

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
THURSDAY, 28 MARCH 2019**

SESSION TWO

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**

Hearing commenced at 2.05 pm

Mr CHRISTOPHER JAMES FIELD

Ombudsman, Ombudsman Western Australia, examined:

Ms GWYNETH MARY WHITE

Deputy Ombudsman, Ombudsman Western Australia, examined:

Ms REBECCA ANNE POOLE

Assistant Ombudsman, Ombudsman Western Australia, 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, member for South West; I am the Chair of the committee. I will get my colleagues to introduce themselves.

Hon DONNA FARAGHER: Donna Faragher, member for East Metro Region.

Mr K.M. O'DONNELL: Kyran O'Donnell, deputy chair, member for Kalgoorlie.

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

The CHAIR: Kyran is my Deputy Chair.

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 you might say outside of today's proceedings. Before we start, do you have any questions about your attendance here today?

Mr Field: None at all, honourable Chair.

The CHAIR: Do you have any sort of opening statement that you would like to make?

Mr Field: The only statement I would make is a couple of points. First—my deputy will correct me—I think, apart from the public administration committee, this is probably the committee before which I have appeared the most in its various iterations during my term as Ombudsman. I think that is a reflection of the very strong importance that our office has always placed on these issues and, I have to say, the willingness of the committee, and various iterations of the committee to, and interest in, talking to us about those issues. We certainly treat this as a very important committee, and the work of the committee is vital. It has always been a pleasure to appear before you and, as I say, I have done that with many iterations of this committee in past Parliaments.

The second is, of course, as Ombudsman, I have only one institution in the state that I serve, and that is Parliament and its committees, so I am here today in your service. I do serve every Western Australian as well, but we will keep that voice serving Parliament and its committees. As I say, I am in your service and anything I can do to assist you in the important work that you are doing, I am delighted to do. I think this is a signal moment in many ways for following on the royal commission's work and other work that is being done in relation to advancing the protection and promotion of the interests of children and young people in this state. I particularly welcome the committee's examination of these issues. I think they will be very fruitful and very positive.

The CHAIR: Thank you; we all appreciate those comments. It is good to hear of the approach that you take to our work. Obviously, in Western Australia, we have had quite a long run-up to this point. As you say, this is a signal moment. We started off, I suppose, with the Blaxell report and then we moved into the royal commission phase. During that process, of course, the commissioner produced the oversight report in 2017 and we have chosen to make that one of our stepping-off points, as well as the recommendations from the royal commission, because obviously the oversight report comes directly out of Blaxell. So we have got those interesting steps along the way.

[2.10 pm]

Our interest in calling you today is because one of the things the commissioner did was to clearly identify all the oversight bodies in Western Australia. He has also made the observation quite recently—I know you have quite a close working relationship with him—that we seem to be becoming experts in compiling reports and forming committees and subcommittees and working groups, and we have lots and lots of recommendations, but whether the outcomes for children have actually materially improved since Blaxell is rather an open question. That is a matter of great concern to us, and that is really what has driven us at this point, recognising that things are happening all around us, to try and take a bit of stock about what is happening and see whether we can play our part in driving the process along.

You will have received from Michele our list of basic questions. We would like to start by asking you just for your commentary, as brief or as lengthy as you like. We have had a couple of hearings where it seems to take the entire hour to get through half the dot points. It is really up to you. If we have questions at the end that we do not have time to cover, we will follow them up with you by letter. Can I ask you to have a look at those dot points, which we took from the Australian Law Reform Commission report from some years ago now—they are close to 20 years old—but they still seem to us to provide a fairly broad basis for understanding what oversight is supposed to be about.

Mr Field: That is bullet point 3, honourable Chair, in the letter that was sent through?

The CHAIR: Shall I just clarify? Michele is going to put something on the screen.

Mr Field: That is very good technology, Chair. It is the ALRC bullet points.

The CHAIR: Yes. It starts with statutory independence.

Mr Field: I know exactly the ones you are talking about, even if that does not come up. I am mindful of the time, but can I just make a couple of preamble points before I get to the essentiality of that very good question. Yes, you are absolutely right. Blaxell was an important report, and I met with him on a number of occasions and spoke at some length to him. I thought that was a very good report, with good recommendations. You are absolutely right that we have had an excellent working relationship with the children's commissioner since its commencement, in the first instance with the then commissioner, the excellent commissioner that Michelle was, and then of course we have another excellent commissioner in Colin. As I say, we have continued to work very closely with the commission throughout its duration. For example, in relation to the oversight report, which you have as one of the documents, inspector Neil Morgan and I worked on a particular consultation process with the current commissioner, Colin, in relation to that piece of work.

