



TRANSCRIPT OF PROCEEDINGS

THE HON RONALD SACKVILLE AO QC, Chair
MS BARBARA BENNETT PSM, Commissioner
MR ALASTAIR McEWIN AM, Commissioner

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

10:05 AM, TUESDAY, 08 JUNE 2021
DAY 2

MS KATE EASTMAN SC, Senior Counsel Assisting
MS ELIZABETH BENNETT, Counsel Assisting
DR HAYLEY BENNETT, Counsel Assisting

CHAIR: Good morning. We commence with an Acknowledgment of Country. We wish to acknowledge the Kaurna people of the Adelaide Plains, the traditional custodians of the land on which the Royal Commission is meeting this week and to pay our respects to the Elders past, present and emerging. We also acknowledge the Gadigal people of the Eora Nation upon whose land I am participating in this hearing and the Wurundjeri people of the Kulin Nation, on whose land Ms Bennett of counsel is appearing. We pay our respects to their Elders past, present and emerging. We also pay our respects to all First Nations people attending the hearing in person today, as well as those who are viewing the hearing on the livestream. Yes, Ms Eastman.

MS EASTMAN: Thank you, Chair. Good morning, Commissioners, and to everyone following the broadcast and the proceedings in the hearing room in Adelaide.

Our first witness is Karen Rogers. You will see she is here in the witness box with her son Daniel by her side. You will see a photo of him. She is our first witness today.

CHAIR: Ms Rogers, thank you very much for coming to the Royal Commission in Adelaide to give your evidence. We very much appreciate your attendance. Would you be good enough to follow the Associate, who will administer the oath to you. Thank you very much.

KAREN LEE ROGERS, SWORN

CHAIR: Thank you very much, Ms Rogers. Now Ms Eastman will ask you some questions.

Just to make sure you are aware, two Commissioners are in the same room as you are in Adelaide, that is Commissioner McEwin and Commissioner Bennett, and I am remote from Sydney, so I'm in Sydney.

Ms Eastman will now ask you some questions.

EXAMINATION-IN-CHIEF BY MS EASTMAN

MS EASTMAN: Ms Rogers, you have prepared a statement for the Royal Commission?

MS ROGERS: Yes, that's correct.

MS EASTMAN: You have got a copy with you?

MS ROGERS: Yes.

MS EASTMAN: Your name is Karen Rogers?

5

MS ROGERS: Yes, that's correct.

MS EASTMAN: You have provided your address to the Royal Commission?

10 MS ROGERS: I have.

MS EASTMAN: You work in the disability sector as an advocate; is that right?

MS ROGERS: Well, I did until November last year and now I'm at home.

15

MS EASTMAN: You have prepared the statement and you have read it before coming today?

MS ROGERS: Yes, I have.

20

MS EASTMAN: Is it true?

MS ROGERS: It's true.

25 MS EASTMAN: You have decided that what you would like to do today is to read your statement and at different points we are going to stop and pause and we either have some photographs or videos that you want to share with the Royal Commission and I'll ask you some questions as we go along. Are you happy with that approach?

30 MS ROGERS: Yes, that's good, thank you.

MS EASTMAN: Can I invite you to start reading your statement, and perhaps we can start at paragraph 3?

35 MS ROGERS: Sure. My name is Karen Lee Rogers, I'm 60 years old and I live in Adelaide with my husband Graham and my son Daniel. I retired in November 2020 after 25 years in a career in the disability sector. Immediately before I retired, I worked as a project leader on the Our Voice SA program, a peer advocacy program for people with intellectual disability or learning disability, auspiced by JFA Purple
40 Orange and funded by the National Disability Insurance Agency, the NDIA. In this role, I was responsible for supporting the peer advocacy group at meetings, as well as liaising with South Australian politicians, senior bureaucrats and people within the South Australian Department of Human Services.

45 Prior to working at Our Voice SA, I worked as an accommodation manager at CARA from August 2014 to August 2018. I also worked as an advocate for 10 years prior to my time at CARA in a number of organisations, including Autism SA and Parent

Advocacy.

5 I continue to do voluntary work in the disability sector as a member of the board of HomePlace, an organisation that provides accommodation and lifestyle support to people with disability in South Australia and as a community visitor with the South Australian Community Visitor Scheme. I started my training with the Community Visitor Scheme in February 2019 and began visits in June 2019.

10 My son Daniel is my second child. Daniel was born on 8 November 1980. There are several photographs that you will see of Daniel further on.

15 Daniel is beautiful. He is a lovely man who is very gentle and very sweet. Daniel's favourite things are sticks, Christmas carols and ABBA. Since he was young, his favourite hobby has been collecting sticks and twigs. He breaks them into small pieces and collects them in containers and buckets. We have several buckets of sticks at our house. Since moving home, Daniel has learned how to make art work with these sticks and he's learned how to make --- we have bought bird houses and coasters and bowls and he's covered them with his sticks and they are lovely. When he had his 40th birthday party, he made a coaster for everyone who came and there were over 100 people there.

20 Daniel loves to sing. He likes television jingles, he likes hymns and anthems and theme songs. He's a Port Power supporter, only because he's forced to be, really, by living in our house, but he likes to also sing the Adelaide Crows song, which is very sad. He has a very good memory and he can remember the lyrics to many, many songs.

30 Before I had surgery on an ankle recently, Daniel and I walked together almost every day near our home. On our walks, I often picked a flower and gave it to Daniel because I think the smell, being sensory, is really good for Daniel. Often, though, he would hold on to the flower and when we went to the cafe for a coffee, he would choose someone and walk over and give the flower to them.

35 Daniel has very limited speech and a limited ability to articulate himself meaningfully or have interactive conversations. When Daniel doesn't want to go somewhere or do something, for example if I put vegetables on his plate, he will say, "Don't want it." He has echolalia, which means he repeats the words and phrases that he hears.

40 When Daniel was four years old, he was diagnosed with severe intellectual disability and epilepsy. It was another four years before Daniel was diagnosed with autism.

45 I took Daniel to see doctors on a number of times because I suspected something was wrong. Before Daniel received a diagnosis, these doctors dismissed my concerns and told me it was all because I was a young mother.

When Daniel was young, he was difficult. He often only slept two hours at night and

even that was in bits and pieces. He regularly had tantrums and at times he screamed, bit, pinched and pulled hair. He also bit himself quite badly too. He was regularly suspended from school due to his behaviour.

- 5 Daniel was nicknamed "Little Houdini" as a child because there were no locks, doors or fences that were "Daniel-proof". He regularly disappeared from our home, from respite care and even from school. Even affording myself the self-indulgence of going to the toilet could result in Daniel escaping.
- 10 In 1992, when Daniel was 11 years old, I was pregnant with twins. We already weren't coping with Daniel, despite doing everything we could and we were told by someone who was very experienced in the disability sector the twins would be in peril if Daniel were to remain in our family home.
- 15 At the time, I was not aware of any options for supported accommodation for children with disability in Adelaide. Social workers suggested that I relinquish Daniel and have him enter the foster system. I was against doing that because I knew I couldn't cope; I wanted to maintain an active role in Daniel's life and for him to continue to have relationships with his sister and his soon-to-be brothers. Those
20 things were very important to me.

In mid-1992, when I was in the latter part of my pregnancy with the twins, three boys of a similar age to Daniel were relinquished into respite care, and permanent accommodation arrangements were set up for these boys by the IDSC, a South
25 Australian Government agency that provided accommodation to other services for people with intellectual disability. I am so thankful to those other parents for having the courage to do what I could not.

30 MS EASTMAN: So, pausing there, you and Daniel have prepared a video for the Royal Commission, so that the Commissioners can meet Daniel and get a sense of a day in the life of Daniel and the things he's particularly interested in?

MS ROGERS: Yes.

35 MS EASTMAN: So we will see some of his art work and some of his singing.

MS ROGERS: Yes. I apologise for the sound because in some areas it's not that great.

40 MS EASTMAN: We will take a moment and the video will be queued up and that will be played. The video will take about four minutes.

[VIDEO RECORDING PLAYED]

45

"KAREN: Today we are going to talk about Daniel. Daniel is a 40-year-old man

who lives with autism, epilepsy, intellectual disability and movement disorder.
I want you to see a really lovely side of Daniel, because he has a very beautiful side,
there are so many lovely things about Daniel and it's really important that you meet
him.

5

Would Daniel like two biscuits?

DANIEL: Yes, please.

10

KAREN: Yes, please, okay. When Daniel goes to bed at night, he likes the teddies
on the bed, but when he goes to bed at night, he kicks them all off in the floor. So
when he gets up in the morning, he and I make the bed together and then he puts all
the teddies back into bed.

15

DANIEL: Hop into bed.

KAREN: He says, "Hop into bed" to them.

DANIEL: Hop into bed.

20

KAREN: Hop into bed. We will go and get some sticks. I've got a bag for you.

25

It's got the sorts of sticks that Daniel likes to break. I'm not sure what sort of tree this
is, I think it's a gum tree, but this is his favourite type of tree and when we get to the
park, he comes straight to this tree.

DANIEL: Thumbs up.

GRAHAM: Yeah.

30

KAREN: We went to ---

DANIEL: The park.

35

KAREN: And we got some --

DANIEL: Sticks.

GRAHAM: Excellent.

40

KAREN: Talk to mummy what this is.

DANIEL: Cop.

45

KAREN: Cop Shop. Is that Cop Shop?

DANIEL: Yes, please.

KAREN: You want it on now? You want Cop Shop on now?

DANIEL: Yes, please.

5

KAREN: He's doing his sticks all at the same time, so breaking up sticks and watching Cop Shop, which is fun for him.

DANIEL: (Sings) Rudolph the red-nosed reindeer, if you ever saw it here ---

10

KAREN: (Sings) You would even say ---

DANIEL: (Sings) --- it glows. You'll go down in history.

15 KAREN: Daniel needs help in the shower, he needs help in the bathroom. He needs help with his shave because he can't get it exactly right. My sister-in-law says he looks like a news reader because he's so handsome, but he does need assistance with shaving. Even if he didn't have a beard, he would need assistance because he misses lots of bits.

20

Good job.

When Daniel is finished his shave every day, he takes the cap off it and blows the whiskers into the sticks.

25

[Music plays]

KAREN: Ready to go for a walk on the beach?

30 GRAHAM: You've beaten me to it.

Alright, Daniel, we're off for a walk, mate, down the beach.

35 He loves to go for walks down the beach. The main thing when we go down there, he always finds a stick somewhere. Every time we go for a walk, he likes to reward himself with a few sticks, takes them and breaks them up at home.

[Music plays]

40 KAREN: I hope you've enjoyed meeting Daniel today and seeing the lovely side of him. There is so much good in Daniel. Since he's come home, he's grown, he's developed and he has --- he's travelled a long dance. And I'm looking forward to seeing what's in the future."

45

[VIDEO RECORDING ENDED]

MS EASTMAN: Thank you, Ms Rogers, for preparing that video and also to your husband Graham and to Daniel for sharing us a little insight into your life.

5 I want to take you back now in your statement, where you start to talk about Daniel's journey through care. We are up to paragraph 23. Tell me when you're ready to start and we will start at paragraph 23.

10 MS ROGERS: Okay. On 12 July 1992, just days before the twins were born, Daniel became the fourth person to move in the IDSC house in Torrensville, which I will now refer to as "Hayward Avenue".

15 In around 2000, one of the men that lived with Daniel became ill and moved to Strathmont Centre, a government-run institution providing accommodation for people with disability, only leaving three boys at that stage at Hayward.

20 In about 2004/2005, the other men who lived at Hayward moved to Strathmont to an empty villa as the Hayward Avenue property required extensive work. Shortly after that, Daniel and the two other men moved from that to a house that I will refer to as "N Street".

25 There were three IDSC houses on that same street that provided accommodation service to people with disability. Two of the houses, including the house that Daniel moved into, were built by the Spastic Centre of South Australia, so the house had wide doors and hallways with big indoor spaces, which suited Daniel. At the time Daniel moved in, the house still had the old institutional bathrooms with a few showers in the same room. In this statement, I will refer to that house, as I said, as "N Street".

30 I understood that N Street was owned by a housing association, but the accommodation services were provided by the South Australian Government. During the time that Daniel lived at N Street, his accommodation services were always provided by the South Australian Government, but the name of the service provider changed from time to time. It was first IDSC, the Intellectual Disability Services Council, it went to Options Coordination, then to Disability SA, and finally
35 to the Department of Human Services.

40 When Daniel first moved to N Street in 2004 to --- I'm not sure of the exact dates --- he lived there with the two other young men who had lived with him at Hayward Avenue and at the Strathmont Centre. After a couple more years, a fourth resident moved in.

45 The other houses on N Street each housed three or four people with disability, each of whom I understood to have similar needs to Daniel.

Daniel and the other residents at N Street attended structured activities on off-site services known as day options during the week. DHS support workers organised

activities for them on the weekend. Day options were individually negotiated by me on behalf of Daniel. I organised for Daniel to go to a different day option to the other three residents at N Street. I did this deliberately because I felt they lived together through circumstance, not by choice, and I didn't think they should be
5 together 24 hours a day. From around 2006, Daniel's day option was at a farm called Windamere Park.

As far as I recall, the time that Daniel lived at N Street there were staff at the house all the time. There were one or two support workers on shift during the day and one
10 support worker on shift throughout the night. The support workers at N Street were supervised by a shift supervisor who supervised a few different houses. The shift supervisor reported to a manager working in the DHS offices.

Over the years that Daniel lived at Hayward Avenue and N Street, my family and
15 I maintained very active involvement in his life. Daniel had regular visits from his family, generally on at least a weekly basis. On some occasions when I was not able to get there, Daniel's sister and brothers and sometimes his grandparents have made sure they have taken him out on a weekend for a whole day, or if that was not possible, at least a meal out.

20 There has never been any formal guardianship or financial administration orders in place for Daniel.

I generally attended medical appointments with Daniel and a DHS staff member
25 usually attended too. At those medical appointments I was consulted about Daniel's care, both by the doctor and the DHS staff member. When I was consulted, I made decisions about care for Daniel or medication, with input from the medical professionals and the Accommodation Services Manager. I largely relied on support workers, shift supervisors, and accommodation managers to keep me informed about
30 any relevant medical issues for Daniel.

In terms of financial decision-making, I understood from my professional experience in the disability sector that DHS received a percentage of the client's Disability Support Pension on a board and lodgings basis and I am aware that the same
35 arrangements were in place for Daniel when he lived at N Street. I was aware that there was an amount of money from that Disability Support Pension that was for Daniel's use. That was transferred into a trust account, Daniel's account. I understood from Accommodation Service Managers that Daniel's account was administered through an internal financial department at DHS.

40 I had no access to Daniel's account and I did not receive bank statements for that account. I was not privy to the records kept at N Street about Daniel, including reports or records about how his money was spent.

45 I do not know what the formal arrangements were for authorising expenditure of Daniel's money from his account. So far as I was aware, DHS managed his finances and personal affairs, with some consultation with me, particularly for large

purchases. It was my expectation that Daniel would be given a weekly allowance and he would use this for expenses such as take-away food and outings.

5 Decision-making for Daniel continued more or less in this way until he moved out of N Street into my home in February 2019, although his finances continued to be managed by DHS for a year.

10 Daniel lived at N Street for about 15 years. In that time, I learned a lot about how best to advocate for my son. I learned to pick my battles and raised things only that I thought was absolutely necessary to be addressed. Otherwise, I was conscious of the need to maintain strong relationships with the staff and with DHS. I had good relationships with some workers over the years. I have outlined the issues that became acute for me and Daniel in the later years of his time at N Street.

15 Over the time Daniel lived at N Street, I found his standard of grooming and hygiene could be quite variable. It was not such an issue I felt I needed to raise it initially, however, from 2017 I noted that Daniel was sometimes dressed in clothes that looked like they didn't belong to him and at times he smelled, often of faeces and very bad breath when we came to pick him up on Sundays. Generally, if an issue of that kind arose, I speak with the Accommodation Services Manager. He was
20 generally understanding and said that he would raise issues with the workers but I didn't notice any significant improvement to Daniel's standards of grooming or hygiene.

25 While Daniel was living at N Street, there was an occasion when my husband and I took Daniel on a holiday. This trip required substantial planning. I provided a long list of things to be packed and the dates of the trip to the Accommodation Services Manager, Wayne Cunningham. Wayne provided this to staff by email at least a week before the trip. However, on the day of our departure, I called and they told me
30 they had forgotten about the trip. When we arrived to pick Daniel up for the holiday, his bags were packed. However, when we got to Melbourne we found that other people's clothing has been packed rather than Daniel's own. I also found that staff had not packed enough medication to last the week. This meant we had to cut our holidays short and return to Adelaide, as Daniel was on a complicated medication
35 regime with some requiring special permissions, so it was not going to be possible to get them replaced in Melbourne.

40 When we returned to Adelaide, I called Wayne and explained why we were back from our holiday early, because staff had not packed enough medication. Wayne apologised for what had happened.

MS EASTMAN: I'm going to pause there. I want to ask you just a few questions about the financial arrangements.

45 MS ROGERS: Sure.

MS EASTMAN: We are about to touch on a topic where the financial arrangements

became very relevant to you. But over the time that Daniel lived at N Street, do you recall having any discussions with anyone about the financial arrangements?

5 MS ROGERS: On occasions I would say that if he needed something --- often we provided things that he needed. Staff would let me know if he was running short of jeans or something like that, but we would have discussions that, you know, they could go and purchase items that he needed, but that was as far as it went.

10 MS EASTMAN: Do you know whether, in terms of Daniel himself, there was ever any education or training for him to understand managing his own money and being able to make decisions about what he wanted to spend his money on?

15 MS ROGERS: Daniel would have had difficulty understanding the concept of finances. But even now, if we go and purchase something for Daniel, we always take him with us, if we are purchasing clothes, and we always show him the clothing and give him the opportunity to choose which clothing he would like.

20 MS EASTMAN: Would it be fair to say that when Daniel first went into care, then at that stage you just relied on the Department to manage all aspects of his life, but you were still his guardian, were you not, until he was the age of 18?

25 MS ROGERS: Yes, that's correct, and I was still his mother and as a mother, that just came naturally, that I was the person who on was contacted with issues. Initially he didn't --- he wasn't in receipt of a Disability Support Pension but as he got older and when he did become --- when he did receive a pension, then we actually --- we were happy for him to enter the same arrangements as most people in, then, IDSC care, in that they had a financial department that oversaw that. For me, that was a good thing because I didn't have to worry about paying bills and things like that.

30 MS EASTMAN: Was it the case that because those arrangements for Daniel in terms of where he was living and how he was living his life really continued from when he was 18, to become an adult, that no one gave any direct thought to what we do we need to do now that he is that he's 18; do we need to examine what we do around a guardianship relationship, do we need to think how, as an adult, he might manage his money or what applications we would make for support pensions and the like. Do you have any memory of what happened when he turned 18?

40 MS ROGERS: From my understanding and my recollections of those times, I'd talked to people from SACAT, which is the South Australian Civil and Administrative Tribunal, used to be called the Guardianship Board, I would talk to people from the Guardianship Board and ask did they feel that I needed to make applications and they had said, no. I could --- whenever Daniel was at hospital or having any treatment, I went anyway. And as his mother, I was able to sign for him to have any treatment. With the finances, I was really happy to just leave them to
45 DHS to sort out.

MS EASTMAN: That might take us back to your statement, to that part starting

from paragraph 43, because this is when the issues around the finances and expenditure became a matter of concern ---

MS ROGERS: Yes.

5

MS EASTMAN: --- you felt you needed to raise with the Department. Can I ask you to take up reading from paragraph 43?

MS ROGERS: Sure. On 20 October 2018 I was telephoned by a support worker who I will call ABL. ABL asked if he would purchase new pillows and bedding using the funds that Daniel had accumulated. I agreed, but asked that they take Daniel to the shops to buy the items. ABL informed me that this was not possible because Daniel was asleep. Because it was already 4.30 on a Saturday and the shops were about to close, I suggested that I would take Daniel to the shops the following day. ABL was reluctant to proceed in this way. I asked him if they had already purchased the bedding and was told no.

However, when I arrived the next day, I found the bedding had been purchased. I viewed the receipt, which showed that the purchase, valued at around \$270, was made at 3.30 pm the day before.

The following day, I wrote a letter of complaint to Wayne Cunningham, the manager, outlining my concerns in full. I was troubled that my permission had been sought after the fact and worried about the staff member not being truthful. The letter is attached.

MS EASTMAN: You have included for the Royal Commission a copy of the letter?

MS ROGERS: Yes.

30

MS EASTMAN: Commissioners, you will find that behind tab 10 in hearing bundle.

Ms Rogers, have you got that letter with you as well?

MS ROGERS: Yes.

35

MS EASTMAN: If you look at the document behind tab 10, that's the letter that you sent to Mr Cunningham?

MS EASTMAN: Yes, that's correct.

40

MS EASTMAN: You say at the bottom of the letter, I can just draw your attention to that:

I let a lot of things go but this is deceptive behaviour by the staff involved and it concerns me that if they would lie to me about this, and yes, I would have been annoyed that they didn't include Daniel in the shopping trip, what else

45

will they lie about? I am disappointed to say the least.

5 So this was a significant event. Some people might say, "Oh, it's just an oversight and maybe Daniel didn't want to go, there might be an explanation behind this", but for you, you wanted to raise it because it went to a question of trust; is that right?

10 MS ROGERS: There were several things involved in this which are in the letter too. But one of them is that to pay that exorbitant amount for a quilt, for a comforter, for someone who has night-time incontinence really bothered me. And the fact that Daniel wasn't included in the purchase bothered me and the fact that I was lied to bothered me. So I had several issues with this occurrence.

15 MS EASTMAN: Can I take you back to pick up from where you left off. We were at the end of paragraph 45. Starting at paragraph 46?

20 MS ROGERS: Just weeks after this incident, I followed up on my complaint with Wayne. He told me that the complaint had been escalated to the Incident Management Unit, the IMU, within DHS. But it had been referred back to Wayne to deal with at a local level. He said that he had been following up with the staff and that the staff member became upset. He stated there were some issues at N Street and that was the extent of the resolution to that complaint.

25 These issues continued and it increasingly troubled me, from 2017, in part because things just didn't seem to be improving for Daniel. However, I felt it was a situation that I could work with. My view changed following some unexplained bruising in October 2018 and in February 2019, which I will describe.

30 October 2018, on 28 October, the week after I had complained, when Graham and I picked Daniel up he was wearing a jacket. When we got home, I removed the jacket and I saw some bruises on Daniel's inner arm. The bruises were close together and they looked about the size of a forefinger. I asked Daniel what had happened and he growled. I can't remember his exact words. I took a photo of the bruising and those photos are here.

35 MS EASTMAN: You have said that you would like the Royal Commissioners to see the photographs. So we will put them up on the screen. Can I give anybody watching the hearing, either here in the hearing room or also online, that there are a number of photographs that we will now show in relation to bruising on Daniel, that may be confronting. And this is the first set of photographs. There are some more to come. I will just give that warning to anyone who might be distressed, before we
40 show those photographs, so that they can take a break and resume with us as we go along.

