

# **JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE**

## **INQUIRY INTO THE MONITORING AND ENFORCING OF CHILD SAFE STANDARDS**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 15 MAY 2019**

### **Members**

**Hon Dr Sally Talbot, MLC (Chair)  
Mr K.M. O'Donnell, MLA (Deputy Chair)  
Hon Donna Faragher, MLC  
Mrs J.M.C. Stojkovski, MLA**

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**Hearing commenced at 9.45 am**

**Mr DARREN FOSTER**

**Director General, Department of the Premier and Cabinet, examined:**

**Ms KIM LAZENBY**

**Director, Social Policy Unit, Department of the Premier and Cabinet, examined:**

**Ms JANINE KINGSTON**

**Acting Director, Social Policy Unit, Department of the Premier and Cabinet, examined:**

**Mrs NICOLE McCARTNEY**

**Acting Director, Aboriginal Policy and Coordination Unit, Department of the Premier and Cabinet, examined:**

**The CHAIR:** On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to the Joint Standing Committee on the Commissioner for Children and Young People's inquiry into the monitoring and enforcing of child safe standards. My name is Sally Talbot. I am a member for South West Region and the Chair of this committee. I will let my colleagues introduce themselves.

**Hon DONNA FARAGHER:** I am Donna Faragher, member for East Metropolitan Region.

**Mrs J.M.C. STOJKOVSKI:** I am Jessica Stojkovski, member for Kingsley.

**The CHAIR:** We also have here our two advisory officers here—Renee Gould and Michele Chiasson—and Hansard is recording proceedings. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege. However, this privilege does not apply to anything that you might say outside of today's proceedings. Before we begin, do you have any questions about your attendance here today?

**The Witnesses:** No.

**The CHAIR:** Would you like to make an opening statement?

**Mr Foster:** I would if you do not mind. The first thing I need to do is to just make an apology to the committee for the comedy of errors that characterised the correspondence that occurred between November and about March this year. It was not very edifying, and I will do everything possible to make sure that does not happen again.

**The CHAIR:** Thank you. Yes, we did do a lengthy time line, which took up a page.

**Mr Foster:** Yes. I have done a similar exercise. We had four committees interacting with us at the same time as well as peak activity at the end of the year with the cabinet agenda, which is always full, and royal commissions landing. It was a rather stressful time. Anyway, that was not acceptable from my point of view. We will be making sure that does not happen again.

**The CHAIR:** Thank you.

**Mr Foster:** Just to turn to the matter at hand. The royal commission had 310 recommendations which were relevant to the state government and covered many areas, including child protection, law enforcement, justice, education and health. We have undertaken quite a substantial amount of

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work since the report was released in final form in December 2017, including the delivery of the state government's statement of intent on the day the royal commission report was released. We have delivered the six-month response to the final report. The Premier made an apology in Parliament to survivors of child sexual abuse. That was the first apology from the head of any Australian jurisdiction. The government has committed to opt into the National Redress Scheme and funded participation to the tune of \$221 million over 10 years. It has legislated to establish the civil liability legislation amendment act 2018, which removed bars on civil litigation for victims. That has been a very survivor-oriented response.

Since then, we have undertaken a fairly rigorous and systemic approach to organising the 310 recommendations to support implementation over the next 10 years and work with all the relevant agencies. The implementation framework, which you may wish to explore later, organised the recommendations into three action areas and 12 cross-agency initiatives with agreed lead and partner agencies. The government has established its priorities for 2019–20 and has received funding through the 2019–20 budget process, which was information we did not have at the last point the committee was briefed. We have also released the state's first annual progress report. Most notably, 108 recommendations have been completed to date and we have 186 more to work on. The progress to date was achieved through a sense of collaboration with agencies, a robust governance mechanism and a joined-up approach to consideration and implementation of the recommendations. The last thing we want to do is to have in 10 years from now any sense that these recommendations have not stuck or achieved the intended outcomes. We are doing quite a lot of systematic work with agencies to make sure that that is not the case. I will leave it there and invite any questions you might have.

[9.50 am]

**The CHAIR:** Thank you very much for that. It is very heartening to hear you talk about where we want to be in 10 years' time. You will be aware that this committee and its previous iterations have done some extensive work on this area. One of the observations that we frequently make is that none of these recommendations are new; you can find them in reports going back at least 10 years. That really is giving this committee the impetus to pull some threads together and to see exactly where we are now. That is enormously heartening to see that you are taking that time frame and the adoption of the recommendations.

Recognising that DPC is driving the Western Australian process through the public sector, do you liaise with other states to keep an eye on what they are doing and how fast they are progressing? We have implemented 108 of the recommendations. Do you have a sense of what other states are doing?

**Mr Foster:** I do not have the metrics at my fingertips. Do you have any intelligence on that, Janine?

**Ms Kingston:** No, but it is a question that we can take on notice and come back to you with the stats.

**The CHAIR:** Of course you can take any of these questions on notice—that is fine. Could you also give us a sense of any formal liaison between states that is going on? Where we often stumble in these processes that are so big is that you get lots of wheels being reinvented when they do not need to be.

**Mr Foster:** Indeed. Part of our project plan for the coming year is to make sure that in developing an oversight mechanism, we are working with other states and territories on what their arrangements are. We have done some preliminary analysis of that already. We intend to send a delegation of officers to relevant jurisdictions to look at the mechanisms they have, how they work

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and how applicable they might be here. Absolutely we are not intending to reinvent the wheel if there is any opportunity to pick up best practice from somewhere else.

**The CHAIR:** That is good to hear because there are states that have made quite significant advances, particularly in areas like harmful sexual behaviours, where I think we have got a lot to learn. There is no need to start from scratch. That is the first question on notice. Most of our questions will be about the inquiry that we are engaged in at the moment. We also want to ask you some questions about the children's impact statements, which was the subject of the correspondence, and then, if we have time, we will ask you some questions about the Aboriginal advocacy group. I think you have been advised of that.

Let us jump straight in with some questions around the oversight working group. We have been provided with a structure, which is about to appear on the screen. The committee struggled initially with putting this together, particularly in relation to the oversight working group and its membership and exactly what it is tasked with doing. Could you confirm that the role for this group, as has been described to us in the table, is accurate? When we asked for the role, we were originally informed that it was an informal group created to inform the state government's six-month response in relation to oversight recommendations. The group has evolved into the oversight working group, which will inform the development of an oversight system for Western Australia in the four areas highlighted by the royal commission: child safe standards, out-of-home care, juvenile justice and reportable conduct scheme. Can you confirm when that working group was formed?

**Mr Foster:** I would have to seek advice from my colleagues on that.

**Ms Kingston:** That working group would have been established last year in the lead-up to the six-month response. I do not have the exact date on me.

**The CHAIR:** Is that when it was an informal working group?

**Ms Kingston:** Correct. It was originally established to feed into the development of the state government's response to the 409 recommendations. Of course, that has now been concluded with the state's six-month response, which was delivered in June of last year.

**Ms Lazenby:** We are reconvening the group to work with us this year on the substantive work on the development of an oversight system.

**The CHAIR:** When that group was still an informal group, did it contribute to the state government's six-month response and the 12-month review?

**Ms Kingston:** Yes, it did.

**The CHAIR:** Do you know how many times that oversight working group met in 2018?

**Ms Kingston:** It met three times in that time.

**The CHAIR:** When did it last meet?

**Ms Kingston:** We can come back to you on that with an exact date, but it would have been in the lead-up to the six-month response. It would have been about May of last year.

**The CHAIR:** May of last year, so 12 months ago?

**Ms Kingston:** Yes.

**The CHAIR:** So it has not met for 12 months?

**Ms Kingston:** No, not that working group. However, a large number of the representatives on that group also sit on the directors general royal commission subgroup and that group had met monthly.

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**Ms Lazenby:** The last meeting of that group was earlier this year. The oversight working group that we have reconvened to work with us is actually meeting tomorrow.

