



Board of Inquiry into historical child
sexual abuse in Beaumaris Primary School
and certain other government schools

TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY INTO HISTORICAL CHILD SEXUAL ABUSE AT BEAUMARIS PRIMARY AND CERTAIN OTHER GOVERNMENT SCHOOLS

PUBLIC HEARING MELBOURNE

**THURSDAY, 16 NOVEMBER 2023
AT 11AM**

HEARING DAY 4 (PUBLIC VERSION)

APPEARANCES

**MS F. RYAN SC – COUNSEL ASSISTING
MS K. STOWELL – COUNSEL ASSISTING
MS JENNY FIRKIN KC – STATE OF VICTORIA
MS CATHY DOWSETT – STATE OF VICTORIA**

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<THE HEARING RESUMED AT 11:05 A.M.

CHAIRPERSON: Morning, everyone. Good morning, Dr Howes.

5 **DR HOWES:** Good morning.

CHAIRPERSON: If you could remind the witness of the affirmation, please.

<WITNESS DAVID COLIN HOWES, ON FORMER AFFIRMATION

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<EXAMINATION BY MS RYAN:

CHAIRPERSON: Ms Ryan.

15 **MS RYAN:** Thank you, Chair.

Dr Howes, we will now turn to the fourth relevant employee, who is David MacGregor. Now, Mr MacGregor taught at Beaumaris Primary School for nine years from January 1968 until December 1976.

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DR HOWES: Yes.

MS RYAN: And he also worked at Kunyung Primary School from January 1981 until 27 May 1985.

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DR HOWES: Yes.

MS RYAN: And he worked at that school as a teacher; is that right?

30 **DR HOWES:** Yes.

MS RYAN: Dr Howes, you say in your statement that the department is aware of three victim-survivors who were abused by David MacGregor at Kunyung Primary School.

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DR HOWES: Yes.

MS RYAN: And just by way of context, the Board has received evidence from seven additional victim-survivors relating to Mr MacGregor. All right. Now, in terms of reports to officers of the Department of Education in relation to MacGregor at around the time of his alleged offending, Dr Howes, the board has heard from a victim-survivor who says that she believes she told someone at Beaumaris Primary School about sexual abuse by MacGregor in the early 1970s. And that shortly after making that report, she was confronted by MacGregor about it. So about having made the report. Now, Dr Howes, would you agree that if that was the case, that if a victim - if a child had reported a teacher, in this case at Beaumaris Primary School, having sexually abused that child, and then that report

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got back to the teacher and that teacher confronted the student about it, that would be what can only be described as an egregious failure in the system, if that had happened.

5 **DR HOWES:** Devastating. Yes, I agree.

MS RYAN: And, indeed, assuming that did occur, that would be and was a missed opportunity at that time to prevent MacGregor from further offending.

10 **DR HOWES:** Yes. I agree.

MS RYAN: Now, your evidence is that the Department of Education first became aware of a report of sexual abuse by David MacGregor on 27 February 1985.

15 **DR HOWES:** Yes.

MS RYAN: I'm just referring here to your table, Dr Howes, and this is in relation to part A of the MacGregor - thank you, you've got that. Now, that awareness arose on 27 February 1985 because that reference, being February 1985, refers to a letter received by the Department of Education from a parent of a student at Kunyung Primary School; is that correct?

20 **DR HOWES:** Yes, although the letter I have, I think, indicates there were three parents.

25 **MS RYAN:** Yes. Concerned parents?

DR HOWES: Yes.

30 **MS RYAN:** Now, when the Department of Education receives this letter at or about 27 February 1985, David MacGregor was still working at Kunyung Primary School as a teacher?

35 **DR HOWES:** Yes.

MS RYAN: Now, the letter advises the department of instances of sexual abuse perpetrated by MacGregor on students at Kunyung Primary School; is that right?

40 **DR HOWES:** Yes, it does.

MS RYAN: And the letter advises the department that, at that time, the police were investigating MacGregor?

45 **DR HOWES:** Yes.

MS RYAN: And the department is also told, by way of that letter, that MacGregor had admitted some of the behaviour to the police.

DR HOWES: Yes.

MS RYAN: Is that correct?

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DR HOWES: The letter states it, yes.

MS RYAN: And, indeed, the letter goes further because it tells the department that the parents are aware of other incidents of sexual abuse perpetrated by
10 MacGregor on primary school students going back as far as 1983; is that right?

DR HOWES: Yes, that's right.

MS RYAN: Is it the case, Dr Howes, that there had been no communication
15 between the Department of Education and Victoria Police prior to the department receiving this letter?

DR HOWES: I don't know that, but we don't have - I don't believe we have any evidence that there was.

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CHAIRPERSON: Has that been looked into? Has the department looked for those records.

DR HOWES: I would have to check.

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CHAIRPERSON: Right. That would be great if that could be checked. Thank you.

MS RYAN: Again, that goes to my question yesterday: was there any arrangement -
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DR HOWES: Protocol.

MS RYAN: - between the Department of Education and Victoria Police when this
35 sort of thing happened and I believe your answer was -

DR HOWES: We had begun to search for that.

MS RYAN: All right. Thank you. And so we have the letter to the department on
40 27 February 1985, but we know, Dr Howes, that despite that letter, David MacGregor continued to teach at Kunyung Primary School until May of that year; is that right?

DR HOWES: Yes.

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MS RYAN: Now, we know from your evidence that, in fact, David MacGregor was interviewed by the police on 1 February 1985, so that predates the letter

advising the department, and he was interviewed about alleged offending against students from Kunyung Primary School; is that right?

DR HOWES: (No audible response).

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MS RYAN: And according to your evidence - and I'm looking here at table 2 and this was in response where you've set out the response of the school on 18 November 1985, if you want to have a look at that.

10 **DR HOWES:** Yes.

MS RYAN: In that interview with Victoria Police on 1 February 1985, your evidence is, or you're now aware that David MacGregor at that time admitted all allegations put to him.

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DR HOWES: Yes.

MS RYAN: Right? Now, it appears that the department did not become aware of that fact, that is, that MacGregor on 1 February 1985 admitted to all those

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allegations, to all the allegations put to him, until November 1985. Is that right?

DR HOWES: Yes, that's right.

MS RYAN: Do you know why that is?

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DR HOWES: No, I don't.

MS RYAN: Are you able to say whether the Department of Education after receiving, or upon receiving the letter from the concerned parents on 27 February 1985, in which they advised the department that MacGregor was being investigated by the police, did the department contact the police upon receipt of that letter?

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DR HOWES: In May 1985? Is that the letter?

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MS RYAN: No, 27 February 1985 was the - sorry, 27 February 1985 was the letter.

DR HOWES: I don't believe there was action then. There was a subsequent letter referred to in the table on 24 May after which then the police were contacted.

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MS RYAN: So it's fair to say, though, that there was no immediate or urgent action of any kind by the Department of Education upon receiving the 27 February 1985 letter to contact the police, to find out what's going on.

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DR HOWES: I don't have any evidence that that was done.

MS RYAN: Now, according to your evidence, Dr Howes - according to material produced by the Department of Education, the Director of Personnel and Industrial Relations of the department wrote to the parent in question, who wrote the February 1985, letter on 15 March 1985. You're aware of that?

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DR HOWES: Yes. Can I just go back a step -

MS RYAN: Sure.

10 **DR HOWES:** - to your earlier question, just referring to the table again in March '85. So the ministry contacted MacGregor to explore his wishes about school placement as a result of pending charges being laid, so the department knew the charges were being laid, but I don't have any evidence that they asked for details or the - or contacted the police about that.

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MS RYAN: So what you're aware of is the department contacted MacGregor.

DR HOWES: That's right.

20 **MS RYAN:** But there's no evidence that the department contacted the police.

DR HOWES: The police, that's right. But did know about the police matter.

25 **MS RYAN:** Well, they knew about it, I take it, because that prompted them to contact MacGregor.

DR HOWES: That's right. Yes.

30 **MS RYAN:** But just going back, there is a letter of 15 March 1985, which you should have in your bundle. It's just -

DR HOWES: Yes, I do.

35 **MS RYAN:** You've got that letter. And you will see there that the - on that - on 15 March 1985, the Director of Personnel and Industrial Relations writes to the parent who wrote the February 1985 letter and advised that:

40 "The allegations are of considerable concern. The Education Department has procedures for investigating and dealing with matters of this nature, and I have arranged for these procedures to be implemented."

You see that?

DR HOWES: Yes, I do.

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MS RYAN: Now, first of all, at that time, David MacGregor was still teaching. There's a reference there to:

"...procedures for investigating and dealing with matters of that nature..."

5 Now, we've heard your evidence yesterday that the department had not been able to find any evidence of policies and procedures. We now see in this letter, there's at least purported to be policies and procedures. So are you able to shed any light on what they were?

10 **DR HOWES:** Yes. So it remains the case that we have been able to locate no policies or procedures relating to how matters of child sexual abuse should be handled. The references in the Teaching Services Act of 1981 go through what could loosely be described, in my view, as procedures for investigation, but they give a great deal of autonomy to those carrying out the investigations. So I - I don't - I don't take this as any evidence that there was somewhere else detailed
15 policies and procedures that should be followed.

CHAIRPERSON: Is it your evidence that what is being told in this letter is, in fact, inconsistent with what you've been able to ascertain to be the case in relation to what policies and procedures were, in fact, in existence?
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DR HOWES: If the reference was - I guess part of it turns on this phrase "with matters of this nature", and there are two possibilities there. One is it was referring to the allegation of child sexual abuse, in which case that statement would be there were procedures for investigating those matters. That would be, in my view,
25 deliberately false. I'm speculating here. I think it more likely that he was, for want of a better phrase, to cover himself, when the reference is to dealing with matters of this nature, it was a broader reference to any matters of misconduct, and then certainly how misconduct should be dealt with was set out in broad terms in that Teaching Service Act, but, again, gave the person to investigate almost limitless
30 power how that should be done. So it is not entirely false to say there was some procedures, in the broader sense, set out for how to manage issues - allegations of misconduct.

CHAIRPERSON: And certainly the letter is written to provide the parent with
35 some comfort that things will be handled.

DR HOWES: Hesitating to - with your use of the word "comfort" or, you know, another interpretation would be to put the parent off and say it will be managed, to give the sense that there was a response that was underway.
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MS RYAN: Dr Howes, just back onto your table and we're referencing here the March 1985 and April 1985 periods. There was a meeting between an Assistant Regional Director of the department and David MacGregor on 2 April 1985.

45 **DR HOWES:** Yes.

MS RYAN: And according to the department, the department described this meeting - well, the purpose of this meeting was to:

5 "...explore MacGregor's wishes re school placement as a result of impending charges being laid by Victoria Police."

Is that right?

DR HOWES: Yes.

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MS RYAN: And during that meeting, David MacGregor told the department that he did not wish to transfer from Kunyung Primary School. Is that right?

DR HOWES: Yes.

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MS RYAN: And it was determined by the department at that time that further action should only take place if and when a formal complaint was made specifying names and allegations; is that right?

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DR HOWES: That's correct. There was - there were two actions that were coming out of that meeting, that the person that I think held the position of senior education officer was to continue to monitor the situation, through the principal of the school, so that suggests that there was some awareness of continuing risk. And then, as you say:

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"I believe further regional action should only take place if and when a formal complaint specifying allegations is submitted."

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MS RYAN: When you say "monitor the situation", David MacGregor continued to teach children. There were no restrictions placed on him in terms of interactions with children at all?

DR HOWES: No.

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CHAIRPERSON: And so it's clear from that interaction that the fact that charges had been laid was not considered sufficient to warrant anything further happening in relation to this teacher at that time?

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MS RYAN: Chair, if I can just clarify that, at this stage, there were impending charges.

CHAIRPERSON: Pending charges, my - impending charges.

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DR HOWES: Yes, that - that's clearly the case. And - and when - when - so "monitor the situation", I was quoting from the letter. And to add to the concern, the report of that meeting seemed to focus as much on anything as what's described as evidence of a swell of community reaction, and so monitoring the

situation, you know, distressingly, may have been as much a reference to is there more community agitation as much as what's MacGregor's behaviour like?

