

CHILD SAFETY COMMISSION OF INQUIRY

Harry Gibbs Commonwealth Law Courts Building,
119 North Quay, Brisbane

On Tuesday, 7 April 2026 at 10.03am

Before: Mr Paul Anastassiou KC, Commissioner

Counsel Assisting: Mr Tom Diaz
Mr Joshua Forrest

1 COMMISSIONER: Yes. I'll take appearances.
2
3 MR DIAZ: Commissioner, I appear as Counsel Assisting the
4 Commission with my learned friend Mr Forrest.
5
6 COMMISSIONER: Thank you, Mr Diaz.
7
8 MR HASTIE: And my name is Peter Hastie. I'm counsel for
9 the State of Queensland with my learned friend
10 Maggie Forrest.
11
12 COMMISSIONER: Well, welcome back, Mr Hastie and
13 Ms Forrest.
14
15 MS AMOS: Commissioner, Samantha Amos, counsel instructed
16 by Clayton Utz for Queensland Health.
17
18 COMMISSIONER: Likewise, welcome back.
19
20 MS GREENWOOD: If it please the Commission, my name is
21 Greenwood, initials KAM. I appear for ATSILS.
22
23 COMMISSIONER: Thank you, Ms Greenwood. Also welcome
24 back.
25
26 MR CREAMER: Commissioner, Creamer, initial J, instructed
27 by Queensland Indigenous Family Violence Legal Service.
28
29 COMMISSIONER: Likewise, welcome back. Thank you,
30 Mr Creamer. Yes, Mr Diaz.
31
32 MR DIAZ: Commissioner, there are 2,388 children and young
33 people waking up in residential care today in Queensland.
34 This represents almost 20 per cent of the total population
35 of children and young people in out-of-home care across the
36 state. Approximately one-third of the children in
37 residential care are aged under 12, and approximately
38 10 per cent of those children are under the age of five.
39 There are also 750 or so children in residential care
40 placed with unlicensed providers, where they are subject to
41 limited oversight and monitoring by the department.
42
43 In absolute terms, the numbers are troubling. In relative
44 terms, even more so. By comparison, in all the other
45 states and territories of Australia combined there are only
46 2,767 children and young people in residential care. By
47 almost any measure, Queensland's residential care system is

1 an outlier and alarmingly so.

2

3 In the previous financial year alone the department's
4 expenditure on residential care services for children and
5 young people exceeded \$1.1 billion. That is a cost to the
6 Queensland taxpayer of, on average, half a million dollars
7 per child per year. In the past six years expenditure on
8 residential care has increased fourfold, rises at a much
9 greater rate than the number of children entering the care
10 system.

11

12 In the previous financial year there were more than 125
13 unlicensed providers as against only 38 licensed providers,
14 and the total funding that went to those unlicensed
15 providers was almost \$500 million. Of those unlicensed
16 providers, at least 20 received more than \$5 million per
17 year in funding, and one unlicensed provider received more
18 than \$30 million in funding.

19

20 Commissioner, the numbers are important because they
21 contextualise the extraordinary growth in and reliance upon
22 the now billion-dollar residential care sector and, though
23 there are many such figures that highlight the financial
24 catastrophe that residential care has become, the problem
25 extends beyond the numbers.

26

27 More importantly, the overreliance on residential care has
28 diluted the design intent of this placement type and
29 contributed to worse outcomes for the children and young
30 people in residential care. By and large, the Commission
31 has observed that those children are not in what would be
32 properly regarded as a therapeutic environment. The
33 overreliance on residential care has also led to worse
34 outcomes for those children whose care needs would be
35 better met in an alternative family-based environment.

36

37 For children who are suitable for family-based care
38 placements residential care is not only significantly more
39 expensive but often associated with worse outcomes: high
40 rates of trauma, self-harm, suicide attempts, unmet mental
41 health needs and placement instability. This is
42 particularly troubling, Commissioner, because we know that
43 there is a significant cohort of children in residential
44 care that could and indeed should be in family-based care.
45 Indeed, data provided by the department in just the past
46 few days reveals that there may be as many, in the
47 department's own assessment, as 1,555 children and young

1 people that fall into this category. Put differently,
2 almost two-thirds of the children in residential care
3 should not be there.

4
5 Taken in its totality, the evidence will demonstrate that
6 there has been an insufficient investment in family-based
7 care and alternative models that create pathways for
8 children and young people to exit residential care. As a
9 result, in the present day not enough family-based care
10 options are available for the number of children who are
11 suitable for that care option.

12
13 During the course of these hearings you will see that in
14 late 2021 the department set a target of reducing the
15 proportion of children and young people in residential care
16 to 7 per cent by 2026. What's more, the department
17 modelled the consequences of achieving this target and
18 forecasted that it could avoid significant costs over the
19 forward estimates by doing so.

20
21 Commissioner, suffice to say those lofty aspirations were
22 not achieved, and here we are with a system in dire need of
23 reform. Not only is it costing Queenslanders extraordinary
24 sums of money; it is also unfit for purpose.

25
26 Commissioner, if I may now touch on some of the themes that
27 we expect will emerge through the evidence over the course
28 of these two weeks of hearings. First, the burgeoning cost
29 of residential care reflects a system that has become
30 dependent on short-term, high-cost, fee-for-service
31 arrangements deployed to address a consistent shortfall in
32 the supply of contracted long-term placements, and the
33 associated collapse and decline of the family-based care
34 system.

35
36 These short-term arrangements are known as individualised
37 placement and support or IPS agreements for short. For
38 such services payment is made by the department at the end
39 of each month on an invoice basis after the services have
40 been delivered. These IPS agreements can be contrasted
41 with the other form of contracting used by the department:
42 outsourced service delivery, or OSD, contracts. Such
43 contracts usually span multiple years and payment is made
44 to the service provider quarterly in advance of the
45 services being delivered.

46
47 Commissioner, OSD contracts offer price certainty for both

1 the department and providers, which enables the former to
2 accurately forecast costs associated with out-of-home care,
3 and enables the latter to employ staff on an ongoing basis
4 and invest in infrastructure for the children in their
5 care.

6
7 Further, under these OSD contracts, a pro forma version of
8 which you'll find behind tab 48 of the main tender bundle -
9 and I might just pause there, Commissioner, having
10 mentioned that there are some documents in the tender
11 bundle, if I could move to tender the document entitled
12 "Main tender bundle", and perhaps an exhibit number
13 could --

14
15 COMMISSIONER: I think on my set it's entitled "Master
16 bundle". Is that the same bundle?

17
18 MR DIAZ: I believe that's the same bundle. The title
19 perhaps may have moved, but the "Master" --

20
21 COMMISSIONER: Yes, and there are three volumes; that's
22 correct, is it not? So three volumes known as the "Master
23 tender bundle"?

24
25 MR DIAZ: Yes.

26
27 COMMISSIONER: Yes. That will be exhibit CA-70, that is
28 the three volumes.

29
30 **EXHIBIT #CA-70 - MASTER TENDER BUNDLE COMPRISING THREE**
31 **VOLUMES**

32
33 MR DIAZ: Thank you, Commissioner. I should just mention
34 there is a separate, what we call, "Reasonable excuse
35 bundle" and a "Public interest immunity bundle". Those
36 cannot be tendered for present purposes because they're at
37 present subject to reasonable excuses.

38
39 COMMISSIONER: Yes.

40
41 MR DIAZ: But I'll come back to those in due course.

42
43 COMMISSIONER: Yes. I'm hoping we can get to that issue
44 and resolve it or determine it quickly this afternoon.

45
46 MR DIAZ: Thank you, Commissioner. Returning to where
47 I was, which is these OSD contracts, a pro forma version of

1 which appears under tab 48 of the master tender bundle,
2 these contracts have a number of elements that are
3 important. Firstly, providers are required to submit
4 independently audited financial statements and quarterly
5 performance measurement data. You'll find that in
6 clause 5. Secondly, the department has power to recover
7 unspent funds or reduce future payments to a provider to
8 take into account unspent funds; you'll find that under
9 clause 7.

10
11 At any time the department can conduct a performance review
12 of the provider or nominate auditors to conduct such a
13 review - that's in clause 12; and the department can
14 suspend or cease funding to the providers if they breach
15 the agreement, such as by failing to comply with quality
16 standards or if they become insolvent - that's in
17 clause 13.

18
19 As we'll come to explore through the evidence in due
20 course, by comparison, the standard form IPS agreement
21 utilised by the department is wholly deficient and entirely
22 inadequate. Now, you'll find that behind tab 136 of
23 the master tender bundle. Suffice to say for present
24 purposes the standard form agreement in substance barely
25 runs to two pages, it imposes very few requirements on
26 providers, and it's noticeably lacking in important
27 contractual protections that one would expect of a
28 government-contracting party spending public funds.

29
30 Commissioner, these IPS agreements I was just referring to
31 are financially unsustainable and reactive by their very
32 nature. What we have observed, and it is supported by
33 analysis undertaken by KPMG, is that the department is
34 often paying a premium for inconsistent service delivery
35 and at least historically had very limited insight into
36 whether it was obtaining value for money on government
37 procurement.

38
39 On a placement per day basis, KPMG's analysis of historical
40 data suggests that IPS agreements seem to attract a margin
41 of anywhere between 30 to 40 per cent on OSD contracts.
42 The difference is principally explained by the fact that
43 IPS providers tend to rely on a casualised workforce and
44 labour hire arrangements to care for the State's most
45 vulnerable children, and charge a premium for the shorter
46 duration of their engagements.

47

1 By way of illustration, in the previous financial year -
2 that is the 24/25 financial year - the median daily cost of
3 IPS agreements was \$1,472 per day compared to \$1,057 per
4 day for an OSD contract. This analysis is broadly in line
5 with findings in an internal audit conducted by the
6 department of for-profit providers in September 2025, which
7 concluded, among other things, that private sector
8 contracts for both IPS and OSD typically command higher
9 median prices and show broad interquartile ranges, with IPS
10 contracts exhibiting particularly pronounced variability
11 from provider to provider. I'll come back to that
12 particular audit in due course, Commissioner, but you'll
13 find it behind tab 78.

14
15 Notwithstanding these matters, Commissioner, it appears
16 that the department has signed up to IPS agreements
17 en masse over the past five years or so. This coincides
18 with a period during which the department has been
19 consistently underfunded, operating a budget deficit that
20 seems to grow year on year, and scrambling to meet the
21 demand for child placements.

22
23 In that regard, Commissioner, you will hear evidence over
24 the course of the next two weeks of the following
25 converging trends in the child safety system: first, that
26 substantially more children are entering the out-of-home
27 care system than are exiting residential care; secondly,
28 that children are staying in placements longer, and there
29 is a decline in the availability of foster carers and too
30 few kin carers to support those children; and, thirdly,
31 that this has led to a marked increase in the number of
32 for-profit and unlicensed providers entering the
33 residential care market to pick up the slack, with greater
34 reliance on high-cost procurement options.

35
36 I might just foreshadow at this stage, Commissioner, that
37 these are what KPMG refers to in its report as the three
38 layers of demand, which we'll come to explore with
39 Mr Jefferson shortly.

40
41 In addition, Commissioner, we anticipate that the evidence
42 will show the department received advice and understood
43 that these matters would occur as early as 2020 and, even
44 though viable solutions were proposed, reform was not
45 pursued with sufficient urgency or at sufficient scale. As
46 I have alluded to, the failure to make a meaningful upfront
47 investment in family-based care and cost-controlled

1 outsourced service delivery has led to a situation whereby
2 demand for residential care services consistently exceeds
3 supply.
4

5 The outcome of this, Commissioner, is a system under strain
6 from multiple pressure points. The failure to adequately
7 invest in family-based care has many consequences. Over
8 the course of the upcoming hearings you will hear evidence
9 that residential care is in the order of 15 times more
10 expensive than the daily cost of foster or kinship care
11 placements. For instance, modelling done by The
12 Demographics Group completed for PeakCare in September 2025
13 concludes that the cost of residential care for a child is
14 about \$500,000 per year, as I mentioned earlier, whereas
15 the cost for foster care is in the order of \$50,000 and
16 kinship care, \$20,000.
17

18 A related further theme that we will explore through the
19 hearings is the surge of unlicensed providers in the
20 market. Funding to such providers has increased from a
21 base of \$105 million in the 2021/22 financial year to
22 \$486 million in the 2024/25 financial year. Commissioner,
23 the explosion of unlicensed providers has given rise to a
24 risk that the department is unable to proactively or
25 consistently ensure child safety standards are being met
26 during a placement.
27

28 For instance, unlicensed providers are not required to
29 undertake an independent assessment as to their compliance
30 with the human services quality framework, or what I shall
31 come to refer to repeatedly as the HSQF. This is an
32 independent third party audit process which we know has
33 revealed at least for one provider and no doubt many more
34 that staff were not being properly trained or supervised,
35 and basic care and safety needs of children were not being
36 met. So much was evidenced in this particular case by the
37 absence of hygiene items within the premises, missing
38 medication and expired first aid kits, among other
39 problems.
40

41 Moreover, unlicensed providers are not subject to regular
42 inspections or monitoring by the department, nor are they
43 required to provide up-to-date insurance policies or
44 documents to confirm their solvency and financial
45 viability, for instance.
46

47 This can be contrasted with the position for licensed

1 providers, who are subject to a minimum of at least one
2 unannounced inspection and one announced inspection by the
3 department each year for each service they operate. Those
4 licensed providers are also required to provide evidence of
5 financial viability during the licence application phase
6 and periodically thereafter as part of their 18-month
7 review of the licence.

8
9 In aggregate, you will hear evidence of how the
10 department's commissioning, procurement, contracting and
11 licensing processes have failed to adapt to the changing
12 market landscape. The cost of providing residential care
13 has increased unsustainably, and the department's limited
14 resources have not been scaled up to meet that demand.
15 Indeed, for several years now the department has been
16 occupied simply trying to tinker around the edges or
17 maintain the status quo, unable to reform a broken system.

18
19 Pleasingly, however, Commissioner, you will also hear about
20 some of the very substantial and commendable reform
21 underway within the department at present, including work
22 currently being overseen by its Reform Implementation
23 Office, or REO for short. Some of that reform,
24 Commissioner, was prompted by the announcement of the
25 Commission of Inquiry itself, including, just to mention a
26 couple of examples, a thorough review of funding types,
27 models of care, pricing and contracting arrangements by the
28 REO, which included a mapping exercise of dual-funded
29 providers, that is providers receiving both IPS and OSD
30 funding; the engagement of Ernst & Young, EY, by the
31 department on 1 June 2025 in the weeks after the Commission
32 was announced to carry out a current state assessment of
33 unlicensed providers of residential care services; and the
34 development and approval of the department's residential
35 care reform plan, which was approved by the
36 Director-General on 1 August 2025.

