



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**

10:54 AM, THURSDAY, 10 JUNE 2021
DAY 4

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

CHAIR: Good morning, everybody. I apologise for the delay in the commencement of the hearing in open session today. The delay was due to the necessity to deal with an application that had to be addressed in a closed session of the Royal Commission.

5 I mention that Commissioner McEwin, who has been participating in the hearing in Adelaide, for personal reasons has had to return to Sydney, and he is sitting with me in the Sydney hearing room today.

10 We commence with an acknowledgment of country. We wish to acknowledge the Kurna people of the Adelaide Plains, the traditional custodians of the land upon which the Royal Commission is holding its hearing in Adelaide this week and to pay our respects to their Elders past, present and emerging. We also acknowledge the Gadigal people of the Eora Nation, upon whose lands Commissioner McEwin and I are participating in the hearing, and the Wurundjeri people of the Kulin Nation,
15 from whose lands Ms Bennett of Counsel is participating. We pay our respects to their Elders past, present and emerging. We also pay our respects to all First Nations people attending the hearing in person today as well as those who may be viewing the hearing on the livestream.

20 Yes, Ms Eastman.

MS EASTMAN: Thank you, Commissioners. Our next witness is Mr Graeme Head AO, who is the Commissioner of the National Disability Insurance Scheme Quality and Safeguards Commission. He is here in the South Australian hearing room.

25 CHAIR: Good morning, Mr Head. Thank you for once again coming to the Royal Commission to give evidence. If you would be good enough to follow the instructions of the Associate, she will administer the affirmation to you.

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GRAEME HEAD AO, AFFIRMED

35 CHAIR: Mr Head, as you probably appreciated from what I have already said, Commissioner McEwin is sitting with me in the Sydney hearing room, Commissioner Bennett is in the same room with you in Adelaide, Ms Eastman, who will be asking you some questions, is also in the Adelaide hearing room. Yes, Ms Eastman.

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EXAMINATION-IN-CHIEF BY MS EASTMAN

45 MS EASTMAN: Mr Head, this is the fifth occasion on which you have given evidence. Would you excuse me by not asking you, for the fifth time, about your qualifications, experience and role as the Commissioner. You have prepared a statement for this proceeding, and that is dated 4 May 2021?

MR HEAD: That is correct.

5 MS EASTMAN: There is one amendment you wish to make to the statement, to paragraph 270(d). I understand that the solicitors and counsel appearing for the Commonwealth parties are preparing a document that will assist us in relation to that amendment.

10 Commissioners, I might take you to the particular amendments in due course.

Apart from dealing with that amendment, the contents of this statement are true?

MR HEAD: Yes.

15 MS EASTMAN: There are a number of topics that I want to cover today, and primarily, your statement addresses the work under taken by your Commission in engaging Mr Alan Robertson and the preparation of the Robertson Report following the death of Ann Marie Smith.

20 Before we turn to those matters, I want to ask you about the role of your Commission in relation to some of the evidence we have heard over the course of this week. The Royal Commission has heard that if a person is an NDIS participant but receives in-kind services from the South Australian Department of Human Services and their accommodation may be provided by the Department, then if something occurs within
25 their accommodation, they don't have an avenue of complaint to the Quality and Safeguards Commission; is that right?

MR HEAD: That's correct. The Commission's jurisdiction does not include what are
30 termed as in-kind supports because they are not NDIS supports within the meaning of the legislation. But in-kind supports are a feature of transitional arrangements and I think Mr Hoffman yesterday indicated the progress in Victoria and the timeframe for South Australia.

35 MS EASTMAN: But it is possible, if someone is an NDIS participant and they receive funding for support services, for example attending a day program, that when they attend a day program and that day program is provided by an NDIS registered provider and something occurs at the day program, then they have an avenue of complaint to the Quality and Safeguards Commission; is that right?

40 MR HEAD: Yes, that's right. NDIS supports, within the meaning of the Act. The Commission, since December last year has had jurisdiction nationally. In-kind supports we don't. But anything that is an NDIS support provided by an NDIS registered provider, or indeed, an unregistered provider, can be notified to us in the form of a complaint or if a matter is a reportable incident in those circumstances, a
45 requirement to report is there.

MS EASTMAN: We have seen that circumstance arise in relation to Mr Daniel

Rogers and you have addressed some issues concerning Mr Rogers in your statement. Before I ask you to deal directly with Mr Rogers' circumstances, from a practical perspective, how does the Quality and Safeguards Commission navigate issues such as this, where a person's accommodation is provided by the State, the support services may be provided by a registered NDIS provider, and an incident might occur that would be characterised as a reportable incident for the purpose of the registered service provider having to report to you, but the circumstances in relation to the incident might have occurred outside the context of the provision of services by the registered service provider?

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Sorry, that's a bit long-winded. But you may have a situation where there's a demarcation dispute, is there, as to how far you can go to investigate whether or not an injury has occurred or there has been some failure of the service provider to meet the relevant standards?

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MR HEAD: Well, it's very difficult to generalise across the range of incidents we see. But providers --- and that is the case here where we receive --- even though we did not have jurisdiction, we received a report of this matter and the Commission, after assessing the matter, checked with DHS --- sorry, the Department of Human Services in South Australia, in respect of their own investigation of the matter. We provide guidance material to our staff. I think, in my witness statement for Hearing 13 I outlined some of the improvements that have been made in respect of guidance for staff on complaints management and reportable incidents management. So if something comes to us and it's out of jurisdiction and that view is formed by assessing the matter and, as is the case here, checking that the body that did have jurisdiction for it was aware of the issue. So --- but, as I say, these issues around in-kind supports are a function of the transitional phase and is quite --- Mr Hoffman indicated yesterday, that of course Victoria has completed that and there is a timeframe for South Australia.

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MS EASTMAN: If I can ask you to turn to page 74, starting at paragraph 298. Commissioners, a copy of Mr Head's statement you will find in hearing bundle C behind tab 1. This, Mr Head, is the part of the statement where you deal with the NDIS Quality and Safeguards Commission response to the injuries to Mr Daniel Rogers.

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As you have said, you are not personally aware of the circumstances, so in preparing this part of your statement you relied on reviewing the relevant records; is that right?

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MR HEAD: Yes.

MS EASTMAN: Someone has assisted you in the process of reviewing those records and addressing what the records tell us in your statement; is that right?

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MR HEAD: Yes.

MS EASTMAN: You say at paragraph 304 that on two dates, 26 and 28 February

2019, the Commission received emails from the provider of Mr Rogers' day program and that notified the Commission of a reportable incident in a category described as a serious injury to a person with disability. I think you have given evidence on previous occasions, but to remind and assist the Commissioners, with respect to reportable incidents, what is the process in terms of giving a characterisation to the nature of the injury or the issue that has to be reported?

MR HEAD: Well, essentially the legislation itself sets out the types of matters that need to be reported to the Commission in both the Act and the rules and our own staff --- and indeed providers that we register --- have guidance material about how different types of matters are characterised. Our role in respect of reportable incidents is to oversee the way providers manage reportable incidents, including whether or not the matter is a matter that needs to be referred to the police or another regulator, for instance.

MS EASTMAN: The nature of the injury was bruising. As you say in paragraph 304, staff at the day program observed this injury when Mr Rogers arrived at Windamere Park on 18 and 19 February. Is there a concern for you that it has taken from 18 and 19 February for a report to be made to you and that report has not occurred until 26 or 28 February?

MR HEAD: Well, I think the issue here is the extent to which Windamere Park would have been actually required --- what I assessed to have happened here is that Windamere Park have notified us of this matter and may not, in a technical sense, have been required to, in a sense that it was something they assessed as being present at the point that Mr Rogers arrived. So we do a lot of work, and I think I've talked about this --- I'm not sure in which hearing --- about working with providers who are obliged to report to us on reporting timeframes and we take regulatory action when people don't meet reporting timeframes. This is a report that came to us where it's fairly clear, based on the documents, that it was a report out of jurisdiction for us. But if the point you're making generally is about reporting timeframes, then that is something that the Commission is quite pointed about in dealing with registered providers and has had a national compliance action in respect of reporting times.

MS EASTMAN: I'm asking you this because we are going to come to the detail of your statement around what you call as natural supports.

MR HEAD: Yes.

MS EASTMAN: Would it not be the case that for someone in Daniel Rogers' situation, if other than his accommodation and his family, his engagement with the broader community might be attending a day program, those who work at the day program are those extra sets of eyes, aren't they?

MR HEAD: Yes, they certainly can be.

MS EASTMAN: Reading the statement, am I right in understanding that what

happened on this occasion is that the staff at Windamere Park asked Daniel what happened and he said, "I don't know". And the staff at Windamere Park had formed the view that the incident had not occurred on their premises and for that reason the reporting obligations didn't arise.

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MR HEAD: That's my understanding, but they notified us anyway, although several days later, and we contacted the Department of Human Services in respect of their awareness of this issue.

10 MS EASTMAN: In this case, have you seen any documents in your review that would allow you to be comfortable that the staff at Windamere Park could be confident that the bruising did not occur on their premises? In asking you that question, I'm not suggesting that it did, I'm not suggesting that there's anything that the Windamere Park staff did that was wrong. I'm just interested in the sense of how
15 do the staff and that service provider say "It didn't happen here"?

MR HEAD: Well, based on my understanding of the events, that was an assessment they were able to make because they were aware of the issue early on, when Mr Rogers arrived. I don't have the documents in front of me in respect of this
20 reportable incident so I can't refer --- and I can't recall the specifics of all of those documents, they don't form --- I think they have been produced to the Royal Commission but they don't form a part of the exhibits to my witness statement.

MS EASTMAN: Looking at paragraph 103, what was reported was ---
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MR HEAD: 303?

MS EASTMAN: Sorry, 305. What was reported on this incident, there was something a little unusual about it, wasn't it? That the bruising was observed but on
30 closer inspection it appeared that some sort of colour had been applied to Mr Rogers' back which had the appearance of paint or dye. Then the staff used a wet cloth and that removed some of it and underneath the dye or the paint, it looked like bruising. Although, as your report says, that's not entirely clear. That is a circumstance that should be a trigger in itself? If what's suggested is that someone has painted over or
35 sought to dye a major bruise on somebody's body, wouldn't that itself be a trigger in addition to the bruising?

MR HEAD: It may well be, yes.

40 MS EASTMAN: In terms of the actions that the Commission could take, you have set out in your statement the chronology in terms of notifications, the 24-hour and then the five-day notification process. It's a case, isn't it, that Mrs Rogers also made a report?

45 MR HEAD: That's my understanding, yes.

MS EASTMAN: Just looking at paragraphs 309 and 310, are we right in

understanding that the Intellectual Disability Accommodation Association, that is also a registered NDIS provider, notified the Commission of the reportable incident in the category of serious injury, and that was the way in which Mrs Rogers made the claim; is that right?

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MR HEAD: That's my understanding, yes.

MS EASTMAN: And so is it a circumstance where the Commission has received a report from Windamere Park and a report from the accommodation association, and there had been some telephone, I think, contact with Mrs Rogers, has there been a process where the Commission became aware that the South Australian Police had also been notified and, if so, how did you come to know that?

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MR HEAD: Can you ---

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MS EASTMAN: I'm looking at paragraphs 309, 310 and 311.

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MR HEAD: I think in paragraph 311 it indicates that the notification form indicated that the police had been informed of the incident and provided the police event number.

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MS EASTMAN: Can the Royal Commissioners understand that to the extent that the Commission became aware that there had been a police report, that had come through the Disability Accommodation Association notification; is that right?

MR HEAD: That's my understanding, yes.

MS EASTMAN: It had not come from South Australian Police to the Commission?

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MR HEAD: No. That's not my understanding. And normally when we're overseeing a reportable incident that is within scope, one of the things that we would check, that staff would check with the provider, is whether or not a matter that alleges criminal conduct had been reported to the police, as part of the oversight, and collect the relevant number.

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MS EASTMAN: Is there information sharing between the police at the local State level and your Commission? Is there a protocol for sharing that information?

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MR HEAD: Yes. We have progressively been implementing information-sharing arrangements with State and Territory agencies since the Commission was established and while those arrangements are not a formal requirement of the Act, they assist staff when they are dealing with a matter in being able to say to colleagues in another agency, "We have an information-sharing agreement with a department or the relevant police force". And there remain agencies --- there's a sort of ongoing process of reviewing that. We have arrangements in place with the agencies that we need to. So information sharing is subject to the relevant provisions of the Act and the information sharing arrangements assist to make that as smooth a

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process as possible.

MS EASTMAN: Following through the statement, by 20 March 2019 --- this is paragraph 317 --- the reportable incidents officer recommended that the matter be
5 closed and no further action was required, and the reason for that was that the provider had notified the incident as a third party and the provider as the provider of Specialist Disability Accommodation only was not required to safeguard the participants. So the closure assessment included information that the South
10 Australian Department of Human Services were investigating the incident, as the in-kind funding provided to the participant. Pausing there, are we to understand that the reason that no further action was taken was because somebody formed a view within the Commission that another agency was undertaking an investigation?

MR HEAD: That's right. My understanding, from the information on this particular
15 matter, is that the view was formed that this matter related to the provision of in-kind supports and that the Department of Human Services was investigating.

MS EASTMAN: Ultimately, a decision was made that the matter be closed on the
20 basis that, with respect to Windamere Park, that Windamere Park had done what it was required to notify. Is it the case that no further investigation was undertaken because of Windamere Park's assessment that the injury had not occurred at the Park?

MR HEAD: And that DHS was investigating. We had no evidence to suggest that
25 the injury had occurred at Windamere Park. As I understand it, DHS were investigating. The provider had notified us, even although there was a question about whether they were technically required to do that.

MS EASTMAN: Windamere Park remains an NDIS registered provider and
30 I assume continues the day programs. We know from Mrs Rogers' evidence that Daniel is no longer attending. Was there any follow-up --- you haven't mentioned this in your statement, but was there any follow-up with Windamere Park on any issues around how it should report, when it should report and how you make an assessment on an injury of the kind that was present on Daniel's body when he came
35 to the Park?

MR HEAD: I haven't been asked those specific questions in preparing my witness
statement so I couldn't speak specifically to follow-up action with Windamere Park. But it is, as I've indicated before, part of the work of the Commission at the moment,
40 particularly as we're still in a phase where new regulatory requirements are less familiar to people than they might be in a system that's 10 or 15 years old, so there's a lot of direct action with providers around reporting obligations, around reportable incidents generally. I've referred to earlier this morning and in previous evidence, I believe too, one of the national compliance initiatives, which is about providers
45 meeting their reporting obligations. And that's --- that's in recognition of the fact that reporting of reportable incidents is a major tool for the Commission to be aware of how providers are responding to critical incidents. But I couldn't give you specifics

on this matter.

MS EASTMAN: You are aware that there is debate, is it appropriate for the same accommodation service provider to also provide the living supports, and this is an
5 issue that comes up in relation to Mr Robertson's report and also sole providers. But
looking at this situation, where you have got one agency providing the
accommodation, you have another service provider providing the day services, if the
day service says, "He came with a bruise, we didn't do it", where is the safeguard
against multiple service providers providing services to a person who is an NDIS
10 participant, and each of the service providers going, "It's not us. He had it before he
came here." Or "We didn't see it until later." Is there a risk of fragmentation in
terms of being able to identify what is a reportable incident, who has responsibility to
report and how do you ensure that multiple service providers don't allow for gaps to
occur, where incidents are not properly reported because somebody says, "It didn't
15 occur on our time or in our premises"?