Can I just pick up on something you have said, because I think it is such a critical issue. This is the issue of lots and lots of inquiries and lots and lots of reports, and potentially lots and lots of recommendations, but how do we measure the success of those, how do we know that they are being implemented, how do we know that they are leading to success? This is an issue that is very much grappling the mind—if I can just speak as an Ombudsman for the moment—of Ombudsmen right around the world. It is a critical issue for my national and international colleagues. It may be a

very meritorious idea to investigate and examine, and we have very significant capacity to do that of our own motion, and very significant powers to do that—full powers of a standing royal commission—and can make wide-ranging recommendations at the end of those, but how do we know that those recommendations have been successful? That is something that we commenced. It really arose from a series of questions from the then Hon Leader of the Opposition and the then honourable shadow Treasurer at that stage, Mark McGowan and Ben Wyatt respectively, in the former government. I was appearing before estimates, which is the committee I appear before most, of all committees, and they said something along the lines—I am paraphrasing; this is just me hearing that—“You are doing quite good work on this, and these reports you are doing are good reports, and you are making these recommendations, but how do we know that they are having an appropriate impact?” We took that back to the office. It was an utterly bipartisan issue. It was not because one side of the Parliament or the other had raised it. We are always listening to any good ideas, no matter where they come from. I thought they both had raised a very sensible point. So we came back and we discussed it at some great length, and we commenced from that day onwards a major process of reviewing all of the implementation of all the recommendations that we had made arising out of every report. What we now do is subsequent to filing our major reports in Parliament, 200 or 300-page reports, with very significant recommendations about some of the most tragic and significant issues in the community—preventing family and domestic violence in Western Australia, preventing youth suicide in Western Australia—we table in Parliament a report on: have those recommendations had the effect that was intended, what have departments done about those recommendations, and are they actually working to achieve their results?

I want to make that comment to reinforce to you the great sense of the point that you have made, with respect, Chair, and to all of your committee members, that of course there is all sorts of value in doing investigations. The Royal Commission into Institutional Responses to Child Sexual Abuse had an extraordinary benefit, even if it had never made a recommendation—of course it was good and proper that it made many—in the fact that it gave victims an opportunity to be heard. It had an incredibly, I think, powerful effect in the community, and that was a great virtue of it. But we want our reports to make recommendations. We do not want them to sit on shelves. If they are worth making, they are worth implementing, and worth seeing that they have had the benefit. We then get a 360-degree approach that comes out of that. If they are not being implemented effectively, Parliament should ask me questions: What am I doing wrong? Why are my recommendations not as effective as they should be? I am serving Parliament, and I am not serving you properly if I am not having positive change made where you would expect it to be. Of course, it gives committees like this, and Parliament as a whole, through estimates and other processes, the opportunity to go to those departments and say, “Actually, we have quizzed the Ombudsman and we think his report was good and we think the work he has done to follow it up is good. What are you doing?” So it will keep them to account as well, because, of course, both of our missions in that sense are exactly the same. We are both here to ensure that the laws of Parliament are being administered effectively by public administrators and that they are doing that as fairly, effectively and efficiently as possible.

I only wanted to make those comments, and I do not want to take too much time to do so, to reinforce what I think is the—you do not need me to tell you—great good sense of your comment, but I want to reinforce why I think it is such a sensitive and powerful comment and very much consistent with all the work that I am doing and colleagues right around Australia are doing. We were one of the first, but most of my colleagues are now doing this around Australia, and it has certainly become the case internationally that those Ombudsmen who have major own-motion investigation powers and are doing very significant reports are now seeing it as their responsibility to report back to Parliament so that their report is not a report on the shelf; it is a document that is

meant to create positive, effective and efficient change. As I say, that is critical. I just want to reinforce that to you.

The CHAIR: Do you do that in relation to each individual inquiry —

Mr Field: Absolutely.

The CHAIR: — or is it an annual assessment across the work you are doing?

Mr Field: Each individual inquiry.

The CHAIR: So it is a new step built into each inquiry?

Mr Field: Absolutely. I made that commitment to Parliament. Let me take my most obvious one. It is in progress at the moment—very, very close to finished. We have a major three-volume investigation looking at youth suicide and the prevention of youth suicide in this state. That comes from my function to review all child deaths—certainly child deaths in this state. The first volume will largely be a summary or compendium document. The second volume has an extensive analysis of what has happened out of that 2014 report. We did a 2014 report on youth suicide. That will follow up on everything that has happened, all the recommendations we made, and what has happened since. Then we are doing a third volume, which is actually a major investigation into now taking us forward to what are the new and other things that we think should be happening in this state in relation to the further prevention and reduction of those tragic deaths.

[2.20 pm]

Of course, unlike a lot of the areas we have worked in, in recent years, where we can actually pinpoint at least some of our work, I have to say having an obvious effect in reducing harm in the community, youth suicide in certain areas is tragically going up. That is particularly tragic for Aboriginal Western Australians. We see that as a vital area to follow through on the recommendations made in the past with new recommendations. But that is a very long answer to say: yes, honourable Chair, after every single investigation, we will table 12 months later a new investigation report, which says to Parliament—we hold a session before Parliament and invite parliamentarians to come; it is very well attended. I always say to parliamentarians who attend those sessions—very bipartisan attendance, ministers and others—“This is your opportunity, an additional opportunity, to hold both the executive to account but me to account as well in relation to the work that we’re doing.” Hopefully, what we can see when we table those reports is that there has been real and positive progress made to protect the lives of some of the most vulnerable Western Australians. We have done that in relation to family and domestic violence—our major report is in that area—and will continue to do it. As I say, it is my view that well after I have gone, my successors will continue to do the same.

I think we are currently the only Ombudsman in the world who does exactly that level of follow-up. It is a very extensive level of follow-up. But to me it gets around, or deals fairly, squarely and head-on with the exact points you raised—lots of reports, lots of inquiries, lots of recommendations, but what parliamentarians want, what officers like I want, what the public wants, is: What is the change? What is the positive change? That is about where that work is headed and directed, basically.

