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**TRANSCRIPT OF PROCEEDINGS**

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

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

**10:00 AM, FRIDAY, 11 JUNE 2021**  
**DAY 5**

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

CHAIR: Ms Eastman, I understand that the hearing room in Adelaide is being cleared and this is in private session. Is that right?

5 MS EASTMAN: No, quite the opposite. I think there was a misunderstanding that there would be a private session this morning. Those matters have been resolved so we are ready to recommence with Ms Boswell.

CHAIR: That is very good news. Alright, thank you.

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**LOIS BOSWELL, ON FORMER AFFIRMATION**

MS EASTMAN: We are ready to commence when you are, Chair.

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CHAIR: Now Ms Boswell is on screen. We can see you. Thank you for returning to the Royal Commission. Ms Eastman will continue asking you questions. Thank you.

20 MS EASTMAN: Chair, I know we are out of a little bit of order, but whether you want to introduce the morning in terms of the Acknowledgment of Country.

CHAIR: Yes. I do that. Thank you for reminding me.

25 We want to acknowledge the Kurna people of the Adelaide Plains, the traditional custodians of the land upon which the Royal Commission is holding the hearing in Adelaide this week. We wish 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 this hearing and the  
30 Wurundjeri people of the Kulin Nation from whose lands Ms Bennett of Counsel is appearing in Melbourne. We pay our respects to their Elders past, present and emerging. We also pay our respects to all First Nations people who are attending the hearing in Adelaide in person today, as well as those who may be viewing the hearing on the livestream.

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Thank you, Ms Eastman.

**EXAMINATION-IN-CHIEF BY MS EASTMAN, CONTINUING**

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MS EASTMAN: Thank you. Thank you, Ms Boswell. The affirmation you made yesterday continues.

45 There are two things I'm told you want to correct from yesterday's evidence, or provide information to the Royal Commission.

MS BOSWELL: Yes, please.

5 MS EASTMAN: The first was in relation to the discussion we had yesterday about the 500 participants and how many were NDIS participants. Is that right? What would you like to tell us about that?

10 MS BOSWELL: That's right. Of the clients in our service, and this includes in our aged care facility, 462 are NDIS participants and 80 are continuity of support participants, which means that they were over the age of 65 when the NDIS commenced.

MS EASTMAN: The second issue was that you wanted to make a correction in relation to the dollar sums in relation to the forward control issues; is that right?

15 MS BOSWELL: Yes, I said that I had signed off on a letter to our external Auditor-General of the potential for a \$10 fraud associated with client funds. I've checked my records and it's actually a \$30 potential missing amount of money across all the houses in total.

20 MS EASTMAN: Thank you for those matters. When we left yesterday we had looked at the auditor's memos and reports as part of the transition to the NDIS. The Royal Commission asked you to prepare, as part of your statement, to specifically address the process of transition to the NDIS. If you have got a copy of your second statement, which is the 19 May 2021 statement, you address this in some detail at  
25 paragraphs 66 and following; is that right? That is at tab 57 of hearing bundle B.

MS BOSWELL: I apologise, I have brought the wrong folder with my statement. If I may have my statement? I'm embarrassed and I'm sorry about that.

30 MS EASTMAN: That's alright. Have you got a folder where you have got a statement that you would like to use?

MS BOSWELL: It's back in my office.

35 MS EASTMAN: Why don't I ask the Office of the Solicitor Assisting to give you a hard copy of your statement.

MS BOSWELL: I would appreciate that.

40 MS EASTMAN: I can hear some activity behind me. Let's see how we go. I want to draw your attention to paragraph 66. You have a copy of it on the screen. Can you work with that copy?

45 MS BOSWELL: Yes.

MS EASTMAN: I don't need to ask you chapter and verse about this but I just want to understand that when the Royal Commission asked to you give a brief description

of when the NDIS commenced in South Australia, and that included the process of transition to the NDIS including when the transition is intended to be completed, this is the total of the summary, is that right, if we look at paragraph 66 through to paragraph 78 on the following page; is that right?

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MS BOSWELL: I will take your word to it. It certainly goes to paragraph 77, which is what I can currently see.

MS EASTMAN: There's a hard copy. It might make it easier.

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CHAIR: That's why, Ms Boswell, you need a junior counsel. The role of junior counsel is to find the documents that senior counsel can't find.

MS BOSWELL: I would clearly not qualify then, sir, I'm sorry. Thank you. Yes, it is. That's correct.

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MS EASTMAN: Can I just summarise that you have described the process of entering into two bilateral agreements in the Commonwealth?

MS BOSWELL: Yes.

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MS EASTMAN: In paragraph 75, the in-kind arrangements must be phased out by 30 June 2023?

MS BOSWELL: That's correct.

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MS EASTMAN: That's provided for in the second bilateral agreement; is that right?

MS BOSWELL: Yes, it is.

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MS EASTMAN: You tell the Royal Commission that DHS is a registered provider of services under the NDIS for non-in-kind services and it intends to be able to deliver all of its services, from 1 July 2023, on a cost recovery basis. So does that mean that in terms of the DHS role, that the DHS itself is going to be subject to the NDIS regime as a registered provider? Is that the intention?

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MS BOSWELL: Yes. And we are about to be a registered provider for some services already very soon and be subject to that regime. It was never intended that being in-kind, when that agreement was signed, meant that the services would not be subject to the NDIS Commission regulatory scheme. The State of South Australia --- well, from my perspective, we always understood that was what was going to happen. It was in September of that same year, 2018, just after that bilateral had been signed, that the Commonwealth informed us, I think at a senior officers' meeting, that in-kind services had been determined not to actually be NDIS services under the legislation and therefore the Commission was not able to regulate. It was more, I would argue, a subject of regulation and legislation that hadn't contemplated it than an intended outcome.

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MS EASTMAN: But becoming registered provider under the NDIS, it's the case, isn't it, that the DHS will be subject to regulatory and legislative arrangements in the NDIS Act, and that includes also reports to the Quality and Safeguards Commission?

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MS BOSWELL: Yes, that's correct.

MS EASTMAN: DHS has, up to the point of transition to the NDIS, provided its services both in terms of accommodation and supports on a case management approach; is that right?

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MS BOSWELL: Yes, that's correct.

MS EASTMAN: One of the impacts of transitioning to the NDIS is moving from a sort of one-stop shop case management approach into more disparate service arrangements; is that right?

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MS BOSWELL: Yes.

MS EASTMAN: What can you tell the Royal Commission about how you have assisted the clients who have been assisted with a case management approach, transitioning into a new model where the Department might still provide their services but not in the case management model? What will that mean for the clients and how have you assisted the clients to prepare for that change?

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MS BOSWELL: So over the last 18 months --- actually, nearly two years --- we have implemented a number of fairly significant employment changes --- or position changes in accommodation services. We are referring only to accommodation services or to the broader roll-out?

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MS EASTMAN: No, I think if we can --- I know the broader roll-out covers a range and you have actually included those in paragraph 79 of the statement. But if we focus on the accommodation services and the residents in the accommodation services who are also provided other services and supports in terms of day-to-day living or transport or health services, whatever it might be.

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MS BOSWELL: So we already have --- most of the clients within our service will be accessing other NDIS services from outside our service already. We have implemented capacity building officers for all of our clients and their ---

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MS EASTMAN: What does "capacity building" mean? That sounds like a very sort of public service or management term. Tell me what that means?

MS BOSWELL: Actually, I think it's an NDIS style term.

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MS EASTMAN: But what does it actually mean, if I'm a person who has relied on a case management approach, what does capacity building mean to me?

MS BOSWELL: So we have service coordinators as well, one per 25 clients, who are helping people to access their services if they have not chosen to have a support coordinator externally. Capacity building officers are doing things like helping  
5 people meet their neighbours, understanding the NDIS, working through what they would like to access in terms of goals. Capacity building is a concept that comes, I think, out of the NDIS language. We also in addition to the capacity building officers and the service coordinators, we also have quality and safeguarding officers across the services now. Every family or guardian and client have access to the  
10 name and the direct mobile number of their service coordinator that they can call and they only have 25 clients per service coordinator. That's separate to the provision of services that have always existed in the houses.

MS EASTMAN: Has that arrangement been in place for a period of time now or is it  
15 still being rolled out?

MS BOSWELL: I'm happy to provide the Royal Commission with the actual dates of it starting, but it came out of a new service delivery plan that I refer to in my statement at --- when we talk about the new plan for accommodation services. Can  
20 I check the information and come back to you? It's been --- I think the plan commenced in late 2019 and these officers were associated with that. That change was around the end of 2019.

MS EASTMAN: Has there been any evaluation of that capacity building project so  
25 far?

MS BOSWELL: We are currently in the process of an external audit for NDIS quality and safeguards. We are also surveying --- we have done two rounds of surveying all of our clients and we are about to start surveying families. There are  
30 now regular meetings happening with families in houses on a quarterly basis and the quality and safeguarding officers are following trends and feeding that back as well.

MS EASTMAN: In your statement you tell the Royal Commission that South Australia is now fully transitioned to the NDIS, and address that issue which we have  
35 just been talking about, that the transition in terms of the in-kind arrangement also needs to be completed by June 2023; is that right?

MS BOSWELL: Yes. By "transition" in my statement, I mean the concept of transition that was used by Governments, which is that everybody had access to  
40 becoming an NDIS participant. That came in in phases. So when South Australia is fully transitioned, like other jurisdictions, everybody is a participant in the NDIS but some people are getting in-kind services.

MS EASTMAN: One matter I want to ask you about is at paragraph 97 of your  
45 statement on page 15. This issue has arisen for the Royal Commission over the course of this week. That is that since July 2018 the NDIS Quality and Safeguards Commission has been the national regulator on quality and safeguards, and that has

meant that if a person who is in DHS accommodation but also receives services from a registered NDIS provider, then the fact that they receive services from an NDIS provider will give them a pathway to the Quality and Safeguards Commission, even though the Commission doesn't have jurisdiction over what may occur within the accommodation operated by DHS; is that right?

MS BOSWELL: Yes.

MS EASTMAN: So paragraph 97, you say:

*While the Department does not have a direct role in safeguarding for people in receipt of services provided by the non-government sector .....*

By that, do you mean the non-government sector being both registered and unregistered NDIS providers?

MS BOSWELL: I think in that paragraph I'm primarily referring to the non-government sector that are mainly registered providers. The sector that existed pre-NDIS and people who have become part of that as organisations, I think, since. And in that paragraph in particular I go on in the next paragraph to specifically talk about the COVID-19 ---

MS EASTMAN: I want to finish this paragraph. So "non-government sector" is a reference, for the most part, to NDIS registered providers; is that right?

MS BOSWELL: Yes, okay.

MS EASTMAN: But you say that the Department continues to play a leadership role within the disability sector. I want to understand what you mean by that. If the Department doesn't have a direct role in safeguarding and you accept that that is the jurisdiction of the Quality and Safeguards Commission for NDIS-registered providers, how is it that the Department continues to play a leadership role within the disability sector and what do you mean by leadership role?

MS BOSWELL: So in that paragraph I'm primarily referring to situations that have happened in terms of --- COVID-19 is one very significant example, where we went on to provide sector forums to talk about what happened within Supported Independent Living and to try to assist the sector with information about the situation in COVID. As well as that, we have been providing information to the sector and conversations about complex support and in terms of our role in engaging with the Commonwealth about things like complex support needs pathways or access when there is a crisis to both the State and Federal systems.

MS EASTMAN: Can we take it that leadership role means that the Department and indeed the South Australian Government recognises that it cannot completely vacate the field?

MS BOSWELL: Absolutely.

MS EASTMAN: And is it the case that the Department and the Government see that it has a role as being a provider of last resort, where the safeguarding arrangements  
5 under the NDIS and the planning and funding of services under the NDIS fail?

MS BOSWELL: At the moment we do appear to be playing the role of provider of last resort, where we have some circumstances where providers are determining that they can no longer provide services to a client and some quite unfortunate situations  
10 of people being social admissions to hospitals, for example, and we are acting as a provider of last resort in terms of providing accommodation services for --- in those situations. And also taking on clients into our service that other services have declined to provide further service to. I cannot speak for the future policy of  
15 Government about whether they intend to deliver accommodation services as a provider of last resort forever. However, in the moment I know that that is the position, is that we have fallen back into the position of provider of last resort role.

CHAIR: Can I interrupt to ask a question, to link what you said previously. You talked about capacity building and one officer being allocated to 25 clients. Is that  
20 something that is going to continue, as far as you know, indefinitely into the future?

MS BOSWELL: That's our service coordinator rather than our capacity builders, was the 25 client ratio. At the moment we intend to continue delivering our services that way, as an accommodation service provider. Obviously, when we move into the  
25 NDIS, our service coordinator role will need to adapt to the support coordination role in the NDIS, and people will be able to choose whether they have a support coordinator within our service but as I know the Commission has identified, there are complex ---

30 MS EASTMAN: Can I ask you to slow down?

MS BOSWELL: To slow down for the interpreters. I knew I was rushing then.

MS EASTMAN: We have enough time so please slow down.  
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MS BOSWELL: The support coordinator role under the NDIS is obviously one where people can make greater choice about who their support coordinators are. We already have people in our service who have chosen external support coordinators and we have always --- South Australia has, since 2017, been very determined that  
40 people need to be released from any in-kind arrangements if they so choose. We will continue to provide those services if that's what people want but we will also provide people options to get them from other organisations.

CHAIR: As support coordinators under NDIS, that normally involves, does it not,  
45 provision in a plan?

MS BOSWELL: Yes, and I believe, Chair, that what will happen is, as all --- our



plans are currently being converted to standard NDIS plans and support coordination will be provided when the NDIS says so in the plans. For the majority of clients within our service, well, I would suspect for all of the clients in our service, there will be some support coordination provided in our plans because of the nature of clients in our service.

5  
CHAIR: I understand. But I'm just trying to clarify that --- and I'm not being critical in asking this question --- the South Australian position would be that it would receive remuneration for this, in the same way as any other support coordinator, through funding provided by the NDIA?

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MS BOSWELL: Yes, and that's a requirement of moving out of in-kind services. We may still choose to operate functions that are not directly billable but that we will work through, and that's because all services may choose to provide an office that they can't directly build that office in time for, but is a role that they have within their service for the purpose of quality or safeguarding or good practice.

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CHAIR: To follow up what Ms Eastman has been asking you, and I think what I have in the back of my mind, but it may be coming to the forefront of my mind, is how far the State has not merely a role as a provider of accommodation of last resort or services of last resort but supplementary to the NDIS if there are --- if the view is formed that the NDIS, admirable as it may be, nonetheless leaves gaps or deficiencies in certain kinds of service or assistance? This is something that maybe States need to think about and I'm just wondering whether South Australia has given any thought to providing that kind of supplementary service, bearing in mind that the States have a great deal of experience in this area?

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MS BOSWELL: We do provide a supplementary service in terms of children that are fully within the NDIS already for --- through a part of our Department called the Exceptional Needs Unit. Commissioner, what that actually does, that Exceptional Needs Unit, it relates to an agreement between the Commonwealth and the States associated with children in voluntary out-of-home care. The NDIA and the Commonwealth had a view for some considerable time that if a child was no longer residing with their parents, that it must be a child protection issue. The complexity with that is that it does not necessarily fit child protection if a parent can no longer care for a child because a child has behaviour issues that may be a threat to the other children or the family. It would not fit the definition of child protection. But we know for many years in every State there is a proportion of teenagers in particular who require out-of-home care.

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In that circumstance, the State has arranged to provide the accommodation services and --- the NDIA, through the NDIS, provides the care services within those arrangements. We coordinate that arrangement through our Exceptional Needs Unit. Our Exceptional Needs Unit also exist for adults to do things like trying to coordinate between State mainstream services and NDIS services for clients with significant complexity who might also fall in the criminal justice system or the mental health system or in fact the health system, for example. That's not the same,

though, I suspect, Chair, of being the provider of last resort for accommodation.

5 CHAIR: I wasn't suggesting that it is. In fact, what I'm looking for is whether there is a contemplated or in existence a supplementary role beyond being a provider of services or accommodation as a last resort? And from what you're saying, it does seem that there are at least some kind of supplementary services that South Australia does provide in specific areas.

10 MS BOSWELL: Yes.

CHAIR: Thank you.

MS EASTMAN: Did you hear any part of Mr Hoffman or Mr Head's evidence over the past few days?

15 MS BOSWELL: Yes, I heard most of both.

MS EASTMAN: Do you recall me asking them some questions about what was described as a vulnerable participants framework?

20 MS BOSWELL: Yes.

MS EASTMAN: Were you aware of the NDIA and the Quality and Safeguards Commission working on a vulnerable participants framework?