37
38 The Commission is also at pains to acknowledge the many
39 department and private sector employees that work
40 tirelessly to contribute to better outcomes for the
41 children and young people in residential care. Those
42 efforts are not in vain, even if they are at times
43 overshadowed by broader systemic deficiencies plaguing the
44 child safety system.

45
46 Commissioner, if I now may at least in brief overview
47 identify the witnesses who will be called to give evidence

1 to the Inquiry over the next two weeks, and what I propose,
2 Commissioner, is at the beginning of each day or as a
3 witness is in fact called to give evidence I will identify
4 in some more detail the topics that we propose to explore
5 with that witness.

6
7 The first witness to be called by the Commission, in a
8 matter of mere moments, will be Dan Jefferson, National
9 Lead Partner of Health, Ageing and Human Services at KPMG.
10 Mr Jefferson will give evidence in relation to a report
11 entitled "Financial review of non-family based residential
12 care", which has been prepared by KPMG and is available on
13 the Commission's website under the "Brisbane hearings" tab.

14
15 The next witness will be Natalie Wilson, Acting Senior
16 Executive Director of Investment and Commissioning at the
17 department. Ms Wilson has extensive experience with the
18 department and its many iterations, dating all the way back
19 to 1987. As Acting Senior Executive Director, Ms Wilson
20 has responsibility for providing the strategic and
21 operational leadership in relation to the investment and
22 delivery of services to children and families in the child
23 safety system.

24
25 The third witness will be Michelle McNamara, a Director of
26 the Reform Implementation Office at the department.
27 Ms McNamara similarly has more than 30 years experience in
28 child safety and related services, having worked
29 extensively for the department across Queensland, including
30 in regional and remote areas. In her current role she is
31 responsible for the residential care reform program and has
32 a specific focus on transition of investment within the
33 department.

34
35 The fourth witness will be Hanelie Lategan, Chief
36 Procurement Officer at the department. Ms Lategan joined
37 the department only more recently, at the beginning of 2025
38 or so. However, in doing so she brought to the role more
39 than 30 years of experience in procurement across
40 South Africa, New Zealand and Australia. She is
41 responsible for procurement and governance - pardon me, for
42 procurement governance across the department. This
43 includes oversight of the procurement frameworks, policy
44 implementation, approvals, procurement assurance, and the
45 broader settings that support contract management practice.

46
47 The fifth witness will be Danny Short, Chief Finance

1 Officer at the department. Mr Short has been the CFO of
2 the department since March 2018. He has statutory
3 responsibility under the Financial Accountability Act for
4 financial resource and budget management, for providing
5 advice in relation to the financial implications of
6 different strategic decisions, and for providing leadership
7 and direction in relation to the financial administration
8 of the department.

9
10 Turning to what is presently scheduled for the second week
11 of hearings, the sixth witness will be Arthur O'Brien.
12 Mr O'Brien was the Deputy Director-General of Corporate
13 Services within the department over an extended period,
14 from May 2018 to late 2025. His responsibilities included
15 oversight of the financial services, legal services, audit
16 and compliance and governance teams.

17
18 The seventh witness will be Bernadette Harvey, Deputy
19 Director-General of Commissioning within the department.
20 Ms Harvey has worked continuously in Queensland's child
21 protection and youth justice system since 1992 across the
22 department and its predecessor agencies in relation to a
23 broad range of leadership and executive roles. I must say,
24 Commissioner, she has provided considerable assistance to
25 the Commission, for which we extend our gratitude, by
26 authoring what on my count is almost 30 witness statements
27 over the course of the past nine months. Ms Harvey will
28 give evidence in relation to topics in her statements and
29 related matters of relevance to the Commission's terms of
30 reference.

31
32 The eighth witness will be Deidre Mulkerin, the former
33 Director-General of the department from 24 February 2020 to
34 31 December 2024. Under the Financial Accountability Act
35 Ms Mulkerin was the accountable officer for all
36 departmental financial matters and decisions, including
37 funding of non-government service providers, contractual
38 decisions, and a broader financial management of
39 the department. Further, under the Public Service Act
40 Ms Mulkerin was responsible for establishing and
41 implementing goals and objectives in accordance with the
42 policies and priorities of the government of the day.

43
44 And finally, Commissioner, the former minister for child
45 safety from 12 November 2020 to 17 May 2023, the
46 Hon. Leanne Linard MP, will give evidence. There will be
47 an opportunity through Ms Linard's testimony for the

1 Commission to explore and evaluate questions of ministerial
2 accountability, and explore the governance of the
3 department during a period in which the Commission has
4 observed the following issues: firstly, that the
5 department's budget position was deteriorating year on
6 year, with escalating deficits predicted and ultimately
7 manifest; secondly, the department, and by extension the
8 government, had failed to appropriately shape or steward
9 the market, which was being overrun by unlicensed and
10 for-profit providers, with placement costs turning out of
11 control; and, thirdly, that despite these known problems,
12 and notwithstanding that the department had access to
13 detailed advice outlining the necessary or at least
14 potential solutions, remedial action was not taken until
15 very recently.

16
17 Commissioner, I mentioned earlier that Mr Jefferson will be
18 the first witness to be called. Through Mr Jefferson we'll
19 have an opportunity to survey the public aspects of KPMG's
20 report in detail, noting that a separate confidential
21 annexure has been provided only to the Commission to assist
22 it in discharging its terms of reference.

23
24 KPMG's report includes many key findings of importance to
25 the Commission's work, six of which I will just foreshadow
26 at this stage before I call Mr Jefferson. First, the
27 market is dominated by a relatively small group of
28 providers, with just 15 out of more than 160 in total
29 receiving half of the department's total funding for
30 residential care; secondly, the number of unlicensed
31 providers has increased significantly since 2021 such that
32 only about a quarter of the market is currently licensed
33 under the HSQF; thirdly, IPS agreements have grown as a
34 proportion of total placement nights and total funding
35 compared to OSD contracts, they are more expensive on a per
36 day basis and generate a greater profit margin for
37 providers; fourthly, directors and executives in the
38 industry are being paid above-market remuneration, with
39 KPMG observing that executive salaries often exceeded
40 \$400,000 and at least in a few instances exceeded \$600,000
41 in a representative sample of just 20 providers selected by
42 the Commission for further analysis; fifthly, that some
43 for-profit providers are using profits they generate from
44 their services to acquire non-core assets such as
45 investments in gold and cryptocurrency or purchasing
46 expensive vehicle fleets that include Mercedes Benz cars,
47 rather than reinvesting those funds in the infrastructure

1 or services for the children in their care; and, sixthly,
2 that financial transparency is lacking across the board,
3 with the department slow to detect that providers are
4 declaring large dividends of up to \$5 million and making
5 substantial related party loans, often without a clear
6 commercial rationale.

7
8 Now, Commissioner, I briefly foreshadowed that the KPMG
9 report is accompanied by a confidential annexure. May
10 I just say a couple of things about that annexure. The
11 Commission has decided not to disclose such information to
12 the public or to any other party appearing at the hearings,
13 and it has done so at the request of various providers on
14 the basis that the annexure has been compiled using
15 commercially sensitive pricing information obtained under
16 the Commission's powers of compulsion.

17
18 That information includes financial statements, payroll
19 data and internal budgeting documents, as well as
20 management and financial reports concerning such matters.
21 In this unusual marketplace, where there is only one buyer
22 for residential care services, namely the department, this
23 information is self-evidently and understandably
24 commercially sensitive.

25
26 KPMG's findings assessed in an aggregated way as they are
27 at times at least in the confidential annexure would also
28 no doubt be of considerable interest to other market
29 participants. For instance, KPMG has undertaken an
30 analysis of the average contract margin generated by
31 providers on their IPS funding schedules, including by
32 reference to margins on labour, which is a significant
33 input cost for these businesses.

34
35 The Commission was cautious not to advantage or
36 disadvantage those providers that went to considerable
37 efforts to assist the Commission, often - I might add - on
38 very compressed timelines, and for that reason the
39 Commission has elected not to publish this aspect of KPMG's
40 report. That confidential annexure will nevertheless
41 inform the Commission's findings and recommendations in its
42 final report.

43
44 That being said, Commissioner - and this is one further
45 theme that we will develop through the hearings - I note
46 that much of this information is the very type of financial
47 information that a buyer should, in a well-organised

1 commissioning, investment and procurement system, request
2 before contracting with providers. That the department
3 does not do so is one of various failings we will unpack
4 through the hearings.

5
6 Without further ado, I call the first witness of
7 the residential care hearings, Mr Jefferson of KPMG.

8
9 COMMISSIONER: Thank you.

10
11 MR HASTIE: Commissioner, before my learned friend does
12 that, I can understand why the Commission would take the
13 view about the commercial sensitivity of the material that
14 they received from some of those providers, and
15 I understood my learned friend's last comment that my
16 client had asked or should have asked for that information
17 when it was seeking to contract, and I'm not sure that
18 that's right. You wouldn't ordinarily ask another party to
19 whom you're contracting for their financial details. But
20 leaving that issue aside --

21
22 COMMISSIONER: That is a debatable proposition, Mr Hastie,
23 I understand that. But, equally, it is a matter for
24 commercial negotiation, and this is, as Mr Diaz correctly
25 characterised it, a very unusual market in that there is
26 only one buyer. Now, of course the buyer has to interest
27 suppliers; I understand that. What information the sole
28 buyer, in this case the department, might reasonably
29 require from a provider is a matter of negotiation and at
30 the very least ought be considered, one would think, by the
31 acquirer, particularly where the acquirer is a department
32 with responsibilities to prudentially manage the
33 expenditure of public funds. But I do understand your
34 observation about what might reasonably be expected to be
35 provided by third party providers to the department.

36
37 MR HASTIE: I didn't mean to comment on my learned
38 friend's comment. What I was really leading to was that
39 I understood - I understood that position which was that,
40 as, your Honour - as, Commissioner, you said, is a
41 respectful one. I was more concerned about
42 the confidentiality of the report because the matters that
43 are raised in the report about some of these providers my
44 learned friend spoke to are matters that the State would be
45 very interested to know, and I'm just trying to work out --

46
47 COMMISSIONER: I understand that, Mr Hastie. There were

1 some reports in the press about this subject over the
2 course of the weekend --

3
4 MR HASTIE: Yes.

5
6 COMMISSIONER: -- that - I'll just note two matters.
7 Firstly, the material provided by the third party providers
8 was provided pursuant to the exercise of the Commission's
9 compulsive powers. Much of the material that was provided,
10 for the reasons explained by Mr Diaz, is commercially
11 sensitive, including vis-à-vis the department --

12
13 MR HASTIE: Yes, Commissioner.

14
15 COMMISSIONER: -- for the obvious reason that the
16 department's the acquirer. Now, where material is produced
17 under compulsion, as I'm sure you appreciate, Mr Hastie,
18 the Commission is required to accord natural justice to the
19 providers of that material and to allow them the
20 opportunity to be heard as to the prejudice that might be
21 caused to them if that material were to be disclosed,
22 including here relevantly to the department.

23
24 There is also legal constraint upon the disclosure of
25 material produced pursuant to compulsive powers under the
26 Commissions of Inquiry Act itself. So if material that has
27 been so provided, and, I should add, it has been provided
28 on an assurance by the Commission that it would not
29 disclose the material without first giving the provider an
30 opportunity to be heard essentially, as I would understand
31 it, on the question of prejudice to them, that process
32 would have to be undertaken before, and properly undertaken
33 before, the material could be disclosed, including to your
34 client.

35
36 Now, as I have noticed this issue was raised in the press
37 over the course of the weekend, I propose to write to the
38 department about this matter because it has to be handled
39 carefully and in an orderly way to ensure two
40 things: firstly, that fairness is accorded to the third
41 party providers who have provided this very sensitive
42 information; and, secondly, to ensure that I do not
43 inadvertently contravene the provisions of the Inquiries
44 Act, which apply also to me personally.

45
46 MR HASTIE: Yes, Commissioner, I understand the
47 constraints and, Commissioner, no doubt you will have

1 already picked up that my client will be concerned to find
2 out more information about this as it affects public
3 moneys.

4
5 COMMISSIONER: Yes, of course. But the - it's probably
6 not productive at this point to have a debate about it, but
7 the 20 providers that were selected are known to the
8 department because their identity was provided to the
9 Commission as a selection of, as I understood it, a
10 representative sample of the providers. So we're not
11 talking about the entire cohort of providers; we're talking
12 about a sample of 20.

13
14 MR HASTIE: Yes.

15
16 COMMISSIONER: Which I would have thought gives your
17 client a reasonably clear lead to the investigation of
18 those providers who have been examined closely by KPMG.
19 But, as I say, I think the appropriate course is - you
20 having raised it, it having also been raised in the course
21 of press articles - that I write to the department directly
22 about this.

23
24 MR HASTIE: Thank you, Commissioner.

25
26 COMMISSIONER: Because it can be resolved in one way or
27 another.

28
29 MR HASTIE: Thank you, Commissioner.

30
31 COMMISSIONER: Thank you, Mr Hastie.

32
33 MR DIAZ: I call Mr Jefferson.

34
35 <DAN JEFFERSON, AFFIRMED [10.43 am]

36
37 <EXAMINATION BY MR DIAZ

38
39 MR DIAZ: Mr Jefferson --

40
41 COMMISSIONER: Pardon me for one moment, sorry. Sorry,
42 Mr Diaz. Mr Jefferson, welcome.

43 A. Thank you. Thanks, Commissioner.

44
45 MR DIAZ: Mr Jefferson, perhaps if you could just begin by
46 stating your full name and your occupation?

47 A. So Dan Jefferson. I'm the Lead Partner at KPMG for

1 Health, Ageing and Human Services in Australia.

2
3 Q. Thank you. And do you have with you there at the
4 witness box a copy of a document or, rather, a folder
5 entitled "Master tender bundle"?

6 A. I do.

7
8 Q. And are you able to locate tab 79 of that particular
9 bundle? It's in volume 3.

10 A. Yep, located.

11
12 Q. Brilliant. It may be worth keeping that handy in case
13 you don't have your own copy. That is the report prepared
14 by KPMG for the Commission. Could you just briefly expand
15 for the Commission a little bit more about your role at
16 KPMG and your previous experience in relation to child
17 protection and out-of-home care systems?

18 A. Yeah, certainly. So, in common with some of the other
19 witnesses listed earlier, I have 30 years experience in
20 health and social services, both here in Australia but
21 also, as you can tell by my accent, from the UK prior to
22 that. Prior to KPMG I was the head of commissioning for
23 public hospitals and ambulance for the Victorian
24 government; prior to that, led work on child protection
25 strategy for the Victorian government, culminating in the
26 publication of the "Roadmap for reform" in 2017 as well as
27 reforms pursuant to the Royal Commission Into Family
28 Violence and the creation of a strategy for social housing.

