



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**

10:00 AM, TUESDAY, 08 JUNE 2021
DAY 3

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

CHAIR: Good morning, everybody, and welcome to those who may be in the hearing room in Adelaide or are following these proceedings on the livestream. I would like to commence by acknowledging the Kaurna people of the Adelaide Plains, the traditional custodians of the land on which the Royal Commission is holding its hearing in Adelaide this week, and to pay our respects to their Elders past, present and emerging. I also acknowledge the Gadigal people of the Eora Nation, upon whose lands I am participating in this hearing, and the Wurundjeri people of the Kulin Nation, from whose lands Ms Elizabeth Bennett of counsel is appearing. I pay our respects to their Elders past, present and emerging. I also pay our respects to all First Nations people who are attending the hearing in person today as well as to those who may be viewing the hearing or following the hearing on the livestream.

Yes, Ms Bennett.

MS BENNETT: The first witness is Mr Antony Allwood, who I believe appears in the South Australian hearing room to be sworn or affirmed.

CHAIR: Thank you very much. Thank you, Mr Allwood, 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 same hearing room as you are and she will administer the oath to you.

ANTONY ALLWOOD, SWORN

CHAIR: Just for the purposes of orientation, Mr Allwood, in the hearing room with you are Commissioners Bennett and McEwin. I am participating in this hearing from our Sydney hearing room and Ms Bennett, Counsel Assisting, will be asking you some questions from Melbourne. Ms Bennett will now ask you some questions.

EXAMINATION-IN-CHIEF BY MS BENNETT

MS BENNETT: Could you please tell the Royal Commission your full name?

MR ALLWOOD: It's Antony Allwood.

MS BENNETT: You have made a statement to the Royal Commission dated 13 May 2020; is that right?

MR ALLWOOD: Yes, I have.

MS BENNETT: Have you read that statement recently?

Mr ALLWOOD: Yes, I have.

MS BENNETT: Are the contents of that statement true and correct?

MR ALLWOOD: Yes.

5

MS BENNETT: Thank you. I would like to understand a little bit about your role. You are the Manager of the Internal Audit Team; is that right?

MR ALLWOOD: That's correct, yes.

10

MS BENNETT: I understand you carry out audits generally by the review of records and systems; is that right?

MR ALLWOOD: Yes, that's right. Records, systems, discussions with staff, observations. Yes.

15

MS BENNETT: Is that process one that is carried out primarily focused on identifying defects or faults in processes and procedures?

MR ALLWOOD: That's correct, yes. And also opportunities to improve.

20

MS BENNETT: Those opportunities to improve, are they focused on policies and procedures or on broader issues?

MR ALLWOOD: It can be on anything. It's primarily on policies, procedures and systems, but it can be on broader matters.

25

MS BENNETT: Do your audits encompass issues of overall culture and compliance?

30

MR ALLWOOD: Sorry, could you repeat the question, please?

MS BENNETT: Do your audits encompass things like workplace culture?

MR ALLWOOD: Yes, if that's a focus that comes to the fore during visits, then that is something that we would look into further.

35

MS BENNETT: Is that something you need to be directed to look into or is that part of your usual audit function?

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MR ALLWOOD: It can be a part of the objectives of the audit which is agreed with the audit --- the executive of the auditee area, or if it is something that we identify during the course of an audit, then we would pursue that if we felt that was appropriate and relevant.

45

MS BENNETT: Is that something that arises in the course of discussions with staff?

MR ALLWOOD: Yes.

MS BENNETT: That can arise?

5 MR ALLWOOD: Yes. It can be or it can be in advance, sort of when we are preparing to go out for an audit, the auditee executive may suggest there is potentially an issue with culture that it would be helpful to have independent eyes look at.

10 MS BENNETT: You said "independent eyes". Can you tell the Commissioners about your independence?

MR ALLWOOD: Yes, certainly. The Internal Audit Team is an independent role within DHS. Clearly, we are part of DHS. However, our reporting lines are directly
15 to the Chief Executive and to the Chair of the DHS Risk Management and Audit Committee. I do sit, for administrative purposes, in the Business Division, but I do not report to the Executive Director and the Chief Finance Officer on audit matters.

MS BENNETT: You report to the CEO. In what sense are you therefore
20 independent?

MR ALLWOOD: Sorry, could you repeat the question, please?

MS BENNETT: Are you not obliged to comply with the CEO's directions?
25

MR ALLWOOD: Yes.

MS BENNETT: So how do you see your role as being independent?

30 MR ALLWOOD: We are not a part of --- because we are not a part of a particular business function, we can identify from records independently. We have unlimited access to records, information and people, and part of the internal audit profession's requirements are that our reports and findings are supported by evidence, therefore we report what we find, and that can't be influenced by --- by the chief executive, for
35 example, which is why there's a dual reporting role to the chief executive and to the Chair of the Audit Committee.

MS BENNETT: I'm going to ask you a couple of questions about a site we have been referring to as N Street. Are you aware of what I'm referring to when I say
40 N Street?

MR ALLWOOD: Yes, I am.

MS BENNETT: We mentioned yesterday that there are a cluster of sites next to and
45 around N Street. If I need to refer to them, I refer to the N sites. Is that okay?

MR ALLWOOD: Yes. Thank you.

MS BENNETT: Thank you. I want to ask you about your audit report which appears at bundle B, tab 36, dated 16 January 2019. It is from you to Muriel Kirkby. Do you have that document?

5

MR ALLWOOD: Yes, I do.

MS BENNETT: This was part of an internal audit program of rolling unannounced visits to accommodation sites; is that right?

10

MR ALLWOOD: That's correct, yes.

MS BENNETT: Some of the N sites had been selected for unannounced visits; is that right?

15

MR ALLWOOD: They were selected after I'd had a discussion with Muriel, who very early on in the piece --- the program of site visits commenced in mid-December, and late December, I had a chance meeting with Muriel and a discussion as to how the audit program was going and at that point I asked if there were any sites that were of particular interest or concern that Muriel or her team would like me to arrange for a visit in the near future.

20

MS BENNETT: Did you understand there were any cultural concerns around the N sites?

25

MR ALLWOOD: In that discussion, Muriel mentioned that she had concerns around the culture and also the number of incidents that were being reported from that site.

MS BENNETT: When you say "number of incidents", do you mean injuries?

30

MR ALLWOOD: RiskMan incidents, incidents reported on the RiskMan system, the incident reporting system.

MS BENNETT: There was a disproportionate number of unexplained injuries from the N site, wasn't there?

35

MR ALLWOOD: Without looking at the statistics, I can't remember. But certainly the number ---

40 MS BENNETT: We could look at the report in front of you, at page 5. In the final paragraph it says:

Unwitnessed Injuries.

45 *Incidents relating to unwitnessed or unexplained injuries account for 193 (20.8%) of all reported incidents for the three N sites, with clients at "N Street" accounting for over half (104) of those.*

MR ALLWOOD: Yes.

MS BENNETT: Was that a concern raised with you, unexplained injuries?

5

MR ALLWOOD: Not explicitly, just the number of incidents in general which enabled us to look at the whole range of incidents that had been reported. The comments that I made --- I'm sorry?

10 MS BENNETT: That was one of the issues that arose in the course of your audit, is that fair?

MR ALLWOOD: That's correct, yes.

15 MS BENNETT: Returning to the first page of your report, you visited the N Street accommodation service; is that right?

MR ALLWOOD: My senior internal auditors did, yes.

20 MS BENNETT: You tell us, at the bottom of page one, that upon entering the site:

There is a strong, pungent odour of urine in the main living area

Do you remember that?

25

MR ALLWOOD: Yes.

MS BENNETT: You tell us further that the carpet had not been cleaned in two years, despite funding having been approved for that task; is that right?

30

MR ALLWOOD: That's correct.

MS BENNETT: Did you hear Ms Kirkby's evidence yesterday?

35 MR ALLWOOD: Yes, I did.

MS BENNETT: You heard me ask her that the N site had an air of neglect about it. Is it your impression from your observations recorded in this internal audit report?

40 MR ALLWOOD: Yes. Yes, the auditors who visited did find it to be rather sparse, probably in need of decoration, and, as you just pointed out, the smell of the carpet when they walked in.

MS BENNETT: There was no explanation for why that approved cleaning hadn't been carried out?

45

MR ALLWOOD: As to why it hadn't been carried out? No. No.

MS BENNETT: Is it fair to say that that was not a particularly home-like environment?

5 MR ALLWOOD: Sorry, a high?

MS BENNETT: Home-like environment, it wasn't like a home?

10 MR ALLWOOD: Yes, that's a fair comment based on the observations the auditors made, yes.

MS BENNETT: I would like to turn now to the circumstances of the investigations around Mitchell. You heard the evidence this week concerning the letter received by Mitchell's family?

15

MR ALLWOOD: Yes.

MS BENNETT: You heard from James and Victoria, giving their evidence?

20 MR ALLWOOD: Yes.

MS BENNETT: You have read the letter that they refer to?

25 MR ALLWOOD: Yes, I have.

MS BENNETT: The Royal Commission has received an internal audit report authored by you, dated 2 June.

30 Commissioners, this appears at hearing bundle B, tab 41A.

This, as I said, was provided on 2 June 2021. Can you tell me when you were asked to carry out this audit?

35 MR ALLWOOD: Yes, I was approached on 6 May.

MS BENNETT: What were you told about the reason that you were being asked to carry out this audit?

40 MR ALLWOOD: It was to have a look at how the Department had handled the incident around receipt of the anonymous letter, how it was investigated.

MS BENNETT: You say under "Audit Scope and Objectives", your objectives are listed there, including:

45 *Review the actions taken by the Department in response to concerns raised by Mitchell's guardians in Mar-18 and determine whether the response and resulting communications were timely, appropriate and in accordance with*

defined policy and procedure.

Do you see that?

5 MR ALLWOOD: Yes.

MS BENNETT: Is it fair to say that you concluded that the response was not timely or in accordance with policy and procedure?

10 MR ALLWOOD: Yes.

MS BENNETT: Then you were asked to:

15 *Determine whether investigations into the concerns raised were adequate, timely and performed in accordance with defined investigation procedures.*

And whether:

20 *Actions have been taken in response to issues raised in the SA Ombudsman's letter, and the effectiveness of those actions.*

Is that right?

25 MR ALLWOOD: Yes, correct.

MS BENNETT: What I want to understand, Mr Allwood, were you asked to evaluate whether the second investigation carried out was actually useful in trying to identify the author of the letter?

30 MR ALLWOOD: I was asked to have a look at whether the second investigation addressed the issues that were raised in the Ombudsman's letter, in that it --- the first investigation was felt not to be adequate and that a follow-up occurred.

35 MS BENNETT: Can you see the distinction I'm drawing? The Ombudsman made criticisms --- I'm going to go through this, to be clear, in a moment. So let me just see if I can summarise the timeline correctly, so it's clear to those watching. The threatening letter --- you would agree with me it was a threatening letter, wouldn't you?

40 MR ALLWOOD: Yes. Yes, I agree.

MS BENNETT: That was received on 3 March 2018.

45 MR ALLWOOD: Yes.

MS BENNETT: Then there was, according to your document, some undocumented inquiries made in March 2018 around that letter; is that right?

MR ALLWOOD: Yes, correct.

5 MS BENNETT: We are not sure exactly the contents of those inquiries or how
fulsome they were because they weren't documented?

MR ALLWOOD: That's correct, I have not been able to find any evidence of a
record of those discussions.

10 MS BENNETT: It was referred to the internal investigation body only in April 2018,
some six weeks later?

15 MR ALLWOOD: That's when the Incident Management Unit actually commenced
their investigation. The then Director of the Incident Management Unit was
involved, I believe, on the day that the actual letter was received.

MS BENNETT: They commenced their investigation some six weeks later and they
completed it on 28 November 2018; and that's the first report. Is that right?

20 MR ALLWOOD: Yes, that's what I found, yes.

MS BENNETT: That's the first report that you found to be defective; is that right?

25 MR ALLWOOD: Yes.

MS BENNETT: And that's consistent with the findings of the South Australian
Ombudsman, that that report was defective?

30 MR ALLWOOD: That's correct, yes.

MS BENNETT: If I can put it another way, would you agree with me that the first
report didn't do all things that could have been done to try and find the author of that
letter?

35 MR ALLWOOD: Yes, I agree. The focus of the investigations that the Incident
Management Unit undertook, sort of from April onwards, focused elsewhere and not
directly on the --- trying to identify the author of the letter.

40 MS BENNETT: If I understand your report, in fact they focused a lot on the conduct
of James and Victoria, rather than on the author of the letter. Is that fair?

45 MR ALLWOOD: That's correct, yes. There are records of an interview that the
Director had with James, Director of IMU at the time, had with James, in which
James did mention a couple of times he expressed his view that the finding the author
of the letter was not the key concern, but that Mitchell's safety was the primary issue
and the concern that they had around the staff being made to read the letter out.

MS BENNETT: So, those are matters that, if I read your report correctly, diverted the proper attention of the investigators from their proper task on to other matters; is that right?

5 MR ALLWOOD: That's correct. I believe there was ---

MS BENNETT: To the detriment of the report overall?

MR ALLWOOD: To the detriment of finding the anonymous letter author, yes.

10

MS BENNETT: Then to move on with the timeline, then the South Australian Ombudsman investigated, there was a process of investigation and the Ombudsman released its final report --- there was a preliminary report in September 2020 and then a final report on 27 January 2021, which found the first report to have been deficient.

15 Is that fair?

MR ALLWOOD: Yes.

20 MS BENNETT: The Ombudsman identified those deficiencies at around paragraphs 151 and 152 and identified a number of investigative steps that could have been taken but were not taken. Is that right?

MR ALLWOOD: Yes, yes.

25 MS BENNETT: There was then a further investigation --- I'll call this the second investigation --- that was carried out after the Ombudsman's report. Is that right?

MR ALLWOOD: Yes, correct.

30 MS BENNETT: That second investigation is dated February 2021; is that right?

MR ALLWOOD: Yes, correct.

35 MS BENNETT: It is the second investigation that you were then asked to report upon; is that right?

MR ALLWOOD: I was asked to report on all of them, on the investigation ---

40 MS BENNETT: Yes?

MR ALLWOOD: --- on the initial investigation and how that was handled, into the anonymous letter, and also the second investigation in terms of whether that addressed the Ombudsman's finding.

45 MS BENNETT: That brings me back to my earlier question. Does your audit report of 2 June consider the question of whether the second investigation was actually effective at trying to find the author of the letter, or is it directed at determining

whether the second report complied with the Ombudsman report?

MR ALLWOOD: It was --- I think partially both. It was certainly a consideration as to whether it had addressed the Ombudsman's finding, but I also had a look at
5 whether the second investigation actually considered staff that had been identified in the first investigation, that hadn't been pursued in that first investigation.

MS BENNETT: When you say it's a little bit of both, is it the case that it wasn't completely an investigation into that question, it wasn't completely a review of that
10 question?

MR ALLWOOD: Sorry, I'm not quite sure I understand.

MS BENNETT: That's okay. Are you able to tell the Royal Commission if you
15 consider the second investigation to have been adequate and appropriate to identify the author of the letter?

MR ALLWOOD: Yes. My opinion is that it was --- it was adequate, given the time elapsed. It did identify more staff to be interviewed and some of those interviews
20 were carried out. But given the time elapsed, it would be unlikely to find any --- anything that didn't necessarily come up earlier.

MS BENNETT: I would like to test that with you. Can we go to the second report, at hearing bundle B, tab 48. At page two of seven, at the bottom of the page, is
25 "Scope of Investigation." This report has three headings in it. The first is "Background", which sets out some uncontroversial matters, then the scope of the investigation is set out. That is said to be:

30 *Obtain statements from staff working at [the site] at the time in relation to the points above. A roster of staff working has been sourced and statements have been taken from those staff members where possible.*

Do you see that?

35 MR ALLWOOD: Yes.

MS BENNETT: That was the scope of the second investigation, wasn't it?

MR ALLWOOD: Yes.
40

MS BENNETT: That does not identify --- that does not say that identifying the author of the letter was the purpose of the investigation?

MR ALLWOOD: Yes.
45

MS BENNETT: Does it?

MR ALLWOOD: No, it doesn't, you're right.

MS BENNETT: Is it fair to a reasonable reader to conclude that this investigation was directed at obtaining statements and taking additional statements?

5

MR ALLWOOD: Yes. Yes.

MS BENNETT: The additional statements were guided by a roster of staff working and we are told that the roster of staff, in the third footnote, was for February/ March 2018. Do you see that?

10

MR ALLWOOD: Yes.

MS BENNETT: That's a very confined time period, isn't it?

15

MR ALLWOOD: It is, yes.

MS BENNETT: And the Ombudsman observed that it was likely to be necessary to consider people who had worked with Mitchell over a far longer period of time. Is that not the case?

20

MR ALLWOOD: Yes. Yes.

MS BENNETT: And in fact, the evidence in the first investigation was that the writer of the letter used a nickname for Mitchell that had been in disuse for some months, if not years. Is that right?

25

MR ALLWOOD: Yes, correct.

MS BENNETT: Can you tell me whether or not confining consideration of the staff to a two-month period around the time of the letter was a useful or appropriate means of approaching that investigation?

30

MR ALLWOOD: I believe it --- there was opportunity to look at a broader range of staff. Initially, it was suggested that there could have been up to 100 staff that could have been interviewed, so it would be a pragmatic approach to try and limit that initially.

35

MS BENNETT: Can I pause there; where do you get the idea that any decision was made to limit to a two-month period because --- for any reason at all?

40

MR ALLWOOD: I haven't. That's an assumption that I've made because that was the rosters that were available.

MS BENNETT: There were more rosters than that available, weren't there?

45

MR ALLWOOD: Yes.

MS BENNETT: RiskMan reports were available for a much longer period, weren't they?

5 MR ALLWOOD: Yes.

MS BENNETT: We were told yesterday that they include input auditing capacity, so we can check who has entered matters into RiskMan and who hasn't.

10 MR ALLWOOD: Yes.

MS BENNETT: As far as I can see from this report, rosters for only two months were considered, no RiskMan reports were identified over a longer period, and rosters that were available were not considered. Isn't that right?

15

MR ALLWOOD: Yes.

MS BENNETT: I would like to suggest to you, Mr Allwood, that that is deficient as an investigation. Would you agree with that?

20

MR ALLWOOD: Yes.

MS BENNETT: The next heading says "Summary of Evidence". I'm not going to take you to this in detail. But would you agree with me that the summary of evidence is no more than a short form summary of the eight interviews carried out with available staff. Is that a fair characterisation?

25

MR ALLWOOD: Yes.

30 MS BENNETT: And then at the end of that, we have a heading that says "Additional Information". That additional information refers to the identification of some people who could not be identified or who could not be contacted or who did not respond to contact. In the second paragraph, under "Additional Information" - I'll ask the operator not to bring this up for privacy reasons - there are identified three people who were not contacted because they were the subject of previous investigation in 2018, I interpolate, and provided their responses then. That's right?

35

MR ALLWOOD: Yes.

40 MS BENNETT: Just to pause there for a moment, wouldn't good investigative practice be to interview again the individuals from 2018 in light of the additional information?

MR ALLWOOD: Yes.

45

MS BENNETT: And that wasn't done in this instance?

MR ALLWOOD: I can't --- I can't remember, to be honest.

5 MS BENNETT: If you look at that paragraph 2 under "Additional Information", it names three people and then it says that "they have not been contacted in this instance as they were subject of the previous investigation and provided a detailed record of interview at the time." That's what it says, isn't it?

10 MR ALLWOOD: I can't see the document. But if that's what you have just read, yes.

MS BENNETT: So you would agree with me that a decision was made by the investigators not to re-interview people from the 2018 investigation in light of additional information?

15 MR ALLWOOD: Yes.

MS BENNETT: We are nowhere told where or why that decision was made, other than they had provided a detailed record of interview at the time?

20 MR ALLWOOD: Yes.

MS BENNETT: You are an experienced investigator and auditor. Is it not the case that these people should have been spoken to in light of subsequent information?

25 MR ALLWOOD: They should certainly have been considered, to determine whether any additional information would be available or whether the original statements were sufficient.

30 MS BENNETT: Thank you. That is the end of the report. Would you agree with me that there is no analysis of the information provided?

MR ALLWOOD: From memory, yes.

35 MS BENNETT: Feel free to take a moment. It's a serious matter, Mr Allwood, I don't want to put words in your mouth. Is there any analysis in this document?

MR ALLWOOD: Sorry, which document are you referring to?

40 MS EASTMAN: Ms Bennett, the witness does not have the document and we will provide a hard copy if you don't want certain things to come up on the screen. Just give us a moment.

CHAIR: We will take a moment until that document is provided.

45 Mr Allwood has the document. Could you, Ms Bennett, indicate what you would like Mr Allwood to do with that document?

MS BENNETT: Thank you. You will see on page 2, "Background", "Scope of Investigation", and "Summary of Evidence." Do you see those headings on page 2?

MR ALLWOOD: Yes.

5

MS BENNETT: We are up to "Additional Information" and we have been through the second paragraph under "Additional Information".

MR ALLWOOD: Yes.

10

MS BENNETT: I suggested to you that there is no further heading of substance in that report?

MR ALLWOOD: Yes.

15

MS BENNETT: I suggest to you that there is no analysis of the evidence in this report?