The CHAIR: That is very interesting. So, in relation to the own-motion investigations that you refer to in your submission to us, have you been able to do those follow-up reports in relation to any of them?

Mr Field: Correct. So, we are about to table this year a major follow-up in relation to our youth suicide report. We have also done a major follow-up report in relation to our investigation in relation to family and domestic violence fatalities, and also follow-up in relation to our drownings

investigations, so examining drowning deaths in this state. I have to say that was one of the more pleasing reports that I was able to table before Parliament because it had shown very significant progress in relation to the work that had been done. Once again, so many of these issues are bipartisan. Of course, I am a utterly bipartisan officer, so I will not indicate anything other than to say there had been terrific work by the current Parliament, in this particular instance by the minister, Minister Johnston, and his department in relation to taking those matters to COAG. A matter that I had indicated to Minister Johnston I thought was an excellent step that had come out of that report, indeed, arising from that report, and the work that had been done in Western Australia, we are now taking national leadership through the COAG process in relation to the prevention of drownings for children in a range of circumstances. If that is the sort of value that that sort of work, can do—there is no hubris here. I am not suggesting we are in any way arrogant about it. What I am saying is that that is the sort of work that ought to be done by agencies like mine.

The CHAIR: And the child deaths review will be out midyear, you are indicating?

Mr Field: Correct; in relation to youth suicide, that is exactly right. Our next major investigation is in relation to the tragic issue of FDV—family and domestic violence—by suicide. So that is those women in circumstances where they have been subject to the abhorrent violence by men over a period of time and the only way they see to escape that violence is to take their own lives. That is an under-studied area and an area that we will be looking at over the coming months.

The CHAIR: Look, I am inviting you to address each of those dot points, but it may be that you can look at those and say, “Look, we’re going to cover those in response to other questions.”

Mr Field: Given the fact that I have now given the longest preamble to a question you have asked—I feel sincerely apologetic about it—I will go through those in relation to a self-assessment of our agency’s performance. Interestingly, most of the ALRC report, it largely talks about that self-assessment in relation to advocacy agencies. Now, we certainly would not describe ourselves as an advocacy agency, but having said that—I do not think we are one—when I read them, honourable Chair, I thought they were very applicable to an agency like mine, so I thought it was perfectly sensible to address them nonetheless.

I will go through each one quickly. In relation to statutory independence, I do not think there is a more independent statutory body in Western Australia, along with the Auditor General, than the Ombudsman. We have complete independence enshrined in our legislation. I report directly to Parliament and Parliament’s committees only. I cannot be directed by a minister in any way in relation to any aspect of my work. I do not report to a minister. There is a minister that is responsible for the administration of my legislation, as is the case for everybody in the state, and in that case mine is the Premier. But, as I say, I cannot be directed by or given any form of direction, any form of guidance or any form of instruction about the way I undertake my work by a minister. So, as I say, the statutory independence is enshrined. If I think about both the Paris principles, of which you would be aware, and the Venice principles, which are very, very new, they relate to the independence of Ombudsmen, we would be amongst the most independent Ombudsman in the world. That independence extends to even greater things by convention in this state, honourable Chair. I appear in the estimates committee not with a minister; I appear in the same session—the very first session of estimates—every year with the honourable Speaker of the Assembly. So, he will have half an hour and then I will have half an hour after that. I will take questions, of course, with respect, through the honourable Speaker, but directly from what almost inevitably tends to be the Leader of the Opposition and the shadow Treasurer, given that the Premier’s portfolio is immediately after mine.

Adequate resources: I have been blessed and fortunate to have—I cannot imagine a Parliament and a series of governments—I was first appointed under the Carpenter government, two terms with my office under the Barnett government and now under the current Labor government. My office has never had a position of having inadequate resources for its role. So, we have always been appropriately supported. I also get to appear before ERC without a minister as well and I have done that on a number of occasions. I get to make my case directly to the Treasurer and members of the subcommittee of cabinet in relation to resources. It was recommended to me—I will not say who—when I first came here, by a couple of very longstanding public servants, that was not a very good idea, but it has turned out to be a perfectly good idea to me. Chair, it has worked okay. I was also the first person in this state to give money back when we had finished a function; we did not think we needed the money for it anymore. I was also told that was a bad idea—plus there was no form for it! But I did give that money back, you will be pleased to know. We do have a view—we start most of our corp ex meetings with it—that if we have a good idea, I need to be able to go down to Albert Facey House and convince someone on the street it is a good idea and then convince them I am going to take money out of their pocket to do it. We do spend other people’s money and we are mindful of that.

Investigative powers: yes, we have investigative powers as strong as any other investigative powers of any Ombudsman in the world—all the powers under my act and all the powers given to us under the Royal Commissions Act 1968, so no stronger investigative powers could come to an office like mine. Of course, there is at least one other body in the state that has stronger investigative powers, and that would be the CCC. But of course they are dealing with different matters. We are dealing with maladministration. They are dealing with corruption and crime. But in terms of investigative powers, they are more than ample to do the work that we need to do. I have never had difficulties getting the material I need to obtain what I need to obtain.