25 MS BOSWELL: I was aware of the work that was done during COVID. I was also aware that as a result of issues raised out of both the Robertson Report and the Safeguarding Task Force reports that the Disability Reform Council Ministers, now the Disability Ministers meeting, has asked for specific work on that. The States were last year involved in a workshop with the NDIA and the Commonwealth on that. I think it occurred ---

MS EASTMAN: When you say "on that", do you mean specifically the vulnerable participants framework as Mr Head and Mr Hoffman described it?

35 MS BOSWELL: Correct me if I'm wrong, but I believe Mr Hoffman didn't call it the "vulnerable participants framework" and I equally haven't heard that particular name. But it was about trying to --- it was the safety --- the name that comes to mind for me is the safety, but it is identifying at-risk participants and access for at-risk participants to the services and safeguards they may need.

MS EASTMAN: In paragraph 44 of Mr Head's statement, he says he understood:

45 *..... that the vulnerable participants framework currently includes the following themes and definitions, with data indicators for each theme.*

That will come up on the screen. I put to him yesterday that many of these themes

fall outside the types of matters that would be subject to NDIA plans or NDIA planning. Looking at that list there, from "Housing" through to "Health", those matters identified in (a) through to (e) are really the sort of part of the business of States in terms of the provision of State social services; would you agree?

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MS BOSWELL: Yes, and I guess that whether or not they relate to someone being -- services associated with an NDIS participant's services will depend on the circumstances. So, for example, housing, which is the first one, we know of people losing their housing because of breakdown with their service provider. That is as much an NDIS issue, perhaps even more so, than a housing issue.

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MS EASTMAN: On that, the Royal Commission has heard evidence from the NDIS or NDIA officers to say that the NDIA is not a homelessness service. Once a person becomes homeless or might be in that transient phase of not having secure housing, that's a State issue. Are you aware of that?

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MS BOSWELL: I am aware of that. I'm also aware that it is a continuous debate. The State is responsible for housing supply and for social housing for all of its citizens and people with disability are absolutely citizens of the State and need to be provided with that access, as anybody else.

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MS EASTMAN: But if there is a debate for people with disability who, because of disability find themselves in the NDIS scheme and they become homeless or transient, why should there be a debate about a place of last resort for refuge when one is homeless, because you have a disability as opposed to something else?

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MS BOSWELL: I'm not talking about there being a debate about whether they are entitled to housing, certainly not. The debate is how those services are coordinated and wrapped around. For example, when somebody is in hospital and needs to access a place to leave hospital, the complexity becomes, for example, that some people may need SDA accommodation that is separate and different to the SDA accommodation that is easily accessible, so a robust housing, for example. Those are issues that are affected by the SDA regulations and market arrangements with NDIS and also the ability to get a plan approved to move out or accommodation modifications sits with the NDIS and there needs to be quite a careful consideration and coordination between the States and the Commonwealth in --- when the State controlled all of the system, it was, I guess, in the State's interests to ensure that the coordination to take somebody out of hospital was timely because it affected the hospital system.

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MS EASTMAN: Let me just put this to you. Is what you are describing, and using the word "complex", can really be code for "we're not quite sure how to do it." Is that right?

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MS BOSWELL: We have recently as of the last few weeks --- sorry, let me start again. In COVID-19 the issue of people ---

MS EASTMAN: I'm not asking you about COVID-19. I just asked you quite a clear question. Would you accept that when you use the word "complex" you are really saying, "I'm using complex because we don't really know what to do or how to deal with it"?

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MS BOSWELL: The reason I was referring to COVID is we did know what to do during COVID because we ---

MS EASTMAN: I'm not asking about COVID. I'm asking about the sorts of things that arise for Mitchell, where an anonymous letter comes in threatening his life. What are the options there? There's no negotiation. What happens to Daniel Rogers, where he ends up in hospital and the question is, is it safe to return? I'm interested in the people with disability who require these services and if someone is at risk of becoming homeless or their circumstances render them transient, where do they end up? Just saying to us "complex" doesn't help us understand that. Do you accept that?

MS BOSWELL: I absolutely accept that and I'm not trying in any way --- in fact, it is something that we have had considerable concerns about the people involved. I'm very concerned about the people involved in this one and we have been making representations on that to no end, because it is wrong to have people in hospital.

MS EASTMAN: But it is --

MS BOSWELL: So I have ---

MS EASTMAN: Can I finish? It's one thing to say it's wrong but it is another thing to say who is the provider of last resort. Where is the ultimate safety net and is that the State's responsibility?

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MS BOSWELL: Counsel, for hospital at the moment, that's exactly what we are doing, we are setting up ways to get people out of hospital and we are doing it under in-kind because that makes it easier. The complexity is that the NDIA says that you cannot get access, as I understand it, and please, I'm not the NDIA, but as I understand it, you have to have somewhere to go to have any transitional accommodation within 90 days. So if you don't already have a solution, you can't get into transitional accommodation. That doesn't apply to us as a State provider, only because we are in-kind. Therefore, we have been taking people into our service to get them transitioned specifically because we can get around that. In the case of how to deal with that in the future, we are proposing to the NDIA that there should be a coordinated integrated team to work that through because at the moment two different Governments and timelines are not working for people.

MS EASTMAN: Coming back to paragraph 44, if you accept that the items in paragraph 44(a) through to (e) are the sorts of things that --- the sorts of areas where people are likely to fall between the gaps of a Commonwealth service and what the State would ordinarily provide, have you had any consultation with the NDIA or the

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Quality and Safeguards Commission about the development of this vulnerable participants framework with respect to the issues specifically identified in (a) through to (e)?

5 MS BOSWELL: Yes.

MS EASTMAN: You have?

10 MS BOSWELL: Not me personally, but our officers have. The State officers met with - as I said, not referred to as the vulnerable participants framework, but met with the Commonwealth in November and then met again in March and we are waiting for the outcome of the Commonwealth was doing that work, and I understand that it's on the next Disability Ministers meeting agenda.

15 MS EASTMAN: There has been specific consultation about those factors for the vulnerability framework?

20 MS BOSWELL: Yes, and I understand that they are being --- the Commonwealth is proposing that they be part of targeted action plans under the National Disability Strategy as well.

25 MS EASTMAN: Has there been any discussion about data sharing? Because the data that would be relevant to those areas where the State would provide services would obviously be relevant to building a data framework for identifying vulnerable participants?

MS BOSWELL: Yes.

30 MS EASTMAN: So is there a discussion or arrangement around data sharing?

35 MS BOSWELL: Yes, there is. South Australia is working on a data sharing arrangement with the NDIA and that at the moment the framework is being consulted with the NDIA legally, I believe. As well as that, we are working --- we are leading, along with New South Wales, a data sharing arrangement project to look at how data might be collected and shared across Australia as well.

MS EASTMAN: Now I want to turn to Daniel Rogers' case study. You have heard Karen Rogers give some evidence earlier this week; is that right?

40 MS BOSWELL: Yes.

MS EASTMAN: You have also read her statements?

45 MS BOSWELL: Yes.

MS EASTMAN: Mr Rogers lived at N Street and he moved into that accommodation in late 2004/early 2005. Are you aware of that?

MS BOSWELL: I don't know for certain.

5 MS EASTMAN: You know, don't you, that N Street was leased by DHS from the Intellectual Disability Accommodation Association?

MS BOSWELL: Yes.

10 MS EASTMAN: That meant that DHS provided the supported accommodation for Mr Rogers and three other people at the particular N Street residence; is that right?

MS BOSWELL: Yes.

15 MS EASTMAN: And the arrangement was described as a board and lodgings arrangement.

MS BOSWELL: Yes, I believe so.

20 MS EASTMAN: In your first statement from February 2021, you have addressed some of the arrangements. Can I take you to that statement?

MS BOSWELL: Sorry, counsel, I don't have that one either.

25 MS EASTMAN: That's coming up on the screen. If you need to have a look at the whole of the statement, let me know.

MS BOSWELL: Thank you.

30 MS EASTMAN: Can I draw your attention to paragraph 18 and paragraph 19.

MS BOSWELL: Yes.

MS EASTMAN: In paragraph 19:

35 *There was no formal agreement of arrangement between DHS and IDAA in relation to the operation of the residence.*

But you say you:

40 *..... understand DHS shared a working relationship with IDAA which involved communication between DHS staff and IDAA in the management and coordination of certain issues, such as maintenance of the property.*

45 MS BOSWELL: Yes.

MS EASTMAN: So the IDAA owns the property, DHS leases the property and provides the accommodation. Is that how it works?

MS BOSWELL: Not by that stage, Senior Counsel. By that stage, you will see in paragraph 18 above that there was a process going through where there was accommodation providers were seeking to have individual tenancy agreements with the tenants, because this was the era when there was a separation between a service provider and a landlord.

MS EASTMAN: For example, Mr Rogers would have had an independent tenancy agreement with IDAA when he started living at the house in late 2004/early 2005?

MS BOSWELL: No, I don't believe it would have happened at that stage because at that stage the landlord and the --- as I said, this was a move that happened before --- I don't know exactly when it occurred for this house but there was a decision of the Department not to be the landlord for most tenants because of moving towards a choice and control scenario, because it's --- for the landlord and the service provider to be the same provides people --- extreme control over people's lives and it was trying to separate that out.

MS EASTMAN: What would have been the legal arrangement between Mr Rogers and the Department and/or IDAA when he moved into N Street?

MS BOSWELL: I think we would have been both.

MS EASTMAN: Both landlord and service provider?

MS BOSWELL: Yes, and service provider.

MS EASTMAN: Was there a written tenancy arrangement with him?

MS BOSWELL: I don't know but I don't think so.

MS EASTMAN: At some stage there was a decision to set up an attempt at separation and that's when the tenancy arrangements were introduced; is that right?

MS BOSWELL: Yes.

MS EASTMAN: I don't think we have seen in the material a copy of any tenancy agreement between Mr Rogers and IDAA. But do you have any knowledge about what the nature of those tenancy agreements were and how they operated in practice?

MS BOSWELL: We would not have that document because it's not our document to have, it's not our contract. However, I do understand that the majority of providers were providing standard residential tenancy agreements, which I would say have some drawbacks because they obviously make people responsible for property damage, et cetera, in a way that doesn't necessarily work in these arrangements.

MS EASTMAN: Did you have any understanding about who had responsibility for

maintenance of the property over the time that Mr Rogers lived there? Was that something IDAA was responsible for? Was it Mr Rogers himself under an agreement? Or was it the Department?

5 MS BOSWELL: It was certainly not Mr Rogers. These are legacy situations where, strictly, it should have been the landlord but I think often in the main DHS did do some maintenance that wasn't within the terms of their agreements. However, I know in some situations, for example, we have got properties that we believe need additional work and we work with the landlord to try and get that done. But  
10 sometimes we would just do things ourselves because it was easier. We have recently been working through a process to try to separate that and provide very clear responsibilities with the landlords in the houses.

MS EASTMAN: Are there currently written form agreements that set out the basis  
15 upon which somebody has a licence to use part of the property or is treated as a tenant for residential tenancy purposes?

MS BOSWELL: Yes. Senior Counsel, I understand that the landlords seek to have tenants sign. Sometimes that is difficult to achieve because of capacity questions.  
20 And I have a view that the standard residential tenancy agreement is problematic in these terms, but that's not for me on to say.

MS EASTMAN: Would we be right in thinking that when we reflect back on the time Mr Rogers moved into N Street in the early 2000s or mid 2000s, that the  
25 expectation might have been that that's where he lived for rest of his life?

MS BOSWELL: I don't know but I assume the expectation would be that that was his home for the foreseeable future, yes.

30 MS EASTMAN: So it wasn't the case at that time that entering into State-supported accommodation would be a pathway to developing independent living skills and looking at transitioning out of arrangements such a group home; is that right?

MS BOSWELL: I think that would be fair to say, yes.  
35

MS EASTMAN: That was the case notwithstanding that Mr Rogers and others had moved from either smaller group homes or in some cases the Strathmont Centre to live in a more community-based living; is that right?

40 MS BOSWELL: Yes, that most people had --- most of the residents, not necessarily in this house, but most of the residents had moved out of Strathmont or another larger ---

MS EASTMAN: I don't mean any disrespect in saying that but essentially the  
45 process had been moved from a very large institution to a mid-sized institution to a small institution?



MS BOSWELL: Which one are you referring to?

MS EASTMAN: If you look at the history of disability support services in South Australia, the large institutions to the Strathmont mid-sized villa style and the idea of  
5 leaving Strathmont into community living was really moving to smaller group homes that had all the features of an institution. That's right, isn't it?

MS BOSWELL: Yes. And I think I refer in my statement, Senior Counsel, to the  
10 fact that when people were moved to these community --- new community housing arrangements, often some of the culture and the operating framework of the institution went with it and these are the legacy issues that we are trying to undo.

MS EASTMAN: Mrs Rogers says in her statement that she understood a proportion  
15 of Mr Rogers' DSP would be used for the board and lodging component, that's right, isn't it?

MS BOSWELL: Yes.

MS EASTMAN: The arrangement would have been something like this: Disability  
20 SA at the time would have applied to be the payment nominee for Centrelink, so that if Mr Rogers received funds through a Disability Support Pension, those funds would be deposited into a special account established by the Department which operated as a trust account; is that right?

25 MS BOSWELL: I believe so.

MS EASTMAN: And those arrangements were opaque up until the Department has  
30 developed a new policy, the Client Management Operation policy. Would you agree with that?

MS BOSWELL: I genuinely do not know whether they were opaque. But I ---

MS EASTMAN: Mrs Rogers said she didn't know anything about what happened to  
35 Daniel's money, how the money was accounted for. There was no transparency from her part. Would you accept from the family's perspective it might have seemed opaque?

MS BOSWELL: Yes, I do accept that.

40 MS EASTMAN: You touched a little bit yesterday on the financial arrangements. But I'm just wanting to focus on the arrangements in relation a accommodation services. Is it the case that the Department still manages the finances for people who receive DHS accommodation services?

45 MS BOSWELL: Not for all, only for some. Quite a number will have their own accounts or they will have an administrator of finances or some other arrangement. But some of these older arrangements, client trust funds, that came out of the old

IDSC, the Intellectual Disability Services Council, yes, we do still continue to administer some of those. And that, as I explained yesterday, is something we are seeking to change because I don't think in the long run it's the right solution.

5 MS EASTMAN: What, if any, policies or practices are you aware of to assist the residents in such accommodation to learn to be financially literate and to be able to make decisions about managing their own money?

MS BOSWELL: Can I take that question on notice, please?

10

MS EASTMAN: Of course. In 2016, IDAA considered closing N Street and you tell the Royal Commission this is because of declining conditions and design. And you're aware, aren't you, that there was no consultation with the residents about a proposed closure at that time?

15

MS BOSWELL: That would be a matter for IDAA.

MS EASTMAN: Would you have expected that if there was going to be any consideration about the closing of N Street --- and this is the place where Mr Rogers and three others had lived since 2004 or early 2005, you would expect some consultation with them?

20

MS BOSWELL: Absolutely.

25 MS EASTMAN: Likewise, you are aware, aren't you, that there was no consultation with the families at this time?

MS BOSWELL: That would again be a matter for IDAA and I think that they --- I don't know that they had progress that in any way. But, yes, I would expect, and as a former tenant advocate, I would be very keen on there being such consultation and consideration of where people would find their next ---

30

CHAIR: Ms Boswell, who is IDAA?

35 MS BOSWELL: It's a community housing provider. It's not a government organisation. And it's ---

CHAIR: It's now known as YourPlace?

40 MS BOSWELL: It's now known as YourPlace, it's a non-government housing provider, community housing provider.

CHAIR: But a non-profit organisation?

45 MS BOSWELL: Yes, a non-profit organisation.

CHAIR: Thank you.

MS EASTMAN: In December 2018, DHS decided to withdraw its services from N Street and relocate all individuals to alternative accommodation facilities. You tell the Royal Commission that?

5

MS BOSWELL: Yes.

MS EASTMAN: That decision was made in line with IDAA's decision to close and redevelop the residence?

10

MS BOSWELL: Yes.

MS EASTMAN: Are we to understand that by September 2018 the Department and IDAA had in effect jointly made a decision to close this particular accommodation and to move the residents?

15

MS BOSWELL: And to work with the residents to do that, yes. This facility was like --- it was built in the institutional --- mini-institutional era, so had it had shared bathrooms, as I understand it, and was less homely than the houses that are used for most group homes today.

20

MS EASTMAN: When did the consultation start with the residents, either before or after the decision had been made in September 2018?

25

MS BOSWELL: Can I take that on notice, please?

MS EASTMAN: Was there any consultation with the residents?