45 Commissioners, you will find a copy of the photographs behind tab 11 and tab 12 in Hearing Bundle A.

Ms Rogers, we will put those up.

These are photos that you took at the time you noticed the bruising?

MS ROGERS: Yes, they are.

5

MS EASTMAN: Given the nature of the bruising that concerned you and you thought you needed to report it; is that right?

MS ROGERS: That's correct.

10

MS EASTMAN: So we have had those photos up. Can I take you to paragraph 49 and you can tell the Royal Commission, what did you do when you took those photographs?

15 MS ROGERS: I emailed copies of these photographs to Wayne Cunningham on that day. I no longer have a copy of the email. I later --- I had a later phone call with Wayne, during which he told me he had again referred the incident to the IMU. I'm not aware of the outcome of the referral or whether the bruising was investigated.

20 I had seen some minor bruises or other unexplained minor injuries on Daniel in the past. However, the bruises I saw on Daniel's arm concerned me because of the size and proportion made me think they were caused by someone grabbing Daniel's arm. I was worried as the bruises appeared the week after I made a complaint about the bedding and I was concerned that in some way this was connected to my complaint,
25 and it made me more alert to similar injuries happening again.

MS EASTMAN: Then you say you didn't notice any further bruising on Daniel until February 2019. The events that you are about to describe and read in your statement were very significant events. Take your time, and if you feel that you want
30 me to jump in and read some of the paragraphs, I'm very happy to do so, but let's start with paragraph 52.

MS ROGERS: Okay. On 22 February 2019, at 5.54 pm, I received a phone call from a support worker who I will call ABM. ABM informed me that Daniel had a
35 large bruise on his back and he asked me if it was okay to call a locum doctor. I absolutely agreed.

At 8.33 that night, the locum doctor called me. The locum told me he felt that Daniel needed to be checked at the hospital for internal bleeding. He recommended we take
40 Daniel to the hospital. I asked ABM to take Daniel to the hospital and said Graham and I would meet them there. N Street was only five minutes drive from the Queen Elizabeth Hospital and we were about 20 minutes away.

When Graham and I arrived at the hospital, Daniel was sitting in the waiting room of the emergency department with another support worker who I will call ABN, and a
45 night supervisor. While we were in the waiting room, I looked at the bruising on Daniel's back and I was shocked to see the extent of the bruising around Daniel's

waist, going from his spine to in front of his kidneys. I took two photographs of those bruises and copies of those will probably come up now.

5 MS EASTMAN: You want to show those photographs as well?

MS ROGERS: Yes. I don't want to show the third photograph, although the Commissioners will see that.

10 MS EASTMAN: Commissioners, the three photographs, the two that we will show appear behind tab 13 in the bundle, and tab 14. You have an additional photo at tab 15, but the one at tab 15 will not appear on the screen.

15 Ms Rogers, can I just ask you, so that Commissioners can see the angles of it, so that first photo where Daniel has the T-shirt on, it's on a slight angle. Can you just explain to us what the angle was and you how took that photo?

20 MS ROGERS: He was standing in the waiting room, in the emergency department, and I took the photo from my phone. The second photo I took was when he was laying on the bed in the emergency department.

MS EASTMAN: What is depicted on the first photograph, that's Daniel's back?

MS ROGERS: Yes, sorry, that's Daniel's back.

25 MS EASTMAN: You can see the bruising continues from about the middle of Daniel's back and it continues around to his side, where the photograph ends?

MS ROGERS: Yes.

30 MS EASTMAN: The second photograph is the continuation of the bruise, so on Daniel's front?

MS ROGERS: Yes.

35 MS EASTMAN: And that's the photo that you took when he was lying down; is that right?

MS ROGERS: Yes, that's correct.

40 MS EASTMAN: I hope that assists the Commissioners to see the nature and extent of the bruising.

So you were shocked when you saw this bruising?

45 MS ROGERS: I was horrified. In the third photograph, which the Commissioners will see, which I took the next day at home, and I'm not putting that up because it's a photograph when Daniel got out of the shower, but I didn't notice it on the day, but

when I look at it, there's actually more bruising down his leg, which you can see down his leg.

MS EASTMAN: On his upper thigh?

5

MS ROGERS: Yes, and partway down his thigh as well, about halfway down his thigh.

MS EASTMAN: We are on paragraph 54. You have described the photographs and we have made the reference there. Can I take you back to what happened when you arrived at the hospital? This is paragraph 55. Can we take it up from there.

10

MS ROGERS: Yes. Shortly after Graham and I arrived at the hospital, the worker returned to N Street to finish his shift. The night supervisor stayed for a while. At some point he had to go. He came back that night to see how Daniel was going. I stayed overnight at the hospital with Daniel. Daniel required a scan to check for internal bleeding, so it was important that I be here.

15

The night in the hospital was not an easy night for Daniel. He's not a cooperative patient and because he is fearful, especially of needles, staff at the hospital were lovely and they listened to everything I said. They even put a cartoon on for Daniel. But is it okay if I just describe the process?

20

MS EASTMAN: Yes, of course.

25

MS ROGERS: For Daniel to have any sort of procedure, there is a drug called midazolam, which is like a sedative. For most of us, if we had one vial of midazolam, we would be knocked out, we would be unable to fight and we probably wouldn't have a recollection of what had happened. For Daniel to have any procedure, he has four vials of midazolam which are given hidden in a bottle of Coke, and after that it takes six security guards to hold him down to even get a needle into his arm. So it was a quite stressful night for him. He was very frightened.

30

MS EASTMAN: And a stressful night for you and Graham as well?

35

MS ROGERS: Yes. It's very sad. It's very difficult for Daniel. He's terrified. So Daniel had scans in the early hours of the Saturday morning. The results revealed no internal damage or bleeding, so Daniel was discharged. I decided we would take him back to our house, where he and I could both have a sleep in quiet and comfort.

40

On the way home, we stopped at the house where Daniel had been living so we could collect Daniel's morning medication. When we drove into the driveway, Daniel became distressed, he held on to his seatbelt, constantly and repeated saying "Don't want it, don't want it." I told Daniel he could stay in the car but I had to go and get his medication. Then he settled.

45

I went to the house and asked the support worker on night duty, who I will now call ABP, for Daniel's medication. Daniel's medication was packed in clear sachets. ABP gave me only one sachet of tablets and I knew Daniel had two sachets of tablets, of pills, in the morning, so I asked him to go back and get the second sachet.
5 He informed me there was only one sachet in Daniel's medication box but I insisted that he go back and check. When I looked closer at the sachet, I realised that he had given me a different client's medication, because the drugs did not look the same as the other client's, and I not noticed that the name was on the sachet. I asked him to go back and get Daniel's medication and then drove Daniel home so we could both
10 have some sleep.

However, I do have to say that when I told the staff member, I said to him, "Look, this is not Daniel's medication, this is another client's medication", he said to me, "Oh, you sure?" I was absolutely sure.

15 Later that day I called the support worker who had called me the night before to tell me about Daniel's bruises. Daniel and I weren't sure about bringing Daniel back to N Street.

20 MS EASTMAN: Graham and I?

MS ROGERS: Sorry, Graham and I weren't sure about bringing Daniel back to N Street but we trusted ABM and ABN who were on shift. They assured me they would watch Daniel well. They said they would take him to Club Cool, a dance and
25 music event that was on the next day at a local hotel, so we took Daniel back that afternoon. That is my biggest regret.

We didn't visit Daniel on the Sunday as we usually did, because we thought he was going to Club Cool.

30 MS EASTMAN: What's Club Cool?

MS ROGERS: Club Cool is a live music event that's held at the Governor Hindmarsh Hotel, and it's specifically held one Sunday afternoon a month,
35 specifically for people with disabilities to come and have fun and they can eat, and listen to music.

On the Sunday night, I called the workers to see how Daniel was going and they told me they needed to go and do food shopping, so they took Daniel with them instead of
40 going to Club Cool.

On Sunday, 24 February, I emailed a staff member at Daniel's day option provider, Windamere Park, and asked if Daniel had been involved in any falls or altercations. On the same day, I emailed Wayne Cunningham and asked him to call me as soon as
45 he got in on the Monday morning.

In the morning of Monday, 25 February, Wayne called me to say he was at the office

and I told him I was coming to see him. I drove to the DHS office where Wayne worked and showed him the photographs I had taken of Daniel's bruises. He was distressed. He cried. And he looked like he was in shock. He told me he didn't know anything about the bruising. While I was with Wayne, I sent an email from my
5 phone to Muriel Kirby, the Director of Accommodation Services at DHS, attaching the photographs of Daniel's bruising and I asked Muriel to call me. She did. We arranged to meet Muriel, Carolyn Warren, the Area Manager, and Sandra Wallis, at their house.

10 Graham and I arrived at the house early for the meeting. Daniel was home as he couldn't go to day options due to the hot weather. He looked distressed and he refused to leave his room. We sat in his bedroom waiting for everyone to arrive. In his room the dust was very thick, the floors and walls were very dirty, it looked like the floors had not been swept for a long time.

15 Staff offered to make Daniel a sandwich. I said that would be great but Daniel refused to go into the kitchen to eat. Staff brought the sandwich to Daniel's room, but he refused to eat anything. He was holding on to me very tightly and he would not let go of my arm. At one point I took my hand away to scratch my face and he
20 became upset and pulled my hand back into his. This was not usual behaviour for Daniel.

Muriel, Wayne, Carolyn and Sandra arrived at the house for the meeting. I talked to them in Daniel's bedroom. I told them what had happened on the Friday night, about
25 the bruises that had been found on Daniel and that he had been taken to hospital. I also complained about the cleanliness of Daniel's bedroom and more generally the cleanliness of the house.

During the meeting, other clients were coming in and out of Daniel's bedroom while
30 we tried to talk. It was a very awkward situation. Daniel appeared to be quite distressed and I wanted to remove him from the environment quickly. Graham and I packed a few items of Daniel's clothing into his suitcase and we left, with an agreement that we would talk to Wayne, Carolyn, Sandra and Muriel later about what we should be doing about Daniel's accommodation arrangements. I was told
35 there were several alternatives to that house and I could call them when I was ready to discuss this.

Daniel stayed home with us for that week. He didn't attend his day option. Muriel, Sandra and Wayne kept in touch over the following weeks. Sandra rang regularly, at
40 least once a week, to see how Daniel and I were going and she reminded us about alternative accommodation options that might be available to Daniel. Despite these offers, Graham and I decided that Daniel could not go back either to live --- especially not to live at N Street. Daniel seemed to be traumatised, he was very unsettled at night and if we mentioned N Street in a conversation, he became very
45 distressed and he would start hitting himself in the head. Graham and I started referring to the accommodation as "NS", to stop him becoming distressed. I decided we needed to give him an environment where we knew he would be safe and secure

in.

At the time Daniel moved out of N Street and into our house in February 2019, I was not aware of any plans to close N Street.

5

On 26 February 2019, Wayne Cunningham called me and asked me to report Daniel's injuries to the police. That evening, I took Daniel to the Port Adelaide Police Station and made a statement. I didn't think at the time the police would even follow this up, as Daniel has very limited speech and had not been able to tell us what had happened to him.

10

Over the course of the next few months, the police investigated the matter. The police sent a specialist communication officer to try and talk to Daniel but it was deemed that Daniel would be unable to provide a statement.

15

I have not seen a copy of the police report. The police officer who investigated Daniel's injuries told me he investigated for several weeks and he had interviewed and visited --- interviewed staff and visited N Street but he was not able to investigate the matter any further. The police officer mentioned to me that there was a theory that Daniel had had a fall. This was the first time this had been suggested to me and came as a surprise because I had never known Daniel to have a fall or to bruise easily.

20

Following my report to the police on 26 February, I was told that DHS would also investigate the incident.

25

I had some professional contact with Muriel Kirkby during the following period of Daniel moving out of N Street and Muriel always asked me how Daniel was going. She told me on a number of occasions that DHS did not have the answers to what had happened or to what had caused the bruising. Muriel apologised for what had happened to Daniel numerous times, although we never actually received a formal apology from DHS.

30

At some point I emailed the Windamere Park staff --- sorry, at some point after I emailed the Windamere Park staff member ---

35

MS EASTMAN: That's the provider of Daniel's day option?

MS ROGERS: Daniel's day option, yes. They replied to my email and told me there had been no altercations or falls involving Daniel that had been reported at Windamere Park but staff had also seen the bruising on Daniel's back on Monday, 18 February.

40

On Monday, 4 March, we decided to drive Daniel back to Windamere Park ourselves. Knowing Daniel's reaction, what it had been when we returned to N Street, he appeared quite happy on the drive to Windamere Park. Daniel was singing and when we got to the farm gate, Graham asked Daniel where he was going

45

and Daniel replied with a smile "Farm", so we knew he was going to be okay there. I spoke with a Windamere Park staff member when we arrived. She told me the staff had seen the bruising on the other side of Daniel's back earlier that week but had not reported it to the accommodation service or me. She said it had looked like someone
5 had tried to cover up the bruises with some type of red paint and when Windamere Park washed the red paint off Daniel, they uncovered the start of the bruising. She told me they also had photographs of the bruising, and I asked why they didn't tell me about Daniel's bruising.

10 MS EASTMAN: Sorry, just go back, so you asked why?

MS ROGERS: I asked why they hadn't --- I asked her why they hadn't told me about Daniel's bruising at the time they discovered it and I said that if there were any further incidents, I needed to know about them.

15

I was very upset with Windamere Park for not reporting to this to me or to DHS. I asked the staff member if they had reported the incident to anyone else and she said they had reported it to the NDIS Quality and Safeguards Commission on 28 February 2019. She provided me with a copy of the report and the incident notification. This
20 is attached.

MS EASTMAN: Commissioners, a copy is behind tab 16 in hearing bundle A. I don't need to take Ms Rogers to that document.

25 But you received a copy of this from the staff at Windamere Park; is that right?

MS ROGERS: Yes, that's correct. I was not involved in or consulted about the DHS investigation. Daniel was living with me after February 2019 and IMU never sought to interview him or me. About a year after the bruising occurred, and I think it was a
30 bit longer than a year, we initiated a meeting with Stewart Dodd, the Director of the IMU. Stewart told me the DHS investigation was inconclusive and he was unable to provide a copy of the report to me. Stewart said if I wanted to see a copy of the report, I would need to make a Freedom of Information application. I didn't make the application because I felt the process would be too onerous and I just didn't have
35 the time or the energy to do so.

MS EASTMAN: I want to ask you a few questions, if we can pause there. First of all, in relation to Windamere Park, and you were told that a report had been made to the NDIS Quality and Safeguards Commission, and the reason for that is that, with
40 respect to Daniel's day programs, that that was part of his NDIS plan and funding at the time?

MS ROGERS: Yes, that's correct.

45 MS EASTMAN: So Windamere Park was an NDIS-registered provider and so if something happened to Daniel while at the day program, that locked in the NDIS Quality and Safeguards Commission reporting line. You understood that?

MS ROGERS: Yes, that's correct.

MS EASTMAN: Were you aware of that at the time of this incident?

5

MS ROGERS: Yes, yes, I was.

MS EASTMAN: In terms of them --- if the incident or the bruising had occurred at the home, that was not something that could be reported to the Quality and Safeguards Commission because that was services provided by the State; is that right?

10

MS ROGERS: Yes, that's correct. And the State were providing in-kind services so they weren't answerable, I guess, to the Quality and Safeguards Commission.

15

MS EASTMAN: So you understood in terms of the State addressing the issue around how Daniel had the bruising and what type of injury he must have sustained to have that level of bruising, that that would be subject to any investigation within the State DHS; is that right?

20

MS ROGERS: Yes, that's correct.

MS EASTMAN: So Mr Cunningham told you that the matter had been reported to the IMU, the Incident Management Unit?

25

MS ROGERS: Yes.

MS EASTMAN: Looking at your paragraph 78, is it the case that you were aware that the IMU would conduct an investigation? So you were aware of that?

30

MS ROGERS: I was aware that they would conduct an investigation and they did tell me that they wouldn't start their investigation until after the police investigation.

MS EASTMAN: So you anticipated my question about just in terms of which went first. So, if the police were investigating, you were aware IMU would wait until they could commence an investigation pending the police investigation?

35

MS ROGERS: Yes.

MS EASTMAN: You say in paragraph 78 you weren't involved or consulted about the DHS investigation at all?

40

MS ROGERS: Never.

MS EASTMAN: No one asked for the photographs?

45

MS ROGERS: No one asked for the photographs, although I had already supplied

them. No one ever came and talked to Daniel. I did suggest at one stage that perhaps we could put photographs of staff in front of Daniel to see his reactions, but that was not agreed upon. And no one ever came out and asked us what we thought happened. We'd had him the day previously, so no one ever came out and said to us,
5 "Did he have a fall on the Sunday", or --- because the bruising was starting to come out later on the Monday. So no one ever came and asked us and said, how was he on the Sunday, was he upset, were there any evidence of anything on the Sunday? I would have known because I took him to the toilet a couple of times.

10 MS EASTMAN: In terms of the way in which the IMU would conduct the investigation, did anyone tell you what that process would be?

MS ROGERS: No.

15 MS EASTMAN: In terms of the IMU investigation, did you know whether there had been any contact between DHS and Windamere Park in terms of what you were told at Windamere Park, that the staff washed red paint off? Did you know anything about the exchange of information, if at all, between Windamere Park and DHS?

20 MS ROGERS: No, I don't know about that. But I do know the police went to Windamere Park.

MS EASTMAN: In terms of the results of the investigation, are you telling the Royal Commission, in paragraph 78, that you had to initiate a meeting with the
25 person in charge of the IMU, that was Mr Dodd?

MS ROGERS: That's correct.

MS EASTMAN: That he agreed to have the meeting with you?
30

MS ROGERS: Yes. He had --- we had met with him in the early stages, when he was telling us that the meeting would --- that they would follow up after the police. But he was going to get back to us, and he never ever did. So we had initiated that meeting which occurred in July the following year.
35

MS EASTMAN: I want to ask you, timing-wise, because Ms Boswell says in her statement that on 8 July 2020 she had a meeting with you and Graham?

MS ROGERS: Yes.
40

MS EASTMAN: And that also, as I understand it included, she said the Director of Accommodation Services, I don't know whether you know who that was at the time, and the director of the IMU were present?

45 MS ROGERS: Yes.

MS EASTMAN: Ms Boswell says she recalls that you were upset that you had not

been contacted by the director of IMU at the conclusion of the investigation, and Mr Dodd apologised for this and Ms Boswell says she apologised on behalf of DHS for the failings of the Department and the handling of the incidents in relation to the bruising. Do you have a recollection of attending that meeting?

5

MS ROGERS: Yes, I do.

MS EASTMAN: Is that the meeting that you're referring to in paragraph 78?

10 MS ROGERS: Yes.

MS EASTMAN: So a year or so after the bruising?

MS ROGERS: Yes. It's probably closer to 15 months afterwards.

15

MS EASTMAN: So it was at that meeting that you say that you asked for a copy of the report?

MS ROGERS: Yes.

20

MS EASTMAN: Ms Boswell doesn't mention that in her statement. But you have got a recollection that you were told at that meeting that if you wanted a copy of the report, you had to make a Freedom of Information application?

25 MS ROGERS: That's correct, yes.

MS EASTMAN: You have now seen a copy of that report in --- have you seen ---

MS ROGERS: Yes.

30

MS EASTMAN: You have seen it in the material from the State?

MS ROGERS: Yes.

35 MS EASTMAN: Commissioners, I'm conscious of the time. It's about 11.05. I had said to Ms Rogers that we will take this bit by bit. So I think we have finished the first hour of what we need to do. Before we turn to part 2, which is after leaving N Street, Commissioners, if it's appropriate, we might take a morning tea adjournment now.

40

CHAIR: Yes. We will resume at 11.25 Adelaide time. Is that convenient?

MS EASTMAN: Yes. Thank you, Chair.

45 CHAIR: Thank you very much. Please have a break and we will resume at 11.25.

ADJOURNED

[11.05 AM]

RESUMED

[11.25 AM]

5

CHAIR: Yes, Ms Eastman.

10 MS EASTMAN: Thank you, Chair. Before we start on life after leaving N Street, Commissioner McEwin, you have a question that you want to ask arising out of paragraph 71 in relation to the police investigation?

15 COMMISSIONER McEWIN: Yes. Thank you, Ms Eastman. Ms Rogers, if I can take you back to paragraph 70?

MS ROGERS: Yes.

20 COMMISSIONER McEWIN: Where you describe the police and a specialist communication officer to try to talk to Daniel. Just tell me, what was your observation or experience of that particular interaction?

25 MS ROGERS: Okay. That was --- they actually came without us knowing they were coming, so they turned up and I wasn't home at the time, Graham was home with Daniel. And he said that the police officer involved attempted to talk to Daniel but Daniel's understanding was very clearly limited and she didn't have any success, and her feedback to the investigating detectives was that Daniel would be unable to give evidence.

30 COMMISSIONER McEWIN: How did you feel about that, you and Graham?

35 MS ROGERS: Look, I felt --- I understood that. I knew that Daniel would be unable to give evidence, but --- and I think the police kept us informed regularly and it was good. I still feel there are answers out there and I still would like to know what happened. I guess we're never going to know. And I think the police --- the police officer, when he came to tell us that they were closing the investigation, he said to us, "Every single shift that I've been on, I've done something on Daniel's case."

COMMISSIONER McEWIN: Thank you for that. Thank you.

40 MS EASTMAN: Can we pick up from paragraph 79.

45 MS ROGERS: Sure. After we made the decision for Daniel to move home, Graham went to the house on the Wednesday, 27 February, to pick up the rest of Daniel's clothing and his other belongings. Graham told me that he picked up the boxes of Daniel's belongings and that staff had packaged for him to bring home. When I unpacked the boxes, I discovered there were no jumpers, no coats or T-shirts, and only three polo shirts. I knew that Daniel had several jumpers and coats and I had

given him three new T-shirts the week previously when he had been home, when he had come home dirty. I also thought that he would have had at least 15 T-shirts and 20 polo shirts at the house. A lot of the clothing had been packed --- that had been packed was either bleach damaged or dirty and many of the items belonged to the other men who lived there.

I also know that there were at least two coats in that house that belonged to Graham, because when Daniel had come home cold, he had been sent home with Graham's coats on, so they had disappeared too.

Staff had also packed a large box of dirty and broken shoes, which contained a pair of ladies' thongs.

MS EASTMAN: You have got some photos. Do you want to show us the photos?

MS ROGERS: I'm happy for them to be put up.

MS EASTMAN: Commissioners, these are behind tab 17, tab 18 and tab 19. This is a collection of shoes.

MS ROGERS: There were actually about two boxes. And I don't think there was one good pair of shoes in them. They were all filthy and broken.

MS EASTMAN: Had you seen Daniel wear any of these shoes?

MS ROGERS: Probably not, and some of them were obviously --- Daniel has a size 13 male foot and some of them were like size 7 and 8.

MS EASTMAN: Back to paragraph 81.