[2.30 pm]

Of course, we also obtained much information, not using directly those investigative powers, but also by request. We have outstanding working relationships with the Supreme Court, the District Court and the Coroner’s Court, because, of course, as you would expect under our separation of powers—goodness knows, I think it would be a very short lifecycle of job in here if I went and spoke to our new Chief Justice and said, “I am demanding these things from you.” I do not think he would take that very well, quite properly. I do not have those powers to compel Parliament, I do not have those powers to compel the courts, but they have been incredibly gracious in providing anything we have ever asked to be provided.

Active participation by children: I will come back to that last.

A good relationship with decision-making bodies concerned with issues affecting children: yes, that has been a very significant matter for me from day one. I came from an NGO background originally, the Economic Regulation Authority of Western Australia prior to that—an NGO consumer advocacy background—and worked very closely with those sorts of agencies in Victoria. So we do work very closely with CCYP, NGOs—with anybody in the state that does make decisions or impacts upon decisions relating to children, and of course with all the relevant departments as well. My view is that no statutory officer, no matter how strong your powers are, can do their work effectively for Parliament unless they have very strong collaborative, consultative, cooperative relationships with all the relevant bodies.

Regional local representation is a very significant issue for us. One of the very first things that my deputy and I started when I commenced—we commenced at the same time—was to recognise the fact that we had very poor representation from regional Western Australia and from Aboriginal

Western Australia, so we started a major, what we call, regional access and awareness program, where my staff and I travel the regions. We have been to every region in Western Australia over the last few years and many regions on multiple occasions. We travel with my outstanding principal Aboriginal liaison officer and other Aboriginal consultant staff, and there we reach out to children and young people, Aboriginal Western Australians, those living and working regionally, FIFO workers and others. It has had a dramatic impact upon increasing the representation to my office of regional and local representation and also those not immediately in the precincts of Perth, but also a very significant effect on Aboriginal Western Australian engagement with my office. That is something we felt very strongly about. We could not be an Ombudsman for Perth. It is a huge state geographically and enormously diverse. If you talk to Europeans about our state, their mind boggles about our geography. But the reality is it is part of our role, it is part of our responsibility, and we do so, and we do so very willingly and happily.

Access to research statistics relevant to children: two things in that regard. First, what we have produced ourselves. Our documents, our major own motion investigation reports, are very significant compendium reports in relation to research and statistics relevant to children. If you take all of those reports that we have produced in the last few years, they are used very extensively nationally and internationally by NGOs, universities, our state government departments and departments elsewhere in relation to research statistics that are relevant to children. Part of the reason for that is that we can get things that other people cannot. Because of our powers, we can gather a vast raft of information. We can analyse that and put that together. As I say, it provides a fantastic point of reference for a range of people who are furthering the interests of children in this state and working with those issues. As I say, we have been both producer of those research and statistics, but also, of course, access to them. We get access to them by either requirements under our compulsive power requirements or alternatively through requests to the Telethon Institute. I could not even start with the number of institutions and others we liaise with on a very regular basis to deeply inform the work that we do in relation to those things.

The CHAIR: May I just interrupt you on the data question?

Mr Field: Yes, of course.

The CHAIR: As an organisation that regularly requests data from agencies and organisations, are you ever surprised by the lack of quality of what you get or the lack of availability of data that you deem to be relevant?

Mr Field: Yes, I am. It varies, honourable Chair. It can be from very good, to data that surprises us as to it not being nearly as good as we would have thought. One of the major things that has occurred to me over several years has been a lack of effective communication between agencies in relation to data. I am sure that is something this committee will continue to grapple with over its iteration, over its term—that is, too often in government, and disappointingly for all of us, the right hand will not necessarily be talking to the left hand. Now, that may be in the one department or it may be across departments. I do think there have been genuine efforts made to improve that. Certainly so many of our reports have gone to recommendations, which we have been strongly following up, that we want agencies, and we are going to need proof that agencies, are working together and taking leadership roles—one person is identified as a leader, but they are working together to share information. I think that is absolutely vital. The answer to your question, succinctly, is: yes, from time to time we have not been as compelled by the data as we might have otherwise thought we would be. The second is that sometimes we have been surprised that there are gaps in the data—gaps that otherwise exist somewhere else that perhaps ought to have been able to be achieved, or sometimes in the same organisation.

The CHAIR: I would not expect you to be able to answer this now, but I will just ask you the question. I do not want you to have to employ someone else to find the answer to this question, so tell me whether it would be available readily. Have you made recommendations in the past, particularly in relation to situations that relate to children and young people, about the need to change data collection and data-sharing mechanisms by agencies and organisations; and if so, would you be able to do a cut-and-paste and send us the details of those recommendations?