MR HEAD: There was a lot in that. Am I answering the question about the extent to
which I think there's a risk of fragmentation? So what I would say about this
20 situation is the difference here between what we would more typically deal with in
the Commission is that you have more than one body responsible for regulation in
respect of this matter, because we are dealing with in-kind supports. Whereas ---
and, again, that's a function of the tail of some transitional issues. More commonly,
the Commission would be dealing with incidents where we were regulating all of the
providers and where, depending on the nature of incidents that had been reported and
25 other intelligence we have, we might form a view about a matter that it was unclear
where an issue had arisen, and we would make a decision based on the material
before us about how to assess where the problem had occurred and what action the
Commission might take. And it is not uncommon to see more than one report about
the same incident from different providers and the Commission has the capacity to
30 investigate matters through an array of its functions. So I think, in terms of
fragmentation, I would just restate that this is unusual because it relates to in-kind
arrangements where you have more than one regulator.

MS EASTMAN: It is often the case, isn't it, that the unusual or the exceptional often
35 becomes the area where a crisis occurs or someone slips between the gaps? How do
you guard against that?

MR HEAD: Well, I think I outlined previously that, now that the Commission has
been operating for almost three years, we have a much better body of experience
40 around both complaints handling and reportable incident handling, much more
experience in interacting with particular providers, and staff gaining significant
familiarity with the people and the organisations they are dealing with. We are
improving constantly our data and analytics capability, improving guidance to staff.
I talk --- and I'm sure we will speak at some point this morning --- about some of the
45 improved tools we've got for staff around helping them have a clearer perspective of
a particular participant, which will help them see whether there have been other
reportable incidents, other complaints, when a matter comes in.

So we, as a relatively new organisation, are very alive to the fact, and an organisation that is using a new regulatory system, are very alive to the fact that we need to be reviewing our approach based on experience and actively educating our staff. For complaints staff and reportable incidents staff, judgment is everything and a lot of our effort goes into assisting people to make complex judgments around scenarios that it may not always be obvious what's happened.

MS EASTMAN: Commissioners, that concludes just that small part of dealing with Daniel Rogers' experience through the reportable incidents made. I'm not sure if the Commissioners have any questions about that discrete part of Mr Head's evidence?

CHAIR: The only point I would make is just to clarify something, just to ensure the people following appreciate this: that there has been a reference to the Intellectual Disability Accommodation Association. That was the name of the, in effect, proprietor of the premises in the right of South Australia. The name of that organisation has changed from time to time. I thought it might be worth just noting that because otherwise people might not pick that up.

I will ask Commissioner McEwin first, do you have any questions?

COMMISSIONER McEWIN: No, thank you.

CHAIR: Commissioner Bennett?

COMMISSIONER BENNETT: In response to Senior Counsel's question about whether Windamere should have reported earlier, you have said that it was a jurisdiction between jurisdictions call. Is there an issue that perhaps the skill set of those type of programs, the staff skill set, isn't as good as it should be and that there needs --- that they may not be as well equipped to understand their obligations or there is insufficient scrutiny, external scrutiny, for day programs?

MR HEAD: I couldn't draw that inference from the materials I reviewed in respect of this. Obviously a big part of what the Commission does is work to educate providers on their responsibilities. I've referred in the Royal Commission previously to some of the work we have done, for instance, through the worker orientation module, which orientates workers across the NDIS in respect of the NDIS Code of Conduct and a range of obligations that providers have. That resource I think has been used by --- I would have to get the precise numbers, but I think it is over 400,000 people now, that's a 90-minute online training exercise. Is there an ongoing need to educate people around relevant matters? Yes. Is the Commission actively involved in that? Yes. And we do a lot of work on generally the issue of capability.

I think I mentioned in the last hearing, or it was certainly referred to I think in my witness statement, that we've recently completed a workforce capability framework for the NDIS workforce which deals with both the core capabilities that people require to work anywhere in the NDIS, but also links that framework to more

specialist capabilities that people require. So we see the Commission as having a role in supporting capability uplift across the sector for workers and providers.

5 COMMISSIONER BENNETT: I'm sure counsel is going to go through some of that material and I might want to revisit your actual understanding that the nature of some providers creates a greater risk for people with disability. Thank you.

CHAIR: Yes, Ms Eastman.

10 MS EASTMAN: Commissioners, I'm conscious of the time and that we had initially scheduled to have the morning tea break somewhere between 11.15 and 11.30. I know this morning has been a little disrupted for those following the broadcast. If it's appropriate to have the morning tea adjournment now, we are happy to do so. I'm equally in the Commissioners' hands and those who organise our affairs.

15 CHAIR: If Mr Head is comfortable with continuing, it might be a good idea, since effectively we haven't been going very long with Mr Head, to continue and then we can break next at lunch and you can determine when it's appropriate to do so.

20 MS EASTMAN: If Mr Head and those in the hearing room, the interpreters and others, are all agreeable to that, I'm very happy to continue.

MR HEAD: That's fine. I'm fine.

25 MS EASTMAN: Alright. I now want to move to the circumstances of Ann Marie Smith's death. I will give the warning that I have given during the course of the week, that some of this evidence may be distressing.

30 Mr Head, it's the case, isn't it, that Ms Smith was an NDIS participant at the time of her death?

MR HEAD: Yes, that is the case.

35 MS EASTMAN: And she died on 6 April 2020 in what you have described as appalling circumstances?

MR HEAD: That's correct.

40 MS EASTMAN: And in terms of the actions taken by the Commission following her death in relation to the service provider, you have set out those matters at paragraph 10 and paragraph 11, and I don't need to take you in any detail beyond what you have set out in those paragraphs.

MR HEAD: Yes, that's correct.

45 MS EASTMAN: With respect to the actions taken, would that represent the full suite of the actions that can be taken by the Quality and Safeguards Commission in

relation to service providers?

MR HEAD: No, that describes the actions taken at the date that I signed my witness statement and I think I indicate in --- I've indicated at some point there that the investigation is ongoing, in paragraph 11, and the Commission is able to take actions in respect of matters if it determines investigations.

MS EASTMAN: On the basis those matters are ongoing, I don't wish to ask you any further questions about those matters. I want to turn to the circumstances in which I assume you decided to appoint Mr Robertson SC, a former judge of the Federal Court, to lead an independent inquiry into matters relating to the death of Ms Smith. You have included in the material for the Royal Commission --- Commissioners, this is in hearing bundle C behind tab 2 --- a copy of the terms of reference.

MR HEAD: Yes.

MS EASTMAN: The approach that you took was to ask Mr Robertson to:

1. *Identify and describe, for each of [two particular periods of time].*
 - (a) *the nature and level of supports and services provided to Ms Smith as a person with disability;*
 - (b) *the extent to which any mechanisms that might have guarded against the particular vulnerability of Ms Smith, such as guardianship in relation to any lack of capacity, were available and were accessed by or on behalf of Ms Smith or applied or sought to be applied in relation to Ms Smith; and.*
 - (c) *the points, if any, at which concerns about Ms Smith's safety could or should have been identified and responded to by service providers, government agencies or regulators*

So that broadly is the subject of the terms of reference.

When you asked Mr Robertson to undertake this investigation, the primary purpose was about the NDIS Commission. You were not seeking to ask him to specifically investigate the NDIA, for example?

MR HEAD: No. The terms of reference are as set out by me. The Commission has been implementing what is a new regulatory framework and I wanted to understand the extent to which the regulatory framework or how the regulatory framework had performed in respect of this matter.

MS EASTMAN: The purpose of this investigation was that it be independent of any Government or any agencies or any service providers; is that right?

MR HEAD: Yes. It was to respond to the terms of reference and that the inquiry be conducted independent of any direction from any other party and that informed my decision to appoint a former judge to the process.

MS EASTMAN: You didn't direct Mr Robertson to conduct the investigation in any particular way? You left it to his experience; is that right?

5 MR HEAD: That's right.

MS EASTMAN: You're aware, aren't you, that he received a number of submissions and, as his report indicates, he interviewed a number of people, including representatives from various agencies?

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MR HEAD: Yes.

MS EASTMAN: He provided to you a report on 31 August last year and there's two versions of the report. There is a full version of the report, which may record matters that would impact on any other proceedings, be they coronial proceedings or police investigations. But there is also a version of the report which you were prepared to make public and that has some redactions that ensure anything Mr Robertson has opined on are not going to prejudice any criminal proceedings; is that right?

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20 MR HEAD: That's correct, and Mr Robertson determined what those redactions would be.

MS EASTMAN: I think, Chair, my request for a morning tea adjournment and your decision to continue has been thwarted by the fact that our transcript is now down, and I understand we will need an adjournment to repair the transcript.

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CHAIR: Very well. Do we have an idea as to how long we will require for the transcript to undertake a process of rehabilitation?

30 MS EASTMAN: Five minutes, but I usually give a five to 10-minute buffer.

CHAIR: I'm sorry, Mr Head, that having just picked up steam, we have to temporarily adjourn. We will resume at 11.50.

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ADJOURNED [11.36 AM]

RESUMED [11.50 AM]

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CHAIR: Yes, Ms Eastman.

MS EASTMAN: Thank you. I think we were up to the receipt of the Robertson Report in two parts. In terms of what we might call the public version, that's the version that we are working with at the Royal Commission.

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MR HEAD: Yes.

MS EASTMAN: You provided a copy of that version to the Minister for the NDIS?

5 MR HEAD: Yes.

MS EASTMAN: And also to Mr Hoffman?

MR HEAD: Yes.

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MS EASTMAN: And you wanted to make the point that with respect to the overall Robertson Review, Mr Robertson did not find or identify any actions of the NDIS Commission that were causally related to the neglect or subsequent death of Ann-Marie Smith. Is that right?

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MR HEAD: That's correct.

MS EASTMAN: The Robertson Review did not identify any significant failings in the nature or timing of the steps taken by the NDIS Commission to respond to her death?

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MR HEAD: That's correct.

MS EASTMAN: But Mr Robertson did make some observations and recommendations around aspects of the NDIS scheme?

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MR HEAD: Yes.

MS EASTMAN: And some of the Commission's processes in terms of identifying risk of participants who might be described as at risk or vulnerable; is that right?

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MR HEAD: That's correct.

MS EASTMAN: Before we get to the detail of Mr Robertson's report, a few days before you commissioned Mr Robertson to undertake his investigation, you were aware, weren't you, that the South Australian Minister for Human Services had established a Safeguarding Task Force?

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MR HEAD: That's correct.

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MS EASTMAN: And the purpose of the Task Force was to examine current gaps in oversight and safeguarding for people living with disability in South Australia and the Safeguarding Task Force Terms of Reference required it to, among other things, consider gaps in safeguarding arrangements for people with disabilities in South Australia, arising from the policies and practices of the National Disability Insurance Agency, the NDIA, the Quality and Safeguards Commission, and the State Government instrumentalities?

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MR HEAD: Yes.

5 MS EASTMAN: In terms of both those inquiries being conducted at the same time, did you have any concern about the South Australian Task Force considering gaps in relation to the policies and practices of the Commission?

10 MR HEAD: Well, it was a matter for the South Australian Minister to determine the characteristics of that exercise. I think I wrote to the Safeguarding Task Force to raise some matters that I thought I needed to raise, to assist them after they published their interim Task Force, and that was my only input to that process.

15 MS EASTMAN: So you have provided a copy of that letter behind tab 3 in hearing bundle C. I don't need to take you to that. But you didn't have any objection to a South Australian Government Task Force investigating matters that concerned areas of your authority?

20 MR HEAD: I didn't raise any objection to the Task Force and the work that it was doing.

MS EASTMAN: And you yourself did not make any specific submissions to the Task Force process, did you?

25 MR HEAD: No, that is correct.

30 MS EASTMAN: It's just the letter that you have included in your evidence that point out some particular aspects of the legislation and how those legislative frameworks have a bearing on the Task Force identification of what they call safeguarding gaps; is that right?

35 MR HEAD: That's right. I don't believe I was requested to make any kind of submission when the interim report was published. I reviewed it and felt it would be helpful to the Task Force to identify a number of things that I felt were not necessarily correctly considered in the report. But I think my witness statement points out that I think appeared to be treated as a response to the final report rather than the interim report.

40 MS EASTMAN: The final report was released on or around 28 September 2020? So that was a month or so after Mr Robertson's report; is that right?

MR HEAD: I'm not entirely aware of the date they released their report, but that sounds right.

45 MS EASTMAN: One matter you identified early in your statement is this topic of vulnerability and risk. Do we take it from your statement that the language and the use of the expression "vulnerable" or "vulnerability" has caused some concern within the disability sector? Is this something that (a) you're aware of and (b) what is your

approach to dealing with those concerns?

MR HEAD: Yes, I am aware of this. And I'm aware of it both in terms of some of the commentary that I've referred to in my witness statement that occurred at the time
5 I released Mr Robertson's report. But, subsequently, this issue has also surfaced in the consultation that I refer to in my witness statement about the next stage of our regulatory response to dealing with sole workers and I think the key point that I set out there is that people expressed to me very strongly that they do not view this as a matter of semantics. They think in terms of us understanding risk and developing
10 systems that identify and respond to risk, we must avoid a suggestion that vulnerability is in some way innate rather than a function of the way a person interacts with the world that they are living in.

MS EASTMAN: When we look at how the expression "vulnerable" is used, it's the
15 case, isn't it, that simply having a disability does not make a person vulnerable?

MR HEAD: That's correct.

MS EASTMAN: That's a point I think raised quite clearly in Mr Robertson's report?
20

MR HEAD: Yes.

MS EASTMAN: It's not in a sense the person themselves who is vulnerable, but it is the circumstances that may surround that person and the combination of
25 circumstances at a given point in time that create vulnerability?

MR HEAD: Yes.

MS EASTMAN: And so when we are looking at vulnerable, we are not using it as
30 an adjective to describe a person or a participant, but we should be careful in the way we use the language to use vulnerability to understand that we are looking at a combination of circumstances that might expose a person to a greater degree of risk of violence, abuse, exploitation, neglect, harm, in the given circumstances? Is that a fair way of trying to understand your concerns about this?
35

MR HEAD: Yes. I think the Commission thinks about, you know, what are the particular issues for a person that are connected to an aspect of their disability. We also think about the circumstances of a person's life, whether they have strong natural supports, whether they are connected to the community, a whole range of things that
40 might influence whether or not they are at heightened risk. And we also think about the nature of the supports that they are receiving and whether the intensity of those supports, where those supports are received, might again heighten risk. And so it's a combination of those factors rather than a focus on the nature of a person's disability exclusively being what drives an understanding of risk.
45

MS EASTMAN: There is no specific statutory definition of "vulnerable" or "vulnerability" in any of the Commonwealth legislation concerning your functions or

the NDIA generally; is that right?

MR HEAD: I don't believe so, no.

5 MS EASTMAN: Are you aware as to whether or not there is now a common meaning or understanding about what vulnerable is in this context?

MR HEAD: There's not always a common sort of language that's used. But I think the work that I outline in my witness statement that we are doing with the National
10 Disability Insurance Agency points to a common and evolving understanding, not just of the nature of risk but how the different parts of the system can work to identify and support the management of risk.

MS EASTMAN: Do you accept that there is some sensitivity for people with
15 disability in terms of who decides whether they may be vulnerable and then giving them the identity of being a vulnerable participant?

MR HEAD: That is right.

MS EASTMAN: If a person with disability may meet the characteristics of being
20 vulnerable but is not happy with that description or that adjective being used around them, what alternatives are there in terms of the language that we use to describe the circumstances in which a person may become vulnerable but not that that becomes their identity? How do we navigate that from the perspective of looking at the things
25 we are about to look at, which is identifying vulnerability and risk?