MS ROGERS: Given the incident with the quilt earlier, only a few months previous, I had asked Graham to ensure that he brought that quilt home that had been purchased in October. Graham told the staff --- told me that staff were unable to find the quilt. Then after some time searching the house, they came out saying that it had been located. When Graham returned, he gave me the quilt which the support workers had provided. I looked at the quilt and later the tag on the quilt and it appeared to have the initials of another person at N Street, and I don't think we need that photo.

MS EASTMAN: You have given a copy of the photo to the Royal Commissioners as part of your evidence but we don't need to put that up on the screen.

MS ROGERS: I believe they had adjusted the name tag on it and changed it, they even used a different coloured pen, so it wasn't even very smart changing of the name on the quilt. So ---

MS EASTMAN: Paragraph 83, I think we're up to.

MS ROGERS: Yes. We returned all of the clothing and bedding to DHS that didn't belong to Daniel. A lot of the bedding was for single beds and Daniel actually had a double bed. So we returned all of that. Staff had forgotten on that day to pack Daniel's medication and I was also aware of the fact that Daniel had some cash at the house from his weekly allowance, but this money was not packed for him either. Graham then had to return that day to collect Daniel's cash and his medication. Obviously, he couldn't go without the medication.

10 I complained about the quilt, the dirty clothing and the broken shoes to Wayne. DHS then transferred \$500 to us, which I was told was to reimburse for the clothing and the shoes. DHS continued to administer Daniel's finance for a year after he moved out. We had asked them to do that. And from recollection, the \$500 from DHS was transferred into our account so we could purchase new clothing for Daniel. We did so and we kept receipts for all of our purchases and we paid out more than \$1,000 to replace the clothing that he needed.

From February 2019, DHS transferred \$400 to us on a fortnightly basis, which I understood was drawn from Daniel's pension. That was about half of the amount that he previously used to pay for his board and lodgings. I nominated the amount that --- and then we paid for all of Daniel's needs from that, from his clothing, medication, everything.

MS EASTMAN: Can I just, pausing there; after DHS administering Daniel's finances for a year or so, did you then make arrangements that you became the nominee in terms of managing any finances?

MS ROGERS: No. In fact, Daniel had some funding in trust for him, quite a large amount of money, and I requested that --- it was after a year and so we took over Daniel's finances, I went to Centrelink, set up a separate account and Centrelink were more than happy to transfer that to me. But the Department were concerned because I didn't have an administration order. But neither did they. And I didn't want to have to go down that path, to formalise it, because I knew that formalising an administration order is actually taking quite --- there's actually quite a lot of administrivia involved in that sort of process and then you have to provide books to the Public Trustee every year and it has to be --- if you are appointed as a formal administrator, and it becomes quite an onerous task.

MS EASTMAN: Now we are going to turn to Daniel's life now.

COMMISSIONER McEWIN: Ms Eastman, before we go on to that, may I ask one question about the medication that you were just talking about. You have described in your evidence that they sometimes didn't pack the right medication when you went away on holiday, they gave you the wrong one. How confident were you that the staff in the house were giving Daniel the medication in the correct way? Can you describe your observations on that?

MS ROGERS: Sure. They had to sign off on everything. And initially I wasn't that unconfident. But after being given the wrong person's medication by a staff member who had been there for several months, I actually at one stage rang Wayne, who was the service manager, and asked him, was the other person on blood thinners? Maybe they had given the wrong medication to Daniel. But no, that wasn't the case.

So, now, I look back and I wonder. But I guess, you know, it's a game. It's something that you are never going to be able to prove and it's a battle that, you know, I've got no --- I've got proof of what happened with Daniel, I've got proof of the bruising, I've got proof of the misappropriation of funds and the fact that the quilt disappeared straight away. So I don't know if that's --- it's probably, at the time I thought maybe it was something we wanted to look into, in case blood thinners were involved and that's what had caused the bruising. But now I haven't really gone back there, I haven't really thought about that.

COMMISSIONER McEWIN: Thank you, Ms Rogers. Thank you, Ms Eastman.

MS EASTMAN: Before you start picking up from where you were up to in your statement, I want to take to you a few things Ms Kirkby says in her statement. She in her statement says she instructed the regional manager to reimburse you and Graham the \$500 to cover the cost of the bedding and other items?

MS ROGERS: Yes.

MS EASTMAN: She also says this, and tell me if you remember this occurring. She said that she arranged for Daniel, you and Graham to have counselling to assist you with the events that you had endured. Daniel had counselling with a specialist psychologist who had experience working with people with intellectual disability who had experienced trauma in their lives and Daniel had received four sessions and you had Graham received two to three sessions and the sessions were funded by DHS. Do you remember that?

MS ROGERS: Yes. We did, we went to Muriel Kirkby and said that we were traumatised and so was Daniel. We took Daniel to the first session. During the first session he became quite animated and was hitting himself in the head a lot and crying a lot. The next day, he actually bit someone. So we felt that bringing that stuff back to him --- and we knew that when we talked about that stuff in the house, that he did become distressed, so we decided not to pursue that.

Graham and I had a session with the --- so in response to that, Daniel had one session. And we just decided that it wasn't appropriate for him. Graham and I also had one session with their --- with the DHS counsellor, and that was really helpful to us. We actually looked at the different ways that we were handling it. And because I was handling it on a very emotional level and Graham was handling it on a very practical level, and that --- we were going to have a second session but when we came out to the reception area there was about 12 people lined up waiting to make the next appointments and we said, no, we were not going to wait in line, we were

quite emotional at the time. But then after we left there, we discussed it and we felt that that session had really helped us greatly and so we were able to move on. So we did that --- that's true, the sessions were offered to us and were funded but we only had one session each. But that was our choice.

5

MS EASTMAN: Ms Kirkby also says that she regularly called and met with you to see how Daniel was doing and this would be approximately weekly. She says she is aware that the regional manager called you weekly to ensure that you had support and to ensure Daniel had a smooth transition to living with you and Graham and she says:

10

To ensure Karen and Graham were supported during this transition, DHS support staff were deployed to Karen and Graham's home every weekend at their request until Daniel had new NDIS arrangements in place for staffing.

15

We are going to deal with the NDIS arrangements soon. Do you have a recollection of talking to Ms Kirkby on a weekly basis?

20

MS ROGERS: I have a recollection of talking regularly to Ms Kirkby and of Sandra Wallis ringing at least weekly, just to see how we were going. And those phone calls were very regular. And I often met with Muriel just for different reasons, but we always talked about Daniel and she was always very supportive.

25

MS EASTMAN: What about deploying a support worker, so a DHS support staff were deployed?

MS ROGERS: Yes.

30

MS EASTMAN: What happened in relation to that? That was every weekend?

MS ROGERS: Yes.

MS EASTMAN: What happened there?

35

MS ROGERS: The first weekend, that was a couple of weeks after Daniel came home and the worker who was the initial worker who made the phone call to me on the night about the bruising, he attended our home, he came and he took Daniel out, he took Daniel to the Cleland Wildlife Park and they had a lovely day out, because Daniel did particularly like this worker. But it only occurred once because when the worker went back to the house, the other staff gave him such a hard time, they accused him of being too friendly with us and they basically said, you know, that he was a bit of a turncoat and that he shouldn't be supporting us. And it just became incredibly difficult for him. He was bullied beyond belief, from what he ---

40

45 MS EASTMAN: That's what he told you?

MS ROGERS: That's what he said.

MS EASTMAN: You don't know that yourself but that's what you were told?

5 MS ROGERS: No, I wasn't there. But I have been told by other people that he was.
And I do realise that, you know, he didn't --- anyway, he came once and he didn't
come back again.

10 MS EASTMAN: You remember I asked you just before the break about paragraph
78 of your statement, which is the follow-up of the IMU meeting.

MS ROGERS: Yes.

15 MS EASTMAN: The meeting that you referred to there, to your recollection, is the
one that occurred on 8 July with Ms Boswell?

MS ROGERS: That's correct, yes. I do remember that meeting because it was the
day after my birthday, so I do know that that was the right date.

20 MS EASTMAN: Ms Kirkby also says in her statement that she met with you and
Graham on 25 February 2019, so that's the year before. She says she met again with
you, with Lynn Young, Stewart Dodd and Joe Young on 7 March 2019 to discuss the
investigation process as the matter had been referred to both IMU and the South
Australian Police for investigation. I just want to make sure that I've covered the
sequence the events.

25 MS ROGERS: Sure. Yes, that's correct.

MS EASTMAN: Do you have a recollection of that meeting?

30 MS ROGERS: I actually do.

MS EASTMAN: There were two meetings there?

35 MS ROGERS: There were two meetings. After that one, Stewart Dodd was going to
get back to us with the results of theirs but we didn't hear back from him, which was
the result of the meeting on 8 July that we requested.

40 MS EASTMAN: So in terms of the questions that I asked you earlier about being
involved or consulted on the DHS investigation, those meetings didn't elaborate on
the policies, processes or systems for the investigation?

45 MS ROGERS: No. No. The only thing that I could say that would have been said at
the first meeting would have been that they weren't going to start investigating until
the police investigation had been completed.

MS EASTMAN: So I wanted to draw your attention to that part of Ms Kirkby's
evidence.

MS ROGERS: Yes.

5 MS EASTMAN: She is giving evidence later this afternoon so I want to ask her about that as well. Can I take you back to your statement? We got to paragraph 88.

MS ROGERS: During the first few weeks after Daniel moved home in February 2019, he didn't settle at night and he often shouted and hit the walls during the night. After a period of settling in, Daniel has been very happy. He's now talking and eating a lot more.

10 He's come so far in the last two years. For example, three years ago a staff member told me they'd cancelled Daniel's dental appointment because he refused to walk up the stairs at the dental clinic. In March this year, after several familiarisation visits to the Specialist Dental Clinic in Adelaide, Daniel sat in the dentist chair and allowed her to scrape years of built up calculus off his teeth.

MS EASTMAN: I know you didn't want me to pause you there but I'm going to. When you talked about familiarisation visits, can you explain that to the Royal Commissioners? The Royal Commissioners have heard a little bit about the experience of people with intellectual disability visiting dentists and sometimes the struggle to even get through the door. So what happened in terms of March this year with the familiarisation visits, and is the Specialist Dental Clinic in Adelaide a specialist service for people with intellectual disability? I don't need you to be long, just help us.

MS ROGERS: No, that's okay. I believe it's a specialist service for people with disability. Daniel started going there after us bringing him home, we made appointments for him to go there. And they have --- the familiarisation visits have been just for him getting in there, sitting in the chair, opening his mouth, and pre-COVID, we went probably two or three times, then everything stopped. But after COVID, they were bringing him in every three to four weeks, just to get him used to things. They actually used the drill on his thumbnail, so that he understood what was going to happen. And he has proved to be a really lovely patient. He doesn't --- he can't tolerate a lot for a long period of time. But he will sit in the dentist's chair, open his mouth and actually allow them to do some work on his teeth.

MS EASTMAN: Let's go to paragraph 90.

40 MS ROGERS: Our lives have changed significantly since Daniel came home to live with Graham and me. Despite still being young, and I think 60 is still relatively young, I had to retire and give up my career to look after Daniel at home. I now have no income. Graham and I had to move out of the master bedroom to renovate it for Daniel, as well as replacing all the carpets in our home with vinyl slats. We have also installed roller shutters on the doors and windows for noise control, because Daniel can sometimes be very noisy and sometimes at 3 o'clock in the morning. We replaced our hot water service with a unit that we can moderate the temperature from

inside the house so Daniel doesn't burn himself, because he will play with the taps. We have also installed new swimming pool fencing and we re-mortgaged the house to pay for a lot of that. Daniel did help out with some of the roller shutters.

5 Daniel has night-time incontinence and sometimes he will manage to saturate his sheets. In winter, as it is now, two quilts, two pillows, a Kylie mattress protector and sometimes this will happen twice a night, which can mean that we will put eight loads of washing through our front-loader washing machine a day. Our water and electricity bills have increased markedly, as did our gas and grocery bills. We
10 installed solar panels, so that's helped. Graham was initially driving over 1,000 kilometres a fortnight and 40 hours a fortnight to drive Daniel to the pick-up point for his day options but we have renegotiated that. Daniel still reacts negatively to anything associated with N Street. Hearing the words or phrases, like "What's wrong" or "What's the matter", or "Naughty", make him very upset. If I say, "That
15 was naughty", he becomes really, really upset. He still refuses to go anywhere near the place. At one stage we were driving on a visit to Daniel's grandparents and he felt like a cake, he said he wanted a cake. We knew there was a 24-hour bakery and we turned down the road that went past N Street. As soon as we turned into that road, Daniel became very upset and started saying, "Don't want to" and repeatedly hit
20 himself in the head.

We realised that even though we were happy to have Daniel home and he was very happy to be home, we needed more help through the NDIS. Daniel became an NDIS participant when he was living in N Street but the assistance provided through his
25 plan at that time was limited because his accommodation services were provided by DHS in-kind. While the NDIS plan provided for Daniel's day options, it did not provide for any additional support before or after day options or respite care on the weekends. So there were also modifications that we needed to make to our home to make sure Daniel was safe. We therefore needed an NDIS plan review.

30 In March 2019, I contacted the NDIA and requested a change of circumstance meeting. It took several weeks to organise the planning meeting.

35 MS EASTMAN: Ms Rogers, can I ask you to slow down just a little bit.

MS ROGERS: Okay. It took several weeks to organise the planning meeting and in the interim period we had no NDIS support for Daniel, apart from day options.

40 In late April 2019, Daniel's plan was approved. This provided for Daniel to continue attending his day options as well as some funding for respite. It also provided funding to get assessments done that would provide further evidence of the extent of Daniel's support needs. Without funding for support during the week, home modifications and additional respite, Daniel's NDIS plan still wasn't really enough to
45 meet his needs.

We needed to go through the process of proving what Daniel's needs were. This process required that I provide up-to-date reports that provided evidence of Daniel's

support needs, which meant making appointments for psychometric assessments, an occupational therapy assessment, a sensory assessment, a behavioural assessment and a positive behaviour support plan. It all took months. It was like having to prove that Daniel had a disability all over again.

5

During that time, the psychologist who was completing an assessment for Daniel, went to the DHS to review Daniel's files, to get more information about Daniel's supports in the accommodation setting. It was the psychologist's review of these notes that we discovered that Daniel had been diagnosed with movement disorder and hypertriglyceridemia. We were not aware of either of these diagnoses.

10

MS EASTMAN: There is a document from the psychologist. The Commissioners will have a copy of that document in the hearing bundle, but I don't need to take you to that document.

15

MS ROGERS: In about August 2019, we gathered the evidence we needed to lodge a request for an internal review of Daniel's NDIS plan, as I did not feel Daniel's plan was adequate. I was sent a review application form and I decided to make an appointment with a support coordinator to help me complete the form. I do not remember the date, but just over a week after I received the form, and before I had met with the support coordinator, I received a phone call from someone from the NDIA who told me I needed to send the reports and the form back within an hour. I was extremely upset because I was on my way to a meeting and I was not going to be able to get that paperwork in within an hour. I explained I wanted to complete the form with the support coordinator and she agreed to give me until the end of the day to submit the reports gathered and 48 hours to complete the form.

20

25

I met with the support coordinator and completed the documentation. I can't remember what date that was. Ultimately, Daniel's support coordinator sent the review application to the NDIA on 10 September.

30

On 10 October, I hadn't heard back from the NDIA so I sent another email asking where the review was up to.

35

On the evening of 11 October, I received a phone call from a delegate with the Review Team. The delegate informed me that the review was not going to be granted because we needed to have lodged the application within 90 days of the date of the plan, the date the plan was signed. I explained that it had taken longer than that to get the evidence the NDIA required to consider more assistance for Daniel. She stated there was nothing that could be done as it was legislated. She did say that the assessments that we had done are so good that when Daniel's review comes up in April 2020, Daniel should receive a much better package.

40

On 17 October 2019, we received a letter from the NDIA stating because the review of our application had taken longer than 14 days, there would be an internal review of the discussion not to grant a review.

45

MS EASTMAN: Decision?

MS ROGERS: Sorry, decision, not to grant a review of Daniel's plan. I searched the NDIS website and discovered a letter can be sent to the Chief Executive Officer of the NDIA to request an internal review of the decision. I wrote to Martin Hoffman on 1 November, asking for his help.

MS EASTMAN: You have provided a copy of this letter. Commissioners will find that behind tab 22 in the bundle. The letter is two pages. I don't think we need to put the entirety of the letter up on the screen, but I would like you to just allow the Commissioners and those following this proceeding to get a sense of what your state of mind was --- we have got that on the screen, that's helpful --- when you decided to write to Mr Hoffman, the Chief Executive Officer of the NDIS, on 1 November 2019. I don't need you to read the whole of the letter but just perhaps those first few paragraphs may give us a sense of how you were feeling at that time and your sense of frustration.

MS ROGERS: Yes. I wrote to Mr Hoffman and I sent it just after he started at the NDIS. The second paragraph is:

In my life, I dealt with being told I was a young mother and there was nothing wrong with my child for four years, then to be told my child was epileptic, "retarded" and he would never be OK. I went through a broken marriage and then I had to face the guilt of not being able to provide the care that he needed when he became too big for me to handle. I have always been involved and had him home a minimum of one day a week and early this year, Daniel faced the trauma of being hurt in care (no one knows how but he was badly injured). We had been expressing concerns about his care for the past few years but this was major. We made the decision to bring him home as he was unhappy and fearful. My life has been busy, hectic and on occasions quite traumatic.

This all pales into insignificance when trying to deal with the NDIS - and I work in the sector!

MS EASTMAN: You go on to describe what you had taken on in terms of the supports for Daniel on his return home, and then just at the end of the letter, you say:

I am asking you to PLEASE HELP US???

MS ROGERS: Yes.

MS EASTMAN: You remember sending that email to Mr Hoffman by around 1 November 2019; is that right?

MS ROGERS: Yes. That may --- that was the date that I wrote the letter but I sent it after he --- I'm not sure what date he started, but I sent the letter after he started with the NDIS.

MS EASTMAN: Was it your expectation that he personally would read the letter?

5 MS ROGERS: I would have thought that he would have. And I've written to him since then too.

MS EASTMAN: You didn't receive a response?

10 MS ROGERS: I never received a response from that. I did get a phone call, saying that Daniel had plenty of funding and that we weren't using it all. As I said to her, you know, we don't know what we are going to need because this is fairly new for us. But also, I didn't --- I didn't like the fact that I was given an hour to get the paperwork in and then had to wait for a month for a reply to it.

15 MS EASTMAN: Let's pick things back up at paragraph 103.

MS ROGERS: In December 2019, an occupational therapist came to our home and conducted an assessment of Daniel's en suite bathroom. They determined that the existing set-up of Daniel's bathroom was not safe and made several
20 recommendations, including the removal of the glass shower screen, installing of an accessible toilet and basin, and the replacement of existing tiles with slip-resistant flooring. The occupational therapist prepared a report setting out the recommendations, which the report was completed on 25 February 2020.

25 MS EASTMAN: You have provided a copy of the report and the quote?

MS ROGERS: Yes, that's correct. The quote provided by the contractor for the modifications was \$19,325.27. For these modifications to be funded through the NDIS, I needed to complete an assistive technology request, which I signed on 5
30 May 2020. Daniel's support coordinator submitted this request to the NDIS and the document ---

MS EASTMAN: You have got a copy of that there.

35 MS ROGERS: That's there. This was around the time that the scheduled review for Daniel was about to take place. I received a phone call from the NDIS planner, who had met with us via phone, for Daniel's planning meeting, which we had also discussed the assistive technology request. She congratulated us, stating that Daniel's plan had been approved. She went through what had been approved and
40 I asked about the bathroom, the home modifications. She stated that that request had been declined. I was extremely upset and said I would be requesting a review.

Daniel's support coordinator made three separate requests to the NDIS over a period of a month for written reasons why the decision of the assistive technology request --
45 -

MS EASTMAN: The decision to decline the AT request?

MS ROGERS: The decision to decline the AT request, which was eventually provided to Daniel's support coordinator.

5 MS EASTMAN: You have given us a copy of those documents.

MS ROGERS: Yes. We applied for a review of the decision and we were advised that the review had been declined. I was advised by Daniel's support coordinator that we had 28 days from the date of the internal review decision to submit an application
10 for an appeal through the Administrative Appeals Tribunal.

MS EASTMAN: Did you know what the Administrative Appeals Tribunal was?

MS ROGERS: Well, I did know, but I hadn't had any experience with them. So we
15 engaged a lawyer to assist us and to submit the application and to represent Daniel at AAT. The application was submitted on 6 August and that application is enclosed.

After submitting the application, a case conference was arranged, which was attended by our lawyer. At the case conference, an agreement was reached that the
20 NDIS would fund the modifications to Daniel's bathroom, to the value that was previously mentioned. The AAT ordered that the modifications be funded through NDIS.

MS EASTMAN: You have included a copy of the orders?
25

MS ROGERS: Yes. Daniel now has a good plan covering his requirements, although the plan is significantly less than what it would be, should Daniel live in supported accommodation.
30 We found the NDIS process extremely difficult to navigate. It seemed that if we didn't meet a deadline then Daniel would be denied support, but if they did so, it just added more layers of bureaucracy for us to complete. This is particularly concerning because I work in the disability sector, so I had a better than average understanding of the terminology and the process and it was still almost impossible for us to
35 navigate.

MS EASTMAN: Pausing there, you have told the Royal Commission some of your experiences in navigating the NDIS. You have got a concern this is going to be ongoing for Daniel's life. But I want you now to turn to the final part of your
40 statement, which is your reflections on your experiences. You start this at paragraph 112.

MS ROGERS: The past two years have been an incredibly difficult and traumatic time for all of Daniel's family. We love Daniel dearly and we have supported him
45 through this time to the best of our ability. It's been distressing at times not knowing how to help him as we were never able to understand the trauma that he had been through. We have as a family attempted to give him support and confidence through

the night terrors. We also assure him regularly that he will be staying with us.

5 Having to deal with the bureaucratic expectations and jump through the flaming hoops of the NDIS has been a tortuous experience, taking many hours and causing enormous stress to my husband and myself.

10 Families play a vital role in the lives of their loved ones with disabilities. They have history, understanding, knowledge and commitment and this needs to be recognised. Agencies and staff should work with families and make every effort to keep them informed and involved. If a support worker wins Lotto, they will probably not continue in the lives of the client they are supporting. If I win Lotto tomorrow, no matter where Daniel is, I will be there, bringing with me the invaluable knowledge.

15 One of the things that happened --- and I just jump in here, when Daniel was quite young and he cut himself, and people were trying to hold him down to give him a needle to, anaesthetise him and he actually arrested. He was only about 18 at the time. I was with him and it was very traumatic. So that's why I insist on him having the midazolam before he goes actually through any procedures. But it was a very traumatic time. But when you look at Daniel's notes, there's nothing in that. That's all been previously archived, because it happened 20 years ago. But I know what will happen. If I'm there, I insist. But if I'm not there, and if it's just support workers and they take him to hospital, they are going to try to hold him down to give him a needle and it could happen again, he could arrest again.