Mr Field: Just delighted, always, to assist the committee in any way I possibly could. When I get back to work this afternoon, what I will do is I will speak to my outstanding staff in my own motion investigations team who do the principal driving. I mean, I settle all of these reports as you would expect—I cannot delegate the settling of recommendations; they are non-delegable. But I will talk to Belinda and that great team in there. It will not surprise them, the question you have asked, Chair, and it will not surprise them that I have asked the question. I think we will be able to pull out some particular instances of reports in which we have referred to exactly these issues—recommendations we have made in relation to those issues—and our hope that they will continue on. Let me give you a positive version of that. When we did our drownings investigation report, we were particularly pleased to see sharing between departments and the local government and non-government sector. When it works well, it is a very pleasing thing to observe, and you see much better outcomes because of it. We have seen both. What we want to see, more often than not, is always this. Please do not take this as some sort of comment, once again, of arrogance or hubris. I do not have a huge level of tolerance for poor data collection and sharing. It seems to me that that is something that citizens should expect of their government agencies to do well. We do collect an enormous amount of data. It is not easy, it is not simple, but when we get down to data about some of the most critical matters in the community—violence against women, preventing the suicide of young people—I would really expect those areas of data to capture people's minds as strongly as possible. I am very happy to take that as a question on notice from you, honourable Chair, and revert back to you about that.

The CHAIR: Michele will write that down and she will be writing to you.

Mr Field: Of course, and we would be delighted to liaise with Michele.

The CHAIR: The committee is aware of many, many instances where this has been a problem. The most recent, probably, is the situation of Roebourne, when the commissioner, in a public hearing, told us that he was alerted by whistleblowers and was unable to substantiate the claims. It turned out to be largely because of a failure to share data.

Mr Field: What we would always want to see is that the sharing of data does two things: it is prophylactic—it prevents problems occurring in the first case—and it aids accountability. Greater data sharing and greater data access aids accountability. But it really is the capacity to ensure that we are providing the best possible services in some of the areas of the most egregious public policy problems in the community.

[2.40 pm]

The CHAIR: There is no doubt. I think you referred to the example of drowning. Decent data sharing can save lives, and it can in less immediately obvious ways as well.

Mr Field: We say this in our own office. I could have some sense of equanimity about the idea we did not share data about widgets and making the widgets, but less so about preventing the drowning of children. I think we ought to have less tolerance in relation to that being an acceptable situation. I think it is a very good point, Chair, and one that resonates with our work. And we will push that through.

The CHAIR: I am conscious I have interrupted you.

Mr Field: No, I am conscious I am speaking for too long. I am going to come back to that.

In about 2015, after a number of fantastic conversations with both of our very competent, very, very good commissioners, both Michelle and now Colin, and very much following on from some of our international colleagues—Austrian, Canadian and other ombudsmen—we took the view that we wanted to look afresh at greater access for children. The ALRC report is quite out-of-date in a lot of its referencing to ombudsmen; there has been very substantial progress by ombudsmen in a whole raft of areas since that time. But it does make the point that, back then, access for children to ombudsman offices was not strong, and they were absolutely right to make that comment. One of the things we wanted to do was to really look at that afresh, so we actually held a quite elaborate youth focus group, which my assistant ombudsman was deeply involved in. It was actually emceed by the children and young persons' commissioner for us, working with us closely, and we took out of that a whole raft of new ways that we wanted to go about our work. One of them was to create a youth-friendly webpage on our website and to completely transform that form of accessibility. We wanted to look at ways that we could target, in a very proactive way, going out to communities in relation to where the most vulnerable children were living, so we created a major out-of-home-care visiting program, visiting out-of-home-care facilities, both in the metropolitan region and the regions. We increased our visits to Banksia Hill and the Kath French centre, so that we could actually be eyes and ears on the ground, looking at the problems, talking to children directly, travelling in those instances with a mix of staff—younger and older, male and female staff—but also bringing with us Aboriginal consultants to try to make ourselves as accessible as possible. As I say, from that point on, we wanted to embed into our practices substantially more access issues.

The one that we will be looking at in terms of certainly electronic is for mobile phone and other social media access to our office as well, which my 18-year-old daughter tells me is something that I am very considerably not advanced enough in at this stage, so we will need to continue to do that. One or two ombudsmen are just commencing on that process now. We will be looking at best practice there and best practice internationally in that regard, and, of course, looking at other children's organisations around the world.

We did make really sea-changing efforts in 2015. We started with regional and Aboriginal access to the office, and we saw that as being absolutely vital.

The CHAIR: You talked about having an Aboriginal liaison officer. Do you have a youth liaison officer?

Mr Field: No. That is an excellent question. We are looking at doing exactly that position. I commenced, once again, wanting to recruit a team of Aboriginal staff—this was prior to any government position in relation to an Aboriginal commissioner. We really thought that was a very significant gap in our office's capabilities, both in the sensibilities of my own staff and the sensibilities of all with whom we engaged. We have an outstanding Whadjuk Noongar female leader in our community, Alison Gibson, who is our principal Aboriginal liaison officer. We have another position and we are about to recruit into that position. I am hoping to create an assistant ombudsman position in that regard—the first of its kind ever in Western Australia, the second only of its kind anywhere in Australia, and one of the few in the world. My very strong hope is that we will include in that team a youth liaison officer position as well. Once again, this is the Ombudsman of the twenty-first century; the Ombudsman that I see when I look at our own work. I talk to our colleagues. Certainly when I talk and travel internationally, this is where ombudsmen are in the twenty-first century as they embrace very strongly the newer jurisdictions, so many of which have been asked of us by governments and parliaments in the past decade. These are national human rights institution-type functions, following on from the Paris principles, the Venice principles and

UN rights' conventions in relation to the rights of women and the rights of children. We do need these positions in our organisation. And we need cultural leadership.