MR ALLWOOD: Yes.

20

MS BENNETT: There is no analysis of how the information obtained in the second investigation might relate to or fit in with the information from the first investigation; is that right?

25

MR ALLWOOD: Yes. Yes.

MS BENNETT: There is no timeline of events, no chronology, no identification of key players. Those are all missing, aren't they?

30

MR ALLWOOD: Yes.

MS BENNETT: They are all things that you would expect to see in a competent and proper investigation, aren't they?

35

MR ALLWOOD: Yes, yes.

MS BENNETT: I put to you this is not a proper and competent investigation. Would you agree with that?

40

MR ALLWOOD: Yes, yes.

MS BENNETT: There is another matter I would like to take you to in your audit report. If I could take you back to that document, your 2 June 2021 audit report, can I take you to page 4 of that document. There is a heading there "Investigation of Anonymous Letter". Do you see that?

45

MR ALLWOOD: Yes.

MS BENNETT: Can I take you to the fifth dot point, starting with the words, "No records have been identified".

5 MR ALLWOOD: Yes.

MS BENNETT: I'm going to read it out for the sake of clarity:

10 *No records have been identified to indicate that an IMU resource was assigned to undertake an investigation at this time.*

Just to pause there, based on context, I understand that to be a reference to March 2018, shortly after the letter was received; is that right?

15 MR ALLWOOD: Correct, yes.

MS BENNETT: I will return to reading:

20 *Further, a statement in the IMU "Investigation Diary" for the second (Jan-21) investigation into the letter records that "Clear instructions were given to the investigator at the time from the director.....not to follow up on establishing who the author was."*

25 Can you tell me what you understand that diary entry to be?

MR ALLWOOD: Yes. That's a record from the investigator who undertook the January 2021 investigation, who was gathering information from the initial investigation file, and recorded that comment in the investigation diary.

30 MS BENNETT: Mr Allwood, I read that to be a record of the Director giving an instruction to the investigator not to follow up on establishing who the author of the 3 March threatening letter was. Is that how you read it?

35 MR ALLWOOD: Within --- yes. However, I would add this context, in that prior to the initial investigation being undertaken, commenced in April 2021 --- sorry, April 2018, the then Director of the Incident Management Unit had met with James and at that meeting James had indicated, according to the notes of that meeting made by the then Director, James had indicated that he was not concerned about the letter or identifying who sent the letter. And the evidence in the investigation file suggests
40 that, as you indicated earlier, the investigation then focused more on the complaints raised by Victoria and James, rather than the --- finding the author of the anonymous letter.

45 MS BENNETT: Is it a matter of concern to you that the Director could have given such a direction to the investigator?

MR ALLWOOD: Yes. However, it doesn't ---

MS BENNETT: It is a significant concern, isn't it?

5 MR ALLWOOD: Yes. However, it is within the context. And in my opinion, there were two --- at least two matters to be investigated, which should have been done separately. One was the matter of the anonymous letter and the other was the complaint against the staff made by Victoria and James.

10 MS BENNETT: Isn't the only context that matters, Mr Allwood, the threat to life of a vulnerable person had been made. That ought to have been the guiding priority for the Director. Isn't that right?

MR ALLWOOD: Yes. Yes, I agree. However, the ---

15 MS BENNETT: Wouldn't a clear instruction like this be a breach of policies and procedures of the Department?

MR ALLWOOD: I can't --- I can't answer that. I don't know.

20 MS BENNETT: Leave aside a specific piece of paper. I'm putting to you that the primary concern of everyone involved in the Disability Accommodation Services should be for the safety and wellbeing of the people who live in those services. You would agree with that?

25 MR ALLWOOD: Yes, I do, yes.

MS BENNETT: No one needs a piece of paper to tell them that, do they?

MR ALLWOOD: No. No.

30 MS BENNETT: So a clear instruction not to follow up on who the author was, was improper, wasn't it?

35 MR ALLWOOD: Yes. However, I would come back to the point that was made in the discussion, where James had commented that the --- finding the source of the anonymous letter was not a priority and also the fact that the matter had been reported to the police and that the then Director of the Incident Management Unit was of the opinion that the police should be investigating that matter. At the time ---

40 MS BENNETT: It is ---

MR ALLWOOD: --- there was no direction in place as to whether the Incident Management Unit could investigate a matter that was being handled by the police. That has been rectified in a recently introduced procedure.

45 MS BENNETT: Can I suggest, Mr Allwood, that even now there is a tendency to blame James for the inaction of the Department? Would you accept that?

MR ALLWOOD: No, I don't believe that's the case. I believe it was a contributory factor, the meeting that he had. I can only report on the evidence that is in the investigation file.

5

MS BENNETT: I understand that, and you have been frank in your evidence and I'm grateful for that. But what I want to put to you is: whatever James said doesn't matter to the duty of the Department to follow this up. Would you agree with that?

10 MR ALLWOOD: Yes, certainly the investigation could have been done better, yes.

MS BENNETT: No, I'm now focused on this direction. Was your audit report of 2 June the first time, to your knowledge, that this direction had been ventilated?

15 MR ALLWOOD: It's the first time that I've seen it. I can't comment on who else might have seen the document outside of the investigation --- the Incident Management Unit.

20 MS BENNETT: Are you aware of any plans to carry out further investigations in relation to this issue?

MR ALLWOOD: At this point in time, no, I'm not aware of anything.

25 MS BENNETT: Has that prompted you to consider whether or not there needs to be cultural investigations into the staff at the Department in this area?

MR ALLWOOD: I hadn't given that explicit thought.

30 MS BENNETT: Doesn't this suggest that there was a culture of non-compliance at the time?

MR ALLWOOD: In regards to who? Sorry?

35 MS BENNETT: In regards to the Director and the investigator, or at least the Director giving that direction?

MR ALLWOOD: Sorry, can you go back to your question?

40 MS BENNETT: Does this direction suggest a culture of non-compliance, a culture of disregard for safety, a culture of concern in the accommodation services?

MR ALLWOOD: It's an isolated --- it's an incident, it's one incident on its own.

45 MS BENNETT: How do you know?

MR ALLWOOD: Alright, yes.

MS BENNETT: What if it's not an isolated incident? What if this is emblematic of the culture in the place at the time?

MR ALLWOOD: Yes, that's a good point.

5

MS BENNETT: This brings me back to where I began this morning. When does the culture of the institution as a whole come up for examination? When do we look past the piece of paper and ask are the people acting in the best interests of the clients?

10

MR ALLWOOD: Culture is something that we try and look at when the internal auditors go out and visit sites, in terms of their observations of interactions of clients, of staff and the interaction --- you know, the contentment of clients.

15

MS BENNETT: Can I take you to paragraph 51 of the statement of James. I would like to ask you about this. I would like it to be brought up on screen so that you can read it. Can you let me know when it's on screen in front of you?

20

MS EASTMAN: For the Commissioners, this is in hearing bundle A, behind tab 29.

MS BENNETT: I'm grateful to my leader.

MS EASTMAN: On the screen, it needs to turn to page 10.

25

MS BENNETT: Have you read that paragraph?

MR ALLWOOD: Yes, I have, thank you.

30

MS BENNETT: You talked about the context before, being relevant to the Director's notation in the investigation notes.

MR ALLWOOD: Yes.

35

MS BENNETT: This is quite a different context, isn't it?

MR ALLWOOD: Yes, it is.

40

MS BENNETT: This is James' version of events and he says he understood that there was an investigation being carried out and that, in summary, he didn't need to know who the person was, as long as someone did. Is that a fair summary of that paragraph you have just read?

MR ALLWOOD: Yes, yes.

45

MS BENNETT: If that were the case, there would be no context at all that mitigates in relation to the paragraph I've just taken you to, the diary note that I've just taken you to?

MR ALLWOOD: Yes.

5 MS BENNETT: Would it be right to say it would be improper on either view, but particularly so if this version of events were correct?

MR ALLWOOD: Sorry, could you repeat the first part that?

10 MS BENNETT: That notation, that direction, would be improper, irrespective of the context? Whether or not James wanted an investigation or not, that direction was improper. Is that fair?

MR ALLWOOD: Yes.

15 MS BENNETT: If James' version of events is correct, then it would be even more improper. Is that fair?

MR ALLWOOD: Yes.

20 MS BENNETT: Mr Allwood, I have asked you some questions about the second investigation report. In your answers you have, I think, fairly departed somewhat from the conclusions that we find in your internal audit report of 2 June 2021. Is that fair?

25 MR ALLWOOD: Yes. Yes.

30 MS BENNETT: Are the Commissioners to take it that to the extent that there is difference between your audit report and the evidence that you have given today, that they should prefer the evidence that you have given today?

MR ALLWOOD: Yes.

MS BENNETT: Just a moment. I will see if there are other matters to raise.

35 Those are the matters I sought to canvass with Mr Allwood this morning, Commissioners.

40 CHAIR: Thank you very much. I'll just inquire, Mr Allwood, whether Commissioners have any questions. Commissioner Bennett, do you have any questions of Mr Allwood?

COMMISSIONER BENNETT: No, Chair.

45 CHAIR: Thank you. Commissioner McEwin?

COMMISSIONER McEWIN: No, thank you, Chair.

CHAIR: Thank you. I think that there is in fact another appearance, is there, to be announced today that I haven't yet taken?

5 MS EASTMAN: Chair, just before we get to that, our colleagues from South Australia would like an opportunity to have a short adjournment, to determine whether or not they need to follow up any questions in relation to Mr Allwood's evidence. Could the Royal Commissioners accommodate us to do that?

10 CHAIR: That's fine. But I think there is another appearance, isn't there, for South Australia that hasn't yet been taken, I was told? No?

MS EASTMAN: I haven't been told that but I will make those inquiries in the short break as well.

15 CHAIR: How long do you want the break for or, more accurately, how long does South Australia want the break for?

20 MS EASTMAN: I notice it's quarter to 11. If the Commissioners are agreeable perhaps to an early morning tea, we can take an adjournment now for 20 minutes and I'll let the Commissioners know after speaking with our learned friends if they need more time and also whether or not Mr Allwood will be released.

CHAIR: Alright. We will adjourn, then, until 11.05 Adelaide time. Thank you.

25 MS EASTMAN: Thank you, Chair.

ADJOURNED **[10.45 AM]**

30 **RESUMED** **[11.05 AM]**

35 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Thank you, Commissioners, for that early morning tea. I understand there are a few questions that arise directly out of the examination that counsel representing the State of South Australia would like to address. Having conferred with him, those questions seem to be appropriate and directly related to the evidence.

40 CHAIR: Yes, thank you. Mr Golding, is it, who will ask those questions?

45 MR SIMPSON: Mr Simpson, sorry, Chair.

CHAIR: Yes. Where does Mr Golding appear? I seem to have an appearance from Mr Golding. Is this something that has mysteriously emerged from the atmosphere?

MR SIMPSON: No, Chair. Mr Golding appeared at the Public Hearing in South Australia in November last year. I am in fact Mr Golding's junior, but Mr Golding was otherwise indisposed for this week's hearing.

5

CHAIR: Very well. That clears it up, except that I'm not sure we had a hearing in South Australia last November. But never mind. Yes, please ask your questions.

MR SIMPSON: Thank you, Chair.

10

CROSS-EXAMINATION BY MR SIMPSON

15 MR SIMPSON: Mr Allwood, in the evidence you have given, you gave some answers to questions that related to instructions that were given by a director in relation to the scope of the investigation. Can I ask you, did those instructions relate to the first investigation or the second investigation?

20 MR ALLWOOD: Those instructions related to the first investigation.

MR SIMPSON: In that first investigation, notwithstanding those instructions, were efforts made to attempt to identify the author of the anonymous letter?

25 MR ALLWOOD: Yes. During the interviews conducted by the investigating officer from the Incident Management Unit, the staff that were interviewed were asked, as part of the interview process, whether they were aware of the author of the letter.

30 MR SIMPSON: In your report dated earlier this month, you undertook some investigations in relation to the focus of the first investigation in relation to safety of Mitchell. Are you able to comment on that?

35 MR ALLWOOD: Yes. I did find evidence of emails and correspondence which indicated safeguards that were put in place to protect Mitchell. They included, if I may read: hourly welfare checks, a supervisor was placed on site over the night shift, and efforts to maximise the use of core staff that were trusted by the family and the client, to roster ---

40 CHAIR: Mr Allwood, where are you reading from, please?

MR ALLWOOD: My report of 2 June, page 3, section 2, "Safeguard Arrangements for the Client".

45 CHAIR: Thank you.

MR SIMPSON: Chair, that can be found at ---

CHAIR: I have got that. I just wanted to know where Mr Allwood was reading from. Thank you, carry on.

5 MR SIMPSON: Sorry, Mr Allwood, had you finished your response to that question?

MR ALLWOOD: Thank you.

10 MR SIMPSON: Turning to the second investigation undertaken by DHS, at tab 48 there is the second investigation report that you were referred to. On that first page there is a heading that refers to the "Scope of Investigation". That scope refers to dot points above. I understand that to be a reference to the three dot points that appear in the last paragraph under the heading "Background". You were asked, Mr Allwood, some questions about the scope of the second investigation.

15

MR ALLWOOD: Yes.

MR SIMPSON: If you just take a moment to read those paragraphs together.

20 MR ALLWOOD: Yes.

MR SIMPSON: Are you able to comment on the scope of the investigation, the second investigation, insofar as it relates to attempting to identify the author of the letter?

25

MR ALLWOOD: Yes, the scope of the investigation clearly needs to be read within the context of the paragraphs above, which does refer to identifying the author of the letter.

30 MR SIMPSON: Thank you, Mr Allwood.

Chair, I have no further questions.

CHAIR: Thank you very much, Mr Simpson.

35

Does that mean that Mr Allwood can now be excused, Ms Eastman?

MS EASTMAN: Yes, it does. Thank you, Chair.

40 CHAIR: Thank you very much, Mr Allwood, for coming to the Commission and giving your evidence this morning. You are now excused as a witness so you are free to go or stay as you wish. Thank you very much.

45 MR ALLWOOD: Thank you.

THE WITNESS WITHDREW

CHAIR: Yes, Ms Eastman.

5 MS EASTMAN: Chair, we have got to the bottom of the additional appearance and Mr Simpson might want to address that.

MR SIMPSON: Sir, I appear for Ms Gale in her capacity as Public Advocate and Principal Community Visitor, in addition to appearing for the State.

10

CHAIR: Thank you, Mr Simpson. Is there any other person or any other witness for whom you have instructions to act, other than the State of South Australia and Ms Gale?

15 MR SIMPSON: I appear also for the witnesses from the Department of Human Services for the State of South Australia. That had been communicated to solicitors instructing, but I apologise if that wasn't clear when I announced my appearance on Day 1 of the hearing.

20 CHAIR: Thank you very much. I think that clarifies matters. Yes, Ms Eastman.

MS EASTMAN: Commissioners and Chair, you will remember that when I opened on Monday morning, I said that the first part of the hearing would address the case studies and the experiences of Mitchell, and Daniel Rogers. I indicated that later in the week we would turn to the response to Ann Marie Smith's death. We have now reached that stage of the proceeding where we are going to turn to the various reports that have been published following investigations in relation to Ann Marie Smith's death and, more specifically, the response of relevant agencies.

30 Dr Bennett, here in Adelaide, will shortly give you an opening in relation to an overview of the various reports that the Royal Commission will address and then you will hear from Anne Gale. But we want to start in terms of reflecting on what lessons we can learn from what was described as the appalling death of Ann Marie Smith by starting with the observations of one of Ms Smith's friends.

35

Commissioners, you will find in the hearing bundle A behind tab 5 a statement of Brooke. Brooke made the statement on 26 May this year and she has affirmed that the contents of the statement are true and correct: I'm going to read to you Brooke's statement. She didn't feel able to come and speak to you in person about it.

40

CHAIR: Please go ahead.

MS EASTMAN:

45 *I first met Annie when I started primary school. She was 7 years old and I was 9. I think Annie had recently started at our school as Annie's parents wanted her to attend a mainstream school after spending some time in a school for*

5 children with special needs. I remember she had a blue walker and was relatively mobile at that stage. I don't think she ever used a wheelchair at school. I guess, like many kids, I noticed that Annie had a disability but I never asked and Annie never told me about it. To be honest, it was only at Annie's funeral that I learnt she had cerebral palsy, and we had been friends for over 40 years.

10 I pause there. Commissioners will see that Brooke has also provided some photographs and those photographs will be displayed while I'm reading this statement. Brooke says this:

15 *Our teacher asked me to help Annie so I sat next to her in class and would go with her to the toilet in case she needed assistance. The school installed ramps and hand rails throughout the school and an accessible toilet. During recess and lunch, I would often sit with her as she didn't go out into the playground with the other children. I think that was partly because she couldn't do some of the physical activities that the other kids could, but in hindsight, I think she also held back from being more involved.*

20 *We would sit in the corridor that ran alongside the classrooms, talking and playing various hand clap games. I remember Annie's Mum would always pack BBQ Shapes and Monte Carlo biscuits in her lunch box. Annie never ate them so I was more than happy to oblige!*

25 *Annie was the first child at our school with a disability, though a few years later a boy who used forearm crutches also started at the school. I don't remember other children picking on Annie, but I'm not really sure how she felt about school or the other kids around us. I guess it was the days where there wasn't a more open conversation about disability and inclusion.*

30 *I would regularly go over to Annie's house on weekends during primary school. I remember Annie had a very close relationship with her parents and I think they were very protective of her. She was particularly close with her mum and they spent a lot of time together. They had a pool and I was often keen to have a swim, but Annie wasn't interested and therefore, we would stay inside.*

35 *Annie liked music and was particularly fond of ABBA. I remember she would get up and jig along whenever an ABBA song came on. She was always dressed in nice clothes and she used to get her hair done in a salon when Mrs Smith was alive. As an adult, Annie also loved Happy Plants and I gave her these for birthdays or Christmas on several occasions. She often had vases of lilies around her house.*

45 *Annie repeated a couple of years of primary school and was on a special learning program. As there was a two year age difference between us, Annie would jokingly call me a baby and I would call her an old lady. I went off to*

5 high school a year or two before Annie. We attended different high schools but I know Annie had at least one good friend at high school in Adelaide and she kept in contact with him throughout her life. we saw less of each other during high school as I played a lot of sport on the weekend and Annie rarely left her parents' home. When I think about it, during our friendship and even into adulthood, she never came to my house and we never caught up in a cafe or restaurant and I always went to her home.

10 During secondary school, Annie and her family moved to Melbourne for about three years. We stayed in contact, talking on the phone regularly. When I was about 15 or 16, I caught the bus over to Melbourne with another friend and we stayed with the Smiths for 2 or 3 nights. I remember we were really excited to visit the CBD, but Annie didn't want to come and opted to stay at home. As a teenager, I wanted to get out and explore the new exciting city.

15 I think Annie finished high school in Melbourne and then the family moved back to Adelaide. After school, I started working full time, was studying at TAFE and also had a boyfriend so I didn't have much spare time, but I continued to catch up with Annie when I could. As far as I'm aware, after
20 Annie finished school, she did not work, study, volunteer or do any other regular activity in the community.

25 Annie had her 21st birthday at her Nana's home in the Barossa. Her Nana was also a very special person in her life. A small group of close family and friends attended, but I remember this was a difficult period for Annie. A close friend from school and his step dad were tragically killed when struck by a car whilst they were crossing the road a few weeks before her birthday. She had spoken to me many times about having a crush on this particular guy and I know she was quite devastated by his death.

30 Annie came to my engagement party, wedding and also visited me in hospital when my son was born. I continued to drop around to see her with my children. Annie was good with them and would always talk to them and ask questions. My marriage ended when my children turned school age, so I would usually visit her when they were with their dad as it was easier. In 1990,
35 I moved almost one hour away from Annie's house, so whilst I didn't see her in person as often, we regularly spoke over the phone or texted.

40 Annie was heartbroken when her mum died of cancer. Aside from the emotional distress, this also lead to change in Annie's day to day life and she started to receive more in-home care. Three months later, her father also passed away suddenly. Annie said he died of a broken heart. I think he had a heart attack.

45 Annie always loved her dogs. I remember she had dogs when she moved back from Melbourne and they lived with her in the family home. Her last two dogs, Deana and Maggie were important companions and Annie was also very sad

when they passed away a few years before her death. I know it was her plan to get a new puppy.

5 *In January 2018, I moved with my partner to a neighbouring suburb only about 15 minutes away from Annie's home. We were both working full-time, stressful jobs and I also had foot surgery in that July which meant I couldn't drive for 3 months. I didn't have a lot of free time. However, I noticed that around this time Annie also started to change as a person and became quite negative. Despite living much closer, I stopped visiting her. We had a falling-out*
10 *approximately one year before her death and so we didn't speak during her final year of her life. This is something I really struggle with - I shouldn't have made excuses. I carry a lot of guilt about that and I know that things would have been different if I had gone around to see her. For me, it is still*
15 *incomprehensible what happened to her.*

Annie could be head strong and stubborn. I would try to help her by making suggestions about how she might deal with a particular issue or problem, but she was always adamant that she would do it her way. I wish that Annie had involved herself more in the lives of her friends and community. By rarely
20 *leaving the house and not pursuing interests, hobbies or work, the possibilities for her life and her connections with people were very restricted. I feel that she may have had a much fuller life if she had been more strongly encouraged to get out into the community at a younger age.*

25 *I feel privileged to have been part of Mr and Mrs Smith's family - they always made me and my family feel welcome. Annie was a caring person who was given a lot of love by her family. We watched each other grow from little girls to adult women and I will always cherish our friendship through many good*
30 *years.*

One thing I will never forget about Annie is her laugh. Sometimes she would start laughing for no apparent reason. I may have tripped or done something silly, and off she would go. I would have to remind her to breathe. I remember
35 *one day saying goodbye and leaving the house while Annie was laughing about something. I could still hear her laughing as I reached my car parked outside in the street.*

Annie, you are loved, you are missed. Rest in peace.