MS BOSWELL: I believe that there was, yes.

30

MS EASTMAN: What about family members, for example, like Mrs Rogers?

MS BOSWELL: Again, I'll take it on notice but I believe that there was.

35

MS EASTMAN: But you are not sure. Can you say anything about the nature of the consultation or is that something you would need to take on notice?

MS BOSWELL: Can I find out and come back, please.

40

MS EASTMAN: Just to finish this bit of the topic, it is the case that, as you are aware, Daniel Rogers left the home and the remaining individuals were all relocated by 25 September 2019; is that right? That's paragraph 30 of your statement.

MS BOSWELL: If it's in paragraph 30 of my statement, yes. I'm again relying on the screen and I can't see it at the moment.

45

MS EASTMAN: We will bring that up.

MS BOSWELL: Yes.

MS EASTMAN: In paragraph 31 you say:

5

*Following further investigation of the staff culture at the residence issues were addressed in accordance with the Department's performance management requirements. The team was subsequently dispersed to different residences and under new supervision.*

10

What does that mean and what was the further investigation? What were the issues around staff culture and what was the outcome of that investigation?

MS BOSWELL: I think, as Ms Kirkby said the other day, that after Karen drew the incident and the bruising of Daniel to the attention of the Department, Muriel and Mr Cunningham spent some time talking with and to staff. As well as that, they were all put on performance improvement plans and required to undertake further training and be --- and were later moved to other residences and dispersed because of a view that the culture was not sufficient and it was better to have the staff working under supervision in a different culture.

20

MS EASTMAN: The Department, can I put to you, was very well aware that there were some "culture issues" well before any investigation was done after 25 September 2019. That's right, isn't it?

25

MS BOSWELL: I beg your pardon, paragraph 31 is not time-bound by paragraph 30. Further investigation of staff culture at the residence actually refers to back when the incident occurred.

MS EASTMAN: Alright. What date are you referring to in paragraph 31?

30

MS BOSWELL: I can check the performance improvement plans and let you know.

MS EASTMAN: In terms of having a fair idea about what the cultural issues were in the home, you recall yesterday I took you to an internal audit interim report prepared by Mr Allwood and his team. That was 21 December 2017. I might take you back to that document, which is in hearing bundle B behind tab 32. You remember I took you to the "Opportunities for improvement" on page 2 and page 3?

35

MS BOSWELL: Yes.

40

MS EASTMAN: You have also heard Mrs Rogers' evidence that when she came to collect Daniel Rogers from the home to go for visits on the weekend and the like, that she described Daniel's condition as being smelly, having bad breath, wearing the wrong clothes, and just his general grooming and hygiene to be poor. You heard that evidence?

45

MS BOSWELL: Yes.

MS EASTMAN: She said to you that she had to pick her battles. No doubt that would have caused you some concern ---

5

MS BOSWELL: A lot.

MS EASTMAN: --- that a parent observing poor grooming, poor hygiene, would have to think about picking their battles to raise that concern?

10

MS BOSWELL: Absolutely.

MS EASTMAN: That tells you something about the culture, doesn't it?

15

MS BOSWELL: Yes.

MS EASTMAN: That if there is a culture where families feel deterred from raising issues that would be a matter of great concern to the Department?

20

MS BOSWELL: Yes.

MS EASTMAN: But it was the case, wasn't it, at this time there were no formal processes in place to enable the families to pick their battles or to raise concerns; isn't that right?

25

MS BOSWELL: The --- there was a complaints system within the Department. I know that the audit here talks about not having clear formal processes in place. And yes, there has been a lot of work done to improve that.

30

MS EASTMAN: So the issue of there not being clear processes in place to receive feedback or to raise issues from time to time was one of the risk areas identified by the auditors, if we look at page 11. This is identified as the "Feedback and Complaints process" and it is improvement opportunity number 6. Do you see that?

35

MS BOSWELL: Yes.

MS EASTMAN: It is coming up on the screen:

40

*There is no formal or regular process for seeking feedback from clients and their families. Feedback is generally provided on an ad hoc basis with no process in place to utilise this information to improve services.*

45

*There is little awareness amongst staff of the DCSI Feedback Form, despite copies being available at the Accommodation Services Offices.*

*There is no formal regular process for staff to provide feedback to management. Feedback from staff is provided on an ad hoc basis. The*

*RiskMan system has capability for staff to enter feedback but there is limited knowledge amongst staff of this process.*

5 Then the observations are made that "there is no formal or consistent process to notify clients and their families of the process for making a complaint." So that's the finding of the auditor.

MS BOSWELL: Yes.

10 MS EASTMAN: You would accept, wouldn't you, that things such as making observations about how a person presents, how they smell, their grooming, those are the sorts of things where you have got a set of eyes that might assist in identifying risks to somebody's safety and wellbeing. You would agree with that?

15 MS BOSWELL: I do.

MS EASTMAN: The eyes are critical for those who work in the service and for the families and advocates who may visit the service? Do you agree with that?

20 MS BOSWELL: Yes, I completely agree.

MS EASTMAN: In terms of the level of risk about there being a lack of a formal or regular process, that risk level was assessed, you will see on the page, in terms of "likelihood" being possible and "consequence" being minor and the risk rating being moderate. I think I asked you about another one of these risk ratings yesterday.

25

MS BOSWELL: Yes.

MS EASTMAN: I questioned whether or not the risk rating in relation to risk assessments --- that's the one on page 13 that we looked at yesterday --- but focusing on page 11, would you agree that it would be wrong to describe the consequence of not having formal or regular processes for seeking feedback or making complaints could not possibly be described as having minor consequence?

30

MS BOSWELL: I do completely agree, Senior Counsel, and that's why we have made very considerable changes to that process over the last year and it's something that I was --- I was very sad to hear Karen say that and she knows that, and it's not the first time I have heard that either and we have been working very hard to make that not the case. This is --- it would be fair to say that this process of doing an internal audit was the first time that that had been done to look at services that have been run for many, many years. We are now, as I said, in the process of external audit, and this is a journey of improvement that I think is long overdue.

40

MS EASTMAN: There was a specific due diligence review done for N Street. You're aware of that, aren't you?

45

MS BOSWELL: Yes.

MS EASTMAN: If we look at the document behind tab 36 in this volume, that's a memo that you are not copied in on, from Mr Allwood to Ms Kirkby, dated 16 January 2019.

5

MS BOSWELL: Yes.

MS EASTMAN: You have seen this document?

10 MS BOSWELL: Yes, I have.

MS EASTMAN: We touched on it briefly in relation to the smell. In terms of this document --- and I'm mindful, Commissioners, there is some sensitive information in this document, so this is not a document that should be displayed unless it is absolutely essential. So if Ms Boswell has a hard copy and the Commissioners have a hard copy?

15

MS BOSWELL: I have a hard copy.

20 MS EASTMAN: Unless anyone is prejudiced by that, I will work off the hard copy.

MS BOSWELL: Senior Counsel, the documents are not getting put up on the screen.

MS EASTMAN: I don't want it in the room either.

25

MS BOSWELL: Sure.

MS EASTMAN: This document not only deals with the observations of the home but it also gives an analysis of reported incidents that occur across a number of residences?

30

MS BOSWELL: Yes.

MS EASTMAN: Including N Street, that Mr Rogers lived in.

35

MS BOSWELL: Yes.

MS EASTMAN: For the period from October 2010 to November 2018, there were just over 900 reported RiskMan incidents for the three sites. Now, as it says, it might be multiple reporting of incidents, so 900 reports doesn't mean 900 separate incidents; is that right?

40

MS BOSWELL: Yes.

MS EASTMAN: In terms of what RiskMan reporting told you, on the next page, page three, you are able to characterise the types of incidents and you will see the table there describes them?

45

MS BOSWELL: Yes.

5 MS EASTMAN: If I just focus on the N Street residence, so you know which one I mean?

MS BOSWELL: I do.

10 MS EASTMAN: Look at the percentage of overall incidents. For that residence, injuries which are unwitnessed and unexplained were 104.

MS BOSWELL: Yes.

15 MS EASTMAN: But if you look at the overall percentages, which I accept is taking into account the other residences, not just N Street, that constitutes just over a fifth of all of the reported incidents.

MS BOSWELL: Yes.

20 MS EASTMAN: That tells you something, doesn't it, if there are unwitnessed and unexplained injuries occurring in those residences?

MS BOSWELL: Yes.

25 MS EASTMAN: That might tell you something about identifying risk, it might tell you something about the culture and if, as we know, there was underreporting in relation to RiskMan --- and I can take you to that in a moment, people were reluctant to report on RiskMan --- that that description might even be an underestimate of injuries that were unwitnessed or unexplained. Do you accept that?

30

MS BOSWELL: Yes.

MS EASTMAN: Over the page, concern was raised by the auditors in relation to medication errors.

35

MS BOSWELL: Yes.

40 MS EASTMAN: Looking at the graph that appears, as you will see under the dot points, the medication errors go sort of up and down, using the red line. If you look at a particular period of time, from about July to September 2017 period, you will see that there is a very steep rise in what are recorded errors in relation to medication errors.

45

MS BOSWELL: Yes.

MS EASTMAN: They also seem to coincide with aggression between clients and client aggression to staff. That all three of those issues all rise at the same time.



MS BOSWELL: They do.

MS EASTMAN: That's got to be an enormous alarm bell, doesn't it?

5

MS BOSWELL: It has and it was. I think that in reality it's --- the purpose of doing this report was to identify and draw out that alarm. It's very unfortunate that there weren't systems in place at the time to do it appropriately without it having to be drawn to attention. Those systems are now in place, and as I said yesterday, this report was finalised shortly before the incident involving Daniel and hopefully will lead to ---

10

MS EASTMAN: You can see that. The timing is significant, isn't it?

15 MS BOSWELL: Yes.

MS EASTMAN: This is information that came to the Department directly to those with responsibility for accommodation services on 16 January.

20 MS BOSWELL: Yes.

MS EASTMAN: And a month later, we are going to come to the unexplained bruising of Daniel Rogers.

25 MS BOSWELL: Yes.

MS EASTMAN: Do you know if anything was done immediately to address the concerns raised in this report? You will see there are recommendations on pages six and seven. You may not know that. There are five recommendations there. Some of them are about cleaning. But number three, for example:

30

*Consider suitable options for reducing the risks to client, staff and public safety arising from current transportation arrangements.*

35 And five:

*Review the risks to individual client well-being and safety identified in the reported incidents, arising from the current mix of residents, and identify appropriate long-term solutions.*

40

Do you know if anything was done in response to those recommendations?

MS BOSWELL: Certainly in response, and in terms of coming up with long-term solutions, that's obviously not an immediate thing because it does, as Senior Counsel has said, involve consultation with residents themselves. I believe that there was something immediately done on the transport issue but I will need come back to Senior Counsel on that.

45

MS EASTMAN: We have at the document behind tab 38 a document that responds to the internal audit action, it's called an internal audit action plan, but that's July 2019.

5

MS BOSWELL: Yes.

MS EASTMAN: That indicates that some actions were being taken by that time. But I'm interested in what was done immediately in that period from 16 January after that report became available?

10

MS BOSWELL: I understand that, Senior Counsel. I can't give you that off the top of my head. I also know that the person who this is addressed to was not --- was on leave at that stage.

15

MS EASTMAN: One of the tools used in the N Street residence was the RiskMan reporting?

MS BOSWELL: Yes.

20

MS EASTMAN: We have just touched on that. In terms of the use of RiskMan at that time, accepting that that's no longer the system in place, but coming back to the document behind tab 32, so this is Mr Allwood's 21 December 2017 report, he identifies some issues around reporting of RiskMan. Again, can I take you this time to page 14 of that memorandum? It is tab 32, page 14. This is called "RiskMan and Incident Reporting". You will see there is a description of improvement opportunity number nine.

25

MS BOSWELL: Yes.

30

MS EASTMAN: I won't read that out but you will see that that gives a description about how staff perceived the use of RiskMan and the reliability of RiskMan. Is that a fair summary?

35

MS BOSWELL: Sorry, are we talking about opportunity 9?

MS EASTMAN: Yes.

MS BOSWELL: This, as I understand it, this is about the call centre staff not taking verbatim, rather than the inherent reliability of the system. But the call centre staff not taking actions verbatim, yes.

40

MS EASTMAN: The possible cause is that:

45

*RiskMan reports do not follow a consistent format regarding the detail or classification required for reported incidents.*

MS BOSWELL: Yes.

MS EASTMAN: And the "Potential Implications" are described as:

5            *Incorrect information provision to Managers leading to inability to monitor incidents and potential harm to clients.*

Again, look at the assessment of risk level. The likelihood is possible and again the consequence here is minor.

10

MS BOSWELL: It is.

MS EASTMAN: Do you agree that that's not a consequence that you would agree with?

15

MS BOSWELL: I do. However, I also agree that a moderate risk is an unacceptable risk for client and that's what it comes out as, as moderate risk. And has to be actioned anyway.

20 MS EASTMAN: Is it the case that the issues raised with the RiskMan reporting around this time then led to the abandonment of RiskMan as a reporting tool and the replacement with the MySAFETY?

25 MS BOSWELL: No, Senior Counsel, MySAFETY was --- they are not strictly consequential but they do occur one after the another. MySAFETY is now a different system, it has a different escalation. Some of the issues identified in the audit reports, such as that staff had some reluctance to report because they were worried that all staff could see who had reported, those things have been fixed with the MySAFETY. In addition, it's not possible to have a --- you have to rate it as a care concern, it's not possible to rate it as "insignificant", for example. So yes, they have been resolved. But it's not necessarily that the MySAFETY was as a result of the report.

30

35 MS EASTMAN: You are aware, aren't you, that on 22 February 2019 Ms Rogers was contacted about an injury that one of the support workers had witnessed in relation to Daniel's back, some bruising?

MS BOSWELL: Yes.

40 MS EASTMAN: You're aware that she agreed that a locum could be contacted?

MS BOSWELL: Yes.

45 MS EASTMAN: You're aware, aren't you, that the decision was made to take Daniel to the emergency centre at the nearby hospital. You are aware of that?

MS BOSWELL: Yes. I believe that was because the staff informed the locum that

had it come out very quickly and that he was concerned about bleeding.

5 MS EASTMAN: You have seen the documents and records in terms of whether or not the staff had reported the injury to Daniel in the days before 22 February and what the nature of the RiskMan reporting was. You've seen all of that?

MS BOSWELL: Yes, I have.

10 MS EASTMAN: In terms of Daniel's admission to the hospital, does that admission itself trigger the operation of a particular policy, for example, the critical client incident policy?

MS BOSWELL: Not the admission to the hospital, but the injury does, yes.

15 MS EASTMAN: In what circumstances, back at that period of time, would the Department have had responsibility in reporting an injury of that kind to the South Australian Police?

20 MS BOSWELL: The Department has responsibilities in duty of care to report incidents of that nature to the South Australian Police.

MS EASTMAN: You are aware, aren't you, that Mr Cunningham asked Ms Rogers to report the incident to the police?

25 MS BOSWELL: Yes, because it was the appropriate way to do it and what had happened was we were contacted and asked --- sorry, I beg your pardon, let me start again, please. It was identified that that matter should be reported to the police. Wayne was asked to contact and ask Ms Rogers if she would report it to the police because it seemed the most appropriate for the family to be reporting to the police.

30 MS EASTMAN: Why would it be appropriate for the family to report?

35 MS BOSWELL: Usually we would --- I think that there is --- and forgive me, Senior Counsel, I'm stretching my memory now, I think there is a policy that we provide support to family and clients to go to police. If client is able to report to police, then they should do so. If not, then we will report on their behalf. I can't tell you exactly why it was not considered that it was the Department that went to the police, other than the first-hand information in that Karen was at the hospital, had attended with the doctors, et cetera.

40 MS EASTMAN: But you will have heard from Mrs Rogers, she didn't know how the injury had been caused or when it had been caused or whether or not the nature of the injury was one that should be reported to the police. Why should the onus be on her to report to the police?

45 MS BOSWELL: I take your point, Senior Counsel. I'm happy for that to be reviewed. I do believe that in the main --- we often do report directly to police

ourselves and we often accompany family to report to police as well. So I take your point. I cannot account for this particular situation.

MS EASTMAN: What if Daniel didn't have a Karen Rogers in his life?

5

MS BOSWELL: We would have reported to the police and that's part of the policy.

MS EASTMAN: How could you be certain that that would have happened?

10 MS BOSWELL: Because I do know that that happens and it gets declared a critical client incident. I can't account for things back way into the past but I monitor critical client incidents very carefully and there's a very strong campaign within the Department, if you see something, report it. There's also a very clear set of protocols about critical client incident reporting.