One of the other major areas of our work over the next 12 to 18 months, and something to which I am also deeply committed, is LGBTQI+ rights. I want to see more work in those spaces in the Ombudsman's office in that regard. We are coming back to the quintessential nature of what an ombudsman's office is, which is an alternative means of access to justice for those who historically could not afford the prerogative justice rights through our superior courts through administrative redress, and, second of all, as an agent of change through major investigation work. As I say, that is most of what you will see in my office over the next 12 to 18 months, if it has not already been evident in the last few years. Of course, we do not not provide services to those who have wealth and means—there is nothing in my legislation that would justify that—but we do have a particular focus on vulnerability, and we count youth and children in that vulnerability, without question.

Mrs J.M.C. STOJKOVSKI: Obviously, this will have to be on notice. Are you able to provide us with an organisational chart of what you currently have, but also what you are proposing or what you are looking at, potentially, moving forward for the office?

Mr Field: I would be absolutely delighted to do so. At the moment, in terms of our organisational structure, if you like, we have three major issues. One is an emerging leaders program for women in the state. As I say, I make no comment. It is still a very slight surprise to me after many, many years of merit-based selection that we still seem to have very, very many men being CEOs, no doubt all merited. But the reality is that I want my office to be an incubator for the next exceptional layer of women leaders in this state. The second is a strong commitment in relation to the LGBTQI+ community, and the third is in relation to Aboriginal Western Australians and children and young people, and our structures to further assist in those matters. For example, our corporate exec for the moment I think is six women and three men, and I will be adding to that hopefully with an assistant ombudsman and an Aboriginal position as well.

The CHAIR: Thank you for that. That was very illuminating and very interesting. Let me move now to the actual number of children and young people that you appear to engage with each year. In the oversight report, the commissioner talks about 79 complaints. We understand that you might have some more up-to-date figures.

Mr Field: We will provide you with the exact figures on notice, and include figures that would otherwise be included in our next annual report as well. We can even extrapolate those, potentially.

The CHAIR: That would be very useful.

Mr Field: As a matter of course, we never divulge our annual report figures in advance, save for two groups—Parliament and Parliament's committees. You get them, as you would expect and hope.

[2.50 pm]

The CHAIR: If you could, maybe you could just indicate on what you send us what is not to be made public, because we tend to default to making documents public unless people have specifically requested otherwise.

Mr Field: Of course, Chair. What I would simply say is that there are these ways that children and young people come to our office: they come to our office directly; they come to our office through guardians and representatives and advocates; and they come to our office through issues that arise where we believe we ought to undertake systemic own-motion investigations. If you just look, for example, at that list of own-motion investigations, the last five that are listed there from 11 through to 17, every single one of those is fairly and squarely related to children and young people. Moreover, three are absolutely fundamentally so—sleep-related deaths, care planning, and

drowning and, of course, youth suicide—so that is four. Even if you look at that in relation to issues around family and domestic violence fatalities, tragically so many of those fatalities have a strong interrelationship with children and young people, as the honourable Chair would know.

I think, probably, almost the entire focus of our major systemic own-motion investigation work during much of my time in the office has been around children and young people. That is probably the third major tranche of the work that we are doing. There are the complaints that we receive from children, there are the complaints that we receive on behalf of children, and then there is the own-motion investigation work. If I can describe that this way the ombudsman ultimately exists to investigate on behalf of Parliament how the laws of Parliament are being administered. Are they being administered lawfully, fairly and correctly. The Auditor General—are they being administered efficiently? We do lawfully, fairly and effectively. We can do that through two mechanisms—complaints we receive and investigations of my own motion. I have taken the view that no matter how much outreach work we do—this is also the case internationally, you will see Ombudsmen who do extraordinary work in relation to outreach for children still receive very few complaints from children—even for children’s ombudsman, that can be the case in some of the Scandinavian countries. So we think that one of the best ways ultimately to be protective about the standards of safety to prevent harm to children is to do those own-motion investigations and then with those make sure that you are doing heavy levels of consultation and collaboration with children—advisory panels for those investigations, working with other organisations that work with children. So not one of these sorts of investigations would occur where we would not be talking to places like WACOSS, the CCYP, running our own panels for children et cetera, trying to ensure we get their voices into those investigations.

The CHAIR: Presumably you would agree that one of the conclusions you cannot draw from the fact that there are few complaints from children is that they have few things to complain about.

Mr Field: Non sequitur; I absolutely cannot agree with you more. The reality is it is almost the bedevilled question as to the fact that you know children have complaints. We know, in particular, that many of those children may not even raise it, leaving aside, say, an office like the children’s commissioner. The children’s commissioner makes this known, very importantly, as children’s commissioners have, the principal advocate for children in this state are their parents and guardians and carers, but children may not raise those complaints with them. Where we have vulnerable children, children in out-of-home care, where we do need advocacy, we do need systemic and individual advocacy, the sort of advocacy provided by, on a systematic basis, particularly, the children and young person’s commission, even with all the work they do, it can still be very difficult to have children come forward. That is one of the reasons why I think jurisdictions like out-of-home care supervision, monitoring standards, reportable conduct and others are so critical, is because the best way, I think, for agencies like ours to receive complaints from children is to be there. One of the reasons why Rebecca and her team have been so proactive in going out to Kath French and out-of-home care facilities, Banksia Hill and others, is to hold complaints clinics—to be there physically available with the Whadjuk Noongar and other appropriate Aboriginal clans and tribes for the precincts and regions we are in, to say to those children, “This is a safe space to raise these complaints with us.” But as I say, is there an underreporting of complaints made by children in this state? I think without question. The solution to it is—I have still not seen a perfect solution anywhere in the world; even creating dedicated children’s ombudsmen does not seem to have completely solved that problem.