40 CHAIR: Thank you, Ms Eastman.

MS EASTMAN: Thank you, Commissioners.

CHAIR: Yes, Dr Bennett.

45 DR BENNETT: Thank you, Chair. I will do a brief opening now in relation to the two reports and following on from the earlier addresses on Monday.

On Monday morning in their opening addresses, the Chair of this Royal Commission and Senior Counsel Assisting spoke of the death of Ms Ann Marie Smith on 6 April of last year and briefly referred to what had been described as a substantial period of neglect, Ms Smith having lived in squalid and appalling circumstances. Ms Smith had been an NDIS participant, lived by herself in her own home and had a single carer employed by a registered service provider.

Also referred to by both the Chair and Senior Counsel Assisting were the constraints of this Royal Commission in undertaking any inquiry in relation to deaths, such as that of Ms Smith, with the Chair citing the Royal Commission's Terms of Reference, which relevantly refer to, and I quote:

..... the need to ensure that evidence that may be received by the Royal Commission that identifies particular individuals as having been subject to violence, abuse, neglect or exploitation is dealt with in a way that does not prejudice current, future criminal or civil proceedings or other contemporaneous inquiries.

Having regard to these Terms of Reference and given that a number of other investigations and inquiries are underway, including criminal proceedings, this part of the hearing will be directing attention primarily at the measures taken in response to investigations that have already been conducted and concluded and are publicly available. In particular, this part of the hearing will consider the responses of the DHS, the NDIA and the NDIS Commission to findings and recommendations of two reports. Those responses and those reports are those of the Honourable Alan Robertson SC, entitled "Independent Review of the Adequacy of the Regulation of the Supports Provided to Ms Ann Marie Smith - an NDIS Participant". That report was presented on 31 August 2020 and will be referred to as the Robertson Report.

The other set of reports are the interim and final reports of the South Australian Safeguarding Task Force that were delivered, respectively, on 5 June and 31 July 2020. There was also a supplementary report from the Task Force that was presented on 28 September 2020. This supplementary report is a compilation of the final report, together with some supplementary material. It is this latter report that will be referred to as the Safeguarding Report in this hearing.

The findings and recommendations made in the two reports will be the subject of this part of the hearing. More specifically, the two reports will raise a number of issues for consideration and they both make associated recommendations. It is from these issues raised and the recommendations made that three key issues and various subcomponents have been distilled to be addressed in this part of the hearing.

Other associated issues may also be addressed as they arise.

Senior Counsel Assisting in her opening address has already described the triggers for the establishment of the inquiries that resulted in the two reports. She has also

described the context in which each of the inquiries took place and the respective methodologies adopted. It therefore only remains to set out the key and associated issues that will be the subject of inquiry over the next couple of days.

5 The first of the key issues is the identification of circumstances of heightened risk of neglect or abuse that a person with disability might find themselves in. The Royal Commission will hear evidence from witnesses as to the evolving understanding of risk and the processes to identify risk. This will include consideration of the effect of being isolated from the community and/or the absence of friends and family. As part of this, evidence as to the potential processes by which any identification of risk ought to be assessed will be heard.

15 The second key issue relates to the consideration of what is the appropriate response or safeguarding once any heightened risk of abuse or neglect had been identified? In this, findings and recommendations in the Safeguarding Report and the Robertson Report considered a number of responses, including whether, for NDIS participants identified at being of heightened risk, there should be a specific person with overall responsibility for that person's safety and wellbeing; whether participants should be supported to access regular health checks; whether planning and reviews of participant plans ought to take place face to face; whether steps to connect with the community and other informal and natural safeguards should be prioritised; whether participants living alone in their own home should have a sole carer; whether there is a conflict of interest where the provider of support coordination is also the same provider that provides core supports; whether all participants at risk should have access to a Community Visitor Scheme.

In relation to the Community Visitor Scheme, Ms Boswell for South Australia will give evidence of the current position of the Community Visitor Scheme in that State.

30 The third key issue relates to information sharing between the State of South Australia, the NDIA and the NDIS Commission.

35 In conducting this inquiry into those key issues, the Royal Commission will hear from five witnesses. Of these five, the evidence of Mr Bruggemann on Monday has already touched on a number of the issues. Later this morning, the Royal Commission will hear from Ms Anne Gale. Ms Gale is a South Australian Public Advocate and Acting Principal Community Visitor. She was also a member of the Safeguarding Task Force and made submissions to the Robertson Report.

40 Following this, and as already anticipated in the openings on Monday, the Royal Commission will then hear from Mr Martin Hoffman, CEO of the NDIA, then Mr Graeme Head, Commissioner of the NDIS Commission, and Ms Lois Boswell, Chief Executive of the Department of Human Services, referred to as DHS South Australia. Ms Boswell was also a member of the Safeguarding Task Force and made submissions to the Robertson Report.

Commissioners and Chair, the first witness will be Ms Gale.

CHAIR: Thank you very much. Do we have Ms Gale on screen?

Good morning, Ms Gale.

5

MS GALE: Good morning, Chair.

CHAIR: Thank you very much for coming to the Commission to give evidence today. If you would be good enough to follow the instructions of the Associate who is in the room with you, she will administer the affirmation.

10

ANNE GALE, AFFIRMED

15

CHAIR: Thank you, Ms Gale. I'm sure you are aware, but just to be clear, there are two Commissioners in the room with you, Commissioner Bennett and Commissioner McEwin. Dr Bennett, who will be asking you some questions, is also in the Adelaide hearing room. I am located in Sydney. So you will see me mystically on a screen.

20

Now Dr Bennett will ask you some questions.

EXAMINATION-IN-CHIEF BY DR BENNETT

25

DR BENNETT: Can you tell the Royal Commission your full name?

MS GALE: My full name is Annette Kay Gale.

30

DR BENNETT: You have provided the Royal Commission with a statement dated 28 May 2021?

MS GALE: That's right.

35

DR BENNETT: Have you read a copy of that statement recently?

MS GALE: Yes.

40

DR BENNETT: Have you got any corrections or amendments to make to that statement?

45

MS GALE: There is a correction. The statement refers to my current roles as Public Advocate and Acting Principal Community Visitor. On 3 June 2021, I was appointed Principal Community Visitor.

DR BENNETT: Ms Gale, looking at paragraph 3 of your statement, would it reflect

accurately the position if it read, "I am currently the South Australian Public Advocate (appointed in December 2015) and the Acting Principal Community Visitor (appointed in September 2019)." And then an additional sentence added, "On 3 June 2021 I was appointed Principal Community Visitor (no longer acting)".

5

MS GALE: That would be correct.

DR BENNETT: Other than that amendment, is that statement true and correct?

10 MS GALE: Yes.

DR BENNETT: Commissioners, that statement is in hearing bundle A at tab 61.

CHAIR: Thank you.

15

DR BENNETT: Ms Gale, in addition to the current positions you hold, at paragraph 4 you have set out some of the positions you have held in the past. They have included, you have said there, that you were the Commissioner for Equal Opportunity; Deputy Commissioner, Consumer and Business Services; Deputy Chief Executive, South Australia Department for Families and Communities. You have said you also held leadership roles in Ageing, Disability and Housing. Over what period were those roles undertaken?

20

MS GALE: My first executive role would have been in Housing in about 1999. So from there, as an executive, the maths would probably be, over 20 years.

25

DR BENNETT: You have also said there that you are a member of a not for profit board, Access to Place, that provides community housing for people living with disability. How long have you had that appointment?

30

MS GALE: I believe I would be into my third term and coming up to six years.

DR BENNETT: Of course, in May 2020, following the death of Ann Marie Smith you were appointed as part of the South Australian Task Force?

35

MS GALE: Yes.

DR BENNETT: Bringing you up to your current role as the Public Advocate, could you explain to the Commissioners what that role is?

40

MS GALE: The Public Advocate is a statutory officer appointed by the Governor and is accountable to the Parliament of South Australia. The role focuses on speaking for and with people who are deemed to have --- the legislation talks about "mental incapacity". The role also has --- can be appointed as a guardian of last resort for adults with a mental incapacity by the South Australian Civil and Administrative Tribunal. The role also includes broader functions, where I can speak about unmet need and report to Ministers about unmet need for people with mental

45

incapacity and their families and carers. That's a bit of a summary. But the functions of my role are outlined in my statement.

5 DR BENNETT: In terms of the role of the Public Advocate, that is distinct from the role, for example, of a financial manager. Where does your role start and the role of somebody who looks after somebody's finances begin?

10 MS GALE: The Public Trustee is another statutory officer that can manage people's finances.

DR BENNETT: From paragraph 10 of your statement you have said:

15 *The clients of the OPA are some of the most vulnerable, complex and marginalised adults with cognitive impairment in the state.*

At paragraph 12 you have said:

20 *As of February 2021, approximately 900 OPA clients were known to the [NDIS] and nearly all had approved plans.*

Then you say:

25 *Work continues to ensure all OPA clients who are eligible are engaged in the NDIS.*

How is it that the OPA ensures that that process happens?

30 MS GALE: When we are appointed as a person's guardian, when the Public Advocate is appointed, we will assess whether they may have needs that --- and a disability and pursue an access request. Very often a person may already be a participant in the scheme. So we may be appointed when someone is a participant and, if not, we might seek access to the scheme.

35 CHAIR: Who are your clients who are not eligible for the NDIS?

MS GALE: I think I caught your question correctly, who are the clients who are not participants; is that right?

40 CHAIR: Yes.

MS GALE: I can be appointed for any South Australian adult. So I might have a range of older people, people over 65, they may be recipients of my aged care services, for example, they may be living in the community. Then there may be other people who are mental health patients who have not been deemed to have a
45 psychosocial disability. So I can be a guardian for a range of adults.

DR BENNETT: At paragraph 14 you have set out the Community Visitor Scheme

and you have said that the CVS, or Community Visitor Scheme, is comprised of the Principal Community Visitor and appointed Community Visitors. Can you explain that role to the Commissioners?

5 MS GALE: The Principal Community Visitor role is also a statutory officer that is appointed by the Governor and works in South Australia to two Ministers, the Minister for Health in relation to mental health services and, secondly, to the Minister for Human Services, for people who are residing in State-run disability accommodation services.

10 The Principal Community Visitor is a paid officer who can conduct visits and we work with volunteers to carry out the majority of other visits. So they are a volunteer, trained, skilled --- I guess a volunteer workforce that we work with to undertake those visits.

15 DR BENNETT: From paragraph 20 of your statement you have set out the current scope of the Community Visitor Scheme here in South Australia. You refer to a period before May 2019 and the position then and you have given some evidence that it changed after May 2019. Can you please explain those two different scopes to
20 the Commissioners?

MS GALE: Prior to May 2019, the scope of the scheme was such that it could visit -
-- the mental health services that I have mentioned and there hasn't been change in
25 mental health services visitations. The change relates to disability services where we visited State-run funded services as well as State-funded non-government services. That --- a couple of years after that commenced, which I think was around 2013, the scheme expanded to also visit supported residential facilities and day options programs. So the scope was quite --- inclusive of all of that up until May 2019. And following that, the scope was refined to visit State-run disability accommodation
30 only, because of the establishment of the NDIS Quality and Safeguards Commission and their regulatory responsibilities for safeguarding.

DR BENNETT: What did that change of scope mean for your clients?

35 MS GALE: Do you mean Public Advocate clients?

DR BENNETT: Yes, the Public Advocate clients.

MS GALE: In September 2019, the State Government decided that the CVS scheme
40 could also be extended to visit clients who were NDIS participants who were under the guardianship of the Public Advocate. So that gave a broadening of the scope to work with the Public Advocate to also visit participants, NDIS participants, and they might have been living in a range of accommodation services.

45 DR BENNETT: Is that the delegation you referred to there at paragraph 28?

MS GALE: That is the delegation, yes.

DR BENNETT: From your perspective, what benefits did you see then and do you see now in relation to that capacity having been opened up due to the delegation?

5 MS GALE: There are many benefits of being able to work with Community Visitors to visit clients of the Public Advocate. We might be, as a Community Visitor, visiting a State-run service, either in a mental health facility where someone might have a psychosocial disability, or a State-run disability home, so those people may also be clients of the Public Advocate. So there is complementary work that can
10 occur there and reports can be provided back to the Public Advocate about those clients. Both of the roles have responsibilities for addressing and reporting on unmet need and systemic issues, so again, they are complementary functions of the two roles.

15 DR BENNETT: On that issue, if you go to your paragraph 30, you have said that:

This arrangement does not replace visits by OPA staff, but provides additional scope for the CVS to assist the Public Advocate

20 Can you say a little bit more about the two roles there? And when you explain the role of the OPA staff member, is that somebody --- is that the same person that visits the client over time?

MS GALE: My staff, who operate under delegations from myself as the Public
25 Advocate, are substitute --- decision-makers and their role, we do aim to visit clients at a minimum of once a year but often more often than that, depending on the needs and circumstances of the client. So we make decisions, so having that complementary visitation element of the CVS is of great assistance to our office. Have I answered your question?

30 DR BENNETT: In terms of the role of the staff member, does responsibility for a particular participant attach to a particular staff member or could it be, each year or each six months, a different person attends?

35 MS GALE: The way we work in our office is clients that we might call needing active decisions will be allocated to a dedicated staff member and that staff member may visit that person on a monthly basis, depending on what's required, or three-monthly, depending on the circumstances. Where matters --- where clients who are not requiring active decisions, we tend to monitor them through a team
40 approach and they have --- we have a schedule of visiting for those clients.

CHAIR: Can I make sure I understand something. I think you said that as of September 2019 there was a change so the Community Visitors were replaced by the NDIS Commission as far as visits to NDIS participants are concerned. Is my
45 understanding correct?

MS GALE: Perhaps I can clarify. In September 2019, the Public Advocate

delegated to the Principal Community Visitor to conduct visits to NDIS participants who are under the guardianship of the Public Advocate. By reference ---

5 CHAIR: So they are acting in the capacity as delegates of the Public Advocate, they are not acting in the capacity of Community Visitors?

10 MS GALE: I delegate those responsibilities to those Community Visitors. Technically, at law, I would need to check your point, but they are deemed to be Community Visitors carrying out those delegations of the Public Advocate.

15 CHAIR: My understanding of what happened is that there was a legal advice given that following the establishment of the NDIS Commission and its regulatory powers, there was no room for the Community Visitors to exercise any powers of compulsion as far as entering into accommodation that NDIS participants were living in. Is that your understanding?

MS GALE: That is my understanding.

20 CHAIR: Alright. We will work out the legal position later on, I think.

DR BENNETT: From paragraph 31, Ms Gale, you talk about accommodation services and those issues as they relate to the OPA clients. You have said at paragraph 31:

25 *I am particularly concerned about OPA clients with disability who face heightened risks of violence, abuse, neglect and exploitation because they cannot access appropriate accommodation in a timely way.*

30 Can you explain to the Royal Commission the nature of that problem?

35 MS GALE: At times --- when people are under the guardianship of the Public Advocate, they are often people with very complex needs, sometimes complex behaviours, communication skills are complex, and they can be dealing with, I guess, potential risks on a daily basis. When we have difficulty locating appropriate housing for those people, sometimes people are --- the service providers have difficulty providing the right level of supports for people and sometimes the service provider reports to us that they can no longer work with that person and we are often left with basically a social admission to hospital when people are experiencing difficulty with their support provider and their housing provider.

40 DR BENNETT: When you say in a timely way, it takes some time for you to work through that and find accommodation?

45 MS GALE: Yes. There are a range of processes. If I talk about the NDIA planning process, for example, there's a range of processes that have to be worked through. A person has to have a goal for their accommodation in their plan, then there has to be a housing assessment undertaken, followed by other assessments, like occupational

therapy, how well someone can live in the home, what supports they need. Then we need to engage a support coordinator to locate housing and so these can be lengthy processes. And then approvals, if need to go through the NDIA and if SDA, Specialist Disability Accommodation, if the person seeks to have eligibility for that, then that's another process that is approved by a panel in the SDA. So we experience months for those processes to take place. So if someone is waiting to be discharged from hospital, that can be a lengthy process, for example.

10 DR BENNETT: Is it the OPA that is working together with whoever is coordinating that issue in the NDIS?

15 MS GALE: We rely a lot on the specialist or support coordinator, so if I'm referring to support coordination, I'm generally inclusive of specialist support coordination because that's something that most of our clients require. At the planning stage, the specialist support coordinator is not engaged in the process, so we actively seek that and work with the planner to seek out the housing. Then we seek --- request for exploring housing options, which is now called a request for home and living supports assessment. And that process can take its course and we work --- we seek out a specialist support coordinator as well and rely on them to do the legwork to progress all of those assessments, because I come back to our role as decision-makers and we need that specialist support coordinator to drive a lot of that work.

25 DR BENNETT: At paragraph 35 you say:

The NDIA provides funding for Specialist Disability Accommodation (SDA) but it is expected that only 6% of participants with the NDIS will be eligible for this.

30 What happens to the clients from the OPA that are not eligible?

35 MS GALE: That means that they don't necessarily get that additional funding for that high level of support or modifications. In some cases, people don't need that, but they still may have challenging behaviours and they might need to have housing that's located in an appropriate location with the appropriate supports. So that 6 per cent is a very small number and so therefore --- you know, there are many other people with other housing needs.

40 DR BENNETT: At paragraph 36 you refer to the former State Government system, where there was a centralised approach to filling supported accommodation vacancies across the Government and non-Government sectors. How did that system work then and how is it different now?

45 MS GALE: That was a service, as you say, run by Disability SA. It was an after-hours service. It would have a register of properties that could be utilised for what you might call short-term or respite accommodation. And then --- so out of business hours you would absolutely minimise the hospitalisation. That doesn't exist

now and so we are seeing a change in the landscape, and that's understandable with the reform, but as a result there are some issues around finding short-term accommodation, particularly after hours.

5 DR BENNETT: On the next page, at paragraph 38, still on the accommodation
issue, I think you have touched on this already, you have said that the OPA staff are
reliant upon the support coordinators and the specialist support coordinators and you
have set out a number of the factors that they are dependent upon them for. In this
process, what will be the role of the OPA staff member if the support group are doing
10 that?

MS GALE: A decision maker. So once the support coordinators come back with
some possible options for accommodation, then my staff will consider those, if
there's more than one, which often there isn't, and will make a decision whether that's
15 appropriate accommodation. We may request for some further research to be
undertaken if it's not deemed to be appropriate. So that's in accordance with the
powers of a guardian.

DR BENNETT: You also on that same page refer to the "Need for a provider of last
20 resort". As part of this, you have also raised the issue of clients with complex needs
that have services withdrawn. In terms of that issue of the need for a provider of last
resort, can you explain that dilemma to the Commissioners?

MS GALE: With the reforms that have taken place, we have seen a rapid expansion
25 of service providers in the market and that's encouraged and acknowledged and been
a goal. Sometimes the knowledge of those --- and sometimes even the skill of
support providers might vary. And for clients with particularly highly-specialised
supports, and often if you have a Public Advocate in your life you might have
particular needs and do have particular complex needs at times, we are finding that
30 service providers come willingly to support a client, but over some time, that their
workforce is struggling to support the client, that perhaps the challenging behaviours
that the client might have, and they withdraw their services. And so we do have
experiences where service providers say "We have exhausted all our options, all our
staffing, and we are no longer able to provide support for this person." Where that is
35 --- a person's accommodation is also with that SIL provider, that is a particularly
challenging issue because the housing and the support provision can be at risk.

DR BENNETT: I will bring you to your evidence on that a little bit later. At
40 paragraphs 41 and 42 you are again going to the issue of the specialist support
coordinator services and you have said that they are sometimes or always not
well-versed in locating housing, in paragraph 41. Then at paragraph 42, you are
bringing it up to what's currently happening, you have said:

45 *In South Australia, the DHS and NDIA have been exploring ideas for
increasing and educating specialist/support coordinators in the various
housing opportunities*

Where is that at the moment?

MS GALE: I'm part of that work and working, I guess, at a systemic level to try and develop some forums for education for specialist support coordinators. We do have
5 a Housing Hub in South Australia, we are not sure how well support coordinators know about that and whether all housing providers are using it. We know some are. So we think there's an opportunity to show some leadership and connect people. It is a market-based system and we recognise that, but for high and complex needs, housing is the top of --- one of our critical issues. So providing, I guess, a helping
10 hand to bring people together to understand how we can better access housing in this State.

People are willing to work together, which I'm very encouraged by. The South Australian Housing Authority established a single housing register in March 2021,
15 this year, so that's in its early days. But again, a promising indicator of us trying to work together to increase, I guess, streamline the processes and we need our colleagues in the NDIA to be part of that, as well, going forward. So they are encouraging signs.

