

25 Mr Coutts-Trotter, I will ask my colleagues whether they have any questions for you. First, I'll ask Commissioner Atkinson.

COMMISSIONER ATKINSON: No, thank you.

30 CHAIR: Commissioner Mason?

COMMISSIONER MASON: No, thank you.

CHAIR: Mr McEwin?

35

COMMISSIONER McEWIN: No, thank you.

CHAIR: Mr Coutts-Trotter --- I will assume, Ms Furness, that you don't have any further questions?

40

MS FURNESS: I do not, thank you, Chair.

CHAIR: Thank you, Ms Furness.

45 Mr Coutts-Trotter, thank you again for coming to the Commission and giving evidence. I know that we have trespassed on your time quite considerably, but we appreciate the assistance you have provided to the Royal Commission. Thank you.

MR COUTTS-TROTTER: Thank you very much, Chair, good to see you again.
Thank you, Commissioners.

5

THE WITNESS WITHDREW

CHAIR: Dr Mellifont, it is now 12.35 your time and 1.35 Sydney time. When
10 should we adjourn to?

DR MELLIFONT: We are entirely in your hands. What remains to be done are the
tender clean-up part of the session and the closings. We are in a position to proceed
now or after lunch.

15

CHAIR: It might be sensible to take an adjournment. I suggest that we resume at
1.30 your time, 2.30 Sydney time; is that convenient?

20

DR MELLIFONT: Yes.

CHAIR: All right, we will do that. Thank you.

25

ADJOURNED [1.36 PM]

RESUMED [2.30 PM]

30 CHAIR: I understand Mr Power is going to tender some documents, or are you
going to do that, Dr Mellifont?

DR MELLIFONT: Mr Power will tender some documents and then I'll ask for some
directions, please.

35

CHAIR: Thank you very much.

40 MR POWER: Chair, a number of remaining documents from this hearing that we
will seek to tender. What is proposed, with your consent, is that I will identify each
of the documents and what their proposed exhibit numbers are and then at the
conclusion of the reading of that list I will seek on order that they be tendered and
marked as exhibits with the numbers that have been identified.

CHAIR: Certainly.

45

MR POWER: First, the transcript of Geoffrey Thomas's pre-recorded video
statement is at Tab 9 of Tender Bundle A. Its proposed exhibit number is Exhibit

11.28.11.

The second written statement of Helen Seares is at Tab 12 of Tender Bundle B.2. Its proposed exhibit number is Exhibit 11.5.2.

5

There are two written statements of The Hon Natasha Fyles MP at Tabs 9 and 11 of Tender Bundle C. The proposed exhibit numbers for those are Exhibits 11.20.1 and 11.20.4 respectively.

10 The statement of David Manchester contains attachments which are at Tabs 1 and 2 of Tender Bundle D.1. Those attachments will have the proposed exhibit markings Exhibit 11.7.3 and Exhibit 11.7.4.

15 A Notice to Produce VIC-NTP-000010, which was referred to in the written statement of Michael Haralambous, is at Tab 91 of Tender Bundle D.2. I ask to tender this document into evidence and for it to have the proposed exhibit number 11.25.5.

20 The CV of Megan Osborne is at Tab 1 and a response by the Office of the Public Guardian to statements of Dr Andrew Ellis in relation to the seclusion of Melanie is at Tab 3 of Tender Bundle E. The proposed exhibit markings are Exhibit 11.2.2 and 11.2.4 respectively.

25 A floor plan of the seclusion unit, attached to the statement of Megan Osborne, is at Tab 2 of Tender Bundle E. The proposed exhibit marking is Exhibit 11.2.3.

30 Ms Osborne's responses to questions on notice arising from her evidence at the Royal Commission are at Tab 26 of Tender Bundle E and the proposed exhibit marking is Exhibit 11.2.5.

Attachments to Minister Fyles's written statements are at tabs 23, 24 and 30 of Tender Bundle E. The proposed exhibit markings are Exhibits 11.20.2, 11.20.3 and 11.20.5 respectively.

35 Policy documents referred to in Professor Stoddart's written statement are at tabs 27 to 29 of Tender Bundle E. The proposed exhibit markings for those documents are Exhibits 11.18.7 to 11.18.9 respectively.