15

MS EASTMAN: I want to ask you about that, and if you need a copy of the policy, let me know. I'm mindful of the time. If the Commissioners can bear with me for about three minutes, I think we can deal with this.

20 It's the case, isn't it, that the following day after Mr Cunningham asked Ms Rogers to report the matter to the police, so this is 27 February 2019, that a decision was made to characterise the injury and the matter as a critical incident that triggered the critical client incident policy. Are you aware of that?

25 MS BOSWELL: I believe so, yes.

MS EASTMAN: That policy, which, Commissioners, you have in hearing bundle B behind tab 77, actually requires DHS to report to the police; isn't that right?

30 MS BOSWELL: I ---

MS EASTMAN: Page 9, paragraph 7.3.

MS BOSWELL: Yes.

35

MS EASTMAN: If you need to have a look at it.

MS BOSWELL: What document number?

40 MS EASTMAN: It's coming up on the screen there. It says report to the police:

*If the incident may constitute a criminal offence or if police attendance is necessary to ensure the safety of those involved .....*

45 MS BOSWELL: Yes.

MS EASTMAN: Mr Cunningham would not have encouraged Ms Rogers to report

to the police if he had not formed a view that this would be a police matter, ie it may involve some criminal conduct?

5 MS BOSWELL: Yes. And we --- he was specifically advised to report it to the police because we were concerned it may involve some criminal conduct. That is correct.

10 MS EASTMAN: If the matter was described and characterised as a critical incident on 27 February, wasn't there also an obligation for DHS to separately report to the police?

MS BOSWELL: Based on that policy, yes, I believe so. However, DHS was aware that the police were investigating and was cooperating in that investigation.

15 MS EASTMAN: How did you know the day after Mrs Rogers went?

MS BOSWELL: I'm sorry, I don't.

20 MS EASTMAN: You didn't, did you?

MS BOSWELL: No.

25 MS EASTMAN: So what should have happened is that if the policy was followed, then there should have been a separate report by DHS to the police.

MS BOSWELL: I accept that, Senior Counsel.

MS EASTMAN: Not just saying what's happening to Mrs Rogers.

30 MS BOSWELL: I accept that.

35 MS EASTMAN: In terms of, then, the critical incident policy, there are requirements in terms of how a matter should be addressed and there are specific requirements that ensure that the matter comes up to your attention; is that right, as the Chief Executive?

MS BOSWELL: Yes, I was not the Chief Executive at the time, but yes.

40 MS EASTMAN: Page 11, I think, of the policy sets that out in relation to the person in your role? So 7.3.2 sets out the responsibilities for the Chief Executive. You are aware of that?

MS BOSWELL: Yes.

45 MS EASTMAN: That would have been the arrangement in place when the matters were reported and characterised for Daniel Rogers as a critical incident; is that right?

MS BOSWELL: I believe so, yes.

MS EASTMAN: Then in terms of what happens after a critical incident is that there needs to be some form of internal investigation; is that right?

5

MS BOSWELL: Yes.

MS EASTMAN: Were you involved in the decisions as to the nature of the investigation to be conducted?

10

MS BOSWELL: No.

MS EASTMAN: Were you involved in monitoring the conduct of an investigation?

15

MS BOSWELL: Not at the time, no.

MS EASTMAN: The person in that role --- if you weren't in that role, would the Chief Executive at that time ---

20

MS BOSWELL: Yes, the Chief Executive is responsible, yes.

MS EASTMAN: Was there an expectation that the family members would be informed about the nature of that investigation?

25

MS BOSWELL: I believe so.

MS EASTMAN: You are aware, aren't you, that Mrs Rogers said that she was aware that an investigation was occurring, but no one made any contact with her?

30

MS BOSWELL: From the Investigation Management Unit, yes, I'm aware of that.

MS EASTMAN: Why would it be the case, if as you say, Mrs Rogers had been at the hospital, she was the one that was required to report to the police, that an internal investigation didn't include her at all. How could that occur?

35

MS BOSWELL: Senior Counsel, since this point I have asked the Investigation Management Unit and partly as a result of talking to Karen about the fact that she had not been contacted directly by the Investigation Management Unit, that they do inform families of what they are doing. I think the Investigation Management Unit Director did meet with Ms Rogers earlier in the piece but didn't come back to her to say what had happened. The policies at the time had a responsibility of --- I think the critical client incident manager to return to talk to the family. However, I don't think that is sufficient because the Incident Management Unit is who the family wants to hear from and that did not occur.

45

MS EASTMAN: Mrs Rogers says she was the one who had to initiate a follow-up to find out what was going on; you heard that?

MS BOSWELL: I did.

5 MS EASTMAN: That resulted in a meeting on or about 8 July last year that you attended?

MS BOSWELL: I think that actual meeting was initiated by me in relation to the trust funds. But I do know that --- and I do know that Karen had also been asking and I may have it wrong --- yes, had also been asking for a meeting to follow up.  
10 And so at the time I had two issues raised with me, one was by a former Executive Director, who said no one --- who I met socially, who told me no one had come back to Karen and about approximately the same time --- yes, I'm right --- it was also raised with me that Karen was finding it very difficult to access the trust fund for Daniel and so I arranged to meet with Karen and have both of those issues talked  
15 with her at the same time about both of those issues.

The complexity with the trust fund was that the bank could not agree to open an account.

20 MS EASTMAN: I will come back to the trust fund. I need to take you to one document to correct something if we have both got it wrong. I asked you about whether you became aware of the Critical Incident Report. There is a document in hearing bundle B behind tab 61.

25 MS BOSWELL: Sorry, I was aware of the Critical Incident Report. You asked me if I was ---

MS EASTMAN: About the investigations ---

30 MS BOSWELL: --- involved in monitoring that, but I wasn't. But I was aware of the report and in fact at the time I asked for it to be treated with a higher risk.

MS EASTMAN: Why did you ask for this particular matter to be treated as a higher risk?

35

MS BOSWELL: Because I was not happy with what I read there.

MS EASTMAN: If you need to look at the email correspondence behind tab 61? You are included in that correspondence on the critical incident reporting. If you  
40 turn over to the next page.

MS BOSWELL: It wasn't the risk rating so much as the risk section. The risk section of the brief referred to it being a public perception issue and I thought that was highly inappropriate because I thought it was an issue associated with client  
45 care.

MS EASTMAN: This suggests that the purpose of this briefing was to also brief the



Minister; is that right?

MS BOSWELL: That was the purpose of the briefing, yes.

5 MS EASTMAN: The relevant policy in terms of dealing with client critical incidents means that it does have to make its way up to the Minister?

MS BOSWELL: Yes.

10 MS EASTMAN: So he or she needs to be aware of those matters. I want to briefly finish with the meeting on 8 July.

CHAIR: I think, Ms Eastman, since it's nearly 11.25, perhaps we might break now.

15 MS EASTMAN: I will ask my three questions on this topic when we resume.

CHAIR: Alright.

MS EASTMAN: I'm happy to adjourn but I will come back to this one.

20

CHAIR: We will adjourn now until 11.40 Adelaide time.

MS EASTMAN: Thank you, Chair.

25

**ADJOURNED**

**[11.21 AM]**

**RESUMED**

**[11.40 AM]**

30

CHAIR: Yes, Ms Eastman.

MS EASTMAN: Thank you. Ms Boswell, I think we were up to the 8 July meeting.

35

MS BOSWELL: Yes.

MS EASTMAN: You have described that meeting in paragraph 57 of your statement; is that right?

40

MS BOSWELL: Yes.

MS EASTMAN: Among the issues to be discussed was not just the question of Daniel Rogers' money and the trust fund, but you recall that Mrs Rogers was upset that she hadn't been contacted by the Director of IMU at the conclusion of the investigation?

45

MS BOSWELL: Yes.

MS EASTMAN: And you required Mr Dodd to apologise for that; is that right?

5 MS BOSWELL: Yes, and I apologised as well.

MS EASTMAN: You say in your statement:

10 *..... I apologised on behalf of DHS for the failings of the Department and the handling of the incidents .....*

What were you apologising for exactly?

15 MS BOSWELL: Apologising for the fact that Daniel received an injury, for the failings of the Department in seeing --- anticipating --- in seeing that bruising before it became extreme and for not coming back to Karen in a timely manner about the investigation.

20 MS EASTMAN: Has there ever been an apology to Daniel Rogers himself?

MS BOSWELL: I've not done so, no.

25 MS EASTMAN: In terms of making the apology, why wasn't that done earlier? You must have been aware about the outcome of the investigation and you must have been aware prior to the meeting that Karen hadn't been told about the outcome of the investigation; is that right?

30 MS BOSWELL: No, Senior Counsel, I was not. I was not responsible for the Investigation Management Unit until I became the Acting Chief Executive and the first I was aware that Karen hadn't been told about the outcome of the investigation or about the other issue we dealt with was when I heard about it not long before this meeting.

35 MS EASTMAN: And you're aware, aren't you, that either at this meeting or some other time, Karen was told that she would not get a copy of the investigation report?

MS BOSWELL: I heard that in Karen's evidence, yes.

40 MS EASTMAN: And she was told she would have to make a Freedom of Information application?

45 MS BOSWELL: I understand that. To be honest, Senior Counsel, that occurred --- I don't --- there was a time during that meeting I wasn't in the room because I was doing other things, it may well have occurred at that point. I don't believe it occurred when I was in the room because I have --- and people know I have a view about that process that I probably would have expressed. I don't believe you should have to seek a Freedom of Information application. I'm told that the reason for doing so

about because investigation reports often have personal information of other people in the reports and it's a process for redacting that information under South Australia's Information Sharing Privacy Principles. However, I personally don't --- I think we probably could do that without requiring an FOI application.

5

MS EASTMAN: It's a pretty blunt instrument, isn't it, to say to somebody who wants to know "What happened to my family member who had this very large bruise on his back", to be told, "Yes, we've done an investigation, we can't find the cause of the injury and if you want to know why, you have to make a Freedom of Information application" ---

10

MS BOSWELL: Yes, Senior Counsel, you're right, it is a blunt instrument and I agree with you that it needs changing.

15 MS EASTMAN: Is that because the Department wants to maintain secrecy over the investigations they undertake?

MS BOSWELL: No, Senior Counsel, as I explained, it's because --- we do have supported family members in the past to seek to fill in --- in fact, I have had staff --- which is why I know that I have would have expressed an opinion, had staff fill in and assist filling in the Freedom of Information applications to get access to reports and I have queried that in the past and the reason that that is done is because it goes through this privacy issue about removing personal information from the investigation file. I think there are other ways to perform that and I will ensure that -

20

25 --

MS EASTMAN: When you are talking about personal information, are you talking about personal information of the client with disability or are you talking about protecting staff members?

30

MS BOSWELL: I'm talking about personal information. There may be other clients' personal information there, there may be staff member personal information, such as mental health issues, there may be all sorts of things within an investigation file or summary. I can't anticipate what they are because obviously they are all different. It is for that purpose that policy is in place. I agree with you, that it wouldn't feel great to be told that.

35

MS EASTMAN: It would be likely if someone like Karen made an FOI information, that if there was that personal information, there might be some resistance to producing the document, even following an FOI application; isn't that right?

40

MS BOSWELL: No, it would be redacted and the document would be provided and it has been done in the past.

45 MS EASTMAN: So why should somebody have to make an FOI information just so somebody in the Department can redact the information and then give a copy of the report? That places an onus, doesn't it, on the person with disability and their

family?

MS BOSWELL: Yes, Senior Counsel.

5 MS EASTMAN: I want to turn to the case study of Mitchell. You have heard Victoria and James' evidence; is that right?

MS BOSWELL: Some of it, yes.

10 MS EASTMAN: Not all of it?

MS BOSWELL: Not all of it, no.

MS EASTMAN: Have you read their statements?

15

MS BOSWELL: Yes.

MS EASTMAN: You are aware, aren't you, of the anonymous letter that they discovered in their letterbox on 3 March 2018?

20

MS BOSWELL: Yes, I am aware.

MS EASTMAN: You accept, don't you, that that letter contains serious threats to Mitchell's life?

25

MS BOSWELL: Yes, and that it's disgusting.

MS EASTMAN: And that the threats were matters that should have been taken seriously?

30

MS BOSWELL: Yes.

MS EASTMAN: And the Royal Commission asked you to provide a summary of the actions taken by you or your division to the investigation --- sorry, I withdraw that. We have asked you to give a summary of actions taken by you or your division in response to the letter addressed to James and Victoria and harm by them --- sorry, received by them on 3 March 2018. That's at paragraphs 62 and 63. Have you got that?

35

40 MS BOSWELL: Yes.

MS EASTMAN: When you prepared your statement, did you think very carefully about what you wanted to tell the Royal Commission in terms of providing a summary of actions taken by you or your division in response to the letter?

45

MS BOSWELL: I'm not completely sure what I'm being asked, Senior Counsel.

MS EASTMAN: You prepared your statement, didn't you?

MS BOSWELL: I had assistance to prepare my statement, yes.

5 MS EASTMAN: But you took responsibility for the contents of the statement?

MS BOSWELL: Yes.

10 MS EASTMAN: Even if you had assistance, no doubt you would have read the statement very carefully?

MS BOSWELL: Yes.

15 MS EASTMAN: And you would have looked at the relevant documents referred to in the statement, at the time you were preparing the statement; is that right?

MS BOSWELL: Yes.

20 MS EASTMAN: And no doubt you wanted to provide the Royal Commission with a comprehensive statement to respond to the Royal Commission's request; is that right?

25 MS BOSWELL: Yes, although I read the question about things that I personally did, have I got that wrong, Senior Counsel?

MS EASTMAN: It says "your division" as well.

30 MS BOSWELL: And my division being the division that I was in at the time or the division in the Chief Executive's office? I'm sorry, I'm not trying to be obtuse. I read it as my --- of what I personally have done, Senior Counsel.

MS EASTMAN: But you didn't understand it to be your division as well?

35 MS BOSWELL: Didn't understand it to --- my division to be the Incident Management Unit, for example, if that's what you are asking, Senior Counsel, and I apologise if I've got that wrong.

40 MS EASTMAN: You tell the Royal Commission in only two paragraphs the summary of the action, and that essentially is the letter of apology on 11 March this year. That's the entirety of your summary of the action taken by you in response to the letter James and Victoria received on 3 March. That's right, isn't it?

45 MS BOSWELL: Yes, it is, and if I've misread the question I do apologise, if I was supposed to be answering for a broader --- than the actions taken by me personally, then I apologise.

MS EASTMAN: In terms of anything you have done personally, it is limited to the

one letter of apology on 11 March this year; is that right?

MS BOSWELL: And the direction to the Incident Management Unit to take --- to do a further investigation, yes.

5

MS EASTMAN: You didn't think, in answering this question, that you might speak to the response that you made to the Ombudsman or any review of any documents that you made or any briefings that you undertook? You didn't think to include those matters?

10

MS BOSWELL: I apologise, Senior Counsel, if I've got that wrong.

MS EASTMAN: You didn't think to include those matters; is that right?

15 MS BOSWELL: I thought I was being asked about actions I had personally taken in response to the letter, not in response to the investigation by the Ombudsman. If I've misunderstood, I'm again sorry.

20 MS EASTMAN: The question that you identify in your statement for number 17 is a summary of actions taken by you or your division to the own initiative investigation conducted by the Ombudsman. And in this question you are asked to briefly outline any communications you had with James and Victoria regarding the investigation. And your response to that paragraph is the two paragraphs at paragraphs 64 and 65; is that right?

25

MS BOSWELL: Yes.

30 MS EASTMAN: Is it the case in answering this question that you interpreted that to be just a reference to you personally? Can I suggest to you that that's not the case? If one reads 64 and 65, you are speaking about the DHS response, aren't you?

35 MS BOSWELL: Yes, Senior Counsel, but you asked me before whether I should have put the Ombudsman's section in the section above. But given it's in the section below that, I guess that I would have interpreted that as duplication. So I apologise. It was disclosed to the Royal Commission.

40 MS EASTMAN: Well, can I put this to you: that in relation to the matters concerning James and Victoria, when you have been asked about your response and your division's response, the entirety is the four paragraphs that appear on page 10; is that right?

MS BOSWELL: Yes.

45 MS EASTMAN: Can I come back to the letter. When did you first become aware of the 3 March letter? I'll give it that date because that's the date that Victoria and James received it. As you know, the letter itself is undated and unsigned.

MS BOSWELL: Yes.

MS EASTMAN: When did you first become aware of it?

5 MS BOSWELL: I believe I first became aware of it on the --- it would have been probably 12 March, after I returned from --- to my position.

MS EASTMAN: When you became aware of the letter on 12 March, so that's just over a year --- that's a few years before your apology; is that right?