20 DR BENNETT: Is the issue of the provider of the housing provider of last resort part of that discussion?

MS GALE: I think it has been part of the discussion but I think the group initially will focus on the location of housing. I think the issue of the housing connection
25 with support, I probably will address through some other advocacy means.

CHAIR: We heard in Public Hearing 13, which was the last hearing that we held, the enormous difficulties that can arise if an accommodation provider and more so if the accommodation provider is also a provider of services, decides to terminate an
30 arrangement of providing accommodation for someone who has extremely complex and sometimes challenging needs. You have referred to the market-based system. As far as you are aware --- and I assume your knowledge is limited to South Australia relevantly --- are there constraints upon an accommodation provider in this market-based system for terminating the residential entitlements of someone with
35 complex needs who is living in supported accommodation?

MS GALE: The tenancy arrangements should be compliant with the *Residential Tenancies Act* of the relevant jurisdiction. So they are jurisdiction based.

40 CHAIR: Are you suggesting that a person with disability in supported residential accommodation through a registered NDIS provider is entitled to the protection of the *South Australian Residential Tenancies Act*?

MS GALE: If they are renting in a private market, yes.

45 CHAIR: No, we are not talking about --- I see. You are regarding someone as receiving accommodation through --- supported by the NDIS as someone in the

private residential market?

5 MS GALE: Yes, in this context, where for example a SIL provider has rented a property in the private rental market. And they may put themselves on the tenancy agreement along with --- maybe with or without the resident.

CHAIR: Your experience is, is it, that the State *Residential Tenancies Act* does apply in these situations?

10 MS GALE: We are looking at these agreements --- they are fairly new --- that are coming my way and we think that in some cases they do need to comply, where it's rented in the private rental market, with the *Residential Tenancies Act*. Some of them may be a boarding house, equivalent to a boarding house arrangement. So it is a piece of work that is unresolved and needs to be actively pursued and it is
15 something that I'm raising with my colleagues, both here in South Australia and with the Quality and Safeguards Commission and I have written to Mr Hoffman and Mr Head on this issue of recent times.

20 CHAIR: This may raise some legal issues not dissimilar to those that arise with community visitors exercising powers of compulsion in relation to supported residential accommodation. But, again, we will come to those at some stage in the future.

Yes, Dr Bennett.

25 COMMISSIONER BENNETT: Just adding to the Chair's question, in paragraph 63 of your statement, you talk about a conflict of interest, where the SIL provider and the housing provider are the same body, and you mention that they are probably not giving them tenants' rights and standards expected under a tenancy arrangement.
30

MS GALE: Did you say 23?

COMMISSIONER BENNETT: Paragraph 63.

35 MS GALE: Yes, there is potentially, in my view, a conflict of interest where it is a joined-up housing and provider arrangement.

40 COMMISSIONER BENNETT: Is that because you think that if they are also providing services and they may not like providing the services, then that person loses their home as well as some perception that they no longer want to be a service provider, they lose the home and the service at the same time?

MS GALE: Yes.

45 COMMISSIONER BENNETT: So there are no rights for them to say in there as a tenant?

MS GALE: Their rights may be compromised and it will depend on how well that provider has structured the supports and the tenancy agreements. Sometimes I have seen agreements where they are rolled into one with the support and housing and we request that they must always be separated. And then some I have seen where the
5 SIL provider is also on that tenancy agreement. So these issues are unresolved and raise concerns for us. Someone might need a maintenance request to be addressed and if the SIL provider is also the landlord, then again that might be an issue in terms of getting that maintenance issue pursued.

10 COMMISSIONER BENNETT: Is that suggesting, in those situations, where they are both own and run the building and provide the service, there's probably really functionally very little tenancy rights for the person? Is that ---

MS GALE: I think that's possible, absolutely. They might not own the dwelling,
15 they might be leasing it from the private rental market. On the one hand we are seeing some creative responses to the provision of housing but they need some extra regulation in my view to make sure they do comply.

COMMISSIONER BENNETT: Is that most group homes in South Australia in that
20 situation?

MS GALE: Not usually group homes. Most group homes, a lot of group homes are run by community housing providers in this State, through some arrangements that the South Australian Housing Authority had established and leased properties to
25 community housing providers. Some community housing providers own their own stock. So there is a clear separation where the community housing provider is the landlord and the SIL provider or support providers are different --- is a different organisation. It's occurring where people are --- primarily a SIL provider is leasing or possibly owning --- I couldn't discount that --- but leased or owned in the private
30 rental market, not from a community housing provider or from the South Australian Housing Authority. In those circumstances, a lot of the group homes for State-run disability services are accommodated in community housing.

COMMISSIONER BENNETT: Thank you.
35

DR BENNETT: You address that issue, Ms Gale, at paragraph 62; is that right? The issue of the SIL and the link to accommodation?

MS GALE: That's right.
40

DR BENNETT: Just above that, paragraphs 59 to 61, you refer there to a letter you sent to Mr Hoffman dated 15 April, raising the issue of the potential conflict of interest. Then you have provided the Commission with a copy of the letter to you sent to Mr Hoffman and then a letter you received back from Mr Hoffman. You
45 have said at paragraph 61:

Mr Hoffman has indicated his willingness to work together on the issues I have

raised in my correspondence.

On that issue, are there any outstanding issues in relation to that particular issue of conflict that are outstanding and need steps to be taken?

5

MS GALE: In relation to housing?

DR BENNETT: In relation to housing.

10 MS GALE: I think there's one other issue I would just flag that I would like to explore further and particularly with the NDIS and the NDIS Quality and Safeguards Commission is the issue of rents. So I think I refer to that in my statement, where I have had experience of the rent being high when we are being asked to approve a particular arrangement for someone, and when I've inquired about that, the response
15 is the SIL provider will manage those costs within their whole package. So generally people in community housing or social housing would pay a 25 per cent --- 25 per cent of their income in rent. So that's a guide that I would use. When I look at some of the rents, I say, is this high, is it not? Does it comply with that? The response about whether or not that is an appropriate arrangement, for the SIL
20 provider to top up the rent, is something that I think deserves inquiry.

DR BENNETT: You have also mentioned at paragraph 57, you have got concerns -- - this is the whole of life providers --- you have got concerns when there's a single service provider in relation to an NDIS participant. What is the nature of your
25 concerns there?

MS GALE: Where there is a single provider for the provision of independent living, SIL, and support coordination, there is a potential conflict of interest. This was debated in the Safeguarding Task Force. I acknowledge that there are differing
30 views on this. But as good practice in my office, I seek out and ask my staff to look for a support coordinator who is different to the SIL provider, and that goes to the issue of having more than one player, more than one set of eyes in the person's life and also that role of support coordinator is a very important one for OPA clients, to ensure that there is someone else who is checking in who is independent of that SIL
35 coordinator.

DR BENNETT: Are there times when you find yourself in a position where there is a single service provider?

40 MS GALE: We may come across it but generally we will seek out to separate that.

DR BENNETT: At paragraph 65, again still in relation to housing, you have said:

45 *OPA's position is that housing and support services should be operated so that when support services fail, other services will continue.*

Then you say:

The Independent Advisory Council (IAC) to the NDIS reported in November 2019 on challenges in housing and support

5 Before I take you to the quote you have given the Commission, Ms Gale, can you explain who the Independent Advisory Council to the NDIS is?

MS GALE: The Independent Advisory Council is a group of advocates and people with lived experience, some very reputable Australians, who report to the NDIA
10 board. It is established in the *NDIA Act*, so it does have a formal role and a responsibility to report on strategic issues, I guess systemic issues, for participants in the NDIS and its implementation.

DR BENNETT: In relation to the quote which is on the next page, you have quoted
15 that group as saying:

The IAC has long argued for the importance of the separation of housing and support being critical to participant choice and control to ensure that residents dissatisfied with supports do not have to move homes.

20

Can you explain that quote in relation to the stance that the OPA has taken?

MS GALE: The quote supports our position, really, of separating that out. A home should be that. What supports come and go in that home should not be dependent ---
25 the housing tenure needs to be standalone, and I do think this quote goes to that issue, very much so, and endorses that principle that has been a longstanding principle, that in Australia in the housing sector have worked towards that separation of housing and support provision.

DR BENNETT: You have also given evidence in your statement about risk assessment and the identification of risks and given evidence of that in relation to your clients. For example, on page 19, Ms Gale, if you go to paragraph 73, there is a heading:

35 *A risk assessment needs to be undertaken during the NDIS access and planning process.*

You have said at paragraph 73 that that's the first point to identify and safeguard people with disability who may be vulnerable. So how do your clients fit in with
40 what you have said there?

MS GALE: Our clients --- it's vital for them at the access and planning process for their particular needs. To become, I guess, a client of the Public Advocate, Public Advocate is a guardian of last resort, and the person is deemed by the SACAT that I have referred to before, to have complex needs and impaired decision-making. So
45 it is critical that that process --- the planning process and the access and planning process identify and work through the particular needs and supports of the person and sa

feeguarding is part of that process, it should begin with the plan.

5 DR BENNETT: What kind of role, then, does the OPA take in that planning process? Do they take an active role, even though they are just --- not just, but they are the substitute decision-maker?

10 MS GALE: My staff are encouraged wherever possible to attend the first planning meeting for the person. We advocate for the needs. Sometimes we may not have met the person before, so we might seek out someone else who knows the person well. But then it is important --- so we might make decisions, but it is important from then on in to recognise that the implementation of the plan sits with support coordinators and other roles. The role of the guardian is to approve and make decisions about health, housing, you know, access arrangements.

15 DR BENNETT: From paragraph 77 you have just mentioned the role of the OPA in relation to safeguarding. But looking at the role of the NDIS and the NDIS Commission in relation to safeguarding, you have made some recommendations there and you have said there, the first one you have referred to being that "safeguarding must be a focus at all stages of the NDIS process". Does that relate to
20 what you have said at paragraph 73, in relation to the access and planning process?

MS GALE: Yes, it does relate to that. The planning process is an opportunity to identify, when the implementation is an opportunity to ensure that, for example, there is not one sole provider involved, and there are a range of safeguards in
25 implementing the plan.

DR BENNETT: You have set out a number of other recommendations, Ms Gale. I'm not going to take you to them all. But I will ask you to go to the bottom of page 20, paragraph 77f. You have said there in terms of your recommendation, you
30 recommend that:

Those who support people with disability undertake training on Supported Decision Making (SDM) to better enable them to support people with disability.

35

Can you explain to the Commission what supported decision-making is and distinguish that from, for example, substitute decision-making?

40 MS GALE: Okay. So a substitute decision-maker in South Australia under the *Guardianship Administration Act* is about standing in someone's shoes but it also does talk about understanding the person's past wishes, current wishes, and consulting them. So as a substitute decision-maker, you might make a decision as if you are in the person's shoes. In practice, my staff are encouraged to undertake supported decision-making. We have a grant working with SAHMRI, the South
45 Australian Health and Medical Research Institute, to undertake supported decision-making for clients under the Public Advocate to document their wishes going forth and to involve them in future decision-making.

I believe we do it to a degree but we need to have training and understanding. That goes to my point about what is supported decision-making? A lot of people agree with it as an important concept going forward to empower people with disabilities, even people with impaired decision making, particularly for people with impaired decision-making, to be supported to make their own decision, to recognise that capacity can fluctuate and that people can still make certain decisions. They might not be able to design a complex investment portfolio with their money, but they may be able to decide exactly what they want to spend their money on, on a daily or weekly basis.

We need to look at what this means. It is a process, it's a process of engagement to support people to make their own decisions, to remove bias, to remove influence. Supporters, to support a person to make their own decision, need to have skills and need to be trained and it is an investment in time. It doesn't happen necessarily quickly. So I think I would encourage this, we talk about it, I think it's in NDIA rules and our grant came from the NDIA IFC process. There is a recognition of the need for it. It needs to go into people's plans and needs to be funded and resourced for the reasons I've outlined.

DR BENNETT: When did your trial commence?

MS GALE: We commenced the project last year. We are designing --- we have designed our process, we have engaged a recognised person, Michelle Browning, to come and do training in our State, so we are halfway through the project and we are about to embark on the process of engaging with our clients, the training and then engaging with our clients to commence this work.

DR BENNETT: I'm keeping an eye on the time, Chair. I won't run over.

Ms Gale, on paragraph 79, just above that, there is a heading that goes to the issue of a person with overall responsibility, specifically in relation to people who are at risk. At paragraph 79 you note that:

Under current arrangements, there are multiple contact points for NDIS participants but no single person or role has overall responsibility for connecting the participant to paid supports and mainstream supports and being a single point of contact to assist the participant to navigate a range of systems.

You have said that there. At paragraph 82 you have set out some of the consequences of that. Can you just give a brief summary about what you say are the difficulties or the pitfalls of not having a single person responsible?

MS GALE: Our experience is that a specialist support coordinator is the logical place to grow the connection and the one --- the go-to person. Funding for support coordination in a plan is not necessarily ongoing. There is a view that a person can

build their capacity and that is supported in principle, one would support that. But for people with such complex needs, ongoing support coordination is required, it can't be capped. Sometimes the funds run out. Only yesterday, talking with staff about one of our clients, but the support coordinator won't pursue anything because
5 there's no money in the plan, therefore we have to request a change of circumstances and that can take 28 days if it's simple or 50 days if it's complex.

So that --- the money has run out for support coordination, doesn't work for clients under the guardianship of the Public Advocate, it needs to be ongoing. Then the role
10 needs to grow to be that go-to person because when a crisis happens and there's no money in the funds, and I had it yesterday, then the person ends up in hospital and it's not appropriate necessarily.

DR BENNETT: What percentage of OPA clients have a support coordinator?
15

MS GALE: We always ask for it. I don't have the specific percentage, but it would be very high, very high.

DR BENNETT: Most clients?
20

MS GALE: Most clients.

DR BENNETT: You have already touched on this, but what percentage of those clients are going to have ongoing needs in relation to support coordination?
25

MS GALE: All of them would have ongoing needs, in my view. There might be the exception, you know, but most of them, the majority by far.

DR BENNETT: In relation to how this might happen in a plan, what sort of accommodation is made to that likelihood in relation to whether there's ongoing support coordination funded as opposed to short term?
30

MS GALE: If I've understood your question, I think in the plan the support coordination funding needs to be not capped and it needs to be flexible. So the plan needs --- when we do have the person in crisis or the service provider has not got staff that evening available, that the support coordinator can --- the funds can be ramped up to enable them to seek out other supports and also that that --- somehow that person can be engaged in some after-hours work.
35

DR BENNETT: On that issue of that support care worker, at paragraph 82b on the same page, you have referred to:
40

The lack of a consistent, trusted person in the life of a person with disability has put pressure on OPA staff to fill the gaps by undertaking tasks that fall outside of their traditional remit.
45

Turning to the first part of that sentence, referring to a "trusted person", how in your

view does that trust relationship become established?

5 MS GALE: It needs to be that independent relationship as well, as I talked about, say a support coordinator. We engage them independent from other services. They need to be available, they need to get to know the person, be involved in the process at the beginning. Our preference will be that service coordinators are involved in the planning phase. They are not. They come in later. And that they get to understand the person's needs. It goes to safeguarding, they get to understand any risks that might be involved and know the client well and independently. That is --- that's an ideal scenario.

10 DR BENNETT: You as a substitute decision-maker, therefore, are the one exercising choice and control about the particular support coordinator that is chosen?

15 MS GALE: Yes, we will make a decision about a support coordinator and work with that support coordinator as far as possible. We are not guardians, the OPA, we are not a service provider, we need that go-to person to work with, to keep the plan ticking over, making sure everything is in place, making sure the person is getting the service that we have approved.

20 DR BENNETT: You have also raised the issue that you have dealt with on the following page about your wish list, if you like, that it would be good if the support coordinator was brought in early in terms of the planning process. Have you seen that happen or is that something that's been suggested or trialed or where is that idea currently standing?

25 MS GALE: I think it's still at a concept idea stage, where --- because the process of engagement through the NDIA plan is still such that, you know, a decision is made about a support coordinator, doesn't come into the planning process. That will be something we would encourage for future consideration.

30 DR BENNETT: Towards the end of your statement --- and I won't take you through it --- you have set out some of the information-sharing strategies that you're aware of. I will take you to your paragraph 102, Ms Gale. There you say:

35 *The OPA is awaiting the formalisation of the head Memorandum of Understanding of Information Sharing between the National Disability Insurance Scheme and the South Australian State Government Agencies.*

40 First of all, can you update the Commission on where this is up to and then, secondly, let the Commission know any likely consequences or impact you think that that might have?

45 MS GALE: The lead for the memorandum of understanding, I believe, sits with the Department of Human Services. All Government agencies have been consulted, so I guess it's been a process of engagement with others, like Department of Child Protection, where there are children. So there's been a range of agencies. We have

put forward our request for data sharing and I believe it is almost complete. I believe it is imminent. Then that exchange of data between us and the NDIA about our clients and their funding arrangements will be able to flow more readily.

5 DR BENNETT: That's the benefit, when this comes into effect, that's the benefit?

MS GALE: Absolutely. Like, knowing what should be in a person's plan and what they are funded for and having that in one source. My computer systems were not designed --- they were designed before the NDIA came into place, so if I want to
10 know who's got a plan and what's in their plan, I can't get it from the existing computer system. This is really a resource of information for us to understand what's in the plan and to work with the NDIA, have all of that information to have more direct access of our clients' plans.

15 DR BENNETT: Thank you, Ms Gale.

Chair, they are the parts of Ms Gale's statements I propose to take her to.

CHAIR: Thank you very much. Ms Gale, I will ask the Commissioners if they have
20 any questions. Then I will ask Mr Simpson if he has any further questions for you. First I'll ask Commissioner McEwin, do you have any questions of Ms Gale?

COMMISSIONER McEWIN: No. Thank you, Chair.

25 CHAIR: Commissioner Bennett?

QUESTIONS BY THE COMMISSIONERS

30 COMMISSIONER BENNETT: Just very quickly. The Community Visitor Scheme, how many Community Visitors do you have working and how many people are people with disability that are Community Visitors?

35 MS GALE: We have 28 Community Visitors at the moment. We have lost some Community Visitors and the process of recruitment during COVID was restricted. So it's been difficult to grow our numbers and we currently have nine in training, so I'm very pleased that we will be up to 36 soon --- 37, I hope. We are in a continual process of recruitment which we are now reinvigorating post-COVID. I don't have
40 statistics and I can look at that, about who has lived experience of disability.

COMMISSIONER BENNETT: If you could come back to me. One last question, some States pay for Community Visitors. Do you think that would attract more people to volunteer or a broader array of people if there was some payment
45 involved?

MS GALE: The volunteers we have are fantastic, in that they do volunteer their

time. I'm sure payment would be an incentive for some. I know other States pay on a casual basis. There are a variety of arrangements in place. It may attract an additional pool of people.

5 COMMISSIONER BENNETT: Thank you.

CHAIR: Thank you. I will inquire of Mr Simpson as to whether he wishes to make an application to ask you any questions.

10 MR SIMPSON: No, Chair, no questions, thank you.

CHAIR: Thank you. I take it no other legal representatives have questions they wish to put?

15 In that case, Ms Gale, thank you very much indeed for both your very detailed and helpful statement and the thoughts that you have provided for how the various systems that interact might be improved. We very much appreciate your coming to the Commission today to give evidence. Thank you very much.

20 MS GALE: Thank you.

THE WITNESS WITHDREW

25

CHAIR: Dr Bennett, do we now adjourn?

DR BENNETT: We now adjourn for the lunch adjournment.

30 CHAIR: We will resume at 1.35 Adelaide time which will give us, according to my calculations, one hour.

DR BENNETT: Thank you.

35

ADJOURNED [12.33 PM]

RESUMED [1.35 PM]

40

CHAIR: Yes, Ms Eastman.

45 MS EASTMAN: Commissioners, for the third time I'm going to ask you to receive a document by way of tender, contrary to what I've been saying at the beginning, that everything will wait until the end. But before I start with Mr Hoffman, who is in the witness box now, could I tender statement of Brooke, dated 26 May 2021, and the

statement is behind tab 55 in hearing bundle A. Commissioners, could you mark the statement Exhibit 14.4.

5 CHAIR: Yes. That statement can be admitted into evidence with the marking of Exhibit 14.4. Thank you very much.

EXHIBIT #14.4 - STATEMENT OF BROOKE DATED 26 MAY 2021

10

MS EASTMAN: We now move to Martin Hoffman and we need to take his oath or affirmation.

15 CHAIR: Thank you very much. Thank you, Mr Hoffman, for returning to the Royal Commission on another occasion. If you would be good enough to follow the instructions of the Associate, she will administer the oath to you.

20 **MARTIN HOFFMAN, SWORN**

CHAIR: Thank you very much, Mr Hoffman. Just to explain where people are, you are in the same room as Commissioners McEwin and Bennett. Ms Eastman, who will be asking you some questions, is also in the Adelaide hearing room. I'm joining the hearing from Sydney. Ms Eastman will now ask you some questions.

EXAMINATION-IN-CHIEF BY MS EASTMAN

30

MS EASTMAN: You are Martin Hoffman?

MR HOFFMAN: Yes.

35 MS EASTMAN: You are the currently the Chief Executive Officer of the NDIA?

MR HOFFMAN: That's right.

40 MS EASTMAN: I will call it the NDIA for convenience. You have provided a statement to the Royal Commission for this Public Hearing dated 20 May?