25 So I've got that knowledge of what's happened in the history, I know how many vials of midazolam he needs, I know how to hold him. I know --- this sounds really corny, but the security guards actually told me on the night of this, one of the security guards came back and asked how Daniel was going. He had been holding one of Daniel's legs for the period of trying to get the needle in. He said to me, "Do you know, he was so tense and so strong when I was holding his legs, but when you were holding his head and singing to him, I felt him relax." No support worker is going to do that for Daniel. So I just --- I really reiterate that families are so important. Families have so much knowledge and they need to be encouraged to keep involved, not sort of pushed away and like, "Get out of our way and let us do our job."

35 I want to talk about staff. When staff are working with people with disabilities, they need proper training. They need proper support and they need proper supervision. They need regular meetings, including staff meetings, at sites. And they should be mandatory. It's important that all staff have the same information and the same discussions about medication, circumstances, changes in routines. Staff also need to learn to listen to families. This should be included in every bit of training that they receive. People with disabilities and their families should be involved in interviewing staff.

45 When Daniel first went into care in the early days at Hayward Avenue, there was a pilot project which trained families of people living in IDSC accommodation to interview staff professionally. I was involved in that training and for many years

I was involved in interviewing staff, staff who worked with Daniel but not just at his house, but for other roles such as case managers and therapists.

5 I also want to talk about the Community Visitor Scheme. The South Australian
Community Visitor Scheme needs to be strengthened and funded appropriately.
I identify here that at the moment I am on hold as a community visitor because I see
this as a bit of a conflict of interest, me being involved in this. But I think visitors
need to do regular scheduled and unscheduled visits to all accommodation services,
10 and not just the Government services, the NGOs as well. The program should be
expanded to include day options and people living in their own homes, particularly
people deemed as vulnerable.

We would welcome a community visitor into our house to see what we are doing, to
make sure that ---
15

MS EASTMAN: I wanted to ask you about this. Were you here when
Mr Bruggemann gave some evidence yesterday about the Community Visitor
Scheme?

20 MS ROGERS: Yes.

MS EASTMAN: He was asked about an opt-in option for people who live in their
family homes or live by themselves.

25 MS ROGERS: Yes, and that was identified by the Ann Marie Smith Task Force.

MS EASTMAN: What would your view be about community visitors coming into
your home?

30 MS ROGERS: Absolutely. I would welcome community visitors into my home.
I think that visitors need to --- people who are vulnerable need to be identified.
Daniel is vulnerable. He has us. I'm his mum, he has his step-dad Graham and he
has his twin brothers and his sister, and that extended family. But we're his family.
He doesn't really have anyone else. So I welcome ---

35 MS EASTMAN: He's not going to a day program at the moment?

MS ROGERS: No, we actually chose to take him out of day program.

40 MS EASTMAN: You haven't sought to find some employment for him as an artist
or a singer?

MS ROGERS: That's certainly on the cards. Because you may --- you've seen that
today I gave you a coaster that Daniel has made.

45 MS EASTMAN: You did.

MS ROGERS: And it is something that we would like to encourage in the future. But right now, I have basically written a day program for him, which includes a picnic day, it includes a day --- everything is out in the community, though, where he is visible, where people see him on a daily basis. He goes to a gym once a week, and
5 so those people in the gym know him. You know, he goes in the pool in the gym. So he would be in fairly, you know ---

MS EASTMAN: I think he's got a strong view about whether you go in the pool with him as well, doesn't he?
10

MS ROGERS: He does. I have to say, this is probably deviating a little bit, but I took Daniel to the pool the other day. He has one support worker who goes with him every now and then and I do the rest of it. The other support worker, Joe, who he really likes, goes in the pool with him and the exercise physiologist. But last
15 week, I said to him, "Daniel, mum come in the pool or mum stay out?" He said, "Mum stay out." I thought, blow it, I'm at the pool now and I've got my bathers on. He went to talk down the steps and he --- I went to walk in after him and he turned around and he looked at me and he said, "Mum stay out." I was so proud of him, that he can make a decision and he can actually say that that's what he wants. I mean, I
20 was a bit annoyed that he didn't want me in there but I was so proud of him for making that decision.

MS EASTMAN: In that sense --- I know we are talking about community visitors here, but that sense of ensuring that Daniel has involvement with a broader
25 community, not just with you and Graham, but that he's got people around him --

MS ROGERS: He's got the exercise physiologist, on the Friday after he goes there, there's a cafe near there that we always take him to, and they all say, "Hi Daniel", when he comes in, they all know him. So I believe that --- you know, he's being seen
30 by an exercise physiologist in his bathers, so if there was anything inappropriate, I'm pretty sure the exercise physiologist would identify it. And I think, you know, so for me, the farm where he went was really good for a period of time, but now he needs to be --- that's a very segregated setting. So he needs to be in the community more and he needs to be very visible in the community. The people at Cleland Wildlife
35 Park, which is in the Adelaide Hills, they know him. He can go to Cleland and they know what he likes for his lunch, so he can walk up to the Cleland Wildlife Park counter with his card, with his debit card, and they say to him, "Would you like chips, Daniel?" And he says, "Yes, please", and he can pay for them with his card.

MS EASTMAN: Part of it, you wanted to tell the Royal Commission, is building that independence for Daniel and your hope for him in the future is to have a life in the community where he can be independent and have choice and control; is that
40 right?

MS ROGERS: Yes. And we have made --- we are in the process of making provisions that our home at North Haven, he will stay in, even after Graham --- if Graham and I become too old or can't look after him any more, the other children are
45

all very happy for this, that Daniel will stay in this house, but it will be done properly and it will be legally done, so that he has --- he can stay in that house until the day he dies.

5 MS EASTMAN: I have diverted you off community visitors.

MS ROGERS: Sorry.

10 MS EASTMAN: You wanted to express your views about the Community Visitor Scheme and you say at the end of paragraph 117:

The Principal Community Visitor role needs to be permanently filled as a matter of urgency.

15 You have a strong view about that; is that right?

MS ROGERS: I do have a strong view about that. The Principal Community Visitor role was filled on Friday, was appointed on Friday. That Principal Community Visitor is also the Public Advocate.

20

MS EASTMAN: There was some news release over the weekend about having a system of apps and that obviously is news that postdates your statement, but you read that news in the Sunday Mail on Sunday, a couple of days ago, about an apps system?

25

MS ROGERS: Yes.

MS EASTMAN: Based on your experience with Daniel or your experience in the sector, how is the app going to work or what do you think might be the experience of people with disability using the app?

30

MS ROGERS: Well, you saw me shortly after I had seen the app and I was angered. The Government has put in half a million dollars towards developing this app, that people in their homes, a visitor can visit them through an app. Daniel has no concept of an app. He has no --- his understanding of my phone is it's something he can watch Sale of the Century and Scooby-Doo on. He has no comprehension of an app and I would be concerned for people in supported accommodation who were given an app who had --- who were not able to use that app by themselves, and they were given an app, they would have a staff member with them, so what opportunity does that provide for them to give honest feedback? If they can even use an app, if they are even verbal.

35

40

MS EASTMAN: So at this stage, what you know about the app is what you read in the newspaper?

45

MS ROGERS: Yes.

MS EASTMAN: So we may ask some questions during the course of the week about that.

MS ROGERS: Absolutely. Yes.

5

MS EASTMAN: The final topic you wanted to raise was security cameras. You wanted to raise this because of not getting any sort of clear answer in terms of how Daniel might have sustained the injury and the very large bruising.

10 MS ROGERS: Yes.

MS EASTMAN: What would you like to tell the Royal Commission about the security cameras? You have set that out at paragraph 118.

15 Commissioners, this is the final topic that Ms Rogers wants to cover and then I'll hand back to the Commissioners, if you have any questions.

MS ROGERS: When I first became involved in the disability sector, there were many discussions about dignity of risk versus duty of care, but now I just see this as
20 dignity versus safety. If it is between people seeing Daniel naked or seeing Daniel being safe in these places and places being accountable, there is no choice. Cameras should be introduced, particularly in common areas. However, if there is concern identified, there should be an option to place cameras in the private areas such as
25 bedrooms, if there is concerns identified. I think that should be done, like, with full discussions with families, or the person with the disability, if they are able to agree to that. But if families have concerns about what's happening with their child or their
30 son or their daughter or their sister or brother or niece or nephew, there should be an option that something can be --- there must be some way of recording if there is --- if there are concerns about someone's safety.

30

MS EASTMAN: Thank you, Ms Rogers. Chair, I understand that none of the parties with leave have any questions of Ms Rogers. So the Commissioners may have some questions.

35 CHAIR: Yes. Thank you very much. Ms Rogers, I'll just ask, first, Commissioner Bennett whether she has any questions to put to you.

40 **QUESTIONS BY THE COMMISSIONERS**

40

COMMISSIONER BENNETT: Firstly, thank you very much for coming today and telling us what's happened to Daniel and the impact it's had on Daniel and to you. In relation to the security camera issue, wouldn't it be better that the systems that --- that
45 the nature of where people live, the skills and aptitude, the culture and the governance, were the protections, and things like community visitors? Wouldn't that remove any debate about needing --- if we can get those things right?

MS ROGERS: Absolutely. But they are not right at the moment. As Mitchell's family said yesterday, in some of these places the atmosphere is toxic, and people are not, people are not safe at the moment. So I mean, ideally, what you are saying
5 would be ideal. I wouldn't want to have a camera watching me. But if --- as in aged care settings, some people are putting hidden cameras in and they are finding things that they don't want to see. But they are finding them. And, I mean, it's clear that not everyone is safe in accommodation services. If what you are saying --- if
10 everything was --- if everyone was accountable and things were happy and people were happy and the Community Visitors could go, in as they do in other states --- in South Australia, our South Australian Government doesn't allow them to go into non-government organisations, although that has been amended in other states. But we --- if those things were all in place and managers were accountable and senior managers knew what was going on in the services, absolutely --- I absolutely 100 per
15 cent agree with you, it would be far better if we didn't have to do that.

COMMISSIONER BENNETT: So that should be our aim?

MS ROGERS: Absolutely.
20

COMMISSIONER BENNETT: Rather than institutional settings that become more institutional by having cameras?

MS ROGERS: Yes, I agree. And I can guarantee you that Daniel will never go into
25 another institutional setting because group homes are mini-institutions, whether we like it or not. I mean, when he went there, we were in a difficult situation and I don't know what we would do, had we our time over again, I think I probably would have done it differently, having the knowledge that I have now. But at the time we were limited as to what was available to us. Our ultimate goal should be that people are
30 safe.

COMMISSIONER BENNETT: I have one last question, Chair. You said that Daniel went into a residential living arrangement when we was about 11, when you were expecting your twins?
35

MS ROGERS: Yes.

COMMISSIONER BENNETT: Had Daniel participated in school during that time and was that continued when he left living with you?
40

MS ROGERS: Yes. Yes, he had been in school. He was regularly suspended from school because he was a bit of a terror. But yes, that did continue once he went into accommodation services, yes.

45 COMMISSIONER BENNETT: How long did he continue education for?

MS ROGERS: Until he was 18. It wasn't what I would call a great education. As

I said, he was regularly suspended. But he did continue attending school, should we say.

COMMISSIONER BENNETT: Thank you.

5

CHAIR: Commissioner McEwin, do you have a question?

COMMISSIONER McEWIN: No, thank you. Other than to say thank you very much, Ms Rogers, for coming today.

10

CHAIR: Ms Rogers, just to follow up on what Commissioner Bennett asked, what kind of school was it? We don't need to know the name, but what kind of school?

MS ROGERS: He did attend a special school. I think that even now in this day and age, I think he would struggle to attend a mainstream school. He wasn't toilet trained until he was quite a lot --- well, into his teens. And for want of a better word, he was into natural art, he did a bit of art work with his bodily functions, and that would not go down well in a classroom. He also regularly bit people. It's only in the last --- it's only since Daniel came home, and I've been involved in more recent times in the incident reports and the problems when Daniel has bitten, that I've worked out --- I've actually worked out why he bites, and he bites because people are screaming around him. I'm not sure if --- I don't want to be flippant, it sounds a bit flippant, but I'm not sure if he thinks that the noise bothers him or if he thinks, "I'll give you something to scream about." So he's a bit of a terror, and as I said, he still bites. But I'm very thankful to say that he doesn't bite me any more.

20

25

CHAIR: The special school you referred to is one run by the State, is it?

MS ROGERS: Yes, that's correct.

30

CHAIR: Thank you. Thank you very much for coming to the Commission to give your evidence. In particular, thank you for preparing that video which we have seen earlier today. That video reflects fairly obviously the love and caring you have for Daniel and we are grateful for you being prepared to do that for the Commission and for people who are following our work. Also, I want to say thank you for how clear and thoughtful and fair your evidence has been. We thank you for that. We appreciate your contribution to the Royal Commission. Thank you.

35

MS ROGERS: Thank you for the opportunity.

40

THE WITNESS WITHDREW

MS EASTMAN: Chair, that concludes Ms Rogers' evidence. We thought if it was convenient to the Commissioners that we have our break for lunch now, then we will return after lunch and Ms Elizabeth Bennett, who is in Melbourne and on the

45

video-link, will take the witnesses for this afternoon's session.

CHAIR: We shall resume at 1.30 Adelaide time.

5 MS EASTMAN: Yes, that's fine, thank you, 1.30.

CHAIR: We will resume at 1.30, thank you.

10 **ADJOURNED** **[12.34 PM]**

RESUMED **[1.30 PM]**

15

MS EASTMAN: Chair, we are waiting to see if we have got sound from you.

CHAIR: Yes.

20 MS EASTMAN: The next witness will be Mr Cunningham. Before he gives his evidence, I want to tender some documents into evidence.

CHAIR: Thank you, Ms Eastman. We didn't actually hear that everybody was ready. But now we are on screen, all is well. Thank you.

25

MS EASTMAN: There are two documents or a video and a photograph, but I will call them documents, from Ms Rogers' evidence that it may be appropriate to tender into evidence now. The first is what I might call Daniel Rogers' video. You might remember the four-minute video. Could that be tendered and marked exhibit 14-2.

30

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

EXHIBIT #14-2 - VIDEO OF DANIEL ROGERS

35

MS EASTMAN: Then there is the photograph which is in hearing bundle part A, behind tab 13. If that photograph could be tendered into evidence for this case study and marked 14-3.

40

CHAIR: Just to be clear about it, that's the one behind tab 13?

MS EASTMAN: Yes, that's right.

45 CHAIR: That is the only photograph that you wish to tender?

MS EASTMAN: For today. As I said earlier, we will ask you to make some

directions at the end of the hearing about the tender of material generally. But with respect to those two documents, they are tendered now.

5 CHAIR: Thank you. Those two documents will be admitted into evidence and bear the exhibit numbers to which Ms Eastman as referred.

EXHIBIT #14-3 - PHOTOGRAPH IN BUNDLE A, TAB 13

10

MS EASTMAN: Mr Cunningham is in the hearing room in Adelaide and Ms Bennett will take his evidence via the video link.

15 CHAIR: Mr Cunningham, thank you very much for coming to the Commission to give evidence. If you follow the instructions the associate in the room you are in, she will administer the affirmation to you.

20 **WAYNE CUNNINGHAM, AFFIRMED**

CHAIR: Thank you, Mr Cunningham. Now Ms Bennett, who is in Melbourne, will ask you some questions. Just so you are aware of where everybody is, you probably already are, Commissioner Bennett and Commissioner McEwin are in the hearing room in Adelaide and I happen to be in Sydney, but no doubt I'm appearing like a brooding omnipresence in the sky on the screen.

30 **EVIDENCE-IN-CHIEF BY MS BENNETT**

MS BENNETT: Mr Cunningham, can you tell the Commissioners your full name?

35 MR CUNNINGHAM: Wayne Francis Robert Cunningham.

MS BENNETT: You have made two statements for this Royal Commission, the first dated 14 May 20021 and the second dated 24 May 2021; is that right?

40 MR CUNNINGHAM: I'm sorry, the message was being garbled and I couldn't understand what you said.

MS BENNETT: I understand you have made two statements to this Royal Commission; is that right?

45 MR CUNNINGHAM: Yes, that's correct.

MS BENNETT: One is dated 14 May 2021 and the other is 24 May 2021; is that

right?

MR CUNNINGHAM: That's correct.

5 MS EASTMAN: Sorry, Ms Bennett, your sound is not ideal. We are only hearing every second word.

CHAIR: It's also breaking up in Sydney a little.

10 MS BENNETT: I'm very sorry. I have a technical person present with me in the room who will try to assist. I will try again. Is that any better, Commissioners?

CHAIR: Too soon to tell.

15 MS BENNETT: Alright. I will persist. Commissioners, the statements of Mr Cunningham are at tabs 1 and 2 of hearing bundle B.

Mr Cunningham, have you read those statements recently?

20 MR CUNNINGHAM: Yes, I have.

MS BENNETT: Thank you. And read together, noting that the second corrects some matters in the first, read together, are you content that those statements are true?

25 MR CUNNINGHAM: Yes, I am. Yes, they are true.

MS BENNETT: Thank you. I tender those statements, Commissioner.

30 CHAIR: Do we need to give them an exhibit number?

MS EASTMAN: No. Commissioner, as I said earlier, we will deal with the tender of all of the documents after the conclusion of the hearing.

35 CHAIR: Yes. Thank you.

MS BENNETT: Mr Cunningham, you started working in the disability sector in around 1989; is that right?

40 MR CUNNINGHAM: Yes, 1988, actually. 4 March.

CHAIR: Being precise.

MS BENNETT: What was your role on 4 March 1988?

45 MR CUNNINGHAM: I started at Strathmont Centre as a Home Assistant.

MS BENNETT: Then you worked as a Disability Services Officer between 1995 and 2008; is that right?

MR CUNNINGHAM: That's correct.

5

MS BENNETT: What did that role involve?

MR CUNNINGHAM: The direct care and support of people in institutionalised care.

10

MS BENNETT: What's your current role?

MR CUNNINGHAM: I'm the Playford Area Manager within Accommodation Services.

15

MS BENNETT: Who do you report to?

MR CUNNINGHAM: I report to Mr Mark Perry, Assistant Director.

20

MS BENNETT: Who does Mr Perry report to?

MR CUNNINGHAM: Mrs Muriel Kirkby, Director of Accommodation Services.

25

MS BENNETT: Without naming people, Mr Cunningham, can you tell me what is the job which reports to you in your role?

MR CUNNINGHAM: I have two team leaders and under them sit team supervisors, approximately six each, and under them sit the disability services officers who are supported and mentored by the team supervisor.

30

MS BENNETT: In a supported accommodation environment, it's the disability support officers who live on site with the people that are being supported?

35

MR CUNNINGHAM: Yes, they work in the clients' homes, yes, in the people's homes.

MS BENNETT: Where are the team supervisors located?

40

MR CUNNINGHAM: They are either based in the home, depending on the size of the group home, or they are a float supervisor and start and finish their day in a particular group home. But the supervisors are out in the houses every day.

MS BENNETT: And the team leaders, where are they based?

45

MR CUNNINGHAM: In our local office at Salisbury.

MS BENNETT: And how often do they visit the houses that they are responsible

for?

MR CUNNINGHAM: They are required to visit each of their accommodation sites monthly, but I would say visit more frequently than that.

5

MS BENNETT: I want to take you back to the end of 2018 for a moment. We are speaking about one of the houses that you were responsible for as "N Street". You are aware of the house I'm talking about when I say N Street?

10 MR CUNNINGHAM: Yes, I am.

CHAIR: Ms Bennett, I'm sorry to interrupt. You have been asking questions of Mr Cunningham about the current situation in terms of organisation. Are we clear that the same arrangements applied at the time you are now asking about?

15

MS BENNETT: No, that's right.

In October 2018, was the structure what we have just discussed? There were disability support officers living in the house; is that right?

20

MR CUNNINGHAM: At the time, yes, there was an accommodation --- disability services officers in the group homes, yes.

MS BENNETT: Did they report to team supervisors?

25

MR CUNNINGHAM: No, they reported to a shift supervisor.

MS BENNETT: Was that shift supervisor present in the house?

30 MR CUNNINGHAM: No, not in all houses. At that time in my area there was only one on-site supervisor. The rest of the accommodation sites were supported by what we call a float shift supervisor.

35 MS BENNETT: What about N Street? Did that have a shift supervisor or a float shift supervisor?

MR CUNNINGHAM: A float supervisor.

MS BENNETT: Across how many houses did that supervisor float?

40

MR CUNNINGHAM: Four to five. I can't give you an accurate list, but they had several sites they supported.

45 MS BENNETT: That shift supervisor in 2018, the latter part of 2018, reported to team leaders; is that right?

MR CUNNINGHAM: No, reported to an Accommodation Services Manager, which

I was at that time.

MS BENNETT: Where were the Accommodation Service managers based at the end of 2018?

5

MR CUNNINGHAM: We were office based, as well were the float supervisors. They would start their day, at least the day at our office at 75 Port Road, Cheltenham.

MS BENNETT: Was N Street one of the houses within your portfolio at the end of 2018?

10

MR CUNNINGHAM: Yes, it was.

MS BENNETT: How often did you get to N Street when you were the Accommodation Services manager?

15

MR CUNNINGHAM: I would say semi-regularly. I would go there to attend house meetings. If there were any care concerns, if there was a problem that couldn't be resolved at a local level with the supervisor, they would then involve me and I would attend.

20

MS BENNETT: What do you mean by "house meetings"?

MR CUNNINGHAM: We used to have quarterly team meetings, where all the staff would get together. It wasn't compulsory, so some meetings were well attended and others weren't so well attended. And we would generally have them at the house or if there was training involved, we might have them at the Port Road office.

25

MS BENNETT: Were those meetings well attended at the end of 2018 at N Street, do you remember?

30

MR CUNNINGHAM: No, they probably weren't. It was a hard site to have staff attend meetings.

MS BENNETT: Can you tell the Commissioners why you think it was a hard site to have people attend meetings?

35

MR CUNNINGHAM: Because of the roster. It was a roster that had active-passive night duty who would work until 9.00 in the morning and they would support the 12-hour day person who worked from 7.00 am to 1910 or 1920, and we have an afternoon person who would start at 2.00 in the afternoon and work until 10.00 at night to support the night staff. But their first job was to go and do the day program run, so they would leave at 2 o'clock and go and do the picking up the men from their day options.

40

45

MS BENNETT: I want to unpack that for a moment because --- was there a hand-over period where the night staff would have the opportunity to speak for a

moment with the day staff who were taking over?

MR CUNNINGHAM: Yes, there was a hand over in the morning. So the passive night staff would work until, I think it was 9 o'clock, 8.30 to 9.00, I'm pretty sure it was 9 o'clock because they would get the boys or the men ready for their day programs and the day person would take them and when they would come back, that's when the night staff would leave, if there was someone who didn't go to a day options. Not everyone went to day options five days a week. So quite often there would be someone, so there had to be a staff member back at the house. But they had that couple of hours in the morning, 7.00 to 9.00, when they could have hand over and the night supervisor would also do a report that would go to the day supervisor, so any issues that were raised by night staff were addressed that way as well.

MS BENNETT: Was that a formal requirement or was it just a cultural adaptation that those hand overs would occur?