5 **CHAIRPERSON:** So rather than monitoring MacGregor's conduct in the school, it can be read as monitoring the reaction in the community.

DR HOWES: Because of what was earlier in the letter and the attention was drawn to that, I'm speculating that that may have been the case.

10 **MS RYAN:** Indeed, Dr Howes, I suggest your speculation is correct because we know from a letter from the Assistant Regional Director to the Director of the Personnel Industrial Relations branch - now, this is a letter of 24 April 1985.

15 **DR HOWES:** Sorry, to clarify, that's the letter I was quoting.

MS RYAN: And this letter is to give the Director of the Personnel, Industrial Relations Branch, an update on what the outcome of that 2 April 1985 meeting was with David MacGregor; is that right?

20 **DR HOWES:** Yes, and I think, trying to interpret this through a bureaucratic lens, I think this does give a bit of insight into what that earlier - when we were earlier looking at what might procedures have been meant because this letter commences, "Following my letter", which is the Assistant Regional Director, "to you", Director of Personnel, "on 27 March", which suggests they were writing to say, "Here's
25 how I proceed to attend" and now probably that, "I was going to hold a meeting and now I'm reporting to you on the outcomes of the meeting." So this does bring us back to that question of procedures. I'm again speculating that that was what was meant when the original letter that we looked at back to the parent said, "We've got procedures to manage these issues."

30 **MS RYAN:** And the assistant regional director notes in that letter that the concern of the meeting with MacGregor on 2 April 1985 was to establish an acceptable course of action which could involve a temporary transfer of Mr MacGregor.

35 **DR HOWES:** Yes, if we can go back to the preceding paragraph for that, it gives perhaps the context of why this regional director was handling the matter in that way because he says:

40 "Further, as the matter was in the hands of the police, I did not wish to respond without full knowledge nor to anticipate any conclusions I might arrive at subsequent to possible departmental enquiry..."

45 For me, the salient point is that first point, is "the matter was in the hands of the police", because it takes it back to some of the considerations yesterday whether the way in which some of these matters were that they were criminal matters and should be dealt with first and foremost by the police with inquiries by the department to subsequently happen. But your - I'm not in any way trying to

diminish the evidence that's being put about the lack of action because there was no effort, as we've indicated just before, for the department to establish from the police any details about those charges.

5 **CHAIRPERSON:** And while the officials involved might be looking to that police process and how it might be unfolding, there's a separate consideration which is we now have a person who may be a sexual offender -

DR HOWES: Exactly.

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CHAIRPERSON: - teaching children at the present time. Is there anything you've seen in this correspondence which indicates that there was attention given to that question, which is how do we protect children, given what we now know, noting that they're pending charges?

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DR HOWES: No, that's the most distressing aspect of the evidence that we've been put together, that the attention of the department seems to have been primarily about where did MacGregor want to - where - a sense that he should be moved and that can only be because of his offending. They must have held a very strong view that that had happened, and it was only a question of where to move him. Nothing about how how do we immediately protect the students at that school.

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CHAIRPERSON: Well, and not only that, moving him to another school obviously puts those children at risk, if there's a risk. So it's not a question of protecting children. It's a question of either managing the community response at this particular school or managing MacGregor's own wishes.

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DR HOWES: I completely agree with that. I was just responding to your first question, was there any action taken about that school. No. The only action considered was to move him to another school, which is distressing to read.

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MS RYAN: The other consideration revealed in that letter, which is - goes hand in hand with consideration of Mr MacGregor's desire not to be moved, is the fact that it was noted that Mr MacGregor claimed that:

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"There is very little evidence of a swell of community reaction to the impending court hearing."

40 You see that?

DR HOWES: Yes, I do.

MS RYAN: And the advice given to Mr MacGregor was to inform the assistant regional director of the department of any wish to transfer to another position:

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"Should tensions within the school community become untenable."

Do you see that?

DR HOWES: Yes, I do.

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MS RYAN: So it appears that, there, the opportunity for the impetus for transfer was, one, in Mr MacGregor's hands at that time.

DR HOWES: Yes. Very largely, that - that fourth point reads - it's worth, if I may read it, reading it in full:

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"Should the regional office become aware..."

So that suggests they were monitoring community sentiment, not only leaving it to MacGregor:

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"...become aware of serious tensions affecting the school community, the RDE..."

The regional director:

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"...may require a further meeting to address Mr MacGregor's position as a teacher. Transfer may be in the best interests of both MacGregor and the school."

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And, again, it's very - it's difficult to read that. I interpret that as the interests of the reputation of the school, the community unrest, not in the interests of the children at that school. And as, Chair, you just pointed out, absolutely no sense of what the impact would be on the next school.

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MS RYAN: And it appears that, effectively, the onus was, in some ways, shifted to the school community to perhaps at some point demand that MacGregor be transferred for anything to happen.

DR HOWES: That and this - and, again, that final paragraph, the regional action:

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"...further regional action should only take place if and when a formal complaint specifying names and allegations is submitted."

So they had the knowledge of who complained. They had a letter. But I can only read this as putting up a barrier to taking action against MacGregor.

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MS RYAN: And would you agree there's a real tension there with this idea that, well, further regional action should only take place if and when a formal complaint is made, while at the same time saying, "We're going to wait for the police investigation to unfold before we undertake our own investigation"?

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DR HOWES: Yes, and it goes to this question that we keep coming back to. This is - this was in part the result of there being no proper policies and procedures mapped out for how these things must be managed.

5 **CHAIRPERSON:** And it's consistent with the other example we looked at yesterday, where a parent is asked to put things in writing and the parent being advised by a lawyer that there is a libel risk.

DR HOWES: Libel risk, that's right.

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CHAIRPERSON: Doesn't decide to take that step and instead chooses to remove the child from the school.

DR HOWES: Yes.

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CHAIRPERSON: So this burden being placed on parents and, in this case, parents who've already raised their concerns in a letter, which is a serious step to take.

20 **DR HOWES:** It's hard to know what - what more of a formal complaint with names and allegations could be submitted when we have those two letters already.

MS RYAN: And, Dr Howes -

25 **DR HOWES:** I think by then there was the first letter, not the second.

MS RYAN: Yes. We're coming to the second letter, so Dr Howes, just going on to what happens next in time, so we have - we have the 2 April 1985 meeting.

30 MacGregor remains teaching at the school. We then know, according to your evidence, that the Department of Education wrote again to the parent concerned. This is on 9 May 1985. And that letter was from the director of personnel and industrial relations on behalf of the Minister; is that correct?

DR HOWES: Yes, that's correct.

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MS RYAN: Yes. And the department advised the parent that:

40 "Evidence gathered by the police in their investigation of your complaint is not available to the Education Department. I therefore find, following initial investigations, I have insufficient evidence upon which to proceed. However, if you are able to provide further evidence of a specific nature upon which a departmental enquiry may be based, I shall proceed with the matter."

Now, a couple of questions about this letter, Dr Howes. You will see it states that:

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"Following initial investigations, I have insufficient evidence upon which to proceed."

However, there is no evidence at all that any investigations had been done by this time by the department, is there?

5 **DR HOWES:** No, that's right.

MS RYAN: Indeed, the opposite. We know the opposite occurred because the department in its own internal correspondence stated, "We are not going to investigate because the police of doing it."

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DR HOWES: In that letter -

MS RYAN: Yes.

15 **DR HOWES:** - that we've just been looking at, that's exactly what was said.

MS RYAN: And so it would appear that the information, or the assertion by the department to this concerned parent on 9 May 1985, that the department had conducted an initial investigation was, if not false, then incorrect.

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DR HOWES: On any reasonable use of the word "investigation", I imagine what was in this person's head was that they had had that meeting. They may well - it sounds like they may have contacted the police to say, "Can you give us any evidence?" The police said no. They regarded that as being able to be defined as an investigation. On any way in which that word should be used, that was as good as doing nothing.

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MS RYAN: Well, if we consider the earlier letter that we were discussing, being the 24 April 1985 letter between two representatives of the department, the department representative who received that letter was, in fact, the author of the 9 May letter to the parent, and that individual was aware, as at 24 April 1985, that there had been no exploration of the details of the allegations with Mr MacGregor at all; is that right?

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35 **DR HOWES:** That's - that's correct.

MS RYAN: So unless between 24 April 1985 and the ninth of -

DR HOWES: If I can just come back to there, because it's that - the only examination that I can find was in the second-last paragraph on the first page of that letter, internal letter, where at that meeting - I assume from this sentence:

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"Mr MacGregor did refer to some details of the events leading to the statement that he considers himself not guilty of the charges, saying they were without substance or foundation."

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I presume from that that in the course of this meeting, they may have said to him, MacGregor, "Is there anything to this?" He said no. They moved on.

5 **MS RYAN:** He denied it.

DR HOWES: Denied.

MS RYAN: There's no evidence, though, the department contacted the police.

10 **DR HOWES:** No, evidence - no, apart from this statement, at that time, no, that's right.

MS RYAN: Certainly no evidence that they made any inquiries of any of the relevant children or -

15 **DR HOWES:** There was nothing done that could in any way be described as an investigation.

20 **CHAIRPERSON:** You would agree, then - well, maybe I should put it this way. It was put to you that this letter to the parent was false or inaccurate. Do you agree with that characterisation?

DR HOWES: Misleading.

25 **CHAIRPERSON:** Misleading.

MS RYAN: We know, though, Dr Howes, that that parent was not to be deterred because, in fact, the parent took the department up on its offer to provide specific information or further information and, in a letter dated 24 May 1985, in fact, did provide the department with information including police statements; is that right?

DR HOWES: Yes.

35 **MS RYAN:** And do you have a copy of that letter of -

DR HOWES: If you have a spare one.

MS RYAN: From the parent dated 24 May 1985.

40 **DR HOWES:** I'm very familiar with that but I have mislaid that.

MS RYAN: All right. We will find one.

45 **CHAIRPERSON:** We will provide you with a copy.

MS RYAN: Thank you. So it's DOE.001.001 -

DR HOWES: Yes.

MS RYAN: Yes, have we got - dot 0131, page 195. Now, there was provision of further information, and the parent also advised the department that MacGregor had now been charged by the police with the alleged offences; is that right?

DR HOWES: Yes. That's correct.

MS RYAN: Now, do you know whether that was the first time the department became aware of that fact?

DR HOWES: I don't - I don't know that other than the evidence that we've got, and I think this is the earliest.

MS RYAN: So it would appear that -

DR HOWES: Because the - on my notes, then, one of the department officials then telephoned the police so I'm presuming this was the time that they became aware.

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MS RYAN: So it would appear that then, Dr Howes, there was no communication between the department and the police prior to this parent advising the department that MacGregor had now been charged.

DR HOWES: Yes, that's right.

MS RYAN: And we know that when the parent sends this letter telling the department that criminal charges have now been laid against Mr MacGregor, Mr MacGregor was still teaching children at Kunyung Primary School.

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DR HOWES: At that time, yes.

MS RYAN: Indeed, the parent says in the letter:

35 "It is disturbing, to say the least, that Mr MacGregor continues to remain in his trusted position as a schoolteacher, in particular when the allegations date back so far. One can only speculate as to how many other boys may be or have been subjected to similar abuse."

DR HOWES: Yes.

MS RYAN: But it was - as your evidence is, it appears to be that letter that finally spurs the department into action to contact the police.

DR HOWES: That's correct.

MS RYAN: And after that letter, on 27 May 1985, David MacGregor was transferred to a non-teaching position.

DR HOWES: Yes.

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MS RYAN: Would you agree that, considering the events that we've traversed so far, it appear that it was entirely up to the parents in question to agitate for the department to take any action at all about Mr MacGregor?

10 **DR HOWES:** Yes.

MS RYAN: Are you able to say why the department was not proactive when it was first alerted in late February 1985, as to the relevant complaints?

15 **DR HOWES:** I don't - I don't know what was in the - the minds of people at that time. The evidence suggests that they were protecting the interests of MacGregor and the interests of the school, and I base that on the evidence that we - we traversed this morning, combined with the fact that they, while they were aware that police were investigating, they were - the inclination was to have the police
20 deal with that matter and not see it as a matter that they should be proactive about.