MR HOFFMAN: Yes.

45 MS EASTMAN: You have a copy with you?

MR HOFFMAN: I do.

MS EASTMAN: You have made some amendments to paragraph 101 of the statement and provided a corrigendum for the Royal Commissioners?

MR HOFFMAN: Yes.

5

MS EASTMAN: Together with the statement and the matters identified in the document provided today, are the contents of your statement true?

MR HOFFMAN: Yes, they are.

10

MS EASTMAN: Have been following the Royal Commission proceedings over the course of this week?

MR HOFFMAN: Somewhat.

15

MS EASTMAN: If I ask you a question about something that has occurred during the course of this week and you are not aware of that, please let me know.

20 You have provided evidence to the Royal Commission in a written format before and I think we were going to take some evidence from you at Public Hearing 5 but we didn't quite manage that.

But Exhibit 5.45, Commissioners, contains Mr Hoffman's background.

25 Mr Hoffman, you have held the role of the CEO of the NDIA since 4 November 2019?

MR HOFFMAN: That's right.

30 MS EASTMAN: You have been a public servant since 2009, first joining the Department of Prime Minister and Cabinet?

MR HOFFMAN: That's right, yes.

35 MS EASTMAN: You have held a number of senior positions in the public sector, which have included Deputy Secretary of the Commonwealth Department of Industry and Science, Secretary of the New South Wales Department of Finance Services and Innovation, and Leader, Services Australia Task Force for Minister Stuart Robert. Is that right?

40

MR HOFFMAN: Yes.

MS EASTMAN: You hold a Masters of Business Administration with honours from the Institute for Management and Development in Lausanne?

45

MR HOFFMAN: Yes.

MS EASTMAN: And a Master, Applied Finance from Macquarie University?

MR HOFFMAN: Yes.

5 MS EASTMAN: And a Bachelor of Economics from the University of Sydney?

MR HOFFMAN: Yes.

10 MS EASTMAN: You are a National Fellow of the Institute of Public Administration of Australia?

MR HOFFMAN: Yes.

15 MS EASTMAN: As the CEO of the NDIA, your role is set out in the NDIS legislation; is that right?

MR HOFFMAN: Yes, it is.

20 MS EASTMAN: Section 159 sets out the functions of the CEO, to say that the CEO is responsible for the day-to-day administration of the agency. The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of your duties, and the CEO is to act in accordance with the objectives, strategies and policies determined by the Board. So that's a fair summary, that pretty much has to do everything; is that right?

25 MR HOFFMAN: The summary is as you read it out from the Act, yes, counsel.

30 MS EASTMAN: You are aware this hearing is concerned with South Australia and one of the issues that has been raised in the hearing thus far is the relationship between South Australia and the NDIS and you've addressed this in your statement, if you've got a copy there, in paragraph 6:

35 *Participants who were residing in supported disability housing in South Australia when they transitioned to the [NDIS] were automatically eligible for Specialist Disability Accommodation (SDA), pursuant to the full scheme bilateral agreement between the Commonwealth and South Australia*

40 In terms of the reference to the bilateral agreement between the Commonwealth and South Australia, is that an agreement that you are familiar with?

MR HOFFMAN: I'm somewhat familiar with it, yes.

45 MS EASTMAN: What's your understanding of the purpose of the agreement in terms of the division of responsibilities between the Commonwealth and South Australia in relation to disability accommodation?

MR HOFFMAN: So the agreement set out the basis by which the State services or

the State-funded services and State involvement in disability would be transferred to the NDIS scheme. It set out some timelines for that to take place, a two-year transition period, which was in fact shorter than a number of other States, provided for the continuation of some services to be retained by the South Australian
5 Government for a longer period of time, particularly some of the residential services, which are then referred to as in-kind services, and that goes to the financial funding of the scheme as between the State and the Commonwealth. And provides for, as I said, some timelines for the transfer of participants and their handling of in-kind services.

10

MS EASTMAN: In terms of the description of in-kind services, at paragraph 20 of your statement you say:

15

The NDIA does not hold structured data about how many NDIS participants in receipt of in-kind accommodation services provided by the [South Australian] Department

Is that right?

20

MR HOFFMAN: Counsel, I believe that's not quite right. I think the statement says we don't hold data about how many of those people have sought funding to enable them to transfer out of that accommodation, rather than the total number itself.

25

MS EASTMAN: In terms of the total number, you have given some data in paragraph 21 and that's the number of participants, is that right, to receive in-kind service?

MR HOFFMAN: That's right.

30

MS EASTMAN: And also a number who have exited?

MR HOFFMAN: Yes.

35

MS EASTMAN: You told the Royal Commission that the participants in receipt of in-kind accommodation services by the South Australian Department is 520, so that's the total since December 2017; is that right? And the participants who have exited the in-kind accommodation services provided by the Department since December 2017 are 77. So the people who would have exited the in-kind accommodation services would have then taken up accommodation services by private providers or
40 other NDIS-registered providers, would that be right?

MR HOFFMAN: So I don't know that for sure in every case, but that would most likely be the situation, yes.

45

MS EASTMAN: Have you read Ms Boswell's statement that she has prepared for these proceedings?

MR HOFFMAN: No, I have not.

MS EASTMAN: She also gives some evidence about the operation of two bilateral agreements between the Commonwealth and South Australia and she says as at
5 31 March this year ---

MR HOFFMAN: Sorry, I don't mean to interrupt you. I mistook the name. Yes, I have read Ms Boswell's statement.

10 MS EASTMAN: She says as at 31 March this year, there are 39,608 South Australians who are NDIS participants. Does that accord with your understanding of the numbers?

MR HOFFMAN: Yes, it does.
15

MS EASTMAN: And that DHS, so the Department, is a registered provider for non-in-kind services; is that right?

MR HOFFMAN: Yes.
20

MS EASTMAN: With DHS registered as a provider for the non-in-kind services, what does that mean in terms of the relationship between the Department and the NDIS?

25 MR HOFFMAN: In that context, it just means that they are a provider of services as a registered provider, in the same way that a for-profit or a not-for-profit organisation might be. So a registered provider can be a Government agency, a not-for-profit, a for-profit, et cetera. And Ms Boswell's statement is simply noting that the South Australian Government in some --- for some services has continued or transitioned
30 into being a registered provider under the NDIS scheme.

MS EASTMAN: Is it the case that the transition is complete but there still remains a date by which anyone in DHS accommodation will be fully transitioned to the NDIS?
35

MR HOFFMAN: My understanding is that the transition is complete in the sense of people with disability previously in State-run programs have transitioned to the NDIS fully. Of course, there are also in that number of 38 thousand-odd, I think, a number of new people who are receiving supports from the scheme for the first time
40 who were not previously receiving supports under State-based schemes. What is still to happen, as I think I note in my statement at paragraph 22, is that the time for the transitioning out of the in-kind accommodation programs will continue through to 2022/23.

45 CHAIR: Can I ask whether, is this arrangement about in-kind accommodation services unique to South Australia or is this something that appears in the other bilateral agreements between the Commonwealth and the States?

MR HOFFMAN: Yes, Commissioner, it is something that does exist in other bilateral agreements. The timings differ. For example, Victorian operations have just ceased now, literally in the last month as opposed to the 2022/23 date that you see here with respect to South Australia.

CHAIR: Thank you.

MS EASTMAN: I want to turn to the two case studies that the Royal Commission has heard about over the course of the past few days. They are the experiences of Mitchell and the experiences of Daniel Rogers and his family. I will start with Mitchell. The Royal Commission asked you in the preparation of your statement to provide us with a chronology of actions taken by the NDIA in relation to applications for NDIS funding made or on behalf of both Mr Rogers and also Mitchell. Can I start with Mitchell. In your statement, one of the attachments which appears in hearing bundle C at tab 67, is the chronology.

I don't need that to come up on the screen, but I want Mr Hoffman to have a hard copy and I understand there is a folder of hard copy documents. Mr Hoffman, I'm going to give you this and I'm not going to ask you in detail about it, but if you need to refer to the chronology, let me know.

MR HOFFMAN: Thank you.

MS EASTMAN: The Royal Commission has heard from Victoria and James and they have told the Royal Commission that Mitchell became a participant of the NDIS on or around 7 May 2018 and that on 18 December 2018 Mitchell's first NDIS plan became available. Victoria says that that plan covered Mitchell's core supports and capacity building, so that is some funding to assist him in improved daily living and relationships. She says this was all in the context of the in-kind agreement between the NDIA and the Department. Do you agree with that characterisation?

MR HOFFMAN: I'm seeking to answer, but I'm not sure exactly what is meant there. The plan, yes, would have contained the supports that you mentioned, including capacity building. If it was, as it were, cashing out the in-kind, then yes, that's what is meant, or it would have continued with the in-kind provision being noted in the plan but not a cash item because that's accounted for directly between the State and the Commonwealth. I hope I'm addressing the question there. I wasn't quite sure.

MS EASTMAN: In the material that you have got behind tab 68 is a copy of the first plan. Have you had a chance to look at that before coming to give your evidence today?

MR HOFFMAN: Yes.

MS EASTMAN: Does that assist you in terms of understanding what the funded

supports would be, if we looked at the plan, for example, starting at page 5?

5 MR HOFFMAN: Yes, it does, because I think it accords with the answer I gave previously, where I was talking about the Supported Independent Living in-kind continuing. You can see the budget amount there of \$2, which is effectively a placeholder in the IT system, to make sure it registers, but notes that the money is actually flowing in a different way.

10 MS EASTMAN: Just stepping outside Mitchell's plan, for an NDIS participant whose accommodation was provided by the South Australian Department, in terms of the in-kind arrangement as it might be described in their NDIS plan, would something like this be similar in other plans, where you have a notional amount?

15 MR HOFFMAN: I think so, yes. That's my understanding of the sort of requirements of the computer system, that it doesn't zero out and then think it's not there, which is why a sort of \$1 or \$2 amount is registered. That's its only purpose. There is no other purpose for why it is \$2.

20 MS EASTMAN: Victoria said she wanted Mitchell to receive various therapy and source some day option activities for him but her evidence is that the NDIS plan, because it was in-kind with the Department, there was no ability for her to source external providers and she had to rely on the Department sourcing and providing the therapies and the options for day activities. Looking at that plan, or if you want to have a look at your chronology, do you accept that Victoria's understanding about
25 how the NDIS plan worked for Mitchell at that time was right?

MR HOFFMAN: Yes, I do.

30 MS EASTMAN: Victoria says that Mitchell's 2020 plan --- and that's in the bundle but I don't need to take you to that --- has released areas of funding from the in-kind agreement, as she had requested, I think, in a review of the plan. She says this has now given Mitchell the ability to appoint external coordinators and therapists to work as a team in providing Mitchell with the best care. So she has made an observation about those changes.
35

First of all, do you accept that Victoria's characterisation is correct? That there was an ability to free up some of the in-kind services?

40 MR HOFFMAN: In this case, yes, it appears to have been the case. And some value of the in-kind was cashed out, as the phrase is, and put into the cash version of the plan, then able to be used with the choice and control of Mitchell and his family.

45 MS EASTMAN: How would people in South Australia who were in a similar situation to Mitchell and Victoria know how to navigate around the NDIS system, to manage the in-kind versus cashing out, so that the participant could have some options outside all options being provided by DHS? How would they know how to do that?

MR HOFFMAN: That should take place through a discussion with the LAC or the planner in the context of preparing the plan or the subsequent reviews of those plans.

5 MS EASTMAN: I want to ask you now to turn to Mr Daniel Rogers. A copy of his chronology that you have prepared for the Royal Commission appears behind tab 29 in that bundle.

MR HOFFMAN: Thank you.

10

MS EASTMAN: Again, I don't need to take you to it in detail, but if you need to refer to any particular date, please let me know.

The Royal Commissioners heard that Mr Rogers met the access requirements on 29
15 June 2018 and he became an NDIS participant from around that date, and the assistance provided through his plan at that time was limited because his accommodation services were also provided by DHS in-kind. And Mrs Rogers --- if this is all right with Karen Rogers, if I go between Daniel and Mr Rogers, I mean no disrespect in referring to Daniel as Mr Rogers or vice versa. The NDIS plan
20 provided for Daniel's day option but it didn't provide for any additional support before or after his day option or any respite care on the weekend. The Royal Commission has heard evidence from Mrs Karen Rogers that Daniel lived in a DHS accommodation but that he had a day program at Windamere Park, a farm. So that was his arrangement.

25

In February 2019, Daniel moved back to his parents' home. Mrs Rogers has told the Royal Commission that Daniel returning to the family home meant that modifications had to be made to the home to make sure Daniel was safe and that required the plan to be reviewed.

30

In your statement, you have talked about an NDIS participant seeking to change their plans because they may change providers or there needs to be a modification to the private home. That's paragraph 7 of your statement. It's the case, isn't it, that with Daniel moving from a DHS home back to his parents' home, that there was an
35 obligation on Mrs Rogers to notify the NDIA of a change of circumstance and if she was seeking some funding to make modifications to a private home, then she had to initiate a plan review. Am I right in understanding that's what you are saying in paragraph 7?

40 MR HOFFMAN: Yes.

MS EASTMAN: Mrs Rogers told the Royal Commission that she contacted the NDIA to request a change of circumstances meeting in March 2019. Is that
45 common, that to identify a change of circumstances, that you would organise a meeting?

MR HOFFMAN: It sometimes requires a meeting. It might be able to be done by

telephone. But yes, there needs to be a process for a request for a --- a participant-requested review of the plan, a decision to do that or not, and then to actually make that plan review, yes.

5 MS EASTMAN: In what circumstances might there be a meeting with the NDIS participant and their supporter versus just making an email request or notifying over the telephone?

10 MR HOFFMAN: It might depend on the preferences of the participant and their family, as to how they want to do it. It might depend on the extent and complexity of the circumstances.

15 MS EASTMAN: Is there a fixed procedure that the NDIA would follow as to whether or not a request for change of circumstances --- particularly where somebody is leaving one form of accommodation into a new form of accommodation where the NDIA would have some work to do --- as to whether there should be a meeting in person about that or whether it is simply a matter of deciding whether you want to give your update details or change of circumstances over the phone?

20 MR HOFFMAN: The process would, as I said --- yes, there is standard operating procedures and guidelines for that. But at a high level, the answer is just that it depends on the preferences of the participant and then also the complexity of the matters, the extent to which other people might need or want to be involved in that meeting and so on.

25 MS EASTMAN: Is the upshot it depends on the circumstances?

MR HOFFMAN: Yes, I think that's fair.

30 MS EASTMAN: Mrs Rogers has told the Royal Commission that towards the end of April 2019, Daniel's NDIS plan was approved and that provided enough funding for Daniel to continue his day options plus some additional funding for respite. But she says that his NDIS plan still wasn't enough to meet his needs. She said at this stage she felt like she needed to go through the process of proving what Daniel's
35 needs were and she describes the process as being one of like having to prove that Daniel had a disability all over again. Have you heard that this has been the experience of people in working through the plan, that they feel that they have to prove that they have a disability all over again?

40 MR HOFFMAN: So, yes, I have heard that --- that criticism from time to time. Yes. I would say, though, that without in any way seeking to diminish or disagree with the feelings and the experiences, the intent or what is often trying to be done is to fully understand the circumstances of the participant and what their needs are and that may well require an understanding of their disability and there are requirements in the Act
45 phrased that way, so that the best possible plan can be put in place. And so there is a balance there and staff seek to do that as well as they can. I have been quite open previously that we haven't always got it right every time and certainly I take this

opportunity here to acknowledge that in some respects that is the case for Mrs Rogers and Daniel and I certainly regret that.

5 MS EASTMAN: I won't take you through that, as you can see in your own chronology, quite detailed chronology about events in terms of communication. You will have seen in that chronology, Mrs Rogers describes a circumstance where she had to submit a review process very, very quickly and the stress that caused. And the chronology also shows a process of decisions being declined and review applications having to be made. But Mrs Rogers gave some evidence this week to say that she
10 looked on the internet and she discovered that a letter could be sent to the CEO of the NDIA to request an internal review of a decision, and she said this might have been fairly shortly after you started, but she wrote to you on 1 November 2019, asking for help.

15 Commissioners, you will recall the letter is in hearing bundle A, behind tab 22. That might come up on the screen for Mr Hoffman. I don't think he's got bundle A with him.

20 Mr Hoffman, Ms Rogers gave some evidence yesterday to say that it was her genuine belief that when the website said that you, as a person, could write to the CEO to request an internal review, that this letter would make it to you and that you would read the letter. So have you seen this letter before?

25 MR HOFFMAN: I have recently, yes.

MS EASTMAN: When you say "recently", in the context of preparing for the Royal Commission hearing; is that right?

30 MR HOFFMAN: That's right, yes.

MS EASTMAN: But not at a time on or around 1 November 2019?

MR HOFFMAN: That is correct.

35 MS EASTMAN: Mrs Rogers is under the apprehension that this would have come directly to you and you would have read it. What would have actually happened to this letter?

40 MR HOFFMAN: So at the time, as you know, I started on 4 November --- at the time, the process was that letters that were addressed to the Chief Executive came to the mail function. They were looked at there by staff and depending on the content, they were then allocated directly to the area of the agency for action. In this case, being a letter concerning a particular participant and a particular complaint and concern, it went directly to the complaints area and I think it was the case that it was
45 actioned and contact by an agency staff member was made to --- with Mrs Rogers.

MS EASTMAN: Well, she --

MR HOFFMAN: If I may finish?

5 MS EASTMAN: The witness gave evidence there was no response to this letter at all.

MR HOFFMAN: I was about to continue on. As I said, the response was --- the response was the phone contact to follow up on the subject matter and content of the letter, and that was done, and I understand done reasonably promptly.

10 MS EASTMAN: Is this the ---

MR HOFFMAN: If I could just finish, please, counsel.

15 MS EASTMAN: No, wait. In your chronology, you say on 1/11/2019, that this letter was received on 6/11/2019 and when you say very promptly, your chronology says the response was on 12/11/2019. Are you saying in your chronology, what's described there was the NDIA phoned Mrs Rogers in relation to her feedback and confirmed that the internal review was initiated, the internal review was initiated because of the lapsed review and that a decision had been made to decline the

20 unscheduled review at that time, and it is describing her letter as a complaint, and that complaint was resolved. Is that what you mean by the response was prompt?

MR HOFFMAN: Yes.

25 MS EASTMAN: So it took Mrs Rogers' letter of 1 November to be told by the NDIA that the internal review was initiated because of a lapse of a review and the decision following that process was to decline the unscheduled review at that time. So how do you say that that's a prompt response to the matters set out in the letter on

30 1 November?

MR HOFFMAN: I was merely trying to say, in terms of the response to the letter, that it explains that it went to the complaints area and caused that phone call to be made to Mrs Rogers.

35 MS EASTMAN: So the phone call is the response to the matters that are set out in the 1 November letter?

MR HOFFMAN: And then the subsequent --- the subsequent actions as set out in the chronology, yes, and the prior actions to that. The interaction between the request for a review not being made in time, causing an automatic internal review of that, as well as then a request for a review of the plan, and those interactions, yes.

40 MS EASTMAN: If you have got Mrs Rogers' letter there, she is saying that she wanted an internal review, and that's what she was seeking. But the response from the NDIA was not to grant an internal review, but to tell her that a decision had been made to decline the review. Is that right?

MR HOFFMAN: I think the appropriate context is on the prior page, where the letter was sent to Mrs Rogers to inform her of the decision to decline the plan review request, and then the letter follows in November and then the phone call follows to confirm the advice given by letter in October.

MS EASTMAN: But do you understand what Mrs Rogers was doing is to say that she wanted to find out what to do when she was told in October that the decision was referred to an internal reviewer. She wanted to find out what was the status of that. She hadn't heard and she is saying that the NDIA website has 243 links, when looking for "NDIS appeal", but it also states that a letter can be sent to the CEO, so "I'm writing to you. The rest is so complicated". That's what she says in her letter. So I'm asking: do you understand that the letter that she was sending to you, and she believed that you would read, would be that you had a power to undertake a review and to help her work out what the situation is? Is that right? Do you accept that?

MR HOFFMAN: I accept that the website sets out that correspondence may be addressed to the Chief Executive. I was about to say earlier that upon my discovering that information that is addressed to me was not automatically coming directly to me in my office, I have since changed that, and such a letter now would be seen either by me or by my very close and small staff, which was not the case at this time, which I do regret.

However, the invitation or opportunity to send correspondence to me as the Chief Executive is important. As I said, I actually spend some time each day looking at emails and letters directly from participants --- it's a very important part of me attempting to stay aware and across with the way the scheme is performing at an individual personal level, as well as the data and so forth.

But it does not create --- and if this impression was created then I regret that, but it does not create and nor can it or should it, really, an alternate pathway to proper decision-making in accordance with the Act. So the process of doing a review under section 100, an internal review and then potentially to the AAT, is the process for review and appeal of decision-making, that should proceed with the appropriate delegated decision-maker, rather than me seeking to intervene because of a direct appeal to me in that process. So it's a balance that I'm trying to make between --- in terms of the way I have done the role, of balancing between staying connected and receiving direct feedback, direct correspondence and understanding of the way the scheme is operating, without, as it were, creating an alternate and separate channel of decision-making and process with the Agency, which would be unfair to all participants in the way that operates.