10

MS BOSWELL: Yes.

MS EASTMAN: What did you do?

15 CHAIR: Just to be clear, we are talking about 12 March 2018?

MS EASTMAN: 2018, yes.

CHAIR: Thank you.

20

MS EASTMAN: What did you do when you first became aware of the letter?

MS BOSWELL: I was advised that the person in my position had been in touch with Victoria and James and spoken to them, or maybe it was James directly and spoken to them; that a range of matters --- a range of security and safety measures were put in place for Mitchell; and that the investigation was being conducted by the Investigations Management Unit into the source of letter.

25

MS EASTMAN: You had been told about that ---

30

MS BOSWELL: Yes.

MS EASTMAN: --- in early March --- when in March do you say you were told that?

35

MS BOSWELL: Probably 12 March would be my guess. But it would have been --- I'm going purely based on the records of an email that I have seen from Lynn Young saying that she was going to brief me and I returned, I believe, on 12 March. At the time the Government was in caretaker.

40

MS EASTMAN: When you saw the letter, was it your view --- and I accept it's a number of years ago --- that the letter would have been the type of matter to trigger the Critical Client Incident policy?

45 MS BOSWELL: Yes. I considered the letter to be appalling and needed investigation and was very, very disturbing and I remember asking what we were doing to investigate. But that's --- I can't tell you more than that.

MS EASTMAN: Did you give any instruction that the matter should be characterised as a critical incident to trigger off the critical incident policy?

5 MS BOSWELL: That would not be within my powers to instruct, Senior Counsel, it was the Chief Executive and the Incident Management Unit that had the responsibility for that. And I understood that it had been referred to in the Incident Management Unit and to the process that ---

10 MS EASTMAN: It wasn't referred to the Incident Management Unit for investigation until 16 March 2018. You're aware of that?

MS BOSWELL: I'm aware of that now. As I said, I wasn't present at the time.

15 MS EASTMAN: Do you recall whether there was any discussion about whether the letter should be characterised as a critical incident triggering off processes under that particular policy?

20 MS BOSWELL: Only the email that I have seen in doing these statements, which says that it had not been declared a critical client incident but was being escalated in the same way. I cannot explain that. I can only say that at the time I believe the Critical Client Incident Policy referred to specific injury and I can only assume that it was interpreted that there was ---

25 MS EASTMAN: Not death threats, it didn't trigger death threats?

30 MS BOSWELL: It certainly does now, Senior Counsel. In fact, as of June 20 --- it could be last year, I believe, when I was --- whilst I was Acting Chief Executive, the Critical Client Incident Policy, in conversation with the Minister, was specifically changed to ensure that anything that was --- should be reported to the police was also declared a Critical Client Incident. That partly occurred because I became aware of two things that had been reported to police that had not been declared critical client incidents and I reported that to ---

35 MS EASTMAN: Do you recall reflecting on the incident, and I will go through a few parts in a moment, that if the letter had been characterised as a Critical Client Incident and the policy process triggered, that matter would have come to the attention of the Minister and the most senior people in the Department immediately?

40 MS BOSWELL: The --- from the document I've seen that --- the email that I've seen, it appears to notify the --- the Chief of Staff of the Minister on that notification. The notification list seems to be the same one for a Critical Client Incident and why it was not classified a Critical Client Incident, I can't tell you. But it did notify the Minister's Chief of Staff at the time, as per the Critical Client Incident Policy. The  
45 Government, however, was in caretaker and the Government changed some time later and to the best of my knowledge the next Minister was not informed.



MS EASTMAN: You're aware, aren't you, that while the letter was referred to IMU for investigation on or about 16 March 2018, the actual investigation didn't start until 20 April? Are you aware of that?

5 MS BOSWELL: I'm only aware of that from reviewing these documents.

MS EASTMAN: You're aware that in terms of the IMU undertaking investigation, it was done pursuant to the Managing Misconduct Guidelines, are you aware of that?

10 MS BOSWELL: Yes, I accept that.

MS EASTMAN: The Managing Misconduct Guidelines, you have provided a copy to the Royal Commission, and I don't need to take you to it but let me know if you need it. It is behind tab 78. It is a set of guidelines for managing misconduct by staff; is that right?

15

MS BOSWELL: Yes, based on the title.

MS EASTMAN: So if the Managing Misconduct Guidelines were applied, would you agree with me that someone has had to make an assessment that the author of the letter or the circumstances of the letter reaching Victoria and James was done by a staff member?

20

MS BOSWELL: Or may have been, yes.

25

MS EASTMAN: So somebody has made a decision that the letter must in some way be connected to a staff member? That would have had to have been done to trigger the operation of these guidelines informing the investigation?

30 MS BOSWELL: Senior Counsel, I think it would need to be done, to assume that it was a possibility, not that it must have been.

MS EASTMAN: If it was managed under the Managing Misconduct Guidelines, would you agree with me that it was really then characterised as a staffing matter rather than a matter which identified a particular threat or risk to the safety of Mitchell?

35

MS BOSWELL: No, because I believe that it was identified as a threat to the safety of Mitchell because there was quite a lot of work put into, as I was advised --- which was the thing I was concerned about at the time, which was that there were hourly checks, there were various things put in place to ensure the safety of Mitchell. So I think that that course of action operated separate, as I would understand it, to this characterisation that it may have --- it could possibly have been a staff member, may well have been a staff member, therefore the misconduct guidelines should be applied.

40

45

MS EASTMAN: If the misconduct guidelines were applied and the focus of the

investigation was on the staff, would that have changed the extent to which the IMU should have informed Victoria and James about the progress of the investigation?

MS BOSWELL: Could you ask that again, please, Senior Counsel?

5

MS EASTMAN: If the investigation was conducted pursuant to the Managing Misconduct Guidelines, so therefore had a focus on staff matters, did that have a bearing on the extent to which Victoria and James were informed about the progress of the investigation?

10

MS BOSWELL: I do not know the answer to that question. I'm sorry, I do not know whether --- compared to what, I guess would be my question.

MS EASTMAN: You're aware, aren't you, that the Principal Community Visitor had a meeting with the then Director of the IMU on or about 4 October 2018 and the Principal Community Visitor was told that there was no standalone investigation in relation to the letter and that the IMU's investigation was linked to James' complaint about support workers defaming Victoria. Are you aware of that?

MS BOSWELL: Yes, and I'm also aware of that from the Ombudsman's report as well as from the statement made by the Director, the then Director of IMU, to the Ombudsman.

MS EASTMAN: You are aware, aren't you, that the Principal Community Visitor prepared an annual report which was tabled in the Parliament?

25

MS BOSWELL: Yes.

MS EASTMAN: This matter was one of the matters included in his report?

30

MS BOSWELL: Yes.

MS EASTMAN: And does the tabling of a report of this kind trigger any process within the Department to say, "Hang on here, look what the community visitor has found. Should we review what's going on, undertake some sort of audit or do something in relation to that?" What happens?

35

MS BOSWELL: As I understood it at the time --- and I can't speak for others involved --- my understanding at the time was that it was under investigation. I was not privy to those conversations. I did believe that the letter was under investigation at the time.

40

MS EASTMAN: But I'm asking about what happens when the community visitor writes in his annual report, "These are problems that have been encountered, this is what I'm hearing." Is the fact that the community visitor reports on these matters, those reports are tabled in Parliament, trigger anything within the Department to do anything?

45

MS BOSWELL: Yes, but I would have thought that we would have known about the issues before they are in the annual report. So the community visitor also advises us of issues that we need to deal with prior to them appearing in an annual report.

5 And so when I say I can't answer that, it's because I understood that at the time there was an investigation going on and so there was nothing to trigger because I understood that process was in place. Does that make sense?

MS EASTMAN: What does the Department do with respect to the Principal  
10 Community Visitor's annual reports? I assume that the Principal Community Visitor has made a number of reports over the years and those reports are tabled in the Parliament. What happens when matters are drawn to the Department's attention through those reports?

15 MS BOSWELL: The issues that we have not formally been aware of --- and I can't specifically think of any --- certainly the Department reads the reports, takes the reports seriously. But usually we would have known about it before it appears in an annual report.

20 MS EASTMAN: You are aware, aren't you, that on 28 November 2018 DHS concluded its investigation and an investigation report was prepared?

MS BOSWELL: I am now. I wasn't at the time.

25 MS EASTMAN: You're aware, aren't you, that there was some correspondence involving the Minister with James? Are you aware of that? Perhaps if I take you to hearing bundle A, behind tab 49.

MS BOSWELL: I don't have hearing bundle A, I'm sorry.

30 MS EASTMAN: We will bring it up on the screen. Have you seen this letter before?

MS BOSWELL: Yes, I've seen it in these documents.

35 MS EASTMAN: Were you involved in giving any advice to the Minister about the preparation of this letter or any briefing around the James and Victoria concerns?

MS BOSWELL: There was a briefing, yes.

40 MS EASTMAN: Were you involved in that?

MS BOSWELL: I can't tell you. I suspect not, but I would need to check.

45 MS EASTMAN: What would be the nature of the briefing to the Minister about a matter of this kind and more specifically this matter? Do you have any recollection?

MS BOSWELL: No, I do not, I'm very sorry. Sorry, which question are you asking me, do I have a recollection or what would be the nature?

MS EASTMAN: Yes.

5

MS BOSWELL: In terms of because I have no recollection because I was not --- well, I don't recall being involved in this. What would be the nature of the briefing? The briefing would explain to the Minister what had occurred, I assume, and draft a letter.

10

MS EASTMAN: This letter from the Minister to James says in the second paragraph:

15

*Whilst the Incident Management Unit in DHS and the South Australian Police conducted thorough investigations into the incident, they were unable to determine the source of the anonymous letter.*

Do you see that?

20

MS BOSWELL: Yes.

MS EASTMAN: Do you accept that somebody would have had to have briefed the Minister and/or prepared this draft letter before the Minister signed off on the letter; is that right?

25

MS BOSWELL: Yes, I do.

MS EASTMAN: And you would have expected that if the Minister was going to write to a constituent, in this case James, that the Minister would want to ensure that the contents of her letter were correct?

30

MS BOSWELL: Yes.

MS EASTMAN: And the only source of information for the Minister to send this letter would have been the briefing from the Department; is that right?

35

MS BOSWELL: Yes, I believe so.

MS EASTMAN: Can you explain on what basis the Minister was briefed that the IMU and the South Australian Police had conducted "thorough investigations into the incident", how could that come about?

40

MS BOSWELL: No, I cannot and I would agree that they were not thorough investigations, Senior Counsel.

45

MS EASTMAN: Has anyone in the Department taken steps to brief the Minister that her letter on 10 January 2020 may have contained some incorrect information?

MS BOSWELL: I've been speaking to the Minister about this matter after seeing the --- after the evidence adduced the other day by Counsel Bennett.

5 MS EASTMAN: But you were aware that neither the IMU nor the South Australian Police had conducted thorough investigations well before hearing the evidence in this case study; isn't that right?

10 MS BOSWELL: I had not seen this letter previous to the hearing bundles, to my recollection.

MS EASTMAN: You are aware, aren't you, that the South Australian Ombudsman commenced an own initiative investigation?

15 MS BOSWELL: Yes, I am.

MS EASTMAN: And the Ombudsman provided a provisional report to the Department and also to James and Victoria on or around 25 October 2020; is that right?

20 MS BOSWELL: Yes.

MS EASTMAN: And it was your responsibility to respond to the Ombudsman's provisional report; is that right?

25 MS BOSWELL: Yes.

MS EASTMAN: And you did write to the Ombudsman, making some observations about the provisional findings and recommendations; is that right?

30 MS BOSWELL: Yes.

MS EASTMAN: If I can ask you now to turn to the final Ombudsman's report.

35 Commissioners, you will find this in hearing bundle D behind tab 7.

Ms Boswell, have you got a copy of that?

40 MS BOSWELL: No, sorry.

MS EASTMAN: I think you need to have a hard copy of the whole of the document.

MS BOSWELL: Thank you.

45 MS EASTMAN: We will put it up on the screen, but it might be easier, because I need to jump around the document a little bit. We will give you a copy.

MS BOSWELL: Thank you.

MS EASTMAN: You have got the front page there. Is this a document that you have seen before and you are familiar with?

5

MS BOSWELL: Yes.

MS EASTMAN: In terms of your role, if you turn to page 3 of the document, the Ombudsman says --- and this is the final report, under the heading "Procedural fairness":

10

*On 25 September 2020, I provided my provisional report to the department, and to Victoria and James.*

15 And he notes there that Victoria and James made lengthy submissions. Then he says this:

*In response to my provisional report, the Chief Executive of the department [and there is a reference to you] offered no comment in response to my conclusions on issue one. Ms Boswell also accepted the first, fourth and sixth recommendations foreshadowed in my provisional determination, without detailed comments.*

20

*In response to my provisional view on issue two .....*

25

And we will come to that in a moment, you responded in writing; is that right?

MS BOSWELL: Yes.

30 MS EASTMAN: In terms of your response, the Ombudsman has reproduced what appears to be part of your response on that page; is that right?

MS BOSWELL: Yes.

35 MS EASTMAN: That was in relation to some staffing issues at Mitchell's residence?

MS BOSWELL: Yes.

40 MS EASTMAN: If you turn over the page, the Ombudsman says in the second paragraph there:

*Finally, on issue four and recommendation six, which concerned the department's response to a letter that threatened harm against Mitchell, Ms Boswell explained .....*

45

You will see then there is a large part of this page that reproduces your letter; is that

right?

MS BOSWELL: Yes.

5 MS EASTMAN: When you prepared this letter, you had been fully briefed on all matters; is that right?

MS BOSWELL: Well, I believe I had been briefed. I --- fully briefed on all matters would probably be more than I would accept at this point.

10

MS EASTMAN: Did you take any role personally to ask for all details concerning the investigation?

MS BOSWELL: No, I did not.

15

MS EASTMAN: And did you yourself, before responding to the Ombudsman, have an opportunity to look at any of the documents relevant to the investigation?

MS BOSWELL: No, I consulted with the directors of the Incident Management Unit, both the former and the current, as it says there, both of whom, as it also says, were experienced former police officers and they advised me that they believed that the investigation had been appropriate.

20

MS EASTMAN: So it was on the basis of what you were told that you informed the Ombudsman that you considered that the Director Accommodation Services and Director Incident Management Unit did properly investigate the letter. That's how you formed that opinion; is that right?

25

MS BOSWELL: No, not the Director Accommodation Services.

30

MS EASTMAN: I'm reading the first sentence. It says:

*..... Ms Boswell explained:*

35

*I consider that the Director, Accommodation Services and Director, Incident Management Unit (IMU) did properly investigate the letter.*

MS BOSWELL: Yes, sorry.

40

MS EASTMAN: That's what you told the Ombudsman.

MS BOSWELL: Yes. I was looking at the paragraph further down, I apologise.

MS EASTMAN: You were not seeking to mislead the Ombudsman, were you?

45

MS BOSWELL: No, of course not, Senior Counsel. I was looking at the paragraph further down about consulting the ---

MS EASTMAN: We will work through this. So when you express your opinion that you considered that there had been a proper investigation of the letter, that was based on what people had told you; is that right?

5

MS BOSWELL: It was based on briefings from two Government executives, yes.

MS EASTMAN: Right. And on that basis, you made the request that the provisional report be changed to state this:

10

*..... the investigation commenced in March 2018, when the Director, Accommodation Services contacted the Director, Incident Management Unit. Following this contact strategies were put in place to ensure the safety of Mitchell and inquiries were commenced to identify the author of the letter. It was at this point that I consider this the commencement of the investigation.*

15

MS BOSWELL: Yes.

MS EASTMAN: You're aware, aren't you, that the investigation did not commence until April?

20

MS BOSWELL: The --- the former executive --- sorry, the former Director of the Investigations Management Unit has provided a statement that is not here, but to the Ombudsman that I have read, that says that he considers that the actions that he advised the Director of Accommodation Services to undertake in talking to staff and asking them for leads was, in his view, the start of the investigation. And that's what that's based on.

25

MS EASTMAN: So, again, based on something that somebody told you?

30

MS BOSWELL: Well, it's based on a signed statement by the Director of the Investigations Unit, yes.

MS EASTMAN: Obviously there's a little more in the letter and the Ombudsman has put the dot, dot, dots in there. The next paragraph, which you might have been reading earlier, is you tell the Ombudsman you:

35

*..... consulted with both the current and former Directors of the Incident Management Unit and they are both of the view that there is nothing more that could have been done at the time, or now.*

40

So, again, you are just repeating there what you were told; is that right?

MS BOSWELL: Yes, on the basis of expert advice from two senior investigators, yes.