29
30 At KPMG I spend a lot of my time supporting government and
31 large providers in the child and family space, including in
32 the area of out-of-home care and, within that, residential
33 care. Of relevance to this hearing, I led the work for the
34 Victorian government known as the care services review,
35 which has been oft commented on and cited in public and
36 also in the media, which has supported government
37 consideration in that jurisdiction of, for example, the
38 rates of incentives provided to foster and kinship carers,
39 and also the structures and payments for residential care.

40
41 I might stress, Mr Diaz, that, whilst I'm appearing as a
42 representative of KPMG, the report that is being considered
43 today was obviously the product of a broader team,
44 including - and I would not count myself as one of this
45 group - forensic accountants, a team that looks at child
46 and family policy as well as provider sustainability.

47

1 Q. Yes, and we're indebted to KPMG for that considerable
2 work that went into the report. And, just based on what
3 you've explained to me now, am I to understand that your
4 experience in Australia is primarily with the Victorian
5 jurisdiction?

6 A. I've conducted work outside Victoria, certainly, and
7 assisted in projects, including review of the homelessness
8 system here in Queensland recently, but child and family
9 strategy and systems, predominantly within Victoria.

10

11 Q. Yes. And it's already been mentioned that your team
12 was engaged by the Commission to prepare a financial
13 analysis concerning matters relating to residential care.
14 Can you just explain in very general terms the questions
15 you were asked to consider and the general structure of
16 your report?

17 A. Of course. So I might talk to it in three main
18 components, which is the way in which our report is
19 structured. So, as you hinted, Mr Diaz, the review was
20 commissioned at the end of January really to provide an
21 independent assessment of the non-family based residential
22 care system in Queensland to support the Commission of
23 Inquiry. The purpose of the review, explained simply, was
24 to objectively examine the current market conditions for
25 the provision of residential care in this state; provider
26 financial dynamics, and I use that term broadly, to
27 understand really the financial state of health of some of
28 the providers that were sampled by the Commission; and
29 also, but equally importantly, the robustness of existing
30 demand and supply models which would support the State of
31 Queensland to understand future demand, and the way to
32 respond to that demand in relation to child protection
33 broadly and, within that, specifically residential care.

34

35 Q. Yes. And, again, just in general terms at this stage,
36 what type of materials did your team consider when
37 preparing the report?

38 A. Yeah. So in preparing our report we rely primarily on
39 datasets and documents obtained by the Commission and
40 provided by the Department of Families, Seniors, Disability
41 Services and Child Safety, which I might refer to as "the
42 department" after that point.

43

44 Q. Please.

45 A. Together with provider-submitted materials and a
46 limited set of public sources. This included contract and
47 service datasets, for example a service-type aggregated

1 records dataset, procurement and policy documentation, IPS
2 business rules benchmarks, provider financial statements
3 and also related financial information. That included
4 selected pricing schedules, payroll and roster extracts and
5 witness materials, and also relevant prior reports and
6 model documentation that have been identified by the
7 Commission, such as the "Buyer Beware" and PBFM governance
8 materials.

9
10 Consistent with the scope of an advisory review, we didn't
11 independently verify all underlying inputs, and our
12 findings are therefore presented at a market and a system
13 level in the main.

14
15 Q. Yes. And perhaps if we could turn to the substance of
16 your report, starting with the first part, which is part 3
17 of the report but I might call part A for my own
18 convenience. Could you just explain the key findings that
19 KPMG made in respect of this part concerning the market for
20 non-family based residential care in Queensland?

21 A. Yeah, I can certainly do that, and this response may
22 feel quite long, but there is a fair amount to cover in
23 terms of the key findings. So over the last --

24
25 COMMISSIONER: Take your time, Mr Jefferson.

26
27 MR DIAZ: And you can be sure we will interrupt you if we
28 have a question.

29 A. So over the last four complete financial years
30 Queensland saw sustained cost increases in residential
31 care. Our report highlights that there are a number of
32 factors that contributed to this increase, with our report
33 identifying demand for services being inelastic and supply
34 being constrained. Inelastic demand means that demand is
35 relatively unresponsive to changes in price; that is, the
36 buyer, in this case the Queensland government, will
37 continue to purchase residential care services in line with
38 its legislative responsibilities regardless of whether the
39 price rises, stays the same or falls.

40
41 In terms of the key statistics from part A, expenditure
42 increased from 652.8 million in FY21/22 to around
43 1.18 billion in FY24/25, while average funding received per
44 provider increased from 4.6 million to around 7.2 million
45 over the same period.

46
47 Our report identifies demand growth at three levels, and

1 I think this was mentioned in the introductory statements
2 in terms of the layers or levels, firstly increased demand
3 for out-of-home care more broadly, which is associated with
4 a range of well-documented socioeconomic conditions,
5 including housing availability, alcohol and drug use,
6 domestic and family violence, and also cost of living
7 pressures. The second --
8

9 Q. Mr Jefferson, I'm so sorry to cut you off, I just
10 helpfully had a note from my instructor that it might be
11 useful for those following along on the livestream to know
12 that at this stage you are speaking to pages I think 15 and
13 following of your report.

14 A. Of course. Thank you, and do help with that
15 navigation as I go through. Once a child or young person -
16 sorry, I'll just touch on the two further levels of demand
17 growth. Secondly, then increased reliance on residential
18 care, particularly where family-based alternatives weren't
19 available - and I should highlight here that we're very
20 conscious in writing the report that reductions in foster
21 care and pressures on kinship care are not unique to the
22 State of Queensland. Those who follow research globally
23 will know that both foster and kinship care rates have been
24 extremely challenged in all jurisdictions that you would
25 say to be comparable to Queensland in both maturity and
26 economic circumstances.
27

28 Q. Just on that, Mr Jefferson, we have seen throughout
29 the course of our investigation some evidence to suggest
30 that kinship care rates are lower in Queensland than they
31 are, for instance, in Victoria. Is that something you're
32 able to speak to?

33 A. I can say that that is broadly the case. I guess my
34 overall observations were just to note that trend in most
35 jurisdictions where certainly KPMG provides advice that
36 particularly for foster care in the period since COVID in
37 particular that there has been a marked decline in the
38 willingness of people to put themselves forward for that
39 form of care arrangement.
40

41 Q. And are you able to elaborate, just based on your
42 experience in the industry and the work you've done, as to
43 why that might be so?

44 A. A range of different factors. So incentives
45 obviously; the stress involved in performing that as a
46 role; the lack of professionalism potentially that is
47 attached and supported in relation to that role, which

1 includes training and preparation to be able to manage the
2 really complex and challenging circumstance of being a
3 foster carer. So they're perhaps some of the key factors
4 we would observe.

5
6 Interestingly, there is also a reduction in trend in
7 volunteering more broadly in the community, and I can say
8 as part of work that we certainly undertook in the State of
9 Victoria there is, I would say, potentially some
10 correlation between those two phenomena.

11
12 Q. Yes.

13 A. So, once a child or young person reaches the threshold
14 for care, the State must procure a placement obviously
15 within the required timeframes regardless of price. At
16 this stage the State is often not in a strong position to
17 negotiate over costs and in a limited supply market can be
18 beholden to the prices set by providers. This means in
19 practice that rising provider costs can flow through
20 directly to government expenditure.

21
22 Our observation in the report would be that supply
23 conditions have constrained the capacity of the residential
24 care market, limiting the system's ability to respond to
25 rising demand and contributing to higher unit costs. This
26 reflects inter alia, among other factors, workforce
27 capability and capacity constraints, including high
28 reliance on casual employment and difficulty sustaining
29 continuous rosters; secondly, labour and non-labour input
30 cost pressures, and that includes housing, rising costs of
31 electricity and utilities, but also non- - sorry, also
32 increasing insurance premiums, which in part are linked to
33 what might be seen as the instability and risk associated
34 with providing this form of care; and last, but certainly
35 not least, supply constraints for specific cohorts,
36 particularly First Nations children and regional and remote
37 areas, which I might turn to a little bit later.

38
39 So, taken together, those pressures reduce the residential
40 care system's effective capacity and increase the unit cost
41 of placements in circumstances where care must be procured
42 within required timeframes regardless of price.

43
44 Q. Yes. And just another aspect following on from
45 the key findings, something I touched on briefly in my
46 opening - and, to assist those following on the livestream,
47 I'm at page 19 of your report - there's some data about

1 the total funding received by the largest providers in the
2 sector. Is it fair to characterise the market as being
3 quite a concentrated market?

4 A. It's not unusual, I would say, in Australian
5 circumstances for there to be a relatively small number of
6 larger providers who provide, if you like, the bulk of
7 care. Often that's seen as an advantage in terms of
8 consistency of quality and in terms of the provision of
9 continuous or like care across the system. I think you
10 highlighted accurately in your opening that there are a
11 small number of providers accounting for quite a large
12 share of the care being provided, with then quite a long
13 tail of smaller providers who, if you like, mop up the
14 residual placements that are required within the system.

15
16 Q. And does that tell us anything about the level of
17 competition in the market, that funding might be
18 concentrated at the top end, or we can discern little from
19 that?

20 A. I'm not sure we can discern too much. I think we have
21 included in our report some of the distribution of both
22 placement contracts and also the numbers of providers, for
23 example at a regional level, and you'll see that in many
24 regions the numbers of providers have actually grown over
25 the funding period rather than declined.

26
27 Q. Yes. And another aspect of your report I wanted to
28 specifically ask you about is a couple of pages over at
29 page 21, and in particular it concerns paragraph A.11.
30 Could you just explain for the Commission what difference
31 you observed in terms of the pricing between IPS and OSD
32 contracts?

33 A. Yeah. So maybe just by way of context, so by FY24/25
34 around 70 per cent of providers were for profit while
35 not-for-profit providers accounted for around 30 per cent.
36 That's an increase from 62 per cent for profit providers
37 back in FY22. At the same time or time period the IPS
38 contracts overall formed a growing proportion of total
39 placement nights and total funding, and IPS contracts
40 became increasingly more expensive than OSD on a per day
41 basis.

42
43 It's important to note there are some limitations to the
44 work that we delivered, and the quantitative data did not
45 support necessarily full analysis of attribution or
46 causality. In terms of the rates, so I think the pattern
47 is probably not uniform completely, but we did see a

1 significantly greater median fee per day for IPS providers
2 than for OSD providers. Without citing the data, which is
3 provided in detail in the report, that was often in the
4 multiple of 10s and 20 per cent higher in relation to each
5 placement day.
6

7 Q. And what do you mean by your observation that it
8 wasn't necessarily a uniform pattern?

9 A. Just that these are all aggregated median figures and
10 certainly in drilling into the sample of 20 providers we
11 could not see in all cases that providers were meeting, for
12 example, that aggregated or median figure. So it's really
13 just to say these are aggregated figures, not specific or
14 particularly granular at the level of provider.
15

16 Q. Yes. And does that point to a degree of variability
17 then in terms of the funding costs per day across
18 providers?

19 A. Certainly variability across providers and also
20 variability when it comes to the costs at a geographic or
21 regional level. Perhaps if I can tie together as well just
22 certain aspects of the report. When you think about demand
23 going forward, the ability of the State to meet that
24 demand, we would observe that there are differences
25 obviously at a regional level in terms of the amount that
26 the State has had to pay over the period in question to
27 secure those placements, but it's not unusual in the sense
28 that there is often a premium for regional or rural and
29 remote placements due to the lack of availability of
30 workforce. But in some areas - North Queensland is an
31 example - the rates per day accelerated quite dramatically
32 over that period, from the start of the funding period to
33 the end, often by up to 50 per cent.
34

35 Q. And we were just discussing the difference between the
36 pricing of IPS and OSD contracts. I'm curious to
37 understand - at least you may be able to speak to the
38 Victorian context - is there a similar type of contracting
39 structure employed in Victoria?

40 A. It's a different contracting structure, which I won't
41 go into detail in this hearing but happy to provide further
42 comparative information if required. It's not something
43 I'd be keen to talk to off the cuff.
44

45 Q. I understand. And if we can go a little bit further
46 in your report, in particular on page 26, I was hoping you
47 might be able to speak to what is figure A.15 on that

1 particular page, which shows a distribution of the average
2 funding received per provider grouped by what I term
3 fluctuating and continuing providers?

4 A. Yes.

5
6 Q. Could you just at least begin by explaining what in
7 particular this graph is modelling?

8 A. Yes. So we were keen to look for data which showed
9 whether we have providers, if you like, that are consistent
10 throughout the funding period versus those providers that
11 may have received zero or lower amounts of funding in any
12 given year. So the scatter diagram that the Commission has
13 on the screen is really showing that difference between
14 providers that have sustained contracts, in other words
15 they have at least one dollar in each of the years under
16 review, versus on the right-hand side those providers that
17 experienced at least one financial year during that period
18 where they received no funding at all.

19
20 So I guess in some ways this illustrates potential
21 fragmentation in the market particularly where you have
22 providers, if you like, coming in and out of the market,
23 which is the light blue sort of scatter. What we can show
24 is that the providers obviously who have a more sustained
25 presence tend to be those that receive greater funding
26 overall at both an aggregate and a sort of total level.

27
28 Q. And when you use the language "fragmentation", am
29 I right to interpret that as essentially a degree of high
30 turnover within the market?

31 A. Some turnover.

32
33 Q. Some turnover?

34 A. I think I would caution by interpreting as high
35 turnover to the extent that what we are not showing in the
36 graph is the frequency, if you like, of exits but, rather,
37 just that there are providers who appear on our data to
38 come in and out at some time. The relevance I think of
39 that finding is also that if you think about the market
40 from the provider's perspective that, if you like, gearing
41 up and gearing down to provide residential care has its own
42 risks in terms of worker continuity, standards of care,
43 adherence to the latest regulatory requirements, et cetera.

44
45 Q. I was in fact going to ask you about that. Is the
46 perhaps non-continuous or fragmented nature of this funding
47 something that you would expect providers to be charging a

1 premium for or at least accounting for in costing their
2 services?

3 A. It's impossible from the report that we have done to
4 draw that causation, but I would simply say anecdotally
5 that it is often challenging for providers to remain within
6 a market at a stable price point if they do have to, for
7 example, mobilise the recruitment of new staff alongside
8 trying to maintain other business operations in the
9 background.

10
11 Q. Yes. And turning overleaf to page 27 of your report,
12 in particular paragraph A.24, here you discuss some
13 performance measures applied by the department I think
14 specific to OSD providers. Am I right to understand, to
15 the extent you're able to speak to it, that the performance
16 measures you observed generally related to matters such as
17 throughput, volume and cost?

18 A. Yes, correct.

19
20 Q. And, in your experience of working in child safety and
21 related areas, are those measures that would allow the
22 department to evaluate the quality of care of children in
23 placements?

24 A. Throughput, volume and cost would not directly
25 contribute to full measurement of the quality of service
26 delivery. You may be able to infer from the cost
27 information some proxy measures, particularly if it
28 included investment in, for example, training of the
29 workforce or other sort of re-investment in both training
30 and development of the team, or adherence, for example, to
31 a recognised model of care.