The CHAIR: Would you agree with the commissioner’s observation—from memory he made this point in one of his many responses to the royal commission in relation to one of their interim reports—that perhaps we are using the wrong term when we talk about complaints in relation to

children. The commissioner did not use this as an example, but if you look at St Andrew's Hostel, if you set up a complaints mechanism, it still may not have heard what the problem was because a child perhaps does not see a complaint as relating to something like sexual abuse.

Mr Field: Honourable Chair, if you look at the astonishingly tragic, the vile allegations, and in many cases now substantiated allegations, that arise from, say, the royal commission into institutional child sexual abuse, children in those circumstances might not have come forward for decades in relation to these issues. Part of that will be because there were no systems in place, no culture in place; in fact, there were active cultures to hide those issues, so vilely. But it is possibly a way that we see these things. The sort of trauma and sexual abuse—many of these things are around sexual misconduct, of course, reportable conduct and others—it is not like the battery in my phone is not working. It is not anodyne issues. These are not the sort of things you might consider a consumer complaint; these are some of the most traumatic and horrific things that could occur to people. Whether they see them as complaints, and how they come forward to bring those to authorities who will take them seriously and who will believe their voice often when their voice has been actively marginalised by those in the system, as I say, that is a terrifically significant challenge. There is much in the royal commission's report, I think, that can remedy many of those wrongs of the past and, properly implemented, amongst other reports, I think those better days are very much ahead of us.

The CHAIR: I just wanted to quickly ask you probably in closing—as I said, we will follow up with some questions in writing—obviously your office has been mentioned very prominently in relation to the Blaxell inquiry. Blaxell looked very specifically at a role for the ombudsman.

Mr Field: Correct.

The CHAIR: When you look at the recommendations from the royal commission, do you immediately see an increased role for the ombudsman in Western Australia as far as oversight goes? Bearing in mind that oversight includes complaints handling, systemic and individual advocacy, inspection reports—you know what that list consists of?

Mr Field: Absolutely. I will answer the question in a couple of parts. I will give the caveat I always give, which is, of course, it is utterly not a matter for me to indicate what jurisdictions anyone ought to give me. Of course, that is going to be a matter for the very important deliberations of this committee. Of course, it is a matter for cabinet and the government of the day, whatever government of the day it is, and of course a matter for Parliament insofar as it requires legislation. I would always be wary of the ombudsman who is walking in and telling you these are the functions I should be given. I do not think that is something I would ever want to say. But you have asked me for advice, you have asked me for an opinion, and I think it is quite appropriate for me to share that with you. There are a couple of areas where I think that it might be most appropriate to consider, both arising from Blaxell and arising out of some deliberations from the former government and former ministers. There was some suggestion of some role for my office in relation to out-of-home-care supervision. That is still a matter that could properly be considered going forward.

[3.00 pm]

In relation to complaint handling, that is a jurisdiction that is inherent to the Ombudsman's office. We would certainly see that as something that would continue on, and I do not think both at the time of the original debate and discussion of the children's commission legislation or any iteration of the committee's senses if there had been a sense—I noticed in the most recent submissions that the children's commission has made there is no sense in which there is seen as being a significant departure from that. I do think that is appropriate.

The only other jurisdiction where I hold a view that there may be some significant sense—but it needs further consideration, it needs, as I say, I think deep consideration of all the relevant stakeholders and the intentions—looking back on the royal commission would be in relation to something like the reportable conduct work. It really comes back to a matter of principle for me, honourable Chair, and I do know that there are some potential differences in the ALRC report; I have looked at that report. It does go back 25 years ago; there have been very substantial changes. Some of the comments they have made about the Ombudsman are very out of date—which is no criticism; obviously, it was right at the time—both in terms of national and international movements since then. For example, most Ombudsmen now, and particularly enshrined in the most recent Venice principles, would see themselves less as complaint handlers and most about proactive systemic investigators, which is then the exact opposite of what is indicated in there. But I do hold a view—once again I note the ALRC does not entirely share that view—that there can be systemic difficulties in combining advocacy functions with impartial independent complaint handling functions. Some of the functions can be done very well by systemic advocacy organisations. That can include, for example, monitoring of standards and other matters like that. That could well be, for example—far be it for me to say—a very proper role for, say, the children’s commissioner.