40 The documents in the Melanie case study are at tabs 1 to 83 of Tender Bundle F1. The proposed exhibit markings for those 83 documents are 11.1.3 to 11.1.85.

45 A second chronology that has been prepared of the Melanie case study, which includes a disclaimer, is at Tab 84 of Tender Bundle F.1. The proposed exhibit marking is Exhibit 11.1.87.

Documents for the Winmartie case study are at Tabs 3 to 136 of Tender Bundle F.2. The proposed exhibit markings are Exhibits 11.35.11 to 11.35.144.

5 The documents related to the CIDP case study and systemic failures generally are at
Tabs 1 to 17 of Tender Bundle F.3. Tab 11 has already been tendered, and so it will
be Tabs 1 to 10 and 12 to 17. I ask that they be given exhibit markings. I just have
to check on that.

10 Chair, while the exhibit markings are being checked, for all the exhibits except for
that last one which I will re-read into the record, I seek that those documents be
tendered into evidence and given the exhibit markings that have been read out.

CHAIR: Yes, thank you very much. That will be done. Of course, the exhibit
markings will be on the transcript, so those markings can be allocated to each of the
exhibits as you have indicated.

15

**EXHIBIT #11.28.11 - TRANSCRIPT OF GEOFFREY THOMAS'S
PRE-RECORDED VIDEO STATEMENT**

20

**EXHIBIT #11.5.2 - SECOND WRITTEN STATEMENT OF MS HELEN
SEARES**

25

**EXHIBIT #11.20.1 - FIRST STATEMENT OF THE HON NATASHA FYLES
MP**

30

**EXHIBIT #11.20.4 - SECOND STATEMENT OF THE HON NATASHA
FYLES MP**

35

**EXHIBITS #11.7.3 TO #11.7.4 - ANNEXURES TO STATEMENT OF MR
DAVID MANCHESTER**

**EXHIBIT #11.25.5 - NOTICE TO PRODUCE VIC-NTP-000010 REFERRED
TO IN STATEMENT OF MR MICHAEL HARALAMBOUS**

40

EXHIBIT #11.2.2 - CURRICULUM VITAE OF MS MEGAN OSBORNE

45

**EXHIBIT #11.2.4 - RESPONSE BY THE PUBLIC GUARDIAN TO
STATEMENTS OF DR ANDREW ELLIS IN RELATION TO THE
SECLUSION OF "MELANIE"**

EXHIBIT #11.2.3 - SECLUSION UNIT FLOORPLAN ANNEXED TO STATEMENT OF MS MEGAN OSBORNE

5 **EXHIBIT #11.2.5 - RESPONSE OF MS MEGAN OSBORNE TO QUESTIONS ON NOTICE FROM THE DISABILITY ROYAL COMMISSION**

10 **EXHIBITS #11.20.2 TO #11.20.3 AND #11.20.5 - ANNEXURES TO STATEMENTS OF THE HON NATASHA FYLES MP**

15 **EXHIBITS #11.18.7 to #11.18.9 - DOCUMENTS REFERRED TO IN STATEMENT OF PROFESSOR CATHERINE ANNE STODDART**

EXHIBITS #11.1.3 TO #11.1.85 - DOCUMENTS IN "MELANIE" CASE STUDY

20 **EXHIBIT #11.1.87 - SECOND CHRONOLOGY OF "MELANIE" CASE STUDY**

25 **EXHIBITS #11.35.11 TO #11.35.144 - DOCUMENTS IN "WINMARTIE" CASE STUDY**

30 CHAIR: Might I ask a question, Mr Power, just to check something.

MR POWER: Yes.

35 CHAIR: You have referred to a chronology for Melanie's case which is Exhibit 11.1.87. There is also a chronology, is there not, for Winmartie's case? Has that been tendered?

MR POWER: It has, Chair, and it is tendered as part of F.2, Tab 16.

40 CHAIR: That's all right, if it has been tendered and has an exhibit number. I just wanted to check that.

MR POWER: It does.

45 CHAIR: The other thing I wanted to check: reference has been made to the summaries that have been prepared within the Royal Commission of themes and recommendations in previous reports. Have those documents been tendered?

MR POWER: Yes, Chair, they have.

CHAIR: So they are already in evidence. Thank you.