32
33 Q. Yes, and I think it's recorded, just for completeness,
34 at paragraph A.25 that, while the Commission sought
35 information and records regarding the performance of
36 providers, limited data was returned by the department.

37
38 Turning then to page 28, this is, as I understand it, a
39 comparative analysis between the regulatory environment in
40 different jurisdictions focused on some particular
41 dimensions as they're described in the report which relate
42 to Victoria, New South Wales and Queensland. Just asking
43 you to synthesise the material that's there in some depth,
44 what did you observe when you compared those three
45 regulatory environments?

46 A. Yeah. So the summary table that you refer to just
47 under paragraph A.29 attempted to characterise and

1 summarise the differences and commonalities between
2 residential care regulation in Queensland, in Victoria and
3 New South Wales. I think our report overall determined
4 that Queensland's regulatory framework for residential care
5 appears to be more segmented among multiple agencies than
6 its jurisdictional peers, noting that some of the changes
7 to aggregate regulation in at least one of the major
8 jurisdictions, which is Victoria, have been a very recent
9 phenomenon. So that is worth noting.

10
11 In Queensland, regulation is distributed across multiple
12 agencies, including the Commission, so the Family and Child
13 Commission, the department and also Blue Card Services
14 within the Department of Justice. Our report notes that
15 this arrangement may require more complex coordination to
16 maintain end-to-end oversight, risk identification and
17 intervention.

18
19 By contrast, at least on the basis of the information
20 reviewed, we can observe that Victoria and New South Wales
21 have moved further towards consolidated regulation. As an
22 example, in Victoria the social services regulator now
23 brings together provider registration, worker screening,
24 reportable conduct and related regulatory functions under
25 one independent regulator; and in New South Wales
26 comparable regulatory functions sit with the Office of the
27 Children's Guardian. They may be seen over time to provide
28 benefit through having greater coordination and information
29 sharing, which could assist in quality oversight and market
30 stewardship.

31
32 Q. And at least at a theoretical level, which may be as
33 much as I can ask you about in this respect, would you
34 generally say that having a uniform and consistent
35 regulator, all else being equal, is preferable to
36 fragmented regulation?

37 A. I think it's too early to say. Certainly the way in
38 which it's being tackled in Victoria is, as I've said, a
39 very recent phenomenon brought about in part by incidents
40 and events that have occurred in that jurisdiction that
41 relate to early year services which have certainly
42 accelerated moves to bring some of the functions I've just
43 described under the same roof.

44
45 Q. Yes. And then turning to the next subpart of part A,
46 if I might call it that, which concerns market dynamics,
47 and in particular starting at page 33, this is the section

1 of the report where you discuss the inelastic nature of
2 demand for child protection services. I was hoping you
3 could just break down for us what is in figure A.17, which
4 is your three layers of demand?

5 A. Yeah, absolutely. So I think - and I've touched on
6 this a little bit earlier on, but we've described three
7 layers of demand drivers and also identified where there
8 are potentially high-cost outcomes that could be avoided
9 through more effective commissioning. So at the macro - so
10 at the community wide level, and that's the top tier - a
11 child or young person being identified as requiring some
12 form of out-of-home care support; then flowing into an
13 identification of the complexity of that requirement in
14 terms of a need for complex needs, a child or young person
15 that may be suitable for a lower-cost alternative, for
16 example foster or kinship care, but - and has been placed
17 in residential care due to a lack of places; or a child and
18 young person that is eligible for that lower-cost
19 alternative and actually receives that corresponding place
20 within either foster or kinship care.

21
22 Flowing then down into demand for those high-cost contract
23 types, we have simply suggested that where you can observe
24 that a young person or child with either complex or less
25 complex needs is unable to be met in kinship or foster
26 care, the choice at that point or the options open to the
27 State of Queensland are either that OSD residential care
28 placement on the left-hand side, an IPS, or IPS,
29 residential care placement due to a lack of available OSD
30 places, or perhaps flow into IPS where an OSD placement is
31 deemed as unsuitable.

32
33 And I think the focus, I suppose, we're trying to place in
34 terms of that layer of demand diagram is to really say that
35 in the middle category, so where we can see that a
36 non-complex or less complex child or young person is
37 entering that higher-cost IPS residential care placement
38 due to a lack of available OSD places, that is the area
39 where there is potentially greatest benefit for action to
40 make sure that there are sufficient licensed OSD places to
41 service the demands that flow from top to bottom.

42
43 COMMISSIONER: Mr Jefferson, can I ask you - and please
44 say if you don't think you are able to express an opinion
45 about this - is this proposition correct: the more IPS
46 funding that is available, and making the assumption that
47 from the provider's perspective the IPS contracting

1 arrangement is desirable because it is more profitable,
2 does it not follow that demand for IPS funding arrangements
3 or contracting arrangements can become self-perpetuating,
4 particularly in a market that is constrained as to supply?
5 A. It would be difficult to answer that definitively.
6 Obviously if IPS is the default option for shorter term, if
7 you like, emergency or urgent placements, then growth that
8 cannot be met through that bulwark of OSD contract
9 provision, which has its own level of targets and activity
10 associated with it, the release valve, if you like, is
11 through the IPS system as it currently stands.
12

13 COMMISSIONER: I understand that the IPS model of funding
14 was invented, as it were, to deal with particular perceived
15 need. There are a number of such needs. One is in the
16 case of children and young people requiring particular
17 specialised levels of care because of particular needs -
18 that's one category - and another impetus for that form of
19 funding or contracting arrangement was to meet unforecast
20 demand, a sort of just-in-time safety net in terms of the
21 availability of residential care as and when unexpected
22 demand arises, which might be quite often and difficult to
23 project at some margin, particularly in remote areas, where
24 supply generally is more constrained. So they're two broad
25 reasons for having, let us call it, a degree of flexibility
26 in the contracting arrangements for the provision of these
27 services by third parties.
28

29 With that background in mind, the proposition I'm putting
30 to you is that, if there is a laxness in defining the
31 purpose for which the IPS funding arrangements is in place,
32 the availability of a more attractive contracting
33 arrangement from the supplier's perspective in the context
34 of a constrained market can perpetuate demand from the
35 supplier's side for that kind of arrangement rather than
36 the more orderly preplanned OSD arrangement; do you agree
37 with that proposition as a general observation of market
38 behaviour?

39 A. It's difficult to answer that from the basis of the
40 data and information that we've gathered. My response may
41 be in two parts. We know that within a constrained human
42 services environment in Australia more broadly that
43 providers are often seeking or forced to make some form of
44 cross-subsidy between the two streams of funding that they
45 are being provided to deliver, and that is not unique to
46 Queensland. So for dual providers, for example, it may be
47 seen that funding for out-of-home care in the round is a

1 combination of both OSD and ISP contracts that together
2 allow them to deliver a cost-effective sustained operation.
3 That is not unusual.

4
5 In terms of the data that we had in the time-compressed
6 sort of period that we had we were not able to drill down,
7 as perhaps we would in a longer review, to really get under
8 the skin of the IPS arrangements and trace back to what the
9 Commissioner has described, which is really categorising
10 them in the two subcategories that you have mentioned, so
11 complex needs, as I understand, was originally intended to
12 be one of the aims of OPS, versus short-term or relief
13 placements where there is no other form of care available.
14 So we have not in our report been able to segment where
15 that growth actually occurs or trace it back to the
16 original aims of that funding stream.

17
18 COMMISSIONER: Mr Jefferson, that's perfectly all right.
19 The questions I've just asked you might be better directed
20 I think to the department decision-makers, who presumably
21 will have a better understanding of the motivations,
22 because I'm really driving at - trying to get to the
23 motivations of the suppliers given that the State itself in
24 this area is wholly dependent upon third party providers of
25 these services. But thank you. Mr Diaz.

26
27 MR DIAZ: And where we had left off just a moment ago, you
28 were talking about the three layers of demand and in
29 particular you had come to explain the observation in the
30 key that accompanies figure A.17 that these kind of
31 high-cost outcomes could be avoided through more effective
32 commissioning. I think you had started to mention that one
33 such form of more effective commissioning could be through
34 commissioning OSD placements. Is there anything else that
35 you have in mind as concerns commissioning practices that
36 could be deployed to avoid children ending up in high-cost
37 IPS arrangements?

38 A. So later on in our report, I think - so paragraph
39 A.75, for those who are reading separately, and figure
40 A.28 - we've suggested at least at high level a kind of a
41 visual representation of how different aspects both of our
42 review report but also other things we understand to be of
43 benefit in relation to commissioning social services could
44 be brought together as part of a more virtuous cycle of
45 commissioning in relation to residential care. I'd say
46 upfront that both the diagram and the recommendations will
47 be, I'm sure, no surprise to the government of Queensland

1 and, as I understand it, some of the activities that are
2 described in that are already underway as part of
3 the reforms that you mentioned in your opening, Mr Diaz.
4

5 I think the planning - and maybe just as an additional
6 commend to tie the parts of the report together, when we
7 come to talk about the third component of the report, which
8 is actually about more effective modelling, that is a
9 critical component of the first part of a commissioning
10 model where you have all of the data available to allow you
11 to plan, not just at the state level but critically at the
12 regional and subregional levels as well, and that I think
13 in other modelling approaches being undertaken allows for
14 you to really understand the drivers and the market
15 dynamics below the level of the state and pick up some of
16 those factors I mentioned earlier, which is the mismatch
17 between supply and demand that can often emerge in a rural
18 or remote setting.
19

20 Q. Yes. And turning back in your report to page 34, this
21 is the first layer of demand that you were describing, the
22 macro demand. Do you have any experience or understanding
23 of what social drivers are driving demand for out-of-home
24 care services generally?

25 A. Without reading our report, I think we have summarised
26 that under paragraph A.33. We have not sought to quantify
27 those drivers, but I think understanding the impact of some
28 of those factors, again linking to the third part of our
29 report, allow you to with more precision understand the
30 correlation between those factors and the flow-through to
31 residential care, which when combined with unmet demand in
32 other adjacent services, which might include alcohol and
33 drugs, mental health or broader health services, can
34 contribute together to drive more families to a position
35 where they may be struggling and may require the
36 intervention of a statutory child protection.
37

38 Q. Yes. And on page 36 now concerning the demand for
39 residential care as compared to other particular types of
40 services, and in particular the observations at
41 paragraph A.43 and A.44, you mention that there's a growing
42 consensus about the effectiveness of therapeutic
43 residential care, and could you just explain - perhaps if
44 you're able to elaborate in particular on the matters at
45 A.44 - how Victoria has been able to in practice rather
46 than in name only ensure that the residential care services
47 provided to children are in fact therapeutic?

1 A. So this comes in two ways. One is obviously
2 investment in the fabric of the homes themselves to ensure
3 that there is a progressive transition away from larger
4 homes to homes of three, four bedrooms that are less busy
5 from the perspective of offering support and care to the
6 young people within them. That comes at a cost when you
7 think about the economies of scale in relation to staffing
8 but also - and this is the second component - the skills
9 and capabilities of the staff that you need within those
10 homes to provide effective care. So simplistically,
11 Mr Diaz, it's an investment in both fabric but also the
12 people that are required to deliver tested therapeutic
13 models in a setting that is different to larger residential
14 care settings, where there may be multiple children
15 sometimes of differing ages, which makes the delivery of
16 therapeutic care challenging.

17
18 Q. Yes. And over the page at paragraph A.50 on page 37
19 you observe that part of the issue with demand is that the
20 government is increasingly procuring IPS contracts at a
21 high cost. You note that you understand there are
22 initiatives underway to transition some of those IPS
23 agreements to OSD arrangements, which is a matter of public
24 record. But then you go on to identify that this may
25 involve some risks of providers leaving the market. Can
26 you explain why that is so?

27 A. Yes. This is an interesting and kind of a bit of a
28 tightrope that all jurisdictions I think are walking on at
29 the moment. So, quite rightly, there is a desire to
30 tighten up requirements and licensing and the oversight of
31 residential care. That needs to be done as part of a
32 careful dialogue with the market to make sure that when
33 you're setting pricing, which may be seen to be on
34 aggregate lower for longer term arrangements with, if you
35 like, more stable providers, that the unintended
36 consequence can sometimes be that you're actually impacting
37 the bottom line for those providers so much that they will
38 reconsider their participation in the program altogether.

39
40 So I think the comment here is not so much geared to,
41 I suppose, providers that have only just joined the market,
42 for example, and are providing a small fraction of places;
43 it is simply stating that market reshaping, in this example
44 moving from more ISP to OSD, so longer term, stable
45 licensed arrangements, needs to be done in a way that is
46 sensitive to price and doesn't inadvertently remove some of
47 the providers that you want to play a strong role in that

1 market from the market. And it goes to the previous
2 comment I was making that this is never an easy market to
3 work in. We have thousands of incredibly values-driven
4 staff and a large number of very values-driven
5 organisations in this market who are struggling to make
6 ends meet to deliver this service well.

7
8 So my comment really is framed in that light, that as part
9 of the exercise - and obviously I've been involved in
10 commissioning of a number of different services in the
11 past - that unintended consequence is really what we're
12 flagging here, that the State of Queensland, in driving
13 towards greater OSD uptake - and there perhaps needs in
14 terms also be redefinition of what's captured within OSD,
15 to pick up the point the Commissioner made earlier about
16 complex cases, for example, which do attract a higher
17 premium, rightly so, in terms of the staffing required and
18 the level of supervision and oversight. But it is a
19 careful dance to make sure that the market overall remains
20 able to respond to that demand and that there are not
21 shocks created by, for example, setting prices lower as
22 part of aggregating to OSD that then removes some of the
23 providers that you would expect to play a meaningful role.

24
25 COMMISSIONER: Mr Jefferson, you've returned in a way to
26 the subject matter of what I was trying to tease out, as it
27 were, a little while ago. In a supplier-constrained
28 market - it may not be supplier constrained in Brisbane but
29 in many regional areas in particular - to put it sort of
30 simply, to encourage the participation of a provider there
31 has to be something in it for the provider. Now, for
32 not-for-profit providers that might be something less in
33 gross financial terms than for for-profit providers. But
34 in either case if one is to contract on the longer term OSD
35 model it has to be a contract from the supplier's
36 perspective that enables it to be a viable business and to
37 meet the prescriptions and standards that the contract
38 itself demands.

39
40 Do I understand you to be saying, using the label of market
41 reshaping, which I think is the characterisation you've
42 given it, that you have to be careful not to drive out of
43 the market by driving too high a bargain or hard a bargain
44 those providers that you want to encourage to remain in the
45 market and provide quality care?

46 A. Correct.
47

1 COMMISSIONER: And it's therefore not as simple as saying
2 let's transition all of the IPS-funded providers to
3 long-term OSD providers?