MR HEAD: My observations are that there's not sort of consensus on how to think or talk about some of these issues amongst the people that I talk to, but there is a strong preference --- and again this has come out in the consultation work that
30 I referred to around sole workers/sole carers --- that there is a preference for talking in terms of risk and as part of that there is a strong signal that it should not be assumed by the people who are administering regulation that people with disability are any less inclined to want to take some of the risks that people without disability may feel free to take in their life, and that there's an expectation that there will be
35 proper engagement around those questions and proper consideration of what choice and control really means, as well as thoughtfulness about how to deal with risk in some aspects of the system that clearly needs to be focused on and properly treated.

MS EASTMAN: One of the issues here is, isn't it, that you get the creep of the
40 protectionist model coming in if you are using language that tends to characterise somebody as being weak or vulnerable or susceptible; is that right?

MR HEAD: That's right. It can also, I think, as a consequence of that, cause
45 people's focus to drift from the things that are actually generating risk to the person with disability, and the very strong sense that I have is that people want the focus on those situations that generate risk, in particular the circumstances surrounding a person and indeed the nature of the supports they receive, rather than a view that, as

I said earlier, that all of the risk is innately connected to a person's disability.

5 MS EASTMAN: Those in the sector might say, well, we have got this Convention on the Rights of Persons with Disability that give us the language that helps us move away from adjectives such as "weak" or "vulnerable" or "susceptible"; why isn't it that we are not looking more to the language from the Human Rights Convention and human rights-based language to help us navigate some of these issues?

10 MR HEAD: Well, generally speaking, I think we are, in the work the Commission does, reaching out to participants, educating providers. The focus on how we talk about quality and safeguarding is around a rights-based approach, and we try to use language in the way we talk to providers, the way we interact with people, that is strongly connected to that, and I think even in the approach we have taken to the regulatory responses that I discuss in response to question 2 in my witness statement,
15 has been very focused on understanding the nature of risk, the continuum of risk in certain situations, and designing the regulatory interventions in a way that is properly responsive to those things, rather than taking a very blunt, one-size-fits-all approach.

20 MS EASTMAN: I'm not being critical in saying this to you but if you look at the Terms of Reference for Mr Robertson's review, you haven't asked him, for example, to look at it through the lens of the CRPD and to say, in undertaking a review, would he be able to form a view on whether or not any of Ms Smith's rights as they are described in the CRPD were in jeopardy or had been violated in any particular way? Is the reason for that that that's not really a function that arises expressly from your
25 legislation and your powers?

MR HEAD: In section 181 of the Act, of course, my core functions include upholding rights. The Terms of Reference for this review were developed by me, with input from some of my staff, to undertake an exercise that I thought was
30 extremely important in the circumstances of what had happened to Ms Smith, where I wanted to understand, for a new regulatory body, very particular lessons that may be useful in developing the Commission's approach to regulation. And that was my focus in preparing the Terms of Reference. But I do accept that our work is assisted by and much of our work is very concretely anchored in the articles of the charter.

35 MS EASTMAN: As I said, I'm not being critical in asking you that. But when we are on this topic of language and how we describe people, what seems to underpin the way in which the CRPD should operate is also for us to be conscious of language and shift away from language which might have reflected some earlier models of
40 disability into a more rights-based model and it might be suggested, unless we start using that rights-based language, we are not starting to change the way in which we have the conversation. Do you have any views on how do we ensure that we start to look at these issues from a rights-based language, rather than found them in language like vulnerability, which takes us back to sort of concepts of protection?

45 MR HEAD: I think probably the best example in work that the Commission has produced is a lot of the work that is connected to our behaviour support function,

which speaks very explicitly in terms of a rights-based approach and where, really over the last couple of years, for the first time in this country there's been an emergent approach around behaviour support and the use of restrictive practices, which of course is very, very linked to a person's rights. And I think the Commission
5 takes great care in all of its work, both in the way we work in our own right but also with States and Territories, the way we work with participants, providers and professionals, to speak very concretely in terms of a rights-based approach.

10 MS EASTMAN: I promise I will get to the Robertson recommendations in a moment. But before I do so, I want to ask you about this part of your statement where you say that following the review there has been work between the Department of Social Security and the NDIA, and one of the aspects of the work is developing what you describe as a vulnerable participants framework.

15 MR HEAD: Can you take me to the paragraph?

MS EASTMAN: This starts on page 6. I'm trying to summarise what's in paragraphs 38 and 39, and then in paragraph 40 you are referring to the NDIA's development of its vulnerable participants framework. Do you see that?
20

MR HEAD: Yes.

MS EASTMAN: Mr Hoffman gave some evidence yesterday, and we raised with him that he hadn't used this expression "vulnerable participants framework" but he
25 did explain in his evidence yesterday about the work done by the NDIA during the course of the COVID-19 pandemic to identify vulnerable participants and that had led on to some broader and ongoing work. I think you heard some of his evidence yesterday?

30 MR HEAD: Yes.

MS EASTMAN: But you have used this expression "vulnerable participants framework". So is that a term of art or is that a convenient term that you have used in your statement?
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MR HEAD: I've used that term in my statement because that's how the work has been described in our interactions with the NDIA. But I should say that, as I've referred to that regular process, we have --- working on issues related to the recommendations in the Robertson Review, and that's a process that's evolving quite
40 quickly and that includes an evolution in the way various elements of that work are described.

MS EASTMAN: Are we right in understanding that the genesis of the vulnerable participants framework is the work done to identify NDIS participants who may be
45 vulnerable to the COVID-19 virus and risk in relation to contracting the coronavirus? Is that right? So it has a risk focus around health issues?

MR HEAD: The initial work was connected to the response to COVID and the work we are doing jointly now builds on that but takes account of other risk factors that are significant for both the agency and ourselves, in responding to the sorts of issues that Mr Robertson raised in his report.

5

MS EASTMAN: At paragraph 41 of your statement, on page 7, this is where you tell the Royal Commission this work has identified potentially at-risk participants on the basis of the types of supports received and other risk factors. You will see that you have characterised that as part (a) and part (b). Looking at the part (b), "other risk factors", are those risk factors --- looking at them, they all seem to have the characteristics of people who may be at a greater risk of contracting the coronavirus?

10

MR HEAD: Those risk factors, as I understand it, are derived from the COVID work and the matters that I detail in paragraph 44, but also further on in this section of the statement, relate to some of the emergent work with the agency throughout that joint program.

15

MS EASTMAN: Then coming back to part (a) in paragraph 41, these are the "types of supports received". So this is identifying at-risk participants on the basis of the nature of the supports; is that right?

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MR HEAD: This is, in part (a) it relates to the types of supports, and this is of course the COVID outreach, which was very specifically a broad outreach. Subsection (b) of that deals with a number of other factors, including demographic factors.

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MS EASTMAN: Part (a) is very much looking at either the supports or the location in which a person may spend their day or time. So you have got included here "participants in Australian Disability Enterprises". How would something like that come into being risk factors? Is that a situational risk or is it something to do with the nature of the supports?

30

MR HEAD: These are the risk factors, as I understand it, that the agency developed in respect of their COVID outreach that was looking at a range of things, including settings, given the nature of the pandemic. So I can't really comment in depth about the decisions about what was included here, except to say that this is, as I understand it, what was used there and I've outlined further on in the statement those things that we are focused on in the next stage of this work.

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MS EASTMAN: Looking at (a), that list is intended to identify what are most critical areas in terms of situational, so from participants in residential aged care and then working through from most critical to least critical, which is the catch-all, in (x), of all other participants; is that right?

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MR HEAD: That's my understanding.

45

MS EASTMAN: In terms of working through this model or matrix, one takes the types of support and matches that with the other risk factors in paragraph (b); is that

right?

MR HEAD: I think so.

5 MS EASTMAN: So that seems --- please let me know if you disagree --- to have a very strong focus on risk factors around COVID-19 and contracting the virus. But the vulnerable participants framework is stretching that out a little bit and not just looking at it through a health perspective. Do you agree with that?

10 MR HEAD: In fact it's focusing in on other aspects that may contribute to a person's heightened risk and I talk later in the statement about other aspects, particularly connected to natural supports that may amplify that risk.

MS EASTMAN: Looking at paragraph 44 of your statement on page 8, this is where
15 you tell the Royal Commission that you understand the vulnerable participants framework currently includes the following themes, definitions, with data indicators for each theme, and that identifies the areas of "Housing", "Financial", "Family", "Domestic violence situations", "Health", "Plan issues" and "Provider issues". That seemed to reflect the evidence Mr Hoffman gave about the participant check-in
20 model that is being developed in the NDIA.

MR HEAD: Yes.

MS EASTMAN: Is that consistent with what he described yesterday as to what you
25 understand to be the current framework for vulnerable participants?

MR HEAD: That the --- that the work that we are doing through that joint exercise I talked about is focused on these things and I have also indicated that we are looking at how these mechanisms better flag particular, I guess, factors around the likelihood
30 of people being able to surface concerns about their circumstances.

MS EASTMAN: Did you have any role in identifying the areas that are set out in paragraph 44?

35 MR HEAD: The Commission --- this part of the work is being led by the NDIA but in close dialogue with the Commission, so we have senior staff who are working across this theme of risk identification and the quarterly meetings that I refer to in my witness statement bring Mr Hoffman, myself and a number of our key senior staff from both organisations together to input to the work and also to monitor its
40 implementation.

MS EASTMAN: Is it the case that your participation is based on a review of the reportable incidents and the nature of the investigations or approach that you have taken to dealing with reportable incidents to help identify these particular cluster
45 areas --- housing, financial, family, domestic violence, et cetera? I'm trying to understand where these come from.

MR HEAD: The Commission is --- I guess we have a number of things that we bring to this process. One is our experience of implementing the regulatory framework and an evolving view about --- obviously, the various elements of the regulatory framework work at a system level for all participants, but we are
5 concerned to be able to better identify if there are participants who, by virtue of their circumstances or in particular an absence of natural supports, may be less likely to surface their concerns. And, of course, we have a particular expertise to bring to the NDIA's perspective on provider issues, where --- because through complaints and reportable incidents, and also through the registration and audit process, we have
10 insights into those issues.

MS EASTMAN: Looking at paragraph 44, "provider issues" are only one of the seven issues. The provider issues are identified as a person at risk because of the provider they have chosen. So is that something that you have contributed --- that
15 the provider issues are because of the choice made by the person?

MR HEAD: No, I don't think that's language that we determined. But as I've said, we see our input to provider issues in respect of heightened risk of harm as including any relevant information that we are observing about providers not limited to issues
20 related to the choice that somebody has made. Although there may be circumstances where we have intelligence about a pattern emerging with a provider where individuals have got a strong desire to work with a particular provider and understanding how, in risk assessment and risk management, that's dealt with, it's not an unimportant issue.
25

MS EASTMAN: Looking at these factors --- and I don't know, Commissioners, if you have got a copy and if it's convenient to come up on the screen --- but these characteristics around housing, financial, family, domestic violence situations, health --- just take those ones --- they are all outside the regulatory scheme, aren't they, in
30 the sense that if a person becomes homeless, then that is outside the regulatory scheme? It's not the NDIA's job to find people homes? If there is financial abuse and it's not concerned with a provider, then it's outside the regulatory scheme. If it's interpersonal matters between families, then that may be outside the scheme. Domestic violence situations may be outside the scheme. Health may or may not be.
35 But I'm struggling to understand how can a vulnerable participants framework be established where the themes and indicators are all the sorts of things that seem to sit outside or in parallel with the operation of service providers or the way in which the plans will work for participants?

MR HEAD: Well, I think the factors outlined --- I'll go to one of the examples you gave. There are situations where under --- and in fact my witness statement for hearing 13 was very concerned with a situation where somebody was at risk of losing their accommodation and a complaint was made to the Commission and the Commission intervened in that particular matter and --- you know, I --- that's an
40 example of our complaints function working in respect of an issue that's connected to housing.
45

The factors that are listed in paragraph 44 I think can't be considered in isolation from the points I make further on in the witness statement about how we are thinking about layers of risk that attach to these things: does a person live alone, have they been supported by a sole provider, plan utilisation.

5

MS EASTMAN: Just to jump in there, that's what you identify in paragraph 46, which you say is the second part of the vulnerable participants framework that's targeting three key risks. So that's the "living alone, being supported by a sole provider; and low utilisation of a plan." But I'm asking you about paragraph 44 because, as I understand your evidence, it is that the NDIA is collecting data relevant to the areas identified in paragraph 44(a) through to (g) and that the Commission's data will contribute to the data a database, which I understand is between NDIA and the Commission, to bring in the provider issues themes. So I'm just trying to get a handle on how paragraph 44 links in with the data collection that you have described in paragraph 45 and then I want to get to the second part, which is a particular focus area.

MR HEAD: So, yes, we will be inputting to issues related to providers this work, but also work that's described further on will all contribute to the further development of the flags that are included in the NDIA's data and that data is provided to us and I think I talk in my witness statement about the fact that we now have a participant-centric view in our operating system and we will soon be making the flags that the NDIA has available to our staff through that system, and some of the work that's described further on is about considering how those flags are refined over time to take account of other things that we think are important, particularly those things that relate to the circumstances where somebody may be less able to raise concerns on their own behalf.

MS EASTMAN: I want to come to that when we deal with the flags further in your statement. But in terms of what is the second part of the vulnerable participants framework --- this is your paragraph 46 --- is it the case that the focus is narrowing down from the broader themes in paragraph 44 to these particular areas of "living alone", "sole provider" and "low utilisation of a plan", and when you say in paragraph 47 that the NDIA currently estimates that this approach to identifying risk participants would result in between 25,000 and 30,000 participants, that group being identified for ongoing proactive checking, is that the whole of the group covered by paragraph 44 or is that the second part, which is the "living alone", "sole provider" and "low utilisation of a plan"? What does that number relate to?

MR HEAD: So this is of course the NDIA's vulnerable participants framework and we are contributing to it. My understanding is that that number is based on the people addressed in respect of paragraphs 44 and 46, but I would need to take that on notice basically in terms of the exact derivation of that number because it's a number that's generated by the NDIA, not the ---

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MS EASTMAN: Mr Hoffman I think said yesterday that in terms of the complex network pathways, there are about 10,000 people in that group and that in terms of

the COVID situation, there were 70,000 identified. So I've asked him some questions about that. But if you wish to take that on notice, that would be helpful.

5 I want to turn to Mr Robertson's report. Commissioners, you have a copy of the public version in the hearing bundle D, tab 4. I will check whether Mr Head has a copy of the report.

MR HEAD: I don't have a hard copy. I probably would prefer a hard copy.

10 MS EASTMAN: I'm with you.

In terms of the summary of the recommendations, if I ask you to turn to page 7, you will see starting on page 7 and then through to page 9 Mr Robertson sets out 10 recommendations.

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MR HEAD: Yes.

20 MS EASTMAN: Some of the recommendations are directed to the Quality and Safeguards Commission, some of the recommendations seem to traverse matters that might touch on legislative reform and change. As Mr Robertson said, he has made recommendations that might trespass outside a recommendation directed to the Quality and Safeguards Commission, but also pick up other regulatory bodies.

25 MR HEAD: Yes.

30 MS EASTMAN: Is that a fair summary of that? In terms of the recommendations, you have identified in your witness statement each of the relevant recommendations for the Quality and Safeguards Commission and then stepped us through, recommendation by recommendation, the response taken by the Commission to each recommendation.

35 MR HEAD: In respect of those things that we were asked to respond to. So there are, I think, recommendations around the legislative changes that we were not asked to comment on, but where I can provide a general update if that's helpful.

MS EASTMAN: Some of the recommendations, for example in recommendation (9) and (10), speak to some legislative change. We haven't asked you, as the regulator, to comment on those matters.

40 MR HEAD: No.

MS EASTMAN: The first recommendation Mr Robertson makes is that:

45 *The Commission should act to identify earlier those people with disability who are vulnerable to harm or neglect.*

He says in his recommendation:

Every stage of decision-making, including corrective regulation, should be alive to factors indicating that a participant may be vulnerable to harm or neglect.