5 MR POWER: They are. If I can return to the final proposed exhibit, it was the documents related to the CIDP case study and systemic failures generally, which are at Tabs 1 to 10 and 12 to 17 of Tender Bundle F.3. I would ask that they be tendered into evidence and given the Exhibit numbers 11.36.1 to 11.36.37.

10 CHAIR: Yes, that can be done as well.

MR POWER: I apologise, I misread it --- 11.36.1 to 11.36.17.

15 CHAIR: All right, that can be done in place of what was said previously. Thank you very much. No doubt we will be able to read all those documents by about 3.30.

**EXHIBITS #11.36.1 TO #11.36.17 - DOCUMENTS RELATED TO CIDP
CASE STUDY AND SYSTEMIC FAILURES GENERALLY**

20

DIRECTIONS

25 DR MELLIFONT: May we ask for some directions in the following terms, please.

1. For any witness who took questions on notice, those witnesses should provide their targeted and concise answers to the Office of Solicitor Assisting the Commission by 12 March 2021.
- 30 2. Any party wishing to make submissions or provide evidence as to why certain exhibits (including statements) which have, or will be tendered, should not be published in accordance with Practice Guideline 4, should provide concise submissions and supporting evidence in relation to any claim, to the Office of
35 Solicitor Assisting by 12 March 2021, so that the Commissioners may consider these claims.
3. Parties in receipt of procedural fairness correspondence should provide any targeted and concise submissions along with any additional material for the
40 Commissioners consideration to the Office of Solicitor Assisting by 12 March 2021.
4. Counsel Assisting the Royal Commission will consider any additional material produced and determine if any additional steps need to be taken, and by 19 March 2021, Counsel Assisting will tender into evidence whatever additional materials are
45 considered appropriate in accordance with Practice Guideline 4.
5. Counsel Assisting will then prepare written submissions for the Royal

Commission, which will be made available on a confidential basis to those parties with leave to appear, on a date to be advised.

5 6. Parties with leave to appear who wish to make submissions in response will be given an opportunity to do so, in a timeframe that will be advised by the Office of Solicitor Assisting, in due course.

10 7. Finally, following consideration of Counsel Assisting's submissions, along with any submissions received in response, the four Royal Commissioners who have sat at this hearing will prepare a short report on the hearing, and such report will be made public in due course.

15 Of course, the last is not a direction that needs to be made, but it is an indication of the intention of the Commission.

CHAIR: It is in fact a helpful suggestion.

DR MELLIFONT: They are the orders sought, please.

20 CHAIR: Thank you.

Dr Mellifont, have these been discussed with Ms Furness and Ms McMillan?

25 I'm not sure whether Ms McMillan is present today.

DR MELLIFONT: These proposed directions were sent by email at 6.51 pm yesterday and I haven't received any objections, as it were, from any party.

30 CHAIR: Thank you for that. In the absence of any indication to the contrary, then I will make the directions that have been read out by Dr Mellifont and of course the terms of the directions are available or will be available with the transcript of the hearing.

35 DR MELLIFONT: Thank you.

We move now to the closing address by Counsel Assisting, which will be delivered by Mr Power and by myself. Mr Power will start.

40 CHAIR: Thank you. Yes, Mr Power.

CLOSING ADDRESS BY COUNSEL ASSISTING

45 MR POWER: Thank you, Chair.

Commissioners, in closing this hearing, we want to thank all of the witnesses who

have participated over the course of the hearing, but we particularly want to thank the five witnesses who spoke of their lived experiences as people with disabilities: Melanie, Dorothy Armstrong, Geoffrey Thomas, Taylor Budin and Justen Thomas.

5 We also want to thank Aunty Margret Campbell, Lorelle Stoeckel and Patrick McGee, who told part of Winmartie's story.

10 And we want to thank Winmartie for allowing his art work to be shown during the course of the evidence. One of his paintings was of his favourite places and animals at Alice Well, his home country. What can be seen is the stockyards and the windmills which were described as his favourite place to sit and watch the cattle and the other animals at Alice Well.