45

MS EASTMAN: But had you personally formed a view at that stage whether



nothing more could have been done at the time or now?

5 MS BOSWELL: I had formed the --- I'd sought advice from two people with significant --- more expertise than me, and that was what I was advised. It's not my current view. But yes, at the time that's what I was advised. And I do not claim to have qualifications in investigation and both of these people have significant qualifications.

10 MS EASTMAN: That's a point you sought to make to the Ombudsman, isn't it, to say to him:

15 *It is important to note that the current and former Directors have significant long-term experience in both detective and prosecution fields with the South Australian Police, collectively over multiple decades.*

MS BOSWELL: Which was the basis of why I believed their advice, yes.

20 MS EASTMAN: Both of those Directors at relevant times were employees of the Department, were they not?

MS BOSWELL: At the relevant times, yes.

25 MS EASTMAN: And in terms of line management reporting, that you were a manager, a very senior manager, to whom each of them would report; is that right?

MS BOSWELL: Not before I was --- they always reported to the Chief Executive. So when I was not the Chief Executive, they did not report to me, no.

30 MS EASTMAN: You tell the Ombudsman:

35 *As part of the investigation, the Department ensured that all staff at [the residence] were spoken to about the letter and in particular those with direct connection with Mitchell, telling staff about the letter and asking what they knew about who sent the letter and encouraging them to come forward with information.*

Where did you get that information from?

40 MS BOSWELL: From the statement written by the investigators, by the --- a signed statement written by the Director of the Investigations Unit, who believes that he instructed and that Claude Bruno, who was the Director at the time, undertook that.

45 MS EASTMAN: So the person who had responsibility for the investigation told you that he had instructed somebody else to do this and therefore that allowed you to reach the conclusion that it in fact had been done; is that right?

MS BOSWELL: Yes.

MS EASTMAN: And you yourself took no steps to verify the accuracy of what you told the Ombudsman here, other than you relied on what you had been told; is that right?

5

MS BOSWELL: Other than a statement, a written witness statement, yes.

MS EASTMAN: You tell the Ombudsman the IMU investigator was satisfied there was nothing more that could be done. You accepted that advice at the time, did you?

10

MS BOSWELL: I did, yes.

MS EASTMAN: Then you say:

15 *It is now over two years since the original letter was sent and the ability to undertake any further meaningful enquiries is unrealistic.*

That's your opinion, isn't it?

20 MS BOSWELL: That was the opinion of the people with the advice I was given who are the professionals. Yes, it was.

MS EASTMAN: That was your opinion, wasn't it? You wouldn't say that to the Ombudsman if it wasn't --

25

MS BOSWELL: It was my opinion based on advice, yes. It's no longer my opinion.

MS EASTMAN: You tell the Ombudsman:

30 *There have been significant staff changes within the Accommodation Services and in the department's opinion further enquiries would not identify the author, which would be the only real basis for conducting further enquiries.*

35 So that's reflecting the whole of the Department's opinion; is that right? You wouldn't say it if you didn't mean it, would you?

MS BOSWELL: Speaking on behalf of the Department, I don't --- the whole the Department is thousands of people. I assume it can't be the whole, every one of those thousands of people, no.

40

MS EASTMAN: What does, then, the Department's opinion, what is that a reference to?

MS BOSWELL: Speaking as an officer on the part of the agency.

45

MS EASTMAN: So that was your opinion, that further inquiries would not identify the author?

MS BOSWELL: Yes, on advice.

MS EASTMAN: Then you say:

5

*If in your opinion [that's a reference to the Ombudsman] you believe there to be other investigative methods that could be employed outside of what the Department has undertaken to date I would welcome a conversation with you.*

10 MS BOSWELL: Yes.

MS EASTMAN: Would it be fair to say that within the Department no one had turned their mind to other investigative methods that could be employed outside the Department?

15

MS BOSWELL: I can't speak on behalf of everybody's minds, whether anybody else had turned their minds, but I had asked the Ombudsman if they had another option, whether they could speak to me about it.

20 MS EASTMAN: One option would have been pretty plain, wouldn't it, at the time you were writing to the Ombudsman and that is perhaps we move from having internal investigators to somebody completely external, somebody who is arms length from the Department, somebody with forensic experience. That would have been a pretty easy conclusion to reach?

25

MS BOSWELL: The staff within that area do have forensic experience. But yes, we --- I intend to take further investigations. I've spoken to the Commissioner for Public Sector Employment and we will ask for an external investigator to come and look further back in time.

30

MS EASTMAN: That's now, today?

MS BOSWELL: Yes.

35 MS EASTMAN: But that's not a view that you held when you communicated to the Ombudsman, asking the Ombudsman to change the findings and alter the recommendations; is that right?

MS BOSWELL: Yes, that's right, based on advice.

40

MS EASTMAN: Now, you will see that the Ombudsman did take into account the matters that you raised with him and he was prepared to make some revisions to recommendations 3 and 6. But he says this:

45

*I have not been persuaded by the department's argument that its investigation of the letter in 2018 was sufficient. I do not agree that, at the time, nothing more could have been done to identify the author of the letter. I remain of the*

*view that there were other investigative steps that could have been taken by the department, including those detailed below .....*

5 He refers to paragraph 151. If we look at that now, that's at page 29. This is where the Ombudsman says:

10 *..... given that serious threats against a client's safety appear to have been made by a person employed by the department in the care of vulnerable people, I consider that the department should have taken all reasonable steps to establish who sent the letter. In particular, the department could have .....*

Then there are three dot points in terms of an approach that could have been taken. Do you see those?

15 MS BOSWELL: Yes.

MS EASTMAN: Can I suggest to you, with respect to those three dot points, they would have been all matters that would have been easy and open to the Department, as you say, with directors with significant long-term experience in both detective and  
20 prosecution fields with the South Australian Police collectively over many decades, one would have assumed that people with that skill and responsibility could have turned their minds to these three dot points. Do you agree?

MS BOSWELL: Yes, and they may have and I cannot tell you whether they did.  
25 "Turned their minds" is not the same as reaching the conclusion that that would be the thing that they choose to do, but I would accept that they should turn their minds to those questions.

MS EASTMAN: Going back to the Ombudsman's report at page 5, he says that  
30 your:

35 *..... submissions as to the efficacy of further, meaningful investigation at this stage have caused me to reconsider my recommendation. Staffing changes within Accommodation Services at the department are particularly persuasive in this regard.*

Then he says this:

40 *That said, I am still very concerned that the author appears to have been a department employee, and they may still be engaged in the care of vulnerable people such as Mitchell.*

45 *I therefore do not consider it appropriate to remove my foreshadowed recommendation entirely. Instead, I have amended it as provided at the end of this report.*

Then he acknowledges that it would be difficult but he says:

..... given the letter's very serious nature, I consider they are necessary and an appropriate use of the department's resources in light of its responsibility for the safety and wellbeing of the vulnerable people in its care.

5

So you have seen that?

MS BOSWELL: Yes.

10 MS EASTMAN: Then in terms of the Ombudsman's consideration of this matter, no doubt you have read the Ombudsman's report in some detail; is that right?

MS BOSWELL: Yes.

15 MS EASTMAN: And the Ombudsman deals with a number of issues in this report, including setting out a very detailed chronology about the way in which the matters came to the Department's attention and the steps taken by the Department to investigate internally. Can I summarise those parts of his report in that way?

20 MS BOSWELL: I'm sorry, I didn't --- can you --- I didn't understand that, I beg your pardon.

MS EASTMAN: I'm trying to do a shortcut.

25 MS BOSWELL: Sorry.

MS EASTMAN: Step 1, the Ombudsman's report is fairly extensive and it covers a lot of topics. Do you agree with that?

30 MS BOSWELL: Yes.

MS EASTMAN: The to the extent that the topic about the investigation of the anonymous letter is dealt with in this Ombudsman's report. That part of the report dealing with the anonymous letter sets out in some detail how the letter came to the Department's attention and the steps taken by the Department?

35

MS BOSWELL: Yes. Sorry, I understand now, yes.

MS EASTMAN: So rather than walk you through all of that in detail, I just want to take you to some of the observations made by the Ombudsman. At page 28 of his report he says at paragraph 140 that he did not accept the Department's investigative options were limited to the initial enquiry. And he says:

40

45 *It appears that the author of the letter could reasonably have been narrowed to all staff at [the residence] and perhaps then further, to those who were aware that the site manager was preparing to leave.*

MS B

OSWELL: Yes.

MS EASTMAN: You would accept the Ombudsman's view now; is that right?

5 MS BOSWELL: Yes.

MS EASTMAN: At paragraph 144 he says:

10 *Given the seriousness of the letter, I consider that specialist investigative skills were necessary. I am not satisfied that preliminary local enquiries and the subsequent contact with nine people were sufficient.*

MS BOSWELL: Yes. And I assume he's referring to the actions of the Director of Accommodation Services in speaking to all the staff at the residence.

15

MS EASTMAN: Would you accept that he expresses a view that, because of the seriousness of the letter, there needed to be specialist investigative skills?

MS BOSWELL: Yes.

20

MS EASTMAN: But at the time you responded to the Ombudsman on the provisional report, you were of the view that the past and present Director of the IMU had the relevant specialist investigative skills within either him or within the team; is that right?

25

MS BOSWELL: Yes.

MS EASTMAN: At paragraph 153 he says:

30 *In my view, it was essential to ensure that the author of the letter was identified. It concerns me greatly that they may still be employed by the department and working with vulnerable people.*

MS BOSWELL: Yes.

35

MS EASTMAN: That remains the case today, does it not?

MS BOSWELL: Yes.

40 MS EASTMAN: He makes the finding that:

*..... the department failed to properly investigate the letter, and that this was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.*

45 You now accept that finding?

MS BOSWELL: I accepted that finding at the time.

MS EASTMAN: The Ombudsman then made a series of recommendations which appear on page 30.

5 MS BOSWELL: Yes.

MS EASTMAN: And if I can turn immediately to recommendation 6, because this is the one dealing with the investigation. That recommendation was:

10 *That the department conduct further enquiries to identify the author of the letter, including but not limited to:*  
*- interviewing the author of the petition ..... if possible .....*  
*- interviewing any other employees who worked at [the residence] when the letter was received and who were aware of the petition.*

15

MS BOSWELL: Yes.

MS EASTMAN:

20 *..... and continue to an investigation where those enquiries indicate that the author of the letter might be identified.*

And he makes the recommendation:

25 *..... if the department is unable to identify the author and no further enquiries can be made, I recommend that the department advise Victoria and James of the steps that it has taken and their outcomes.*

30 But if the person can be identified then a recommendation is made with respect to disciplinary action. You're aware, aren't you, that the Department acted on this recommendation?

MS BOSWELL: Yes.

35 MS EASTMAN: And that recommendation resulted in a fresh investigation; is that right?

MS BOSWELL: As I understand it, yes.

40 MS EASTMAN: That investigation commenced before the Ombudsman provided the final report; is that right?

MS BOSWELL: Because when I saw the Ombudsman's provisional report, I directed that that occur.

45

MS EASTMAN: And did you have any hand in how the investigation should be conducted?

MS BOSWELL: No.

5 MS EASTMAN: Did you instruct those responsible for conducting the investigation to perhaps consider some of the observations made by the Ombudsman about the need for specialist investigative skills or the nature and scope of the investigation?

10 MS BOSWELL: The instruction I gave was that the investigation should occur as per the Ombudsman's report but I didn't specify line by line, no.

MS EASTMAN: Did you receive a copy of the investigation report after it had been completed?

15 MS BOSWELL: No. I was not aware that it had been completed until I asked and after I found out I immediately wrote to Victoria and James because I did not know that it had been completed.

MS EASTMAN: No one told you?

20 MS BOSWELL: No.

MS EASTMAN: You're aware, aren't you, on 1 March that Mr Dodd wrote to Victoria and James by way of email and informed them that the Department had been unable to identify the author and no further inquiries would be made and the investigation was at an end?

MS BOSWELL: I was not aware of that until after the fact, but yes.

30 MS EASTMAN: Have you now seen that investigation report?

MS BOSWELL: I have now, yes.

35 MS EASTMAN: You are aware, aren't you, that Mr Allwood gave some evidence earlier this week in relation to an audit that was completed on 2 June this year in relation to whether the investigation done following the Ombudsman's recommendation was a process that had the integrity and met the auditing standards; is that right?

40 MS BOSWELL: Yes, I am.

MS EASTMAN: Did you have any role in instructing him to undertake that audit?

45 MS BOSWELL: Yes, because I was not aware of the investigation when it was completed, and I was concerned about the letter, the tone of the letter --- the letter not appearing to be empathetic, written to Victoria and James, and also whether or not the second investigation had been sufficient. I asked for my internal audit to have a look at it.



MS EASTMAN: You saw his memorandum of 2 June 2021?

MS BOSWELL: Yes.

5

MS EASTMAN: And are you aware of the evidence that he gave earlier this week?

MS BOSWELL: Yes.

10 MS EASTMAN: Would you accept that, looking at all of the steps taken by the Department, that there has frankly been a woeful failure in relation to the investigation of the anonymous letter?

MS BOSWELL: I accept that the --- there could be further steps taken in  
15 investigation and I'm seeking to do so, yes.

MS EASTMAN: It's a woeful failure, isn't it?

MS BOSWELL: I have --- I have --- I don't think it's sufficient. I do --- I want to  
20 FOI as well the police investigation, which I don't know whether the Royal Commission has had the chance to see. So I need to understand the police investigation. I accept that it is not sufficient. I have a number of --- to accept that it would be a woeful failure would be to accept that I have --- that I have two  
25 investigators who are saying that it was appropriate and adequate but I am now not of that view and I also want to see what the police did as well.

MS EASTMAN: What happens now for Victoria and James?

MS BOSWELL: We will keep them up to date and apologise to them and seek to  
30 have that investigation undertaken.

MS EASTMAN: I suppose they would say to you, thanks for the apology but if as the Ombudsman said, the person who is the author of the letter is still within the Department and may still work with Mitchell or people like Mitchell who are in the  
35 care or require accommodation from the Department, there continues to be a significant risk. Do you accept that?

MS BOSWELL: I do accept that. I also have to accept that I have investigators and I understand the police saying that it is very difficult to find that. They may not be  
40 staff of the Department. But I do accept that that's a significant issue. There has been a lot of work put to ensure that the staff around Mitchell are unlikely to be that or very unlikely because ---

MS EASTMAN: How do you know that?

45

MS BOSWELL: Because the staff at the time, it was reduced to core staff, it was discussed, as I understand it, and I'm not party to it, with James and Victoria that that

was the staff that they were comfortable with and that the staff that now work there were are a different cohort of staff from the staff involved at the time, as I understand it.

5 MS EASTMAN: You are aware that James and Victoria expressed some frustration about the fact that the Ombudsman's process was confidential and that there has been confidentiality around the documents prepared by the Department or used as part of the investigation leading to the report? You're aware of that?

10 MS BOSWELL: Yes.

MS EASTMAN: Is there any particular reason why these matters had to be confidential with respect to Victoria and James?

15 MS BOSWELL: I think you might need to ask the Ombudsman. I'm sorry, I don't know. It may have something to do with the operation of the legislation, I don't know.

MS EASTMAN: But it would have been open for you or someone in the  
20 Department to organise a meeting with Victoria and James, if they wished to talk to them about the Ombudsman's report?

MS BOSWELL: Yes.

25 MS EASTMAN: And that never occurred?

MS BOSWELL: No. As I said, I did not know that the second report had been finished until after it was gone.

30 MS EASTMAN: One of the recommendations, number 1, was that the Department provide a formal apology to Victoria and James and in regard to the errors identified in the Ombudsman's investigation.

MS BOSWELL: Yes.

35

MS EASTMAN: And you wrote a letter of apology; is that right?

MS BOSWELL: Yes.

40 MS EASTMAN: You became aware, on reading Victoria and James' statements for the Royal Commission, that they had not received your letter?

MS BOSWELL: Yes, and I felt terrible about that. I actually felt quite sick about it.

45 MS EASTMAN: They have I think said that they're now aware of the letter and they have now seen your letter?

MS BOSWELL: Yes.

MS EASTMAN: In terms of what you are apologising for, were you just sending the apology because that's what the Ombudsman recommended that you do?

5

MS BOSWELL: No. As I said, I was most concerned that the second investigation -- a letter had been sent to Victoria and James that I did not feel adequately expressed what should be expressed to Victoria and James, and no, I was sending a letter because I genuinely also believed that that apology is warranted.

10

MS EASTMAN: What about an apology to Mitchell himself?

MS BOSWELL: I would be happy to provide an apology.