MS EASTMAN: Can I ask you why, then, have you described that letter in your chronology as a complaint? If you are saying that the letter should be read as following particular legislative process or steps in the Act about review, why have you referred to it as a complaint?

MR HOFFMAN: I think it reflects the fact that Mrs Rogers was, perhaps not unreasonably, expressing some dissatisfaction with what --- the experience she had received and that Daniel had received. As I said, it came from the mail room to the complaints area to follow up, and that was the way it was categorised.

5

MS EASTMAN: But there is a separate process, isn't there, in the NDIA for dealing with complaints, which is different to legislative decision-making in terms of meeting timeframes for making reviews, for those reviews to be dealt with; do you agree with that?

10

MR HOFFMAN: Well, they often interact and intersect because, quite properly and quite reasonably, we shouldn't require participants and their families to be experts in the legislation. But yes, there is a process under the Act for decision-making and of course there is a complaints handling process too.

15

MS EASTMAN: Do you accept, looking at your own chronology, that when you say that the complaint was resolved on 12 November 2019 by Mrs Rogers being told that the internal review was initiated but because of a lapse of review, that the decision was made to decline the unscheduled review at that time, is an adequate resolution of the subject matter of her complaint?

20

MR HOFFMAN: It was an attempt to explain where the situation was up to, where the case was up to. It was not changing the decisions that had been made and the process that was made. I can understand that that would not necessarily be what Mrs Rogers, maybe quite properly, would have wanted to have received, but from the perspective of administering the document, the letter, it was actioned and the correct information as to the status of the situation was conveyed at that time.

25

MS EASTMAN: You are aware, aren't you, from the chronology that then there was a series of events leading up to Mrs Rogers commencing an application in the Administrative Appeals Tribunal to seek to review a decision to decline a quote for the modification of the bathroom in their home? You're aware of that?

30

MR HOFFMAN: Yes.

35

MS EASTMAN: The matter was settled in the AAT with the AAT making directions that the NDIA approve that funding and pay for the modifications. You're aware of that?

40

MR HOFFMAN: Yes, that's correct.

MS EASTMAN: In your statement at paragraphs 16 to 19 you make some observations about home modifications. I just draw your attention to those paragraphs, without the need to go through them in any detail. The description that you give of home modifications in paragraphs 17 to 19, is that the arrangement that was in place when Mrs Rogers was seeking some funding to modify the bathroom in her home or is this a new process?

45

MR HOFFMAN: My hesitation there is simply that I know we have made improvements to the home modification process. I'm not 100 per cent sure of the exact interaction of the timing of that with the timing of the Rogers' case. If it's of importance to the Commission's work, I'm happy to clarify that after the ---

MS EASTMAN: I'm happy for you to take that on notice. The reason I asked you is that I can't see any temporal aspect or timeframes in the process that you describe in paragraphs 16 to 19, and it just wasn't clear whether that was the process that applied to Mrs Rogers.

MR HOFFMAN: Sure.

CHAIR: May I ask a question, while we are on the chronology. I apologise if this is because I have misunderstood something that has already been explained.

On page three of that chronology, we are told that Mrs Rogers requested a plan review on 29 August. Then in September she sends through a review request form. In October she seeks an urgent update. And then on 11 October, NDIA sends a letter to inform her of the:

..... decision to decline the plan review request. The decision was referred to an internal reviewer under s 100 of the NDIS Act.

Under section 100, is an internal review only available when someone requests it?

MR HOFFMAN: No, Commissioner. That is normally the case. There are about 20 or 25 decisions under the Act that --- of reviewable decisions where they have to be requested. I think there are two examples where it is an automatic review, for internal review, one of those being where we fail to make a decision as to whether to accept a participant requested review or not within the required time. We failed to make that decision within the required time, so it is automatically a section 100 reviewable decision.

CHAIR: If that's so, on my reading of section 100, it's not a review under section 100 because that only applies where requests are made. That's what section 100 says.

MR HOFFMAN: Without getting into --- maybe this is something that we might come back to after. I'm happy to make a further submission and clarify that point, Commissioner.

CHAIR: Thank you.

MS EASTMAN: I want to finish on Daniel Rogers. His NDIS plan finishes on 20 June, in about 11 days' time. Mrs Rogers sent an email on 25 May, indicating her need for a planning meeting, as Daniel's circumstances have changed. She says she

has only received a generic email to date. She sent you an email to identify her concerns again, and she hasn't received a response. I'm not expecting you to be across the current details of the plans, but if someone's plan is to finish in 11 days' time and they need a planning meeting to discuss changed circumstances, what should the NDIS participant and anyone supporting the participant expect in those circumstances?

MR HOFFMAN: Well, they should expect contact from the Agency in order to proceed with either a plan review or a plan extension and so on. I believe my office has spoken with Mrs Rogers, including about the original letter, and will certainly be seeking to ensure that there is contact and that plan review is completed promptly.

MS EASTMAN: Commissioners, I'm about to turn to the next topic, which is to move to the NDIA's response to the two reports, the Robertson report and the Safeguarding Report. If the Commissioners have any questions directly relevant to Mitchell or Daniel, it might be appropriate, Chair, to deal with those questions now.

CHAIR: Yes, thank you. I'll ask Commissioner Bennett whether she has any questions to put?

QUESTIONS BY THE COMMISSIONERS

COMMISSIONER BENNETT: Thank you very much. One of the issues that I get the sense from the evidence provided by Mrs Rogers and also by Victoria is about this flexibility, that a budget occurs, things are allocated. Even in your form, whether it's notionally \$2, but it's down to \$1,073. Do you get feedback that the flexibility --- a plan made at a point in time for a certain amount of money, are you receiving feedback from clients to say, well, can't they have some direction in using the quantum of the envelope and actually use it for some of the bits that may emerge or something might cost more or something becomes a changing priority in their life, so an increased flexibility to use their envelope?

MR HOFFMAN: Absolutely, Commissioner. I think that is very much the direction that we are trying to take the scheme. I think that's very necessary. There is a degree of flexibility for use of the amount of money that is within the core supports category. But there are multiple other categories into which money is allocated. This stems from the way the Act is put together in section 34, that requires the consideration of individual supports on a line-by-line basis, and the individual and incremental consideration of those supports to build up the total plan. And that has been confirmed in case law from the AAT to the Federal Court.

That is something that I don't think works well. It doesn't work well for the agency, and more importantly, it doesn't work well for participants. I spoke about this at the Joint Standing Committee into the NDIS hearing at the beginning of May, in Geelong, and I made an opening statement there, which was only very short but

I think is very important, in that it is referred to as Phoebe's Sundays, talking about an actual participant Phoebe and her father, and just noting the hundreds, literally, of decisions that the agency has to make about each and every plan, and that the real difficulties that causes for participants and for ourselves.

5

So the whole direction of the current scheme reform program, which you will be aware of and which is controversial as well, I would honestly say, is towards the setting of an overall budget amount and giving much greater flexibility in its use to participants, in the view that they are the experts in their own lives and the lives of their loved ones, rather than a plan built up line by line, support by support. So I totally agree with you on that and that is the direction of reform ourselves and the government is seeking to move.

10

COMMISSIONER BENNETT: One last question. We received some evidence today from Ms Gale, the South Australian Public Advocate, from the Office of the Public Advocate. Going back to what Senior Counsel said about this capacity building, that it also shouldn't be a formula approach, that some people need that ability to assist decision-making and on a more ongoing, not see if it's a one-off investment. Did you hear that evidence and did you have a view on what ---

20

MS EASTMAN: Commissioner, can I jump in there? These are topics that I'm about to get to. I wanted to try to contain the Mitchell and the Daniel Rogers-specific questions but I will very much welcome your questions when I get to that.

25

COMMISSIONER BENNETT: Counsel, thank you.

CHAIR: Does Commissioner McEwin have a question?

COMMISSIONER McEWIN: A quick supplementary question to Commissioner Bennett's question about flexibility. Is it fair to say, at paragraph 19, where you have said you are committed to delivering a simpler process for requesting home modifications, that will be given strong consideration to the broader response you said about looking at how we can make plans more flexible, is that a fair characterisation?

35

MR HOFFMAN: Yes, Commissioner. I would say that I was talking more broadly about the total plan. The specific improvements referenced in paragraph 19, some of those we have already done, but certainly I would see the use of the plan --- basically it would be --- I'll be very brief --- basically it would be about where there are expensive or significant home modifications, they would probably still need to be decided and approved separately and individually. But lower than that, small scale modifications should be made much more simply and more in the control and the decision of the participant and their family.

45

COMMISSIONER McEWIN: Thank you.

EXAMINATION-IN-CHIEF BY MS EASTMAN, CONTINUES

5 MS EASTMAN: I want to turn to Ann-Marie Smith. She was an NDIS participant. That's right?

MR HOFFMAN: Yes, that's right.

10 MS EASTMAN: You are aware, aren't you, following her death, that a report was commissioned by the NDIS Quality and Safeguards Commission?

MR HOFFMAN: Yes, that's right.

15 MS EASTMAN: And also a process of review undertaken in South Australia through a Safeguarding Task Force. You aware of that?

MR HOFFMAN: Yes.

20 MS EASTMAN: You say in your statement that the NDIA conducted its own review into the circumstances surrounding Ms Smith's death; is that right?

MR HOFFMAN: That's right, yes.

25 MS EASTMAN: You are aware of the South Australian Safeguarding Task Force Report and the Robertson Report being released on 31 July last year and 4 September last year respectively?

MR HOFFMAN: Yes, that's right.

30 MS EASTMAN: I want to understand what you mean when you say in paragraph 28:

35 *At the time, the NDIA's focus was appropriately on ensuring that participants could continue to access their essential disability supports during the COVID-19 pandemic, including participants who were considered vulnerable.*

40 Are you suggesting there that, notwithstanding the two reports, that at that time the NDIA's focus was on a COVID-19 response, rather than the specific issues and recommendations raised in those reports? I'm just trying to understand why you have made the observation there that your focus was appropriately on ensuring COVID-19 matters.

45 MR HOFFMAN: I think the paragraph 28 is saying that in fact because of --- not despite, but because of the impacts of the COVID-19 pandemic, we were --- there was already a focus on ways to better or more proactively identify and safeguard vulnerable participants aligning with the recommendation, so it wasn't the case that

because of COVID we weren't looking at those issues. In fact, it was the reverse; because of COVID we already had a heightened focus, as it says, on ways to better or more proactively identify and safeguard vulnerable participants.

5 MS EASTMAN: Are you saying that the fact of COVID-19 meant that the NDIA had to focus on participants who were considered to be vulnerable in a way that hadn't occurred prior to COVID-19?

10 MR HOFFMAN: I think in that situation, particularly when there were lock-downs and people unable to leave home, there were concerns about the availability of workers, there were concerns about the entry of workers to residences or private homes and the potential for infection that might come from that. I think that did create an additional, and I think quite proper, focus on the sort of issues that might arise from that. But I don't think it would --- yes.

15 MS EASTMAN: It is the case, isn't it, that the identification of vulnerable participants has always been part of NDIS planning processes. It hasn't had to wait for COVID, has it?

20 MR HOFFMAN: Absolutely, and I would not suggest and was not suggesting anything to the contrary there.

25 MS EASTMAN: In terms of the identification of vulnerable participants, a centilever tool from the NDIA's perspective is in the planning and development process; is that right?

MR HOFFMAN: In the planning process, yes. And other processes that are set out in my statement, yes.

30 MS EASTMAN: When you use the expression "vulnerable" does that have a statutory meaning or some other fixed and agreed meaning?

35 MR HOFFMAN: No, I don't believe it does. I think it is being used in a more general sense. I also note that, of course, it is important, as has been stated by other witnesses and elsewhere, that one must not equate disability with vulnerability and in fact there may well be a better phrasing and approach in terms of referring to at risk. I think Commissioner Head has spoken about that and I would agree with his comments on it.

40 MS EASTMAN: I want to ask you about the planning process in terms of, as you describe in your statement, identifying, categorising and monitoring vulnerable participants. You have told the Royal Commission there's a range of ways in which that's done. But are we right in understanding that the primary way in which that is done is through data sources and analysis of data?

45 MR HOFFMAN: I would say it's a combination of the data, the information that we hold, together with engagement with the participant in various ways.

5 MS EASTMAN: Looking at your paragraph 30, you don't talk about engagement there, you talk about vulnerable participants being identified, categorised and monitored "through a range of data sources and analysis." That's what you have said in paragraph 30.

10 MR HOFFMAN: That's right. But if you talk about the components listed under paragraph 30, a number of those involve qualitative or direct engagement with participants that lead to those components.

15 MS EASTMAN: I want to touch in a moment on each of those areas very briefly. You would have been aware from reading the report prepared by Mr Robertson and his recommendations that he formed the view that it seemed to him that the processes adopted in Ms Smith's case not fully utilise the planning process as a safeguarding and risk detection measure consistent with the Act and the framework. You have seen his observations, haven't you? If you need to have a look at it again, Commissioners, you will find this is part of the report in hearing bundle D, behind tab 4 at page 45.

20 MR HOFFMAN: I would like to see it, please. Thank you.

25 MS EASTMAN: I have given you page 45. It is the second substantive paragraph, which starts:

It seems to me that the process adopted in Ms Smith's case did not fully utilise the planning process as a safeguarding and risk detection measure, consistent with the Act and Framework.

30 Then there is a reference to section 33(2) of the Act, which says that the plan must be "prepared with", and then you will see the "with" is bold and italicised, "the participant and approved by the CEO." You have read that, haven't you?

35 MR HOFFMAN: Yes.

MS EASTMAN: Do you accept that that assessment made by Mr Robertson is correct?

40 MR HOFFMAN: Sorry, there's a number of assessments in the paragraph. Do you mean the first sentence?

MS EASTMAN: Yes.

45 MR HOFFMAN: Yes, I think in that case the planning process did not work as well as it could have or should have as a safeguarding and risk detection measure.

MS EASTMAN: In terms of Mr Robertson's recommendation, he makes his first

recommendation, he says, "The Commission" --- and this is a reference to the Quality and Safeguards Commission:

5 *should act to identify earlier those people with disability who are vulnerable to harm or neglect. Every stage of decision-making, including corrective regulation, should be alive to factors indicating that a participant may be vulnerable to harm or neglect.*

10 He says this:

(Although not within my terms of reference, the NDIA should also so act in the planning process and continually.)

15 You saw that recommendation?

MR HOFFMAN: Yes.

20 MS EASTMAN: You are aware, aren't you, that obviously Mr Robertson was not investigating the NDIA, his focus was elsewhere. But it's the case, isn't it, that submissions were made on behalf of the NDIA to the Robertson review?

MR HOFFMAN: Yes, it was, yes. Or information was --- submissions or information was provided. As you note, I met with him and discussed these matters.

25 MS EASTMAN: To the extent that Mr Robertson has expressed these views and made recommendations, should this Royal Commission take it that the NDIA has also carefully looked at recommendations that are relevant to the NDIA?

30 MR HOFFMAN: Yes, you should.

35 MS EASTMAN: You are also aware of the South Australian Safeguarding Report. In the same bundle that you have there, behind tab 5, you see what's called the supplementary report, but it is the final report. I ask you to turn that up, and in particular to turn to page 7. At page 7 there is a description of the NDIA. Is this something that you have read before? I don't expect that you would have read it today, but have you seen this before?

MR HOFFMAN: Yes, I have.

40 MS EASTMAN: I just ask you to scan those pages 7, 8 and the top part of page 9. The supplementary report seeks to give a very high level overview about the operation of the NDIA. Would you agree with that?

45 MR HOFFMAN: It seeks to give what, I'm sorry?

MS EASTMAN: A very high level overview of the processes of the NDIA?

MR HOFFMAN: It seeks to do that, yes.

MS EASTMAN: The Task Force has said in its report that the NDIA has not had a clear transparent concept of vulnerability. That's in the final paragraph on page 7.

5

MR HOFFMAN: Yes.

MS EASTMAN: The report notes that during the COVID-19 pandemic the NDIA identified over 5,000 participants in South Australia who are vulnerable and these people have had welfare checks conducted by the NDIA. Do you accept the accuracy of that statement?

10

MR HOFFMAN: I accept the accuracy of the statement that during COVID the NDIS identified participants for whom, with whom, we made welfare checks. I don't necessarily accept the first sentence of that paragraph.

15

MS EASTMAN: Over the page, the Task Force says --- and I think the point that you have just made --- just because you have a disability does not mean that you are therefore vulnerable. Some people may be vulnerable due to not being aware of what they need and what support is available for them. But they say this:

20

Having a process to identify potentially vulnerable participants is key and having a single locus of responsibility vis-a-vis the participant is essential for good practice. The concept of vulnerability needs to be assessed on a case-by-case basis and is not static.

25

Do you agree with that?

MR HOFFMAN: Can you just point me to the exact paragraph on page eight?

30

MS EASTMAN: It's the third paragraph. The first paragraph is continuing from the page before. The second paragraph starts "Task Force members" and the third paragraph is the bit that I've just read to you, "Having a process". It is page nine.

35

MR HOFFMAN: Page nine. Sorry, I was on page eight. I beg your pardon.

That paragraph has a number of concepts. And I would need to talk about each one in terms of my view of it.

40

MS EASTMAN: I'm just asking whether you agree with that or not?

MR HOFFMAN: I don't agree with every concept or principle that is contained in that paragraph.

45

MS EASTMAN: Do you agree having a process to identify potentially vulnerable participants is key?

MR HOFFMAN: Yes.

MS EASTMAN: Do you agree that the process is one that has a single locus of responsibility?

5

MR HOFFMAN: That is the one that is more complex to deal with and that is one that I'm happy to talk about further and may wish to, as to whether there is a single person, if that's what's meant by "locus", or a single --- and that is the same person or sort of person for all participants or not. So that is why I was hesitating. I'm happy to go into that. But the idea of having certainly the process to identify vulnerable participants and then responsibility to do something about that, be aware of it, I do accept.

10

MS EASTMAN: It's a case, isn't it, that your view is that there shouldn't be a single locus of responsibility and your view is consistent with the quality and safeguarding framework, that it is different players starting with the participant, share responsibility for promoting the safety and wellbeing of a participant and working to reduce risk of abuse, violence, neglect and exploitation and the role of nominees and statutorily appointed guardians is especially significant. That's what you say at paragraph 75 of your statement.

15

20

MR HOFFMAN: Yes, that's right.

MS EASTMAN: Do we take it by that that it's the NDIA's view that looking at safety is a shared responsibility?

25

MR HOFFMAN: That would be one way of putting it, yes.

MS EASTMAN: Would you accept that shared responsibility carries with it some difficulties because shared responsibility requires there to be clarity around who has responsibility and how any shared responsibility should be discharged? Do you accept that?

30

MR HOFFMAN: Yes.

35

MS EASTMAN: The concept of shared responsibility can also be very difficult if one is looking at accountability, if one or more parts of those with shared responsibility fails to discharge their responsibility. Do you accept that?

40

MR HOFFMAN: Not necessarily. I think there are many examples of shared systems that doesn't preclude accountability. I don't think it necessarily follows, no.

MS EASTMAN: When you talk about shared responsibility, do you mean shared in the sense of equal responsibility?

45

MR HOFFMAN: Not necessarily, no.

MS EASTMAN: What then does shared responsibility mean in terms of who bears primary responsibility and others who may have subsidiary shared responsibility?

5 MR HOFFMAN: I think it depends upon the circumstances of the particular person and their particular situation. As we said, you start from the presumption of capability of the participant themselves, that is not always fair, of course. So then you look to the person who has the nominee or guardian responsibility, which may well be family members, and then proceeding to the State as the guardian of last resort and their decision-making responsibility, including as to matters of health and
10 safety and wellbeing.

Then in the NDIS context you come to the role of the NDIA and its sibling agency, the Commission, and our roles with our staff and partners in the LAC and they clearly have an ongoing role through the planning process, which is identified in the
15 framework, as you said, as an important component of safety and wellbeing. And then thirdly you move to the actual service providers themselves and the importance that the service provider has a responsibility there, as they are often the party most in contact on a day-to-day basis with the participant.

20 MS EASTMAN: That's a system that requires all of those component parts to, first of all, understand what their responsibilities are, may be; secondly, to have the capacity to discharge that responsibility; and, thirdly, that there is a system that wraps around that shared responsibility so that those involved can be accountable. Do you accept, doesn't that become difficult when you have a number of shared
25 players?

MR HOFFMAN: Not necessarily, no. I think it provides --- it does require an understanding of responsibilities, as I just tried to outline in my prior answer, but in some senses it provides overlapping and strength and depth, as it were, of different
30 players having responsibility and accountability for safety and wellbeing. I think that is in some ways preferable to a system that may be liable to a single point of failure.

MS EASTMAN: Mr Head says in his statement that the NDIA planning process seems most likely to be the best source of information in relation to, firstly, whether
35 a participant can raise concerns themselves; secondly, whether a participant has natural supports; and, thirdly, whether a participant is at risk of losing their natural supports. So that's what he says in his statement. If you need a reference to that, it's at paragraph 84, page 21 of his statement.

40 But the Safeguarding Task Force noted as the first safeguarding gap is that potentially vulnerable participants are not routinely identified through the planning processes. Against that background, I want to ask you about the planning processes that you have described in paragraph 30 of your statement. I think you were about to start to deal with those a little earlier. If I can ask you to turn to paragraph 30, you
45 have identified the different methods. Before I ask you about each of those methods, to what extent have people with disability been involved in the development of any of the methods described in subparagraphs 30(a) through to (g)?