MS RYAN: Would you agree that what happened here in 1985 in relation to Mr MacGregor was consistent with what we've seen occur in relation to the other relevant employees yesterday, earlier in time, in that the department at all times
25 prioritised the teachers and the reputation of the department over the welfare and safety of children?

DR HOWES: The smallest caveat I would put on that would be "at all times" because we've got evidence when they had overwhelming evidence, then they acted but there were - I in no way want that to be represented as a diminution or
30 excuse. The default setting at all times, I would say that the default setting -

MS RYAN: Default setting.

35 **DR HOWES:** - was to - was to place the - the interests of the teacher and the school ahead of the students.

CHAIRPERSON: You just said that action was taken at a certain point that it does seem, from what we're looking at, that action was only taken when it became
40 really the only viable option at that point, that at every other preceding point if there was another way to deal with this that didn't involve removing him from being with children in a classroom, the other option was taken?

DR HOWES: That's an accurate characterisation, yes.

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CHAIRPERSON: And the other thing that's interesting, looking at the evidence that we looked at yesterday and then the evidence we're looking at today,

yesterday, we were dealing with complaints being made to a principal and a district inspector being brought in to have a look at a situation, but here we're actually looking at more senior people, more than one person, looking at this information and coming to the same conclusion, which is, "We might transfer".

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DR HOWES: Yes, and I mean, they - I think the point that action was taken when - I can't remember exactly how you put it, when there was -

CHAIRPERSON: No other option.

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DR HOWES: There was no other option. For me, that, again, troublingly is that clearly could have been done before. There was nothing to prevent that, other than the attitude and what I've characterised as the default setting of these circumstances at this place at that time.

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MS RYAN: And so David MacGregor was transferred to a non-teaching position. Now, we know from your evidence that in about - in June of 1985 the department determined that Mr MacGregor could be suspended pending the outcome of the police investigation, but, otherwise, no further action could be taken against him under the Teaching Service Act until he was convicted.

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DR HOWES: Yes.

MS RYAN: Is that right?

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DR HOWES: Yes, and, you know, the - again, the - what - what I'm assuming prompted that, because the information I have here that's in the table was that the Ministry of Education received advice from their legal officer. Someone must have asked that legal officer for that advice, so someone was aware that -

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MS RYAN: Yes.

DR HOWES: - that the department should at least consider whether action should be taken.

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MS RYAN: And the department did consider suspension, didn't it?

DR HOWES: Yes.

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MS RYAN: And what was the department's determination in relation to that?

DR HOWES: No action was taken at that point. Later in - in June, they wrote to MacGregor noting the charges, noting that he may be called before the Director-General to show cause why he should not be suspended from duty. So suspension was clearly considered as an option. And then it's unclear to me whether that meeting took place, but as the table indicates in July, the Director-General - and to your point, Chair, that is the most senior

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position - determined MacGregor should not be suspended. And, again, it's difficult to read the evidence for why that was the case: His previous record in the department, references of support.

5 **MS RYAN:** But the Director-General took into account in his decision not to suspend MacGregor his previous record in the department and the references of support which were produced. So we can infer, can we not, that MacGregor provided some sort of references of support to the Director-General?

10 **DR HOWES:** I'm just - I wouldn't - I mean, I'd be careful about just limiting it, that your agency was that MacGregor did that. It may have been regional staff who organised those references.

MS RYAN: In any event, references of support were received -

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DR HOWES: References were provided.

MS RYAN: - and considered by the Director-General.

20 **DR HOWES:** And one can only assume from this that they were very positive.

MS RYAN: And it was determined that MacGregor should continue working in the regional office.

25 **DR HOWES:** Yes.

MS RYAN: And so, at this time - and this is about in July 1985.

DR HOWES: Yes.

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MS RYAN: David MacGregor was not suspended and he was working in a regional office. So, Dr Howes, are you able to tell the Board, apart from waiting for the criminal process to take its course, do you know whether, at this time, the department conducted any further investigation into MacGregor?

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DR HOWES: We've got no record of that and I've got the - I've got evidence that would suggest it did not, because as you see in the next row of that table of evidence, it notes that the ministry opened its own investigation into MacGregor in late '85 after he was sentenced.

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MS RYAN: Right.

DR HOWES: So that previous reference to July was prior to the sentence, so that, suggests to me, indicates an absence of any investigation occurring before that

45 time.

MS RYAN: Now, we know that, Dr Howes, that David MacGregor was a member of the Kunyung Primary School Council.

DR HOWES: Yes.

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MS RYAN: And the principal of Kunyung Primary was also a member of that school council.

DR HOWES: Yes.

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MS RYAN: And in August 1985, it was determined by the school council to send a letter of appreciation to David MacGregor for his service; is that correct?

DR HOWES: Yes. The minutes record that - they record the resignation of MacGregor from the school council, which I'm presuming was in writing, and then they resolved a letter of appreciation be sent for past service.

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MS RYAN: And the council also were instructed - council members were instructed not to disclose the reason for MacGregor's transfer.

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DR HOWES: The minutes record the recommendation:

"Because of legal implications, any questions to council members re the position of Mr MacGregor be answered to the effect that his was an administrative transfer."

25

What the reasons - what school council members understood to be the actual reasons for his resignation, I don't know.

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MS RYAN: Are you able to say whether the principal knew at the time?

DR HOWES: I can't definitely say, but I would strongly think that - that he had been transferred out of that school. It would be - it stretches plausibility to say there had been no reason given to him. Whether he passed that on to the school council, I don't know.

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MS RYAN: Now, in terms of the department's own investigation, that commenced after MacGregor was convicted in September 1985.

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DR HOWES: Yes.

MS RYAN: In relation to the offence of indecent assault.

DR HOWES: Yes.

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MS RYAN: And the department's investigation, the purpose of its investigation, was to determine what, if any, action should be taken by the department against MacGregor pursuant to its own disciplinary policies; is that right?

5 **DR HOWES:** Yes, to determine what, if any, disciplinary action should be taken, given that they now knew of these - of the findings of the charges and the sentence.

MS RYAN: Yes.

10

CHAIRPERSON: One thing I'm interested to know about this investigation is what was the scope of the conduct that they were looking at? There's a reference to seven charges. Did the department at that point start looking back in time to all the other places that MacGregor had taught at - because he had had a long teaching history before this time - to see whether there were any references to complaints being made or any incidents? Or was it limited to the matters that gave rise to this set of inquiries?

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DR HOWES: No, the - the information I've got in - as indicated in the table of evidence that - was that the - the record of interviews held by police with MacGregor formed the basis for the ministry's investigation. They got those records. So I am assuming from that that they limited their investigation to the limit of those charges.

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25 **CHAIRPERSON:** You recall that the mother who wrote to the department raised this question about how many other children might have been abused by this man, and it's - it's an obvious question to ask. He'd been teaching in the system for so many years. Is there any evidence that the department itself asked that question and started making inquiries looking back at all of the other schools he had taught at? What is the scope of this problem that we might be sitting on here?

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DR HOWES: I don't believe there is.

CHAIRPERSON: Are you able to say at what point, if any, the department did start looking at it in that way?

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DR HOWES: No.

CHAIRPERSON: And when you say - is your answer, then, you don't know, or there's no evidence that the department did?

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DR HOWES: There's no evidence that the department did.

CHAIRPERSON: At any point?

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DR HOWES: I don't have that - any evidence of that.

MS RYAN: You would agree, Dr Howes, just taking up what the Chair has asked you, that if the department had undertaken that investigation at that time, that is, in 1985 or 1986, that may well have produced a benefit to victim-survivors on two bases: one, it may well have revealed or uncovered other instances of abuse; and, two, the department may well have been in a position to provide support for those victim-survivors at a much earlier time. You agree with that?

DR HOWES: Both of those things are true.

CHAIRPERSON: Do you agree, Dr Howes, that that is a step the department should have taken at that time?

DR HOWES: Yes, I do. If not, I probably qualify that by they should have taken that step much earlier.

CHAIRPERSON: Well, when you say "much earlier", I understood from your previous answer that it doesn't seem the department ever took that step.

DR HOWES: No. I was simply responding to your question at that time.

CHAIRPERSON: Yes.

DR HOWES: Acknowledging it should have been done and, in my view, that should have been done earlier.

MS RYAN: And when you say "earlier" is your evidence that it was never done?

DR HOWES: Well, we - as we traversed, there was nothing that I would regard that could reasonably be described as an investigation that had been carried out.

CHAIRPERSON: Just so we're clear what we're talking about, though, the question the mother asked, "How many other boys were abused by this man, or how many other children?" You would think that the department at some stage, if not in this 1985 period at some later point, would have asked itself, "Well, we now know we have this person who's been convicted of these crimes. He taught for so many years in the system. What is the scope of the problem that we're sitting on here? How many people are out there who might have suffered at the hands of this person?" I understood your previous answer to be that it doesn't appear the department ever did that work.

DR HOWES: No, I don't believe there is any evidence that - that they did, and the opposite is almost true in that, if we go to the - well, you might want to go there on your own, but the 8 August 1986, the record of the investigation at the conclusion of MacGregor's defences is, again, difficult to read, and suggests that there was an effort made to limit (indistinct) rather than to open anything up.

MS RYAN: Just on that last point, though, in terms of no investigation, I mean, the fact that, for example, school council members were told not to disclose the reason for a transfer, doesn't that indicate that there was a - at least a decision made or a culture of sweeping this all under the carpet?

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DR HOWES: At the school level, yes, and that culture, I think, reflected the broader culture that we've been - we've had evidence of. So, yes, I don't think - I don't think there is no evidence and I don't think I've got any reason to think there was that question asked.

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CHAIRPERSON: When you say "the broader culture", do you mean the broader societal culture?

DR HOWES: No.

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CHAIRPERSON: You mean within the department?

DR HOWES: I mean the department.

20

MS RYAN: We will come to - so we're now in the - the department is conducting its own investigation. This is from late 1985 into 1986.

DR HOWES: Yes.

25

MS RYAN: And MacGregor is still employed by the department and working in a regional office at that time?

DR HOWES: Yes.

30

MS RYAN: Now, in late 1985, so while the department is investigating and after MacGregor has been convicted by the - in the Magistrates Court, in late 1985 he gained an employment as a district reliever based at Hawksburn Primary School to commence in 1986. Is that right?

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DR HOWES: That's correct.

MS RYAN: Do you know how that came about?

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DR HOWES: No. The - the information that I have is that he was successful in gaining an appointment. So whether he applied for that - I'm assuming he applied for that role.

MS RYAN: But you would agree that was a clear failing in the system, in that MacGregor at this time was appointed to work at a school with children?

45

DR HOWES: Complete failure.

MS RYAN: After he had been convicted of a criminal offence against a child.

DR HOWES: Complete failure.

5 **MS RYAN:** And from the material in your statement, it seems that the Department of Education only stopped that from occurring after being alerted by the Teachers' Union of the fact; is that right?

10 **DR HOWES:** Yes. Well, the Teachers' Union sought clarification -

MS RYAN: Yes.

15 **DR HOWES:** - about that position and it wasn't because of - the information that I have is that it wasn't because of the criminal sentence. It was because of the department's investigation.

20 **MS RYAN:** So it was - I mean, it may have been that if that union official hadn't alerted the department, Mr MacGregor may well have commenced work at Hawksburn Primary in 1986.

DR HOWES: I think that very likely.

25 **CHAIRPERSON:** And it wasn't raising any red flags for anyone that MacGregor was actively seeking to be back in a classroom in front of children?

DR HOWES: Appears not.

30 **MS RYAN:** And, indeed, going forward to the department's investigation and its hearing, we know, do we not, Dr Howes, that that fact was not considered, ie, that David MacGregor was actively seeking to return to a school environment?

DR HOWES: Sorry, what was the first part?

35 **MS RYAN:** Perhaps I will withdraw that. We'll come to - we'll jump to the charges. So in March -

40 **DR HOWES:** No, just while I'm on this - I missed one, Chair. The - the information records that the decision not to proceed with MacGregor's appointment as a district relieving teacher, that that vacancy that that created, the notes that I have say that that was filled on a temporary basis "until the matter is resolved", which you can only read as suggesting they assumed it was a strong possibility he may fill that when the matter was resolved, whatever that was taken to mean.