15 MS EASTMAN: It's never occurred?

MS BOSWELL: I have not done that. I apologise. I also, Senior Counsel, understand, and I could be wrong in this, but I understand that Mitchell was not aware of the letter in his own interests, and therefore it would be difficult to apologise for a letter that he was protected from. But I could be wrong on that.

20

MS EASTMAN: He was aware that he had been referred to as piglet. You have seen that in the evidence, haven't you?

25 MS BOSWELL: Yes, I have.

MS EASTMAN: You have heard Victoria describe that as a derogatory term?

MS BOSWELL: Yes, I have.

30

MS EASTMAN: And I asked you yesterday about the importance of language and one of the auditor's reports describing people as "child-like". Do you accept that if clients in DHS were referred to by names such as "piglet", that that is unacceptable?

35 MS BOSWELL: I do. I also understand, Senior Counsel, that it was, and I've been told this now repeatedly, an old term that existed many years ago that was in use at a particular point in time and that nobody had heard it in recent times until that day.

40 MS EASTMAN: Do you accept, reflecting on the matters now, and the period of time that's elapsed, that it's not surprising that James and Victoria have lost complete trust and confidence in the Department?

MS BOSWELL: I accept that, yes.

45 MS EASTMAN: And whose responsibility is it to restore trust and confidence?

MS BOSWELL: I believe that's mine.

MS EASTMAN: And how can that be done?

MS BOSWELL: Well, I was waiting for the end of this hearing to be actually able to  
5 make contact because I thought it was inappropriate to make contact during this  
hearing. As I said, I sent the letter and then discovered that they had not received it  
and that letter offered a contact. But after the end of this hearing it would be my  
intention to make contact, subject to legal advice, Senior Counsel, but I'm trying to  
be respectful to the Royal Commission's processes, to undertake a number of things.  
10 One is to speak to them and apologise and to inform them of the next steps; secondly,  
to offer that if it would be of use to them, and not in any way to suggest that we want  
to do this, but if it would assist them in any way, to allow an alternative service  
provider to use that house, even though it's a collective site, if that would make them  
feel more comfortable because they are providing services from somewhere else, and  
15 to do other things necessary to restore trust and confidence.

MS EASTMAN: Do you accept one thing that's important for Government agencies  
is to have both transparency and processes that allow for accountability?

20 MS BOSWELL: Yes, I do.

MS EASTMAN: Would you accept that one step that could be taken to restore a loss  
of trust and confidence was for there to be, in this case, an independent investigation  
conducted arm's length from the Department by a person with relevant qualifications  
25 and forensic skills?

MS BOSWELL: I accept that, Senior Counsel, but I also would put forward that the  
Incident Management Unit sits separate in the Department and conducts  
investigations on referral of groups such as ICAC, for example, and refers --- and so  
30 in line with how I understand the NDIS Commission works at times, a report is made  
to ICAC, it is then referred to the Department, depending on what the Commission  
itself determines, and then the report is seen afterwards by the relevant group.  
I accept that the process may be seen to be better from Victoria and James, given the  
circumstances for that to be independent. I don't accept that that's necessary in all  
35 circumstances. In this one, though, I do accept that.

MS EASTMAN: Do you accept one way of developing trust and confidence is to  
include and consult with James and Victoria on the sorts of things the Ombudsman  
has recommended need to be undertaken, and that is reviewing and amending  
40 policies around supervision, to amend policies requiring regular audits of incident  
reporting, to amend standard agenda for support worker meetings to include incident  
reporting and for the Department to review and amend Managing Misconduct  
Guidelines and any other guidelines or internal documents to provide greater clarity  
on a range of issues? Those are all matters that, can I put to you, the Department  
45 would be assisted by understanding Victoria and James' view. Would you agree with  
that?

MS BOSWELL: If I may take them individually, Senior Counsel, amending relevant policies to require regular audits is a very factual thing. So I do think that there is a point about the misconduct guidelines and other guidelines. But the facts, there are some in there which are things that just should be done and I believe have now been  
5 done.

MS EASTMAN: Have all of those recommendations been acted upon by the Department?

10 MS BOSWELL: I believe so.

MS EASTMAN: Has the Department undertaken any training or developed guidelines on a trauma informed approach to the way in which investigations that involve a threat to a person's safety or wellbeing are undertaken?  
15

MS BOSWELL: There's --- the Department has been working on trauma informed approaches across the agency. I do not believe at this point that has occurred in terms of investigations but I will undertake to do so.

20 MS EASTMAN: Do you accept that when people may experience trauma or great distress, that it is important that an investigator undertake an investigation informed by trauma informed approaches?

MS BOSWELL: Yes, and our investigations unit actually all has vulnerable witness training and they all have training associated with appropriate investigations for vulnerable people, yes.  
25

MS EASTMAN: Reflecting back on these events, and I think as the Ombudsman said, sometimes the benefit of hindsight can be helpful, is that there is nothing about the way in which the Department approached the conduct of the investigation or the communication with Victoria and James that had any element of a trauma informed approach, would you agree with that?  
30

MS BOSWELL: I accept that. Yes, I do.  
35

MS EASTMAN: I'm going to put to you again: would you agree with me that reflecting on the process of the investigation, it has been a woeful failure by the Department?

40 MS BOSWELL: I accept it has been a failure. I think that there are --- as you say, the benefit of hindsight, Senior Counsel, I absolutely accept that failure. I also accept that there was different views about --- and I think these are informed by not a trauma informed approach but more a forensic investigation approach about how far one can go with success. I don't necessarily accept that that is what we should be  
45 doing and it won't be what we will be doing into the future.

MS EASTMAN: Commissioners, I'm mindful of the time. The final topic I need to

deal with is the ---

CHAIR: You do keep saying that.

5 MS EASTMAN: I am. Well, I am trying just to go through ---

CHAIR: I know. I know. I know. If you don't mind, I just want to ask a brief ---

10 MS EASTMAN: Sorry, before you do, Chair, can I just say, I have finished that part of the case studies for Mitchell and Daniel Rogers. And the final topic that I need to --- I want to turn to is the Department's response to the Safeguarding Report and the Robertson Report. I was going to suggest if it's convenient to perhaps deal with any questions the Commissioners have about these matters now, before we move to the next topic?

15

CHAIR: That's why I wanted to ask the question now, as I thought you had finished this particular inquiry.

20 Ms Boswell, you were asked a number of very detailed questions about your response to the Ombudsman that appears at page 4 of the Ombudsman's report. One of the points that you made that reflects the contents of your response was that you received advice from very experienced investigators at IMU and in the other Department that was concerned, the Accommodation Services. Didn't the IMU have an interest in this? They were the ones that conducted the inquiry, weren't they?

25

MS BOSWELL: I'm sorry, Chair I didn't understand the question.

30 CHAIR: The question is whether the person who was giving you advice as to the thoroughness of the inquiry in effect had a conflict of interest because that was the organisation that conducted what has now been found to be an inadequate inquiry.

35 MS BOSWELL: If --- I guess that I have to take advice from experts within the Department. Yes, they had an interest in the advice they gave me but, yes, I took the advice on face value and the advice was given with explanation about what they believed appropriate investigative techniques would be and what they believed was the efficacy of further investigation and why.

40 CHAIR: I'm not querying that you received that advice. My point is that the very worst person to ask for advice about the thoroughness of an inquiry is the person responsible for the conduct of the inquiry. Isn't that the position?

45 MS BOSWELL: Except I also asked for advice from the now Director, who was not responsible for the conduct of the inquiry at the time. So the person --- the people that gave me advice was both the person who had been responsible and for the person who was now responsible, who was not the same person and not --- and a completely new person in the same position.

CHAIR: Yes, but that doesn't remove the problem, does it?

MS BOSWELL: It depends on whether you believe that it was a personal conflict. Because the investigation was conducted by an individual, by a person in charge. A  
5 new person in charge was giving advice about what they saw as the past record, so there is less conflict.

CHAIR: But there is still conflict, isn't there?

10 MS BOSWELL: There may be conflict but I would accept there is less conflict.

CHAIR: Thank you. I will ask Commissioner Bennett if she has any questions to put to you on this aspect of the investigation.

15 COMMISSIONER BENNETT: No questions, Chair.

CHAIR: Commissioner McEwin?

COMMISSIONER McEWIN: No questions, Chair.

20 CHAIR: Thank you. Ms Eastman?

MS EASTMAN: I want to turn to the two reports that followed investigations and inquiries on the passing of Ann Marie Smith last year. There are two reports. You're  
25 aware of the Robertson review?

MS BOSWELL: Yes.

MS EASTMAN: Did you hear Mr Head's evidence yesterday?  
30

MS BOSWELL: Most of it, yes.

MS EASTMAN: You are aware, aren't you, he commissioned Mr Robertson to conduct a review?  
35

MS BOSWELL: Yes, and I was aware at the time.

MS EASTMAN: The Terms of Reference were essentially directed to the NDIS Quality and Safeguards Commission but it also picked up other agencies including the NDIA? You aware of that?  
40

MS BOSWELL: Yes.

MS EASTMAN: It's the case, isn't it, that you received a copy of the Robertson Report?  
45

MS BOSWELL: Yes.

MS EASTMAN: You've dealt with this at paragraphs 163 and 164. This is page 23 of your second statement.

5 MS BOSWELL: Yes.

MS EASTMAN: The Royal Commission asked you to:

10 *Provide a brief update on any responses to, or actions taken by the South Australian government and/or Department specifically to address, the findings and/or recommendations made in the [Robertson Review].*

You see you were asked that question?

15 MS BOSWELL: Yes.

MS EASTMAN: The entirety of your response to that is the matters set out in paragraphs 163 and 164; is that right?

20 MS BOSWELL: Yes. The majority of the Robertson Review is very similar to the Safeguarding Task Force Review and the State's concentration was responding to the Safeguarding Task Force Review and much of the matters in the Robertson Review were matters that were picked up by the State in response to the Safeguarding Task Force Review, which do have quite similar actions in them.

25 MS EASTMAN: Are we right in understanding that in terms of the Department and the South Australian Government, that its focus has been on the Safeguarding Task Force report rather than the Robertson recommendations?

30 MS BOSWELL: The Robertson recommendations were not recommendations to South Australia, they were recommendations to the Commission. Certainly South Australia has been interested in those and progressing those through the Disability Ministers meeting or the Disability Reform Council meeting and that they --- the work being undertaken is seeking to pick up both reviews.

35 MS EASTMAN: I think you have made a reference to some correspondence with the Commission?

40 MS BOSWELL: Yes.

MS EASTMAN: In terms of the South Australian Safeguarding Task Force, you were a member of the Task Force; is that right?

45 MS BOSWELL: Yes.

MS EASTMAN: The Commissioners have got in the bundles a copy of the Task Force interim report of 15 June, a report of 30 July 2020 and then a supplementary



report, which I think has been variously referred to as the final report.

MS BOSWELL: Yes, probably the final report predates --- the supplementary report really is supplementary, but the final report.

5

MS EASTMAN: That is 28 September.

MS BOSWELL: Yes.

10 MS EASTMAN: Again, the Royal Commission asked you to provide a brief update on any responses to or actions taken by the South Australian Government and/or the Department specifically to address the findings and/or recommendations made by the Safeguarding Task Force report.

15 MS BOSWELL: Yes.

MS EASTMAN: You have set that out in the table, is that right, at pages 23 through to 25 of your statement.

20 MS BOSWELL: Yes.

MS EASTMAN: And that is intended to be in summary form, do I take it?

MS BOSWELL: Yes, it is.

25

MS EASTMAN: In terms of the Safeguarding Task Force, were you involved in establishing the Task Force?

30 MS BOSWELL: No, I was not. The Minister and the Cabinet established the Task Force. I was involved in assisting after the decision had been made in some administrative --- not me, but the Department was in administrative roles of ensuring setting fees, et cetera.

35 MS EASTMAN: What was the composition of the Task Force? It wasn't all Government, was it?

40 MS BOSWELL: No, it was made up of people with lived experience. It was jointly chaired by a former Executive Director of Disability SA and now Disability Advocate, who is based in the Office of the Public Advocate, Dr David Caudrey, and Ms Kelly Vincent, who has lived experience and is a former member of the South Australian Parliament.

45 MS EASTMAN: The Commissioners have in volume D, behind tab 2, a copy of the interim report. That's the first report. That extracts the Safeguarding Task Force Terms of Reference on page 20 of 22; is that right? They are the Terms of Reference.

MS BOSWELL: Yes.

MS EASTMAN: Who was responsible for developing the Terms of Reference?

5 MS BOSWELL: I believe they were developed by the Minister in conjunction with Dr Caudrey and Ms Vincent but I can't tell you for sure, I'm sorry.

MS EASTMAN: As a member of the Task Force, what was the process undertaken by the Task Force to address the matters identified in the Terms of Reference? How  
10 did you go about that task?

MS BOSWELL: Well, it was during COVID so the meetings were virtual. There were --- Dr Caudrey and Ms Vincent, as co-chairs, did a number of things. Look, my  
15 memory --- you just have to bear with me on my memory, Senior Counsel, please, but there were regular meetings of the Task Force that worked through issues. Members of the Task Force put in papers and thoughts about what they thought were issues that needed to be examined. There was a special separate workshop with people with lived experience on the subject and there was also a consultation session --- sessions undertaken by Dr Caudrey and Ms Vincent going around and meeting  
20 with various people and talking through. And I think they also took public submissions.

MS EASTMAN: Some of the work that the Task Force did focused specifically on the NDIA but also the NDIS Quality and Safeguards Commission; is that right?  
25

MS BOSWELL: That's right.

MS EASTMAN: So its focus was not limited to looking at the response solely of the South Australian Government or the Department; is that right?  
30

MS BOSWELL: No, its response was based on working out what safeguarding gaps there were, and then who was responsible for that was the secondary part process to establishing what the gaps were.

35 MS EASTMAN: And the Task Force concluded ultimately that there were 14 safeguarding gaps and they are produced, Commissioners, in the supplementary report which is behind tab 5 in this bundle at pages 22 and 23.

40 So you recognise those as the safeguarding gaps?

MS BOSWELL: Yes.

MS EASTMAN: One of the issues that arose in the course of the Task Force work was what does vulnerability and what does a vulnerable participant mean; is that  
45 right?

MS BOSWELL: Yes.

MS EASTMAN: Has that work of the Task Force informed the way in which South Australia has engaged with the NDIA and the Quality and Safeguards Commission on the Vulnerable Participants Framework?

5

MS BOSWELL: Very much so. And in fact during the process it was very clear that people with disability do not want to be perceived --- and there was a very strong theme in South Australia at the time because the media reports were all about vulnerability and there was some concern about ensuring that that was not --- it was not assumed that because you had a disability that you were vulnerable, that that was actually going backwards in time. So the Safeguarding Task Force actually grappled with that concept quite a lot, about how do you identify vulnerability without labelling everybody as vulnerable, given particularly the circumstances of Ms Smith that did not fall into the classical definitions of vulnerability, shall we say.

10  
15

MS EASTMAN: In the time that we have, I can't take you through all the safeguarding gaps, but I want to ask you about two in particular. The first is in relation to advocacy. In the report that you have, the supplementary report, the question of capacity, development and advocacy was discussed at pages 19 and 20. Can I ask you to look at 5.5 "Capacity Development and Advocacy."

20

MS BOSWELL: I will need it to be brought up, I'm sorry. Yes.

MS EASTMAN: The Task Force says in the second paragraph:

25

*The participant or their family needs a "go-to" person in the system. We have identified, in the absence of a case manager or social worker, that the support coordinator is the closest thing to exercising this role.*

30 We have discussed that earlier today.

MS BOSWELL: Yes.

MS EASTMAN: And over the page it says:

35

*Many people we have spoken to have said that they have tried to make use of advocacy agencies, but they are fully booked and cannot help or can only help on a superficial basis. It may well be asked why advocacy is necessary when the NDIS and the Commission offer an array of personnel all tasked with assisting the individual to get what they need from the NDIS.*

40

*In practice, the participant often feels confused and disempowered before this system and needs "a friend who is on their side".*

45 MS BOSWELL: Yes.

MS EASTMAN: In terms of the observations there, do you agree that the participant

and the family needs a go-to person in the system or a friend who is on their side?

MS BOSWELL: I do agree that people need a way to navigate the system and ideally a single point of contact would be the best way to achieve that, yes.

5

MS EASTMAN: Does that presently exist in any of the systems in South Australia?

MS BOSWELL: I can't speak on behalf of the NDIS and the NDIA, but my understanding is no. When you say any of the systems, Senior Counsel, we're not talking about the whole of the State of South Australia?

10

MS EASTMAN: No, just focus on the systems that we have been talking about, which is people on who receive services from South Australia or receive accommodation.