MR CUNNINGHAM: No, it was a requirement. At every accommodation site we have a hand over of staff from one session to another. There were certain things that would be required to be undertaken at a hand over. So if you had DDA drugs that needed counting, that counting would occur. There was handing over of the money in the safe. And clients' health concerns were discussed, the bowel management support plans were discussed. So people needed suppositories that day or that evening, that's where things like that occurred. So there was a complete hand over.

MS BENNETT: What was it about that house that made it difficult to get people together for a quarterly team meeting?

MR CUNNINGHAM: It was the roster. So the night staff, because they would work 1900 to 8.30 or 9 o'clock in the morning shift, they wanted to go home so they didn't want to stay back for a meeting. The part-time staff, we found it hard to get them to come in early. We offered --- we would pay them, trying to incentivise them to attend. But they often had appointments themselves during the day. So when we did call a meeting, we had to set dates, we had a calendar of dates, and we encouraged people to participate, but it was --- yeah, I couldn't force people to attend.

MS BENNETT: There's no scope for additional support to facilitate those meetings?

MR CUNNINGHAM: We would --- it depends. Sometimes we could bring in extra staffing and that's where I would negotiate with my area manager at the time if that was possible. Sometimes, depending on what needed to be discussed, it was possible. But still then I couldn't get full attendance. It was only probably a couple of meetings in the years I oversaw that team that I was able to get full attendance.

MS BENNETT: Was that unusual for that house? Let me rephrase that. Was that unusual when compared with other houses?

MR CUNNINGHAM: No, not really. There was --- I was just thinking about my other accommodation sites I managed at the time. It was always a struggle to have -- - because it was two defined sections, section one and section two, so in the calendar we would rotate what section the meeting would be held so that everyone was
5 involved in a meeting at some point. So there was not --- it wasn't all of section one, so if section two staff didn't attend, they never got to be involved in the meeting, that didn't occur. We would have the meetings rotating, on both sections, so over the course of a year, hopefully everyone got involved in meetings.

10 MS BENNETT: Mr Cunningham, do you remember if you ever met Daniel at N Street?

MR CUNNINGHAM: Yes, I knew Daniel very well.

15 MS BENNETT: Can you tell us about Daniel?

MR CUNNINGHAM: I found him to be a lovely man. He reminded me a lot of my nephew, who functions very similar to Daniel. So I had a great warmth for him, as did I have for all the men who lived in the N Street site.

20 MS BENNETT: How was your relationship with his family?

MR CUNNINGHAM: Very good. I had a good relationship with Karen and she could easily talk to me and I found her very easy to talk to. She was very
25 understanding, being a manager. We were both the same classification at that time, her working in CARA as an accommodation manager and me as the Accommodation Services Manager within Accommodation Services.

30 MS BENNETT: Did you hear her evidence earlier today?

MR CUNNINGHAM: Yes, I did.

35 MS BENNETT: You would have heard Karen speak about an incident that happened in late 2016, where staff didn't properly pack Daniel's clothes and medication for his holiday. Did you hear her speak about that?

MR CUNNINGHAM: Yes, I did.

40 MS BENNETT: Can you tell the Royal Commissioners how you felt about that incident when it happened?

45 MR CUNNINGHAM: I was embarrassed. Karen had met with me and provided a list which was emailed to me. I personally took it out to the site and entered it into the diary and it was also placed on the notice board. The shift supervisor was also advised. And it was --- yes, communicated on in multiple ways for the staff to prepare his holiday bag and ensure he had his medication, et cetera.

MS BENNETT: As I understand your evidence, after Ms Rogers made her complaint, you spoke at the house meeting about that issue; is that right?

5 MR CUNNINGHAM: Yes, I spoke at the house meeting and with the individual staff and supervisors involved.

MS BENNETT: What did you tell them, do you remember?

10 MR CUNNINGHAM: That it was unacceptable; that there had to be change; that staff had to take responsibility for their actions, and ensure clients and families were supported; that I was very disappointed in them.

MS BENNETT: Another incident that we heard about ---

15 CHAIR: Sorry, what did they tell you?

MR CUNNINGHAM: They acknowledged they dropped the ball and they were very remorseful about the situation. The staff involved were experienced staff who genuinely cared for Daniel and wanted him to have a successful holiday. I think
20 everyone at the time, the staff thought each other was doing the work that was required. And obviously no one was doing it.

MS BENNETT: Did you report back to Daniel's family about what you found out about what had happened?
25

MR CUNNINGHAM: Yes, I believe I gave feedback around the fact that the staff, that --- apologised and the staff were remorseful about that happening to Daniel and ruining his holiday.

30 MS BENNETT: We heard about an incident around the purchase of some bed linen in October 2018.

MR CUNNINGHAM: Yes.

35 MS BENNETT: Is that a complaint that also concerned you?

MR CUNNINGHAM: Yes, it did concern me.

MS BENNETT: Can you tell the Royal Commissioners what it was that concerned
40 you about that the most?

MR CUNNINGHAM: The lies told to the family by the staff involved and the fact that Daniel was excluded from that process. We promote, with the clients --- staff involve clients in the purchases of life, not a hotel model where everyone stays to the
45 side and staff do everything. I would expect Daniel to be involved in his life and have active participation in decision-making around his purchases, his items.

MS BENNETT: Is it fair that, for this model to work, there needs to be open and transparent communication between the people working in the home and the families?

5 MR CUNNINGHAM: Most definitely, yes.

MS BENNETT: And with Daniel?

MR CUNNINGHAM: Yes.

10

MS BENNETT: I want to understand about how Daniel's money was accessed. As I understand it, there was cash on the premises belonging to Daniel. Is that your understanding?

15 MR CUNNINGHAM: Yes, that's correct.

MS BENNETT: It was about just over \$250 on the premises; is that right?

20 MR CUNNINGHAM: Yes, there probably would have been a bit more than that. It was approaching his birthday, so the staff would have requested through their supervisor extra money from client trust, so they could buy birthday presents and other things he needed.

MS BENNETT: Who was responsible within the house for Daniel's money?

25

MR CUNNINGHAM: Well, it was a shared responsibility. On any given shift, the staff on duty were responsible for counting the money and signing it over. They would need to have a conversation with either family or the supervisor or myself. Some --- a couple of the men at N Street were under guardianship, under the Public Advocate, so their spending would have been delegated to me to monitor on their behalf. But in this case, Daniel's family had oversight of that and having --- should have been consulted.

30

CHAIR: You said, Mr Cunningham, that the staff at N Street in 2016 were experienced and remorseful about what had happened then.

35

MR CUNNINGHAM: Yes.

CHAIR: We were now talking about 2018.

40

MR CUNNINGHAM: Yes.

CHAIR: Was this the same group of staff members or had it changed?

45 MR CUNNINGHAM: No. No, it had changed. We did rotate staff and staff did move. I tried to have stability and not move people for a couple of years, but I generally would rotate staff, encourage staff to move around the service, learning

how to support people with different types of disabilities, and also I didn't want a culture where staff took ownership, so I did encourage staff movement. It was always drummed into me in Strathmont Centre, we were moved within the villas and then to other villas, so we were --- there wasn't an ownership issue and I tried to
5 maintain that.

MS BENNETT: As at late 2018 was anyone identified as the custodian of Daniel's money?

10 MR CUNNINGHAM: It was an informal arrangement with Karen. Money did sit with client trust and money came down. And if staff would --- I expect, would expect, would have a conversation with Karen and Daniel about purchases or they might suggest a purchase and then the staff would then go and take Daniel and make that purchase. Or it could be that Karen would want some information on the
15 balance or something, and that could be provided.

MS BENNETT: How did money get from Daniel's bank account to the house?

MR CUNNINGHAM: It was delivered by courier. The money would come down
20 for all the clients at once. Then it would be counted by admin staff and then dispersed to the three teams in Cheltenham and the supervisors would then count that money again before staff and the clients attended the office to collect the money, where they would sign for it.

25 MS BENNETT: Were you aware of any limits on the amount of money that could be held on behalf of Daniel at the house?

MR CUNNINGHAM: We did strive to have a limit of \$250 but that limit would go above that if they were buying for, say, like at Christmas time, we would order four
30 weeks' money in advance, because the client trust would close over Christmas or around the public holidays, if they had to do --- we had a specific day of delivery, so if that fell in a week where there's a public holiday, we generally would do a double order or a triple order, depending --- especially over Christmas, there would be a four-week order.

35 MS EASTMAN: Are these kinds of arrangements common in your experience?

MR CUNNINGHAM: Yes. Yes.

40 MS BENNETT: You understand it's reasonably common that where there are no guardianship orders in place, the funds are managed by DHS?

MR CUNNINGHAM: Yes, they would be managed at a local level and there would be oversight by the audit team.

45 MS BENNETT: I want to move on to ask you about a little bit later, in October 2018. I want to show you a document at hearing bundle B, tab 71. This is an

incident report from October 2018. Could you tell the Royal Commissioners what this document is?

5 MR CUNNINGHAM: That is a RiskMan incident report.

MS BENNETT: Can you tell me, as at the end of 2018, were RiskMan reports --- how were they completed? Were they done via an online form or by telephone?

10 MR CUNNINGHAM: The support staff would ring and enter the report that way, by telephone to an operator.

MS BENNETT: The operator would go through all of the fields with the reporter; is that right?

15 MR CUNNINGHAM: Correct, yes.

MS BENNETT: The reporter would usually be the officer who works with, for example, Daniel?

20 MR CUNNINGHAM: Correct. It would be the support worker generally would be the one who would ring and make the RiskMan report, yes, that's correct.

MS BENNETT: And who would see that report once it was entered?

25 MR CUNNINGHAM: It would be the shift supervisor. Depending on the severity, myself, the area manager, the regional manager, director, up all the way to ---

30 MS BENNETT: When you say "depending on the severity," perhaps the operator could show us the second half of that page. The first word is "Severity" on the left-hand side. Do you see that?

MR CUNNINGHAM: Yes, it has "Insignificant", yes.

35 MS BENNETT: Who would see a report that has an insignificant rating?

MR CUNNINGHAM: From memory, I don't believe it would have gone any higher than an area manager, so the area manager and myself would have received this RiskMan.

40 MS BENNETT: What would you do with it?

45 MR CUNNINGHAM: That would be --- would ensure that the shift supervisor investigated and completed a remedial action plan, as to fix the problem, depending on what the situation was, or if it was a client injury, to make sure that the client involved got the necessary treatment, the supervisor would upload the report from the ambulance, any hospital discharge summary, statements from staff, et cetera. It would all be added to that document.

MS BENNETT: The severity label determines the level of escalation of that report. That's fair, isn't it?

5 MR CUNNINGHAM: Correct, yes.

MS BENNETT: The person who enters the severity is the person who has most often witnessed the incident or first noticed the incident; is that right?

10 MR CUNNINGHAM: Correct, yes.

MS BENNETT: Did you ever observe any difficulties with reports downplaying an incident?

15 MR CUNNINGHAM: At times, yes. It was in my delegation to change that severity rating, which I would do.

MS BENNETT: Can you give us an example of under-reporting, that you are aware of? I don't want specifics but what sorts of issues did you observe?

20

MR CUNNINGHAM: Oh ---

MS BENNETT: Perhaps I could rephrase that. Did you observe any such issues at N Street in 2018?

25

MR CUNNINGHAM: Not for N Street, no, I didn't. They were very good at reporting incidents. That was not a concern re that site. I guess staff conflicts would probably be the main one that would be under-reported. Any client-related issues were scrutinised and we would change that delegation --- the severity level if required. Especially if you had to seek ---

30

CHAIR: Mr Cunningham, if the designation of the severity of an incident is the responsibility of the person who is there at the time, assuming there was such a person ---

35

MR CUNNINGHAM: Yes.

CHAIR: --- how would you get a sense of whether that person was deliberately underplaying the significance of an injury, for example?

40

MR CUNNINGHAM: I wouldn't be able to. But I would look at the nature of the injury, so if it involved --- if it involved a physical injury that resulted in external medical care being required, like an ambulance being called for an assessment, I would change it to "moderate" or to "severe", and that would increase the escalation. So, like, the community nurses would be informed, et cetera. So there was increased involvement, more eyes on the incident.

45

CHAIR: But you would need something, as it were, external and objective to change the assessment of the person responsible for reporting in the first instance?

5 MR CUNNINGHAM: I was capable of making that decision. I could look at an incident and my experience told me that severity rating was insufficient. There was no ---

10 CHAIR: But your experience wouldn't always --- I'm not putting this as a criticism, but your experience wouldn't necessarily allow to you do that, for example, if a worker deliberately downplayed the significance of bruising and chose not to call a doctor, precisely because that person wanted to downplay the significance of the incident, it would be pretty difficult for you to determine otherwise, wouldn't it?

15 MR CUNNINGHAM: The following staff member, if they had any concerns, would probably do a new RiskMan. We would often have multiple RiskMans for the one injury and I think that's where that would be made clear, so we would never discourage anyone from making a report. So someone came in and saw a bruise or a client looked unwell, they would report it and escalate it. So we never discouraged staff from reporting. It was always encouraged.

20 MS BENNETT: Let's look at an example of RiskMan from February 2019. I will ask the operator to bring up a document that I think identifies N Street, so perhaps discretion might be required. It's at hearing bundle B, tab 67. The document ID is SAG.0002.0007.2036. This is from 18 February 2019. You heard evidence about
25 this incident this morning, I think, from Daniel's mother.

MR CUNNINGHAM: Yes.

30 MS BENNETT: You will note in the summary it says:

Staff was showering client when he noticed two bruises on the left side of his bottom, staff went to the previous notes and was an entry from the overnight staff stating of the bruises.

35 So do I understand from that, that the bruising was noticed the day before by the last shift?

MR CUNNINGHAM: Yes.

40 MS BENNETT: Not recorded in RiskMan. Is that fair?

MR CUNNINGHAM: That's correct, yes, that's a fair statement.

45 MS BENNETT: And can you explain to the Commissioners why it wouldn't have been recorded in RiskMan?

MR CUNNINGHAM: No, I can't explain why that staff member at the time did not

report it appropriately. My memory says that he asked the day staff to do it on his behalf and that's what that employee did. That's my recollection, that he got the --- as part of his hand over, he advised the staff.

5 MS BENNETT: You would agree with me, though, that the notes here suggest that the staff noticed the bruise and then went to the notes?

MR CUNNINGHAM: Correct, yes.

10 MS BENNETT: Did you read that?

MR CUNNINGHAM: I understand that, yes.

15 MS BENNETT: You are not able to say whether it happened one way or the other; is that right?

MR CUNNINGHAM: I did investigate it at the time and from memory, the night staff member had asked the day staff to do it on their behalf, to submit the RiskMan form.

20 MS BENNETT: Can you explain why it wouldn't have been done at the time?

MR CUNNINGHAM: No, I can't. It's not common practice, and that staff member was spoken about you see it, you report it.

25 MS BENNETT: What criteria --- at first instance it was not reported on RiskMan at all.

MR CUNNINGHAM: Correct.

30 MS BENNETT: The next time the bruise was observed it was categorised as "insignificant". Is that fair?

MR CUNNINGHAM: Correct, yes.

35 MS BENNETT: You would have then reviewed this report; is that right?

MR CUNNINGHAM: Yes, I did.

40 MS BENNETT: And what did you do to consider whether or not the insignificant rating was correct or not?

MR CUNNINGHAM: I asked the supervisor to investigate and provide me with feedback, and --- yeah, to investigate the incident, because it was reported as a small
45 bruise.

MS BENNETT: Did you ask anyone to look at the bruise?

MR CUNNINGHAM: The supervisor, yes, to investigate it and provide me with information.

5 MS BENNETT: Do you know when the supervisor did that?

MR CUNNINGHAM: I think there's a journal entry attached to this document that's my --- I think it was the 20th I was able to review it. I'm not sure of the date.

10 CHAIR: Ms Bennett, I just want it to be clear that I'm following this. Is this a report of the more extensive bruising that we saw in a photograph?

MS BENNETT: No, Chair, I'm coming to that one next. This is the day before.

15 Perhaps, Mr Cunningham, you can just explain. This is 18 February 2019. I would be grateful for your clarification about this. As I understand, there was these bruises observed on 18 February and then perhaps the witness could be shown tab 72 at hearing bundle B, which is SAG.0002.0007.2038, which again will have the N Street identifier. That, as I understand it, refers to in the summary part, it says:

20

Staff was giving client a shower, noticed he had a medium [size] bruise on the right bottom and the colour of the bruise is pink.

Do you see that?

25

MR CUNNINGHAM: Yes, I do.

MS BENNETT: Did that incident report make it to you?

30 MR CUNNINGHAM: It would have done, yes. I would have received an email notification.

MS BENNETT: Do you remember if you reviewed it at around the time you received that notification?

35

MR CUNNINGHAM: I want to say, yes, I believe I did. My journal entry, if there's an attachment, that would confirm. I would have made an entry.

40 MS BENNETT: Was there any concern for you about a pattern between 18 February and now 21 February, having bruises?

45 MR CUNNINGHAM: It would have raised alarm bells and I would have spoken to the supervisor around the cause. As I said, you know, we encourage bruising --- sorry, we encourage reporting of bruises or any incidents related. So my understanding of this incident was another staff member noting the bruise and reporting it.

MS BENNETT: This is ultimately the bruising, as I understand it, that led to the hospital admission; is that right?

MR CUNNINGHAM: Correct, yes.

5

MS BENNETT: The Commissioners saw photographs of that this morning.

MR CUNNINGHAM: Yes.

10 MS BENNETT: You have seen photographs of that bruising earlier as well as today; is that right?

MR CUNNINGHAM: Correct, yes.

15 MS BENNETT: You will notice in this RiskMan report that we are looking at, the severity is again identified as "insignificant". Do you see that?

MR CUNNINGHAM: Yes, I do. Yes.

20 MS BENNETT: That rating has been there the whole time, as I understand it. It was never changed. Is that right?

MR CUNNINGHAM: That would be correct, yes.

25 MS BENNETT: So subsequent review didn't change the severity rating from insignificant to anything more serious, did it?

MR CUNNINGHAM: That was because the incident escalated very quickly and I can't explain why I didn't change that report but it did not change the escalation.

30 Though it was still escalated.

MS BENNETT: As I understand, just having now today seen the photographs that you have seen and having seen them in the past, would you say that that was correctly categorised as an insignificant injury?

35

MR CUNNINGHAM: No, I would have categorised it as a major.

MS BENNETT: Can you tell the Commissioners why it is that a major injury or a major incident was categorised as insignificant?

40

MR CUNNINGHAM: I can't explain the actions of the staff. It was inappropriately classified.

CHAIR: And would it be also correct that the details on this form which state that staff were giving the client a shower and noticed he had a medium size bruise on the right bottom, and the colour of the bruise was pink, that that was not an accurate description of the extensive bruising that the client had sustained?

45

MR CUNNINGHAM: Yes, in hindsight, yes, it was an incorrect reporting.

5 CHAIR: It's a little hard inadvertently, isn't it, to describe the bruising that was sustained in the way that is recorded in this document, isn't it?

MR CUNNINGHAM: Yes.

10 MS BENNETT: Could it have been deliberately downplayed?

MR CUNNINGHAM: No. Well, nothing that came out of the investigation indicated that. I think it was just the bruise came out at different times. It started off very small and seemed to have grown. And I think staff reported it as they saw it. So I think that's why it's changed from one small bruise to medium "size" bruises, 15 medium size --- I think it's medium size, or "medium size" it's got here. So it did increase over time and on Friday when the staff called the locum, that's when the full bruise obviously had come out. I don't think there was a deliberate attempt to deceive, no.

20 MS BENNETT: Was that possibility investigated?

MR CUNNINGHAM: Staff were questioned at length. Every staff member involved was interviewed by myself and HR. And staff were made to undertake the code of ethics training after the interview. They were sat down and undertake the 25 online training module before they could leave. We fully investigated that and the HR then compiled all the evidence for triage.

MS BENNETT: I would like to really understand how this was categorised as "insignificant". So I would like to take you to tab 87 of the hearing bundle B. This 30 is a manual. Before we talk about that manual, can you tell me, Mr Cunningham, about who trained you in the use of RiskMan?

MR CUNNINGHAM: There was no formal training. I do know of this document.

35 MS BENNETT: We will stay with the first question first. You say there was no formal training. What informal training did you receive?

MR CUNNINGHAM: It would have been just walked through the process, it would have been like a dummy incident for investigating. There was no formal training 40 around entering in RiskMan, it was done over the phone. But as a supervisor and as an ASM, it was on-the-job learnt, I guess would be the way to categorise it.

MS BENNETT: By 2019, were incidents still being reported over the phone or were they now being entered directly?

45 MR CUNNINGHAM: No, they were still entered over the phone. Staff could --- supervisors could do one on an electronic copy and some supervisors did do that.

But most support worker staff used the phone to make their RiskMan reports.

MS BENNETT: Is there any way to know whether the reports we have been looking at were made over the phone or by direct entry?

5

MR CUNNINGHAM: No. But I would --- knowing the staff, they would have used the phone.

MS BENNETT: That was the practice at the time in early 2019 in N Street?

10

MR CUNNINGHAM: Yes.

MS BENNETT: Did anyone speak to the phone operators about the way in which they took information down?

15

MR CUNNINGHAM: I think over the time there was issues with communicating with English as a second language for some of our staff. I think some of the nuances of words were misinterpreted and we would then correct that when we did the remedial action, if for some ---

20

MS BENNETT: Sorry?

MR CUNNINGHAM: We would correct it. So when we reviewed, when the shift supervisor reviewed, or myself, I might change some of the wording in the document because it was incorrect or they used the wrong term to describe the incident. They might have put "epileptic fit" and I would change that to "seizure".

25

MS BENNETT: What I meant to ask is, was there any investigation of the phone operators in relation to the incident reports that we have been looking at?

30

MR CUNNINGHAM: Sorry, I don't know. I'm sorry, I don't know the answer to that question. I didn't.

CHAIR: I want to check some of the chronology here. Because there perhaps is some inconsistency or I have misunderstood something. The RiskMan report we have been looking at states that the incident time was 6.00 am and that the report is received on the same day, 21 February 2019. In your second statement, paragraph 14a, you say:

35

40 *On 20 February 2019, I reviewed the RiskMan report generated by a support worker*

Now, is that a reference to this or is it a reference to a previous incident?

45 MR CUNNINGHAM: It's the previous one, dated 18 February.

CHAIR: You then say in paragraph 14b:

On 22 February 2019, I received an email from a staff member of Daniel's residence, advising that bruising had been noticed on Daniel when was prompted for a shower, and that a RiskMan had been submitted by night staff.

5

Now, is the RiskMan document we have been looking at one that was submitted by the night staff?

MR CUNNINGHAM: Correct, yes.

10

CHAIR: Who was on at 6 o'clock in the morning or thereabouts?

MR CUNNINGHAM: Yes. That would be ABQ.

15

CHAIR: But you don't get to hear about this until the next day; is that right?

MR CUNNINGHAM: Yes. Depending on --- received a lot of emails and I think with the classification that would show on the email header, so I probably --- if it had been higher up, I probably would have picked it up sooner.