45 **CHAIRPERSON:** And they wanted to keep it open for him?

DR HOWES: Exactly.

MS RYAN: So after that, in March 1986, the Department of Education charged MacGregor with seven charges.

5 **DR HOWES:** Yes.

MS RYAN: Pursuant to the Teachers Services Act relating to child sex abuse offences, and these related to offences perpetrated on students at Kunyung Primary School?

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DR HOWES: Well, the information I have was that charges related to conduct at his home.

MS RYAN: Yes, but -

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DR HOWES: While he was teaching, yes.

MS RYAN: And conduct perpetrated on primary school students.

20 **DR HOWES:** Yes. Yes.

MS RYAN: And students - it appears students of Kunyung Primary School? And on 25 July 1986, the Department of Education found that six of those charges were proven.

25

DR HOWES: Yes.

MS RYAN: And there was then a hearing held to determine the penalty that should be imposed on Mr MacGregor; is that right?

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DR HOWES: Yes.

MS RYAN: And on 8 August 1986, the department determined that MacGregor should not be dismissed from his employment but, instead, that the penalty should be that he be removed from his position and appointed to another office; is that right?

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DR HOWES: Yes, and banned from teaching until September 1988.

40 **MS RYAN:** Yes. So that there was - the penalty imposed, apart from moving to another office, banning him from teaching positions until September 1988, which is just in excess of two years; is that right?

DR HOWES: Yes, and it's - it's - it's - it's an upsetting thing to read, that that was the penalty imposed.

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CHAIRPERSON: And just to be clear, that penalty was in the context of charges having been proven which included grabbing or touching students on the penis.

DR HOWES: Yes.

5

MS RYAN: And masturbating in front of students.

MS RYAN: And in that context, the ministry determined that the following matters were relevant to its decision not to terminate MacGregor's appointment: the fact that the offences were not committed at school; is that right?

10

DR HOWES: Yes.

MS RYAN: The fact that the department considered that MacGregor did not set out to commit the offences in a premeditated way and that they arose from his desire to assist some young lads who were considered to have a difficult home background? Is that one of the considerations?

15

DR HOWES: Yes, it was.

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MS RYAN: You would agree, Dr Howes, that if, in fact, that was that was the case and that these boys did, in fact, have a difficult home background, it might be said that MacGregor may well have exploited that fact?

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DR HOWES: I believe now we would regard that as - as the only description you could apply. Compounding this, I just note, Chair, those offences were conducted on more than one student so it wasn't a one-off.

MS RYAN: Then the department's investigation into him and determination as to penalty was concluded, and just to confirm, after that was done, there is no evidence that the department undertook any other investigation into MacGregor as to whether he might have offended against any other students, as per the Chair's previous question.

30

DR HOWES: That's correct.

CHAIRPERSON: And that really highlights several issue about that decision that must have been made not to conduct further inquiries, because a decision has been made about whether or not he can come back into the school system and teach, and on the penalty afforded to him, he would have that opportunity at some point to come back.

40

DR HOWES: I can only read that as an expectation that he would come back.

CHAIRPERSON: It's contemplated that - expected that he will come back, and yet no investigation or inquiry is done into what might have happened over the many years that he was in all of these other schools?

45

DR HOWES: That's correct.

5 **MS RYAN:** Indeed, we know that Mr MacGregor was advised, in a letter from the department on 13 September 1986, that he may apply for a teaching position on or after 29 September 1988, which is in accordance with the penalty.

DR HOWES: That's correct.

10 **MS RYAN:** And your evidence is that David MacGregor did, in fact, apply for another teaching position after 29 September 1988; is that right?

DR HOWES: If I can just come back, given that we're on that letter.

15 **MS RYAN:** Sure.

DR HOWES: Because it goes to a point that you raised earlier, I think, Chair, about the culture. It's just, to me, notable that that letter that indicated that he would be removed and appointed to another position, that he could apply for other positions, states:

"Pursuant to section 74(2) of the Teaching Service Act 1981 the above determination have been reviewed by the Chief Executive of Education."

25 Now, I don't know what that took, whether this person picked up the phone and said, "This is what I propose to do". I don't know the extent, but it is confronting to read that that decision, on the evidence of this, was approved by the chief executive.

30 **CHAIRPERSON:** So, again, going to the point that we were discussing about the evidence yesterday involving the principal and a district inspector, the evidence in relation to Mr MacGregor is that the decision-making, the same approach permeates right up to the highest levels.

35 **DR HOWES:** Perhaps if that - I can only assume that, at some level, the chief executive approved that and thought that that was appropriate. The - the contribution that that would have made to the kind of approach that was taken to these issues is revealing.

40 **CHAIRPERSON:** Meaning that it sets a tone or it sets an expectation about how these matters will be dealt with.

DR HOWES: Yes, thank you.

45 **MS RYAN:** Dr Howes, in your evidence, in November 1988, David MacGregor applied for a teaching position at Langwarrin Primary School and was successful in obtaining that position?

DR HOWES: Yes.

5 **MS RYAN:** And the Appointments Board of the Ministry of Education appointed him to that position.

DR HOWES: Yes.

10 **MS RYAN:** According to the material, he was due to start on 1 January 1989.

DR HOWES: Yes.

15 **MS RYAN:** Do you know whether the Appointments Board was aware of his history in relation to child sex abuse when it made that appointment?

DR HOWES: I don't know that, but I note that he was scheduled - that the commencement date was prior to the expiration of his suspension, which perhaps suggests they were not.

20 **MS RYAN:** Well, the expiration of his suspension was 29 September 1988. So he was - he was cleared to apply for another teaching position after that time.

DR HOWES: But I think the notes that I have indicate that application would have happened before the suspension.

25 **MS RYAN:** Yes. All right. In any event, he was successful in obtaining a teaching position.

DR HOWES: Yes.

30 **MS RYAN:** And the evidence is - your evidence is, effectively, he was only prevented from commencing that role after the principal at Langwarrin Primary School and other members of the school community objected to the appointment.

35 **DR HOWES:** Yes. And if I could make one observation here. This - there have been so many instances of where members of the department at this time acted terribly. We have got an example here of one person acting in a principled way, I think, using the other form of "principle". And I do want to note that, because I think there were - I don't - I'm not trying in any way to ameliorate the evidence
40 that we've heard, but I think there is evidence that there were people who worked in schools at that time whose behaviour was not reflective of the behaviour of those whose actions we've been considering, and this principal is an indication of that.

45 **CHAIRPERSON:** One thing that strikes me about this principal and the other members of the community who objected and also the parents who had written in relation to the charges, the pending charges in relation to MacGregor, it really

shows, doesn't it, that what the community was expecting was very different to what the department was doing.

5 **DR HOWES:** That's true. What's also interesting is that they knew. So there - so it's - it's interesting to speculate how did they - how did they know? I mean, my speculation would be that MacGregor's behaviour and sentencing was the subject of discussion among principals, and here we've got an example of a principal who's saying, "I'm not going to tolerate that", that it would have been the discussion, as you said, around parent groups and the expectation of this parent
10 group was quite different to the action that the ministry had taken in appointing MacGregor to this role.

CHAIRPERSON: Parents - the parents at the - at Kunyung?

15 **DR HOWES:** The school council.

CHAIRPERSON: Exactly, because we have, in both of these schools, parents raising concerns.

20 **DR HOWES:** No, I was just noting that parents raising concerns, but there were parents on the school council as well at Kunyung. So we've got this, again, you know - I don't want to - I wonder whether that - that institutional culture captured those parents on that council as well, because of that decision, because of that decision to say it was an administrative decision to transfer - but we don't know
25 what information they had as well.

MS RYAN: And after - after David MacGregor was prevented from commencing a role at Langwarrin Primary School, he was then transferred to the South Metropolitan Regional Office.

30

DR HOWES: Yes.

MS RYAN: Dr Howes, do you know whether in any of his administrative roles after the criminal convictions he had cause to deal with any reports or complaints
35 to the department about child sex abuse? Do you know?

DR HOWES: No, I don't know the duties that he undertook.

40 **MS RYAN:** I believe you were present yesterday when we heard evidence from Samuel that he did not feel comfortable speaking to someone in the regional office because he had heard that teachers who committed child sex abuse had been transferred to office work. Would you agree that's a fair concern in those circumstances for victim-survivors?

45 **DR HOWES:** Completely fair.

MS RYAN: Now, just finally on MacGregor, in February 1990, the Department of Education received a letter from a lecturer at the -

DR HOWES: Yes.

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MS RYAN: - Chisholm Institute of Technology School of Education, and this individual raised concerns that MacGregor was hoping to be a school principal and is currently working with street children. So that was in February 1990. And the lecturer stated, told the department:

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"I suggest that his continued employment by the ministry continues the perception that he's still a teacher and request that the department evaluate the suitability of teachers found guilty of indictable offences."

15

Are you aware that - well, first of all, is there any evidence the department took any action or made any investigation about the fact that, or alerted the police about the fact that MacGregor may still be working with children in some capacity?

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CHAIRPERSON: The point, I suppose, that arises from this correspondence is a concern that by continuing to be employed by the Department of Education, MacGregor is given the department's imprimatur in some way and that might actually assist him to be able to work with children in some context.

25

DR HOWES: Yes.

CHAIRPERSON: That's an extremely concerning issue that's being brought to the department's attention, isn't it?

30

DR HOWES: Very, very disturbing, that this correspondence was - was generated by the fact that he was studying to - enrolled in this program to become a principal, no less.

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MS RYAN: Yet it appears, Dr Howes, that after receiving that information in February of 1990, the department took no action at all. Perhaps time for a break, Chair.

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CHAIRPERSON: I just wanted to ask one further question and then we'll take a break.

In relation to MacGregor, would you agree that the evidence shows that what the department did in relation to his conduct and his placements after the criminal convictions really served to protect him, in some way, in his role in the community?

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DR HOWES: Yes, I would, and to protect his prospects of further employment with the department, with the ministry.

CHAIRPERSON: His reputation.

DR HOWES: And, therefore, protect his reputation. I think it's impossible to overstate how inadequate the response of the ministry was to this, and the
5 consequences of that are difficult to face. If I can make one last comment about this correspondence with - with Chisholm again, I would indicate there was someone who knew this was not a good thing to be doing. It's - so it's telling that the response from the ministry - because it goes to our earlier attempts to determine whether there were policies or procedures - the record that I've got of
10 that correspondence, when the ministry wrote back to the Chisholm people said that:

"The continued employment of teachers found guilty of indictable offences is assessed individually."

15 And it does go on to claim the ministry is concerned about the safety and wellbeing of students and makes every effort to:

"...employ conscientious and competent teachers..."

20 But that - there were no standard procedures for saying if someone is guilty of an indictable offence, here is what's going to happen.

CHAIRPERSON: And it also discloses the language used in that material, that
25 this is obviously not the first time that anyone is confronting this issue.

DR HOWES: No. I think it's the first time that the words "safety and wellbeing of students" has been foregrounded.

30 **CHAIRPERSON:** We'll take a break. We'll come back at 12.30.

<THE HEARING ADJOURNED AT 12.17 P.M

<THE HEARING RESUMED AT 12.31 PM

35 **MS RYAN:** Dr Howes, just two factual matters. We've been provided with the following information, and just for you to confirm that Principal Hussey died in November 1989.

40 **DR HOWES:** That's my information.

MS RYAN: And District Inspector Romanes was deceased in 1982.