15

MS BOSWELL: So within our accommodation services, yes, there is. There is a service coordinator that I spoke of earlier. There is one per 25 clients whose sole role is to be that single point of contact. Yes.

MS EASTMAN: Has there been any evaluation of that process?

20

MS BOSWELL: It's a new process, we are not at the evaluation stage yet, but there will be evaluation further on, yes.

MS EASTMAN: In terms of that evaluation, will that be informed by the families and the participants who identify the need for a go-to or a friend on their side?

25

MS BOSWELL: Absolutely. I can't see another way to evaluate it.

MS EASTMAN: The second issue that was raised, which seemed to attract some debate, was the Community Visitor Scheme.

30

MS BOSWELL: Yes.

MS EASTMAN: If you turn back to pages 17 and 18, there is a discussion of the Community Visitor Scheme.

35

MS BOSWELL: Yes.

MS EASTMAN: That says in the second paragraph:

40

*The State [reference to South Australia] no longer has a funding relationship with non-government agencies and the State needs to work within its responsibilities rather than venture in the domain of the Commonwealth. The future role of the [Community Visitor Scheme] has to accommodate the roles and functions of the NDIA and of the Commission under the Commonwealth NDIS Act 2013.*

45

*Under current arrangements, the South Australian [Community Visitor Scheme] has the power to visit DHS-run accommodation services.*

5 Then it goes on to say what the limits are. It is the case, isn't it, that in South Australia there is a fairly significant debate about why the State has stepped back from a Community Visitor Scheme? Do you agree with that?

10 MS BOSWELL: I agree that there's a debate. I don't agree that the State has stepped back from the Community Visitor Scheme. The State is actually very committed to a Community Visitor Scheme and, as a result of advice that the State received, and --- it had very little option other than to take --- the *Disability Services Act* no longer applied and therefore that reduced the scope of the Community Visitor Scheme into group homes, which was its traditional base, that were undertaken by the NDIS.

15 To try to partially redress that, the State --- and I know because I was the proposer --- sought to have the --- a delegation from the Public Advocate to provide more access to areas outside of State-run facilities. And in addition to that, what the State has done is --- and it's partly in response to the Adult Safeguarding Unit, is to expand the  
20 role of the Adult Safeguarding Unit, which has a different ability on report, but actually has powers to do things based on somebody having a complaint of abuse.

We have also sought to have arrangements between the Adult Safeguarding Unit and the NDIS Quality and Safeguards Commission, obviously, and the State of South  
25 Australia is committed to a Community Visitor Scheme and believes that one visiting --- on the purpose of being arms and legs for the regulatory function of the NDIS Commission should be under the auspices of the NDIS Commission but also has, in response to discussions about an opt-in system, for those who --- particularly for those who would never previously have had access to a Community Visitor Scheme  
30 in the first place, is seeking to try to establish a virtual Community Visitor Scheme that people can reach out to. That's a work in progress and I have an agreement with the NDIS Commission that we will work closely to try to make that work together.

35 MS EASTMAN: I just want to take some of those points in turn. It's the case, isn't it, as you are aware, that there is no National Community Visitor Scheme under the auspices of the Quality and Safeguards Commission; correct?

MS BOSWELL: I am aware of that.

40 MS EASTMAN: You would have heard that Graeme Head has said, notwithstanding he's leaving his role and he can't bind a successor, that he sees merit in there being a national system?

45 MS BOSWELL: Yes.

MS EASTMAN: You also heard him say that in the absence of a Commonwealth scheme, that some States have continued to operate their Community Visitor Schem

es?

MS BOSWELL: Yes.

5 MS EASTMAN: You have heard Mr Head say that he doesn't see that there is any impediment from his perspective in the States continuing to operate those schemes. That's what he says.

MS BOSWELL: I have heard him say that.

10

MS EASTMAN: To the extent that if there is an impediment in South Australia, is it right to understand that the impediment is based on a legal opinion?

MS BOSWELL: Yes, it is.

15

MS EASTMAN: And nothing else?

MS BOSWELL: I don't know how to answer that, Senior Counsel. It is based on an opinion that there is no constitutional power, so that depends on whether you think that's nothing else.

20

MS EASTMAN: Let me put this to you. But for the legal opinion, from your perspective there would be no impediment to South Australia continuing its Community Visitor Scheme; is that right?

25

MS BOSWELL: That's been the basis of the history of the decision-making, yes.

MS EASTMAN: So if you were not shackled by a legal opinion, would it be the case that a Community Visitor Scheme could continue in South Australia?

30

MS BOSWELL: The scheme would have continued the way that it was, yes, I agree.

MS EASTMAN: You accept, don't you, that different lawyers sometimes have different opinions and different views ---

35

MS BOSWELL: Sometimes.

MS EASTMAN: --- about the operation of the law? You yourself have been a lawyer?

40

MS BOSWELL: Yes. I have never practised, Senior Counsel. But yes, I accept that lawyers have different opinions. When you get to be very senior, though, that does bind.

45 MS EASTMAN: You have been provided with a summary of the Commonwealth's legal advice; is that right?

MS BOSWELL: Yes.

MS EASTMAN: And are you aware of what steps have been taken between the  
5 respective legal officers of the relevant Commonwealth agencies and your  
department to resolve the legal differences?

MS BOSWELL: No, I am not. I know that there are things under consideration but  
that is not within my department, Senior Counsel.

10 MS EASTMAN: Do you accept a legal debate about the operation of section 109 or  
other provisions of the Constitution should not be an impediment to protecting the  
safety and wellbeing of vulnerable participants?

CHAIR: I'm not sure that's a question that can fairly be put to Ms Boswell.  
15

MS EASTMAN: I withdraw that.

MS BOSWELL: Thank you.

20 MS EASTMAN: If the legal issues can be resolved, would South Australia be open  
to revisiting and reconsidering the operation of its Community Visitor Scheme?

MS BOSWELL: I would say that I also do agree with Commissioner Head that the  
Community Visitor Scheme as it was designed is not of a modern nature. It was  
25 designed to be an institutional visiting scheme, that's the history which it came out  
of. It was designed to enter houses at the behest of the service provider. And it  
never had access to private houses. And was really a role to have oversight of a  
service. It was a regulatory role in many respects. I think that bearing in mind the  
circumstances of moving from 16,000 people with disability supports in South  
30 Australia to more like 40,000, and that's mirrored across the country, that it's  
important to consult with people with disability about what such a scheme would  
look like and how it is respectful in terms of its availability, rather than presuming  
that it is to come in and check. Because that's part of the debate that the  
Safeguarding Task Force had and I think, as you said, as you would know, Senior  
35 Counsel, Mr Robertson says --- sorry, his Honour said that there was --- there was no  
guarantee that somebody would be allowed in, so how do you make that the case?  
I think that there is much to be said for natural supports and so part of the point of an  
Adult Safeguarding Unit is to try to encourage people to come on behalf of others as  
well as have people speak themselves. Part of the point of a virtual visiting scheme  
40 would be to do that as well. Having access to --- we're preparing media guidelines  
about how people are portrayed because I think that's a very important part of  
community attitudes towards national safeguarding. So it's working through that and  
talking with people with disabilities about what does a modern social connection  
visiting scheme vis-a-vis --- and/or a regulatory scheme look like in a new era?  
45 Because if it's performing the old regulatory scheme regulation role then it is not  
going to --- it would never have reached Ann Marie Smith and it's not going get to a  
wide range of people with disability who may want to have social connection

through some form. So I think there is a design issue, I agree strongly with Commissioner Head, and he and I have had many conversations about that in attempts to try to sort this issue in ways that we can work around different legal opinions.

5

MS EASTMAN: Let me put this to you: without the Community Visitor Scheme, the issues that James and Victoria sought to bring to the attention of the Department and the Department's failing to address those matters may never have come to light. Do you accept that?

10

MS BOSWELL: I accept that. And I also accept that there is a new advocacy scheme in South Australia that would hopefully replace that function, as well as the systemic disability advocate that was specifically put there to replace that function as the CVS role withdrew out of that area.

15

MS EASTMAN: Thank you, Commissioners, those are my questions.

CHAIR: Thank you very much.

20

I shall ask the Commissioners if they have any further questions of you, Ms Boswell. First, I'll ask Commissioner Bennett.

COMMISSIONER BENNETT: No, Chair.

25

CHAIR: Thank you. Commissioner McEwin?

COMMISSIONER McEWIN: No, thank you, Chair.

CHAIR: Thank you very much.

30

Now, Mr Simpson, do you have any questions you wish to put to Ms Boswell?

35

MR SIMPSON: Chair, I am conscious of the time. I had intended to ask for a brief adjournment to seek instructions on that topic. But I think I can indicate that I have no questions at this time.

CHAIR: I don't want to constrain you. If you think that there is something of potential significance and you need a few minutes to do that, we can do that.

40

In fact, I think that the best course for us to adopt in any event is, if not to take the luncheon adjournment, then to adjourn for about 15 minutes, just to make sure there are no loose ends to be tied up and then to return, and that will conclude the hearing. Can I just check with Ms Eastman as to whether she's comfortable with that course.

45

MS EASTMAN: Yes, I certainly am. Chair, we have also circulated some proposed directions to parties and I hope that those directions have reached you as well.



CHAIR: They have. What I suggest, it is now 1.10 Adelaide time. If we reconvene, let us say, at 1.30 Adelaide time, and I imagine we will not need more than a few minutes, if Mr Simpson has anything he wishes to put, then we can discuss that at the time. We will deal with the directions and if there are any closing remarks to be made, which I anticipate will be very brief.

MS EASTMAN: Thank you, Chair.

CHAIR: We will adjourn until 1.30 Adelaide time.

**ADJOURNED** **[1.07 PM]**

**RESUMED** **[1.31 PM]**

CHAIR: Yes, Ms Eastman.

MS EASTMAN: Commissioners, I understand there are no questions. So, Ms Boswell, who has very kindly returned to the witness box, can be excused.

CHAIR: Ms Boswell, thank you very much for coming to the Royal Commission to give evidence. I'm sorry we kept you over two successive days but thank you for the assistance you have provided to us.

MS BOSWELL: Thank you, Chair.

**THE WITNESS WITHDREW**

MS EASTMAN: Commissioner, a notice requiring Mr Stewart Dodd to attend the Royal Commission had been issued. We did not require him to give evidence in person. The Commissioners have a copy of his statement. If he could be formally excused as well?

CHAIR: Yes, that can be done.

MS EASTMAN: Apart from that, I think that concludes the presentation of the evidence for Public Hearing 14, subject to the proposed directions, which I think now all parties have had an opportunity to read and I understand are agreed. Thank you.

CHAIR: I have a copy of --- at least I think I have a copy of the proposed directions. But before reading them, I note that they include an oral hearing which will be held on 20 August 2021 and that will be a hearing at which oral submissions will be heard by the Commissioners who have participated in this hearing, but there will be

provision for written submissions as well.

These then are the directions that are to be made. First of all, dealing with questions on notice and additional material:

5

1. Any witness who took questions on notice during this hearing should provide his or her answers in writing to the Office of the Solicitor Assisting the Royal Commission by 18 June 2021. Those answers should be targeted and concise and not address additional or unnecessary matters.

10

2. Counsel Assisting the Royal Commission may tender those responses into evidence.

15

3. In addition, given that during this hearing it has become apparent that some documents may have been overlooked in responding to notices issued by the Royal Commission, parties should ensure that further checks are conducted to ensure that those notices have been fully complied with.

20

I now deal with documents for tendering. Direction 4:

4. By 25 June 2021, Counsel Assisting the Royal Commission will provide a list of the documents she wishes to tender into evidence, including responses to questions on notice, on a confidential basis to the parties with leave to appear at this hearing.

25

5. Parties with leave to appear should advise the Office of the Solicitor Assisting by 2 July 2021 if they wish to suggest any additional documents for tendering by Counsel Assisting. At the same time, they should identify any parts of those documents that they consider need to be removed before the documents are made public.

30

6. Counsel Assisting will tender those documents into evidence which she considers appropriate in Chambers by 6 July 2021.

35

I will deal now with submissions.

Direction 7: Counsel Assisting the Royal Commission will prepare written submissions following this hearing. By 23 July 2021 these submissions will be provided on a confidential basis to parties with leave to appear to the witnesses who gave evidence and to any organisation that received a procedural fairness letter from the Office of the Solicitor Assisting the Royal Commission in preparation for this hearing.

40

45

8. Any responses to the Counsel Assisting's submissions should be sent to the Office of the Solicitor Assisting by 13 August 2021. Those responses should be concise and not include any additional evidence. After receiving all of the written submissions, there will be a short hearing for oral submissions which will be scheduled on 20 August 2021. That hearing will be conducted virtually.

Those are the directions.

5 MS EASTMAN: Thank you, Chair. Could I just ask already for an amendment to the directions. Direction number 1, the date I think you said 18 June.

CHAIR: I did.

10 MS EASTMAN: There have been discussions with the parties and we had all agreed on 22 June. Could that amendment be made, please?

CHAIR: Yes, that amendment can be made. Thus, Direction 1 will have the date of 22 June 2021 substituted for 18 June 2021. Thank you. Ms Eastman, is there anything further from you?

15

MS EASTMAN: No, thank you, Chair.

CHAIR: Thank you very much.

20 I want just to make some very brief remarks at the close of this hearing.

Before we do adjourn the hearing that has been held this week, it is important for the Commissioners to express their gratitude to all of the witnesses who have given evidence this week. This includes the representatives of public agencies and authorities, whose evidence has been very helpful to the Royal Commission.

25

We particularly wish to thank Victoria and James and Karen Rogers for being prepared to share their experiences, and those of Mitchell and Daniel, with the Royal Commission and indeed with the Australian community. As their evidence shows and as the evidence that we have heard at other hearings shows, it often takes great courage and determination for parents or guardians of people with disability to ensure that the people they love but who cannot speak easily for themselves are kept safe and free from violence, abuse, neglect or exploitation.

30

35 It also takes determination and courage to give evidence of difficult and sometimes traumatic experiences in a public forum such as the Royal Commission or a hearing of the Royal Commission. Victoria, James and Karen Rogers have done so and through them we have been able to learn about Mitchell and Daniel. Victoria described Mitchell, her nephew, as having a very loving, caring and humorous personality. It was very clear that Mitchell is very much loved. Karen described Daniel as “just beautiful. He is a lovely man who is very gentle and sweet.” We saw pictures of Daniel and a video which showed how much he is loved.

40

Mitchell and Daniel are entitled, like every other Australian, to realise to the full their potential for a rewarding and fulfilling life.

45

The Royal Commission's publicly stated intention to hold hearings into case studies

of alleged violence, abuse, neglect or exploitation attracted some mixed responses within the disability community. Some see it as a welcome opportunity to hold perpetrators of violence or abuse to account; others have worried that case studies might reinforce perceptions of people with disability as victims, rather than as independent people able to exercise choice and control over their own lives. In the evidence today we heard some discussion of those issues.

The case of Ann-Marie Smith illustrates this dilemma. I do not need to restate the tragic circumstances of her death. But the evidence given by Brooke has allowed us to see Ms Smith as an individual with her own personality and priorities who was loved by her family and friends. Her death will not be in vain. The failures of the systems intended to support Ms Smith have been the catalyst, as we have heard, for much soul searching among administrators and policy-makers. One objective of this hearing is to ensure, as far as possible, that the lessons are not only learned but are acted upon so that nothing similar can ever again occur in this country.

I want to conclude by expressing our thanks to Counsel, Ms Eastman, Ms Bennett and Dr Bennett, for their commitment and skill in presenting the evidence. Given that Commissioner Bennett has participated in this hearing, we now have a trifecta of Bennetts. We are also deeply grateful to the Office of the Solicitor Assisting the Royal Commission for their indefatigable work in preparing for the hearing and in conducting the hearing. Many others have contributed to the orderly and efficient conduct of this hearing, including our corporate branch, which has done a great deal of work behind the scenes, the counsellors who provide invaluable and much appreciated support to witnesses and to others, the Auslan interpreters and those who are responsible for producing the realtime transcript under often impossibly swift circumstances.

As this list indicates, preparation for and conduct of a hearing like this is a truly major undertaking. We will be doing it all again in 12 days time in Brisbane, COVID-19 permitting, at a further hearing on People with Cognitive Disability in the Criminal Justice System. Mercifully, this hearing is scheduled to last for only two days.

We shall now adjourn.

**HEARING ADJOURNED AT 1.41 PM**

**Index of Witness Events**

LOIS BOSWELL, ON FORMER AFFIRMATION	P-353
EXAMINATION-IN-CHIEF BY MS EASTMAN, CONTINUING	P-353
THE WITNESS WITHDREW	P-424

**Index of Exhibits and MFIs**