4 A. There is a commendable move, in my view, to move a
5 larger proportion of IPS arrangements into a stable and
6 licensed arrangement. The second point I made a moment ago
7 was that, I think standing back from that move, that
8 reconceptualisation of what's actually in the tin for OSD
9 provision and ISP provision needs to be part of that
10 discussion so that, for example, and you mentioned earlier,
11 Commissioner, that if an original intent for ISP was to
12 support provision of complex cases that could not be
13 managed elsewhere, that the removal of an IPS mechanism by
14 transferring all of those places into OSD doesn't remove
15 that as a type of care or a situation that can be
16 effectively dealt with through licensed provision in this
17 case. So that was really what I was saying. It's, you
18 know - I suppose our view would be that it is part and
19 parcel of a reconceptualisation of the market more broadly,
20 the elements that you are buying from providers within it,
21 both complex, non-complex, therapeutic models, et cetera.
22

23 COMMISSIONER: Yes, but doesn't it require, if one is to
24 design the market as best one can as the buyer, that there
25 is clarity about the circumstances or criteria that would
26 distinguish the use of an IPS model, for which there may
27 well be a clear residual role or a clear specific role for
28 particular kinds of demand or needs, from OSD contracts,
29 which generally are perhaps a more sound basis for
30 acquiring the service over a reasonable timeframe? If
31 there isn't clarity about the role of the IPS-funded
32 arrangements, and assuming that those arrangements have
33 developed to the point where it is more profitable,
34 generally speaking, for suppliers to opt for that method of
35 funding, then does it not follow that you incentivise, as
36 it were, the growth of the IPS model in effect by default
37 because you haven't properly defined what that model of
38 funding should address?

39 A. Well, I think the answer - and I did attempt to answer
40 this before, Commissioner. I think really the growth
41 that's available is through that IPS channel, as we've
42 observed, and so for providers seeking to add placements,
43 if you like, to their mix of service delivery that has been
44 the avenue to do so, as per the data that we've reviewed
45 over the last four years. So much more significant growth
46 in the IPS channel rather than the OSD arrangement, which
47 appears to not have grown by the same number --

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COMMISSIONER: But isn't the basic explanation for that, from looking at it from the perspective of the provider, the supplier, simply that it is more attractive financially to engage with the department and provide the service via this more profitable IPS funding model?

A. So we've certainly provided the data that shows the trend. What we haven't been able to do in the time available is engage directly with providers to really understand those behaviours in the market, and I suspect it is, you know, a more complex set of motivations that cause people or providers that time to seek that stream, and it may be, for example, lack of time to be able to construct a more comprehensive arrangement under OSD or it could be, as you say, that they're seeking to benefit from a more generous or perhaps a more open pricing approach that is there through the IPS or IPS arrangement.

COMMISSIONER: Well, particularly if that pricing arrangement is not allied to a requirement that the provider be licensed and subject to review and scrutiny in the way that a licensed provider under an OSD contractual arrangement would be, and therefore the attractiveness might also include the opportunity to, as it were, cherry-pick the supply of services where there is an unmet demand, that in turn, the unmet demand, may well be the function of a failure to properly plan in advance based on a good model of forecasting to meet that demand, resulting in a circumstance where the department is effectively hostage to a rack rate just in time to meet the demand. Isn't that a reasonable explanation of one of the reasons, which involves a number of inputs coming together, that is to say a lack of forward planning, perhaps aggravated by deficiencies in the forecasting model, and a lack of timely attention to known likely forecast demand relying instead on a retrospective meeting of the demand by simply seeking an IPS funder or funded entity to cherry-pick opportunities as and when they arise?

A. We've said in our report certainly that forward planning is a key offset for really curbing that growth in IPS placements, so, in other words, trying to work out going forward what level of capacity for licence provision might be appropriate. That obviously comes with its own difficulties in terms of working out how to translate that data into available places on the ground, given that Queensland is a more fragmented state population wise than some of the other jurisdictions and the distances involved

1 in terms of providing provision are significant. So - yeah.

2

3 COMMISSIONER: Take it, Mr Jefferson, I think again I'm
4 sort of pressing you on topics that are better perhaps put
5 to the department. But, in any event, thank you.

6

7 MR DIAZ: And we certainly will put them in due course.
8 Just coming back to this comment you made about the
9 tightrope for all of the jurisdictions and the necessity to
10 have a careful dialogue with the market, as I understood
11 it, to avoid a possible exodus or at least exit of some
12 providers from the market, is it fair to say that an
13 offsetting consideration might be that entry into long-term
14 placements is beneficial for providers both from the
15 perspective that, one, it allows them, for instance, to
16 enter into leases for extended period with a degree of
17 confidence that they will be receiving funding, and not
18 only receiving funding, but quarterly in advance, so it can
19 be budgeted properly, and, secondly, it allows them to hire
20 staff with certainty at a more cost-effective rate than
21 casualised labour, the point being aren't those
22 considerations that might offset some of this exit risk?

23

A. Correct.

24

25 Q. Yes. Okay. And, mindful of time, I might take you
26 just to the back part of part A, and in particular at
27 page 43 there's reference to some possible market
28 intervention strategies, which I understand from your
29 report have just been raised at preliminary level but you
30 haven't had time to consider them in detail; is that right?

31

A. So if we're talking about paragraphs A.66 through
32 A.75 --

33

34 Q. That's right.

35

36 A. -- I think you will note that this is a relatively
37 summarised version of potential interventions that we have
38 given some insight or reflection on based on the
39 observations and the data that we can see in relation to
40 both the types of provision but also the contractual
41 oversight. And I think on - in paragraph A.75 and the
42 subsequent dot points, to assist the Commission in really
43 trying to bring together the findings of the report in
44 totum, that diagram at figure A.28 really is certainly our
45 attempt to be able to say there are features of the
46 analysis that tell you about improvements or incremental
47 changes that could be made at all four stages of the
high-level commissioning model and would be to a greater or

1 lesser extent informed by the Commission's work but also
2 the specific report.

3

4 Q. Yes. And one of those matters you mention at least in
5 the preliminary way just discussed is the possibility of
6 direct government service delivery, and you mention the
7 example of New South Wales having committed to funding 44
8 government-owned purpose-built facilities; that's at
9 paragraph A.47. Are you aware of any other jurisdictions
10 being involved in direct service delivery?

11 A. Well, Victoria certainly is. I think the comment I'd
12 probably make just standing back is that, you know,
13 different states and territories have approached their
14 market in very much different ways in terms of government
15 roles. We, in this review, did not set out to consider in
16 detail the potential role of government in Queensland
17 beyond its role in the market that we could observe and
18 analyse. I think, you know, more broadly there is
19 potentially some analysis of whether that is a good thing
20 going forward that would require much greater level of care
21 and attention than we were able to devote in the two months
22 that we worked on this review.

23

24 Q. I understand that was a Herculean effort indeed. Just
25 to at least deal with that, though, at a level of principle
26 or theory, are you able to comment at all on some of the
27 benefits and disadvantages of government being involved in
28 direct service delivery for a service like this?

29 A. Maybe a couple of examples. One, obviously providing
30 care as a last resort within the system where it is unable
31 to be provided by others; secondly, as the body that can
32 test and trial new models of delivery, potentially a
33 broader benefit to the system, which at times can struggle
34 to have sufficient capital to invest themselves in
35 trialling new models, evaluating them and then rolling them
36 out more broadly. Thirdly, it can actually act as a labour
37 market sort of facilitator in the sense that by employing
38 workers at some degree within the system it allows for
39 retention of that workforce pool within a relatively
40 well-paid supported environment that can also then be of
41 benefit to the sector more broadly. I would say that last
42 point with a degree of not tongue in cheek but certainly
43 I can acknowledge that government is often seen as a
44 competitor for labour from providers. So I think that
45 notion of collaboration and kind of cooperation within the
46 system would need to be part and parcel of any move to
47 either grow or strengthen the role of government here.

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Q. And any disadvantages that at least in a theoretical level you think appropriate to mention?

A. Well, government is not always the best deliverer of social services, and it does depend on, you know, relative strength in geographic areas, the availability and also the track record of providers in the sector that may be greater in particular areas of the jurisdiction. I think it goes without saying that provision to First Nations children and young people is an area where - you know, a number of states have made significant moves towards self-determination and transfer out of government, so this is to community-controlled organisations as is appropriate, and that would be, you know, I suppose an obvious caveat to put over the top of all of the comments I've just made in terms of that delineation between government services and Aboriginal or First Nations delivered service delivery.

Q. Yes. And, mindful of time, I'll move a little bit more swiftly through parts B and C. That being said, I certainly don't want you to feel like there's any rush. You should still take time to explain things in as much detail as you like. But, if anything, it is imposing a restraint on myself.

For part 4, which I call part B and I think is described as much at least in parts of the report, could you just explain to the Commission the exercise you undertook in an analysis of 20 residential care providers and the materials that you considered for that purpose?

A. Yeah. So I'll also try and be brief here. So the Commission, as I think was highlighted at the start in the introductory statement, prepared the notice to produce without KPMG's direct input, and the key financial information we received included annual financial reports for FY23, 24 and 25; a copy of the last five IPS pricing quotes from each provider relating to FY26, so very up to date; an extract of the payroll report that covers 30 June 2025; a roster for a one-week period sample, which had to include 30 June 2025 as well; and in addition we obviously reviewed witness statements where they were relevant.

Perhaps just as a comment on limitation, the absence of more granular financial information and at times the different reporting periods noted above limited our ability to reconcile all of the financial performance to the payroll, rosters and IPS pricing schedules. So our

1 findings certainly in the published document focus on broad
2 themes rather than validating provider-specific
3 profitability on more of a bottom-up basis.
4

5 I should also note that not all questions in the notice to
6 produce were answered by providers, and the witness
7 statements did not always corroborate with the financial
8 statements; and we have given a flavour of that in the
9 report that's been made public.

10
11 Q. Yes. For those following on the livestream, that's at
12 pages 47 - or page 47 only of the report. And are you
13 aware how the cross-section of 20 providers was selected by
14 the Commission for your analysis?

15 A. The understanding we have is that the Commission
16 selected a sample of 20 providers with reference to
17 different criteria, which included a balance of for-profit
18 and not-for-profit, licensed versus unlicensed, large
19 providers versus small providers, geographic spread and,
20 lastly, providers with different focus areas or models of
21 care.
22

23 Q. Yes. And it's already been touched on at least in my
24 opening submissions, but are you able to explain why part B
25 of your report has been kept in a separate confidential
26 annexure?

27 A. Very briefly, given the to and fro on that issue
28 already, it was felt that the level of financial
29 information detailed in part B could be price sensitive,
30 particularly the analysis of IPS funding per placement day
31 and also, and importantly, the contract margin information,
32 and we felt important to avoid a situation where providers
33 would be able to adjust their prices as a result of access
34 to this more granular information.
35

36 Q. Yes, and --
37

38 COMMISSIONER: And just to be clear, Mr Jefferson, this is
39 information in the case of IPS-funded providers that was
40 not sought and may or may not have been provided if sought
41 by the department in the course of procuring the IPS-funded
42 contract with the particular provider?

43 A. Correct.
44

45 COMMISSIONER: Yes.
46

47 MR DIAZ: And just to draw on the point made by the

1 Commissioner just now, it's right, isn't it, from your
2 understanding that OSD providers are required to provide
3 financial statements to the department, audited financial
4 statements?

5 A. That's my understanding, but I'm happy to take that on
6 notice as there may be, you know, a slightly more granular
7 answer to that in terms of the level of information.

8

9 Q. Yes. Okay. And, appreciating that the findings are
10 at a higher level of generality given the limitations you
11 alluded to, are you able to draw us through in summary form
12 some of the key findings you made in part B?

13 A. Certainly. So maybe just firstly in relation to the
14 average price per placement day for suppliers we noted --

15

16 Q. And where can we find this, sorry, Mr Jefferson?

17 A. So page 14. I believe that's --

18

19 Q. This is the executive summary?

20 A. Correct, yeah.

21

22 Q. Yes.

23 A. Sorry. So, firstly, significant variability in the
24 average price per placement day for suppliers with an
25 approximate 450 per cent difference between the lowest and
26 highest amount in our sample. Notably, for-profit
27 providers received a materially higher funding per
28 placement per day, with average daily rates being around
29 \$500 higher than not-for-profit providers. This means that
30 according to our sample - again stressing it is a sample,
31 not every provider - on average a placement with a
32 for-profit provider in our sample would have cost 182K, or
33 thousand, dollars more per year than a placement with a
34 not-for-profit provider. And that calculation is derived
35 from extrapolating that \$500 difference per day times by
36 the number of days in a year.

37

38 In terms of maybe just talking a little bit about model of
39 care information, because you will have seen that one of
40 the insights is really around just, you know, that quality
41 dimension in relation to contractor, based on the available
42 information we were able to segment providers at a high
43 level into different kind of adherences to a recognised
44 model of care. We would say overall that funding per
45 placement per day does not, on the basis of the information
46 that we were provided, show a consistent relationship with
47 the models of care, with providers demonstrating strong

1 models across a very wide range of funding levels. So that
2 really is perhaps a statement that goes to that question of
3 paying for quality or for a recognised approach to either
4 therapeutic care or some other recognised model.

5
6 Q. And, just to make sure I've understood that correctly,
7 you're saying that you weren't able to discern a clear
8 correlation between funding price per placement day and the
9 model of care said to be provided?

10 A. Correct. And I would again caveat that by saying we
11 were not in the time available able to really drill down at
12 a provider level into their adherence with the model of
13 care which was stated to be in place, but --

14
15 COMMISSIONER: Mr Jefferson, putting that another way, are
16 you saying that, insofar as you were able to analyse this
17 correlation, there was not necessarily a correlation
18 between better quality care and higher price?

19 A. Yes, that's a shorter way of saying what I've said.

20
21 COMMISSIONER: Yes.

22
23 MR DIAZ: And is it right, just to provide the necessary
24 context, that you did, however, have, for instance, witness
25 statements where providers were invited to explain the
26 model of care that they used, the type of staff that they
27 hired and any particular features that might set their
28 service apart from other services?

29 A. Yes, correct.

30
31 Q. Yes.

32 A. And we would - just to add to that, we would observe
33 that from our work more broadly in Australia, and the
34 Commissioner highlighted earlier this notion of what is
35 I suppose a reasonable dividend or return to providers for
36 providing this information, that purpose-driven
37 organisations within this sector will often seek to
38 reinvest any return in developing or trialling different
39 models - that has certainly been my experience working with
40 some of the leading providers in the sector - so that as
41 they operate as a for-purpose and a not-for-profit business
42 in the cases that I've been most closely associated with
43 that any dividend, if you can put it that way, is then
44 reinvested in trialling or addressing workforce shortfalls
45 or training rather than, if you like, returning to a
46 beneficiary or a shareholder.

1 Q. And I might just take you in particular to page 50 of
2 the report, which is - contains the second and third of
3 your key findings. Initially I would like to focus on the
4 second of those key findings. You mention that net profit
5 is not necessarily a reliable indicator of financial
6 performance. Are you able to explain why that was so,
7 perhaps building on some of the matters we've in fact just
8 been discussing?