DR HOWES: That's my information.
45

MS RYAN: Dr Howes, you've given a lot of evidence about transfers and how they worked in the relevant period, being 1960 to - we've dealt with till the late '80s. Are you able to outline the process first of all for transferring teachers for nondisciplinary purposes during that period, and then the process for transferring them for disciplinary purposes?
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DR HOWES: I've got a - a fairly sketchy knowledge of that, but I'll describe it as best I can. Disciplinary procedures, that was one of the sanctions available, was a - was a transfer. So, to the best of my knowledge, that was simply determining another location, whether that was a non-school or a school location, and placing that teacher in that location. For nondisciplinary measures, my understanding is that transfers were often a way in which people could - teachers could move to a school that was more desirable for them, that they would elect to transfer, and there was a system of points that you accrued for teaching in more difficult locations. And there was also the question of staffing management, what was referred to as an excess process where staff numbers were determined according to the size of the school which, of course, can fluctuate, and then people would be transferred out of a school where there was an excess of - determined to be an excess of teachers into another school, and, likewise, teachers could transfer into a school in which there were vacancies because of growing school populations.
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MS RYAN: Do you consider that it may have been the case that, in relation to some of the relevant employee transfers or transfers generally during that period, that they were undertaken using this nondisciplinary transfer mechanism in order to effectively avoid revealing or addressing the real reasons for the transfer?
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DR HOWES: We heard some evidence of that, as I think I indicated yesterday, from a former district inspector.

MS RYAN: Are you able to say why the transfer mechanism was used rather than termination of employment in these instances?
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DR HOWES: Again, I can only speculate. I don't have any evidence from what we've been able to obtain, but I think it goes back to our previous conversation that it was privileging the reputation and the ongoing employment of a member of staff. Well, there's two things. If we're talking about the - the outcomes of disciplinary procedures like termination related to child sexual abuse, that that was not regarded as sufficient reason to terminate, and so transfer was regarded as a - under the disciplinary code as a - as a lesser punishment, a lesser sanction. If - if there was a desire to act outside that kind of disciplinary process to cover up, that was a - that was a mechanism that appears to have been used.
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MS RYAN: Dr Howes, you've given extensive evidence now as to what the department knew about the four relevant employees at the time of their offending, as well as the department's response to that knowledge. Are you able to explain or tell the board, in your view, whether and if the department's responses to those
45

allegations and incidents complied with those regulations, and particularly clauses 10 and 11, about which we had regard yesterday?

5 **DR HOWES:** It's - I'm struggling with an answer because of that - this - the thing that we've come back to a number of times, the absence of proper policies and procedures. In that absence, there was kind of nothing to be - nothing to be noncompliant with, other than the processes for - for transfer, and - but in saying that, was - was the transfer being used in a way that it surely was never intended? Yes.

10

MS RYAN: And are you able to say whether you or the department has reviewed records for any disciplinary actions taken for child sex abuse under these regulations during the period that we're dealing with for the inquiry?

15 **DR HOWES:** I think we've reviewed - we've reviewed all the documents that we could - that we could find related to the - the cases that we've been looking at over the last two days.

20 **CHAIRPERSON:** Just to understand that, and it ties into some of the questions that you were asked yesterday, as I understand it, when civil claims first started being made, the department did some work in relation to specific civil claims to understand what had gone on.

25 **DR HOWES:** In the early 2000s.

CHAIRPERSON: In the early 2000s. And then in response to this inquiry, further work has been done in relation to the matters of relevance to this inquiry. Am I right that no other work was done either at an earlier point of time or in that intervening period to try to understand the broader picture here?

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DR HOWES: Yes, and I can't comment on what might have happened prior to, for example, my coming into - into this position. I think we knew from those - we knew - we felt we knew a lot from those records about not only what had been done, but, more to the point, what hadn't been done. We - we took as - I think our stance was to take the evidence that we had found from those interviews and from all the transcripts and had no reason to think that that was wrong.

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CHAIRPERSON: Are you talking now about the work being done at the present time in relation to this inquiry or back in the 2000s? What time period are you talking about?

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DR HOWES: Back in the 2000s, there was that work that was - that was done. I think people used that to form a - form a view and then there - there was a - there was that gap until more recent times when further - further evidence has come forward. I'm not aware of work that might - whether work was or wasn't done in that intervening period.

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MS RYAN: Dr Howes, I just want to ask you some questions about your understanding and knowledge of the role of district inspectors, because that's arisen quite often on a number of occasions when we're reviewing what occurred. Just for your assistance, if you can go to DH-2, and this is the part A knowledge regarding Stan. If I can just ask you to look at the date of [REDACTED] Take your time.

DR HOWES: Yes.

MS RYAN: And you will see there there's a reference - I won't name the individual but there's a reference there to evidence from a district inspector who was - did cover the Beaumaris Primary School area in the - in about [REDACTED]

DR HOWES: Yes.

MS RYAN: Do you see that?

DR HOWES: Yes.

MS RYAN: Now, there's been evidence obtained from the department, from this individual, which suggests that at some stage in the 1970s, district inspectors were involved in teams to investigate sexual complaints. Do you see that?

DR HOWES: Can you point me to the -

MS RYAN: I will tell you what - you should have - I will tell you what he says. He says:

"Later on..."

30 Which you can take to be some stage in the late '70s:

"...a number of us inspectors were involved in teams to investigate department complaints of drunkenness, sexual complaints and things of that nature. Then in 1983, the inspectorate closed."

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So are you able to shed any light on that, that is, this evidence that there were district inspectors either allocated or working in teams to investigate sexual complaints?

DR HOWES: No, I don't have details of that, no. I - whether "teams" meant a district inspector working with an administrative support worker or similar or other district inspectors, I simply don't know.

MS RYAN: It would appear to indicate, if that was the case, if it was district inspectors being involved in teams, that there was some kind of formal role for them, or someone had made a decision in terms of getting them to investigate sexual complaints?

DR HOWES: Yes, although I'm not sure that we've got reason to think that they were treated differently to other forms of misconduct.

5 **MS RYAN:** Just in terms of district inspectors, and their - you've given evidence about - and we've gone through the documents which reveal that district inspectors had the power to facilitate transfers or make determinations about transfers. Are you able to say whether they were able to do that only within their relevant district or area of responsibility? Or were they able to facilitate transfers across districts?

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DR HOWES: I don't know that.

MS RYAN: I want to ask you about evidence that the department obtained from a former district inspector. You should have this record. It's DOE.001.001.0048.

15

DR HOWES: Yes.

MS RYAN: You have a copy. And have you had an opportunity to read that?

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DR HOWES: Yes, I have.

MS RYAN: And this is effectively evidence from district inspectors who were working for the department in the 1970s.

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DR HOWES: Yes.

MS RYAN: And the material reveals that one of them described the culture of transfer as following:

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"In those days, we had the philosophy about teachers with problems like this, keep quiet and give them another start."

DR HOWES: Yes.

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MS RYAN: And about the process with which district inspectors would deal with complaints of a sexual nature, it was described to be a reference system:

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"If a complaint was made to the director, it was a yellow notice and I had to investigate. I handled one, and I transferred the teacher to non-teaching duties."

And the individual notes that:

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"The reference system came from the ministry itself."

So in that example, it would appear that the director, at least, the ministry was aware of the allegation and asked the district inspector to investigate.

DR HOWES: I read that as saying if the complaint came to the director, to the ministry, the ministry would refer it on. So there could be other forms of complaint.

5

MS RYAN: Yes. And a teacher or principal could also contact the inspector directly.

DR HOWES: Yes.

10

MS RYAN: Rather than push it up to the director first.

DR HOWES: Yes.

15

MS RYAN: So there were a number of mechanisms by which a complaint could come to an inspector.

DR HOWES: Yes, that's right.

20

MS RYAN: And this former district inspector describes the culture again as:

"The motto for inspectors was consume our own smoke and try to solve problems when they arise as quickly as possible."

25

Does that accord with your understanding as to what was going on in the 1970s?

DR HOWES: I think that's both consistent with and illustrative of the way in which matters were handled that we discussed earlier this morning, that district inspectors, where this referral to a processes was, well, the district inspector will look at it. But the only way to interpret that - and I've got no reason to question that that wasn't this inspector's understanding and the understanding of others - was that basically they would sort out how they would investigate that, each matter. And it's, you know, again telling, that phrase, it wasn't only "consume our own smoke" but "try to solve problems when they arise as quickly as possible", and I guess there's two ways of looking at that one. The best possible light is be efficient, don't dawdle. I think it more likely that the other interpretation is at least as plausible because of all the other evidence we have, is don't do a - there's not an imperative and there certainly aren't policies and procedures that require a thorough investigation that will take some time to be followed.

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MS RYAN: One of the other matters stated - this is on the next page - Dr Howes, about record keeping, that is documents from that era, this former district inspector says:

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"Records were supposed to be destroyed after a certain number of years."

Do you see that?

DR HOWES: Yes.

5 **MS RYAN:** Are you able to tell the board what, if any, policy did exist around the destruction of records related reports of child sex abuse in schools?

DR HOWES: I don't have that detail.

10 **MS RYAN:** And just onto the process itself, this district inspector, as I said, talked about a yellow notice being given upon a complaint of this nature. Are you able to shed any light on this system of notices?

DR HOWES: No.

15 **MS RYAN:** The former district inspector describes the system as:

"If a complaint was made to the director, it was a yellow notice."

20 So if that's the case it would appear that two things are true: one, that there was at least some kind of informal, if not formal policy, in place to respond to these incidents.

25 **DR HOWES:** To the extent that district inspectors would be asked to investigate and that form took this - the form of that was what's being described here as the yellow notice, yes.

MS RYAN: And to the extent that the district inspectors were aware that a yellow notice means -

30 **DR HOWES:** They should investigate.

35 **MS RYAN:** - they should investigate. And if that's the case, if the director was issuing yellow notices to district inspectors, that would indicate that the Department of Education was aware that there were certainly allegations of sexual abuse occurring?

40 **DR HOWES:** Yes. And that - and that because they got issued with a direction to investigate, then - then this information says that the yellow notice required them to investigate and report and recommend.

MS RYAN: And in terms of the culture of transfers that this former district inspector described as:

45 "The philosophy was about teachers with problems like that, keep them quiet and give them another start."

Are you able to say whether, when that occurred, whether district inspectors communicated to the new school why the teacher had been transferred?

DR HOWES: I don't know that.

5

MS RYAN: Are you able to say in those circumstances how the risks of further offending were managed and if they were managed at all?

DR HOWES: In the absence of those clear policies and procedures, that would oblige people and require district inspectors to inform a receiving school. I'm not able to say that those things were in place, so I infer they were not.

MS RYAN: And would you agree that it is likely that, consistent with this culture, that this district inspector described as "keep quiet and give them another start", the new school may not have been informed at all?

15

DR HOWES: That's what I would infer from this, from the two things, that the keeping quiet suggests that that wouldn't be broadcast and a new start suggests they would not be - they would not - they would not have their prior offending assigned to them when they took up their new role.

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MS RYAN: In relation to your statement that you've given, Dr Howes, you were asked some questions as to the date certain information became known to the department, and you've set out various dates in DH2. If I can take you to an example - well, perhaps the first example, if we go to Wyatt which is at the beginning of that DH2.

25

DR HOWES: Yes.

MS RYAN: You will see that there's dates there in the [REDACTED] about, for example, evidence that the principal was informed. Do you see that?

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DR HOWES: For example, the fourth line?

MS RYAN: Yes.

35

DR HOWES: Reports from unknown persons to the principal, yes.

MS RYAN: Yes. But you stated there, the dates info became known to the Department of Education, 2001, you would agree though that if you accept that the principal knew, then the principal's an officer of the Department of Education. So it's not quite accurate to say the Department of Education only knew many years later?

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DR HOWES: I'm - I'm taking from this that there was that distinction that we would make now between teaching service staff and the department and principals. So I - so yes, you're right, they were definitely employees of the

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department. I think "department" here is being used to reference people like the district inspectors and the - and the broader bureaucracy.

MS RYAN: You wish to clarify?

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DR HOWES: Yes.

MS RYAN: Now, we've got a report -

10 **DR HOWES:** I guess it would be that - the clearest way is probably to distinguish them as school-based roles and non-school-based roles.

MS RYAN: But you would describe a district inspector as a school-based role, would you, on that analysis?

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DR HOWES: No.

MS RYAN: You agree that a district inspector is -

20 **DR HOWES:** A definite -

MS RYAN: - better in the managerial category?

DR HOWES: Yes, I would.