15 We started this hearing with evidence from Melanie. Part of what Melanie said was:

.... when I was in seclusion for 8 years not one day of my life I didn't want to get out and have a life and be happy on the ward. But then the kindness of the nurses in the Forensic Hospital got me out after 8 years

20 *.... when I got put in seclusion, it was I didn't know that I would ever come out of seclusion I was like thinking, y'know what I got no light at the end of the tunnel I don't see any light, where is the light?*

25 Then we concluded this hearing on the final day with the beginning with the evidence of Justen Thomas. He spoke of being homeless as a teenager with cognitive disability and being imprisoned. He said that because of his homelessness:

30 *Eventually I was charged with trespassing and ended up escalating a lot of fines and I couldn't deal with my fines, so they found a reason to lock me up, to lock me up for fines, unpaid fines and that, and that made me a lot worse. Inside me, my trauma was getting worse.*

And:

35 *A lot of times I have been remanded in custody because I didn't have a place to go and a home address*

40 However, Justen's story is also about his resilience and his success in changing his life with the support of some key people who he acknowledged. He said that a program like the CIDP helps people with disability live their potential, instead of seeing them go to jail and locking them away.

From all of the evidence heard, several themes have emerged from this hearing.

45 1. There is no doubt that people with cognitive disability and particularly First Nations people with cognitive disability are overrepresented in the justice system.

2. Early intervention and the provision of disability appropriate support at all stages of the criminal justice system may operate to reduce that overrepresentation. We note that we heard striking examples from Professor Baldry about the economic cost benefits of early intervention and support for people with disabilities who are
5 otherwise likely to be imprisoned or hospitalised.

3. There is a need for much more early intervention and much more disability appropriate supports and culturally appropriate supports at all stages of the criminal justice system.
10

4. Programs and services that address the needs of people with cognitive disability can result in cost savings over the life course of a person with disability and provide several benefits to the community, not least of which is the reduction in recidivism.

5. The short-term funding of programs and services makes it difficult to build institutional knowledge and effect lasting change.
15

6. Forensic orders for people with cognitive disability who are found unfit to be tried or not guilty by reason of mental impairment need to be therapeutic rather than punitive and to have transparent, accessible systems of review.
20

7. The solitary confinement of people with cognitive disability is significantly more likely to cause harm than good. Long-term solitary confinement is no solution to caring for a person with disability who has complex needs.
25

8. There is a lack of usable, adequately disaggregated data about people with disability across all areas of the criminal justice system.

9. As a result of that lack of data, there is limited targeted research with respect to people with cognitive disability and First Nations people with cognitive disability in the criminal justice system.
30

The evidence in this hearing has identified significant and confronting issues for people with disability interacting with the criminal justice system, both as victims and as offenders.
35

We have heard, however, from people with disability who have managed to come through these challenges and to become powerful advocates for change.

40 Dorothy Armstrong: amongst other things, her advocacy with CIJ included speaking to magistrates about how confronting courts were for her as a person with a significant trauma history and an acquired brain injury.

45 Geoffrey Thomas: he has become involved as the Chair of the residents' committee of his public housing complex and involved in the tending to the common garden area.

Taylor Budin: her advocacy with IDRS has included speaking to prison officers about how she experienced prison and the difference that a positive prison guard made to her life.

- 5 Justen Thomas: his advocacy included speaking to the UN on behalf of First Nations people with disability.

10 In addition to that evidence we want to highlight and acknowledge the other voices we have heard from people who are committed to the advocacy and support of persons with a disability when confronting the criminal justice system.

We also want to acknowledge the important contribution of the expert witnesses and to thank them for their continued research and their suggestions on change.

- 15 The Royal Commission encourages those involved or following the public hearings to seek support if they feel they need to in response to the confronting issues that we heard in this hearing.

20 We again note that the following supports are available:

The Royal Commission has an internal counselling and support service team made up of social workers and councillors who can provide counselling and support to people engaging with the Commission.

- 25 The Australian Government has also funded the Blue Knot Foundation, a specialist counselling support and referral service for people with disability, their families and carers and anyone affected by the Commission. Their hotline number is 1800 421 468.

- 30 A range of legal and advocacy services have been funded by the Australian Government. There is legal financial assistance to assist meeting the costs of legal representation associated with formal engagement with the Commission. National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Service also deliver free advisory services for people engaging with the commission. Further
35 information about those services can be found on the Commission's website, or by contacting the information line 1800 517 199.

Thank you, Chair.

- 40 CHAIR: Thank you, Mr Power. Yes, Dr Mellifont.

DR MELLIFONT: On behalf of counsel, may I express our sincere gratitude for the work all of those that have contributed towards some very hard work for and at this
45 hearing.