20

CHAIR: Ms Rogers' statement in paragraph 52 says, on Friday, 22 February 2019 at 5.54 pm she received a phone call from a support worker at N Street informing her that her son had a large bruise on his neck and that the locum was called. I'm not sure why this is a reference to 22 February. But were you aware when you got an email, as referred to in 14b that a locum had been called?

25

MR CUNNINGHAM: I at that time wasn't an on-call officer. So if it was out of hours, I would not have been notified, no.

30

CHAIR: I see.

MR CUNNINGHAM: Until the Monday I think is was when I was made fully aware.

35

CHAIR: Yes, I see. Alright, thank you.

MS BENNETT: We can look at the document on the screen. That is a RiskMan incident reporting manual for default level users. Am I right in understanding that that captures all users of the RiskMan system?

40

MR CUNNINGHAM: Yes, yes, all support staff, yes. So everyone, yes, correct.

MS BENNETT: Were you shown in document as part of any training?

45

MR CUNNINGHAM: I would have seen that when it was released at compliance, when we have our compliance updates. That's when I would have seen that document.

MS BENNETT: But were you provided with that document as part of any training on RiskMan?

5 MR CUNNINGHAM: No.

MS BENNETT: Can I take you to page 10 of that document. Can you see that table reasonably clearly?

10 MR CUNNINGHAM: Yes, I can.

MS BENNETT: Have you seen this table before?

MR CUNNINGHAM: Yes. It was on display in all our group homes.

15

MS BENNETT: What's your understanding of what this table is telling you?

MR CUNNINGHAM: It tells me the nature of how to classify an incident, whether it be client related, staff or organisational, et cetera. So it covers the main type of events that could happen in a group home setting.

20

MS BENNETT: There are six domains across the top. Do you see that?

MR CUNNINGHAM: Yes.

25

MS BENNETT: Only one of those seems to me to relate to clients as all. Is that fair?

MR CUNNINGHAM: Correct, yes.

30

MS BENNETT: The vast bulk of the consideration appears to go to the organisational effect of the incident. Is that fair?

MR CUNNINGHAM: Yes.

35

MS BENNETT: Is that a client-centred approach, in your view?

MR CUNNINGHAM: Well, yes, I believe so, because it addresses what can happen to a client, with the different injuries or, you know, near miss or --- but also financial, also that's for financial loss of the client. I think it adequately puts the client at the centre. Don't forget, our staff mainly work with the client. So I would rarely see reports about human resources, organisational --- I have never seen a RiskMan for those.

40

45 MS BENNETT: To be categorised in the client category as insignificant, it needs to be a "Near miss, no injury"?

MR CUNNINGHAM: Correct.

MS BENNETT: So how is it that an injury of any kind ends up being categorised as "insignificant"?

5

MR CUNNINGHAM: I can't --- I mean, as I said, I disagreed with the classification the staff put on it. And I would only be surmising. I don't want to ---

MS BENNETT: Would a bruise ever be properly categorised as insignificant on this table?

10

MR CUNNINGHAM: No, it should be a minor, a minor.

MS BENNETT: How is it that in your reviews that you have told us about, having reviewed multiple bruise incident reports, that "insignificant" was accepted on each occasion?

15

MR CUNNINGHAM: Well, it's the supervisor did the initial review and should have changed that. In hindsight, if I was to do it again, I would have changed it. I think it moved very quickly, that incident, and became escalated very quickly. So reviewing the RiskMan report, I didn't prioritise --- I did --- I prioritised the journal entries and investigating and meeting with staff and trying to get to the bottom of it. I would do things differently now, in regards to ensuring that the documentation matched the actions I took.

20

MS BENNETT: I'm just trying to understand. Can we go back to, for example, the October bruising that was also rated as insignificant. Was that properly rated as insignificant?

MR CUNNINGHAM: The --- are we talking now about the arm? The upper arm?

25

MS BENNETT: Yes.

MR CUNNINGHAM: Look, in hindsight, no, it should have been a minor, even though it was deemed that it was likely to be the clients, you know, hurting each other.

30

MS BENNETT: Does the way that the injury occurred impact on the categorisation for this purpose?

35

MR CUNNINGHAM: It should have been re-categorised as "minor", yes.

MS BENNETT: Can you tell me if you have ever seen the document at tab 86, which is a similar document? This says it is the "RiskMan Incident Reporting Manual for RiskMan Manager and Risk Manager Level Users".

40

MR CUNNINGHAM: Yes.

MS BENNETT: Are you a RiskMan Risk Manager user?

5 MR CUNNINGHAM: Yes, I am, I have full access to the RiskMan system, so I can see all the different boxes and stuff, yes.

MS BENNETT: So have you seen this document in the context of your training?

10 MR CUNNINGHAM: I would have only seen it at compliance, when we have compliance updates and we meet to talk about the document, that's when I would have seen --- I haven't used that document.

15 MS BENNETT: Do you know if you have read that document before this Royal Commission?

MR CUNNINGHAM: Only --- I may have gone through it with my peers when it was first released but I have not seen it since.

20 MS BENNETT: Returning to the injuries of 22 February, these were ultimately reported in the report on RiskMan at tab 68 in hearing bundle B. This is the report that tells us that the matter has gone to hospital --- that the incident has gone to hospital. As I understand it, the summary there is summarising the circumstances in which Daniel went to hospital. Is that right?

25 MR CUNNINGHAM: Correct, yes.

MS BENNETT: The incident that this reports upon is the admission to hospital; is that right?

30 MR CUNNINGHAM: Well, taken to Accident and Emergency. I don't believe he was admitted. He was treated in Accident and Emergency and discharged. I don't think he spent overnight or he didn't go up to a ward or anything. I believe he --- it was all treated ---

35 MS BENNETT: If you look at the last line of the summary under "Details", "Client was admitted overnight for observation." So that report really relates to the admission to hospital; is that right?

40 MR CUNNINGHAM: Yes.

MS BENNETT: Over the page, we will see that was categorised as a major incident.

MR CUNNINGHAM: Yes.

45 MS BENNETT: We can agree that happened, without going over the page. So how does that work? The underlying incidents are identified as insignificant but the fact of admission to hospital is regarded as major.

MR CUNNINGHAM: I think the staff would have reported it as their experience told them, that obviously a major event had occurred because it required outside agencies to be involved, it required him to go to the hospital and receive treatment ---
5 assessment and treatment.

MS BENNETT: Would you agree that the focus was really on that hospital admission rather than the injuries, in this report?

10 MR CUNNINGHAM: Well, I think it was --- the support workers aren't medically-trained staff, so I think what they reported was the events that occurred. He was assessed by a locum and a recommendation to go to the hospital, and with the family notified. So I think it reflects the incident. I don't --- I mean, the area
15 investigation would uncover --- or just --- the full nature of the event, but it was reported as a transfer to hospital.

MS BENNETT: The matter was then investigated. Can you tell the Commissioners about what was involved in that investigation, so far as you're aware, just from your
20 experience?

MR CUNNINGHAM: Every staff member that worked that whole week in N Street was spoken to and formally interviewed by me and my HR business partner. There was a series of questions that were developed and put to the staff. And their responses were documented and then they were --- had to take that code of ethics
25 training online module. So we interviewed them over a period of a few days and that information then was sent on for triage.

MS BENNETT: What was the conclusion, following that investigation? What caused the bruises?
30

MR CUNNINGHAM: It was not determined. Staff believed it occurred outside the home, but no one could come to a determination.

MS BENNETT: Did anyone speak with Daniel about it as part of that investigation?
35

MR CUNNINGHAM: Yes. We spoke with Daniel. I believe the police attempted to speak to Daniel. But yes, we weren't able to get to the bottom of that.

MS BENNETT: I might ask you to ---
40

CHAIR: Mr Cunningham, you have suggested that you were told by staff that the bruising that had been detected at 6.00 am on Thursday, 21 February --- that's the day of the week, Thursday, 21 February --- must have, by Friday evening when the locum comes at 8.30 pm, expanded into what we saw in photographs. Is that what
45 you were told?

MR CUNNINGHAM: Yes, yes. That's what --- yes.

CHAIR: Did you ask anybody any questions about whether that was in fact the case?

5 MR CUNNINGHAM: Well, yes, when I was advised what happened, yes, I was --- I started asking questions. I can't think what specific questions I asked at the time but ---

CHAIR: No. When one looks at the two immediately relevant documents, that is
10 RiskMan 21 February, that is the Thursday, 6.00 am; and the RiskMan received on the Monday, but in fact referring to what happened by way of admission to the hospital on --- or at least attendance to the hospital on Friday night, when you look at the latter, it says:

15 *Locum attended, Client admitted to hospital overnight, Client refused to return to property.*

*Staff was advised by the Supervisor on Friday night to call the Locum out regarding the bruising previously reported over the prior week as Client's
20 mother was informed and she showed some concern regarding the injuries. Locum attended at [8.30 pm] recommended that the Client be taken to Hospital*

And the client was driven to the hospital.
25

There is nothing in there, is there, about a bruise from 6 o'clock on the Thursday morphing into extensive bruising, on ---

MR CUNNINGHAM: No, no, the staff, when they do their RiskMan reports, give a
30 brief summary type of thing. Some staff --- we would always have to --- engaging with our staff and we were provided --- the supervisors around giving as much information as possible.

CHAIR: But brevity is not the same as omitting critical material, is it?
35

MR CUNNINGHAM: No.

CHAIR: What I'm getting at is it seems odd that there's a reference there to "the
40 previous bruising" and nobody has suggested that the previous bruising over a day and a half has become much, much more extensive. I appreciate you're not an investigator and I'm not being particularly critical of you, but I'm just noting that there is something that you would --- that one would expect in a report, if that was the explanation, to appear in documentation, after all, that was the official record of what was happening.

45 MR CUNNINGHAM: And we do have other, like case notes and the 24-hour report where things were noted. I think it accumulated to form a picture in the end. But at

the time, yes, it was not reported correctly or sufficiently.

CHAIR: Thank you.

5 MS BENNETT: Were any medical professionals involved to give an opinion about the development of the injuries or how they might have been caused?

MR CUNNINGHAM: I think because it was seen initially as a small bruise, it was just --- the staff just treated it locally with the supervisor involved. And I think as it
10 became more apparent that the injury was greater than first reported, yes, medical assistance was sought, et cetera.

MS BENNETT: Just to be clear, from 25 February when the bruises were as they appeared in the photographs, were medical opinions sought about what could have
15 caused such bruising?

MR CUNNINGHAM: Not by myself. There was the medical report from the hospital, the discharge summary, which was seen and added to the report. But of course Daniel stayed with his mum, so she would have done the follow-up medical
20 appointments and I --- my team wasn't involved in that.

MS BENNETT: And similarly, was there any consideration about the age of the bruises, any investigation of the age of the bruises by medical professionals?

25 MR CUNNINGHAM: Not to my knowledge, not that I know of.

MS BENNETT: I want to ask you --- I'm conscious of the time, Commissioners. I want to ask Mr Cunningham, did you hear Karen Rogers' evidence this morning about the arrangements that were made for ABM to provide support to Daniel?
30

MR CUNNINGHAM: Yes.

MS BENNETT: Was it the case that ABM was being bullied by Department support workers?
35

MR CUNNINGHAM: I don't believe that was the case, no.

MS BENNETT: Did you receive any reports to that effect?

40 MR CUNNINGHAM: No, I did not. The only report, there was a personal reason why he withdrew. I encouraged him and tried to --- because Karen was really keen to have ABM's support and I was --- I was too. But I couldn't make it happen.

MS BENNETT: Were there reports of bullying by community members?
45

MR CUNNINGHAM: Only hearsay from ABM. He was --- when he spoke to me about it and explained why he couldn't do it. There was no suggestion of bullying by

support workers or peers within the group home. They all just wanted the best for Daniel.

5 MS BENNETT: I'm going to check with my instructors, Commissioners, if there are other matters I need to cover. I will take one moment while I do that.

Commissioners, I'm told those are the matters this afternoon. I understand it's around break time. If this is a convenient time?

10 CHAIR: I will just, if you don't mind, inquire whether Commissioners Bennett or McEwin have any questions. Can you tell us whether, as far as you're aware, any legal representatives wish to ask Mr Cunningham some questions? Do you know?

15 MS EASTMAN: I can assist there. No.

CHAIR: Thank you. Commissioner McEwin, do you have any questions of Mr Cunningham?

20 COMMISSIONER McEWIN: Thank you, Chair. Yes.

QUESTIONS BY THE COMMISSIONERS

25 COMMISSIONER McEWIN: I do have one question, Mr Cunningham. In your evidence you said that when you met with staff after the incident was reported, the February 2019, and you said that staff were given a copy of the Accommodation Services Support Staff Guidelines and asked to complete the Code of Ethics Awareness Training, that's correct; right?

30 MR CUNNINGHAM: That's correct, yes.

COMMISSIONER McEWIN: Then they had to sign a declaration saying they had read the guideline and completed the training?

35 MR CUNNINGHAM: Yes.

COMMISSIONER McEWIN: Am I to take it they had not done any training whatsoever before being employed by you ---

40 MR CUNNINGHAM: Oh, no.

COMMISSIONER McEWIN: What did that mean?

45 MR CUNNINGHAM: It was just a refresher, to hold staff accountable because of the lack of appropriate reporting and escalating of the incident. So it was a suggestion made by HR at the time, that we get the employees to undertake the Code

of Ethics training as a refresher.

5 COMMISSIONER McEWIN: So the declaration that you are talking about was on the point of a refresher. Would they have signed a declaration before commencing employment or being employed in the house, would they have signed declarations that they had done training?

10 MR CUNNINGHAM: They would have undertaken their mandatory training at the start of their employment and we had compliance training which I believe was every two years. This was given as a prompt reminder for staff of their responsibilities and their obligations.

COMMISSIONER McEWIN: Okay. Thank you.

15 CHAIR: Thank you. Commissioner Bennett, do you have any questions?

20 COMMISSIONER BENNETT: I'm conscious of time. I want to ask just a few general questions about N Street. Firstly, the disability support workers, the floating supervisors, the Team Leaders and yourself, you are all government employees; is that correct?

25 MR CUNNINGHAM: Yes. There were no team leaders in the structure. I was the equivalent. I was an ASM. The team leader in the new structure replaces the ASM. So I was --- it was myself as the ASM and then I reported to an Area Manager.

COMMISSIONER BENNETT: But they were all employees of the Department?

MR CUNNINGHAM: Yes, we had no agency staff on.

30 COMMISSIONER BENNETT: Karen Rogers gave evidence of other signs of what living in N Street was like. She talked about the personal care of Daniel had deteriorated, that he smelt on many occasions, that his clothes weren't clean, and often that they weren't his own clothes. She talked about that the residence itself was dirty, that it hadn't been swept, had an unclean sense to it, and she talked about medication mix-ups. This is an aside from the incidents that we have just been
35 talking about. This is the general living in N Street, of her observations.

40 You had disability workers, a floating supervisor and yourself that visited, what you said, regularly, on a semi-regular basis, were the word that you used.

MR CUNNINGHAM: Yes.

COMMISSIONER BENNETT: Including at least quarterly meetings?

45 MR CUNNINGHAM: Yes.

COMMISSIONER BENNETT: Did no one notice that Daniel's personal care

needed more attention, that the residence needed cleaning? Worried about medication mix-ups? And people's possessions and that --- Karen's story gave a general air of neglect. And what I'm asking is, when there are so many people there, why is it no one else saw that general air of neglect?

5

MR CUNNINGHAM: I think it was acknowledged and attempts made. I know that we had in place a roster of work that had to be done, where floors had to be swept, cupboards were kept tidy and the clothes in the right wardrobes. Where carpets needed cleaning, they would get them steam cleaned, et cetera. I know, as the ASM, when I visited, my focus was more on the administrative tasks, were the finance book was kept up to date, were the case notes kept up to day. Now, as an Area Manager, when I visit sites, I go into the clients' bedrooms, I check the wardrobes. I do those more intimate checks than I would have done at that time as an ASM. I did rely on my supervisors to have a presence and address those things.

15

In the new structure that we have in place, with the supervisors working in group homes and the floats not being office based, so in the houses, that addresses a lot of that poor practice that was happening. And I know in my current role, the standards are a lot higher, there's a lot greater accountability for the support workers.

20

COMMISSIONER BENNETT: You said that you --- without criticising you specifically, but you said you did know Daniel.

MR CUNNINGHAM: Yes.

25

COMMISSIONER BENNETT: Did you not notice? Did people not notice that he wasn't clean?

MR CUNNINGHAM: No, not when I ---

30

COMMISSIONER BENNETT: And that the room wasn't clean and that the general living was not a home that we would want to live in?

MR CUNNINGHAM: It was a very large home. It --- every time I saw Daniel, he was, you know, either dressed well or he had just come back from day options. When he went to day options, he was on a farm and he was doing farm labour, farm work, so he was coming back, you know, dirty and with mud on his shoes, et cetera, because that's where he was. And he would --- as soon as he came home, he would change and have a shower and get into his pyjamas. When I visited, I never saw anything that really gave me cause for concern. I know the staff cared for Daniel, cared for all four men that lived there and were very fond of them. I didn't see anything that would cause me concern.

40

I think there was --- you know, when there's male clients and male staff, some of the cleaning probably could be done better. But I do know that they did sweep and clean and wash things, and if they needed specialist cleaning to come in, I would then go through the process and get approval for that, like having the carpets steam cleaned,

45

et cetera, or having curtains washed.

COMMISSIONER BENNETT: But you would agree that from Karen's description, that it had ---

5

MR CUNNINGHAM: Yes, I would ---

COMMISSIONER BENNETT: --- an air of neglect?

10 MR CUNNINGHAM: Well, yes, it wasn't nice hearing what Karen had to say this morning, no, it was concerning.

COMMISSIONER BENNETT: Thank you.

15 CHAIR: Does the Department still have a policy of rotation of the support staff?

MR CUNNINGHAM: I would say it's on an individual area basis. I know I've always worked in areas where the managers do encourage rotation. Some staff will really fight that, they don't want to move, they build strong connections. And some families don't want staff moved either. So it's an individual basis, but we do try and move staff, yes.

20

CHAIR: I appreciate it's a balance. But there are costs of moving staff ---

25 MR CUNNINGHAM: Correct, yes.

CHAIR: --- for nothing.

MR CUNNINGHAM: Yes, building that new relationship, and especially when it's a single-staffed house, you don't have that overlap of people.

30

CHAIR: Thank you, Mr Cunningham, for your statements and for giving evidence today. We appreciate your assistance to the Royal Commission. Thank you.

35 MR CUNNINGHAM: Thank you.

THE WITNESS WITHDREW

40

CHAIR: Ms Bennett, is it appropriate to adjourn? It is now 2.50, more or less, in Adelaide. Shall we resume at 3.10?

MS BENNETT: As it is convenient to the Commission.

45

CHAIR: Do you want to come back a little earlier, 3.05?

MS BENNETT: If that's possible. Only 15 minutes would be sufficient from my point of view.

5 CHAIR: We shall return at 3.05.

ADJOURNED [2.48 PM]

10 **RESUMED** [3.06 PM]

CHAIR: Yes, Ms Bennett.

15 MS BENNETT: Thank you, Chair. Ms Kirkby appears in the Adelaide hearing room to be sworn or affirmed.

20 CHAIR: Ms Kirkby, thank you very much for coming to the Royal Commission to give evidence. If you would be good enough to follow the instructions of the associate who is in the room with you, she will administer the oath.

MURIEL KIRKBY, SWORN

25 CHAIR: Thank you, Ms Kirkby. Ms Bennett will now ask you some questions. Just to explain where we are, Ms Bennett is appearing from Melbourne, I happen to be in Sydney in our Sydney hearing room, but you do have two Commissioners in the Adelaide hearing room with you, Commissioner Bennett and Commissioner
30 McEwin. So we are slightly scattered, but Ms Bennett will now ask you some questions.

35 **EXAMINATION-IN-CHIEF BY MS BENNETT**

MS BENNETT: Can you tell the Royal Commissioners your full name?

40 MS KIRKBY: My name is Muriel Charlotte Kirkby.

MS BENNETT: You have made a statement to the Royal Commission which, Commissioners, appears behind tab 49 of bundle B.

45 Have you read the contents of that statement recently?

MS KIRKBY: I have.

MS BENNETT: Are the contents of that statement true?

MS KIRKBY: They are.

5 MS BENNETT: I would like to ask you a few questions about the contents of your statement. First of all, can you tell the Royal Commissioners your current role?

MS KIRKBY: I'm the Director of Accommodation Services with the Department for
10 Human Services, with responsibility for the disability group homes and also aged care facilities.

MS BENNETT: I'm going to ask you to slow down the timing of your responses. We have interpreters and we also have the added concern around the audiovisual link. If I could ask you to slow it down, that would be great.

15 MS KIRKBY: Apologies. Of course.

MS BENNETT: You have held your current role since about August 2018; is that right?

20 MS KIRKBY: That's correct.

MS BENNETT: Can you tell me what that role involves? What are the core components of that role?

25 MS KIRKBY: I'm, as I said, the Director for Accommodation Services so I have the responsibility for 211 of our group homes right across the Adelaide region, and also I have group homes that I have a responsibility for in Mount Gambier and also in Kadina. As part of my portfolio, I have a Northgate Aged Care facility which is a
30 Commonwealth aged care facility within the State. I provide strategic leadership and direction to the service and have a responsibility to 530 clients who live within our service, and also the staff. So we have in and around 1,500 to 1,600 staff.

MS BENNETT: How many staff are your direct reports, do you know?

35 MS KIRKBY: Direct reports, I have my Director of Nursing, I have the Manager of Quality and Safeguarding, I have the Manager for NDIS and Customer Engagement, I have the Assistant Director of Accommodation Services, I have a Manager of Strategic Projects and also the last one, I have a manager that looks after our business
40 systems. So six plus an EA.

MS BENNETT: You were the sole director from 6 August 2018 and before that there were two directors; is that right?

45 MS KIRKBY: That's correct. So before that, there were two directorates. One was responsible for the community group homes, as I have described, and the other, which was the position I held, was for Highgate Park, which was last remaining

Government institution in South Australia and also the aged care facility, clinical services, including nursing services, community nursing.

CHAIR: May I ask, are all 530 clients participants in the NDIS?

5

MS KIRKBY: No, they are not. I also have 30 aged care clients in those numbers as well.

CHAIR: So there are about 500 that are participants in the NDIS?

10

MS KIRKBY: I also have some people who are in the COS program, the Continuity of Support Program. So I understand I've probably got --- there are probably around 475 NDIS participants.

15 CHAIR: Thank you.

MS BENNETT: You said there are 211 houses in your portfolio. Does that remain the case today?

20 MS KIRKBY: That's correct.

MS BENNETT: How often do you visit those houses?

25 MS KIRKBY: Very regularly. It is part of my practice to --- I've got one day a month that I actually block out to go and visit houses across the directorate. I do those visits with the Executive Director of Accommodation Services as well and we will do those visits with an Area Manager, will host us. So since being in the role, I've probably visited all of the houses, I'm on my probably third round at this stage.