But in relation to matters like reportable conduct, whether there would be a need to receive individual complaints and investigate those, both on a systemic and own-motion basis, I would not say it goes as far as offending the rule of law, but it gives me a level of discomfort. I think the exact words in the ALRC report is that “something that should not cause undue problems”. I suspect it may cause undue problems from an external perception point of view, of course—bias and those matters are a matter of not only actual but also perception. If we think about the counterfactual in that regard: say, for example, you suggested that tomorrow the Supreme Court ought to continue its resolution of disputes, investigation of disputes as it does through, in its case, adversarial processes, but what we should add to the Supreme Court is an advocacy function. One part of that role, what they are doing, is advocating for one party to a dispute. I think that would be entirely antithetical to what would be considered good justice in the state. It is the same for tribunals; same for others. They create a reference to HREOC as being an example where it can be done together, and it is done together there. It also has been subject to very significant criticism for doing those two roles together all subsequent to this 25-year report. In fact, I think there is a fairly scathing couple of reports including some comments—obiter, I think they were—in a Supreme Court of Queensland case about being antithetical to do the two together.

My strong sense is this: it is difficult for agencies that have to investigate complaints which must be seen. Actually, it must be perceived to be utterly impartial, utterly independent, utterly without any form of bias or prejudgement to one of the parties before them to, at the same stage, also do advocacy and systemic advocacy. Yes, you can put matters within your agency that can, perhaps, put various fences, if you like, in there and procedural safeguards, but by the time you have done all of that, then it is a question whether you have got any efficiency benefits from doing that anyway. I think that is an issue, too.

It goes to a terrific submission by WACOSS that has been given to you—a great organisation—and they are arguing for a single oversight body. We ought to aim as much as possible for single oversight. I think it is almost impossible to achieve, of course, in practice, because, just off the top of my head I can probably think of 20 oversight organisations in the state who currently oversight children and young people and their wellbeing, and it would not be conceivable to put them all together.

The CHAIR: We have got to 11.

Mr Field: Yes, at least 11. You have also got a separation of powers issue. Goodness me; I do not need to tell honourable MPs, you know better than me, the great virtues of our Westminster democracy, but the idea we separate powers is in part to ensure that their checks and balances are on another. If someone said to me tomorrow, “Ombudsman, do you think it’s a good idea we give you 100 new functions?”, I would probably say a bit of a paraphrasing of that Adam Smith quote: I would not necessarily give power to the person who has got the hubris who thinks he might be able to undertake them. I would be a little bit worried about doing all of them. I think some separation within there is a good thing—so, checks and balances. Then we come to that last point. That is what Michelle has done in practice and that is what Colin has done in practice, if I can be so bold as to refer to them by their first names. I have been sitting there resolving complaints, and I have received a call from Michelle, an utterly appropriate call, totally appropriate, where she said, “I’m calling up because I’ve got concerns on a systemic basis about some issues arising out of some Banksia Hill complaints. I know you’re looking at some Banksia Hill complaints; it’s public record.” Do I say that to myself if I am holding both roles, “Those things can be difficult”? When you look at the commissioner’s oversight report—keeping in mind, by world standards, we have one of the best oversight systems in the world. We are up with New Zealand, a couple of the Scandinavian countries, as absolutely top of the world. We are envied. We are looked at covetously and enviously by most nations around the world. I am not talking just about developing nations but developed nations in relation to how strong the Western Australian independent oversight system is. A lot of that probably rises out of WA Inc before my time, but it is looked upon very strongly.

I like the idea, once again, not for me to say, of possibly increasing some individual advocacy components to the children’s commissioner in this state—so beyond systemic advocacy, they can also advocate to us about individual cases. If you look at their report, the glaring column that is missing there is advocacy. We do have a lot of bodies. There is some fragmentations—some gaps. We have a lot of bodies doing a lot of work on oversight. Often what happens, though, when we have two parties before us, a serious allegation, say, about a reportable conduct incident—a very serious allegation with very serious ramifications for the person on the other side of that allegation—but we want to take the voice of the child as a voice that we accept, and then we test those allegations and we do that in an incredibly good environment for children. I want someone to advocate to us about the rights of that child. I would not want the advocacy to be coming from my own organisation, as I on the same token have to be independent and impartial without any form of prejudgement. I do not even know how I could satisfy the Australian rules of procedural fairness to do that in the one organisation. That is the point I would make about those issues. I think that is probably the only area that needs probably some further consideration in relation to that joining together.

The CHAIR: Yes, I think so. We may very well ask to talk to you again when we get a little further down this track, because you have identified the key issue.

Mr Field: I am going to finish, because I am well over time. What I would simply say, apart from saying once again, what a privilege and a delight it has been to appear before you, is that if at any stage—because we will continue to think about these matters, just like the children’s commission and others, as you would hope and expect; we are working with the Department of Communities, we are working with the Department of the Premier and Cabinet to ensure the royal commission reports have their full fruition, have their best benefit.

The CHAIR: Are you involved in those working groups?

Mr Field: Intimately involved. What I would say is this: as we continue to develop our understanding—because I do not have a prejudged mind about this; I have a range of initial

thoughts—one of the things I had mentioned to my deputy actually driving down here is that if you were to so indulge me again, I would have thought there would be enormous benefit potentially in me coming to talk to you about further iterations of our thinking as well.

The CHAIR: I think we are almost certain to take you up on that. At that point, somewhat reluctantly, I am going to close the hearing. You will get some questions on notice from us. I hope that is okay. Michele will clarify what you have already agreed to provide as well. 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 via these corrections and the sense of your evidence cannot be altered. But 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 for coming today. It has been most interesting.

Mr Field: Honourable members, honourable Chair, thank you so much.

The CHAIR: Thanks for your time.

Hearing concluded at 3.10 pm