9 A. Yes, and again briefly - and I think this has been
10 touched on a little bit already - we found in our report
11 that net profit is not an accurate indicator of the
12 provider's financial performance as the analysis of the
13 sample shows owners and related parties extract economic
14 value through various mechanisms, including above-market
15 salaries, related party benefits, related party loans and
16 dividends, and that enables cash to be withdrawn from the
17 business irrespective of reported profit. As a result, our
18 analysis focused really on the IPS contract margins, which
19 we felt to be a good indicator of profitability but does
20 not consider a business's central costs, for example, head
21 office salaries and IT and system costs.

22
23 Q. And I appreciate that this question may be too
24 simplistic and, if that's so, you can provide whatever
25 caveats you need to, but was it your general observation
26 that the providers were operating in what you might call a
27 profitable market?

28 A. Yeah, I might just touch on the facts there. So, in
29 terms of the analysis, 12 of the 14 for-profit providers
30 make a profit. Of the two that were shown at least on
31 paper as loss making, one still paid a \$5 million dividend
32 and a 2.7 million related party loan, which is highly
33 unusual, in our view, for a loss-making business. We may
34 have been able to identify the underlying driver of that
35 loss if we had access to more granular information. And
36 the second provider showing loss, while they reported a
37 receivables impairment of \$6 million, it actually gave
38 rise, that impairment, to a \$4.5 million loss, and, given
39 the underlying debtor of this type of business relates to
40 the Queensland government, we assume the receivable that
41 was written off was actually a related party loan.

42
43 COMMISSIONER: When you say a loss, do you mean a loss for
44 tax purposes?

45 A. A loss at end financial year, yeah, in terms of
46 reported - yeah. I'll just add to that two of the six
47 not-for-profit providers are loss making, and they both -

1 I should note that the analysis there was slightly clouded
2 or more difficult by the fact that they both provide
3 multiple services, and that's not unusual for providers
4 within that space, where IPS and OSD are very small as a
5 proportion of their overall business and only account for
6 1.2 per cent and 7 per cent of revenue; so perhaps are not
7 representative of some of the other providers that we
8 analysed.

9

10 COMMISSIONER: So that's a not-for-profit category?

11 A. Correct.

12

13 COMMISSIONER: That is not-for-profit providers?

14 A. Yeah, that's right.

15

16 COMMISSIONER: And when you say "loss" there in that
17 answer do you mean a real economic loss as opposed to a
18 reported loss?

19 A. I don't have that detail in front of me, Commissioner.
20 So happy to take that one on notice and provide that you
21 separately.

22

23 COMMISSIONER: Yes.

24 A. I suspect that that is contained within the
25 confidential annexure.

26

27 COMMISSIONER: Yes. Thank you.

28

29 MR DIAZ: And just on the profitability and perhaps more
30 precisely the scaleability of the providers - and I think
31 this is touched on to some extent at page 51 of your
32 report - did you observe that IPS providers in particular
33 were able to scale and grow their businesses quite rapidly?

34 A. Yeah, we can comment on that a little bit, and I think
35 that goes maybe to a more general observation around the
36 state of the market. I think in effect the barriers to
37 entry to IPS are seen objectively as being lower than OSD
38 as the operating model there is really - can be akin to a
39 labour hire business that requires access to youth workers
40 who only need to be working towards their Cert IV in Child,
41 Youth and Family Intervention, and, as I think was
42 highlighted earlier, minimal upfront capital is required as
43 many providers lease vehicles or require the workforce to
44 have access to their own vehicles, and properties are
45 rented.

46

47 The data that we could observe showed that 50 per cent of

1 the IPS providers in our sample use a flexible workforce of
2 labour hire or casual staff rather than fixed-term
3 employment, which reduces the need for - well - and, again,
4 this is an inference - which reduces the need for
5 investment in the workforce, given its more casual nature.

6

7 Given many providers of the for-profit IPS-only providers
8 do not have a licence, those rules, if you like, in
9 relation to pricing benchmarks appear to have become less
10 observed or monitored over time, particularly when we're
11 looking at the difference between the amounts being, if you
12 like, charged in the pricing schedule for staff and the
13 amounts being paid to staff through payroll.

14

15 Q. Yes. And with some trepidation, but I think we can do
16 it appropriately, could I just take you to the confidential
17 annexure of your report. Do you have a copy of that with
18 you?

19

20

21 Q. Now, without disclosing names or numbers of anyone
22 identified in that annexure, I just want to take you to
23 page 9 in particular, which records some summary
24 observations that have been provided to assist the
25 Commission, and could you indicate for the Commission -
26 summary observation 2 --

27

28

29 Q. -- which is on page 9, identifies the revenue that was
30 generated by two providers in their first year of trading.
31 Could you just identify that for the Commission?

32

33

34

35 MR DIAZ: There's no difficulty with the witness
36 identifying the amount generated in the first years of
37 trading providing he doesn't identify the number or name of
38 the providers.

39

40

41

42 WITNESS: So just, yeah, to characterise that observation,
43 and I might just change wording slightly, the IPS revenue
44 growth varies across the providers sampled, but several
45 providers demonstrated significant first-year growth, which
46 suggests opportunistic scaling rather than incremental
47 growth patterns. Two providers generated revenue of,

1 respectively, 15.1 million and \$9 million in the first year
2 of trading.

3
4 MR DIAZ: Yes. And coming back to the public aspect of
5 your report, or in fact more generally I just wanted to ask
6 you about that, what does that tell us about the state of
7 the market, if anything, that - I know you've touched on
8 this already with the point you made about barriers to
9 entry, but providers are able to scale their businesses in
10 quite substantial ways in their first financial year of
11 trading?

12 A. I'm not sure I can say much more, Mr Diaz, than I've
13 already said. You know, the data probably speaks for
14 itself in terms of that growth trajectory.

15
16 Q. And perhaps with my prompting, from a best practice
17 perspective, would you have any concerns about providers
18 receiving that amount of revenue before they have been, if
19 you will, tried and tested by the department or have a long
20 history of providing child placement services?

21 A. The difficulty in answering that question, if I can
22 just push back a little bit, is that because we didn't
23 drill down into each of the individual provider's track
24 record, if we can put it like that, or perhaps their
25 provision of services in adjacent sectors - you will often
26 find providers in a market like this one seeking, if
27 they're a hybrid provider of other services, to explore an
28 entry into market in this or other areas, and a theme at
29 the moment, just as a for example, is providers seeking to
30 derive benefit from increased Commonwealth funding into
31 social housing by opening up a housing arm. It is not
32 unusual in that kind of business for you to see revenue
33 growth that is significant in the first few years given the
34 capital-intensive nature of that service. Given we're
35 talking here about people primarily, staffing costs,
36 15 million obviously in a first year of revenue is
37 relatively significant when you break that down by number
38 of staff. We would want, if we were doing this review over
39 a longer period of time, to really understand whether that
40 presents a risk in terms of that speed of scale-up but
41 particularly the track record and the quality that's being
42 delivered as part of that fast growth.

43
44 COMMISSIONER: Can I just ask you some questions about
45 economic - or barriers to entry. I think you've said that
46 this market, that is for the provision of non-family based
47 residential care services, is one to be characterised as

1 having low barriers to entry; is that correct?
2 A. I was being specific in relation to IPS funding
3 requirements as distinct from OSD.

4
5 COMMISSIONER: All right. Can we distinguish between
6 economic or financial barriers to entry as opposed to other
7 barriers of a regulatory kind which in turn may involve
8 some expenditure? So in the case of a licensed provider
9 there are requirements for training and other supervision
10 that would come at a cost presumably to the provider?

11 A. Correct.

12
13 COMMISSIONER: But nevertheless you wouldn't call this
14 market one characterised by high economic barriers to
15 entry, would you?

16 A. Not at the present time.

17
18 COMMISSIONER: No.

19 A. I think - and that's, as I say, specifically in
20 relation to the IPS rather than the OSD.

21
22 COMMISSIONER: Just focusing on the OSD, how would you
23 characterise the barriers to entry in relation to OSD
24 providers?

25 A. Well, more significant, but, as I think has been
26 recognised here and in the report, there are - and this is
27 the same in every jurisdiction - there are further elements
28 of strengthening that need to be put in place to make sure
29 that it is a fully, you know, licensed regulated and
30 commissioned area of service delivery.

31
32 COMMISSIONER: Sure. But even in the case of OSD
33 providers, acknowledging that there is a higher cost
34 associated with meeting the requirements necessary to
35 become licensed, it's not a market activity that one would
36 generally characterise as involving high economic barriers
37 to entry?

38 A. Well, there are - I think you hinted at this in your
39 question, Commissioner, and the same can be said in other
40 adjacent systems like health care, for example, that
41 investment by providers in quality systems - and I use that
42 term specifically - so staff who are actually managing
43 adherence with compliance requirements but also staff who
44 are proactively looking to improve quality through
45 training, through implementation of better practice models
46 of care all has a cost to it. So those are the aspects
47 that I think are - they're not always directly related to

1 care delivery, but they're certainly a back-office cost
2 that would come to a provider seeking to deliver licensed
3 care at scale.

4
5 COMMISSIONER: Yes, but on the assumption that the
6 contract price takes account of the costs associated with
7 delivering the service, including allied regulatory costs,
8 if I can just give it that label, associated with the need
9 to obtain a licence, meet certain standards, train staff
10 appropriately, engage staff appropriately, if one is a
11 potential supplier under that model there's every reason,
12 isn't there, to make that kind of investment provided there
13 is a contractual arrangement with the department that
14 allows the business to be viable having regard to the costs
15 associated with conducting it, with some reasonable profit
16 margin, whether the provider is a not-for-profit entity or
17 a profit-seeking entity? And, if that's correct, doesn't
18 that mean that in principle at least it should be possible
19 to attract suppliers to the market, increase the number of
20 suppliers to the market, provided that there is a rational
21 correlation between the terms upon which the department
22 contracts with the supplier and the costs associated with
23 delivering the services; do you agree with that?

24 A. I think that's correct. I mean, I would say that it
25 takes us back to the conversation, Commissioner, that we
26 were having a little while ago about the fine line that a
27 Commissioner has to walk to provide sufficient incentive,
28 taking account of all of those inputs that need to be in
29 place to deliver a quality service, and the price that is
30 being set in the market. So, in very simplistic terms,
31 it's finding that middle ground that recognises the
32 back-office costs in addition to the front-office or
33 direct-care delivery costs, and rewards those in a way that
34 is proportionate both to the risk on providers and the
35 compliance requirements that they've got, and also the
36 quality requirements in relation to vulnerable children -
37 and, you know, I think we started with that comment. We've
38 got to remember that the client group here are vulnerable
39 children, and so there will always be a minimum - some
40 minimum requirements and hopefully more aspirational
41 requirements that relate to quality and safety of the care
42 of the children and young people in question.

43
44 COMMISSIONER: Well, Mr Jefferson, I think we can all
45 agree on the criticality of the service and the importance
46 in ensuring that the service meets the needs of children
47 and keeps them safe. The point I'm trying to get to is

1 this: that if procurement is not designed with a view to
2 providing a contractual arrangement that is rational and
3 meets the cost demands, et cetera of the provider seeking a
4 reasonable return, then that will be a disincentive to
5 participation in the marketplace under those longer-term
6 arrangements?

7 A. Yeah, there needs to be adequate recognition of that
8 burden as part of longer-term pricing; agreed.

9

10 COMMISSIONER: And then if lo and behold there's a demand
11 for the service which, as you say, is an inelastic demand
12 because the State has an obligation to care for children as
13 and when the need arises as and where the children are
14 found, then you create, don't you, a crisis-driven demand
15 that is met under the arrangements that seem to have been
16 in place for the last five years for just-in-time
17 crisis-driven demand leaving the acquirer with the only
18 option being to engage in IPS-funded service delivery just
19 in time, thereby opening up the opportunity for
20 cherry-picking by those suppliers who come into the market
21 seizing an opportunity; isn't that the natural consequence
22 of --

23 A. I think we're furiously agreeing, Commissioner, that
24 longer-term planning is at the heart of the solution to the
25 problem we're discussing and, as part of that, seeking as
26 an objective to raise the proportion of places that are
27 provided through properly licensed and governed provision.

28

29 COMMISSIONER: Yes. And I started out by asking you about
30 the topic of economic barriers to entry. The costs - just
31 looking at the financial costs of entering in this market -
32 are, generally speaking, variable costs, aren't they?
33 They're costs associated with staff, and I suppose one
34 could say that the lease arrangement on a residence that is
35 used is a fixed cost, but if you can lease a property for,
36 say, a year and have rolling extensions to that property
37 there isn't an enormous fixed cost disincentive to entering
38 the market, is there?

39 A. I think that's correct, and I think I covered that
40 certainly in a previous answer. Yes.

41

42 COMMISSIONER: Yes. All right.

43

44 MR DIAZ: And, Mr Jefferson, just one final aspect to ask
45 you about part B - again, this arises, though, from the
46 confidential annexure. I'll give you a moment to turn that
47 up, and when you do if you could go in particular to

1 page 13 of the confidential annexure. So I can say this
2 concerns some analysis that KPMG did in relation to the IPS
3 agreements and in particular the hourly base rate charged
4 by different providers. Again, without identifying any
5 providers by name or identifying the particular allocation
6 of an anonymous number for that provider, could you just
7 explain, firstly, what you understand to be the award rate
8 under the SHADS 3.4 agreement that applies to most of these
9 providers?

10 A. So the hourly base rate which we understand to be
11 under SHADS 3.4 is \$41.45, is the current benchmark, which
12 we have extrapolated up from the last available guidelines
13 or benchmarks from the department, which I think were 2020.
14 I might just go on from that to say that the average
15 provider rate perhaps --

16
17 Q. I think before you - yes, I think I would rather you
18 don't disclose that particular information, but if you
19 could disclose the information at summary observation 4 --

20 A. Yep.

21
22 Q. -- as to how many providers you observed exceeded the
23 SHADS 3.4 award rate?

24 A. Eighteen out of the 20.

25
26 Q. Yes. And is it right, looking at the figure that
27 again is confidential which you can see on the left of
28 the page, that for the two providers that I guess are
29 attributed as not exceeding it, they are essentially at the
30 award rate; is that right?

31 A. Correct.

32
33 Q. Yes. And if now we could go back to the public aspect
34 of your report, and I'll turn, given the time, to part 5,
35 which is also known as part C. This is the final section
36 of KPMG's report which concerns some modelling or analysis
37 you did on existing models. Could you begin by just
38 identifying the - I think in totality there are four models
39 that you analysed?