30 MS BENNETT: When did you first visit N Street?

35 MS KIRKBY: N Street, as I think was mentioned on one of the days, there are actually three homes in a row in N Street. The first time I visited --- and I might need to just have a look at my statement, but the first time I visited was in 2018, but I only visited 2 N Street, I didn't actually visit the residence that we are talking about today. So as part of my visits I also do visits at night, so I had gone out on this particular visit with the night supervisor and we went to No. 2 N Street.

40 MS BENNETT: Just to pause, I should have been clearer. We are using "N Street" as a kind of a pseudonym, to refer to the actual house in which Daniel lives. When I say N Street, I mean that house.

MS KIRKBY: Yes.

45 MS BENNETT: I accept it is a little bit confusing because it refers to a street. If I need to refer to the other houses, I will think of something. When did you first visit N Street?

MS KIRKBY: The first time I visited N Street was on 25 February 2019.

MS BENNETT: Had there been issues with that house before you had visited?

5

MS KIRKBY: I believe there were.

MS BENNETT: Had those issues been escalated to your level?

10 MS KIRKBY: So can I explain to you why I say there were?

CHAIR: Yes, go ahead.

MS BENNETT: Yes, please.

15

MS KIRKBY: So, as you said, when I became Director of the whole of Accommodation Services in 2018, I met with all my senior leaders, so at that time, obviously as has been explained, there was a different structure in place, so there were about five Area Managers plus two Regional Managers that were reporting in to me. Shortly after I became director, we had the Oakden Report, that I'm sure everybody is familiar with, that came out in South Australia. I had taken that report and copied a copy for all of my senior leaders and asked them all to read it in the context of our service. And then I met with each of them and I said to them, "Talk to me about what's in the report", and asked them if there were any areas across the service that had any sort of similar issues or that they were concerned about. That was probably in October/November time.

20

25

And one of the area managers that I met with had mentioned N Street to me as a site where there were some significant issues, and issues similar to what has been discussed today around culture and general cleanliness, et cetera. That was one of the topics that I had discussed. So I did become aware that that was a site that I should take a closer look at. And from that, I had been talking and engaging with my --- with our Director of Audit and asked him when he was putting his audit schedule together, if that was something that he could actually --- if that was a house that he could prioritise in having a look at when the audits were going through.

30

35

I did talk to the manager who was responsible for the site at the time, to get their viewpoint of how things were and if there was anything that they were aware of, and certainly there was --- there was certainly a difference of opinion around what the --- one of the area managers who had been responsible for the site for a while, for a long time, had told me, versus what the local management was --- what their view was at the time.

40

MS BENNETT: I would like to explore that with you in a moment. Before I do, I think you might have heard the evidence of Mr Cunningham before; is that right?

45

MS KIRKBY: Yes, I did.

MS BENNETT: You heard Commissioner Bennett ask some questions around the air of neglect at N Street. Did you hear that?

5 MS KIRKBY: Yes, I did.

MS BENNETT: The matters that motivated you to ask for an audit of N Street are consistent with a house that had that air of neglect. Is that fair?

10 MS KIRKBY: Sorry, I just lost your audio, just at the end.

MS BENNETT: I'm sorry. Is it fair that you were receiving reports of such an air of neglect about that house and that was part of your motivation for asking for that review?

15

MS KIRKBY: Not specifically in terms of the detail that was discussed with Wayne.

CHAIR: What led you specifically to form the view that there was an issue of compatibility of staff with residents, there was a possible problem with staff culture and some other issues? What led you to that conclusion?

20

MS KIRKBY: So when I had met with one of the area managers who was responsible for that site, after I had asked the --- after I had asked the staff to read the Oakden Report, to give me their view around that and if there were areas within our service that had, you know, that potentially we could have issues that needed attention. So it was the Area Manager, who has since retired with us, that had mentioned N Street, and it was more compatibility around the clients living there.

25

CHAIR: What particularly did the Area Manager convey to you that resulted in you forming a view that there was possibly something wrong that needed correction?

30

MS KIRKBY: So the Area Manager had been somebody who had worked for us for many, many years, was very experienced and had spent a good part of the latter years of his career moving a number of people from the Strathmont Centre out into community living. And one of the things that he mentioned to me was that often, you know, had that process happened, you know, at the time --- so often you had people who lived together in a villa, but then would move out into a home together and, you know, often they were people who had similar disabilities, similar behaviour issues and things like that. And one of his concerns was that, you know, that's probably not the best thing to have people with similar disabilities and similar behaviour issues actually living in the same home. And so that was --- that was part of the discussion that we had had in terms of compatibility. So often we had people who, you know, potentially --- there might have been two people who had a --- who were biters, if you like, who lived together or who had various behaviours of concern and things like that.

35

40

45

And then also we talked about general staff attitude, because, you know, a number of

staff that we had working in the service were staff who had worked in an institutional model and then had transitioned into a community model but not really made that transitional shift. So we had a number of conversations around that and how we needed to change culture and how we needed to change people's attitudes from, you know, a hotel model, if you like, but an institutional model where everything was done at a particular time to a particular timetable and then versus what that looks like in a community house and what does community engagement look like, what does real true engagement in the community look like as well. So we had a number of conversations around --- around that and just staff attitude in general.

10 MS EASTMAN: I'm sorry to interrupt you, Ms Kirkby, but our transcript has stopped. Could we just check what the status of the transcript is, so that we haven't lost any of your evidence. I apologise for interrupting.

15 MS KIRKBY: That's fine.

CHAIR: Is our transcript recuperated?

20 MS EASTMAN: I'm told, Chair and Commissioners, that the transcript is still being recorded but the live transcript is not presently connected and will be reconnected. So I don't know whether we need the reconnection for those who are in the hearing room who are following the live transcript, or counsel who are behind us.

25 CHAIR: Do we have an indication of how long it will take to re-establish the connection?

MS BENNETT: I believe we have it back, Chair. I can see my words appearing.

30 CHAIR: I'm told we have it back. We shall proceed on the assumption that it has recuperated and made a full recovery. I was going to ask you, Ms Kirkby, your answer, I wasn't clear whether your answer was directed to specific concerns about N Street or whether what had been conveyed to you by the experienced manager were general comments.

35 MS KIRKBY: General comments, but enough to put it on my radar. I had come from having a small part of the portfolio in --- as I said at the start, in Highgate Park and in aged care facility, where everybody was grouped together and obviously we went through a process with everyone to transition into the community in a particular way. Taking on the wider portfolio ---

40 CHAIR: Sorry to interrupt. But there must have been something, I assume, that caused you to connect the general comments made by the manager to the specific facility at N Street?

45 MS KIRKBY: Yes. So I had asked the question if there was any --- of all of the managers, if there were any particular areas that they had concerns about. And that was one of the homes that that particular manager had suggested. And it was very

general comments. But as I say, I was new into the position and needed to --- needed to start my visits and to start looking at the service, to get a sense of the service. So the best way that I felt I could get a sense of the service was to talk to the people who had been working in the service for a long time.

5

CHAIR: Okay. Thank you. I think we will get Ms Bennett back to ask some questions.

MS BENNETT: Thank you, Chair.

10

So you had some concerns in October 2018 about N Street; is that fair?

MS KIRKBY: Yes, October/November, yes.

15 MS BENNETT: Around that time, you were monitoring RiskMan reports as they were coming through from all levels; is that right?

MS KIRKBY: That's correct, yes.

20 MS BENNETT: You saw some RiskMan reports come through about some bruising, some unexplained bruising; is that right?

MS KIRKBY: Yes, I did, yes.

25 MS BENNETT: You tell us about that at paragraph 77 of your statement. Did that cause you any concern, that a house that had been flagged to you as a house of concern had unexplained bruising coming?

30 MS KIRKBY: Yes, it did. And as I think was discussed with Wayne just previous, around the notification around the bruising being insignificant and there were a number of bruises, or there were certainly two RiskMans that I was aware of in that week preceding 22 February and subsequently 25 February, that were deemed on RiskMan to be small bruises and I think one was described as being the size of a 5 cent piece, which suggested that it was a small bruise. And, actually, I do recall
35 reading both of the bruising reports on that week, one when it was a small red mark, and then a couple of days later when it appeared that it was the same bruise being reported again, but it had then progressed to a bruise. So I actually remember that that rang a bell for me and I thought, well, that's good that reporting is happening, you know, in that sense. But as we now know, the reporting was completely
40 inadequate for the size and the scale of what was happening with Daniel's bruising.

MS BENNETT: You tell us in your statement that staff are expected to report in accordance with the various RiskMan manuals. Do you recall giving that evidence?

45 MS KIRKBY: Yes.

MS BENNETT: That's at paragraph 26. I think you say "authorised and expected."

Are they not required to do that?

MS KIRKBY: They are required, yes.

5 MS BENNETT: And you provide them with training about how to use that system?

MS KIRKBY: So the RiskMan system is our previous system, it's not the system that we currently use. So and the RiskMan system, I understand, was in place from about 2009, which predates my coming into the service. My understanding --- so
10 I can tell you what training happened in 2009 onwards. But certainly RiskMan training was something at the time that there were lot of manual --- manuals, if you like, in the homes as to how you report on RiskMan and how you record. And I think that a lot of the direction around how to use RiskMan was done at a local level. That's my understanding.

15

MS BENNETT: If I can just pause there, I want to go slowly. I just want to be clear about my question. You say in your statement they were "authorised and expected", but you say now they were required and you required them to comply with the policies that you have listed at paragraph 26. Is that how I understand your evidence
20 correctly?

MS KIRKBY: Yes. That's correct.

MS BENNETT: You heard Mr Cunningham tell us that he never received formal training in those manuals. You heard that evidence?
25

MS KIRKBY: I did.

MS BENNETT: Did you ever take any steps to know whether training was being provided in those manuals that staff were required to comply with?
30

MS KIRKBY: I did. But the training that --- so I did become aware that the RiskMan system was being used in a particular way and it was clear that it was more of a reactive system than a proactive system. When I developed the new structure and we had a Manager of Quality and Safeguarding in place, one of the first things that we actually did was really investigate what was happening with the RiskMan system, particularly around we had hundreds of open RiskMan reports that actually --
35 - so a RiskMan report has a process to it, where you've got the person who will log that RiskMan in the first place, then there's a number of other people that may well be involved with the RiskMan, around doing remedial actions and then it is actually the expectation of the Area Manager to close those RiskMans off. So when the Manager of Practice and Quality was recruited, one of the things that we talked about was how many open RiskMan reports there were and one of the questions that we both asked was, well, why are they open and what --- and did people have training?
40

45

MS BENNETT: If you can pause for a moment, I just want to return to my question. My question really was just about the training. And the proposition I want to put to

you is that it wasn't being provided by DHS in late 2018 and early 2019, staff weren't being trained in RiskMan. Is that fair?

5 MS KIRKBY: So what I was --- if I just finish that sentence, if that's okay, it's just we took all of the area managers and the team leaders and we put them all through training on RiskMan, and that would have been --- I would have to check dates --- but it would have been towards the end of --- sorry, the beginning of 2019. In regards to our support staff, our support staff would have been given on-the-job training, really, around RiskMan reporting, is my understanding.

10 MS BENNETT: So it is fair to say there was no specific formal training for the support officers?

15 MS KIRKBY: That I'm aware of, no.

MS BENNETT: They were the ones who were responsible for the initial report that determined who saw that incident report; is that fair?

20 MS KIRKBY: Yes. And ---

MS BENNETT: I'm sorry to interrupt. Inaccurate reporting by the initial reporter can infect and affect the way that an incident is treated in the future; is that fair?

25 MS KIRKBY: That is fair. My understanding is there are trigger words within the report that actually triggers an escalation as well. Now, I don't have those just off the top of my head.

30 MS BENNETT: I want to ask one question about the bundle B, tab 87. This is about RiskMan for Managers. At page 20 of that document, it seems to set out what the manager should be doing in response to a report that has been received in RiskMan. Hopefully, that document will become available any moment.

MS KIRKBY: Yes, page 1.

35 MS BENNETT: I think Mr Cunningham told us that this is the manager level manual, so this is for the people at a level above the operator or the immediate reporter. I'm sorry, I said page 20. I think I meant page 10.

40 MS KIRKBY: I'm still on page 1. It's coming.

CHAIR: Which part of page 10 would you like expanded?

45 MS BENNETT: I wanted to have a look at that table again, to see if we had understood it correctly.

CHAIR: It's a bit hard with the table in that form. Can we have it expanded?

MS BENNETT: I'm hoping the operator will do the thing they did last time and rotate it. I'm afraid I can't see it from where I am. Perhaps I can do it this way, Ms Kirkby.

5 MS KIRKBY: I can see it.

MS BENNETT: Thank you. Can you tell me, how does a person choose which category they are looking at, in an injury that might have --- in an incident that might fit into multiple categories, which one predominates?

10

MS KIRKBY: Within Accommodation Services, I would say almost always the "Client" category would be used. Occ health and safety for some issues, but to be honest, as I think Wayne might have mentioned, the other categories were hardly ever used by the staff who were reporting on RiskMan. The "Client" category was the one that was picked almost every time, I would say.

15

MS BENNETT: Were supervisors expected to review RiskMan and would they amend it if they saw fit?

20 MS KIRKBY: Yes, they could be.

MS BENNETT: And would they ever change any of the substantive details of the report, that you're aware of?

25 MS KIRKBY: The only details that would get changed would be if the report quite honestly didn't make sense. If there were issues of language, so if there were language barriers with the person making the report and the person receiving the report, sometimes one might read a RiskMan and try --- it would be very difficult to follow what was actually going on. So often a manager would go back to the staff member and talk to the staff member about what it was that they were trying to say, and amend that or they may well put in a notation to the RiskMan.

30

MS BENNETT: So there was no suggestion that statements would be removed prior to investigation or anything?

35

MS KIRKBY: No.

MS BENNETT: They were put there and then added to. Is that the way it's meant to work?

40

MS KIRKBY: That's right, yes, and it is a fully auditable system so if somebody did go in and interfere with the report in any way, that was on a timeline that was tracked.

45 MS BENNETT: You can actually see go back and see who has entered data at any given time?

MS KIRKBY: That's right.

MS BENNETT: Are you aware that anyone does review, if they find a problem in RiskMan reporting, is there a process for checking if that problem is more
5 widespread?

MS KIRKBY: At the time we were using RiskMan, there were multiple, many, many RiskMan reports coming through in a day. The system was used more in a reactive way, as opposed to really looking at trends that were happening in the
10 service. So some managers might look at trends and certainly we had the ability to look at trends. But the system wasn't necessarily used in that way. And as I said, this is our previous system.

MS BENNETT: I want to ask you if you ever met Daniel. Do you remember if you
15 have ever met Daniel?

MS KIRKBY: Yes, I've met Daniel many times and actually was lucky enough to be at his 40th birthday, that Karen spoke about earlier.

20 MS BENNETT: What about Mitchell, have you ever met Mitchell?

MS KIRKBY: Yes, I've met Mitchell a few times as well.

MS BENNETT: How would you describe your relationships with the families of
25 both Mitchell and Daniel?

MS KIRKBY: I have met Karen many times through the unfortunate incidents that obviously we were talking about today. I also have worked with Karen in a professional capacity as well. Karen, as I think she mentioned, worked for Purple
30 Orange and she was very heavily involved with the training of our client influencers group that we set up a few years ago and was very involved in developing our client customer charter with the client influencers group and myself.

I have met Victoria and James once, just face to face, but I had spoken to James a
35 number of times on the phone, just over the years, about various matters.

MS BENNETT: I want to return to that in a moment. Have you sought input into the policies that you list in your statement from the families of those who live with them? Live with those policies, that is?
40

MS KIRKBY: Which policies?

MS BENNETT: In paragraph 49 --- you go through a lot of policies but I'm particularly looking at paragraph 49. These are the policies that are said to
45 operationalise your Zero Tolerance to Abuse and Neglect of People with Disability Strategy.

MS KIRKBY: Yes.

MS BENNETT: There are 11 there. Are these the result of consultation with the families or with the people who receive service there is DHS?

5

MS KIRKBY: Zero tolerance to abuse and neglect, absolutely. Some of the first policies that are mentioned on point 49, managing incidents in the workplace and critical client incidents, et cetera, none of those ones are my policies. They are the policies of the Director of the IMU. So certainly I --- the families and the people we support were very involved with our zero tolerance to abuse and neglect and our quality practice and safeguarding framework. So our client influencers group certainly have provided a lot of feedback around some of the things that they would like to see in the service and in our policies and in our practice moving forward.

10

MS BENNETT: Are you able to say whether any of the documents at paragraph 49 were the subject of consultation with families or they are just not owned by you?

15

MS KIRKBY: I don't believe they were. Those policies, as I said, they are not owned by me but I don't believe that critical incident policies or reporting policies have been --- have had any family or client input at all. Customer feedback and complaints policy, again, we have had clients involved with those; and feedback, certainly there has been feedback from clients in those policies.

20

MS BENNETT: You have received feedback about that, but you have perhaps not actively sought it; is that right?

25

MS KIRKBY: No, we actively sought it.

MS BENNETT: In respect of all of them or just that one?

30

MS KIRKBY: Customer feedback and complaints and zero tolerance to abuse and neglect, customer charter.

MS BENNETT: Is it important to you to be transparent in your investigations and the outcomes of investigations that concern people who receive services?

35

MS KIRKBY: Absolutely. And certainly acknowledge that we need to do better.

MS BENNETT: What makes you say that, briefly?

40

MS KIRKBY: Well, I obviously watched Victoria and James' statement yesterday and it absolutely --- we absolutely need to do better and will do better, in that space. And obviously listening to Karen Rogers this morning, again, you know, we absolutely need to do better in our feedback and in our giving feedback to families. So, yes, absolutely we need to improve.

45

MS BENNETT: The letter that was received about Mitchell was pretty horrifying,

wasn't it?

MS KIRKBY: Absolutely, heartbreaking, totally heartbreaking. And to listen to Victoria and James' pain yesterday was really, really hard to watch. And I don't
5 think anybody would discount in any way the pain that receiving a letter like that would cause. And the not knowing, obviously, is --- who, who would do such a thing is --- it's completely heartbreaking to even think that anyone would write such a letter about anyone, particularly about a vulnerable person. I think the not knowing who did it, the thought as the Director of a service that there's potential that one of
10 my staff could have written that, absolutely sends shivers down my spine. And, yes, it's --- it's really, really awful.

MS BENNETT: You gave some evidence in your statement that you provided some counselling and support for the Rogers family. Did you provide the same offer to
15 Mitchell's family and to Mitchell?

MS KIRKBY: No. And it's no excuse to say that I wasn't the Director at the time. But it's certainly something that I would be reaching out to Mitchell's family and offering that, albeit that may well be, you know, too little too late. But I absolutely
20 want to work with Mitchell's family, to ensure that they get the support that they need and deserve.

MS BENNETT: Are you able to volunteer a view as to why there might have been differential treatment between those two cases, why one was supported in that way
25 and one was not, or offered support in that way and the other was not?

MS KIRKBY: As I said, I actually wasn't the Director of the entire accommodation services when the matter of the letter happened, but I was the Director of Accommodation Services when Daniel went through his bruising. So I walked right
30 along the journey with Karen and Graham and Daniel, which is quite different. As I say, I wasn't the actual Director responsible at the time of the letter. That was Claude Bruno, who was the Director of Accommodation Services at the time.

MS BENNETT: You were the Director while some investigations were being carried out, weren't you?
35

MS KIRKBY: No. So I was the Director with the following-on of the Ombudsman's recent report. But that was actually --- yes, it was some time before I became
40 Director.

MS BENNETT: I think in your evidence you said that you provided two to three counselling sessions for Karen and four for Daniel. I think we heard from Karen this morning that there was slightly less than that accepted. Are we to understand your evidence to be that that number of sessions was offered but only one was taken up?
45

MS KIRKBY: Yes. And, actually, I did speak to Karen actually today at the break. They were the sessions that I had spoken to the various counsellors around providing

in the first instance. Obviously the relationship with the counsellor and the --- and Karen and Graham and Daniel, I hadn't actually realised that they hadn't taken up all of the sessions. But they are still available to them, as I said to Karen.

5 MS BENNETT: I'm going to pass you a few issues that have arisen as I reviewed your materials and I'm going to do it at a reasonably quick pace, having regard to the time. I'm going to move around a little bit. You tell us that the IMU would only investigate a matter after South Australian Police have concluded the investigation. Does that remain your understanding of the situation?

10 MS KIRKBY: That's my understanding, yes.

MS BENNETT: Are there any times investigations will be appropriate before the South Australian Police have concluded their investigations?

15 MS KIRKBY: Well, that would be a matter for the Director of the IMU to make that decision, I think. But I'm not aware of any --- I'm not aware.

MS BENNETT: I want to take you back to your evidence before about certain
20 trigger words that could trigger an escalation in RiskMan. Do you remember that evidence?

MS KIRKBY: Yes.

25 MS BENNETT: Do you know where we could find information about those trigger words?

MS KIRKBY: I could certainly provide that to the Commission afterwards.

30 MS BENNETT: I also wanted to understand, going back to tab 86, this is the RiskMan document again, at page 7, that document in bundle B tells, as I read it, under the heading "Review the detail of the incident"?

MS KIRKBY: Are we on page 7?

35 MS BENNETT: Yes, page 7. "Review the detail of the incident." Can you see that?

MS KIRKBY: I actually can't, I'm sorry.

40 CHAIR: Could we enlarge it, please? Which part of the page do you want?

MS BENNETT: There's a heading that says "Review the detail of the incident", about halfway down the page.

45 MS KIRKBY: Yes.

MS BENNETT: As I understand it, this is a direction to the manager to review the

detail of the incident recorded in RiskMan. I want to ask you about the second-last bullet point, where it says:

5 *Remove any inappropriate statements or unfounded allegations as organisational policy may dictate.*

What organisational policy is being referred to there?

10 MS KIRKBY: I'm sorry, I'll have to take that on notice. I'm unaware of any organisational policy that would suggest to remove any evidence from or any details from a RiskMan, other than what I said, if actually it didn't make any sense or something like that, that there would be a change. But again, you would be able to see the history of that.

15 MS BENNETT: It says here that the person is directed to remove unfounded allegations, and I don't quite understand how that removal could take place before an investigation.

20 MS KIRKBY: Yes, I agree. I'll need to take that one on notice, if that's appropriate.

MS BENNETT: Alright. That appears in two places in that document, just so you are aware and your instructors are aware, that appears at page 7 and is repeated at page 20. It appears, on its face, to be a direction to remove allegations prior to investigation. I take it you can't take that any further for the Commission?

25 MS KIRKBY: I can't, no.

30 MS BENNETT: I want to ask you briefly about the financial arrangements for people living in group homes. You heard some evidence that informal arrangements are quite common. Did you hear that evidence?

MS KIRKBY: I did.

35 MS BENNETT: As I understand it, adult clients with no guardianship orders in place have their funds provided to --- well, can you tell me what are the processes in place for people with informal arrangements like Daniel?

40 MS KIRKBY: I actually can't answer that question. Our finance area manages the finances with families and guardians.

MS BENNETT: Do you see any issues with an informal arrangement of that kind in place for Daniel, as an example?

45 MS KIRKBY: I think our financial arrangements, or the Finance Division of the Department, is certainly a heavily regulated and audited part of Government. So yes, I think they --- they run to, you know, a very high standard.