**Ms Kingston:** Correct.

**Hon DONNA FARAGHER:** Can I just get some clarity? The informal group is the one that had been meeting informally up until May of last year. You are now saying that it has evolved into the oversight working group, but that “oversight working group” has not met since May, until tomorrow, you have indicated.

**Ms Lazenby:** We have had discussions with individuals on that group —

**Hon DONNA FARAGHER:** But not as a whole. That group has not met as a whole?

**Ms Lazenby:** We need to check for you the dates last year. It did meet several times last year. Perhaps May was the last meeting but we need to check that for you to make sure. It was to feed into the initial arrangement and the very early thinking that informed the six-month progress report. Then we focused on the priorities for implementation through the rest of the year. Now it has been identified that the work on independent oversight is a priority for 2019, so we have asked those same people if they would like to come together again with some additional members to reconvene in an expanded and more substantive group to look at the issues this year as we are actually working through the operationalisation of the relevant recommendations.

**Hon DONNA FARAGHER:** I appreciate that you are going to take that on notice to clarify exactly when it last met. If we were to take what you are saying on face value—that it has not met since May of last year—could I ask that it be taken on notice with respect to all the other groups, the dates for all meetings that have taken place? I think that would assist the committee.

**Ms Lazenby:** Yes.

**Mr Foster:** I should just point out that they are groups that assemble as required. People are still doing things individually as agencies working towards the outcomes in the report. If you scroll up to the DG’s implementation group, that is a group chaired by myself and it feeds into the cabinet committee. It deals with a wide range of other matters that are of priority to the government, including within the social policy domain, the meth task force and the coroner’s report on youth suicide, for example. There are a whole range of other matters. Some of these other groups are set up to deal with the specific, but it all funnels into the responsibilities of the DG’s implementation group. Obviously, you are looking at one aspect of activity but there is a raft of activities that feed into that group. As my colleague mentioned, we have only just secured the funding to advance this substantive work in the budget that was brought down a short while ago. The focus for us has been to scope up the 2019–20 activities, secure the funding so that we can continue those without interruption and get cracking on those from now.

[10.00 am]

**The CHAIR:** You will be aware that part of our terms of reference for this inquiry is the commissioner’s oversight report for 2017. While we recognise that there are many other areas of activity in relation to implementing the recommendations of the royal commission, the oversight question constantly resurfaces as a major issue going right back to Blaxell. Of course, you will also be aware, director general, that the recommendations of Blaxell got deferred to the royal commission. The recommendations of the review of the commissioner’s act got deferred to the royal commission recommendations. There is a lot resting on this, and the oversight questions have mounted during that time. I know that you are familiar with them.

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**Mr Foster:** Indeed. In fact, I think the story is a little worse than you have portrayed in the sense that if you look at the range of reports, which we have done, that deal with supporting the safety of children and young people in Western Australia—we have gone back to 2002—there are about 1 079 recommendations that we will need to go back to and look at in the context of going forward and deciding what the best oversight arrangements are. We need to look at other jurisdictions. But it is important not to underestimate the complexity of the task and why we need to be fairly systematic and methodical with this.

The royal commission recommendations are going to push the state into territory we have not been before in terms of some responsibility for oversight of sporting clubs and religious institutions—thousands upon thousands of them. That is a very sensitive and complex task and we have to be very careful about making sure that in adopting an oversight mechanism, we do not relieve some of those organisations of their own responsibility to take action themselves. It is a fairly fine balancing act. We have to work out where the dividing line is between advocacy and education right up to the intervention, regulation and prosecution end of the spectrum. It is not a simple task and that is why we have had to seek funding and enough officers to work on it full time. The social policy team, as I have said, manages currently this issue among many others including the government's election commitments around the supporting communities forum and so on. There is a very wide slate of work and activity. We have to resource up to carry this forward and make sure the recommendations stick and last so that we do not repeat the pattern of the past, which is an initial flurry of activity and then it drops away.

**The CHAIR:** Yes, less than edifying. We recognise the enormous complexity and the volume of material. We do, of course, have a body that has done a lot of work solely on that, and that is the Commissioner for Children and Young People and his office. Of course you have to go back to 2002, and there are over 1 000 recommendations, but much of that work has been pulled together by the commissioner culminating in the oversight report of 2017. There is that aspect to make the task seem a little easier. There is no shortage of material suggesting about where we need to go and what best practice does look like in other jurisdictions.

Let us move onto the implementation framework. Going back to the response to the recommendations released by the state government, we were told that the framework had been developed through a methodical and rigorous approach to organising the 310 applicable royal commission recommendations to support a 10-year program of reform. Our question is: when did the work commence to develop the implementation framework? While you are thinking about that, how long did the development process take?

**Mr Foster:** It was developed between July and November 2018. It involved a collaborative effort between 14 agencies and 11 ministerial portfolios.

**The CHAIR:** During the development of that framework in those four or five months, was any other work being undertaken to progress the royal commission recommendations?

**Mr Foster:** Other work? Well, yes. We are involved in the implementation of the redress scheme and developing 2019–20 priorities and securing funding for implementation of those.

**The CHAIR:** What is the status of the implementation framework now?

**Mr Foster:** It is a living, breathing document. Can I just clarify, has the committee actually got a copy of the document? I have probably got a slightly more detailed version, if that is of use.

**The CHAIR:** Is the background document a public document?

**Mr Foster:** No, but I am happy to make it available. There is nothing —

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**The CHAIR:** Do you want us to keep it private?

**Mr Foster:** No, there is no need to keep it confidential.

**The CHAIR:** No? Okay. That is a fulsome response to that question. Thank you. We will just digest and then we might be able to come back to it.

Let us move forward now to the response to date. Prior to the release of the final report in December 2017, the royal commission had released three previous reports. They were, just to refresh your memory, “Working with Children Checks”, “Redress and Civil Litigation” and “Criminal Justice”. The dates of those were August 2015, September 2015 and August 2017. Each of those reports included a series of recommendations. We are aware of some of the completed recommendations as of December 2018, but what we noted was that the bulk of those completed recommendations were the ones contained in the earlier royal commission reports. Can you confirm that the state government commenced work on the recommendations contained in the three earlier reports prior to the release of the final report of the royal commission, which was December 2017?

**Ms Kingston:** The majority of recommendations that have been completed has been in relation to redress and civil litigation. There has also been a large number of recommendations that have been completed on the working with children checks. The implementation of the criminal justice recommendations are being led by the Department of Justice. That report was released in August of last year. The implementation of that is underway.

**The CHAIR:** Thank you. Do you have a sense of how many of the 400-plus recommendations you had already started work on as a result of earlier reports, interim reports?

**Ms Kingston:** There are 310 recommendations that relate to the state government, because there are 99 of the 409 that relate to religious institutions. That is a question we will have to take on notice, in terms of going back to each of those individual reports and working through. I am happy to come back to you on that.

**The CHAIR:** Yes. If you would not mind, thank you; that would be useful.

**Mr Foster:** Sorry to interrupt, but just as I indicated, the focus initially was on those survivor responses, so redress and civil litigation, one of which was an election commitment. They were implemented first. Recommendations relating to those were the priority for the state, yes.

**The CHAIR:** Yes. So what you are confirming is that that work was started well before the final report of the royal commission.

**Mr Foster:** Absolutely.

**The CHAIR:** Which presumably was the commissioner’s intention.

**Mr Foster:** Yes.

**The CHAIR:** It is like doing any controlled study; if you can make findings early, you make them.

**Mr Foster:** Yes. Of course, one element of that was some fairly complex negotiations with the commonwealth in the lead-up to our participation in the scheme. We have obviously only joined the scheme on 1 January, but there were some quite significant threshold issues for the state, including around child migrants and dealing with issues to do with prisoners, for instance.