5

Then he makes the observation:

(Although not within my terms of reference, the NDIA should also so act in the planning process and continually.) The Commission and the NDIA should have a freer and two-way flow of information for this purpose.

10

So that's the first recommendation. This is relevant to identifying risk; is that right? And Mr Robertson's recommendation certainly makes it clear that that cannot be done by the Commission standing alone and the NDIA standing alone; you need to work together. Is that right?

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MR HEAD: That's correct.

MS EASTMAN: It's your view, isn't it, that one of the greatest tools to be a predictor or indicator of risk is the planning process. When a participant enters the NDIS and has a plan, that the planning process is where risk should be identified; is that right?

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MR HEAD: It's a critical component of the process, yes.

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MS EASTMAN: In terms of where the Commission sits with this process, by its very nature and given its functions, you are a much more reactive body, you will wait until somebody brings something to the attention of the Commission through reportable incidents, and that seems to be a primary way of seeing issues concerning risk, but it's after the event; is that right?

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MR HEAD: Certainly the complaints function and the reportable incidents functions, which are critical functions, respond to matters in the way that you have described, but they are not the only functions that the Commission has.

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MS EASTMAN: The other functions you have are around regulating providers and perhaps imposing conditions on providers, that might anticipate risk, is that part of the proactive preventative model?

MR HEAD: Well, yes, because the audit of providers against practice standards is a way of identifying issues. I think I mention at paragraph 68 that I'm about to initiate an own motion inquiry that allows the Commission, I guess based on some of the things it's observed, in particular settings or in respect of providers or classes of support, to look, using those powers deeply, broadly, but also not in response only to complaints or reportable incidents that have been received.

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MS EASTMAN: Starting with paragraph 53 of your statement, you have set out from t

his paragraph onwards the Commission's targeted approach to risk of harm or neglect. You identify in paragraph 54 "Risk under the NDIS Framework". You say this is one of the key principles underpinning the NDIS Quality and Safeguarding Framework and it's about proportionality and risk responsiveness.

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Looking at that framework, what do you say are the key features of that framework which would assist in identifying risk? How would we use that to identify risk?

MR HEAD: This is paragraph 54?

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MS EASTMAN: Yes.

MR HEAD: Obviously, one of the things that's very significant in risks at the individual level is the extent to which people have natural supports around them, in addition to the characteristics, the personal characteristics, of the person with disability. And as I outlined earlier, there's an interaction between those things and the types of supports that people are receiving. So this, I guess, characterises or underpins much of the way we think about this issue and the work with the NDIA is about how we use different elements of the NDIS process to capture information that would assist in assessing risk for people.

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MS EASTMAN: These are the matters that you have covered in paragraph 78 of your statement, on page 19, and that's where you talk about the NDIS Framework recognising natural supports, and that being an important informal safeguard for people with disability, natural supports are identified as family, friends and community connections.

25

MR HEAD: Yes.

30 MS EASTMAN: You have said at paragraph 80 that:

I recognise that, in spite of any efforts to build natural supports, some participants who are at risk of harm or neglect and who cannot raise concerns themselves will not have natural supports available to them to identify risks and raise concerns on their behalf. Some of these participants will want to have natural supports but for whatever reason will not have them. Others will not want natural supports. In either case, I consider that these are the participants for whom neither the NDIS Commission's approach to risk at the system level nor the availability of the complaints function to respond to otherwise unidentified risk at the individual level may be sufficient to respond to their risk of harm or neglect.

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That is the essence of that cohort that I was describing perhaps earlier, where they might be the exception or outside the ordinary day-to-day working that works well for others, it's those on the margins or those outside where the natural supports are not going to be either a protector or indicator of risk; is that right?

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MR HEAD: That's right, and where we recognise that a mechanism that can help us to be able to identify people who are more likely to be in those circumstances will assist ourselves, the NDIA and others in effective outreach to ensure that where people are perhaps less likely to surface issues of concern, particularly through a complaints process, that there is a capacity to proactively reach out to those people.

MS EASTMAN: Is that the matters that you've addressed in paragraphs 81 through to 83?

MR HEAD: That's correct.

MS EASTMAN: And paragraph 83 takes us back to:

The NDIA vulnerable participants framework recognises that having a limited informal support network can contribute to vulnerability. However, it is not yet clear to me how completely the NDIA's current data would enable the presence or absence of strong natural supports to be reliably identified.

Just pausing there, I've asked you earlier about paragraph 44 and then the second stage and you've talked about the NDIS Framework and natural supports. But is that the conclusion of all of this, as you express in paragraph 83, that we don't know that this is going to work?

MR HEAD: So what I've attempted to describe in paragraphs 82 and 83 is that the Commission believes that a mechanism that performs this function is essential. And in paragraph 84 I set out a number of points about the planning process and its importance in being able to identify matters that would enliven that mechanism, essentially.

MS EASTMAN: How is that going to work? You say in paragraph 84 that:

The NDIA's planning process seems most likely to be the best source of information in relation to:

[Particular circumstances].

(a) whether a participant can raise concerns themselves;

(b) whether a participant has natural supports; and.

(c) whether a participant is at risk of losing natural supports.

What is it that you know about the planning process that makes that the most likely source of information?

MR HEAD: Well, the planning process --- and I'm not talking about particular approaches of detail in the way aspects of the planning process work at the moment,

but it is my view that the planning process itself is the right place to be working with participants to understand whether or not the factors that would indicate whether or not they can raise concerns or have natural supports are best identified.

5 MS EASTMAN: How would that be done? What is your expectation in the planning process that would enable that to be detected? Is it something about the method of the planning process or something about the way in which a planning process may be reviewed and checked against a system to identify these areas of risk?

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MR HEAD: Well, obviously --- I shouldn't say it that way --- my view is that the planning process, in order to sharpen our understanding of this, will need to examine questions that help to form a view about particularly those matters that are listed in paragraph 84, and that can be done using a range of techniques around the sorts of questions that people are asked and that can contribute to ultimately the flags that we get in our system.

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MS EASTMAN: If the planning process is really designed to work out what supports somebody needs and what the costs of those supports are, and you are really looking at it in terms of service delivery, how is the planning process going to pick up the sorts of matters identified in paragraph 4 in relation to a risk of homelessness or a person whose life is transient or a propensity for financial violence within a family or within living circumstances or family issues or a propensity to domestic violence? How will the planning process pick up issues which don't naturally sit with the planning process in terms of the delivery of services?

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MR HEAD: I think the planning process is intended to be a part of the NDIS system that can assist in safeguarding. So the extent to which --- and I'm not the best person to be talking in detail about that. I guess what I am saying as NDIS Quality and Safeguards Commissioner is that I think the planning process is the right point in the process to be considering things that are relevant to these factors and that allows, I think, for early identification of people who may be less likely to, at critical junctures, be as comprehensively supported through the system level interventions as the rest of the NDIS community.

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MS EASTMAN: If the risk arises because of the service provider and the quality and nature of those services, then how is the planning process going to elicit where the risk is in who delivers the services? Because you regulate the service providers but you are not involved in the planning process. If the issue is that the service provider is the source of risk, how do we deal with that? I know we are going to come to sole carers, but just generally, before we look at sole carers, how does the planning process help identify risks caused by the conduct or omissions of a service provider?

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MR HEAD: Progressively, there is a whole range of information available, not just to the NDIA but to others, about actions we have taken that go, I guess specifically, to the question of issues related to a provider. So we are going through the process

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of post-transition, assessing everybody against the practice standards, the same standards operating nationally. People are --- providers who require a certification audit are audited against the core module of the standards and the modules that relate to classes of supports. So the fact that we have reregistered somebody is a part of the system of managing risk. We publish a register of providers and included in that register are the compliance actions that we have taken against providers. I've mentioned before in evidence to the Commission that we have been --- I guess as we get closer to the end of the transition process, taking increasingly more regulatory action against providers. So there's an increasing amount of intelligence about provider compliance with standards but also compliance and enforcement action that the Commission has taken, and that will only increase over time.

MS EASTMAN: How does that knowledge and what you have described as sort of more experience, how would that fit into the planning process so that if the identification of risks arises because of the conduct of a service provider, that will actually be picked up in a planning process?

MR HEAD: Well, I haven't really thought through the detail of how that particular element would work. What I can say is that the agency and the Commission have done a lot of work in recent months on information flows between the two and that's not a one-way process in terms of participant information. And it is my view that, particularly as a consequence of being towards the end of transition, that the Commission increasingly has information that shows what's happening in terms of the NDIS market. We've deregistered providers or revoked registration, we have taken compliance actions, so that information is available to people in the planning process.

And, of course, there might be circumstances where we are dealing with a provider around, for instance, a critical incident where we work with the NDIA on how to support other individuals or individuals who are being supported by that provider and there are examples of us doing that where we have been in the process of deregistering or revoking a registration for a provider.

MS EASTMAN: You have said under the current regulatory arrangements the NDIS Commission does not generally regulate the participant's choice of NDIS providers. So you can't say to a participant, "You can't have this particular provider", is that right?

MR HEAD: That's correct.

MS EASTMAN: But you can provide lots of information that a participant can review and then the participant can make a decision about who they wish to provide services; is that right?

MR HEAD: There's information about who has been registered and, by definition, that indicates that somebody has been audited against the standards once they are through the transition phase. And we do have an impact on what is available to be

chosen because we remove some providers from the market on the basis that they haven't satisfied the conditions for registration or indeed as a consequence of compliance action we have revoked a registration or banned a provider from operating in the market.

5

MS EASTMAN: What happens for unregistered providers? Where are the safeguards in terms of planning processes and unregistered providers?

10 MR HEAD: The planning processes, I understand it, of course it's through that process that it's determined whether or not somebody is going to be agency-managed, plan-managed or are able to self-manage. And it's only plan-managed and self-managing participants who are able to use unregistered providers. So all agency-managed supports require the use of registered providers and indeed there are classes of supports, such as SDA and behaviour support which 15 can only be provided by registered providers. So the planning process is making a judgment about the extent to which somebody is able to self-manage and therefore be able to use unregistered providers.

20 Unregistered providers are not unregulated providers. They are subject to the Code of Conduct and the compliance and enforcement tools of the Commission can take, generally speaking, the same actions against unregistered providers, except where those actions are registration specific. So of course I can't deregister an unregistered provider but I can fine or ban or issue a compliance notice or seek civil penalties in respect of the conduct of an unregistered provider. And we have banned and taken 25 other regulatory actions against unregistered providers.

MS EASTMAN: Before lunch I want to see if we can cover sole carers in private homes. The second recommendation made by Mr Robertson --- and you have set this out at paragraph 121 of your statement --- is:

30

No vulnerable NDIS participant should have a sole carer providing services in the participant's own home. The relevant statutory instruments and guidelines should be amended to provide expressly for this.

35 You have set out the reasons Mr Robertson gave for reaching that conclusion. As you say in paragraph 122 in Mr Robertson's report he says:

40

The critical circumstance in the case of Ms Smith was that she became invisible to everybody but her sole carer. She had no or limited mobility and became isolated from all but her sole carer. At the relevant time, Ms Smith appears to have had no interactions with her relatives or her neighbours or people in her local area. She did not see her general practitioner. It is not the case that every vulnerable participant would suffer harm in these circumstances because vulnerabilities differ between individuals. But there is 45 a substantial risk of harm which would be avoided if there were more than a single pair of eyes. The regular presence of at least one other human, another carer, would reduce the risk.

Then he goes on to deal with the legislative provisions. You have also included Safeguarding Gap 8 identified by the South Australian Safeguarding Task Force in its report. That also is the issue about sole carers.

5

Following the Robertson Report, there have been a number of initiatives that you have taken to address that issue of sole carers, particularly in private homes and that touches on what you have talked about a little earlier as a characteristic that might lead to risk, which is that social isolation.

10

MR HEAD: Yes.

MS EASTMAN: In terms of the action, I'm mindful of the time, can you take us through the actions that you have taken? I think paragraph 125 very helpfully summarises that but you have also written to a number of registered providers to have a sense of what's happening in terms of the providers and what action they are taking. Could I ask you to tell the Royal Commission, how have you responded to that recommendation?

MR HEAD: So our response to this predates me receiving Mr Robertson's report and started with an initial compliance action of us looking at all of the providers who may have been providing supports to --- with in respect of people's daily requirements in their home. So we commenced with an information gathering exercise in May and June 2020, targeted at providers who are registered to provide assistance with daily personal activities. This was to assist us to both understand the range of circumstances in which people might be receiving those supports and the extent to which those circumstances and the mode of delivery of those supports may have been presenting risk for participants.

I set out in my statement that there was a series of sort of cascading activities --- the initial call for information, the assessment of that information, follow-up compliance activity with around 495 providers, and as a consequence of that phase of work, in November 2020 we were able to impose a condition of registration on providers, specifying how they were to deal with issues in respect of sole carers.

35

MS EASTMAN: What is that condition and how does it operate?

MR HEAD: The condition itself is attached to my witness statement but in fact it would help if I was able to have a --- to have that on the screen.

40

MS EASTMAN: Is it the document that appears behind tab 9 in the bundle that you have got? This is the part of your statement where you have got the relevant correspondence.

MR HEAD: The condition itself is attached to that correspondence.

45

MS EASTMAN: There is a letter from Samantha Taylor dated 4 November 2020

and that is behind tab 9 and it has attachment A. Is that the registration condition?

MR HEAD: The letter I have behind tab 9 is dated 20 November and attached to that
5 of factors connected to a range of risk factors that are set out in section 7 of the
document that says "Additional Condition of Registration."

MR HEAD: I'm sorry, but our tabs are different.

10 MS EASTMAN: It is tab 9. But you haven't got a folder there with the document?

MR HEAD: I do have the document.

MS EASTMAN: My apologies, Commissioners, I'm trying to make sure we have
15 the right documents.

I'm happy, bearing in mind I've probably got another half an hour to 40 minutes of
Mr Head's evidence, if we adjourn now, we can sort out the documents over lunch.

20 CHAIR: That seems like a sensible thing to do. If that is the case, the witness to
follow Mr Head will be ---

MS EASTMAN: Ms Boswell.

25 CHAIR: At this stage I take it you don't anticipate finishing with Ms Boswell this
afternoon?

MS EASTMAN: No, I do not.

30 CHAIR: She will continue tomorrow morning?

MS EASTMAN: Yes.

CHAIR: It is now just before 1 o'clock Adelaide time. We will resume Mr Head at
35 2.00 pm Adelaide time, by which time all of these issues concerning the precise
conditions will have been sorted out, I'm quite confident.

40 **ADJOURNED** **[12.58 PM]**

RESUMED **[2.00 PM]**

45 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Now, I just want to get to the bottom of the tab 9/tab 11 issue. The

document behind tab 9 is the letter from the Commission advising the providers that a condition will be applied, and this is what the condition will be?

MR HEAD: Yes.

5

MS EASTMAN: Then there was the letter which came on or around 20 November, that's the document behind tab 11, and the attachment there, which is described as "Additional Condition of Registration", that is the condition that was sent out?

10 MR HEAD: That is correct.

MS EASTMAN: So we have sorted out the documents, I think. Thank you.

15 I want to turn to the third recommendation Mr Robertson made. You have addressed this in your statement at page 44, starting at paragraph 183. Have you got that?

MR HEAD: I do.

20 MS EASTMAN: This deals with the person with overall responsibility. Mr Robertson's recommendation is that:

25 *For each vulnerable NDIS participant, there should be a specific person with overall responsibility for that participant's safety and wellbeing. That individual should be clearly identified by name and, ideally, introduced in person, to the vulnerable NDIS participant.*

Again, as he says:

30 *(Although not within my terms of reference, that individual should be identified in a participant's plan.)*

35 That is recommendation 3. In terms of that recommendation, you have set out an extract of Mr Robertson's reasons for that recommendation at paragraph 184; is that right?