The hearing is, of course, the culmination of the work of staff across the entire Commission, engagement, counselling, interpreting and translation, media, data

research and publications, corporate services, Law In Order, executive assistants and associates.

5 Of course, there is the hearing team within the Office of Solicitor Assisting, under the leadership for this, particular hearing of Ms Peterswald, Ms W[?], Mr Markus, and policy under the leadership of Ms Scott and Ms Koronius[?].

10 As to hearing and logistics, I think I can safely say that I am not alone in my abundant gratitude for the truly exemplary leadership of Ms Michelle Corcoran.

10 Finally, may I acknowledge the immeasurable help and contribution of my co-counsel, Ms Crawford, Mr Power and Ms Tarago. Thank you.

15 **CLOSING ADDRESS BY CHAIR**

CHAIR: Thank you, Dr Mellifont.

20 The opening statements at this Public Hearing 11 explained the purposes of the hearing and set the context for our examination of the interaction between people with cognitive disability and the criminal justice system. I do not want to repeat anything that was said in the openings.

25 It is necessary only to add that this eight-day hearing has amply demonstrated that the expression "criminalisation of disability" is an apt description of the treatment of so many people with cognitive disability by and in the criminal justice system.

30 Counsel Assisting, Mr Power, just now, has identified a number of themes that have emerged from the evidence at this hearing. Again, I do not want to repeat what Mr Power has said. However, the themes identified bear on the questions that were also identified in the openings.

35 In many ways, the most telling material to emerge from this hearing are the chronologies that record in truncated form the life histories of Melanie and Winmartie. I will not comment on who, if anyone, bears responsibility for the treatment each has received over so many years. That may or may not be the subject of submissions and may have to be dealt with in a report.

40 What is incontrovertible is that both Melanie and Winmartie have endured conditions to which no person in Australia should ever be subjected, let alone people who are not actually serving a sentence of imprisonment for a criminal offence of which they have been convicted.

45 In 2003, a judge of the Supreme Court of New South Wales characterised the conditions under which Melanie was then detained as "inhumane in the extreme". A little earlier, a tribunal described the conditions of Melanie's confinement in a male

prison, where she was at the time, as "degrading and in humane".

5 The Royal Commission will no doubt hear submissions as to whether the conditions Melanie has been under for long periods since she was transferred from the male prison warrant the same description.

10 It is difficult to believe that well into the 21st century in this country, someone with a severe cognitive disability should have been subjected to the regime of seclusion and physical restraint that Melanie has experienced.

15 In 2014, the Australian Human Rights Commission recorded a concession made by the Commonwealth, by the Australian Government, that Winmartie had been subject to the most severe treatment while in prison, including frequent use of physical, mechanical and chemical restraints, seclusion and shackles when outside his cell. The Commission found that the conditions of detention experienced by Winmartie amounted to cruel, inhuman or degrading treatment, contrary to Article 15 of the *Convention on the Rights of Persons with Disabilities*, the CRPD.

20 We heard, during the last week or so, a good deal of evidence concerning Winmartie's treatment in the years after the Human Rights Commission's report was published, but I don't today want to pre-empt any submissions that might address the way in which that treatment should be described.

25 What can be said is that if anybody doubts or has doubted the validity of the concept of "intersectionality" --- that is, the cumulative forms of disadvantage which so many First Nations people with disability experience --- the cases of Melanie and Winmartie provide irrefutable proof.

30 As Dr Mellifont has done, I want to thank all the witnesses who have given evidence at this hearing in one form or another. I particularly wish to express, on behalf of the Commissioners, our appreciation to witnesses who have had direct experience of a period in custody as the result of their involvement in the criminal justice system.

35 Mr Power, just now, recounted an extract from Melanie's recorded statement with which the evidence at this hearing commenced. After all that Melanie has been through, it is remarkable that she retains hope and wants to reach the light at the end of the exceedingly dark tunnel in which the system placed her. With appropriate support, she has the determination to overcome the obstacles that the system has placed in that dark tunnel and to reach the light.

40 Her story is a reminder --- that should be completely unnecessary, but is in fact necessary --- that people locked away in seclusion have rights, they have human rights, and they deserve to be treated with respect and dignity and to receive the support they need to realise their full potential.