[10.10 am]

**The CHAIR:** Thank you. I am going to come to a series of questions which really come out of the committee’s concern, but not so much with the specifics of what we have been informed about so far. I am glad you referred, director general, to the history of this issue in your opening statement—

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to the fact that we do tend to be very, very skilled at building up recommendations and a little less deft at implementing anything. I am going to ask you this series of questions to give you an opportunity to describe some of the methodology that has gone into the process from your point of view. It is really by way of reassurance to the committee that this work is not starting from scratch—that we are not reinventing wheels. As I say, we were concerned that the DPC process, to some extent, was starting from scratch, rather than respecting and making use of all the work that has been done surrounding the recommendations to date. Could you describe for us the consultative process undertaken so far to establish the state government's approach to developing recommendations around—I have four areas—implementing the child safe standards, methods to help address harmful sexual behaviours, the implementation of the reportable conduct scheme, and the oversight mechanisms. If you want to take those one at a time, we will start with the child safe standards.

**Mr Foster:** I will just make a general comment and then allow my colleagues to answer in the specific. It is just a general observation about how DPC is operating and the change program that I am overseeing, in which this nests. It is one of many projects that we are obviously undertaking, but one of the things I have been trying to drive in DPC is to open the doors, make it more collaborative and invite people in.

**The CHAIR:** “Joined-up government”, we used to call it.

**Mr Foster:** I am trying to make joined-up government a reality, not an aspiration. I guess that is how we are operating in DPC. Even to the extent of offering offices for DGs who visit the building—we encourage them to come in, sit in the building, whether in between appointments and things, so that we have lots of informal interaction and they feel welcome. We have many points of engagement. We have a Public Sector Leadership Council, where we actually talk about some of these cross-sectoral issues that are quite significant. Once a month, all the DGs meet. We have been, I think in our disposition, trying to go out and help agencies and work with them, rather than being seen as a scary, threatening DPC that monsters them or directs them in some way or another. That has created a very collaborative atmosphere. The accountability agencies, the children's commission, the Ombudsman, regularly come to see me. It is very free interaction with the officers in DPC. That is the atmosphere that has been created in order to allow some of these collaborative exercises and that mode of operation to become normalised. I might just hand over to my colleagues to talk about the specifics on those particular committees.

**The CHAIR:** Thank you.

**Ms Lazenby:** In terms of three of the four points that you asked about—child safe standards, reportable conduct and the oversight mechanism—that is the policy work that DPC is directly leading on. We see a couple of other areas of recommendation as important as well—the accreditation of out-of-home care providers and the oversight of children in detention facilities. We have grouped those together, you will see, in the implementation framework. We have grouped those together under, if you like, the umbrella of an independent oversight framework. We are being largely informed by volume 6 of the royal commission's report, which went to regulatory arrangements, although some of those recommendations come out of a couple of the later volumes, particularly the detention facilities. We see those as the four key areas, which covers three of the areas you have raised plus a couple more.

We have been consulting, both formally and informally, through sporadic discussions, through regular meetings and through initially the informal oversight working group, and now in the lead-up to the reconvening of the oversight working group, as part of the arrangements for that group to come a little bit more formally together. We have been regularly consulting with what we



understand are the key oversight agencies that are in existence in Western Australia, plus those key government departments that may be particularly impacted, or may represent, at a government level, those organisations that will be particularly impacted by the regulatory arrangements envisaged by that collection of recommendations of the royal commission. The oversight working group, for example, includes CCYP. I speak regularly to Trish Heath, the 2IC, as well as meeting with the director general, with the commissioner, and with the Ombudsman's office. I speak regularly with the deputy Ombudsman. I have had a series of meetings leading up to this reconvening of the working group in preparation for those discussions with the deputy Ombudsman, the Inspector of Custodial Services and HADSCO. I have had interactions with HADSCO in the last couple of weeks in particular, but I know them well; I speak to them regularly.

Some of the agencies that are particularly impacted or that represent groups that will be particularly impacted are, for example, the Department of Local Government, Sport and Cultural Industries, who we are looking to for advice in the first instance on how an oversight mechanism may be effective for the range of sporting clubs, piano teachers, guitar lessons, ballet schools, et cetera, that may be impacted by the recommendations. The Department of Communities, of course, has contact with a broad range of stakeholders that we will need to be in contact with. The Department of Health, Department of Justice and Department of Education will also all be represented on the group. But more than that, we have been having ongoing discussions, both offline and as part of more formal governance arrangements, both at the directors general level, the royal commission subgroup level and ministerial office level et cetera, leading up to getting prepared for the work that we are now about to commence.

**Ms Kingston:** Can I add to that as well, just in relation to the interface there with some of the national recommendations. There are about 70-odd recommendations that require national cooperation and consistency. WA sits on the Child Abuse Royal Commission Taskforce. That is chaired by the commonwealth Attorney-General's office and it consists of representation from all the various jurisdictions. The role of that group really is to provide a collaborative and consultative mechanism for states and territories to be progressing their 70-odd recommendations, but also to be progressing recommendations that have been identified as national priorities, of which child safe standards is a national priority, as well as harmful sexual behaviours reporting and data sharing and information sharing in that space. What that group also allows us to do is to leverage some of the collective expertise, skills et cetera, and previous work that had been done at a national level. We are actively looking at and harnessing that through that group as well which complements the work that we are doing at a state level.

**The CHAIR:** I guess that is part of what you will include in the answer to question on notice 1, which is about the extent to which we are working with other states?

**Ms Kingston:** Correct.

**The CHAIR:** Both formally and informally. I go back, Ms Lazenby, to what you were describing. If we take, for example, the area of child safe standards, the director general has very adequately described the challenges that are involved in going into areas where we may not have been before, in terms of NGOs. Do we have an idea yet about what sort of model we are looking at, or are we still talking about the model?

**Ms Lazenby:** We will be drawing on, in the first instance, best practice from the literature, some of which I think you have talked about before; Law Reform Commission recommendations and principles; human rights recommendations and principles, but also we are very keen to draw on best practice in regulation, so regulation theory and principles. There has been a lot of progress in that area in recent years from the early days when regulatory theory was mainly focused on

environmental and law enforcement, to now human services areas. My reading and following of that literature and that practice is that that has evolved a long way with the need for government to increasingly regulate in human services areas such as aged care and child care. There has been a lot more effort and energy put into what are the best types of regulation in those areas.

[10.20 am]

I envisage, I anticipate—we need to consult thoroughly through the working group with the key agencies on this—that we will start the discussion by talking about the regulatory pyramid. That gives us a model which follows the royal commission's recommendations, that regulation in this area should be risk-based, responsive and fit for purpose, which is exactly what that regulatory pyramid model does provide for. The idea that at the base of the model you have regulatory approaches that are fairly light touch, which is envisaged by the recommendations about legislative requirements for child safe standards, assuming that many, many organisations will reasonably effectively comply with those, but they need to be backed up by slightly more assertive and increasingly stringent regulatory measures such as accreditation, audit and then investigation, which is exactly what is envisaged by the reportable conduct recommendations about an oversight body that would conduct its own investigations of reportable incidents. So, up the pyramid, you would hope that you would have to use those measures less and less times.

I anticipate that we will discuss that model with the agencies, talk about how fit that is for our purpose and take it from there.

**The CHAIR:** You will be aware, of course, that the Commissioner for Children and Young People started work on child safe standards about three years ago, so we have about three years' worth of work. Are you indicating that you will be taking a different approach from that approach taken by the commission?

**Ms Lazenby:** Not at all. The work that the children's commission has done to—as I understand it, they have identified child safe standards which are slightly different to the child safe standards in the royal commission report, so we will need to revise those, but that is only a very minor amendment that needs to be made. The royal commission report, of course, envisages that there would be legislation and they would be required for organisations that are substantively involved in child-related activities. The child safe standards at the moment, as you know, are not a legislative requirement, so that step would need to be taken, but essentially we would be looking to build on the very sound basis that the children's commission has established with the current child safe standards.

They would need some slight amendment. There would be these legislative and regulatory mechanisms which would need to be added on. Also, the standards, as you may know, the children's commission does not currently have a great reach into religious institutions. I had a discussion with Trish Heath about this the other day. Only a couple of churches have volunteered to take forward the child safe standards. The children's commission does not reach assertively into those organisations. They engage mostly, as I understand it, with organisations that volunteer to participate. The royal commission really is saying there needs to be a further step, a much more assertive kind of approach.