40 A. Yeah, happy to at very high level, and there are kind
41 of almost five models, really, when you take into account
42 that there are two adjacent models used by Queensland
43 government as the demand funding kind of modelling system.
44 So the models we reviewed were the Rennie advisory demand
45 and cost models used in the "Buyer Beware" report, which
46 I characterised at a very summary level as a whole-of-state
47 unchanged system pressure scenario that signals the scale

1 of risk if out-of-home care, specifically non-family based
2 care, demand continues to grow with an increasing reliance
3 on that form of care to meet this demand growth.
4

5 Secondly, The Demographics Group demand model, that's an
6 intentionally illustrative linear and exponential trend
7 projection of future non-family based care demand really
8 used to help frame a conversation around workforce
9 sustainability and the ability of the labour market to be
10 able to staff the demand that's coming through.
11

12 Third, the PeakCare social advantage advisory demand model,
13 which is historical trend projection alongside what we call
14 a policy target pathway to show the gap to target for
15 future non-family based care demand. And then within the
16 government sphere there are sort of two parts to this,
17 firstly the simulated analytical model and then the
18 parameter-based funding model, which are combined as a kind
19 of modelling system. Those two models are currently used
20 by Queensland government as the core system for child
21 protection care budget setting and acquittal. The SAM -
22 again just summarising what it does - simulates the system
23 pathways of children through the child protection system to
24 produce demand volumes, and then the PBFM, or the
25 parameter-based funding model, applies parameters to
26 translate those volume forecasts into funding benchmarks.
27

28 I think over the top what we would observe, Mr Diaz, is
29 that the outputs are directionally consistent, in other
30 words more growth or more demand, but should be - or each
31 should be interpreted with some degree of caution. The
32 simpler models, which I have listed as 1, 2 and 3 - so
33 Rennie Advisory, Demographics Group and PeakCare - are best
34 treated as contextual baselines, they're really signals,
35 while the SAM to PBFM is the most decision-relevant model,
36 and that reflects its pathway based simulation approach and
37 also cost translation rather than looking at simple trend
38 extrapolation.
39

40 Having said that, though, its outputs are conditional on
41 specified settings and assumptions, and should not be read
42 as what I'd call unconstrained forecasts of funding
43 required. In other words, it's a little bit more
44 complicated than that when you're thinking about all of the
45 different factors that add up to give an accurate planning
46 forecast, and I would say - and I've said this to the
47 Commission - as part of the work, you know, we would never

1 say in this space that you could create a model that is
2 mathematically perfect. It is a space that is so dynamic
3 with so many inputs and outputs to be generated from any
4 model that governments both in Australia and more broadly
5 overseas are very much struggling with this area at the
6 moment in terms of accurately forecasting demand, not least
7 because it is really difficult to work out where foster
8 care is going to go in the future, which is a key driver of
9 both cost increase when you push that group into
10 residential care, but also reflects, if you like, societal
11 changes and dynamics that are really, really difficult to
12 crystal ball gaze as part of a model.

13
14 Q. Yes, and I think --

15
16 COMMISSIONER: Mr Jefferson - sorry, Mr Diaz - the SAM to
17 PBFM model, which is the model used by the Treasury --

18 A. Correct.

19
20 COMMISSIONER: -- that's been in operation, is it correct,
21 since 2019?

22 A. I think it may even predate that.

23
24 COMMISSIONER: Or even earlier.

25
26 MR DIAZ: I think, Commissioner, we'll hear some evidence
27 about that throughout the course of the hearings. Someone
28 will correct me if I'm wrong, but I think the SAM was
29 introduced in around 2015 and the PBFM more recently,
30 around 2023. Certainly there will be evidence about that
31 and we'll delve into the detail.

32
33 COMMISSIONER: All right.

34
35 MR HASTIE: I'm not correcting that, Commissioner.

36
37 COMMISSIONER: Pardon?

38
39 MR HASTIE: I'm not correcting that.

40
41 COMMISSIONER: No, no.

42
43 MR HASTIE: That's my understanding too.

44
45 COMMISSIONER: Yes. Thank you, Mr Hastie. As a general
46 proposition, Mr Jefferson, do you regard the SAM to PBFM
47 model, that is the Treasury's combined model, to be a

1 sophisticated model for forecasting of demand?
2 A. So I think conceptually and structurally we would say
3 it's fundamentally sound. We have suggested in the report
4 that there are a number of enhancements or improvements
5 that could be made. So, for example, in its current form
6 the model is not a fully independent demand forecast.
7 Future intake volumes are specified outside of the SAM and
8 are themselves based on growth and trend assumptions. Key
9 pathway probabilities are largely as well derived from
10 historical system behaviour rather than thinking about, for
11 example, things that may occur or be driven by policy
12 changes going forward or scenarios that could be explored
13 therein.

14
15 COMMISSIONER: And you've made some suggestions, as
16 I understand it, about how the modelling might be improved?
17 A. We think --

18
19 COMMISSIONER: Enhanced?
20 A. Yeah. There are improvements. If you think of a
21 model as both inputs and outputs, we would - our
22 independent view, knowing what's occurring in other
23 modelling systems around Australia, that there are
24 improvements on both sides of the ledger that could be
25 made. So, for example, in relation to outputs the model at
26 the moment does not explicitly represent workforce capacity
27 or market constraints in being able to talk about what is
28 reasonable in terms of labour market provision, for
29 example, and in that extent it links to perhaps one of the
30 simpler models in The Demographics Group report that is a
31 hint at what could be built into the SAM and PBFM model to
32 ensure that it's not just about looking at the input side
33 but it's creating findings that are useful not just for
34 budget modelling but also to help with things like
35 workforce planning.

36
37 COMMISSIONER: Right. Well, the Treasury doesn't spend
38 the time, effort and no doubt deploy the resources
39 necessary to model and forecast demand simply for the sake
40 of understanding what the output of that model is in
41 relation to demand - here, relevantly, the demand for
42 residential care. It does so in order to have an idea,
43 presumably, about how to meet that demand and to allow the
44 projections, which are the output of that modelling, to
45 inform decision-making at the level of the relevant
46 department, here the department of families and child
47 safety; correct?

1 A. Yes.

2

3 COMMISSIONER: And if the model - notwithstanding
4 improvements that might be made to it and allowing for the
5 inherent difficulties of modelling demand with so many
6 concurrent and complex variables as exist in relation to
7 the child safety system or which are applicable to the
8 child safety system, do you agree that allowing for those
9 limitations it was nevertheless available to government as
10 a tool to base its planning and resource allocations
11 decisions upon, in particular as to the forecast's need for
12 the provision of residential care services over whatever
13 period is being forecast?

14 A. Look, I can only answer factually that it appears to
15 have been in place for around a decade, perhaps as a result
16 of previous reforms within the state. The review - I think
17 we would describe it as being structurally sound as a model
18 but certainly in need of further enhancements to allow it
19 to be fully successful as a - both as a model that
20 considers inputs and changes to some of those drivers and
21 also --

22

23 COMMISSIONER: Perhaps I've led you - I haven't identified
24 clearly what I want to ask you about. I was merely trying
25 to contextualise what the department had available to it
26 over a period of time for the purposes of informing the
27 department about decisions it needed to make concerning the
28 provision of residential care services. So that was the
29 point of asking you whether you regarded it as a
30 sophisticated model and useful to the department.

31 A. It's difficult to answer that in a fulsome way because
32 we - our review is focused on today's model, today's
33 version, not iterations that may have been used since 2015
34 onwards. So it's hard to answer a question around what was
35 actually available throughout that decade. We can only
36 give advice as to how the model is currently applied, and
37 the strengths and weaknesses of it.

38

39 COMMISSIONER: So the model as currently applied - that's
40 the SAM and the PBFM - when did the two components of that
41 model come together in the model? When did the two - when
42 did the current model first start to be used?

43 A. I don't have the answer, I'm sorry, to that question.

44

45 COMMISSIONER: All right. We might find that out
46 elsewhere.

47

1 MR DIAZ: Certainly it's a matter we will explore, and
2 there are certain documents that are the subject of
3 reasonable excuse claims, so I can't go into too much
4 detail about it at present.

5
6 COMMISSIONER: Yes.

7
8 MR DIAZ: But hopefully this afternoon that's a theme
9 we'll be able to explore further. And I should just say
10 the characterisation of the model as SAM to PBFM is a
11 characterisation put on it by KPMG.

12
13 COMMISSIONER: Yes.

14
15 MR DIAZ: It's not perhaps the way that the department
16 might describe the model. But certainly I think the
17 department would accept that the SAM is an input into the
18 modelling that is made as part of the parameters-based
19 funding model.

20
21 COMMISSIONER: All right. Well, I'll just conclude with
22 this question. Mr Jefferson, the whole point of these
23 models is to inform government decision-making, albeit it's
24 a difficult and, to a degree, imprecise exercise however
25 good the model is, as I understand your evidence. But it
26 is to inform decision-making about the deployment of
27 resources in relation to a known demand for the purposes of
28 quantifying the demand and then making decisions in advance
29 of failing to meet the demand if one were to apply the
30 point of this sort of modelling to the need to provide
31 residential care services to care for children?

32 A. Correct.

33
34 COMMISSIONER: Yes.

35
36 MR DIAZ: The final question I wanted to ask you about,
37 Mr Jefferson, concerns the proposed enhancements that you
38 were just discussing. So in outline you had identified the
39 summary findings at page 58 of KPMG's report --

40 A. Yep.

41
42 Q. -- and also overleaf on 59, and then usefully there is
43 a diagram which it's explained is an illustrative schematic
44 only and not a validated model design. I just want to ask
45 you about the seventh step or aspect of that proposed
46 enhancement. It concerns the outputs of the model. Could
47 you explain to the Commissioner what is meant by having

1 both a base case output and also a reference case output?
2 A. Yeah, I can. So I think probably the way that I'd
3 describe it in brief terms, so the distinction between the
4 base case and the reference case, it is really intended to
5 prevent those PBFM outputs being misread as forecasts of
6 what funding will necessarily be required. So the base
7 case supports that budget control and a critical reflecting
8 approved target-driven parameter settings. So that is your
9 foundation.

10

11 The reference case, or it could be cases, by contrast would
12 be used for planning and risk analysis, and that would draw
13 on a more enhanced driver-based intake approach, for
14 example, and a constraint-aware view of placement, supply
15 and capacity. So, in other words, it would push back and
16 challenge where you were clearly of the view that the
17 market as it was currently configured could not ever
18 deliver what was being shown within the numeric or
19 mathematical model itself.

20

21 So I think keeping these outputs separate, so having that
22 base case to make sure that you have, if you like, minimum
23 available funding available, but also reference case to
24 allow for understanding of potential changes in that
25 scenario would improve transparency, make clear what's
26 driving differences in outcomes, allow you to kind of
27 reconcile what's actually happened in the years in
28 question, to also test the health of the model itself, and
29 it would allow decision-makers to test interventions and
30 sensitivities without blurring that planning analysis with
31 the budget controls that are obviously needed by
32 government, particularly the Treasury. So I hope that's
33 clear.

34

35 Q. So, if I can synthesise my understanding, you might
36 have a scenario based on what the department understands is
37 actually occurring, that is to say how many children are
38 entering out-of-home care, what proportion of them are
39 going to family-based care or non-family based care --

40

A. Yep.

41

42 Q. -- and then you could have alternative outputs which
43 model what happens if the supply mix changes, what happens
44 if demand abates and less children are entering out-of-home
45 care, and so on and so forth?

46

A. Correct.

47

1 Q. Yes.
2 A. And a base case really, you know, allows for that
3 I think safety net to a certain extent to make sure that
4 the more risk-driven scenario-based reference cases do not
5 in effect undermine the need for stable, consistent funding
6 at the baseline, which, on the basis of the numbers in this
7 report and the trends we can see, is clearly needed.

8
9 Q. Yes. Those are the questions I had for Mr Jefferson.
10 I understand Mr Hastie may have some matters briefly.

11
12 COMMISSIONER: Yes. Mr Hastie.

13
14 MR HASTIE: Just a few questions, Commissioner.

15
16 COMMISSIONER: Thank you.

17
18 **<EXAMINATION BY MR HASTIE** **[12.32 pm]**

19
20 MR HASTIE: Mr Jefferson, when you gave your evidence you
21 indicated the confidentiality part of the report. I'm not
22 asking much about that, but that was directed to the fact
23 that there were different pricing - prices that the
24 providers were making for the services to be provided to
25 the State?

26 A. Correct, Mr Hastie.

27
28 Q. And that's the reason why you thought - well,
29 obviously they thought it should be confidential to
30 themselves rather than have their competitors know what the
31 prices were?

32
33 COMMISSIONER: Mr Hastie, just to be fair to this witness,
34 the confidentiality decision was one made by me.

35
36 MR HASTIE: I see.

37
38 COMMISSIONER: The material was provided in answer to
39 notices to produce. Identifying material that was either
40 privileged or commercially sensitive, the Commission has
41 given an undertaking to the providers of the information
42 that it will not be disclosed without giving those
43 providers an opportunity to be heard as to prejudice,
44 essentially, consistent with the obligations that
45 I consider I have under the Inquiries Act and the
46 obligation to accord procedural fairness to the providers
47 of that information.

1
2 Now, what I think Mr Jefferson has explained is - through
3 questions asked of him by Mr Diaz is the materiality of
4 the information, therefore essentially the potential for
5 prejudice if that information were to be made public and
6 even if it were to be made available to your client as the
7 counterparty to the contracting arrangements. Now, that is
8 a matter - that is to say the extent to which your client
9 as distinct from others and the public more generally
10 should have access to that material, which would need to be
11 carefully considered, including and importantly giving the
12 providers of that information an opportunity to be heard.
13

14 MR HASTIE: I have no difficulty with the concept of the
15 pricing arrangements being - or indeed anything else that
16 the providers might have being confidential as between - as
17 against themselves and the public.
18

19 COMMISSIONER: And as between themselves?
20

21 MR HASTIE: Or and as between themselves, yes.
22

23 COMMISSIONER: And as between themselves and their sole
24 counterparty - that is, there's a single counterparty to
25 all of these numerous arrangements, and that's the
26 department.
27

28 MR HASTIE: Except that the price obviously comes to my -
29 to the department anyway, Commissioner. That was --
30

31 COMMISSIONER: Yes, that is known. But the working out of
32 the price, the margins, the various - well, the relative
33 margins, for example, as between one supplier of
34 the services and another wouldn't on its face, I would
35 think, be known by the department.
36

37 MR HASTIE: No, quite.
38

39 COMMISSIONER: And if, if this matter is sort of taken
40 further in argument, you were to submit that certain types
41 of information are in any case known to the department and
42 therefore there could be no prejudice to the provider, that
43 would be for such category of information a compelling
44 argument. But it would also be a compelling argument the
45 other way, which is, well, if you know that information you
46 don't need it via this compulsive process.
47

1 So what I'm saying in short to you, Mr Hastie, is that the
2 nature of the material which to some extent at least
3 Mr Jefferson has described in his evidence was to my mind
4 self-evidently commercially sensitive and its disclosure
5 even to your client potentially prejudicial in
6 circumstances where your client is the counterparty to the
7 contracting arrangements.