45 We did not hear directly from Winmartie, who was in hospital at the time evidence was given concerning his case, although, as we have seen, we have been provided

with examples of his very colourful artwork. However, we did hear from Aunty Margret Campbell about Winmartie's deep connection with country and culture. As Commissioner Atkinson remarked during the hearing, it was wonderful to hear Aunty Margret give evidence in the Pitjantjatjara language, with the excellent assistance of Aunty Della Pearce acting as interpreter.

I do not know whether this is the first time evidence has been given to a Royal Commission in the Pitjantjatjara language. As it happens, however, it is not the first time I have heard evidence given in that language. Nearly two decades ago I spent six weeks in Uluru hearing a native title compensation claim and much of the evidence at that hearing was given either in the Pitjantjatjara or Yankuntjatjara languages. I had the privilege at that time of being taken to numerous sites of great spiritual significance in and around Uluru and Kata Tjuta and well beyond. It was a moving and unforgettable experience. The only downside is that it required travel in a helicopter and I had just completed a helicopter crash case shortly before the hearing in Uluru.

Today, I want to add my thanks to those of Dr Mellifont for Ms Stoeckel and Mr McGee for their part in telling Winmartie's story.

I want to express special appreciation to the witnesses who have been prepared to tell us, or let their stories be told, stories that are harrowing and relate to their experiences with the criminal justice system.

We are very grateful to Melanie and Winmartie for allowing their stories to be told.

Ms Dorothy Armstrong told us of the relationship between being the victim of terrible violence and abuse and becoming enmeshed in the criminal justice system, and then being able to overcome those difficulties with appropriate assistance.

We heard from Mr Geoffrey Thomas, who told us about the cycle of incarceration that could have been avoided had he received, as a child and young person, the support that should be the birthright of every Australian but especially First Nations people.

Mr Justen Thomas's story shows the links between homelessness and the criminal justice system. And the consequences of the system failing to recognise intellectual disability or the consequences of trauma. Here is someone who has spent time in prison but who has become an effective advocate, has represented advocacy organisations and has addressed the United Nations to speak on behalf of his Indigenous brothers and sisters with disability.

We heard and saw from Ms Taylor Budin, who explained how the provision of support through CIDP turned her life around. Had that support been available earlier, it is highly unlikely that Ms Budin would ever have found her way into custody. As she said:

'Cause if I was in the prison system still, I wouldn't have this support now and I would be sitting there, screwed.

Interviewer: Yep.

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Ms Budin: And that worries me. That worries 'cause like how many other people are still in there that needs to be on the program? That could be out, not in?

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Interviewer: And they just don't know about it? ---

Ms Budin: And they just don't know about it or it just doesn't exist. So really, I would like to get something back into the system.

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This hearing has shown, as was foreshadowed at the outset, that there is no shortage of worthwhile approaches to end the cycle created by the criminalisation of disability. The difficulty is to ensure that effective programs are introduced, supported and properly funded and not just in the short term.

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I want to conclude by expressing on behalf of the Commissioners our deep gratitude to the skilled and dedicated staff of the Royal Commission who, together with our indefatigable counsel led by Dr Mellifont, and the hearing team, have worked so hard to compile and present such powerful evidence over eight days of hearings. It is not easy for people outside the Royal Commission to appreciate just how challenging it is to prepare a hearing such as this. It is an enormous and difficult undertaking and we owe a great deal to everyone who has contributed to such an important part of the Royal Commission's work.

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On behalf of the Commissioners, I endorse Dr Mellifont's expression of thanks to everybody who has played their part in ensuring that this hearing can take place.

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The Commissioners also wish to thank Mr Ben Fogarty of Counsel for so ably and sensitively assisting witnesses to give evidence, and Mr Michael Baker from the Intellectual Disability Rights Service for supporting the witnesses. We also thank Stride for supporting Mr Thomas in his interview with Mr Fogarty.

It is rather sobering to recall that this has been our 11th Public Hearing, each of which has presented similar challenges for the teams in the Royal Commission.

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Today is Thursday. We resume next Tuesday when we shall be hearing further evidence from Public Hearing 10 --- Education and Training of the Health Professionals in Relation to People with Cognitive Disability. Idleness is not an option.

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We will adjourn the hearing.

HEARING ADJOURNED AT 3.07 PM UNTIL TUESDAY, 2 MARCH 2021 AT 9.30 AM

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