**The CHAIR:** It is interesting looking, for example, at the Auditor General's powers in that regard, when you are considering the broader question. This committee did a report recently on the education and learning study done by the commissioner. We had hearings with all the providers of education services. We were very impressed with the relationship the commission does have with the non-government sector. It is certainly there for you to build on. I am addressing this question to you, Ms Lazenby, because you are sort of taking the running here. How would you describe the

balance—let us talk about child safe standards—between regulation and advocacy? Do you think that balance is going to shift?

**Ms Lazenby:** That is a very interesting question, and actually one that we have been having a lot of debate about. I can only give you a personal view at the moment. This is not something we have explored through consultation or through the DGIG and the cabinet subcommittee, or through cabinet. The tradition, as I understand it, in oversight is that advocacy and accountability are seen as two different things. Effective accountability relies on a belief that the accountability agency or the oversight agency is in fact acting impartially. To conduct investigations, the tradition is that the organisation has to be seen to be an impartial organisation; for example, the Ombudsman. That becomes important when you get into the investigations which have a criminal justice flavour, because if the principles of administrative law around procedural fairness and natural justice and complete neutrality of the investigating body are not followed, then the investigated party has grounds for appeal. That frequently happens—in the Ombudsman's case, through SAT, for example. If it happens in a criminal justice context, people can appeal. The tradition, as I understand it, is that the two functions are kept separate. Whether they need to be in a separate organisation or whether it can be in two different parts of the same organisation with a clear distinction is a matter that can be explored. It then goes to matters of pragmatics and viability. I think both models have been shown to be effective—both having advocacy and accountability in separate agencies and advocacy and accountability in the same agency, but with a clear distinction.

**The CHAIR:** It probably is the most challenging part of this equation, I think it is probably fair to say.

**Ms Lazenby:** Yes. I think the royal commission report is quite clear—that they are two distinct things. Advocacy is dealt with in one volume of the report in relation to support and therapeutic services. It is seen very much as supporting victims with their complaints in a trauma-informed way. The commencement, at least, of the recommendations around regulation are mainly dealt with in volume 6. I think the royal commission sees them as separate things. They are quite clear in volume 6 about that. But as I say, that does not mean that, in practical terms, there necessarily needs to be two separate organisations.

**The CHAIR:** No, and you cannot have one blind to the other.

**Ms Lazenby:** Yes.

**The CHAIR:** It does have to be some kind of mix of the two. That is very interesting.

**Mr Foster:** The other issue is the one I referred to earlier, which is making sure that in establishing these arrangements, we do not see a transfer of accountability and responsibility to the state from organisations that should take responsibility for their own actions. The member for East Metropolitan Region will appreciate, as a former environment minister, that usually when there is an adverse environmental outcome from an approved project, it is the regulator that is blamed for the problem, not the perpetrator or the proponent. We have to avoid a situation where the state effectively takes responsibility for something that might occur in a church or some other context, or at least gives any implicit permission for those institutions not to take responsibility for their own actions and the conduct of their members and the culture they have created.

**The CHAIR:** Because the cost is enormous to the state if it fails.

**Mr Foster:** Yes, but in taking over that effectively regulatory responsibility, we have to be very careful about where to draw the line and not to imply any shift or transfer of responsibility.

**The CHAIR:** Yes. That is a point well taken. I wonder whether you are able to give us an updated list of who will be on the oversight working group when it reconvenes tomorrow.

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**Ms Lazenby:** In terms of the oversight bodies—the current oversight bodies, Ombudsman of Western Australia, Inspector of Custodial Services, Commissioner for Children and Young People, and HADSCO. We have reached out to the Mental Health Advocacy Service, talking about advocacy. In terms of the departments that might be impacted or representing key stakeholders, it is the Department of Communities, Department of Justice, Department of Health, Treasury, Mental Health Commission, Department of Education and Department of Local Government, Sport and Cultural Industries.

[10.30 am]

**The CHAIR:** That is excellent. Thank you.

**Hon DONNA FARAGHER:** How often do you anticipate the working group to meet? How regularly?

**Ms Lazenby:** I would imagine possibly monthly. We need to talk to the working group about that. It will be in their hands, but monthly is a very common, standard way in which we proceed. We would be probably starting with the idea that it would be monthly and discussing it from there.

**Hon DONNA FARAGHER:** Will Premier and Cabinet actually chair the meeting?

**Ms Lazenby:** That is what is proposed. We are drawing together the group and we are proposing to chair the first meeting. The group may want to rotate the chair. It may want to have a six-monthly rotation. It may want to rotate every month. Really, it is just an opportunity to make sure that we are driving it. If we meet once a month, just having that deadline of having to come back and report back to your colleagues is really a mechanism for driving the work and implementation and making sure that nobody gets left out of the loop.

**Hon DONNA FARAGHER:** Certainly you would not want a situation of only meeting once a year, as appears has already happened, in terms of meeting previously in May of last year and now it is May again this year. Notwithstanding that you might be doing work in relation to it, but I would have thought that regular meetings would keep everyone on track, as you have indicated.

**The CHAIR:** Does the group have terms of reference?

**Ms Lazenby:** There are some draft terms of reference, I think, that we have circulated with the meeting papers. They need to be discussed by the group. We have just drafted up some as a discussion starter for the group's use. The terms of reference will then go through to the royal commission subgroup and the DGIG for formal approval.

**The CHAIR:** Will they be made public at that stage?

**Ms Lazenby:** I do not think there would be any issue with making them public. We would not necessarily publish them, because we would not imagine that people would be particularly interested in another committee, but —

**The CHAIR:** Can I ask that, whether they are public or private, you inform the committee when those terms of reference are decided? I think that would be very helpful.

**Ms Lazenby:** Certainly. Yes.

**The CHAIR:** Will there be a final date for some sort of report from that group?

**Ms Lazenby:** We are aiming to have advice to cabinet in May next year.

**The CHAIR:** This is the \$627 000, is it?

**Ms Lazenby:** Yes.

**The CHAIR:** That is the money. How is that money going to be spent?

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**Mr Foster:** We are in the process of recruiting three officers to support the work. Essentially, it is three FTEs; there is provision for some interstate travel for a delegation, if that is warranted; and also for a consultant on some of the regulatory arrangements, if we need specific expertise that we do not have.

**The CHAIR:** You just ran through that list of agencies who are on the working group. I ask Michele to put it on the board the seven statutory oversight bodies that were identified by the commissioner in the 2017 oversight report. I think you have covered those. Interestingly, the Chief Psychiatrist appeared before us last week, and he is not of the view that he is being asked to play an active role. I know you have the Mental Health Commission, or Mental Health Advocacy Service, but I thought the Chief Psychiatrist was an interesting omission from that list. He has a particular view of the world which I think might be of value. It is not a government agency, but TKI—Telethon Kids—are doing all the data. You would be well aware of their work. They are driving the data analysis, data collection work, both in an abstract and a practical sense in this state. I will only speak for myself, but I do not think I will get any dissent from my colleagues on this side of the table. I think if we had involved them earlier in many of our processes over the last couple of decades, we would be in a different place now. Whether or not all their views are accepted, I think they should at least be heard. I just draw your attention to those two other sources of potential assistance with this process.

**Mrs J.M.C. STOJKOVSKI:** As we have had various departments and agencies come through, data has been one of the biggest issues that they have identified in this space. I think, to give context of “I support TKI being involved”—that is probably where we are coming from—is that they do so much in data, and there is a gap in our agencies on data. It seems a good fit.

**Mr Foster:** There is. In fact, it is a little bit of a hobby horse of mine, that topic. We are currently working on it, and it is a recommendation of the service priority review, that we do something about data sharing legislation in the state. Unfortunately, we do not have privacy legislation. The absence of that is sometimes a reason that people will not share data with the state on particular matters. DPC is currently developing a discussion paper on responsible data sharing, including privacy-related matters, which will be a precursor to a piece of legislation we hope to bring into the Parliament very soon.