Let me put it simply.

MR HOFFMAN: No, no, I'm just pausing.

5

MS EASTMAN: Is there a consultation process or ---

MR HOFFMAN: Yes. I was trying to scan the list before responding, et cetera.

10 MS EASTMAN: If it's easier, when we go through each one, if you want to come back and assist me on each topic as we go through it, whether people with disability have been consulted in the development, I'm happy to do it that way, but I was thinking we might shortcut it if we can do to globally.

15 MR HOFFMAN: They have particularly in respect to (a), (f) and (g) which go to our Pathways work, which was done in 2017 and 2018, which established the different planning pathways and there was significant consultation and collaboration in the design of those.

20 MS EASTMAN: What role, if any, has the Independent Advisory Council had in reviewing any of the methods described in (a) through to (g)?

MR HOFFMAN: That is a question I'm not 100 per cent sure of the answer now. Some of that work, as I said, referred to 2017 and 2018 timeframes, before
25 I commenced. So I'm not 100 per cent sure. I know that currently the IAC is working very closely with us on issues of risk and they have a piece of formal advice, I think, has been tendered or an early draft of it has been tendered to this Commission, so in that sense some of these issues are involved, yes.

30 MS EASTMAN: To the extent that the Convention on the Rights of Persons with Disabilities is relevant, to what extent has the CRPD been used as a means of checking the operation of each of these sources or some audit against the CRPD? Do you know if that's been undertaken?

35 MR HOFFMAN: No, I don't know the answer to that. I would be speculating. I will be very happy to come back and make a submission on that point.

MS EASTMAN: I just briefly want to deal with each of the methods, because you have described them from paragraphs 31 and onwards. The first one is risk
40 streaming:

The NDIA applies a risk streaming method for all participants as they enter and interact with the NDIS.

45 It is the case, isn't it, that streaming refers to a predicted level of assistance or support that a participant may need to navigate the NDIS pathway, but streaming doesn't impact on the level of reasonable and necessary supports for a participant. So is it

the case that streaming works like this: that everybody has to be streamed and that the streaming process is really designed to look at the level of assistance and supports but not necessarily to identify vulnerability per se?

5 MR HOFFMAN: No, counsel, I don't think that follows. What the streaming is seeking to do is to allocate to a pathway, two of which are managed --- which is the majority of participants, about 70-odd per cent, are managed with the partners, the Local Area Coordinators, and then 28 to 30-odd per cent are managed within the agency. You are correct that it doesn't go to the reasonable and necessary funding and supports, although there is a very clear correlation between the size of the
10 package, the size of the funding that is ultimately set and the streaming. So in that sense, as I said, there's a very close correlation between those two things. But that risk streaming does use as factors things that do --- have been identified and agreed as indicating risk factors.

15 MS EASTMAN: There are four streams: general, supported, intensive and super-intensive?

MR HOFFMAN: Then I would probably add the fifth, being the complex support
20 needs pathway.

MS EASTMAN: That's a separate item, though, that you have identified in paragraph 30?

25 MR HOFFMAN: Yes.

MS EASTMAN: So we will come to that. In terms of how the streamings work and where you might end up by way of streaming, you have referred in your statement at paragraph 33 to the Standard Operating Procedure and a copy of that is provided
30 behind tab 25. I don't need to take you any further into that. But just finally on the streaming, the streaming can be updated at any time and reassessed during plan monitoring and plan review processes, as well as when new information becomes available.

35 Is that a matter of course? I have just asked you earlier, for example, in relation to Daniel Rogers and Mrs Rogers saying she wants to have a review of the plan, would a request for a review automatically trigger a review of the streaming or is it the case that the review of any streaming, as to whether you are in general or in intensive or the like, comes about in a different way?

40 MR HOFFMAN: No, I believe it comes about as part of the review process, the plan review process.

MS EASTMAN: The second area you have identified is something called the
45 Participant Risk Assessment Tool. At tab 22 in the material, that relevant system is identified. But you describe this in paragraph 37 is a tool intended to evaluate participant risk during a planning meeting. So it occurs after streaming, and it is

completed with details of vulnerabilities or risks relevant to the participant's current circumstances. Then you have listed a number of areas of vulnerability, from physical, mental harm, financial harm, undue influences, unsafe home, unsafe in the community, and vulnerable to exploitation.

5

Is it the case that this assessment tool requires a face-to-face assessment between a planner or a Local Area Coordinator? Does this have to be a face-to-face exercise?

MR HOFFMAN: No, it does not necessarily have to be a face-to-face exercise.

10

MS EASTMAN: If it's not face to face, what would be the way in which the tool is exercised? Is it an online process, a telephone process?

MR HOFFMAN: It might be telephone or it might be a video call.

15

MS EASTMAN: If this is a process designed to evaluate participant risk and it is done during a planning meeting, how long on average would a planning meeting take to properly apply this assessment tool?

20

MR HOFFMAN: That's getting to a level of operational detail that I'm not best placed to answer here and now. But it's an important question, I'm very happy to provide that information.

25

MS EASTMAN: We talked earlier about there not being a clear definition of vulnerability. What does vulnerability mean in relation to the operation of this tool and in particular --- and you can use any of the examples that are set out there --- vulnerable to physical harm, vulnerable to mental harm --- how do those different vulnerabilities --- how are they detected and what do they mean?

30

MR HOFFMAN: They are detected through the questions that are asked and I think the document that is referred to, or at least --- yes, referred to in paragraph 40 sets out some of those questions and approaches to doing that.

35

MS EASTMAN: We might have a look at that. If you turn to tab 22 in the folder that you have there, hearing bundle C, if you turn to page 14, I take it you are familiar with the Standard Operating Procedure?

MR HOFFMAN: Yes.

40

MS EASTMAN: In terms of some of the questions that might be asked, the area of identifying vulnerabilities and capabilities starts a couple of pages before, at page 12, with some instructions. Do you see that?

MR HOFFMAN: Which page?

45

MS EASTMAN: I want to ask you some questions about page 14, but just to provide a context, page 12.

MR HOFFMAN: Mm-hmm.

MS EASTMAN: There is some pagination in the bottom right-hand corner.
5 Paragraph 3.4 says "Identifying vulnerabilities and capabilities" and it sets out in guidance notes for the process to be followed. Do you agree with that?

MR HOFFMAN: Yes.

10 MS EASTMAN: Back to page 14. Looking at this document, is it right if we look at the boxes which are framed by the red border that that would represent something that has to be completed, like an online form that has to be completed?

MR HOFFMAN: Yes, it's been completed by the staff member on their system.

15

MS EASTMAN: Some of the questions that might be asked on page 14, for example:

20 *Does the participant have a support network of friends and family who are available to assist them?*

There are four options there. So identifying one of those four options would identify whether somebody might have relevant supports. Is that right?

25 MR HOFFMAN: That's right, yes.

MS EASTMAN: Then in terms of participant vulnerability, you will see the language that you have used in your statement, that appears in the box under number 2; is that right?

30

MR HOFFMAN: That's right, yes.

MS EASTMAN: But that description "Vulnerable to physical harm", you agree is a conclusion and that you need to have certain information to make the assessment of vulnerability before you could tick the box. Do you agree with that?

35

MR HOFFMAN: Yes, I think so.

MS EASTMAN: Can I suggest to you, looking at the whole of that document, that there isn't anything that helps the person make an evaluative process as to whether somebody is vulnerable. Do you accept that? It builds in a conclusion of vulnerability, not a method of identifying vulnerability.

40

MR HOFFMAN: The method of --- it reaches a conclusion and as reflected in the box at 2, having gone through the questions at 1 and 3.4.3(1), in terms of the conversation that will have been had in order to reach that conclusion.

45

MS EASTMAN: You are aware, aren't you, one of the recommendations made by Mr Robertson in his report, recommendation 5, was directed to the importance of face-to-face assessments of vulnerable participants. Are you aware of that?

5 MR HOFFMAN: Can I just see that?

MS EASTMAN: Yes, of course.

MR HOFFMAN: Is it the other folder?

10

MS EASTMAN: Sorry, I'm trying to speed up a little bit.

MR HOFFMAN: I'm not trying to slow you down.

15 MS EASTMAN: That's in bundle B, behind tab 4 and there is a summary of the recommendations on pages 7 and 8. If you look at recommendation 5, it says:

20 *Because of the inherent limitations in record-based systems in preventing harm or risk of harm to vulnerable participants, the Commission [and that is a reference to Mr Head's Commission] should conduct occasional visits to assess the safety and wellbeing of selected individual NDIS participants, whether or not a complaint has been made or a reportable incident notified.*

He says this:

25

The Commission should miss no opportunity for face-to-face assessment of vulnerable participants. Although not in my Terms of Reference, the NDIA should also act.

30 He gives a fuller description of the reasons for that recommendation at pages 43 to 47.

MR HOFFMAN: Yes.

35 MS EASTMAN: Mr Bruggemann, who gave some evidence to the Royal Commission earlier this week, also commented on the importance of planning being face-to-face and preferably within a person's home. In terms of this exercise that is used for the participant's risk assessment tool, would you accept that you may get different results, depending on whether or not the assessment is face to face versus
40 something over the telephone?

MR HOFFMAN: Yes, in theory, yes.

MS EASTMAN: Let me give you an example.

45

MR HOFFMAN: Sure.

MS EASTMAN: We heard this week in relation to where Daniel Rogers lived before he returned to live with his parents and that an audit report was conducted of the particular residence and the first thing that people noticed when they walked through the door was the odour. So just being in the physical location and observing the circumstances or the odour, that would help you identify a factor that may be relevant to looking at vulnerability. Do you accept that?

MR HOFFMAN: Yes.

10 MS EASTMAN: And over the phone, someone not going to say, "My house smells." I want to test with you, if the planning process is designed to detect vulnerability, do you accept that it has got significant limitations if there is no face-to-face component in that?

15 MR HOFFMAN: I certainly accept that it is, as Mr Robertson said, we should not miss an opportunity for face-to-face assessment of participants, particularly potentially not vulnerable participants and that may well be through the planning meeting. I just go back, of course, to two points: one, the --- and this is a judgment and a balance, but one, the preferences of the participant in terms of the way
20 meetings are carried out; and then, secondly, the obviously practical one over the past year in terms of the difficulties that COVID has caused for face-to-face-type meetings; in general way, accepts the point that we should miss no opportunity for face-to-face assessments.

25 MS EASTMAN: The COVID situation in a sense has really brought to light that when people are isolated in their own homes, that loss of connection and reliance solely on technology and processes highlights weaknesses in systems to detect vulnerability. You would accept that?

30 MR HOFFMAN: I think --- I'm not sure it necessarily highlights the weaknesses of systems. It in itself can create vulnerability and can weaken the ability of our processes and systems and other agencies to detect that, yes.

MS EASTMAN: I want to come to the complex support needs pathway, and that
35 seems to be an important element. Before I get to that, there are three others which you describe as Customer Relationship Management, participant dashboards and a PCI framework, a Participant Critical Incident framework. In terms of the Customer Relationship Management Systems Alerts Profile, you have dealt with this at paragraphs 41 to 45 of the statement. Is that something that's not predictive but more
40 reactive? So that if an event occurs and an alert needs to be added to a participant's record, there is a system of having an alert added to the participant's record?

MR HOFFMAN: Yes, that's right, and then ---

45 MS EASTMAN: It's not a planning tool per se?

MR HOFFMAN: Yes, and then when a staff member comes to have or prepare for

an interaction with a participant, the existence of one or more of those alerts is an important factor as to how they might carry that out.

5 MS EASTMAN: The participant's dashboard, that is available to all NDIA staff and the LACs. And it allows you to view the participant information drawn from the Customer Relationship Management System. So is that the flip-side of what you have described as the Customer Relationship Management Alert process? So this is from the participant's perspective; is that right?

10 MR HOFFMAN: No, not --- what I would simply say is that the dashboard pulls together in a relatively easy to use way for a staff member relevant information about the participant, drawn from the CRM database. That will include risk alerts and profiles as one of the things you would see on the Mydashboard.

15 MS EASTMAN: The Participant Critical Incident framework which you have described in paragraphs 49 and 50, is it fair to say that that is not planning per se, but that is a system in which the NDIA and partners --- and I want to ask you who they are in a moment --- is that they manage critical incidents? So that's a response mechanism rather than a planning mechanism; is that right?

20 MR HOFFMAN: That's right, yes.

MS EASTMAN: The "partners" there is a reference to who, the Quality and Safeguards Commission?

25 MR HOFFMAN: No, they are --- the first line of paragraph 49 referring to the LAC partners, the Early Childhood partners, the National Contact Centre partner, et cetera.

30 MS EASTMAN: This critical incident framework is if a critical incident of the kind described in paragraph 49 occurs, then this is to set off the right pathways about how to respond to that incident; is that right?

35 MR HOFFMAN: Yes, to make sure that staff know what to do if they become aware of one of those sorts of events or things, and that it is dealt with properly and that, to the extent possible, harm can be minimised going forward.

40 MS EASTMAN: I'm conscious of the time, and Commissioners may need a break. I have probably got another 60 minutes or so, an hour to go, if the Commissioners would like a short break now, because I'm about to move to the Complex Support Needs Pathway. Otherwise I'll keep going.

CHAIR: If Martin Hoffman is comfortable to keep going and unless Commissioners Bennett or McEwin show signs of wanting to flee, then I suggest we keep going.

45 MS EASTMAN: We will keep a close eye on them, Commissioner.

CHAIR: If any Commissioner keels over, we will know it's time for an adjournment.

MS EASTMAN: I want to ask you about the Complex Support Needs Pathway. I want to start with this. Mr Head in his statements, at paragraphs 44 and 45, says that the NDIA is currently developing its "vulnerable participants framework". He
5 says he understands that the vulnerable participants framework currently includes the following themes and definitions, with data indicators for each theme, so housing, financial, family, domestic violence situations, health plan issues and provider issues. We didn't see you describe a vulnerable participant's framework in your statement and we have assumed --- and please tell us if our assumptions are wrong --- that the
10 Complex Support Needs Pathway is the vulnerable participant's framework? If I'm wrong on that, can you please help us with what is the vulnerable participant's framework?

MR HOFFMAN: Yes, counsel, and I'm sorry if it wasn't as clear. No, they
15 obviously interrelate but the Complex Support Needs Pathway is one thing. What is described under the next subheading, "The participant check-in model" and particularly paragraphs 56, 57 and 58, that is what Mr Head is referring to, that's the matching piece.

MS EASTMAN: The reason I ask you that is looking at the Complex Support Needs
20 Pathway at paragraph 52 is the relevant situational factors or criteria that lead to a referral to the Complex Support Needs Pathway seem to include some of the factors that Mr Head has identified in his statement, which may be indicators of vulnerable participants. So somebody who is homeless or transient, a person with a history or
25 propensity for experiencing financial abuse or vulnerability where a person has limited informal support networks. Looking at what Mr Head has described and then looking at the CSN pathway, what's the difference between them?

MR HOFFMAN: As I said in my previous answer, there is clearly an overlap
30 between the two. The CSN pathway leads to the identification of a group of participants, I think it's about 10,000, who are treated in that pathway, and that is they are in a particular --- or managed, supported, serviced by a particular branch, with some of our more experienced and senior and capable planners. They are not involved with the LAC partners. We manage that directly, their plans directly, often
35 working, almost always working, very closely with support coordinators and others.

What then goes on under the participant check-in model is broader, where we are identifying a wider group of participants who may be at risk, based on the sort of factors listed at paragraph 56 and then as being refined as per paragraph 57, and that
40 goes to the check-in model, where we are making direct contact with the participant, either by phone or face-to-face, to literally check in and have a conversation, rather than only talking with them for the transactional purposes of a plan review or a plan update, et cetera.

MS EASTMAN: So is the check-in model the model that was developed in that
45 early phase of the COVID-19 pandemic, where there were a lot of lock-downs and the NDIA then said, we are going to check in on people who we think may be

vulnerable?

MR HOFFMAN: Yes.

5 MS EASTMAN: You have given some evidence in your prior statement about that.

MR HOFFMAN: In my prior statement, yes. I think that was so well received by participants, and frankly motivational to our staff as well, that it was something that we thought, hey, we should keep doing this and we should refine it and get better at it
10 and embed it in our general operating practice, rather than a sort of one-off crisis pandemic response. So, yes, it came out of that but it is now ongoing. So separate to the plan review process, where we have an engagement, we now have the check-in process, which is completely separate. As I said, trying to develop more of a relation --- I don't want to overstate it or overpromise it, but more of a relational engagement
15 than just a transactional one about the plan review.

So year to date, or up to May, we have made 7,000 contacts. Outside the plan review process, in the quarter to March we did something like 94,000 plan reviews, so that's where we engage, but then this additional non-review based thing was about 7,000
20 for the month of May.

MS EASTMAN: If there are about 10,000 NDIS participants who are in the Complex Support Needs Pathway, would those 10,000 be in the cohort of the 70,000 that you referred to in paragraph 55, being vulnerable participants who check-ins had
25 occurred during the COVID? Is the 10,000 of the CSN automatically part of that larger cohort of vulnerable participants?

MR HOFFMAN: I don't recall that they were automatically, but by the nature of the factors involved, there would be an almost identical overlap.
30

MS EASTMAN: With respect to the 70,000 vulnerable participants that you have referred to in paragraph 55, Mr Head says in his paragraph 47 that he thinks that the NDIA currently estimates the vulnerable participants through the vulnerable participants network to be something in the order of 25,000 to 30,000 participants.
35 I just want to understand your 70,000 and his 25,000 to 30,000. Do you have an estimate at the present time, applying the participant check-in model, that the number of participants would be in the order of 25,000 to 30,000 people?

MR HOFFMAN: I'm not 100 per cent sure of where Mr Head --- of that number. Of
40 course, part of the issue is it's not a binary yes/no or 1/0 type thing. There is by definition a continuum of risk, depending on the factors you bring in to bear, and the fact that of course that they can change over time as well. So I'm not sure it's --- that's why I'm hesitating on the numbers because it's true we made 70,000 --- contacted 70,000 people in the COVID VPOC program. I don't think it's helpful
45 necessarily to say there are X thousand vulnerable participants and therefore 450,000 minus X non-vulnerable participants. I think that has risks as an approach in itself.

MS EASTMAN: How were the 70,000 vulnerable participants identified during the height of the COVID pandemic?

MR HOFFMAN: Through the factors listed in paragraph 56.

5

MS EASTMAN: Ms Smith was not identified as a vulnerable participant prior to her death on 6 April, was she?

MR HOFFMAN: She was not sought to be contacted before her death, no. That's not quite the same thing as what you asked. Her factors against paragraph 56 would have, but she was not contacted as part of that program at that time before her death.

MS EASTMAN: Hindsight can give you great benefits. With the benefit of hindsight, there would be no question that she was a vulnerable participant. Do you agree with that?

15

MR HOFFMAN: Yes. There is no question that she would have been contacted in that program, if she were still alive. Now, I know that sounds hindsight is sure or harsh, it's not meant to be. I'm simply saying, yes, you are quite right that the factors identified in paragraph 56 would have flagged her and so she would have been contacted or attempted to be contacted as part of that program because it is ongoing longer than April.

20

MS EASTMAN: Looking at the items you have identified in paragraph 56, they themselves are quite broad. Where you have a scheme designed on choice and control and people living alone, it's not the case, is it, that simply living alone creates a vulnerability?

25

MR HOFFMAN: I would agree, yes. That was my point about it doesn't help to have a binary yes/no approach on this, I believe.

30

MS EASTMAN: In light of what we have been talking about, which is the planning process to identify risk, can you help the Royal Commission understand how then does this process of the participant check-in model or the vulnerability participant framework model guarantee that you are going to catch the Ann-Marie Smiths into the future?

35

MR HOFFMAN: With the best will in the world, there are not guarantees in this life or in our approach. But the approach we have of using multiple factors of, as I said, deliberately not treating it as a binary yes/no and thereby potentially excluding somebody, seeing that it varies over time, and expanding our contact with participants through the check-in model and then through the continued improvements to the planning processes, give us the best chance of playing our part in identifying and protecting participants who may be at risk.

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CHAIR: I'm sorry to interrupt. But part of the difficulty with a concept like vulnerability, whether you want to use that or "at risk" is that it has different

meanings in different contexts?

MR HOFFMAN: Yes.

5 CHAIR: As I understand paragraph 56, it lists criteria that we use to determine vulnerability or people who are at risk in the sense of being at risk of contracting COVID-19 and suffering severe consequences as a result. That was the object, wasn't it?

10 MR HOFFMAN: No, Commissioner. We weren't able or capable or wanting to make judgments about vulnerability to infection. It was merely that --- not merely, it was that during the pandemic, and some of the factors that counsel referred to in terms of lockdown, potential disruption to normal supports, we thought people with these sorts of factors might be most vulnerable or at risk of a range of harms and
15 therefore we should seek to up our level of contact with them. It was not about their infectability or infection risk, if I use that word properly.

CHAIR: The second line of paragraph 56 suggests that vulnerability to the virus itself was one of the aims of the project. Is that right?