MR HEAD: That's correct.

40 MS EASTMAN: In terms of your view, you say that at this stage the Commission has not formed a view as to whether there's an inherent conflict of interest where a participant receives support coordination from an NDIS provider that also provides core supports to the participant. Core supports are supports that help a participant complete daily living activity. So this issue is whether you have one person who has an overall responsibility and how does that sit with the circumstances where the provider of the services and the provider of accommodation might be in one; is that
45 right? I'm trying to sort of work out who has that responsibility.

MR HEAD: Sorry, can you just repeat the last part?

MS EASTMAN: Sorry, I'm a bit distracted. There is a bit of flicking pages and noises. Let me regain my concentration.

5 Just dealing with this issue of a single focus point or a locus of responsibility, and Mr Robertson's recommendation 3, is it the case, as you've set out at paragraph 187, that the Commission hasn't formed a view about this recommendation?

10 MR HEAD: No. The questions that I was asked to respond to by the Royal Commission were specifically about whether or not there is --- whether or not I consider there to be an inherent conflict of interest, rather than Mr Robertson's recommendation more broadly.

15 MS EASTMAN: With Mr Robertson's recommendation more broadly --- and that is that there should be a specific person with overall responsibility --- is that something you agree with?

20 MR HEAD: Well, I take that recommendation to refer to a person within the sort of NDIS apparatus, as it were, and I think in respect of people who are identified at being at a heightened risk, that that is appropriate.

25 MS EASTMAN: The Royal Commission has heard that as people have transitioned to the NDIS from the traditional State system where there might be a case manager, that the recommendation Mr Robertson has made is almost going back to suggest a case manager model. Do you accept that?

30 MR HEAD: Well, I certainly accept that that's how some people interpret it. But I think Mr Robertson has set out in his report what he meant by his observations, and I don't think that one can impose on that a particular sort of model of case management or, indeed, that an individual with responsibility for knowing the things that he's referenced in his recommendation would be the same as a sort of single person managing every aspect of those things.

35 MS EASTMAN: It's the case, isn't it, looking at recommendation 3, it's really not a recommendation that your Commission can implement; it's a recommendation that really has to be actioned by the NDIA; is that right?

40 MR HEAD: That's right, given the remit of the Commission and the way its functions more broadly operate.

45 CHAIR: Just coming back to paragraph 187 that Ms Eastman asked you about, you say that the Commission has not formed a view as to whether there is an inherent conflict of interest where a participant receives support coordination from an NDIS provider and that provider is also the one that provides core supports.

Are you suggesting that, in those circumstances, the support coordinator could be the monitor of the person in the manner that Mr Robertson has proposed?

MR HEAD: So it's certainly the case that support coordinators are often referenced as individuals who could play such a role. What I'm attempting to do in those paragraphs is simply respond to the question that was put to me in the --- for my
5 witness statement about our assessment of conflicts of interest. So I haven't actually, in that part of the witness statement, been setting out who within the NDIS apparatus could or should perform that role because it's not really a role for me as Commissioner.

10 CHAIR: I understand that. That's why I asked you the question. I'm asking whether it would be appropriate for a support coordinator who is in fact part of the NDIS provider providing services to be the monitor? I would have thought the answer to that is no.

15 MR HEAD: Well, I certainly think where you are dealing with people who have been identified as having a heightened risk of harm, one would need to pay very great attention to whether these sorts of roles were more likely to have a potential conflict of interest.

20 CHAIR: Putting it another way, to ensure that the person performing that role was genuinely independent.

MR HEAD: Yes.

25 MS EASTMAN: This was an issue also raised in the final report of the Safeguarding Task Force. You're aware of that?

MR HEAD: Yes.

30 MS EASTMAN: If you have still got hearing bundle D, behind tab 5 is a copy of the Safeguarding Task Force Supplementary Report, that's the final report, of 28 September 2020. If you turn to page 9 in that report, the document reference at the end of that is 0123. That's in the top right-hand corner.

35 MR HEAD: Yes.

MS EASTMAN: I took Mr Hoffman to part of this yesterday. This is where the Task Force very broadly summarises the operation of the NDIS in terms of the levels of support coordination, et cetera. On page 9, the Task Force members make the
40 same point Mr Robertson does, that they:

..... were at pains to emphasise that just because you have a disability that does not mean you are therefore vulnerable. Some people may be vulnerable due to not being aware what they need or what support is available to them.

45 Then they go on to say:

Having a process to identify potentially vulnerable participants is key and having a single locus of responsibility vis-à-vis the participant is essential for good practice.

5 At the bottom of the page they say:

Any support coordinator that is employed by an agency that also provides other services for that participant is not an independent pair of eyes.

10 Reference is made to the 2019 review done by Mr David Tune and the recommendations around amendments to the NDIS rules. Coming back to the question the Chair just asked you on the observations made in the Safeguarding Task Force report, is this also the area where you haven't formed a final view on the matters that are identified in that Safeguarding Report?

15

MR HEAD: That's correct in respect to conflicts of interest. And I think I have indicated in my witness statement that there's some consultation work that I understand the NDIA is conducting in respect of support coordination and I would intend --- although I do need to be careful because of course my term finishes on 30 June and I can't commit my successor to anything --- but I would think it would make sense to look at that work. I think some of these broader issues around certain settings are also intended to be captured in aspects of the own motion inquiry I referred to in paragraph 68 of my statement.

25 MS EASTMAN: I want to now turn to the fourth recommendation in Mr Robertson's report. Perhaps if we go back to the document behind tab 4 in hearing bundle D, this is Mr Robertson's report, to page 7 and to recommendation 4. This recommendation says:

30 *Consideration should be given to the Commission establishing its own equivalent to State and Territory based Community Visitor Schemes to provide for individual face-to-face contact with vulnerable NDIS participants.*

35 He makes some observations about perhaps the need for amendment to the legislation. I don't want to get into a debate about the amendment to legislation or what seems to be a question about State versus Federal power in this respect. I want to ask you about the suggestion of there being a National Community Visitor Scheme. You have addressed this in your statement at page 52, from paragraphs 210 and following; is that right?

40

MR HEAD: Yes.

MS EASTMAN: This part of your statement also deals with site visits and inspections. I will come to that separately.

45

In terms of a Community Visitor Scheme, you have specifically addressed this at paragraphs 240 and following. Commissioners, this is page 60. Do you have a specif

ic view on whether or not a Community Visitor Scheme established by and operated by the Commission would be an appropriate safeguarding mechanism?

5 MR HEAD: I think I gave a general indication in Hearing 6 on the use of chemical restraints, that I was not opposed to such a national scheme and that community visiting is generally agreed to be a positive safeguard. I've provided to the Royal Commission a short paper that I prepared for the Department of Social Services, given that community visiting is currently referenced in the Safeguarding Framework that all Australian Governments agreed to. It was subject to a review that
10 Governments had agreed to, and the arrangements that are in place today for the six jurisdictions that have Community Visitor Schemes are the arrangements that Governments at this stage have settled.

I've prepared a paper which indicates both my general support for a Community
15 Visitor Scheme that is aligned to the NDIS but also the relevant considerations I think are important in determining such a scheme. It's actually a matter for Disability Ministers from the Commonwealth, States and Territories to determine any changes to the community visiting arrangements they have agreed to and I fully imagine that this issue will be considered in the forthcoming review of the Quality
20 and Safeguarding framework. Part of the reason for developing the paper is that community visiting as it exists now was not actually designed in any jurisdiction for the NDIS and the NDIS itself changes some of the fundamental concepts that have underpinned community visiting, and my view is that in taking the principle of community visiting into an NDIS model, that actually requires rethinking, a redesign
25 of the approach, so that it makes sense in the environment in which NDIS supports are being provided.

MS EASTMAN: In terms of your paper, is the document you refer to behind tab 14
30 in the bundle that you have?

MR HEAD: Yes.

MS EASTMAN: Commissioners, this is hearing bundle C, tab 14.

35 MR HEAD: That's correct.

MS EASTMAN: Let me just check that you have got that. There is a letter to the Deputy Secretary, Department of Social Services?

40 MR HEAD: That's correct.

MS EASTMAN: Attached to that is a paper that says:

45 *Should an NDIS community visitor scheme be established?*

It sets out the current position and it is dated 31 March this year.

MR HEAD: That's correct.

MS EASTMAN: So that's the paper. In the covering letter to the Deputy Secretary, I think you refer to oral evidence given to the Royal Commission in February 2020?

5

MR HEAD: That's correct.

MS EASTMAN: At that stage you acknowledge that whether there be a National Community Visitor Scheme was a live issue. I think we again raised that with you following Mr Robertson's recommendations at Public Hearing 6 in relation to psychotropic medication.

10

MR HEAD: Yes, that's correct.

MS EASTMAN: Is it the case that your views around the establishment of a National Community Visitor Scheme have really developed over the course of the past year or so?

15

MR HEAD: Yes, that is correct. I've been focused in a number of areas on national consistency in the work that I have described at Hearing 4 and Hearing 6 in respect of behaviour support. At the moment there are important differences between the way Community Visiting Schemes operate in States and Territories and there are two States and Territories that don't have Community Visitor Schemes. And, generally speaking, I think it's the case that if we accept that an NDIS version of community visiting remains a sensible safeguarding measure, then it makes sense to have a nationally consistent set of arrangements around that.

20

25

MS EASTMAN: In terms of the way in which it would be done, one observation that you make in the letter --- this is on the final page, page 15 --- is that you say:

30

It would also be essential to ensure that the role of community visitors is clearly delineated from the functions of the NDIA. There would need to be good information sharing between the NDIS Commission and the NDIA in relation to community visiting, both to assist with targeting community visiting to particularly vulnerable participants and to provide any information gathered by community visitors that could be relevant for the NDIA's functions.

35

I take it by that, that you see that the establishment and operation of any Community Visitor Scheme nationally should really be in the domain of the Quality and Safeguards Commission, not the NDIA? Is that your view?

40

MR HEAD: Well, it is a safeguarding mechanism and it seems to me that the most obvious fit is within the safeguarding agency.

MS EASTMAN: So if we took that model that you have discussed in your paper, how would that fit into the matters that we have talked about earlier today in terms of the planning process? Is it the case that community visitors wouldn't have a role in

45

the planning process at all, would they?

MR HEAD: Well, I haven't done a sort of end-to-end design. I was really suggesting to DSS some of the sort of key issues that I think need to be considered by Ministers when the review of the framework is happening. But I think where this logically fits in with the other things that I've answered questions about today is that in identifying people who might benefit from particular forms of outreach, such a visiting scheme would provide an important additional vehicle for reaching out to people who may have difficulty in raising concerns themselves, alongside those things that the Commission deals with through its own visits and other forms of outreach that are within the agency's processes.

MS EASTMAN: Based on your experience, how could you ensure that community visitors reach that cohort of people who you describe as socially isolated and without the natural supports around them?

MR HEAD: I think the process that I spoke about earlier of looking through things like the planning process at a better assessment of the extent to which people have either no natural supports or natural supports that might be somewhat fragile or that where people become disengaged at certain points becomes a very important flag for the Commission and therefore a signal to the Commission about where it might think about directing its own efforts through its --- through our officers being in the field but also how it might direct the efforts of any national community visitor scheme.

MS EASTMAN: One issue that I think has been a matter raised during the course of the hearing is if there was to be a community visitor scheme that would operate in people's private homes, as opposed to congregate living, one suggestion is to have an opt-in model rather than a system of people having to allow visitors into their home perhaps unwillingly. Do you have a view about opt-in models or do you say, consistent with the safeguarding model, that those who might be resistant to having visitors, that itself might be an indicator of vulnerability of risk?

MR HEAD: I think it will be a very critical question to answer in the design any initiative. When I speak to people with disability and organisations representing people with disability, there is a great deal of very hotly-debated views about how visiting works. It may be that through an initial engagement with the NDIS that --- and some form of an assessment can be made about the extent to which somebody might be prepared to do that. There are probably other features of how supports are provided, where it's much easier to establish the role of community visitors because there's an experience, for instance, of community visitors going into group homes, for instance. So I don't --- I think such a thing would be very important to resolve and I think the --- I think looking at how a participant or a potential participant views the idea of visiting would be a critical thing rather than determining that such a program should have an as-of-right entry to people's homes.

MS EASTMAN: I'm not going to ask you a legal question and I don't want you to get involved in the debate about what different lawyers say. But do you have a view

as to whether or not it's viable to have state community visitor schemes continuing to operate in the absence of a national scheme? Do you think that there is, in that respect, some ability for community visitors even to operate concurrently, so to have both a state and a federal scheme? There are two questions in one for you there.

5

MR HEAD: Can I ask for some assistance to go to the part of my witness statement ---

10 MS EASTMAN: This bit of your statement where you are starting to deal with this issues is at page 64, at paragraphs 258 through to 260. This is talking about the legal advice. You have set that out, without disclosing the advice, and we don't think that that is necessary, and I'm not asking you to comment on the advice. I'm more interested in your view, as the Commissioner, whether or not you have a view of the state schemes continuing to operate in the absence of a federal scheme. And then, 15 secondly, even if a federal scheme is established over time, is there capacity for the State schemes to operate concurrently with the federal scheme?

20 MR HEAD: I think my views, even though they are in a fairly truncated form at paragraph 260, about my understanding of the NDIS Act, suggests that --- and I'm not a lawyer --- but my view in respect of section 207 is that it does provide for the concurrent operation of state and territory laws. Acknowledging that I won't be the Commissioner from 1 July on, and I respect whoever my successor is to form their own views on this, I think in a situation where there was going to be an 25 NDIS-specific community visitors initiative, it would be a matter for discussion between the Commonwealth and the states and territories about whether there was any duplicated function with whatever community visiting arrangements operated in states and territories, noting that existing community visitor schemes in States and territories are sometimes quite broad in the range of things they can deal with. I'm not sure that I think it would be a good idea to have two separate systems operating 30 in respect of NDIS participants, but that's a personal view.

MS EASTMAN: Is it the case that there needs to be some clarity around this issue in terms of the opportunity for the states to continue community visitor schemes, to the extent states still do that?

35

MR HEAD: Sorry?

MS EASTMAN: There needs to be some clarity, doesn't there? There needs to be legislative clarity?

40

MR HEAD: States and territories, with the exception of one, have continued to operate the Community Visitor Schemes in a form --- there may have been some changes at the margins, but in the form they operated before my jurisdiction kicked in.

45

MS EASTMAN: You are aware that the Community Visitor Scheme no longer operates in South Australia?

MR HEAD: I am aware that there were changes made to the Community Visitor Scheme in South Australia and that it has a different form of operations than it did before the NDIS Commission commenced.

5

MS EASTMAN: One thing the NDIS Commission can do is to conduct site visits or inspections.

MR HEAD: Yes.

10

MS EASTMAN: The site visits and inspections are with respect to providers not participants, per se; is that right?

MR HEAD: Yes. But those site visits could include visiting particular parts of a provider's operation, whether that was SDA or a day program, and may also include interaction with participants as well.

15

MS EASTMAN: So the NDIS Quality and Safeguards Commission has conducted 188 site visits in South Australia since 1 July 2018 and most of these, some 171 sites, have been conducted with providers, while 17 site visits have been conducted with participants, their families or guardians. That's paragraph 216 of your statement.