**Mrs J.M.C. STOJKOVSKI:** I think there is a perception in the community that government already shares data, and it is quite strange to them when they find out that we do not.

**Mr Foster:** That is right. That is exactly my experience as well. People assume government departments share data. There are some legal prohibitions in some acts, but a large part of it is also cultural disposition of some agencies in terms of sharing data, and a fear that they might be compromising someone’s information. That is why you have to look at the privacy dimension alongside it. But we are actively working on that.

**Hon DONNA FARAGHER:** Could I just get some clarity in and around the budget? You have mentioned the \$627 000. I do note in the budget—and I think maybe the chair might ask a few more questions in and around the budget generally—but with regard to the \$627 000, you indicated that that is for three staff plus potential travel. Will those staff, just for clarity, effectively be attached to the oversight working group or are they doing other work? What are they actually going to be doing? I am presuming this would be new staff, not seconded staff from other areas within government agencies, with expertise in the areas that we are talking about.

**Mr Foster:** They could be seconded. We have a practice of seconding quite often, but they will be funded by DPC, so that will not put pressure on another agency. We will have capacity to staff-up to support this oversight work and support the committee. Typically, committees do not do work; they provide advice to others to do the work.

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**Hon DONNA FARAGHER:** That is an interesting concept that you have put there, director general. The people on the committee might have a different view. Just so that I am clear, though, those staff will be specifically working on the oversight recommendations?

**Ms Lazenby:** Yes.

**Mr Foster:** Yes. That is what the funding is for.

**Hon DONNA FARAGHER:** What do you anticipate the strategy will be? Is this a strategy that will be at the end of where you are going to report back to government in May, I think you indicated? You believe that that is what will be the strategy? Just so that I am clear, so that we have the wording right.

[10.40 am]

**Ms Lazenby:** As you say, you have seven oversight bodies there. Potentially, any of those oversight bodies, hypothetically, could take forward some of the functions envisaged by the recommendations of the royal commission, around oversight, but some are better placed. We have talked about the children's commissioner is well placed to take forward the child safe standards—the promulgation and promotion of child-safe standards. Other of those bodies may have powers and responsibilities that are approaching what the royal commission envisages in other areas. Obviously, the Inspector of Custodial Services, for example, may have powers and responsibilities that approach what is envisaged in relation to the recommendations regarding detention. We need to work through with those bodies what they currently have the powers and responsibilities to take forward; whether they are the best placed, given the slight difference between the royal commission recommendations and the current situation; and whether the best next step would be to expand their powers, build on their powers and responsibilities, or whether there are gaps that are better filled by another organisation. We also need to work through how in fact the current entities can be organised and augmented in order to create the system that is envisaged by the recommendations that go to regulatory arrangements—learning from, as I say, other jurisdictions. In some jurisdictions, the model is the children's commissioner has all of the role; in other jurisdictions, it is a children's guardian; in other jurisdictions, it is the Ombudsman or somehow the functions, responsibilities, are split between several bodies that collectively have the set of responsibilities for the oversight framework. We need to work through that—what is best for WA, bearing in mind we have our regional and remote element, which adds complexity. A significant proportion of our population and the people who are likely to want to use the system would be Aboriginal, including Aboriginal people living in rural and remote areas, bearing in mind the profile of the institutions that would actually be regulated in Western Australia, which is slightly different from some of the east coast states. We have to work through what is the best fit for WA as well. We will be drawing, as I say, on the recommendations themselves, the detail in the full report and its 13 volumes, plus regulatory experts like Ayres and Braithwaite, Malcolm Sparrow, Neil Gunningham, the publications from the Australian National University around regulation, risk base and responsive regulation, et cetera.

**The CHAIR:** Will there be any mechanism in place that would allow a body like ours—this committee—to track the oversight working group's progress during the year?

**Ms Lazenby:** I am not sure.

**Mr Foster:** We will have to take that on notice, or maybe we could come and brief you periodically.

**The CHAIR:** That will be good. Even if that is the answer, that is fine.

**Mr Foster:** Just to be clear, the working group is not the accountable body.

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**The CHAIR:** Yes.

**Mr Foster:** It reports to the directors general implementation group, which is on a whole suite of social policy matters, that then reports to the cabinet sub-subcommittee. I would think they would want to have first viewing or say on oversight arrangements. But we can try and navigate some arrangement to —

**The CHAIR:** Do you want to take that on notice and feed back to us what you think.

**Mr Foster:** Yes.

**The CHAIR:** The intent of the question is clear, I think.

**Mr Foster:** Yes. I may have to test that with the cabinet committee, if that is all right.

**The CHAIR:** Yes; of course. I am going to give you a little estimates practice here, but only in the most general sense. These are the other areas of spending that we have identified in the budget. If you could just give us a quick run through there. We have done the first one—the independent oversight working group.

**Mr Foster:** Just matching it to my list.

**The CHAIR:** The next one is the \$589 000 on reportable conduct.

**Mr Foster:** Yes. That is for the Ombudsman to undertake that piece of work.

**The CHAIR:** So that is being handled just by the Ombudsman and his office; yes?

**Mr Foster:** Yes. If it is of use, I can give you a rundown on the total funding for the royal commission and the allocations and who is carrying which allocations?

**The CHAIR:** Yes. That might be the more efficient way of doing it. Thank you.

**Mr Foster:** There is \$5.7 million over two years, overall, for the first tranche of implementation. This was a submission that DPC worked with various agencies to steer through the budget process, which includes \$3.6 million over two years for Department of Communities to undertake work on recommendations they have direct carriage of. The \$627 000, you are aware of for DPC; \$589 000 for the Ombudsman for next financial year to develop the reportable conduct scheme and work with stakeholders on that. Obviously, there is an interrelationship between all of these. There is \$442 000 for the police to replace and enhance interview recording equipment they use when conducting interviews with children; \$299 000 for Western Australia police to digitise historic criminal records to improve working with children check processes; \$114 000 for Communities to modify its existing working with children check system to allow for the sharing of information between jurisdictions through the soon to be established national reference system.

**The CHAIR:** Thank you. That is very useful information for us to have. I wonder whether I can ask Michele to put on the board the implementation strategy, the priorities for the implementation strategy, and just ask you whether the 2019–20 state budget has altered any of these, or are they the same as we have been informed. These are the priority areas of work.

**Ms Kingston:** Perhaps I can answer that question. No; the budget allocation is consistent with the priorities up on the screen. It is important to note that redress and civil litigation was actually funded through the previous budget process. The remainder of those initiatives are not being funded through this round; it is actually being funded internally from within agencies' existing resources. It is consistent.

**Hon DONNA FARAGHER:** Can I go back to the budget. I appreciate the information that the director general has provided. I just want to make sure we have not missed something. You have referred with respect to the \$627 000, that relates to DPC; the \$589 000 which relates to the Ombudsman;

WAPOL, you have mentioned. But there is also the additional spend of \$3.6 million between 2019 and 2021. I apologise if I missed it, but is that general across a number of agencies in terms of policy and program development?

**Mr Foster:** The \$3.6 million over two years is for the Department of Communities to undertake policy and program work, but they will need to work with Health, Education, Local Government, Sport and Cultural Industries.

**Hon DONNA FARAGHER:** So the additional staff will be housed within Communities, would you anticipate?

**Mr Foster:** Sorry, for the three point —

**Hon DONNA FARAGHER:** As part of the 3.6 million?

**Mr Foster:** Yes, I would expect that would be the case.

**The CHAIR:** In relation to that ongoing work, drawing up the implementation strategy, what do we do in the meantime? Are there things that we ought to be doing prior to the whole of government independent oversight strategy being implemented? You go back to the commissioner's oversight report of 2017 and in all six areas of priority service delivery that he investigated, there is not one that he gives the clean bill of health to. We are working towards having a whole-of-government approach to keeping children safe. What are we doing in the interim?