20 MR HOFFMAN: Yes. It does mention that. But I would say my focus and our focus is on the rest of the sentence, "vulnerable should their services be discontinued or disrupted". It is true that there is also --- I'm not pretending to be an expert in the infection component, it is true that, as I understand it, some of these factors may
25 contribute to infection risk. But the primary focus, which is why we have continued it on, is about vulnerability, about services being discontinued or disrupted, and other harms.

CHAIR: Ascertaining whether someone was at risk of contracting the virus and serious consequences if they did would have been an exceedingly useful thing to do, wouldn't it?

30 MR HOFFMAN: Whether that was --- I would say that was probably a matter for health services, and I know they were seeking to do that, so --- but I wouldn't disagree with you, Commissioner, no.

CHAIR: That's precisely the point. At a hearing dealing with the immunisation program for COVID-19, we were told that the reason that people with disability in supported accommodation who were within Phase 1a were pushed down as far as
40 priority was concerned in favour of aged care residents was because a judgment was made that all aged care residents are more at risk than people with disability living in supported accommodation. If there had been in fact an assessment of people within such accommodation who were at risk of contracting COVID-19 or serious consequences therefrom, then there would have been a mechanism to ensure that
45 people with disability received an appropriate level of priority, would there not?

MR HOFFMAN: Commissioner, it's not my area of expertise to comment, or

responsibility on those decisions. I think it is not unreasonable to point to the relative infection and death rates as between aged care environments and disability environments through last year to support that judgment. However, as I said, that judgment and decision is not or was not a matter for the agency or myself.

5

CHAIR: Why not? Why not?

MR HOFFMAN: Because that is not the allocation of responsibilities that the Government has put in place for the management of the vaccination program.

10

CHAIR: No, but you wanted to find out. You have got it here yourself. You wanted to find out whether the people that you were looking at were in fact vulnerable to COVID-19. That was what --- their welfare in that respect was part of the concept of vulnerability, was it not?

15

MR HOFFMAN: So the factors we used are the ones that are in our knowledge, which is (a) to (j), they were the factors, the knowledge, that we have that we used to determine the people we contacted during the VPOC program and that was termed vulnerable in that sense. That includes both vulnerable to the virus itself or, as you have noted, or particularly vulnerable should their services be discontinued. I don't think however we were seeking or implying that there was great epidemiologically or health or infection control knowledge behind the linkage of (a) to (j) with that question of vulnerable to the virus itself. These are factors we know about, they seem reasonable, as other work has shown, they do go to this wider question of at risk, and that was how the cohort was determined.

20

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CHAIR: The only other point I make is that in paragraph 53 you refer to personal factors or criteria leading to referral to the CSN Pathway included multiple diagnosis, clinical complexity of disability, both of which are closely related to vulnerability to COVID-19 or the consequences of contracting the virus, are they not?

30

MR HOFFMAN: I'm not aware of the evidence of that in terms of --- given the very low rates of infection in the disability community, I'm not, as I said, an expert in that. I think paragraph 53 stands on itself in terms of its relevance to the CSN pathway.

35

CHAIR: Yes. Thank you.

MS EASTMAN: In terms of the CSN pathway, at paragraph 69 of your statement you make this observation: that these planners frequently deal with the most vulnerable NDIS participants and so the cohort of CSN planners are more highly trained and experienced planners. In terms of being more highly trained and more experienced, is that to identify those who are in the CSN pathway having that level of complexity also identifying vulnerability? I'm trying to make that link and I was asking you about that before.

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45

MR HOFFMAN: Yes. I think they are --- so the question is, counsel, sorry?

MS EASTMAN: Just looking at paragraph 69, I was asking you earlier about the relationship between the CSN and the Vulnerable Participants Network. So I asked you about the 10,000 who are in the CSN network and whether they are a cohort of the 70,000 that you have identified. Looking at how you find your way into the CSN pathway and the supports that you have while you are in that pathway, you have the assistance of planners who you describe as more highly trained and experienced planners who work closely with the participant.

It's the case, isn't it, that if you are in the CSN pathway with planners with that relevant expertise, that if there are the risk factors that might cause a person to be identified as vulnerable, that they are likely to be picked up because of the planners and because of the framework that the CSN pathway describes?

MR HOFFMAN: I would hope so, yes. I mean, that's the, the nature of the criteria that go to being in the CSN pathway, as I said, have an overlap clearly with criterias of risk and vulnerability, and the planners who work there. But the focus for that group is the complexity of their needs and supports and the requirement for often close coordination of those supports across multiple server systems, as is mentioned there in the third line, and that's really where the expertise and experience of the planners comes to bear.

MS EASTMAN: It's more likely that people in the CSN pathway have more static needs and they are more clearly identified in terms of what those needs will be over a particular period of time?

MR HOFFMAN: Not necessarily, no. In fact, can be almost the reverse, that these are people whose lives are not static, not in any sense disrespectfully, but can be somewhat more chaotic, which is one of the things that gives rise to the complexity of their support needs.

MS EASTMAN: I have raised the question of static, because in paragraph 71 of your statement, that Mr Robertson identified that:

..... being vulnerable, or being at risk of harm or neglect, is not static: a person with a disability may become vulnerable or may be vulnerable at one point but cease to be vulnerable.

On an ongoing basis. A crisis like COVID-19 may heighten vulnerability, do you agree?

MR HOFFMAN: Yes.

MS EASTMAN: But a crisis situation, for example family violence, may heighten vulnerability at a particular moment in time. So in terms of the way in which you use the participants' check-in model which you have described at paragraphs 72 and following, and please take a moment to look at that, but in summary, this is a process that relies on check-in conversations either on the phone or face to face. That's

subparagraph (b). But this is not a process really designed to deal with vulnerability in a crisis situation, say an acute crisis with family violence. Do you agree with that?

5 MR HOFFMAN: No, it's not a process designed to deal with an acute crisis. We have a crisis service issue framework and process to deal with those sorts of cases as they arise. In doing this, these contacts, it might well identify crisis situations that are occurring at that point in time.

10 MS EASTMAN: But that might just be good luck and coincidence in the timing rather than by design; is that right?

MR HOFFMAN: That's right, yes.

15 MS EASTMAN: And in terms of this process, it has to be initiated by the planners or the LACs and they arrange the time with the participant to have what you describe as a check-in conversation, either by phone or face to face; is that right?

MR HOFFMAN: Yes.

20 MS EASTMAN: So this is not a process where a participant can contact the NDIA and say, "I'm in crisis" or "My circumstances have changed which have put me in a situation of vulnerability." For example, if your family members receive a letter anonymously making death threats. I know that applies to a situation in South Australia and Victoria and James' circumstances, but in Victoria and James and
25 Mitchell were fully NDIS participants and receiving NDIS services in relation to Mitchell's accommodation, this model would not have provided them with a way of dealing with that immediate crisis where Mitchell became vulnerable by circumstances completely unrelated to his disability or to the services that are provided. Would you agree with that?

30 MR HOFFMAN: That is right, but it is not intended to. There are other processes that I mentioned very briefly before, to handle that sort of situation. And in that example, contact to either the planner or the contact centre would initiate the Participant Critical Incident framework and process, including in that case potential
35 referral to police or whatever was the appropriate action under that framework.

MS EASTMAN: Coming back to what "vulnerable" means for the purpose of this framework, the vulnerability really depends on particular characteristics or circumstances of the person rather than the circumstances in which a person may find
40 themselves in that creates the vulnerability. Do you agree?

MR HOFFMAN: Not entirely, no. I think there are factors there that go to the particular circumstances of the individual but also to their surrounding circumstances in terms of their living arrangements, their family arrangements. So there is a range
45 of things. I accept it doesn't go to those what we might call shock events, et cetera, but then nor can it or should it, nor is it designed to and there are other processes and avenues to deal with that sort of situation.

MS EASTMAN: Mr McNaughton gave evidence in Public Hearing 13 a couple of weeks ago and one of the issues he was asked about was homelessness. He made the point I think very clearly that the NDIA is not a homeless service. You would
5 accept, wouldn't you, that an NDIS participant who is at risk of becoming hopeless is a person who would have to be characterised as vulnerable? Would you accept that?

MR HOFFMAN: At that point in time, yes.

10 MS EASTMAN: As I understand the evidence from a week or so ago, if the NDIA is not there to assist a participant who may become homeless, who in those circumstances addresses the vulnerability and provides assistance to a vulnerable NDIS participant?

15 MR HOFFMAN: The responsibility for crisis homelessness rests with the relevant State and Territory Governments. Clearly --- and that is the nature of the multisystem supports. Clearly, there needs to be engagement and coordination and our staff play their role in doing that. As it happens, as Mr McNaughton may have said --- I don't fully recall --- we do use STA, short-term accommodation funds,
20 sometimes in those sorts of circumstances. But it's important to maintain the agreements that the Commonwealth and all State and Territory Governments made as to the delineation of what is NDIS and what is not, without that seeking to --- while always trying to make sure that it is relatively seamless to the individual involved.

25 MS EASTMAN: Do you accept, looking at the NDIS scheme as a whole, the assumption is that if you are funded under the NDIA or your accommodation and your services, that that in some circumstances has allowed State Governments to step back from service delivery? Do you accept that with the State Governments stepping
30 back and the assumption that the NDIA is becoming the safety net for people who are participants, that that leaves a vacuum for both identifying and managing risks for NDIS participants in these circumstances of crisis such as homelessness?

MR HOFFMAN: So I accept that --- or agree that the States have stepped back from
35 the things which have been agreed to be the responsibility of the NDIS. That's by definition. I don't accept that --- and nor would the States --- accept that they have stepped back from those things that remain, under those agreements, their responsibility, which includes homelessness and crisis accommodation. So I don't think I would accept that a vacuum has been created. I accept that there is an
40 ongoing need for coordination in order that, as I said before, these multisystem and multi-government supports are relatively seamless to the individual involved.

MS EASTMAN: Who then becomes the provider of last resort?

45 MR HOFFMAN: Well, that depends what service we are talking about being provided. Provider of what? In the last resort?

MS EASTMAN: If you take the homelessness.

MR HOFFMAN: I'm not trying to be difficult, I just want to understand.

5 MS EASTMAN: I'm thinking in relation to Mitchell and Daniel and their
circumstances, is both were involved in situations that became a crisis and the crisis
arose in the context of the safety in their homes and consideration about where they
go. If they had been NDIS participants and there needed to be some action taken to
avoid homelessness, who then becomes the provider, in effect, of last resort? It's
10 different to somebody who may be evicted from their home. But these are crises not
of the participant's making, but circumstances where being able to remain in their
homes may increase their vulnerability. So who becomes their provider of last resort
in those circumstances?

15 MR HOFFMAN: So the responsibility --- and this happens right now --- the
responsibility of the agency is there and we regularly work at the local level and then
through our Critical Services Issues Response, CSIR, where we have an escalated
pathway and contact points with State and Territory Governments to resolve those
exact circumstances. So there is a well defined, ongoing day-to-day operation at the
20 local branch and State level and then with escalation points to coordinate exactly
those sorts of circumstances.

Where the person may end up living, if it's a homeless example, in the immediate
term or the medium and longer term, is not the provision of one --- is not provided by
25 one organisation, it may be one of many providers who are involved in that sort of ---
in the provision of those sorts of services. So I just think, I'm trying to tease out what
"provider of last resort" means is what I was trying to do in that last answer.

MS EASTMAN: If you put yourself not in the shoes of the system but in the shoes
30 of a participant, in a crisis situation which creates that vulnerability, it might be for
example in a situation of family violence, where does the person look for help and
assistance? In that sense, who is the provider of last resort? Where do we go?
Where is the ultimate safety net? Because if there is an expectation that it's the
NDIA, is that something the NDIA can actually service?

35 MR HOFFMAN: So I'm just making a distinction --- I'm making a distinction
between where do they go for the coordination and the support to solve the problem
and who is the provider of a particular solution? So in that situation they can and
should be calling their support coordinator and the NDIA through either our contact
40 centre or directly through the branch contact, the LAC contact that they will have.
As I said, we have processes and approaches through that Critical Service Issues
Response to deal with that, because that is a reasonable expectation that involves
coordination with State and Territory services and the actual provider of where are
they going to sleep, maybe tonight or next week or whatever, may well come from a
45 range of different parties.

MS EASTMAN: Would you accept that, as the person in the middle here, the

participant, not knowing where or how that all will work in a crisis situation is something that needs to be clarified? There could be some simplicity in how and what a participant does in those circumstances?

5 MR HOFFMAN: Of course a participant --- any person needs and benefits from that certainty and that clarity. Given that we deal with these sorts of critical service issues very often, while not claiming perfection at all, we do have a process, it is used regularly to support people.

10 MS EASTMAN: Do you accept that the current model which gives the NDIA the responsibility of planning and funding is not something that can be done in isolation in looking at safeguarding and identifying vulnerability? You can't separate out the functions?

15 MR HOFFMAN: No, no. And I think we have had a good discussion about confirming that planning and the discussions that go with that are an important part of safeguarding, yes.

MS EASTMAN: I'm just mindful of the time. I have got two issues that I want to
20 raise with you before we end. The first is about Community Visitor Schemes. You say at page 14, paragraph 82 of your statement that:

*The NDIA notes that the merits of a proactive system of identifying and visiting
25 vulnerable participants (in the form of a community visitor scheme) is currently under consideration.*

Can I ask you about this. You have seen Mr Robertson's recommendation and he makes a recommendation, I think number 4, about Community Visitor Scheme.
30 Have you also seen the review undertaken by WestWood Spice in relation to Community Visitor Schemes? It's in volume D behind tab 6. We have included for the Commissioners a copy of the report. You may or may not be familiar with it.

MR HOFFMAN: I'm aware of it but I would not claim to be familiar with it.

35 MS EASTMAN: WestWood Spice says there's been some form of Community Visitor arrangement in Australia since 1843 and I think there is concern that it should not take until 2021 for that to now go. You say it is currently under consideration. Can you assist the Royal Commission as to what consideration is being given to a national Community Visitor Scheme, if that's what you are referring to in paragraph
40 82?

MR HOFFMAN: 82 is a reference to the work and commentary that Graeme Head has made, a reference to the review of the quality and safeguards framework, which I understand is or should be, will be, the vehicle for the consideration of this issue, as
45 well as the continuation of the arrangements currently in place.

MS EASTMAN: What does that mean, in practice? Will there be a Community

Visitor Scheme?

MR HOFFMAN: That's not something for me to decide and to confirm as to how that will be done. That's a matter for the processes through the Ministerial Council
5 and the framework review, the quality and safeguards framework review.

MS EASTMAN: There has been some suggestion, thinking about the Ann Marie Smith circumstance, about having an opt-in model for Community Visitors to visit people in private homes. Have you got a view on an opt-in model?
10

MR HOFFMAN: Counsel, I haven't given it a huge amount of thought, for exactly the reasons that I gave before. However, one could well see how something like that could work. And we have envisaged in our planning processes and conversations, that would be a good vehicle for asking people, "Would you like, would you be
15 prepared, would you like to have someone come and knock on your door from time to time?" "Yes" or "No"?

MS EASTMAN: The final question is about the information sharing between the NDIA and the NDIS Commission. We asked you some questions in the matters that we sought your evidence on. So this is page 18, paragraph 101 and following.
20

MR HOFFMAN: Yes.

MS EASTMAN: You have made the additional point in the corrigendum that we have received today. What do we take by this evidence in terms of this Royal
25 Commission, understanding what information is shared with the NDIS Commission and can you just assist us with your paragraph 101(a), because as I read that, that when data was initially provided to the NDIS Commission, it did not include the name and address of a participant. In mid-2020 the names of participants were
30 provided but the NDIS Commission could only provide the information to the NDIS Commission's data team.

If that's right, isn't that creating a fairly significant limitation on the NDIS Commission to be able to identify particular participants by name and address? Can
35 you just help me a little bit in understanding about this information sharing and the nature of the data that has been shared?

MR HOFFMAN: So paragraph 101(a) is giving the timeline of changes and improvements that have been made. When the name and address was not provided, the NDIS participant number was provided as the identifier. I think this reflects an
40 initially conservative view about the sharing of information back then and a progressive realisation by Mr Head and myself that we needed to and could do more, and hence the progressive improvements including to since early 2021, both in terms of the amount of data, the nature of the data and the frequency. Of course, the
45 Government then has now introduced the Bill just this week or last week to put beyond any doubt the ability for the full sharing of data as between our two agencies, and I think that's a great thing.

Then I can also confirm, as I think I referred to in some of these paragraphs, in paragraph 105, so that enhanced ICT infrastructure is on track for delivery at the end of June, so that will enable direct realtime access interrogation of our participant database by Commission staff. Another further step. And then I can also confirm that also in June we will add further to the sort of data that is provided which will be some of those vulnerability risk flags that we have previously spoken about earlier this afternoon.

5
10 MS EASTMAN: Coming back to the Vulnerability Participant Framework, will there be a way of data to be shared that specifically identifies a cohort of NDIS participants who satisfy the elements of vulnerable participants? Would that be part of that --- rather than just "here is the name and address", it would actually identify the cohort?

15 MR HOFFMAN: It will have the name and address and it will have flags or tags against those criteria or those attributes that go to risk and vulnerability, yes.

20 MS EASTMAN: Commissioners, Mr Hoffman has prepared a comprehensive statement. There are a large number of documents. We haven't gone through all of them today but they will be part of the material available to the Commissioners. Those are my questions.

25 CHAIR: Thank you very much. I shall ask the Commissioners whether they have any further questions of you, Mr Hoffman, and then I will ask Ms Downes whether she has any questions to ask you. First, Commissioner Bennett, do you have any questions of Mr Hoffman?

30 **QUESTIONS BY THE COMMISSIONERS**

COMMISSIONER BENNETT: My questions also go to data sharing, but a slightly different nuance from Senior Counsel. In the review that was provided on Ms Smith's death, two points that I read was the transfer documents weren't actually accessed at any point in time, and the first focus of the first plan was about transitioning rather than making an individual plan. So the words were used that a there was a continuity of service rather than actually working out it was the right plan.

40
45 There are 520 participants in South Australia that will transition by the end of the 2022/23 financial year. Ms Gale said on information sharing that there needed to be improvement between the NDIA and the quality and safety and the State and Commonwealth agencies. Will you be aiming that there is actually full, appropriate transfer of information, not just a piece of paper that goes into a system that may or may not be read, as a learning from the Ms Smith exercise --- event?

MR HOFFMAN: Thank you, Commissioner.

MS EASTMAN: Can I just intervene there. I'm sorry to do that. Commissioner, we haven't sought to ask Mr Hoffman any questions about the content of the NDIA's
5 internal review. There are some reasons for that.

COMMISSIONER BENNETT: I was referencing the information sharing and advice from Ms Gale, where she said that increased information sharing will enhance the safety of vulnerable NDIS participants and they are the 550 specifically. I can
10 ignore the component where I added more information.

MS EASTMAN: Thank you. Ms Downes can address any concerns about that.

MR HOFFMAN: Thank you, Counsel. I was taking the question to be the second
15 half of it, about going forward. Thank you. Yes, it is absolutely our intention, particularly that it is now a relatively small number of people, and some are probably at the more complex end, to do that in as good a way as possible. I have been very focused on completing full information-sharing agreements with the South Australian Government. I wrote to the South Australian Government back in April
20 wanting to accelerate the completion of the upgraded framework. We have an information sharing under the bilateral that all just goes through DHHS, but as we have heard there are other agencies that would benefit to have direct sharing with, such as the OPA, and so I've been pushing that, I wrote to the head of AGD here in April, got a good response back. We have schedules from a number of agencies,
25 including OPA, that we are working through now. So I'm focused on that and I believe we will have a good solution in place and we will do well by those participants over the coming year or two.

COMMISSIONER BENNETT: Thank you.
30

CHAIR: Commissioner McEwin, do you have a question?

COMMISSIONER McEWIN: No, thank you.

CHAIR: Mr Hoffman, I will now ask Ms Downes whether she has any questions to
35 put to you.

MS DOWNES: I have no questions, thank you, Chair.

CHAIR: I assume no other legal representatives wish to put any questions to
40 Mr Hoffman?

In that case, Mr Hoffman, you will be pleased to know that you hold the record for the longest uninterrupted evidence given by a witness. When I say uninterrupted,
45 I mean uninterrupted by adjournments, not uninterrupted by questions from people other than Senior Counsel. Thank you very much for coming to the Commission to give evidence for such a prolonged stint. We appreciate your assistance, and that

includes the details in your statement that you have provided us. Thank you very much.

5 MR HOFFMAN: Thank you for the opportunity, Commissioners.

THE WITNESS WITHDREW

10 CHAIR: Ms Eastman, is it opportune to adjourn until tomorrow?

MS EASTMAN: Yes. Can I just indicate that any witnesses who have taken questions on notice or indicated that they will provide information, that you will make some directions for the timing of that and we don't expect Mr Hoffman to
15 prepare that material overnight.

CHAIR: We will.

20 MR HOFFMAN: It's State of Origin!

MS EASTMAN: Maybe I might reinstate that it should be done by tonight. Thank you, Chair. We will adjourn to tomorrow.

25 CHAIR: I should say, I don't regard the State of Origin as an excuse. It would be different if it was the AFL Grand Final. We will adjourn until 10 o'clock Adelaide time tomorrow.

30 **HEARING ADJOURNED AT 3.59 PM UNTIL 10.00 AM ON THURSDAY,
10 JUNE 2021**

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