20

Then you have provided to the Royal Commission a table, at paragraph 219 on page 55 of your statement. It might be helpful to bring that up. That gives us a breakdown in terms of the visits over the relevant period of time and the nature of those visits. I asked you about whether those visits are to providers. But looking at that table where you have got, for example, "Compliance - participants" and "Investigations - participants", without going into the detail of those matters, what circumstances would the Commission be investigating a participant?

30

MR HEAD: That wouldn't refer to necessarily investigating a participant but looking at the circumstances or perhaps talking to a participant about the circumstances where a compliance issue is on foot. So I don't have the specific details of what each of these visits relate to, but my reading of this information when it was produced to me is that this is essentially people in the field --- and they may be visiting providers in the provider's office or they may be visiting providers in a particular place where supports are provided --- and they may be talking to staff of providers and may also be talking to participants.

35

MS EASTMAN: You say in the statement that a site visit can have a broad impact, particularly where the provider is large and supports many participants and the NDIS Commission officers will often use the opportunity of a site visit to address a number of issues in one visit. In terms of the nature of the site visits, looking at the table there, the largest proportion of visits are provider outreach and engagement. What would be the nature of that activity, in terms of prompting a site visit or what would happen on a site visit concerning provider outreach and engagement?

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[Recording stopped.]

MS EASTMAN: I'm not sure if that is a message for me to stop or whether we have a technical problem. I'm sorry, Chair, I don't have anyone in the hearing room. I'm
5 told we still have the transcript, so I think we can continue.

CHAIR: Please press on.

MR HEAD: Generally speaking, those visits, they could be prompted by, for
10 instance, a state or territory office looking at a number of complaints in respect of a provider, attending one or more of the provider's sites, and providing information or guidance on a range of things that may have surfaced through a consideration of those complaints. Remembering, of course, that in the periods we are talking about, irrespective of where a provider is operating in the country, the regulatory
15 arrangements that the Commission imposes will generally represent a fairly material change from what was in place in that state or territory before. So basically staff in the states and territories use the opportunities when they visit to point to a whole range of things that providers need to be aware of and that's in addition to all of the formal communication through correspondence, through notices and through other
20 mechanisms that we use.

MS EASTMAN: You tell the Royal Commission that the Commission has been developing a site visit policy over recent months. Do we take it by that, that from 1
25 July 2018 up until recent times, that there hasn't been any formal policy about when or how a site visit has been undertaken?

MR HEAD: Not in the way that there is in the policy that I've attached to my witness statement. And the Commission, as I've indicated a number of times, is really moving away from the focus on transition management to really optimising
30 each of its functions and there's more experience in each state and territory of the issues that they are dealing with, with providers, and this is part of our development as an organisation about how to use our various tools in the most effective way.

MS EASTMAN: A copy of the draft policy you have provided to the Royal
35 Commission behind tab 13. Commissioners, this again is still in hearing bundle C.

Mr Head, this is currently in a draft form; is that right?

MR HEAD: Yes, being piloted with our state and territory offices.
40

MS EASTMAN: What is your expectation in terms of that pilot completing and this policy being implemented? What's the proposed timeframe around that?

MR HEAD: I don't know that I have imposed a particular timeframe, nor am I aware
45 of whether the registrar in whose area this is has imposed a timeframe. But my general view is that this is something that we wanted to see settled fairly quickly and that we have just had a very, very significant uplift in the number of staff in our State

and Territory offices and the idea is for staff in those offices to really test the extent to which this works well for them and to formalise it relatively quickly.

5 MS EASTMAN: The use of site visits and this draft policy is not intended to replace a community visitor scheme or be in lieu of a community visitor scheme; is that right?

MR HEAD: No, it's not.

10 MS EASTMAN: In terms of site visits, the policy might be a policy that works in operation if an investigation needs to be undertaken?

15 MR HEAD: If an investigation needs to be undertaken or sometimes to gather information in respect of a complex complaint that's being resolved. I should probably point out that this is, of course, in addition to any sampling --- or visits by auditors as part of sampling for certification audits, where auditors are visiting a selection of places where supports are provided and also as part of certification audits must talk to a number of participants and families of participants as part of that exercise.

20 MS EASTMAN: The idea behind this policy is to provide for site visits that might be both announced and unannounced; is that right?

MR HEAD: Yes.

25 MS EASTMAN: To what extent have people with disability, their families or relevant advocacy groups been involved in the development of this policy?

30 MR HEAD: I don't think at this stage there's been an active involvement. What would typically happen with work like this is that once we've got a view in the organisation of --- because this is operational policy about our regulatory functions -- - we would typically consult through both of our consultative committees, one of which is made up of organisations that represent people with disability and includes people with disability, and one that is made up of, generally, bodies that represent providers or part of the delivery sector.

35
40 With many of our resources that are resources that directly face participants, there's a very extensive process of involvement of people with disability in the design of things like our work modules. So this, I think, has been developed at this stage based on the experience to date, but largely speaking, work like this would typically be consulted about through those consultative mechanisms.

45 MS EASTMAN: I want to link this to some observations you make further in your statement at paragraph 265. If there is to be a site policy, will there be capacity for participants and their families to make a request that the Commission come and conduct a site visit? I'm asking you this in the context of a matter raised in the Safeguarding Task Force report, and you've described that at paragraph 265 as

safeguarding gap number 6, and that is:

5 *Participants and their families are unclear about how to raise matters of concern with the Commission and the Commission does not routinely undertake proactive investigations to vet the performance of service providers.*

10 So there seems to be an issue here about from a participant's perspective, how do we raise our concerns with the Commission, but also does the Commission undertake inspections? Part of this might be a process of education and understanding about the Commission's functions and powers. But is this a matter that you have addressed?

15 MR HEAD: So we are addressing the second part of that through the work we've just described around a more formal approach to visits. I think there's been an extensive amount of work on outreach to participants and I should say in the context of South Australia --- and it's a while since I've looked at the numbers --- that the numbers of complaints that we receive around NDIS supports in the South Australian office, on my understanding, exceed significantly the number of complaints that were considered for a broader set of services before we started operating. So I think our
20 outreach is --- and the numbers of complaints we receive suggests to me that there is a growing awareness of the fact that we are here and we are able to take complaints and we are able to take complaints from anybody and those complaints can be about any problem with a service, no matter how small or significant. The complaint function is very, very broad. So there's always more work to do in educating people
25 but I think the trend suggests to us that there is a growing awareness of who we are and how we fit into the NDIS.

30 MS EASTMAN: The last thing --- and I've lost my piece of paper --- is you have provided the correction that you wanted to make. Have you got a copy of it there?

MR HEAD: Yes. Not a copy of the signed version but I think this is correct.

MS EASTMAN: You have signed a version?

35 MR HEAD: Yes.

MS EASTMAN: That makes the correction to the first sentence in paragraph 270(d), which appears at page 68.

40 MR HEAD: Yes.

45 MS EASTMAN: You want to replace the first sentence by deleting it and incorporating the text of paragraph 113 of your statement made for Public hearing 4, and then you have reproduced that part of the statement in the document to the Royal Commission?

MR HEAD: That's correct.

MS EASTMAN: Commissioners, I think probably the easiest way to deal with this is that we keep the corrigendum and we will tender that in due course when we tender Mr Head's statement, rather than try to amend the statement, if the
5 Commissioners are content with that approach.

CHAIR: Thank you.

MS EASTMAN: I haven't covered every topic in Mr Head's very comprehensive
10 statement but those are the questions that I wish to ask him today.

CHAIR: Thank you. I'll ask first Commissioner Bennett whether she has any questions to put to Mr Head.

15

QUESTIONS BY THE COMMISSION

COMMISSIONER BENNETT: When you talked about visits, do you also actually
20 visit the office of the service provider?

MR HEAD: So those visits could include the office, they could include a place where supports are being provided.

COMMISSIONER BENNETT: When you would do an office visit, would it look at things like, is there --- how their records are kept, is there the working with vulnerable people checks, time sheets? Does it go into that sort of administrative information about how the business is run and the training of staff is an obvious question?
30

MR HEAD: So they are matters that are examined through the audit process. So the way the registration function works, there are two types of audit; a full certification audit or a verification audit. A certification audit is required for those classes of supports that are more complex, where the risks associated with support provision warrant a full third party certification. So, as I was saying to Counsel Assisting, in those processes, they happen once every three years but with a mid-term review, all of the relevant components of the practice standards that apply to that organisation are assessed by the auditors and that includes the sorts of things that you are speaking about in respect of organisational governance, human resource management, records-keeping, all of those things.
35
40

We may in the course of investigating a possible breach of the Act also determine that there's a site visit where we require records to be --- we do a site visit and then, using the relevant powers that we have access to under the Regulatory Powers Act,
45 we might require that records are produced, we might examine particular sets of records. But those broader issues around corporate governance generally for a provider are assessed through the audit process.

COMMISSIONER BENNETT: Have I understood that you could initiate your own and that might be triggered by complaints or failure to respond to requests that you have made or something like that?

5

MR HEAD: Yes, we could. We could visit, we could issue a notice requiring the provider to produce certain things for us, to help us understand, for instance, where there's a complaint about staffing or people not being where they are supposed to be in terms of providing supports overnight or whatever, we might ask for a production of documents related to rostering, those sorts of things. So there are --- I guess what I'm saying is there are routine assessments of the range of governance matters that are set out in the standards through the registration --- re-registration audit processes and mid-term reviews, in addition to us being able to use all of the compliance, enforcement and monitoring powers to gather information and take action at any time in respect of a complaint or a reportable incident or us acting on some other intelligence that we have that may cause us to have a concern.

10
15

COMMISSIONER BENNETT: One last question is that we heard from the Office of the Public Advocate where there were incidents where providers were overcharging, in her view, of what a market --- I won't go into it. Could that also be an area where someone or a family could make a complaint or reservation about the amount being charged for the service being provided?

20
25

MR HEAD: So there might be issues for both the NDIA and ourselves in something like that. But the Code of Conduct applies to both registered and unregistered providers and it has components that are about acting with integrity, honesty and transparency, so we would assess whether a matter that came to us such as the one that you are describing was an allegation of the breach of the Code of Conduct, based on the nature of the conduct being reported, and there might be other elements of a provider's conduct in respect of the NDIA's price guide, et cetera, that may raise issues for the NDIA.

30

COMMISSIONER BENNETT: Thank you.

35

CHAIR: Commissioner McEwin?

COMMISSIONER McEWIN: No, thank you, Chair.

40

CHAIR: Mr Head, I'll ask Ms Downes whether she has any questions to put to you.

MS DOWNES: I have no questions, Chair, thank you.

45

CHAIR: And I assume that no other legal representative wishes to ask Mr Head questions? I will take silence as assent to that.

Thank you, Mr Head, to you for your fifth appearance or is it the sixth?

MR HEAD: Fifth. I had one rogue appearance at the Aged Care Royal Commission, so five at this one.

5 CHAIR: We won't count that one. Five appearances before us. Thank you very
much for the great assistance you have provided, the enormous amount of material
you have provided to us at the various hearings, both in writing and in your oral
evidence. We know, because you have said so, that you are finishing your role at the
10 end of this month. We thank you for your service as a Commissioner. It is pretty
clear from the evidence we have received at the Royal Commission that your task
was never particularly easy and I'm sure you all have understood that it hasn't been
easy. We wish you all best for the future.

MR HEAD: Thank you, Chair.

15 MS EASTMAN: Thank you, Mr Head.

THE WITNESS WITHDREW

20 MS EASTMAN: Commissioners, our next witness is Ms Boswell. I need to
reconstitute the witness stand and some documents, so could we take a short
adjournment, say until 3.00 pm Adelaide time. And then in terms of the rest of the
day, I think we may be with Ms Boswell for about half an hour to 40 minutes this
25 afternoon, and then we will be able to complete her evidence tomorrow. So if the
Commissioners are happy to have a short break and then resume for half an hour to
40 minutes, that's the proposed plan.

30 CHAIR: Yes. We have become very practised at taking short breaks so we will take
another one.

MS EASTMAN: Thank you.

35 **ADJOURNED** **[2.50 PM]**

RESUMED **[3.01 PM]**

40 CHAIR: Yes, Ms Eastman.

MS EASTMAN: The next witness is Lois Boswell. You have two statements in
hearing bundle B behind tab 56 and hearing bundle B behind tab 57. We will deal
45 first with the oath and affirmation.

CHAIR: Thank you very much. Ms Boswell, thank you for coming to the Royal

Commission today to give evidence. I would ask you please to follow the instructions of the Associate who is in the same room as you are and she will administer the affirmation to you.

5

LOIS BOSWELL, AFFIRMED

10 CHAIR: Thank you, Ms Boswell, just to explain --- you may already know this --- you will find that Commissioner Bennett is in the same room as you are in Adelaide, as is Ms Eastman, who will ask you some questions. Commissioner McEwin and I are in the Sydney hearing room of the Royal Commission. Ms Eastman will now ask you some questions.

15

EXAMINATION-IN-CHIEF BY MS EASTMAN

20 MS EASTMAN: Your name is Lois Boswell?

20

MS BOSWELL: Yes.

25 MS EASTMAN: You are currently the Chief Executive of the Department of Human Services in South Australia?

25

MS BOSWELL: Yes.

30 MS EASTMAN: You have prepared two statements for this hearing. The first, which is behind tab 56, is dated 19 February 2021. Have you got a copy of that?

30

MS BOSWELL: I do.

MS EASTMAN: Have you had a chance to read that statement?

35 MS BOSWELL: Yes.

MS EASTMAN: Are its contents true?

40 MS BOSWELL: Yes.

40

MS EASTMAN: The second statement, which is behind tab 57 in hearing bundle B, is a statement made on 19 May 2021.

45 MS BOSWELL: That's correct.

45

MS EASTMAN: You have got some amendments to paragraph 17 and to paragraph 42.

MS BOSWELL: Yes.

5 MS EASTMAN: Commissioners, I hope the Commissioners in Sydney have received a document that sets out the nature of those corrections?

CHAIR: We have, thank you very much.

10 MS EASTMAN: Just to ensure that those following the hearing are aware of the amendments, Ms Boswell, can you just take us through the amendments that you wish to make?

15 MS BOSWELL: Yes, please. To paragraph 7 of my statement of 19 May, I would like to add ---

MS EASTMAN: Paragraph 17?

20 MS BOSWELL: Sorry, paragraph 17, I beg your pardon, of my statement of 19 May 2021, I would like to make some changes to that paragraph. In the second sentence after the words "Director of Nursing, Internal Audit and Work Health and Safety", please add the word "representatives." Then in the next sentence it says, "There is a number of specialist", please add the word "matters/" in front of the word "groups". In the Roman numeral points underneath, the third Roman numeral dot point is added, inserted as the "the Mortality Review Committee", the fourth Roman numeral dot point inserted as "the Coordinated Care Committee" and then paragraph (v) should just read "Clinical Governance", remove the words "the" and "committee" and paragraph 6 should just read, "Client/Family Engagement and Complaints", again remove the words "the" and "committee".

30 MS EASTMAN: The next change is to paragraph 42 and that is just to change some of the document reference numbers; is that right?

35 MS BOSWELL: That is right. Would you like me to read out the document reference?

MS EASTMAN: No, we will use the document that you have provided us for those numbers. With those amendments, are the contents of those statements true?

40 MS BOSWELL: They are.

MS EASTMAN: The Royal Commissioners may remember that you gave evidence at Public Hearing 8 and you were part of a panel?

45 MS BOSWELL: Yes.

MS EASTMAN: You provided a statement on that occasion which the Commissioners marked as Exhibit 8.20. But not everyone may have followed that

proceeding and is aware of your role and responsibilities. You have been the Chief Executive of the DHS since October 2020?

MS BOSWELL: Yes.

5

MS EASTMAN: Before that, you were the Deputy Chief Executive and that was a position you have held since 2016?

MS BOSWELL: That's right.