**Ms Lazenby:** Part of our thinking has been to try not to do this as a sort of lock step process, where we do all the planning and nothing happens until the planning has finished. The money for the reportable conduct scheme for the Ombudsman, for example, is money that they can use to—so while we are developing an oversight system, which includes the ways in which we are going to operationalise the recommendations in relation to reportable conduct, the Ombudsman's office has offered to and been successful in obtaining that funding to progress the consultations regarding reportable conduct, those that can be progressed without needing a final decision by cabinet. Rather than get a decision by cabinet that, yes, this is the best way to organise the responsibilities, without prejudicing that decision, we are trying to work as agencies to progress as much as possible.

[10.50 am]

The Ombudsman will be doing that in relation to reportable conduct and that is exactly what that \$589 000 is to allow them to do. Also, the \$3.6 million that is going to the Department of Communities, for example, is in part to implement child safety strategies in their own remit. When they currently know they have the powers and the responsibilities, it is not likely that those powers and responsibilities will change that aspect of their powers and responsibilities, so they can get on with the implementation of child safe standards in that particular context. Working with children checks, of course, are an important part of making child safe standards and an important part of supporting child safe standards, I suppose, so there is work going on around working with children checks, similarly.

The money that has been allocated in the budget is, in fact, in the large part, to progress the implementation of recommendations where they can be, where it is common sense to do so, without waiting for specific decisions that are not required to progress that aspect.

**The CHAIR:** Will the monitoring of that be tasked, in any sense, to the working group?

**Ms Lazenby:** The working group and the royal commission subgroup, in particular, probably.

**The CHAIR:** So they will be looking at that, too—the ongoing implementation of the measures?

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**Ms Lazenby:** Yes. That will be more the responsibility of the royal commission subgroup, I think, because it goes to a broader range of recommendations, not just those related to oversight.

**The CHAIR:** There is one particular cohort of children who have absolutely no oversight at the moment, and that is the children in Kath French, who have fallen between all stools. While there are children in other areas of service delivery where the oversight leaves something to be desired, Kath French is actually exempt from all the systems because the children are not in contact with the justice system. But they are secluded—they are secured, to a certain extent.

**Ms Lazenby:** Yes. They would, I presume, be a concern under the UN OPCAT, the optional protocol.

**The CHAIR:** Yes. OPCAT will be important.

**Ms Lazenby:** That would cover Kath French. That is also an interdependency or something we want to be mindful of in taking forward the independent oversight framework, that it should be consistent with all of those, not only the UN rights of the child, but those other conventions including that one around OPCAT, or let us call it OPCAT, referred to as OPCAT.

**The CHAIR:** Yes. The committee will be in an interesting position over the next few months because in the course of having these hearings, up to today, we have collected quite a lot of evidence about what agencies would do if they had money to improve their oversight provisions. We will now be able to go back and test whether they have actually done it.

I was going to ask you a couple of questions about the Commissioner for Children and Young People's submission to this inquiry. He has called for a child-focused oversight system. He says it "should oversight all areas relevant to a child or young person's safety and wellbeing." Would you agree with that scope for the independent oversight system? I will just read you what the commissioner says. He calls for a child-focused oversight system that should oversee all areas relevant to a child or a young person's safety and wellbeing. Would you agree that is a good parameter to start from—a good premise?

**Ms Lazenby:** Yes.

**The CHAIR:** He then goes on to talk about responsibility. He says that responsibility for that oversight should fall to one agency to help mend the current fractured system of oversight, and that arrow-pointed system on the screen is the commissioner's view about what should be included in that model. I wanted to ask you whether there is anything in that proposed model that you, as the agency driving this process, would take exception to or dissent from?

**Mr Foster:** No. On the face of it, those are fine. They are fairly high level and there is some detail there that I think needs or warrants more detailed consideration.

**The CHAIR:** I do not think my colleagues and I would be disappointed if you wanted to take it on notice.

**Mr Foster:** I should point out that the department will not be making the decision on these matters. This is a decision that cabinet will actually have to make. We will be assembling all the information about risks and benefits of options to put to the ministers.

**The CHAIR:** The committee is aware of that, but I think what we are trying to do is ensure that we have our heads around the process that will lead-up to the formulation of the suggestions to cabinet about what a model of an oversight system looks like.

**Mr Foster:** Yes. I think those points are reasonable. There are other ways of looking at the issue. Certainly, in the area of data sharing, we have a project on-foot at the moment to try and develop some legislation around privacy in data sharing, which would be a precursor step to some of these things. It is all very well just saying collect the data and information, but you need the data-sharing

legislation and privacy considerations taken into account. That is a building block, to get there. I think there is an underlying issue about the fragmentation of the public sector, including the accountability agencies. I think it is incredibly difficult for anyone to try and navigate the accountability agencies and who they should be making a complaint to. If I could gently give the commissioner some advice, it is worth the accountability agencies themselves looking at practical solutions like co-location—sharing an entry point so people do not have to shop around. There is a wealth of practical things the agencies themselves can do. I think the opportunity is there for that to occur.

**The CHAIR:** Yes. I think that probably is the most important point to come out of Blaxell, for example.

**Mr Foster:** Yes. I think it is also taking, if you can excuse the language, a customer standpoint, which often agencies do not do, including accountability agencies. They know what they are doing and they know what their mandate is and they know what services they can offer, but often their constituency may not. I think that is a real issue we are grappling with in government generally—trying to make sure that wherever possible we are de-emphasising the name, livery or identity of agencies and focusing on the service provision, regardless of who provides that service.

**The CHAIR:** It is quite interesting to find that while the Commissioner for Children and Young People is the only person with a statutory obligation to listen to the point of view of children and young people, the number of agencies who do not do that, who are yet delivering services to children and young people, is quite breathtaking, and you would be well aware of that.

**Mr Foster:** Yes.

**Mrs J.M.C. STOJKOVSKI:** Just on that point—they know what they do and they know what they deliver—it is quite often hard for adults to navigate that system, but it is even harder for children to do it. Something that we have certainly seen as we have had different agencies in is that they do not think about how they promote themselves to children or how children interact with them. In addition to what you are saying, that also needs to be taken into consideration if they are providing those services to children, because they are very different to adults.

**Mr Foster:** Absolutely. But I think it is a cultural phenomenon, really, in the sector of about thinking who you are delivering services to, and then putting yourself in those shoes and adapting to their needs. I think that is an art form that we have lost and we have to do more of in the sector. Whether you are delivering services to young people or whether it is to people in remote areas or Aboriginal people who may have particular needs, we have to get a whole lot better at that and, in fact, a whole lot better at the modes of engagement we undertake. DPC has recently hosted some best practice people—I always forget the name of the institution—on best practice in community engagement. We hosted a forum across the sector to invite agencies to hear what best practice looks like in this space.

[11.00 am]

**Mrs J.M.C. STOJKOVSKI:** I think also with children, a lot of agencies do not do enough around technology. They do not realise that that is how children talk to each other now and there seems to be a lack of understanding of that within the agencies.

**Mr Foster:** That is absolutely the case. The Office of Digital Government is now in DPC and part of their mission is to work with agencies to try to lift the standard of digital engagement across the sector.

**Mrs J.M.C. STOJKOVSKI:** On that, I would also highlight that the commissioner has done some work in this area, particularly with trying to engage with young children. I cannot remember the name of

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the program, but you create a digital me—it is called Digi-Me—and so there is experience out there in WA, although it does not seem to be tapped.

**Mr Foster:** Absolutely.

**The CHAIR:** Which gives you a lovely segue into a couple of questions about the office of advocacy and accountability in Aboriginal Affairs. You just mentioned two things. One is learning to listen, or teaching agencies now to listen, and the other one is collocation, of course, because in the commissioner's submission to DPC about the creation of this new office, he talks about collocation. Could we ask you whether the development of the idea of that office has progressed since the release of the discussion paper?