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CHAIRPERSON: We were just touching earlier in relation to Mr MacGregor to this issue of whether the department, once it became aware of convictions and things of that nature, decided to do a kind of backwards analysis to see what the scope of the problem might have been, and we were discussing MacGregor. If we're looking at this particular perpetrator that we're talking about, what we do know, and we canvassed this yesterday, [REDACTED] ultimately a reference is made in the department's resource register in relation to the state of his employment, and so there's knowledge at that stage, and that's in [REDACTED]. Are you aware of whether at that point - and this is the same question I asked in relation to Mr MacGregor - this backwards looking analysis was done to try to understand the scope of the problem in relation to this perpetrator?

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DR HOWES: No, I don't know the answer to that.

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CHAIRPERSON: Has that been looked at by the department, to your knowledge?

DR HOWES: I don't know the answer to that.

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MS RYAN: We've been provided by the department with a report of the Minister of Education in 1972 and 1973. I don't need you to look at it, but just got a query

about a reference. It refers to a Psychology and Guidance Branch of the department. Do you have any knowledge of that, and whether that branch had any role in supporting responses to child sexual abuse?

5 **DR HOWES:** No, I don't - I don't have any detailed knowledge but that would have been - I'm speculating here again - that would have been a precursor to what we now have, a student wellbeing health and engagement division. So at that time I'm imagining that was a precursor of those specialist services becoming more part of the work of the department.

10

MS RYAN: Dr Howes, now looking at the evidence you've given with regard to the roles of various people within the department, from the director-general to the various regional heads, district inspectors, principals and so forth, are you able to comment on how the structure of the Department of Education and the Victorian Government school system during the relevant period impacted its ability to proactively identify and respond to child sexual abuse? Do you have any comment on that?

20 **DR HOWES:** If I've understood the question correctly, so tell me if this was not the intent or the point. I don't think the structure represented any impediment. I think the impediment that has led to the clear failings that we've traversed was one of a lack of policies and procedures and a culture that did not place a premium value on the safety of children. So there - the structure of principals reporting to district inspectors, reporting their - that structure should have facilitated and enabled and ensured, to the fullest extent possible, the safety of children. It was the practices within that structure that I think where the clear and devastating shortcomings were.

25 **CHAIRPERSON:** You would attribute it more to culture rather than structural issues as such?

30 **DR HOWES:** I - I - in my mind they are intertwined in that the - the lack of an orientation to a determination to identify the risk to children that was clearly present, meant that there was no drive to create policies and procedures and practices that would ensure that safety. That reinforced the lack of awareness and the lack of attention. So this was a - this was a very damaging mutually-reinforcing dynamic. But I can't see any reason why, with that kind of structure, where a clear directive was given that here are the way the risks will be identified, managed and responded to, and here are your obligations, all those things, I don't think the structure was the impediment.

35 **CHAIRPERSON:** And just to be clear, one aspect of it is the people who, at the time, like the principal or the more senior people who were receiving complaints or letters are dealing with it, but another aspect of what these questions are going to is that backward-looking analysis that we talked about in relation to MacGregor of asking, well, why didn't the department at that stage seek to proactively

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understand the scale of the problem looking backwards? And is your answer the same when it comes to that part of the analysis?

5 **DR HOWES:** I think that would be part of, yes, why - that, was there an obligation to review an incident that it happened and how it was managed. That wasn't there because there were no policies and processes to drive that.

10 **MS RYAN:** Dr Howes, you may have answered this in part already, but what - now that you've given evidence over almost two days, one full day, what are your reflections now on the policies, actions and inactions of the Department of Education at the time that we've traversed and how that has - that impacted the safety of children in schools and the community?

15 **DR HOWES:** There were clearly some individuals who placed a premium on student safety and were aware of the risks that were present. In the cases that we've looked at, there was - there were repeated failures on the part of the Department of Education and its staff to identify the risks that were clearly there, to take action to mitigate those risks and to support students who had been
20 offended against. That was a result of two things: the lack of a - three things: the lack of documented and required policies and procedures to be followed; a seeming culture, at least amongst some, that downplayed the significance of those offences; and decisions taken by individual officeholders that had very dire consequences.

25 **CHAIRPERSON:** You've referred to the lack of policies and procedures in giving that answer. How do you understand or explain the fact that policies and procedures dealing with these matters weren't put in place?

30 **DR HOWES:** In a subsequent interview we had with one of the district inspectors, they said the issue of child sexual abuse was never raised with them as something that they would be expected to manage. I think I can - Chair, I can't answer that definitively. I don't know what was in the minds of people. The - the inferences that I would draw is that, as I understand there's evidence about the broader cultural orientation towards these things, I think that the department,
35 where it, in my view at that time, it should have - it should have taken a different stance to that than was characterising the broader community. The fact that those policies and procedures weren't in place, to me, reflects a - the lack of a clear and explicit referencing of the risk that these offending - that this offending would occur, and a determination to put in place active and real steps to reduce that risk
40 as far as possible.

45 **MS RYAN:** Would you agree, Dr Howes, that given, as you've already acknowledged, the department was aware of the risk of teachers offending against children in a sexual way, since at least 1882, certainly again in 1952 because of the memo, in light of that knowledge, and in light of the fact that the department, during the relevant period, had disciplinary procedures for teachers, if it is the case that there were - there was a complete absence of policies or procedures dealing

with this matter, that is really an extraordinary abdication of responsibility by the department?

DR HOWES: I think it was a - it was a terrible omission.

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MS RYAN: Chair, I don't have any further questions for Dr Howes. So I was intending to invite you, doctor, to make a concluding statement, if you wish.

DR HOWES: I haven't prepared a concluding statement. From my perspective, in the role that I currently hold, I want to express the deepest regret that what happened at the department by the people who held my equivalent position did not take the actions that we've just canvassed. They did not do - they fell a very long way short of doing not only everything that could be done but anything that could be done, in any real or substantive terms, to protect children. I'm aware of the damage that that has done. I apologise profoundly for that and express my ongoing regret that that was the case. And I - my concluding remark would be that we will do everything that we can, those of us who hold those offices now, to make sure those things do not happen - do not happen again. Thank you.

CHAIRPERSON: Mr Howes, I want to thank you for attending to give evidence. It has been very helpful to our understanding of a range of matters and it's important to have someone in your position here to explain these things that we've heard about over the last two days. So I thank you for attending and giving us that time. We will adjourn until 2 pm.

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<THE WITNESS WAS RELEASED

<THE HEARING ADJOURNED AT 1.07 PM

<THE HEARING RESUMED AT 2.04 PM

CHAIRPERSON: Can we call the next witness, please.

MS STOWELL: Yes. The inquiry calls the witness Professor Patrick O'Leary.

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CHAIRPERSON: Thank you, Ms Stowell.

<WITNESS PATRICK O'LEARY, AFFIRMED

<EXAMINATION BY MS STOWELL:

CHAIRPERSON: Thank you, Professor O'Leary. Please make yourself comfortable. If at any stage you would like a break, please just let us know and we can do that.

45

PROF O'LEARY: Thank you.

CHAIRPERSON: Thank you, Ms Stowell.

MS STOWELL: Thank you. Professor O'Leary, the Board of Inquiry is aware that you're based in Queensland, and we thank you for making time on your trip to
5 Melbourne today. You have prepared a statement for this inquiry; is that correct?

PROF O'LEARY: Correct.

MS STOWELL: And do you have that statement in front of you.
10

PROF O'LEARY: I do.

MS STOWELL: And are you satisfied that that statement is true and correct?

15 **PROF O'LEARY:** I am.

MS STOWELL: Professor, could you please set out for the Board of Inquiry your position at Griffith University and your professional qualifications.

20 **PROF O'LEARY:** Sure. I've been at Griffith University since 2011 and previously before that held academic positions in the UK and in South Australia. I hold a Bachelor of Social Work with Honours, and a PhD from Flinders University. Currently I'm the co-lead of the Disrupting Violence Beacon, which is a bit like a research institute, and I also look after a number of knowledge transfer
25 activities through the Violence Research and Prevention program. I'm the co-chief or the editor for the International Social Work, and I'm also a member of the National Strategy to Prevent and Respond to Child Sexual Abuse, which is based at the National Office for Child Safety, and part of the Federal Attorney-General's Department. I have been, for around eight years, the Chair of the Clinical
30 Advisory Committee for Survivors and Mates Support Network, which is a specialist service for male survivors of child sexual abuse. I've worked internationally with Terre des hommes but other organisations as well, such as UNICEF. I'm currently a board member of DVConnect, which is both a phone and online emergency response service for people affected by domestic violence, both
35 women and men, and I also serve as - on the Human Ethics Committee for Your Town.

MS STOWELL: Thank you, Professor. Chair, Professor O'Leary has an extensive curriculum vitae which has been provided to the Board of Inquiry. But, Professor,
40 I might ask, could you just outline for us in particular the role that you played during the Royal Commission into Institutional Responses to Child Sexual Abuse?

PROF O'LEARY: Sure. I played a number of roles, both quality control of some of the research that the Royal Commission undertook, but also carrying out
45 discrete pieces of work in preparation for some of the case studies, but also to add somewhat to - to inform some of the recommendations. So some examples of that, that I have prepared a statement, was a large project on grooming and also looking

at the actual knowledge of institutions in a particular time set in relation to child sexual abuse, as well as some work on the - the issues of disclosure and the fact that many men who had experienced child sexual abuse in institutions that were of interest to the Royal Commission had taken, you know, in many cases, decades
5 before they were first able to come forward about the crimes committed against them.

MS STOWELL: Thank you, Professor. Professor, you've been identified by this Board of Inquiry as an expert, if I can put it that way, on the topic of grooming.
10 And I'd like to start there by covering some of the parts of your statement. Perhaps if I can ask as an opening question, having carried out research in this area for many years, what's the best definition that we currently have about what grooming is?

PROF O'LEARY: Well, the first thing I would say is that the definitions have changed over years as the sort of different modes and different techniques that perpetrators can use. So, for example, now our definitions that we would have had
20 20 years ago didn't include the use of electronics or technology as part of the process of grooming. So I think one of the features that we see with our definition of grooming is it's about intent, because behaviours in grooming are all geared around presenting a particular credibility and particular emphasis that it's normal or good or charitable. But sitting behind that is an intent to both access children and create a sense of credibility and trust with a child. So critical to any definition of grooming - because some of these behaviours are evident in all people because
25 they're well intended, but in the case of grooming, these - the intention of this behaviour is about their offending.

MS STOWELL: In your statement at paragraph 7, you say that it was only in about the 1980s that the concept of grooming was written about in academic
30 publications. The timeframe of this inquiry stretches back to 1960. Can you describe how grooming existed or how it was understood before we had this more modern language that we have now?

PROF O'LEARY: Sure. I understand that before it was sort of written about in a formal sense, some investigators and police had referred to grooming in the '70s,
35 but it had never really been coined as a proper term. And so often the term was, you know, is about the - the same tactics were used regardless of whether the term was current at that time. But often framed around control and coercion, influence, not only over the child but over the community, over the family, over other
40 individuals. And I don't think we had the language back then because child sexual abuse was really seen as a very rare event, and often the stereotype that we now identify was really believed, that it was an offence committed by strangers, that it wasn't committed by people close to children. So, I mean, in my statement I've given some examples. For example, that, you know, the current estimates, for
45 example, of one in five and one in three - one in five boys, one in three girls back in the 1970s was, you know, in one case, the Psychiatric Association of America

said one in a million, so we know that that was way off the mark, but even one in 100, one in 30 were sorts of figures of prevalence used historically.

5 **MS STOWELL:** Just want to pick up, you mentioned the word "influence". In the institutional context - and this Board of Inquiry specifically interested in government schools, primary schools - how does grooming take a form or particular characteristics in an institutional setting like a school?

10 **PROF O'LEARY:** Particularly the work shows that it - very much about how the perpetrator could establish credibility through their - not only through their work but through doing extra things. Through influencing others to believe about their work, but also having a particular title or particular status in an institution such as a school gives you authority that is unearned in your own personal right. It's because that's been granted. So it gives a level in the institution of your authority
15 and your influence to not be held in question.

MS STOWELL: You say in your statement that grooming is something that makes a lot of sense in retrospect. Can you explain to the inquiry why that is?