10

MS EASTMAN: In terms of your professional career and background, can I ask you just to turn to paragraph 6 of your 19 May statement?

MS BOSWELL: Yes.

15

MS EASTMAN: You tell the Royal Commission there you have held previous positions as the Executive Director of the Cabinet Office and the Department of Treasury, and there is a range of other positions that you have held. Has your career essentially been in the public sector?

20

MS BOSWELL: No, not exclusively, I have also worked in the non-government sector for some time in northern New South Wales, I have worked in a community legal centre as an advocate --- not a lawyer but an advocate --- and I have also been in the Consumer Trader and Tenancy Tribunal in New South Wales, and at one stage I worked for the Federal Government as well and I have been an adviser to various Ministers, including the former Premier of South Australia.

25

MS EASTMAN: Have you ever had any experience in frontline delivery of disability services? By that I mean have you worked for a service provider, in a group home or in the provision of day services?

30

MS BOSWELL: I was involved in establishing the Lifetime Support Authority in South Australia, which is actually a disability service provider under the National Injury Insurance Scheme provisions. We established that. Whilst I was not a care worker or an allied health professional, we were a start-up organisation so therefore worked quite closely with people with disabilities who had recently acquired their disabilities in that role.

35

MS EASTMAN: In your role as the Chief Executive of DHS, DHS is not just limited to disability, is it? There's a wide range of functions in the DHS area of responsibility; is that right?

40

MS BOSWELL: That's right.

MS EASTMAN: And that includes areas of accommodation generally; is that right? Youth justice, those sorts of things?

45

MS BOSWELL: We used to have all social housing, we don't any more, it's removed to an authority, but we have early intervention, child protection, worker screening, concession supports and a range of other community service supports and non-government sector funding.

5

MS EASTMAN: DHS has had a long history in providing accommodation support to people with disability in South Australia; is that right?

MS BOSWELL: That's right.

10

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

MS BOSWELL: Most of it, not all of it. I've had to go to meetings at various points.

15

MS EASTMAN: There has been some evidence given by Mr Bruggemann setting out the history of the delivery of disability services in South Australia. He spoke about moving from large institutional model to the Strathmont Centre and then into community-based housing. Your career has spanned a period of time when the Strathmont Centre was in operation; is that right?

20

MS BOSWELL: There was only a little bit left in operation. But yes. And the Highgate institution as well.

25

MS EASTMAN: Were you involved in the Strathmont Centre being decommissioned and the process of assisting the residents to move into community housing?

MS BOSWELL: There had been a project operating for I think some nearly 10 years, called --- I might be wrong about the timeframe, but many years --- called "One Person at a Time", that had been involved in moving the residents into community settings. That was coming to an end when I reached the Department. But there were still a number of residents who were having special housing built, and I had the great pleasure of going to a few of the final ones opening.

30

35

MS EASTMAN: You tell the Royal Commission in your May statement that DHS and Accommodation Services have undergone a significant restructure with the deinstitutionalisation of disability service delivery and the most recent being the transition to the NDIS. So in terms of looking at the significant restructure, that has been an ongoing process, has it not, since the decommissioning of the Strathmont Centre and the move to community housing; is that right?

40

MS BOSWELL: Yes, and I would say it's still an ongoing process.

45

MS EASTMAN: As far as the number of people who receive accommodation services in South Australia at the present time, can I take you to your first statement, the February statement, to paragraph 12.

MS BOSWELL: Yes.

5 MS EASTMAN: In February you told the Royal Commission, in this statement, that
DHS now provides disability accommodation services to over 500 people in
community-based living arrangements within 211 accommodation facilities. Is that
number still accurate?

10 MS BOSWELL: That number does fluctuate a little bit. There are some different
numbers that were corrected at a point in time in my second statement. It may have
changed again, but it is approximately the same as the numbers in my second
statement. There are a few people coming and a few people leaving on a monthly
basis, but not many.

15 MS EASTMAN: In terms of the 500 people in community-based living
arrangements, those 500 people with disability, do they represent a particular cohort
of people with disability, for example intellectual disability, psychosocial disability?
What can you tell us about that group of 500?

20 MS BOSWELL: It is a mix. It probably primarily consists of people and intellectual
disability and some physical disabilities that accommodate --- sorry, that accompany
intellectual disability. There are people who have acquired brain injuries within that
group. It is built up over a period of time and comes out of a number of different
25 parts of what was the former disability sector, so the Julia Farr building, for example,
which became Highgate Park, had quite a bit of acquired brain injury but there were
also, in the old IDSC, quite a lot of intellectual disability.

MS EASTMAN: In terms of the 211 accommodation facilities, is that, loosely, 211
30 group homes?

MS BOSWELL: Yes, it is. I'm not sure whether the full 211 are group homes. We
also --- whether that includes the Northgate Aged Care facility as one unto itself, but
some of those are cluster housing arrangements and sites but most of them are
housing.

35 MS EASTMAN: In terms of the group homes in South Australia, are the group
homes generally catering for up to four or five people living together or are they sort
of smaller arrangements? One to two bedrooms?

40 MS BOSWELL: It depends a little bit on the era in which they were developed.
Some are --- I think the largest one has been up to seven. But we are working at
making them less than that and most would be in the three or four, but some are
individual.

45 MS EASTMAN: I think there is often a discussion in terms of the accommodation
facilities in group homes as to whether they are sort of legacy properties or
non-legacy properties. Are you able to assist us in terms of the 211, are these all

longstanding properties or are some of them relatively new and newly-built homes?

5 MS BOSWELL: No, quite a few were newly built in the last three or so years, but there is --- probably the larger proportion is older stock. It has been --- some of it has been changing over and most of it is now held by community housing organisations and we are actually not the provider of the accommodation any more. We rent or --- we don't rent, we provide services now into accommodation that is rented by the residents.

10 MS EASTMAN: Just looking at paragraph 12, though, you say that the Minister for Human Services owns 23 accommodation facilities. So that is 23 out of the 211; is that right?

15 MS BOSWELL: That's right, and those 23 are due to be transferred out of our Department.

MS EASTMAN: In paragraph 13 you say "DHS is responsible for about 30 per cent of disability accommodation services in metropolitan and country South Australia." Is that figure still correct?

20

MS BOSWELL: That's an approximation. But yes.

CHAIR: How many of the 500 people would be NDIS participants?

25 MS BOSWELL: There are approximately 500 NDIS participants. I can get you the exact figure, Chair. We have some that are aged care continuity of support, particularly in the --- in our aged care facility. But for the majority of housing, they would almost all be NDIS participants.

30 CHAIR: Thank you.

MS EASTMAN: In the time that we have got this afternoon, I want to ask you about the experience of South Australia transitioning to the NDIS. You deal with this in your second statement, the May statement. If I can draw your attention to page 4, paragraph 24.

35

MS BOSWELL: Yes.

40 MS EASTMAN: It was the case, was it, that:

..... in 2015 DHS began to transition some of its whole-of-life services to the non-government sector including its day activities, respite and in-home support.

45 MS BOSWELL: Yes.

MS EASTMAN: The evidence that you just gave in terms of now South Australia

providing 30 per cent, you have reached that figure of 30 per cent over a transition period from about 2015; is that right?

5 MS BOSWELL: No, the accommodation services number is pretty well as it has been. There may be less of a proportion because the sector is a bit bigger now. However, we have transitioned out of a lot of other services, rather than out of providing in-home support in group homes primarily. That's still --- it's slightly less than it used to be but it's still essentially the same number that the Department had when I arrived.

10 MS EASTMAN: When you were appointed the Deputy Chief Executive in August 2016, was it the case that one of your primary areas of responsibility was planning the transition for South Australia's disability services to transition to the NDIS; is that right?

15 MS BOSWELL: Yes.

MS EASTMAN: Can I ask you, in terms of that planning process, some of the planning appears to be in the statement, but there may be other matters that I need to ask you about to understand. What was the process that you are responsible for overseeing in relation to the transition of accommodation services and disability support generally to the NDIS?

25 MS BOSWELL: The process was when I arrived in the Department, the Department had been spending some time working through business plans and proposals regarding how South Australia --- South Australia was a very big service delivery arm of the sector --- and was working out whether or not any of that should remain in Government or whether it should be transitioned in line with the changing model to the NDIS to the non-Government sector. It was worked through over a period of time what model for each type of service delivery the Department had had was able to be transferred in what way.

35 So, for example, we also had domiciliary care services, which eventually were transferred to the Royal District Nursing Service. We had the adult therapy services that now sit with Minda. We had child and youth services that formed into their own organisation and became a cooperative of workers that set up as Allied Health professionals and operate as an organisation now called Kudos and provide therapy services for children. But our community --- Disability SA community service offices largely wound down as the NDIS took over and the LACs and the NDIA took over along with other support provision.

45 MS EASTMAN: It's the case, isn't it, that by February 2017 the South Australian Government had decided to move all State-run disability services to the non-Government sector with just the exception of the accommodation services; is that right?

MS BOSWELL: That's correct.

MS EASTMAN: And then part of the way in which the transition was overseen was the establishment of what you have described as the Peak Services Reform Group; is that right?

5

MS BOSWELL: Yes.

MS EASTMAN: You were a member of the Peak Group. You say in your statement that the group oversaw the transition of the State systems to the NDIS and the transfer of various other services. You say this:

10

..... and the establishment of the commercial trading entity for supported accommodation services.

15 Can I ask you to help me a little bit on what the commercial trading entity was intended to do with respect to the accommodation services that were going to remain? How did that fit into the State continuing to operate accommodation services but at the same time establishing a commercial trading entity?

20 MS BOSWELL: It was intended to take it over from the Department and operate as a commercial arm of Government. "Commercial" may not be quite the right word but it was an entity that could trade, just like our water supply entity is a Government entity.

25 MS EASTMAN: So privatising, was it?

MS BOSWELL: It's not privatising because it's owned by the State. So it's corporatising it, I guess.

30 CHAIR: Is that the entity that is intended to be a registered NDIS provider of ---

MS BOSWELL: It is no longer the proposal, Chair. That proposal was a point-in-time proposal and the State has changed its position since then.

35 CHAIR: I don't want to you comment on the wisdom or otherwise of Government policy, but what's your understanding of the idea behind the privatisation of the services? What's the expressed goal of that?

40 MS BOSWELL: The expressed goal was to have a board. It wasn't to necessarily privatise, it was to have a board to do a full clinical governance, corporate governance change to the way that service operated and make it more in line with the operating model of an NDIS organisation.

45 CHAIR: Sorry, I didn't make it clear. I wasn't talking about the trading entity, I was talking about the decision to move the services from the Government to the non-Government or private sector. What was the expressed objective?

MS BOSWELL: It was primarily about choice and control was going to be in a more diverse range of services, so that you had --- for example, therapy services were operating --- it wasn't a matter of a rationed system any more where you had to queue up to wait to get a therapy service from the State because you were able to use
5 your NDIS plan to get that service from a provider. We were running a rationed system where you had to wait for us to provide you with a service and on a waiting list and it was rationed service. So it was much more in line with this idea that people were able to choose services rather than have to be doled out services.

10 CHAIR: Thank you.

MS EASTMAN: In terms of the initial plan, which was to use the vehicle of a commercial trading entity, two things had to be done, did they not? First of all, there had to be the establishment of the trading entity with an appropriate composition of
15 the board. But the other was that there had to be an internal audit to ascertain the readiness of the DHS service into the new trading entity; is that right?

MS BOSWELL: I don't know that there had to be. We chose to do an internal audit to try to ascertain the readiness and to make sure that we knew what it was that was transferring and how it was transferring and how ready it was, and be able to provide
20 the incoming organisation with good intelligence about what they were taking over.

MS EASTMAN: So the purpose of the audit was really to look at the requirements of the NDIS and to look at the requirements of the NDIS Quality and Safeguarding Framework and undertake an audit of what was presently occurring in South
25 Australia through DHS, to ascertain its readiness to move into a commercial trading entity that met the NDIS requirements? Is that a fair summary of what was happening?

30 MS BOSWELL: Yes. It was probably motivated by ensuring that we knew what was transferring and start to try to bring it up to the new model.

MS EASTMAN: While this exercise was undertaken, the Independent Commission against Corruption in South Australia had been conducting an inquiry into a question
35 of maladministration in public administration in relation to the delivery of services to a facility which --- looking at the delivery of serves that resulted in what is called the Oakden Report. Is that right?

40 MS BOSWELL: Yes.

MS EASTMAN: The service was the Oakden Older Persons Mental Health Facility?

MS BOSWELL: Yes.

45 MS EASTMAN: The ICAC Inquiry was in relation to complaints and reports about the quality of care at that facility; is that right?

MS BOSWELL: That's right.

MS EASTMAN: Mr Lander, a former Federal Court judge and ICAC Commissioner, oversaw a fairly significant inquiry?

5

MS BOSWELL: Yes.

MS EASTMAN: A fairly large report was prepared and that report identified a number of factors in terms of the public administration of services of the kind such as the Oakden Older Persons Mental Health Facility; is that right?

10

MS BOSWELL: Yes.

MS EASTMAN: Obviously the findings from the Oakden Inquiry resulted in DHS also having to look at its administration and this was happening at the same time as examining the readiness to move into that NDIS framework and the commercial trading entity. So that's all happening around the same time?

15

MS BOSWELL: It is. Oakden was not administered by our Department, it was in the Department of Health, but we chose to obviously examine Mr Lander's report and see what application it had for services provided to people in facilities, essentially.

20

MS EASTMAN: At this time, obviously there's a lot happening within the Departments in terms of looking at systems and practices, and as you say in your statement, in June 2018 a newly-elected State Government dissolved the public corporation and announced that DHS would gradually withdraw from the provision of accommodation services subject to consultation. So that's why you never ultimately ended up in the model that was proposed by the Peak Services Reform Group; is that right?

25

30

MS BOSWELL: That's right, although the Peak Services Reform Group also went on to be the group proposing new models. It was one model that was chosen by the former Government and the incoming Government chose to approach it in a different way.

35

MS EASTMAN: But the work that was undertaken and started with the internal audits continued, did it not, to help inform what needed to be done in South Australia to ensure that the South Australian services would be ready to move to the NDIS standards; is that right?

40

MS BOSWELL: Yes. I recall having a conversation with the then Chief Executive, with a concern that we needed to try to have more eyes on what services and the quality of services within group homes. They have been in the --- as you said, quite a long period of time, built up out of an institutional model and it was seen to be an audit to try to both look at quality and assurance in general, as well as look at the Oakden sort of losses, as well as look at how the NDIS Quality Assurance Framework might be used in the future.

45

- MS EASTMAN: The Government witnesses --- I think this comes from Mr Allwood's evidence, but I understand you are familiar with these documents --- we have some of the internal documents that help us understand what the audit assignment was and then the steps taken in terms of various audits. Could I start by asking you to look at the memorandum that appears behind tab 31 in hearing bundle B. If we need the numbers, the final four numbers at the top of the page are 0024. Have you got that?
- 5
- 10 MS BOSWELL: Thank you, it's on the screen.
- MS EASTMAN: It's two pages. Just take a moment and tell me whether or not this is a document you recognise. It suggests that you were cc'd into the document.
- 15 MS BOSWELL: I have the first page. I recognise the document as one that I have seen before.
- MS EASTMAN: I'm drawing your attention to it because it sets out on the first page the "Audit Scope and Objectives". So this was the proposed due diligence activity in relation to quality and safeguards. Then there are a number of dot points on that page. Does that accord with your understanding of what the purpose and scope of the audits that would be undertaken?
- 20
- MS BOSWELL: Yes.
- 25 MS EASTMAN: Over the page, the terms of the audit approach and the identification of risks, one of those factors was a failure to meet the agreed targets within the South Australian bilateral agreement and the operational plan for the transition of the full roll-out, so the audits were against measuring risk of not making compliance with the bilateral agreement and a roll-out plan; is that right?
- 30 MS BOSWELL: Yes.
- MS EASTMAN: Then in terms of the second risk is the "Failure to adequately assess and respond to the impact of the implementation of the NDIS and Aged Care reforms". Does that partly pick up some of the Oakden issues?
- 35 MS BOSWELL: This is primarily NDIS and aged care reforms but I would think that that is implicit within that, yes. They refer back to an organisational strategic risk document and a strategic risk document which had spelt out organisational risk.
- 40 MS EASTMAN: Can I ask you to turn to the next document in that bundle, behind tab 32. You have made reference to this document in paragraph 28 of your May statement. I will just ask you to look at the document. This is a memo that you are also copied into and it is from Mr Allwood, the Manager of Internal Audit. This now takes us up to 21 December 2017.
- 45

MS BOSWELL: Yes.