**Mr Foster:** Yes, and I should say at the outset, the instructions that we had from the Minister for Aboriginal affairs was to consult fully and widely because he was very concerned that we did not rush the proposal and have an office set up and then have differences of view about the purpose and functions that it should fulfil. There has been quite extensive engagement with Aboriginal people. Nicole McCartney can give you some more detail about that. We have provided advice to the minister recently about taking this to the next step, which includes a recommendation that we go out with a more formal proposal to test that again with communities.

**Mrs McCartney:** With regard to the process and where we have landed, obviously, at the end of last year was the discussion paper, which I am sure you have seen, to which we received 76 written submissions, which has provided a range of views across a range of things, including functions, structures and powers, indeed, even the appointment process. I think given some of the sensitivity of having a commissioner for Aboriginal people and not repeating trauma of the past, which is why the consultation process has been quite extended and will continue as we move forward. Out of those submissions we now have a consultation summary which is being progressed and we hope to have released this month so that we can go back out to those who have contributed to see where we landed on that. But the feedback from all of that process will inform the development of the next stage, which, again, we committed to developing a partnership with Aboriginal people as part of the process.

**The CHAIR:** Is the provision of independent oversight part of the brief? So independent oversight for institutions providing services to children and young people. Would that be part of the brief for the establishment of that office?

**Mr Foster:** Sorry to interrupt, but that is not determined because we are still in the consultative phase. There are a few moving parts here, and that is one of them. The other is the closing the gap engagement underway with the commonwealth, which has not concluded. We need to understand that what implies. We are also in the process of reconceptualising the role of the WA Aboriginal Advisory Committee, which will be relevant and have an impact on an interaction with this office as well. So there are a number of things going on which will come together over the next six months, we expect, that should sharpen up our focus on what the model is for this Aboriginal commissioner role going forward.

Just to elaborate on that a little, one of the themes that came out of the consultation was what I think is a very strong sense of loss about ATSIC and having an elected representative body and also there is a legitimate concern about not having a body that replicates the activities of others, and that there is some clear definition of its responsibilities, that it has a direct reporting relationship to the Parliament and also that it has real teeth and a mandate. Those are some of the issues that came out of the consultation. There are quite divergent views about what the role should be and they are issues that we have to work through in terms of WAAAC. The membership of WAAAC has ceased and we have an opportunity to rethink that, which may answer some of the desire for an elected or

more representative body. We have to think about how we have some oversight of the closing the gap recommendations and activities.

**The CHAIR:** It is a vast area of consideration. From an outsider's point of view, it may appear that you have two distinct processes happening—I know there are a lot more—within DPC, with no interaction between the two. One is the royal commission responses and the other is the development of the office of Aboriginal advocacy. I am guessing that commonsense tells you that there has to be an overlap.

**Mr Foster:** There is one DG over all of that, which is me. Fortunately, Aboriginal policy is in DPC now so the teams work very closely together on these things. They interact, we are aware of that and the teams are trying to navigate those two issues. We are not in full control of timetable on closing the gap, of course, and that has been a bit interrupted by the federal election, assuming that gets it back on track in the next couple of months.

**The CHAIR:** I think it is pretty certain there will be an election on Saturday!

**Mr Foster:** Yes, there will but there is always a bit of flux after an election, no matter what happens.

**The CHAIR:** I am sorry; it was not supposed to be facetious.

**Mr Foster:** Yes. There could be reshuffles and all the like. That will give us more certainty about possible functions for the office and also the work that we will be progressing on the oversight body, noting that the Commissioner for Children and Young People has also asked for an Aboriginal Deputy commissioner —

**The CHAIR:** Indeed, that is been talked about for some years as well.

**Mr Foster:** Yes, but I guess the principle for the government is to avoid further complicating or confusing roles and responsibilities. We just need to make sure that there is a clear outcome and clear roles and responsibilities for these office holders that is the outcome that we seek to achieve.

**The CHAIR:** Again, I think everybody would celebrate the elimination of duplication and fragmentation. There are interesting models in other states, as you would be aware. There is no doubt in my mind that the Victorian Commissioner for Aboriginal Children and Young People did a remarkable job. Andrew Jackomos did a remarkable job. All the agencies might have been slightly envious of the tangible affect he had on the lives of many Aboriginal children with that survey of children in care. Thank you very much for that.

If I can move to the question of the child impact statements. Thank you for your comments at the beginning of this hearing. It is much appreciated on this side of the table. Our time line goes back longer than that because we only had to involve DPC towards the end because we drew a blank everywhere else. We started a hearing with the commissioner on 21 March 2018 and the committee wrote to the Attorney General on 11 April, so it was that letter that then wended its way through the system and finally ended up with you, director general. It is very timely that we should be raising this now because, of course, the commissioner's report on vulnerability was tabled in the Parliament last week. It talks again about the question of child impact statements. If I can just take you to the questions, we will we fish around about half past. If you are okay to say until then, that would be great.

We did note your comments about the fact that the cabinet referral process is not the right place to start doing that detailed consultation. We have people on this side of the table with ministerial experience who I think would agree with that. Recommendation 8 was given affect by the work which DPC undertakes to ensure effective consultation prior to the referral process. The committee would agree that recommendation 8 contemplates reviewing the overall mechanism by which draft

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laws and policies are developed for ways to ensure the children's commissioner has been consulted prior to cabinet receiving these draft documents. Recognising the sense in your response, can you explain what DPC does to ensure effective consultation prior to the referral process?

[11.10 am]

**Mr Foster:** We are often in the position of advising agencies about who should be consulted on what, or identifying more particularly broader whole-of-government issues that may not be apparent to an agency that is focused on a narrower span of activities. More broadly, though, I think the issue is about how you lift the quality of cabinet submissions overall so that cabinet can make the best possible and most informed decisions. I have recently sent a delegation to other states and territories to look at their cabinet processes, to see what practices we can adopt to improve that overall. I know your specific focus is on children and young people, but I think it is equally valid for impact on small business of any decisions that might be made, or regional and remote communities or Aboriginal people or even whether a decision is going to increase the possibility of Aboriginal incarceration rates, for example.

**The CHAIR:** Of course, we have had women's impact statements going right back to the early 1980s.

**Mr Foster:** Absolutely. Yes. Typically, I have seen the evolution of those things which include a box on the cabinet submission that you tick if there has been a —

**The CHAIR:** Which I think was that original process for the commonwealth.

**Mr Foster:** That is right, yes. In fact, that is all too late. I think there is a common misconception in the public sector that the 10-day rule is the consultation process. Well, if you are waiting to that point, it is again too late. That is the fail-safe mechanism, where if there is a red flag that has been overlooked in all the preceding consultation, the 10-day rule is designed to capture that and identify that. Really, your aim in a cabinet process is to avoid a minimum of fuss in the 10-day rule process so that you do not get any surprises or adverse comments from agencies. It should be fairly supportive and aligned by that point. If you are getting a lot of adverse comments or surprises, something has gone wrong further upstream in the process.

What we are trying to do is develop the cabinet handbook as a more live and useful document for agencies, review and improve all the templates, offer training on developing cabinet submissions, including how to engage other agencies. There are a lot of cultural behaviours that have developed in the sector that we have to overcome. A lot of agencies are terrified about sharing a cabinet submission because it should go to the minister first before it is shared with agencies. Well, again, it is too late. If the minister has commissioned some work, there should be engagement with relevant agencies, identification of other agencies that may have some useful input, reviewing relevant reports. A lot of the tension is often around the time pressure to develop a cabinet submission. Ministers will often want them urgently, but if that urgency then results in compromising consultation, then you will have problems in the 10-day rule process. That will become evident, with red flags and so on.

We have been trying to impose greater discipline on submissions and test the urgency and whether the urgency is real or perceived. In fact, the Premier has been quite assiduous at rejecting submissions or deferring submissions when there has been any adverse comments coming forward because it does point to a failing in the early consultation. We have been policing that as best we can in DPC. We have been working with agencies to get greater notice of proposed cabinet submissions so we can start identifying issues earlier. But I think one of the more fundamental issues is trying to get a more electronic-based system, a digital cabinet system, not pushing people to places they do not want to go faster than they want to go there, but if we can have a much more

agile system that is less paper based, it will allow more straightforward transmission and identification of people we might have missed in a consultation process. Also a bit of tracking and work on metrics so you can track and do post-mortems, if you like, on why a cabinet submission missed particular issues or where the training need is.