20 **PROF O'LEARY:** Yes. And I'll draw on a couple of experience, both from the Royal Commission but also my own work and research with survivors. When you unpack some of the behaviours that a perpetrator has used that, at the time, might have seemed quite positive, except for the abuse that was occurring, those actual acts make more sense in the rear-vision mirror than prospectively, and that's
25 because many of those behaviours had been normalised. And we didn't know - and it goes back to that issue of intent - what was the intent of that behaviour of building a relationship with the child? And I think also the sort of tactics used by perpetrators add to some of the community perceptions of children too, that children, you know, that - can be provocative or children can be manipulative. So
30 once you have that position of authority and certain things said and done by a perpetrator to discredit children is part of that grooming process. And I think one interesting thing, when we look in the rear-vision mirror, is often the behaviour of perpetrators might be that they're grooming multiple children all at once. They're not sexually abusing all those children. They're making particular choices. But
35 also, because their activities and their grooming behaviour is with multiple children, it normalises the behaviour. It also makes it seem as just what they're doing. And because abuse isn't happening in all cases, it's easy for them to act with a sense of invisibility and even impunity with their level of authority and status.

40 **MS STOWELL:** What's the challenge, then, in understanding or identifying grooming that's happening now, or prospectively into the future?

PROF O'LEARY: Can you say that again, sorry?

45 **MS STOWELL:** What's the difficulty with understanding or being aware of grooming that might be happening in the present, and prospectively, as opposed to retrospectively?

PROF O'LEARY: Well, that - that is because, you know, many people who aren't offenders engage in that behaviour as well, and their intent is not to harm children. I think - I think one example is - which I've sort of detailed in the report,
5 for example, someone might, you know, really show that they're very likeable, a community person and serving the community and taking extra steps, which we really value in our communities. It's really important. But, for example, they may - an offender may do a lot of that work but, for example, offer to help a child behind closed doors. Maybe that child is struggling with a particular issue or
10 excelling at a particular issue but that's being used as a justification to access the child. But most people who are child aware and have a focus on child safety would - would not close the door. They would make all their activities and their interactions with a child transparent. And, in fact, their time spent with the child would be, you know, commensurate with what we would expect of adult/child
15 relationships. So it might seem like a minor point, just the shutting of a door, but when we actually look at the tactics used and all the work happening before that door is shut, of credibility-building, it is really important to think about how abuse is hidden.

20 **MS STOWELL:** In your statement, you mention there's a recent movement in Australia to not permit good character references for child sex offenders in Australian courts, and you provide a reference there for some media article on that campaign. Can you just explain to the inquiry what you understand that to be
25 about?

PROF O'LEARY: Sure. I think - and this is part of that prospective understanding, is that the grooming behaviours, the good character behaviours, are actually central to the perpetration of abuse. And so a number of survivors have led a movement to really question the use of good character references when
30 offenders are being sentenced. And in some cases, offenders have been - had their sentence reduced because of the good character reference that actually details all their community service, all their extra work that actually was part of their grooming behaviour. So this - this movement's got some attention recently in the media, and it's being really led by survivors who are using their lived experience
35 to show the actual use of the good behaviour reference, is it detailing how they were grooming children at the time.

MS STOWELL: You haven't -

40 **CHAIRPERSON:** Can I ask a follow-up about that. Is it your view that the use of those good character references, the fact that courts might accept them and the fact that they might be used - for example, one example we've seen is a good character reference being used when someone is going through an internal disciplinary proceeding. Do you think it demonstrates a lack of true understanding about what
45 grooming involves?

PROF O'LEARY: Absolutely. And it shows that - it doesn't really properly expose that this is part of the tactics and part of the creation of credibility that has given that particular offender access to children, but also trust of children.

5 **MS STOWELL:** Professor, you may have covered this already but do you have a view on whether limiting good character references for child sex offending in this way would be a good idea in cases involving grooming?

10 **PROF O'LEARY:** Absolutely. I think - and that's not to criticise that they have been used in the past, but - but, rather, we understand grooming in a much more detailed way than we have in the past. We - I often equate grooming to some of the work that's being done around coercive control. It's a very controlled activity, and often sex offenders are presented as out of control, and that's actually a rarity. They're quite purposeful in their tactics, quite controlled. And so I think
15 it's a really important that we expose those decisions, not in the frame of good character, but in the frame of some of their offending.

MS STOWELL: In the historical context, and if I can ask you about the '60s and '70s and your view on that, how would tactics of grooming differed between boys
20 and girls?

PROF O'LEARY: Just got to find my spot.

25 **MS STOWELL:** Paragraph 17.

PROF O'LEARY: I think some of the tactics used to groom boys often relied on sort of the dominant masculine sort of ideas. When we think of the 1970s, '60s, we think of a particular type of masculinity. Some of that has held - is still held today, but some is different in terms of what we expect. We're also particularly aware of,
30 like, how sport is used, and I think also giving the relationship an adult theme. So sometimes we saw, for example, perpetrators using alcohol or drugs. I think now we see a much more wider range of tactics used, compared to then. And I think that there's also evidence that in the 1960s, '70s, certainly from our review of case studies at the Royal Commission that I was involved in, that perpetrators targeted
35 vulnerable children, and I think it's probably important to say there that that's not just a structural vulnerability about things, but it might be about - such as the socio-economic status of a family, but all children are vulnerable to grooming and child sexual abuse. It might be that they're from a single-parent family; it might be that they have a particular trauma that occurs in the family. For example,
40 perpetrators might target the mother, for example, about role model, relief the caregiving responsibilities. As I mentioned earlier, there might be a vulnerability about particular area child struggles in or excels in, and the perpetrator might assist in that area or be seen as encouraging that excellence in a particular area. And that allows them that extra contact. I think also children are incredibly
45 trusting of adults, and I think we - if we think about, at that particular time that this inquiry is focused on, adults held a - a much less questioned position than they do now in children's lives. And all children want to be told wonderful things about

themselves. And this is a tactic of grooming. They want to be told they're liked and capable. So this forging of a positive relationship with the status of adulthood at that time is particularly important, that building a special type of relationship based on trust, secrecy and a degree of dependence that I think is important, that
5 the child may perceive they're receiving something from that relationship in terms of their status, in terms of what opportunities it opens up for them. And I think this is probably a strongest strategy historically, because now we do have greater visibility and questioning of adult authority, or the special relationship that a child might have with a particular person in an institution. So we certainly see - I
10 certainly in recent times have been surprised by the level of manipulation, the level of extra hidden things that perpetrators may go through, because they're more aware that sort of the past behaviours of grooming would be - might be thrown into question if they were to occur today, such as taking a child privately in a private car or taking a child on an outing on their own. So now I think perpetrators
15 often think and act in different and a more hidden way. That's not to say that doesn't happen today but it's probably much more apparent that tech, the sort of media, the sort of gaming, popular culture, access to particular popular culture issues might be used more today than they were at - at the time that this inquiry is focused on.

20

MS STOWELL: Professor, I just want to take you back to looking at the institutional context and communities around the concept of grooming. Is it possible that there's the grooming of the child, that in, say, the context of a school, there could be grooming of fellow staff and people in the school community? Is
25 that possible as well?

PROF O'LEARY: Absolutely. And it goes back to that establishment of credibility and service. I just want to mention one thing I didn't mention before, just in - and it does relate to that community. If we think about in the 1960s to the
30 1990s and masculinity, which is something you mentioned before, about gender, it was a very homophobic world in that period, much more so than now. And so men - part of the strategies often used was to silence the men through fear of homosexuality being exposed in some way, and that, I think, has changed now in some ways. But going back to the community aspect - is that okay?

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MS STOWELL: Yes.

PROF O'LEARY: Yes. One thing we often hear is that perpetrators use tactics to fill a gap, for example, by coaching or sharing part of the caring burden, where the
40 child's family and the community might feel indebted to the perpetrator. It's not just that the perpetrator has provided the service. They also create a sense of goodwill and a sense that the family owes something, without it ever being said, or the child owes something, the school community owes something. Often perpetrators might receive awards or acknowledgements or life memberships, etcetera. And in school, this manipulation might occur through strong service to
45 the school community, through involvement in a whole range of extracurricular activities but also that sense of going that extra mile. And often, in my experience,

you hear communities saying in disbelief about a perpetrator, "Oh, but they were so good. They served the community. They always stayed behind. They always waited for the last child to be collected by the parent." And this creates that grooming of the community.

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CHAIRPERSON: So just to stop you there, in some ways, the grooming then served a few purposes for the perpetrator because it can enable access to children, but it can also provide some protection if questions are raised or allegations are made. The community will have this view that, "Hang on a minute, this person's such a trusted member of our community, this couldn't possibly be right."

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PROF O'LEARY: Absolutely, and it kind of enlists that community to defend them, if questioned, but also to receive accolades that sort of really silence anyone from questioning that person.

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CHAIRPERSON: And provide an impediment to the child who might be thinking of making a disclosure because actually the person that they might make the disclosure about holds this trusted position?

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PROF O'LEARY: Exactly, yes. And the child might make a - a decision at that time that they won't be believed, or, on occasions, that other children we know aren't believed at that time or quickly dismissed that, you know, so-and-so would never do that, look at all they've done for you.

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MS STOWELL: Professor, your research has identified that there are different types of perpetrators. Could you help us to understand what those different types of perpetrators are? I think there's three categories in your statement that you cover.

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PROF O'LEARY: Sure. So there's really three types: predatory perpetrators, who groom and perpetrate abuse very systematically, very controlled. They often have multiple victims and they often are - their offending occurs over a long period of time, and they make conscious efforts to conceal their - their actions.

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Opportunistic perpetrators still groom children, but are less strategic in how they do that. And situational perpetrators may still abuse children but not in a planned way, when the situation arises. So, for example, in a child - a situational perpetrator may build up trust with a child, not initiate abuse but then, for example, justify the abuse because the child showed them affection in some way, and then put the responsibility and blame on the child for the abuse. The - the sort of predatory perpetrators work much harder and (indistinct) about creating credibility for themselves, and they prepare the environment quite carefully. So they - you know, they gain some stealth-like - and sometimes when we were reviewing some of the tactics of grooming at the Royal Commission, from teachers and clergy, there was a sense that they acted, because they had done so much work in establishing their credibility, with a sense of impunity, and this may lead them to take greater risks which then increases the risk of them getting - getting caught on occasions.

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MS STOWELL: Chair, I have no further questions on grooming. I propose to move to a different subject, unless you have any questions on this.

5 **CHAIRPERSON:** Just one question, thank you, Ms Stowell. Is the main difference between the opportunistic perpetrator and the situational perpetrator that the opportunistic perpetrator may engage in some grooming whereas the situational perpetrator will not?

10 **PROF O'LEARY:** They may not in some cases. It could be more random because the perpetrator may not have had past contact with the child. But there are situational perpetrators that have groomed the child and established a relationship where they have credibility. And so when the situation presents itself, they - they act on it.

15 **CHAIRPERSON:** Thank you, Ms Stowell.

MS STOWELL: Professor, this inquiry's Terms of Reference charge it with looking at support services and approaches to healing for victim-survivors. In your
20 statement, you say that you believe there's some real gaps in the system in terms of support for particularly male victim-survivors of historical child sexual abuse. What are those gaps and what's the problem, as you see it?

PROF O'LEARY: I think that those issues are complex, and they are historical in
25 some ways because of the - the way that sexual violence services were first established and often established through the history of - of the women's movement and rape crisis centres and sexual violence that was focused particularly on adult victims and mostly women. So there - there's this history
30 where all sexual violence got put in together, and obviously there is some real challenges in how you prioritise when someone has recent - very recently experienced sexual assault such as rape, and someone who's making a request for service about abuse that occurred historically. And so this has disadvantaged, in
35 my - my view, historical survivors of child sexual abuse and especially male victims because there hasn't been an intuitive go-to service because of the way they're structured and the different purposes they were set up for.