MS EASTMAN: This is a report that he provides in relation to addressing the audit in light of the scope and objectives described earlier, but you will see they are repeated again on page 1. Are you familiar with this document?

MS BOSWELL: Yes.

MS EASTMAN: If we go over the page, there is a "Summary of Findings". That tells us that the findings cover the work done between September and December 2017. We are told that 40 of the 100 accommodation sites selected as the sample had been visited.

MS BOSWELL: Yes.

MS EASTMAN: Then based on those visits, a number of areas had been identified, first in terms of good practice?

MS BOSWELL: Yes.

MS EASTMAN: And then in terms of opportunities for improvement?

MS BOSWELL: I can't see that, yes, but that is the standard structure of the report. Yes.

MS EASTMAN: So good news first ---

MS BOSWELL: And then a lot of things to do.

MS EASTMAN: --- and not so good news, described as opportunities for improvement, is that right?

MS BOSWELL: Yes.

CHAIR: There are obviously optimists in the organisation rather than pessimists?

MS BOSWELL: Or you deliver medicine with sugar.

MS EASTMAN: I'm just conscious of the time and I don't want to go through each of these points but I do want to take you through a few of them. Would it be fair to say that, overall, there are quite a few opportunities for improvement identified in this report?

MS BOSWELL: Yes, it would be.

MS EASTMAN: And some of the areas for opportunity make it fairly clear that the field work had identified practices that were not sufficient to meet the NDIS Quality

and Safeguarding Framework at that time.

MS BOSWELL: I would agree with that.

5 MS EASTMAN: The first one --- and if you followed the evidence over the course of this week, some questions have been raised about how clients' funds were managed and how cash was managed. Did you hear that evidence? Ms Kirkby also give some evidence about that as well?

10 MS BOSWELL: I heard some of that evidence, I heard a little bit of Ms Kirkby's, but I'm not aware if there were others.

MS EASTMAN: We will come to the case studies, probably tomorrow. Ms Karen Rogers raised an issue in relation to the purchase of some bedding and bed linen for
15 her son and whether that purchase had been made with her prior approval and whether her son had been involved in the purchase.

MS BOSWELL: Yes.

20 MS EASTMAN: That then led to some evidence about the nature of Mr Rogers' finances at the house. One of the first dot points here is that the NDIS Quality and Safeguarding Framework does not explicitly cover arrangements for the management of client assets including cash.

25 MS BOSWELL: Yes.

MS EASTMAN: This is raised as an issue in terms of South Australia's preparedness to move into the system. Do you remember whether this was a particular issue and if so what was done around this period of time, as part of
30 opportunities for improvement?

MS BOSWELL: There are a number of issues associated with what is a legacy system of client trust funds that exist within our Department. A year or so before this --- it might have been a little longer --- I know that there was an attempt by the
35 Department that is being revisited at the moment, to consider moving client trust funds to the Public Trustee. The Public Advocate at the time opposed that because the Department administers these funds without any form of fee or charge and so therefore it's always been this complex contention of the Department managing a client trust fund that is in demand because it's free, but means that it's managed
40 within the Department that is also providing the services. We have also more recently been trying --- I do know that the Chair mentioned that cash is an odd thing to have in this day and age --- one of the complexities, and we have spent a lot of time on this because I do believe we have to get out of cash, but there are a number of complexities. One is that a number of our clients do not have 100 points to open a
45 bank account, which has been an ongoing issue. We have worked through a number of financial institutions and we have gotten to almost the point of getting debit cards with them but not being able to pull that off because the institutions have pulled out.

I would have to say, though, that I think that the issues raised by Mrs Rogers in her evidence, and I know that she will correct me if I'm wrong, was about the use of the money without the inclusion of Daniel, not about the accounting of this money. This money in our service gets counted regularly, it has all the financial oversights of petty cash associated with Government and is regularly audited. I need to report to the Auditor-General on any conception of fraud and I know that in this year's statement I have signed off, I think I said that there was one possible \$10 error in one of these client cash funds.

MS EASTMAN: We will come back to the particular circumstances of Mr Rogers tomorrow. Can I ask you to turn to the next page, and it is the third final dot point on the page. It says:

There is no consistent or formalised process for conducting a comprehensive risk assessment for each individual client, and no documented evidence to show use of a risk matrix to assess likelihood and consequences of each risk.

Then the dot point after that is:

A number of staff report variances and modifications between information relayed by them to the RiskMan call centre staff, and the RiskMan reports.

So this is identified as an area of improvement. In terms of the readiness for the transition. If you turn to page 13 of this memo, you will see that the auditors have identified a sort of risk associated with identifying the areas of improvement, and this one is the finding with respect to there being no comprehensive risk assessments being undertaken. Do you see that?

MS BOSWELL: Yes, I do.

MS EASTMAN: The "Possible Causes" of that are described, perhaps obviously, "No risk assessment was undertaken". Then there is an assessment of the potential implication. It is described this way:

A lack of a comprehensive risk assessment undertaken for each individual client leading to inadequate client care and support services.

MS BOSWELL: Yes.

MS EASTMAN: Would you accept that that somewhat understates the risk of not undertaking a comprehensive risk assessment for each individual client might be?

MS BOSWELL: I would agree that inadequate client care and support services could not be the only consequences of that and injury or harm could be a consequence as well.

MS EASTMAN: So the lack of a comprehensive risk assessment could be not identifying a risk of violence, abuse, neglect, exploitation or death, would you agree?

5 MS BOSWELL: If there was a lack of a comprehensive risk assessment. I'm not sure that that means that there's no identification of a risk of abuse or neglect.

10 MS EASTMAN: For the purpose of the Department's work in looking at its readiness for the transition, the risk level is described in this way: "the likelihood of that risk occurring is possible but the consequence is described as minor, which leads to a risk rating of moderate". Reflecting on more recent events, do you think that seriously underplays the consequence of the risk that might arise for not having a comprehensive risk assessment?

15 MS BOSWELL: I will have to check the risk ratings. But I don't think "possible" multiplied by "minor" usually results in "moderate", so there may be an error in that table. I would say that this is about a comprehensive risk assessment for a client but that doesn't --- it isn't completely divorced from the idea that people are alive to risk of injury in a way other than through a comprehensive risk assessment, which did always exist in the Department's risk table as obviously an injury to a client was
20 considered a significant risk.

MS EASTMAN: There is a further audit report provided on 16 April 2018, behind tab 33. Commissioners, I will deal with this document and that might conclude --- after that we will conclude for the day, if that's convenient.

25 CHAIR: Yes.

MS EASTMAN: You have got a copy of the document behind tab 33. The numbers in the top right-hand corner are 0026. If you turn over the page, by this stage 103
30 accommodation sites had been visited, and the sample sites by this stage represented 50 per cent of the total number of accommodation service sites.

MS BOSWELL: Yes.

35 MS EASTMAN: Looking at that second page, some of these visits were unannounced visits, indeed, half of the visits. And this part on the audit scope describes a little bit about the way in which the visits were undertaken. Again, the model of identifying good practice appears at the bottom of page 2 and over to page 3. Then some concerns were raised in this report. Do you recall this report at
40 all?

MS BOSWELL: I recall there were reports. This one specifically, I recall that I have seen because it was attached to my statement. But is there a particular part of it you would like me to recall?

45 MS EASTMAN: I just want to see if you can recall this at all, because it seems by this stage, reading the whole of this report, that the findings from the Oakden report

start to have greater significance in terms of how the auditors are assessing and checking standards?

5 MS BOSWELL: That would be correct. The Oakden report came out and audit were asked to make sure they considered that as part of assessing risk.

MS EASTMAN: Some of this aspect of the report comments on observations of some of the clients. If you look to page 5 there's a heading "Monitoring for, and Reporting of Abuse". The auditors record this:

10 *While Internal Audit can advise that no instances or indications of abuse were identified during the audit visits, it is not possible to provide absolute assurance that it is not occurring. The audit can, however, provide assurance that there are systems and controls in place to lessen the potential for abuse, and appropriate mechanisms in place for reporting abuse.*

Then if you read the next paragraph, the language is a little confronting, isn't it? I will just give people a warning about this.

20 MS BOSWELL: It would not be language I use.

MS EASTMAN: This is the auditor saying:

25 *Some client behaviours can be quite childlike, and it is feasible that a client can be upset with a support worker one minute and then forget whatever they were upset about and be the worker's "best friend" the next.*

This is in the context of describing client behaviours and it gives an indication of perhaps how the auditors were making assessments by their observations in a site. Would you agree with that?

30

MS BOSWELL: Well, language is an indication of many things, yes.

MS EASTMAN: Over the page, they say at page 7 --- and this is part of the "Improvement Opportunities", that on one occasion --- this is the middle of page 7, the second dot point:

40 *One occasion was observed where a staff member instructed a client to "go and lie down" during the audit visit, so that the employee could talk to auditors "without interruption". The lead auditor suggested the client be allowed to be present, as the meeting was taking place in the client's home.*

What I want to suggest to you is reading this memo, there are some hints in the way circumstances are described that should cause some concern. Would you agree with that?

45

MS BOSWELL: Yes, I think the auditor, though, is maybe clumsily trying to say

that what was done by the staff member was inappropriate.

MS EASTMAN: And the "Conclusion" in terms of this report on the following page, page 8 of 25, is suggested that:

5

Overall, based on the testing and site visits performed during this review, Internal Audit can provide reasonable assurance of a good level of compliance with requirements of the National Standards for Disability Services and the NDIS Quality and Safeguarding Framework.

10

So that's the conclusion that the auditors reached. Do you see that?

MS BOSWELL: Yes.

15 MS EASTMAN: And these audit reports formed part of the assurance work that the Department was undertaking in its transition; is that right?

MS BOSWELL: This is assurance work not necessarily --- well, in its transition but the transition has not yet occurred and there has been significant other work done since this report was produced. Particularly last year there's been quite a big change in the Quality and Safeguarding Framework of the Department and of Accommodation Services.

20

MS EASTMAN: This is the last thing. In terms of compliance with the NDIS Quality and Safeguarding Framework, if we turn to page 18 of this memo, there are some graphs or charts that help us in a summary format to see how the auditors assessed that question of compliance. Looking at the first one, which I think is on the screen, it is:

25

30 *Encouraging safe, innovative, high quality support provision.*

The blue is "Compliant" and the orange is "Requires improvement". For that first chart, evidence of a comprehensive risk assessment seems to be the greatest risk area. Would you agree with that?

35

MS BOSWELL: Yes, I would.

MS EASTMAN: Then over the page, on the area of "Supporting and Empowering People with Disability", information is provided to clients in a suitable format. That's the area that requires improvement?

40

MS BOSWELL: Yes.

MS EASTMAN: I didn't take you to that earlier but that related to the fact that often the clients, who may be non-verbal or non-literate, were receiving letters to advise them about what was happening in their service.

45

MS BOSWELL: Yes.

MS EASTMAN: That was the issue. Do you recall that?

5 MS BOSWELL: Yes.

MS EASTMAN: Then following that, you will see that a table is then prepared which does the work of bringing the Oakden recommendations into the work that the auditors were doing, and that completes the memo. Do you see that?

10

MS BOSWELL: Yes. I can't see it. But yes, I take your word for it.

MS EASTMAN: Tomorrow morning, when we start again, there is another part of the work that was done on the site visits, and the auditors reported on what they observed on particular sites. This is the context in which, for example, I will quickly deal with this, if we turn to tab 36, if we look at a report done by Mr Allwood, which was provided to Ms Kirkby, this is part of the due diligence review but it involves an audit report done for N Street. Do you see that?

15

20 MS BOSWELL: Yes, I do.

MS EASTMAN: Did you observe Mr Allwood give evidence yesterday?

MS BOSWELL: Yes, remotely.

25

MS EASTMAN: He was taken to this document in the context of the observations during the site visit, which are described in the dot point at the bottom on that page. Do you see that?

30 MS BOSWELL: Yes, I do.

MS EASTMAN: This document goes into a lot of the issues concerning the circumstances at N Street as at 16 January 2019. But to understand how Mr Allwood came to be at N Street, that document was prepared as part of the due diligence review; is that right?

35

MS BOSWELL: It was. However, it was a special document prepared on that one site because that one site --- and it wasn't done for a lot of sites. This was a single focus on the basis that, I think as Ms Kirkby has already given evidence, that when she came into the role and she asked all of her managers to read the Oakden report and identify what they thought, whether they had any sites that gave them concern, they said --- N Street and he went and did this audit, this audit came out in January. I think Ms Kirkby was still away, and returned --- I think she returned in the beginning of February and we can discuss the case study that happened very shortly after that tomorrow.

40

45

MS EASTMAN: At paragraph 30, you say that "In light of the findings and

recommendations of the Due Diligence Project", you discussed with the then Chief Executive "the need for ongoing audit to provide better assurance of quality and safety in the many dispersed sites of Accommodation Services." And that then led in October 2018 to the internal audit to undertake the more comprehensive structured approach, including site visits; is that right?

MS BOSWELL: Yes.

MS EASTMAN: Just to finish off this topic, in paragraph 32, the reports and the site visit project reports were then provided to the Director of Accommodation Services and the Risk Management Audit Committee and the purpose of those committees taking those reports was to identify areas of reform and improvement; is that right?

MS BOSWELL: Yes, and to regularly provide an update on the actions as identified in the reports.

MS EASTMAN: Did this process then lead to the development after new strategic plan for the model of service delivery?

MS BOSWELL: Yes. I think that, as you have identified, the auditors themselves are not Allied Health practitioners or skilled specialist disability workers, but there was enough in the audit reports to provide concern that led to a very clear agenda put forward to try to bring the service into modern practice.

MS EASTMAN: Commissioners, just noting the time, and I apologise for going over, I just wanted to finish that particular part of Ms Boswell's evidence this afternoon. If we can continue ---

CHAIR: That's quite alright, Ms Eastman. We shall resume, I take it, at 10 o'clock tomorrow. Ms Boswell, if you would be good enough to return then.

MS BOSWELL: Thank you.

CHAIR: In the meantime, it only remains for me to thank South Australia for giving so many employment opportunities to retired Federal Court judges. It seems to be a very consistent practice, much to be commended.

MS BOSWELL: Very welcome, Chair.

MS EASTMAN: Thank you, Chair.

**HEARING ADJOURNED AT 3.52 PM UNTIL 10.00 AM ON FRIDAY,
11 JUNE 2021**

Index of Witness Events

GRAEME HEAD AO, AFFIRMED	P-286
EXAMINATION-IN-CHIEF BY MS EASTMAN	P-286
QUESTIONS BY THE COMMISSION	P-329
THE WITNESS WITHDREW	P-331
LOIS BOSWELL, AFFIRMED	P-332
EXAMINATION-IN-CHIEF BY MS EASTMAN	P-332

Index of Exhibits and MFIs