There is actually quite a big demand for training. I have found a lot of people do not know how to write a cabinet submission anymore, it is a bit of a lost art, but it is part of the discussions we are having at the directors general council and with the Public Sector Commissioner about lifting the training and capability of the sector, whether it be developing submissions, doing adequate and appropriate and targeted consultation, developing business cases, those sorts of basic skills. It is a longwinded way of saying it is too late if you are starting to consult in the 10-day process. We have to get, upstream, more effective mechanisms. I think part of that is getting people comfortable for collaborating. I think that is certainly occurring and DGs are working very closely together. We have to get that culture to develop throughout the rest of the sector and at multiple levels.

**The CHAIR:** What I am hearing you say is that in an ideal situation, when people were both properly and adequately informed about what the cabinet submission process is, but also were culturally aware of what was required and not just culture-bound by what the previous person did —

**Mr Foster:** That is right.

**The CHAIR:** — that we would indeed have something that looked like a child impact statement?

**Mr Foster:** Yes. The child impact statement is simply a tool—it is a prompt. I have looked at the Scottish one and I have looked at the New Zealand child impact statement. It is actually a child impact assessment tool and guidelines, in both cases. They are not that different from something you might have for small business, although I think New Zealand has a much more culturally attuned impact assessment tool. It looks at the needs of Maori children and their world view, which I think is an important consideration here. That implies to me that we need a much more sophisticated cabinet handbook and training process that helps people do that sort of mental checklist, either in formally filling out forms or in testing their development and cabinet submission against multiple criteria; “Have you considered these questions?”

**Hon DONNA FARAGHER:** With respect to the cabinet document as it stands at the moment, does that include specific reference to the need or appropriateness of consulting with the commissioner where it is relevant? Is there any reference to the commissioner in the cabinet handbook at this point in time?

**Mr Foster:** No, and that is unchanged from the previous government. The cabinet handbook is —

**Hon DONNA FARAGHER:** I am asking as it is now, so there is no change?

**Mr Foster:** Yes. Absolutely. It does not make specific reference to the commissioner. It does talk about the need for consultation with relevant parties, but it does not single out children and young people.

**Hon DONNA FARAGHER:** I ask that question because you also mentioned that you were looking at seeing that the cabinet handbook becomes actually something that is a live document.

**Mr Foster:** Yes.

**Hon DONNA FARAGHER:** Do you see in the future that there would be some form of specific reference with regard to the need to consult with the commissioner on issues that are relevant and within his remit?

**Mr Foster:** I do. I think that is part of the guidance we need to produce in the cabinet handbook, including checklists and impact assessment tools, if that is warranted, in addition to training of

officers in the sorts of considerations they should undertake in developing a cabinet submission. I think it is a multifaceted project. It is actually part of the public sector reform recommendations. But I do see some value in having specific reference to the children's commissioner and the impact on children.

**The CHAIR:** Is there also a role here for the community, safety and family support cabinet subcommittee?

**Mr Foster:** Yes. That does act as a bit of a filter on submissions. Submissions that are relevant to children and young people would normally pass through that committee before they got to cabinet, in some form or another, either as a discussion paper or as a submission. That is also a place where those broader considerations could be undertaken. But, again, I would see it as a little bit of a failure of the public service that we had not done that before it went to a group of ministers. We really have to get these matters dealt with further upstream.

[11.20 am]

**The CHAIR:** Yes. The timelines become more critical the closer you get to the cabinet itself.

**Mr Foster:** Yes.

**The CHAIR:** I am sure you are aware that the commissioner published, in 2013, a document called, "Improving Legislation for Children and Young People—Guidelines". It was revised in 2013. Is that document relevant to this process?

**Mr Foster:** I think the same principle applies—that there are multiple things that the public servants should consider in developing a good cabinet submission. That may well provide some of the guidance for that purpose.

**The CHAIR:** It would be interesting to know how many of them are familiar with that publication.

**Mr Foster:** I would suspect virtually none.

**The CHAIR:** Yes. That would be my suspicion, too, but that was not my place to say that. I am glad you ventured that first.

**Mr Foster:** But it just goes to the size of the task we have in trying to build better standards in development of cabinet submissions, to make sure ministers have all the information that is relevant to them. The other thing I think it is worth drawing attention to is the new whole-of-government targets—the outcomes that the government is seeking—which includes a wellbeing one for children. Increasingly, that is going to be another test for any submission. We have to develop the tools for that to occur as well, so that when cabinet makes a decision, they would not want to be not informed that it may be working against one of the whole-of-government outcomes. That is another bit of a test we have to incorporate into the development.

**The CHAIR:** I draw your attention also to recommendation 2 in last week's report, "Improving the Odds". I am sure you are familiar with recommendation 2, having prepared for this hearing. The recommendation is that —

The Department of Premier and Cabinet, on behalf of the government and in collaboration with the Commissioner for Children and Young People, should undertake a consultation process to develop and implement a Child Impact Assessment tool. All government agencies should be required to use the tool through, for example, a Premier's instruction. Non-government agencies should also be encouraged to use the tool.

The Child Impact Assessment tool should assess the impact of any proposed legislation, policy or strategy on the rights, interests and wellbeing of children and young people.

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Is there anything in that recommendation that you would dissent from, or you think is not a valid consideration?

**Mr Foster:** I think it is naive. I can elaborate on that. I think this default to Premier's instructions, again, is not in the spirit of collaboration or co-design, and a little bit of the old way of thinking, which is, "Well, we just tell public servants and they will employ more people with disabilities, or they'll undertake more procurement of sustainable products", or, "If we give a direction, everything will be well." There are loads of directions and instructions and circulars, many of which do not reconcile any of the conflicts that DGs face, which is, "Well, you're telling me to manage my budget and you're telling me to do this, and you're telling me to do that. Are we procuring the most cost-effective, or is it cost-effective plus, plus, plus, and which wins?" None of those things, dealt with in isolation, ever reconcile those challenges. In the spirit of co-design, rarely is there any discussion with directors general about, "Why aren't you actually tackling any of these issues? What are the sorts of barriers that you see or the inhibitions?" It is largely around the number of volume of rules and instructions and the limits on your flexibility to be able to do the things that government would like you to do. I think, again, in this case, the better approach is to go to the nub of the problem, which is the development of cabinet submissions and making sure that they are well cooked, well developed and you are consulting with appropriate people, including the children's commissioner, to ensure cabinet gets the best possible information.

**The CHAIR:** The other thing that recommendation draws attention to is that we are not just talking about cabinet submissions; we are talking about the development of policy and programs across the board. It is not just cabinet submissions. Would you see that as part of being in the cultural change that you are talking about?

**Mr Foster:** Yes. Absolutely. In fact, at the moment we are looking at a learning program for public servants that has been implemented in the UK. It has a whole series of modules. It looks quite interesting. It has been co-designed with public servants. The Public Sector Commissioner and I have been talking about how we might pilot that in WA. There be a module, for instance, on policy development and the considerations to try and lift those basic skills across the public sector, but in a really consistent way. That is policy 111—you should be considering the impacts of a policy on multiple stakeholders in its development. That is a basic obligation of a public servant supplying any advice to a minister.

**The CHAIR:** Thank you for that. My final question was going to be based on just drawing your attention to the fact that the commissioner is not particular happy about the amount of consultation that takes place currently, but I think you probably have addressed that. That will not be a surprise to you.

**Mr Foster:** I might say I was not consulted on the commissioner's recommendations either.

**The CHAIR:** Okay. Thank you very much for this morning. That was a real tour de force. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added by these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary document for the committee's consideration when you return your corrected transcript of evidence. Thank you very much, everybody.

**Hearing concluded at 11.26 am**

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