MS BENNETT: Is there an appointed custodian or trustee for Daniel's money?

MS KIRKBY: Well, Daniel was under the Public Trustee, I believe. And now Daniel's mum is his financial manager.

5

MS BENNETT: You say that he was subject to the Public Trustee. Can you tell me what you mean by that?

MS KIRKBY: I think his money --- well, his money was, I think, managed by the client trust, which is administered within DHS. So his money was managed in that way.

10

MS BENNETT: But not by ---

MS KIRKBY: I don't actually know a lot of details about it.

15

CHAIR: Ms Kirkby, as I understand the evidence that has been given, apparently these informal arrangements quite often involve cash being on the premises and dispersed by the staff as required. Is that your understanding?

20

MS KIRKBY: So different clients would receive amounts of money, depending on what activities they were taking part in. For instance, if somebody went out to ---

CHAIR: I'm not asking about the source of funds, I'm asking about what form the funds took when they were available at the home. Is it common practice for there to be a pool of cash?

25

MS KIRKBY: There is, yes, it is common practice. So ---

CHAIR: Isn't that an invitation for misuse of money? Why wouldn't the Department have a policy of debit cards or even credit cards where there's a record of expenditure and the opportunities for misuse are minimised?

30

MS KIRKBY: Yes, so debit cards are something that we have been trying to move to and we have been trying to have a more streamlined system of cash, because the cash moving in homes, there is a lot of cash that gets moved and gets counted a lot of times in houses. We have got a lot of checks and balances in each house for the counting of cash, to make sure that the right cash balance is in place between shifts, which as you can imagine is taking time away from other things that staff would be doing that would be a lot more person-centred and useful if we didn't actually have this cash within the homes. There's been a number of ---

35

40

CHAIR: I take it the answer to my question is it would be a good idea to move to ---

MS KIRKBY: It's a fantastic idea. And there are a number of challenges with it, believe it or not, and some of --- yes, anyway, it's a really --- it is something that we would love to do. Some clients, of course, do have debit cards. But a vast majority

45

of our clients don't.

CHAIR: Cash is so yesterday, so I'm told.

5 MS KIRKBY: I totally agree. Though it's also balancing that with a number of our clients prefer to have cash for the Bunnings' sausage and all those sorts of things. But it is something that we have put a lot of time and effort into over the last two years and we still have not solved it.

10 CHAIR: We will go back to Ms Bennett.

MS BENNETT: I want to finish up by taking you to an email at hearing bundle B, tab 52. This is an email that follows on from the bruising in February 2019. You said here:

15

There are so many things wrong with this. I would like you to follow up as a matter of urgency please.

20 I want to just confirm with you that this was your impression at the time and these were your concerns about the house at the time. You said "Lack of reporting" and that was about the bruises that were not reported in a timely way. Is that right?

MS KIRKBY: That's correct.

25 MS BENNETT: That was a concern for you?

MS KIRKBY: Huge concern.

30 MS BENNETT: It was a concern that it can impact on the effectiveness of a subsequent investigation; is that right?

35 MS KIRKBY: Well, it was more around the fact that we have --- as you've been through with Wayne --- we have had a number of poor reporting practices on the week leading up to a family member receiving a phone call to get a locum to come and have a look at her son on a Friday night, with, you know, then in terms of the notification, of me actually being notified of that bruising and the severity of that bruising, I actually wasn't notified until the Monday and I was notified by Karen, which is absolutely not appropriate.

40 So, therefore, you know, there was a lot of time went by there. And as you say, absolutely, it affected the investigation and it also affected our transparency and trust and all of those sorts of things with the family. So when --- when Karen rang me and sent me the photographs of the bruising, again, I was completely horrified that I was hearing this from a mum, as opposed to internally.

45

MS BENNETT: You say the staff apparently sleeping on duty, according to the mum. Staff apparently being lazy, and this is known. Were those some of the

cultural problems you had been informed about or were these matters that were raised after?

5 MS KIRKBY: Look, they were alluded to previously. But, you know, you look for evidence for some of these things. Obviously I had started --- I had started looking at some of these things but hadn't specifically been to N Street to look at these things. But on the Monday when I met Karen and Graham and Daniel at N Street, with the other managers, these were certainly some of the things that I saw, which absolutely horrified me. So when you're asked the question, well, did I think it was --- your
10 colleague asked the question around, well, is nobody seeing --- like when you open the front door and you're met with a smell of urine, does nobody ask a question about that, so what does that say about what's going on in that house?

15 MS BENNETT: You say there, "Staff apparently being lazy and this is known", what do you mean by that? That is known by who, senior staff?

MS KIRKBY: When I had spoken to Karen, I had had a huge conversation with Karen and Graham on that Monday in Daniel's bedroom and it was like Karen's floodgates opened with a number of things that she had concerns about over the
20 years that I was unaware of, and I think Karen has put it in her --- I think I heard her mention it in her own statement, around choosing her battles, and Karen said to me, "I choose my battles." Again, that's something else that as a Director of the service, I don't want to hear that families are feeling that they need to choose their battles and why is that and what does that say about our culture and what do we need to do about
25 it?

So Karen had said to me she had raised some of these matters around the staff are lazy, she had come to visit --- she visited quite a lot, but she visited and she felt that a staff member had opened the door and it appeared that they may have been sleeping.
30 And some of those other issues that Karen raised today around the quality of Daniel's clothes and --- yes.

MS BENNETT: You attended the house that day and you observed the house to be dirty; is that right?
35

MS KIRKBY: Absolutely, yes. It was disgraceful.

MS BENNETT: Was Commissioner Bennett's characterisation that it had an air of neglect, is that a fair characterisation for you that day?
40

MS KIRKBY: Absolutely.

MS BENNETT: Is it acceptable that a house that is the home of these people was presenting in that way?
45

MS KIRKBY: Absolutely not. Absolutely not.

MS BENNETT: Commissioners, those are the matters I seek to explore with Ms Kirkby this afternoon. I will hand back to the Chair.

5 CHAIR: Thank you very much. Ms Kirkby, I'll just ascertain from my colleagues whether they wish to ask questions. Commissioner Bennett, do you have a question of Ms Kirkby?

10 QUESTIONS BY THE COMMISSIONERS

COMMISSIONER BENNETT: I want to talk a little bit about in your submission, from paragraphs 35 to 46, you talk about the zero tolerance strategy. This goes to the culture of organisations. What do you actually do with staff, so that in paragraph 37, 15 that they actually understand, recognise and name all forms of abuse and neglect? We just talked about the smell, the filth. How are staff trained that they see those signs, let alone the more extreme signs of physical abuse that have been referred to? And it goes to writing letters, of name calling and threats. What actually happens in the, I understand, two weeks of intense training?

20 CHAIR: I think there are perhaps a number of questions there. So let's start with the one, how do you ensure that staff understand, recognise and name all forms of abuse and neglect? I think that was the first question.

25 MS KIRKBY: Yes. So it's an excellent question. And I think, one of the main things that I do is I --- the first person that they meet when they come to their induction is actually myself and the Executive Director of Accommodation Services. So, certainly, we actually talk, I actually talk to people to try and engage hearts and minds and make documents into living things. So I think it's really important to 30 really engage with new staff and existing staff, but I'll talk about existing staff in a second if that's okay. But certainly all new staff that come into the service, I talk to them about zero tolerance to abuse and neglect and I talk to them about what that is.

I will often start by saying, when we talk about abuse and neglect, we all think well, 35 that's not me, because we go to those big ticket items, as I call it, we go to sexual abuse, physical abuse, financial abuse, and we forget about the --- you normally don't start there, that's not where abuse starts. Abuse starts, I think, when you open the front door and you smell urine meeting you, or you --- some of the work that we have done with the client influencers group, one of the things they are very, very 40 passionate about is that they are presented to the world in the best way possible, and that includes having clean breath, having their teeth brushed, having their hair brushed, actually looking nice and being presented how they want to present to the community. So I talk to all of the new staff ---

45 CHAIR: Sorry to interrupt, Ms Kirkby, but is the answer to Commissioner Bennett's question that the way that staff come to understand, recognise and name all forms of abuse and neglect is because you talk to them at their induction and convey that

information to them? Is that what you are telling us?

5 MS KIRKBY: Well, I guess it's probably not as simple as that. Yes, but that's one aspect of it. I think it's about seeing yourself in the client and it's about seeing what you would want if you were in the service, what would you want, how would you want your loved one to be presented and how would you want your loved one to be cared for in the service? So it's about making the policies real, I think, to people.

10 COMMISSIONER BENNETT: Does your training invite people with disability and their families and carers to come and tell your staff about how they perceive what could be abuse and neglect and what their aspirations are and how they want to live? Is it included that you have a first --- a voice, a first-hand account of those expectations?

15 MS KIRKBY: So at this moment in time we have got a limited connection into our inductions of people with lived experience. However, that is in our plan to have everything about you with you, to have our clients and our families involved in everything from recruitment through to training and expectations. That is our longer term strategy as we work through. We have got a number of things that we need to develop and that's certainly high up on our agenda.

20 COMMISSIONER BENNETT: Last question, Chair, since he's guiding me on how to ask questions. One of your commitments is capacity building?

25 MS KIRKBY: Yes.

30 COMMISSIONER BENNETT: Are you training staff to actually work directly with clients and families, coordinating, facilitating supports and services, growing supports and networks, are they being trained and understand what that means for the client?

35 MS KIRKBY: Yes, absolutely. So we have eight roles currently that are actively working across the seven areas and they are working with the clients, their families, they are working with the staff within each house in developing capacity and accessing other supports for clients as well. So, external advocacy, external community engagement. So it's definitely capacity building is absolutely growing.

40 COMMISSIONER BENNETT: Are those networks mainstream parts of our community?

45 MS KIRKBY: Absolutely, yes. It's about being an equal citizen, it's about --- I talked very briefly, I might have mentioned, the reconnecting to community, moving people out of Highgate Park, the last remaining institution, one of the things that we did was we worked very closely with individuals moving into their new communities to make sure that their likes were taken into consideration, whether it was, you know, linking in with the local libraries, the local community centres, the local activities, councils, and that people are fully engaged in their communities and

that they have their supports around them, and mainstream, absolutely.

5 COMMISSIONER BENNETT: Last question. Are you monitoring to see if that practice, training, aim is actually working and are you going to be able to report on the success of these initiatives, and when would that be?

10 MS KIRKBY: Absolutely. What we have done with the new structure is that we have these roles within the service, working within the service, but reporting out to a manager that isn't within that line if that makes sense. So, therefore, those people are actually --- the staff are reporting against specific KPIs and we are able to monitor. We have also been surveying our clients as well. So client satisfaction survey, how are you going, what's working well for you, what's not, what would you like to see more of? All of those sorts of things. So we have just done our second client survey recently and the results of that are just in the process of being collated.

15 COMMISSIONER BENNETT: That will be shared with the NDIA?

MS KIRKBY: It certainly can be, yes.

20 CHAIR: Commissioner McEwin, do you have any questions?

25 COMMISSIONER McEWIN: That you, yes. One question, Ms Kirkby. You said that you have 211 houses under your auspice and you try to visit --- one day a month you set aside to visit houses that you can see for yourself, as you described with N Street.

MS KIRKBY: Yes.

30 COMMISSIONER McEWIN: How many houses would you visit in one day?

MS KIRKBY: It just depends on the clustering. I should say, 211 sites. Some are far. So if I went to Mount Gambier, as an example, there are eight homes there, so I would visit all homes on the one day. Same for Kadina. I say on average one day a month. I might visit more homes, depending on what's going on.

35 COMMISSIONER McEWIN: Taking Mount Gambier, as you described, eight houses in one day, so how much time actually in one house? That would be less than one hour, can I suggest?

40 MS KIRKBY: Again, it depends. If I'm in Mount Gambier, it might be an overnight. I might go and share a meal with --- there's one particular lady that likes to do that when I visit. I might go to a basketball game, which I have done in the past, with a number of people who play, or it might be some people just want to see you for a shorter period of time.

45 COMMISSIONER McEWIN: I'll get specifically to the point. You go into a house. It would take more than an hour, it would take days to get a sense of the culture ---

I put it to you it would take days to get a real sense of the culture of what's happening in that house. I put it to you it wouldn't be adequate for you to get a real sense, for example, you were shocked to discover the state of N Street, so how can you do that for all 211 houses in the time you have?

5

MS KIRKBY: I guess I respectfully answer that question that if I go back to the experience of N Street, I knew this was a problem with N Street when the front door was opened, when you get that smell of urine, when you walk through the house and see some of the things that I saw. I guess I've been working in the disability sector now for 30 years and I've worked in lots of different aspects and configurations of models, and I think you do get a sense when you walk through, and also when you meet with the people in the homes, looking at their appearance, taking onboard some of those things that were brought out in terms of Daniel's statement. How are --- are people clean, how is their oral hygiene, how is their clothes? Are they happy?

10
15

I agree that it is a short period of time for me as Director in that space, but also I'm just one person who is visiting as well. Our area managers have an actual KPI around visiting all of the homes for a longer period of time on a three-monthly basis and team leaders visit the homes on a monthly basis and that's their expectation and they would be there for longer periods of time.

20

COMMISSIONER McEWIN: I will conclude, Chair ---

CHAIR: Commissioner McEwin, it was one question. I see the time and I understand there's an application that ---

25

COMMISSIONER McEWIN: With all due respect, I'll conclude by putting it to Ms Kirkby: in the time you have, it is unreasonable, isn't it, for 211 houses to get a real deep sense of the culture? You described N Street as one example. I put it to you it is unreasonable for you to be able to achieve that in your capacity. Thank you.

30

MS KIRKBY: Certainly, visits are one thing, but also it's about looking at what are some of the trends and incidents. So I might spend a longer period of time at a house where there may be a number of incidents for that particular house, to get a sense, I may go back and visit again, I may ask the Area Manager to do some follow-up work. But I think it's very important for all of our layers of management to actually go and visit and meet with the clients and actually start to build that relationship with the people we support. But I absolutely take your point.

35

COMMISSIONER McEWIN: Thank you. Thank you, Chair.

40

CHAIR: Thank you. Thank you, Ms Bennett, I think you have finished your examination of Ms Kirkby.

Ms Eastman, I understand there may be an application?

45

MS EASTMAN: Commissioners, the other parties with leave don't require any

questions of Ms Kirkby. Mr O'Brien, who acts for Victoria and James, wants to make an application to ask some questions.

CHAIR: Do you have a view about this?

5

MS EASTMAN: It would be my view, given Ms Kirkby's evidence this afternoon about the nature and the extent of the interaction that she had with Victoria and James, and in light of some evidence in Victoria's written statement, but not addressed orally, that the matters that Mr O'Brien wishes to address may have little utility to the overall inquiry for this particular case study. But it is Mr O'Brien's application and he may explain the relevance of these questions to the evidence.

10

CHAIR: Thank you. Mr O'Brien, you have heard what Ms Eastman has to say. How do the questions you propose to put advance the position of the Commission on the issues that have been identified?

15

MR O'BRIEN: There are two topics about which I would seek, on instructions, to ask this witness about.

20

CHAIR: They are?

MR O'BRIEN: They are the appointment of the person who was --- who is the catalyst, really, for the bringing about of the writing of the letter which was sent to Victoria and James on 3 March 2018, the re-appointment of her into a line of responsibility by this witness. And secondly -

25

CHAIR: I'm sorry, I'm not sure I understand that.

MR O'BRIEN: The person who --- the author of the letter that has become exhibited in these proceedings, at Exhibit 14.1 ---

30

CHAIR: The unidentified author of the letter?

MR O'BRIEN: --- referred to the forced movement or removal of a manager from the residence as being the catalyst for the letter. The catalyst, therefore, for the threats. That person left but was then reinstated in a position which had a line of authority to the residence later on and under the directorship of this witness, as I understand it. That's certainly the evidence of Victoria and James.

35

40

CHAIR: And the second point?

MR O'BRIEN: The second point is the response by the Department after the draft Ombudsman's report was made available.

45

CHAIR: I don't think you should be permitted to ask the second. That raises a whole range of issues that have already been explored and no doubt will be explored by Counsel Assisting further, and if there are issues you want to raise --- want

Counsel Assisting to raise, I suggest that overnight you talk with her and she can then determine what is appropriate. If you want to ask Ms Kirkby about the first matter, then please ask some rather specific questions about that and we will see how we go. But I don't anticipate this will take very long.

5

MS EASTMAN: Chair, before that occurs, could I just draw Mr O'Brien's attention to paragraph 90 of Victoria's statement.

MR O'BRIEN: Yes.

10

MS EASTMAN: I ask that Ms Kirkby's attention also be drawn to that paragraph.

CHAIR: Can that be brought up on the screen, please. The reference is STAT.0361.0001.0001 at page 17. And then the following page as well.

15

Mr O'Brien, you have seen that paragraph?

MR O'BRIEN: Yes, I have.

CHAIR: We are still waiting for it to come up. Can we enlarge paragraph 90? So that Ms Kirkby can see it. Can you see that, Ms Kirkby?

20

MS KIRKBY: Yes, I can.

CHAIR: Yes, Mr O'Brien, ask your well honed question.

25

MR O'BRIEN: Thanks, Chair.

CROSS-EXAMINATION BY MR O'BRIEN

30

MR O'BRIEN: You can see from paragraph 90 of Victoria's statement that Lesley had been removed from the residence but was in the position for a short time whilst the existing manager was on leave. Do you see that?

35

MS KIRKBY: I do.

MR O'BRIEN: That was brought to your attention, was it not?

40

MS KIRKBY: It was.

MR O'BRIEN: Wendy was then removed from the position, is that so?

MS KIRKBY: No. Unfortunately, the residence that Mitchell lives in and the area that the staff member in question --- and what this email was advising --- so what this email was about, briefly, was about --- it was about the new areas and it was about what area manager was in what area and what team leader was in what area. Now,

45

the mistake, if you like, that was made here is the area that Mitchell lives in and his house are referred to as the same thing, so the staff member in question here never had direct reporting lines for Mitchell's house. There were alternative arrangements made for that house. She has never had anything to do with Mitchell's house,
5 following obviously the events that were discussed, but is working in the area of the same name, if that makes sense.

MR O'BRIEN: Certainly. Just going back one step to paragraph 89, you will see from that paragraph that there was a time when Lesley, the former Accommodation
10 Services Manager, was acting in Wendy, the incumbent's role, for a month. Do you see that?

MS KIRKBY: Yes.

15 MR O'BRIEN: That was brought to your attention and she was removed; correct?

MS KIRKBY: Again, yes, Lesley was working in Wendy's position but alternative arrangements had been made for the oversight of the house and the area that Mitchell lived in.
20

MR O'BRIEN: You can obviously see Victoria and James' concern as to the position being filled by Lesley. You understand that, don't you?

MS KIRKBY: I absolutely understand the concern and when I spoke to James,
25 I clarified that, that there was no oversight for Mitchell's service by Lesley.

MR O'BRIEN: Going back to paragraph 90, you can see that when they received that generic email associated with the name of the residence or the name of the place, however it was explained, that that would have caused a great deal of concern and,
30 indeed, re-traumatised them as to the existence of that letter and the contents thereof; correct?

MS KIRKBY: Yes, absolutely, and I apologised at the time to James for that confusion. The correspondence was not designed to cause any trauma to any family.
35 I absolutely appreciate that it did and I apologised then and I apologise again today.

MR O'BRIEN: Indeed, you have come to learn that the family, in particular Victoria and James, requested Ministerial assistance in relation to this particular email and what it meant in terms of particularly the safety for Mitchell; correct?
40

MS KIRKBY: Yes, absolutely. Yes.

MR O'BRIEN: I want to ask you about something you said in answer to Ms Bennett
45 ---

CHAIR: Have we not exhausted the topic, Mr O'Brien?

MR O'BRIEN: This arises from the evidence that this witness gave to Ms Bennett, and it is relevant to this topic.

CHAIR: One more question, I think.

5

MR O'BRIEN: Thank you.

You said at page 178 of the transcript, when you were asked this question, the question was:

10

You were the Director while some investigations were being carried out, weren't you?

That was a question in relation to the investigations of the letter. Do you remember being asked that?

15

MS KIRKBY: Yes, I do.

MR O'BRIEN: You responded:

20

No. So I was the Director with the following-on of the Ombudsman's recent report. But that was actually --- yes, it was some time before I became Director.

Do you remember answering that?

25

MS KIRKBY: Yes.

MR O'BRIEN: You were the Director from 6 August 2018, were you not?

30

MS KIRKBY: Yes, I was.

MR O'BRIEN: The letter was received on 3 March 2018, was it not?

MS KIRKBY: If that's what you are saying, yes.

35

MR O'BRIEN: So you were the Director whilst some of the investigations were being carried out; in fact, most of the investigation was carried out under your directorship, correct?

40

MS KIRKBY: I think the majority of --- I mean, I would have to check records, but I would say that the majority of the investigation would have happened before August.

MR O'BRIEN: That's my questions, Chair.

45

CHAIR: Thank you, Mr O'Brien. Ms Eastman, do we now adjourn until 10.00 am

tomorrow Adelaide time?

5 MS EASTMAN: Yes, with one matter. You might recall in my opening, I made
reference to section 6M of the *Royal Commissions Act* and that is the provision
dealing with injuries to a witness, and it extends to any person who causes any
damage, loss or disadvantage to any person on account of the person having
produced a document or given information or a statement to the Royal Commission.
The Royal Commissioners take these provisions very seriously. Can I remind
10 people, following the conduct of this Royal Commission, either in the hearing room
or making comment online, to be reminded about the effect of section 6M.

15 CHAIR: Thank you very much. Ms Kirkby, thank you for coming to the Royal
Commission and giving evidence. We appreciate your attendance. I'm sorry to have
kept you a little longer than perhaps we anticipated. But thank you for your
assistance.

THE WITNESS WITHDREW

20

CHAIR: We will adjourn now until 10.00 am Adelaide time tomorrow.

25 **HEARING ADJOURNED AT 4.25 PM UNTIL 10.00 AM ON WEDNESDAY,
10 JUNE 2021**

Index of Witness Events

KAREN LEE ROGERS, SWORN	P-84
EXAMINATION-IN-CHIEF BY MS EASTMAN	P-84
QUESTIONS BY THE COMMISSIONERS	P-122
THE WITNESS WITHDREW	P-124
WAYNE CUNNINGHAM, AFFIRMED	P-126
EVIDENCE-IN-CHIEF BY MS BENNETT	P-126
QUESTIONS BY THE COMMISSIONERS	P-151
THE WITNESS WITHDREW	P-154
MURIEL KIRKBY, SWORN	P-155
EXAMINATION-IN-CHIEF BY MS BENNETT	P-155
QUESTIONS BY THE COMMISSIONERS	P-173
CROSS-EXAMINATION BY MR O'BRIEN	P-178
THE WITNESS WITHDREW	P-181

Index of Exhibits and MFIs

[VIDEO RECORDING PLAYED]	P-87
EXHIBIT #14-2 - VIDEO OF DANIEL ROGERS	P-125
EXHIBIT #14-3 - PHOTOGRAPH IN BUNDLE A, TAB 13	P-126