MS STOWELL: In the post-Royal Commission world, if I can put it that way, is it disappointing that these services don't exist or perhaps shouldn't exist in the way that they ought?
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PROF O'LEARY: It is. It is certainly disappointing. I think the - some of the recommendations are still work in progress in terms of establishing an appropriate service system for survivors of child sexual abuse. And I think one of the
45 disappointing things is that we haven't fully understood complex trauma and the lifelong effect it has across the life course. We often - often healing is - in other domains is seen as a final thing and that people move and never revisit the issue. But we know, with complex trauma, people can reach a very safe and healing

space, but years later, something can trigger them. Years later, something occurs that may take them back to that trauma. And it's therefore really important across that life course that we are actually taking complex trauma and their needs across that whole span, and the current service system doesn't really meet those
5 requirements, particularly if someone doesn't have access to private counselling services, which can be quite costly. And also for males, I think it's important to understand their - that - the many sort of intersectional issues that can affect them.

CHAIRPERSON: Can you just elaborate a bit more on that? One thing I really
10 took from your statement was the gender differences in how people might respond to sexual abuse, and I think it would be very useful for the people sitting here today to hear a little bit more about that.

PROF O'LEARY: Thank you. I'll just find that spot -
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CHAIRPERSON: Right.

PROF O'LEARY: - where I mention that. I think the - and I've worked with male
20 survivors for over 25 years, and we know that disclosure can be very difficult time for men. And disclosure isn't one event. They may disclose at one other point and disclose again later in life. How we receive that disclosure is really critical, and there's a lot of shame and guilt. We also know that many men come forward with a sense of - of fear and not always connecting their behaviours to the abuse. And later in the statement - I forget the number, but I talk about suicidal behaviour, and
25 this is a key area of the research I've done, that we see that men who have experienced childhood sexual abuse are up to 10 times more likely to experience suicidal ideation than we would expect in the general community. And often the help-seeking behaviours in mainstream services doesn't really identify sexual abuse as underlying that trauma, underlying the reason for presentation, and the
30 men may not always make that connection because of the other trauma effects. We often also see, in some of the services that I'm involved in, such as SAMSN, men make presentations for help but often are reliant on family members, close friends for that support. And, for example, at SAMSN, we see about over 50 per cent of the first-time callers are not the survivor themselves. They're the survivor's
35 mother, partner, sister, family friend making that first inquiry. So that real barrier to seek help can be really strong. And it's often an intersectional issue for men, because the men may be affected by other aspects that we know in relation to gender-based violence. So we do see men who are certainly not offending in a way against children at all, but may have, for example, had issues of domestic violence
40 or family break-up or relationship issues that part of that trauma of child sexual abuse, it helps us understand why they've had some real challenges in that intersectional area, as well as mental health. Certainly we saw, at the Royal Commission - and we actually had - there were hearings and private sessions held in prisons, that we saw a much higher number of men who were, you know,
45 needing other sort of intersectional issues in their lives to be addressed. So I think there's that complexity around gender. And if we think about the - the ways that men might be questioned when they come forward as a child sexual abuse

survivor, it often goes to the heart of those questioning their male identity, their strength, and a lot of those stereotypes of masculinity can be exceptionally hard for men's own sense of coping.

5 **CHAIRPERSON:** Thank you. So just so I understand it in terms of gaps in the existing system, one thing that you've talked about is a lack of specialised services for men, and a lack of specialised services dealing with historical abuse, but also a - a lack of focus or experience with the trauma - complex trauma that survivors might experience. Have I captured all of that correctly?

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PROF O'LEARY: Yes. Yes, you have, Chair. I think some of the gaps are also about a continuity -

CHAIRPERSON: Continuity.

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PROF O'LEARY: - of service that just because a man received service here doesn't mean in five years' time he won't need some sort of follow-up or some sort of help. I think also one of the things too that is important to capture in that context is the - the men's supporters who often have carried a lot of the burden of supporting the man, and they also need support. And at SAMSN we have run Survivors and Supporter Workshops where people come along to those sessions. And sometimes supporters come without the survivor because they - the survivor isn't ready yet to come to a forum like that, but the supporters often want that support and want that support to know how they can best assist the survivor. But also how they can best take care of themselves.

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CHAIRPERSON: Thank you. Thank you, Ms Stowell.

MS STOWELL: Professor, it comes through in your statement that you're a passionate advocate for people with lived experience being involved in the design of support services. You say that that needs to be done in tandem with professionals. Can you just expand on your views around that?

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PROF O'LEARY: I think there's a really important balance in how professionals and people with lived experience partner together. Often for men, coming forward to talk to another man who's had a similar experience can be immensely empowering and can break that sense of isolation and shame, to know that the abuse isn't about them, it's all about the perpetrator, and to hear that with survivors. But at the same time, we can't expect survivors to do the therapy. So they work side by side. And the power of co-design of services with professionals and survivors is really critical. At SAMSN, we've been trialling a peer - what's called a peer support line which we have termed the phrase, "Talk to a mate who can relate", and it's an organised facilitated call where survivors can talk to another survivor. The survivors on the phone are paid to operate that service. And the results have been really positive, because it also allows the survivor to encourage the other survivor to seek professional help or to engage more with the service and builds that solidarity in the movement of speaking out about child sexual abuse.

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So the immense power of it cannot be underestimated. I think we're only harnessing some of that at the moment.

5 **MS STOWELL:** Chair, there's been a number of references to the organisation SAMSUN. Just for clarity that stands for - Professor, correct me if I'm wrong - the Survivors and Mates Support Network. And, Professor, according to your CV, you chair the Clinical Advisory Committee for SAMSUN. Can you just tell us a little bit about that role?

10 **PROF O'LEARY:** So SAMSUN was established by a group of survivors who had largely run eight-week programs, and then it - the service gradually got funding and employed clinical staff. And, in my role, I chaired the clinical governance of the service, which really identified many of those intersectional issues I identified earlier today, of the specific needs of male survivors. But also it serves as an
15 advocacy and activist service. It currently is a service that receives money as part of the redress scheme to support survivors coming forward. It's probably one of the unique services in that it has a national profile. It does receive some Commonwealth but mostly New South Wales State Government funding. And to my knowledge, it's the only really specific male service in Australia that receives
20 public funding.

MS STOWELL: Professor, you're also on the advisory group for the National Strategy to Prevent and Respond to Child Sexual Abuse for the Australian Government. I understand as part of that role, recently you've been involved in the
25 formulation of some Minimum Practice Standards for Special and Community Support Services for Responding to Child Sexual Abuse. That's quite recent work; correct?

PROF O'LEARY: Yes, that is quite recent work. The - just to clarify, that was
30 work that was both commissioned by the National Office for Child Safety but carried out by myself and other colleagues, actually led by the University of South Australia to formulate that. And it really mapped a sort of fragmented system, which was one of the key findings of the Royal Commission, that responses were often fragmented, not coordinated across states. Some of those historical things
35 around sexual violence being all lumped together was also some of those challenges.

MS STOWELL: So there's six standards. I wonder if you could just tell the inquiry what those standards are.
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PROF O'LEARY: Sure.

MS STOWELL: They're at paragraph 63 of your statement.

45 **PROF O'LEARY:** Yes. 63. Yes. So standard 1 examines the promotion of safety and self-determination. That services develop and implement systems and processes that support victim-survivors and their support systems to experience a

sense of choice, self-determination. But also a sense that often survivors feel that they - they aren't the experts. So how you actually situate the expertise of the lived experience combined with the expertise of professionals to facilitate that process is really important.

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PROF O'LEARY: And standard 2 is accessible and inclusive services. And this is really relevant to, I believe, your Board of Inquiry, how service design and delivery are accessible to all - gender, cultural background - and that diversity of victim-survivors and their support systems. And those support systems can be

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informal and formal support systems.

Standard 3 really addresses that holistic integrated response that, for some survivors, counselling might not be the best way to respond to the effects of abuse. There can be differential responses to healing and support. But also a connection

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to a community, and some of the work of the standards showed that, you know, isolation was a big barrier for survivors, feeling very isolated within their community and not having those connections to broader service system responses.

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With standard 4, about experience and research and a practice-informed way of working, that we're still developing, really, responses. And research is not unanimous in which model works for which survivor. We're still - that knowledge base is still emerging. Certainly the theory of complex trauma has really shaped a lot of the responses more recently and showing promising results, but we still lack a solid evidence base in Australia about what really works for that diversity of

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survivors, and that applies to all survivors.

And the next standard, skill - skilled and supported workforce. It's really important that survivors can trust that level of competence, that survivors - that therapists, social workers, psychologists, community support workers can offer

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victim-survivors, and that they maintain a survivor-centric care. We did have some informal feedback about survivors sometimes not feeling they had much control over professionals or that they were insensitive or - or ways of engaging or even the use of language, where survivors could really, from the person they were exactly seeking help from, could really trigger them and lead to feelings of

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self-blame and shame. And making sure it's culturally safe for people. And having choice there in terms of safety was something we focused on in that - the standards. So for some people from particular communities, they didn't want a community-specific service because they felt their confidentiality could be compromised. So they wanted options for how they sought help.

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And, importantly, governance. Organisations have ethical and trauma-informed ways and culturally safe governance models. It's interesting, because some of these standards are aspirational for some organisation, and they were worried, "Will we achieve those?" And some of that comes down to a resourcing question,

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but also it comes down to how organisations are organised. And for many survivors, they may access mainstream services such as phone lines - I think I've mentioned a bit of that in the report - and often the response of those services is

not specialists. Often people get triaged and, really, the focus is on their immediate risk. And so, therefore, they're not really directed a specialist service. And we don't really have that process. That was identified by the Royal Commission through the recommendation around a central website and help line that
5 specialised for survivors. I understand that that is being pursued at the moment, and there is some consultation occurring about the development of that model at a federal level.

10 **MS STOWELL:** These standards are authored as at 2023, so it's very recent, as I understand it. Correct?

PROF O'LEARY: Can you say that again?

15 **MS STOWELL:** Yes. The standards are authored in 2023 so it's very recent work you've undertaken.

PROF O'LEARY: That's correct.

20 **MS STOWELL:** Could you just clarify, is it intended that they're aspirational minimum standards for support services? Or is there going to be consequences for organisations that don't measure up.

25 **PROF O'LEARY:** It's a really good question. At the moment, they're more aspirational, and there's not really the mechanism in place if a service, say, failed to meet these standards, what the result would be. At the moment, it would be that people would hopefully work with that service to address that issue. And certainly their coverage of services that, for example, are community-led and don't receive public funding or don't have a funding body, it does give rise to some risks, potentially, about how you actually bring these standards across the board in terms
30 of service delivery to survivors.

MS STOWELL: So what's next for this piece of work?

35 **PROF O'LEARY:** Well, because of their recent sort of work, the next step is to really work with organisations, how they can achieve this, but also building a greater evidence base around these standards, and there are practice minimum standards for service providers in terms of the micro-level of practice.

40 **MS STOWELL:** Chair, I have nothing further for the Professor. Thank you.

CHAIRPERSON: Professor, did you have anything else you wanted to address that you feel hasn't been addressed arising out of your statement or any of the questions that have been asked today?

45 **PROF O'LEARY:** Other than to say, I mean, I'm conscious I've gone through this quite quickly in time, but I - I think it's important to conceptualise both the difficulties for survivors in coming forward to tell their story, and that that can

occur at any time. And probably, based on what we know of the process of trauma across the life span, there's probably survivors who were impacted that haven't come forward and won't come forward at this particular point in time. So to conceptualise that as a lifelong process, that people require a place to check in, in
5 some way, about addressing their trauma, but also having their story acknowledged is really critical. And breaking those barriers over time and exposing the offending helps that process. So having worked in this area for over 25 years, you know, I'm hopeful that the work, like the Board of Inquiry that you're doing, that that will not only help survivors now but into the future.

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CHAIRPERSON: Thank you. Professor, I wanted to thank you not only for the time that you've taken with the Board of Inquiry staff to prepare your witness statement, but also for your time to come and give evidence in person here today. Given your extensive experience, knowledge and expertise, it's incredibly helpful
15 for us to have the benefit of all of your views and opinions and perspectives. Thank you very much.

PROF O'LEARY: Thank you.

20 <**THE WITNESS WAS RELEASED**

CHAIRPERSON: I'm going to adjourn today, and we will be coming back tomorrow at 10 am for further witnesses.

25 <**THE HEARING ADJOURNED AT 3.01 PM TO FRIDAY, 17 NOVEMBER 2023 AT 10.00 AM**