8
9 MR HASTIE: Quite, Commissioner.

10
11 COMMISSIONER: Yes.

12
13 MR HASTIE: Can I ask you this, though. The - you had
14 available to you, from what you've said in your report, the
15 financial statements, and is that the bare financial
16 statements of some of these providers?

17 A. Sorry, I thought your question was to the
18 Commissioner.

19
20 Q. No, that's all right.

21 A. Yes.

22
23 Q. You had in this report some of the bare financial
24 statements of these providers for three years, plus the
25 additional financial information that you mentioned?

26 A. Correct.

27
28 Q. And you also had some statements. Were they
29 statements that explained components of those financial
30 statements?

31 A. In part.

32
33 Q. All right. And was that following an enquiry by you
34 as to an explanation as to those financial statements and
35 as to those components?

36 A. So we received from the Commission through its powers
37 of enquiry witness statements which related to the sample
38 of providers that we were enquiring into or looking into,
39 the annual financial reports, as you say, and that request
40 was for three financial years, FY23, 24 and 25. We had a
41 copy of the last five pricing quotes for each provider
42 relating to FY26, so the current financial year, and then
43 two extracts or sample pieces of information: payroll
44 report for 30 June 25 and a roster for a one-week period
45 also covering 30 June. So - yeah.

46
47 So our job in a sense was, for each provider, to try and

1 correlate that information to give us a sense of the true
2 financial picture and any other extraneous factors that may
3 have been mentioned in witness statements that we needed to
4 understand to provide greater clarity to some of the things
5 we could see in the financial information.
6

7 Q. All right. So you didn't have any personal contact
8 with any of the providers?

9 A. No, and I think I explained, Mr Hastie, earlier that
10 our exercise is a desktop one only.
11

12 Q. Yes. Quite.

13 A. Yeah. So neither with providers nor with
14 the department directly. All of our information was
15 channelled through the Commission.
16

17 Q. All right. And some of the comments that you've made
18 about the providers, for instance, making acquisitions for
19 what would be described as non-core assets, did they appear
20 in the financial statements, did they?

21 A. That's the information that we've relied on to - yeah,
22 to observe those transactions; yep.
23

24 Q. All right. And in the case of your comments about the
25 income of the CEO was that also an explicit statement in
26 the expenditure component of the financial statement?

27 A. It would have been a line item within the financial
28 statements; yep.
29

30 Q. All right. And they were, with your experience,
31 unusual enough to sort of - or in comparison with the other
32 providers who provided financial statements unusual enough
33 for you to cause - to cause you to make a comment about
34 them?

35 A. From a proportionate perspective, yes, in terms of
36 size of business or complexity of business versus CEO
37 salary. The range for the 20 providers, as you will have
38 noted in the report, Mr Hastie, is quite significant.
39

40 Q. Yes.

41 A. And so we're certainly not saying that everybody
42 within the 20 providers are paying their CEOs at that upper
43 limit. But there were examples that we could point to at
44 the upper limit
45

46 Q. And these were all only IPS providers, weren't they?

47 A. Some were a mix.

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Q. Some were mix; all right. And did I understand you to say that some were also providers of other social services?

A. My understand is that some were - are providers of other social services; yes. I'm happy to take that on notice because we may be able to give a little bit more information in relation to that that I haven't got at my fingertips.

Q. All right. I suppose the point of the question really was that if there were sources of income other than as IPS provider that might affect the dynamic that otherwise appears in your report about the IPS providers?

A. I think I was mentioning earlier, Mr Hastie - and I raised this in relation to not-for-profit providers - that our understanding of their, if you like, true financial position as it relates to residential care is clouded by the fact that there are other activities being performed by that organisation that in one case go to 98 per cent of the business versus their IPS activity relating to 1.5 per cent, let's say. So in those circumstances it's difficult to make generalised observations around financial profitability just of that business unit when all the other factors perhaps are set out in a way that you can't perfectly extract the information that relates to that 1 per cent of the business from the other 99 per cent.

Q. Yes, thank you. And you've mentioned a couple of times the high cost for short-term residential care placements, and you've indicated in your report that that might be associated within the broad planning for lower cost placement options. Can I take it in effect that means that, rather than have OSD contracts, there have been these IPS contracts which are generally a higher cost?

A. The data would suggest that's where the growth has occurred.

Q. And the growth has occurred that way, so the data would therefore suggest that the answer to that is for greater funding for OSD contracts?

A. Well, greater planning, forward planning. The way that we're certainly inferring it in our insights would be for licensed OSD provision to be grown as a proportion of overall provision going forward; correct.

Q. And the problem might be that not enough money has

1 been allowed for the OSD contracts?
2 A. So what we've not sought to do in our review with time
3 available is give any insight as to what a fair price might
4 look like going for forward the market, and I would
5 certainly caution against answering any question in that
6 regard. It goes to the point I was making earlier from my
7 broader experience that commissioning in this market is
8 notoriously difficult because it is a balancing act between
9 ensuring that for purpose, if you like, virtuous providers
10 remain in the market delivering services with the right
11 intent versus creating price constriction to perhaps
12 improve efficiency in a way that rules them out of the
13 market.

14
15 So the Commissioner raised that balance of the other costs
16 that are involved in this space. It is much more
17 complicated to run a successful high quality business than
18 just employing people and plonking them in. You obviously
19 need those quality systems to sit around to make sure that
20 both the model of care, the adherence to it, the training
21 of people, the continuity of care is something that is
22 focused on.

23
24 Q. But in general, as I think you told my learned friend
25 Mr Diaz, if a business has a longer term contract they're
26 likely to be able to put in their labour and their
27 accommodation and everything else that goes with a business
28 in place knowing that they have a stable contract?

29 A. Correct. And they may be able to leverage other
30 sources of funding to invest in that proposition; so, for
31 example, faith based organisations being able to leverage
32 philanthropic funds or other sources of investment to
33 ensure that that long-term program is, as you say, stable,
34 secure, properly funded and also then a platform for doing
35 other things which could include innovating in models of
36 care as well.

37
38 Q. So that would be a quality plus as well as a quantity
39 plus?

40 A. Correct.

41
42 Q. All right. You mentioned --

43
44 COMMISSIONER: Mr Hastie, I'm sorry to interrupt you.
45 I notice the time. Do you have much longer?

46
47 MR HASTIE: Two more questions, Commissioner.

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COMMISSIONER: Carry on.

MR HASTIE: I don't know whether my learned friends to my right have any questions.

COMMISSIONER: Well, if that is the case, we'll continue after lunch with those.

MR HASTIE: Thank you, Commissioner.

You mentioned in an answer to my learned friend Mr Diaz's question a comment or you made a comment about - I don't think you used the word "fragmented", but "fragmented" is another word that comes to mind when you talk in terms of regulation and you mentioned that Victoria, for instance, had gone to a more centralised --

A. Yep.

Q. -- if I could use that word, centralised system, and you mentioned I think in the case of New South Wales the role of the Office of the Children's Guardian. Were you familiar with the fact that the Public Guardian in Queensland has some role as well in protecting children?

A. Yes. I may have omitted it from my list of those involved.

Q. That's all right.

A. No offence intended.

Q. On the same issue can I just - and I'm not being critical, you understand clearly that there are licensed and unlicensed providers in Queensland and you also understand - and, if you don't, will you accept - that Queensland has a system of licensing providers, it has and allows for unlicensed providers, but it doesn't otherwise have a general regulation of residential care providers?

A. Yes, that's my understanding.

Q. All right. But the wording of your report isn't quite consistent with that but, if that's your understanding, that's sufficient.

A. Yep.

Q. Thank you. And the only other thing that I wanted to ask the witness, Commissioner, was this. In one place you mentioned the availability of alternative providers and we

1 know that there are, as you mentioned, kinship care and
2 foster care, there might be the family as well, and you
3 indicate that the weakness of the system of kinship care
4 that the carers may receive less training and financial
5 support than foster carers. I take it that that's a
6 reference to children who have been placed by the Chief
7 Executive in kinship care?

8 A. Yeah, it's really an economic statement about the
9 payments or the allowances made in the different care types
10 and so the overall cost to government being stepped in
11 terms of residential care, foster care and then kinship
12 care.

13
14 Q. All right. Would you accept this suggestion, that the
15 payments being made to or for children in kinship care or
16 foster care are the same in Queensland?

17 A. I'd have to take that on notice because I think it's
18 probably a more complicated answer than a "yes" or a "no"
19 would merit.

20
21 Q. All right. Your report only says "may", and we accept
22 that there may be less training because kinship carers - a
23 grandmother might be prepared to be trusted in a way that a
24 foster parent mightn't be. But in terms of the allowance
25 you'd take that on notice?

26 A. Well, it's more that my own experience running
27 strategy for the system in another jurisdiction tells me
28 that every case is a little bit different in terms of
29 certainly the amounts that might be required for a kinship
30 carer and some of the supports that might be needed which
31 would vary, as your example suggests. So making broad
32 generalisations is probably not a particularly helpful way
33 to respond.

34
35 MR HASTIE: All right.

36
37 COMMISSIONER: Mr Hastie, if it helps, it's my
38 understanding from the evidence I've heard that the
39 allowances available to foster carers are no different to
40 the allowances that are available to kinship carers.

41
42 MR HASTIE: Thank you, Commissioner.

43
44 COMMISSIONER: And why there is an apparent discrepancy
45 when those figures have been aggregated in the way they
46 have in the KPMG report I'm not entirely clear about; we'll
47 try and get to the bottom of. But it's not suggested,

1 I think, that there's any distinction being made in the
2 availability of support for kinship carers as opposed to
3 non-kin foster carers, and that's your understanding as
4 I would understand your questions.

5
6 MR HASTIE: Yes. I thought I should just ask that
7 question --

8
9 COMMISSIONER: Yes, indeed.

10
11 MR HASTIE: Your understanding, Commissioner, is correct,
12 and it's not intended to be a criticism the report.

13
14 COMMISSIONER: No, no. And there will be an explanation
15 for that difference, and we'll work out what it is and make
16 sure that's clarified if it needs to be.

17
18 MR HASTIE: Thank you, Commissioner. No further
19 questions.

20
21 COMMISSIONER: Thank you. I'll adjourn until 2.15.

22
23 **LUNCHEON ADJOURNMENT** **[1.52 pm]**

24
25 COMMISSIONER: Thank you. Now, who in the batting order
26 is going next? Who would like to go next at the Bar table?

27
28 MS GREENWOOD: Thank you, Commissioner.

29
30 COMMISSIONER: Ms Greenwood, can I just say this. It's
31 very plain from what has been said by the witness that his
32 evidence is confined to the work that he undertook and the
33 scope of the report as explained in the report. I didn't
34 get anywhere with him trying to get opinions from him about
35 matters that went outside the terms of his engagement and
36 specific enquiries. So I venture you won't get any further
37 if you were to stray in that way either. So I'll ask,
38 please, that you confine your questions to matters that are
39 germane to the work undertaken by this witness.

40
41 MS GREENWOOD: Your Honour, you'll probably both be
42 relieved to find out that I'm simply asking a question on a
43 comment that the witness made a little bit earlier in the
44 evidence.

45
46 COMMISSIONER: Perhaps I was speaking to myself rather
47 than you. Thank you, Ms Greenwood.

1
2 <EXAMINATION BY MS GREENWOOD [2.20 pm]
3

4 MS GREENWOOD: So, as anticipated, I'm just seeking to
5 ask - get a little bit more information from you when you
6 spoke about, it was probably in the Victorian context, the
7 concept of self-determination of communities and that some
8 of the care had been transferred out to
9 community-controlled organisation. And I'll ask this
10 question in this context.

11
12 And, Commissioner, if anyone wants to check my geographic
13 facts they're more than welcome to, but I'll just ask the
14 witness to take it for granted for the context of this
15 question Bamaga is a township in the northern peninsula
16 area of Queensland. Hobart is actually closer than Bamaga
17 from Brisbane. So we are dealing in this state with
18 considerable distances and it's a very decentralised state.
19

20 So, with that background in mind, are you able to just give
21 us a little bit of context and background information about
22 the self-determination, the transfer out to
23 community-controlled organisations and how that might
24 address some of the problems that you were addressing
25 earlier in your evidence?

26 A. Yeah, just very briefly and I obviously don't claim to
27 speak for the Victorian Government in making these
28 comments, but in the past 12 months there have been much
29 heralded moves in Victoria to move a greater proportion of
30 the care currently delivered by the State through its child
31 protection teams to community-controlled organisations, in
32 a sense going further than the work that was already
33 carried out by organisations like VACCA, the Victorian
34 Aboriginal child-care association organisation, prior to
35 that legislative change allowing for much more widespread
36 transition.
37

38 I think it is fair to comment that it is not as simple,
39 clearly, as making a change in law or creating that
40 objective as one of government. There is a fair amount of
41 work and capacity and capability building still to go to
42 allow for all ACCOs, for example, to be able to deliver
43 similar or equivalent programs of work and support. And
44 the example I'd probably give is that there's very much a
45 spectrum in the child and family system from what we might
46 call family services nearer the front end of care right the
47 way through to out-of-home care, which we are discussing in

1 the room today.

2

3 As of today you would probably not claim nor would some of
4 the ACCOs involved that all are ready for that full
5 spectrum of delivery, and therefore work needs to be
6 undertaken between government, as I understand it, and the
7 sector, but particularly the sector driving that program
8 themselves, to make sure that that transfer can in fact be
9 effected.

10

11 And there is also an interesting conversation going on
12 around the role of what is often described as mainstream
13 providers, but let's say non-Aboriginal providers, in terms
14 of supporting that transition both through the provision of
15 staff and guidance but also in some areas through genuine
16 service partnership where the best of both non-Aboriginal
17 and Aboriginal organisations could be brought to bear to
18 support a community.

19

20 Q. Thank you very much. Are there any particular
21 communities or areas that you're familiar with?

22 A. So there are more than 25 different ACCOs in Victoria
23 representing different communities. All come with very
24 different characteristics, demographic profiles, some with
25 much younger populations and some with much older, as you'd
26 expect. I don't have at my fingertips a knowledge of,
27 I guess, where the data shows perhaps there is more
28 pressing need for that transition to occur faster or with a
29 different sort of focus. But, yeah, I think that was part
30 of the planning that I was just describing in Victoria
31 that's being undertaken at the moment as part of
32 implementation of that transition of care.

33

34 MS GREENWOOD: Thank you.

35

36 Thank you, Commissioner. No further questions.

37

38 COMMISSIONER: Thank you. Mr Creamer?

39

40 MR CREAMER: I only have two or three questions,
41 Commissioner.

42

43 COMMISSIONER: Yes.

44

45 <EXAMINATION BY MR CREAMER

[2.25 pm]

46

47 MR CREAMER: Just picking up on that point, perhaps,

1 Mr Jefferson, at paragraph A.62 --

2 A. Yes.

3

4 Q. -- you state that 47.8 per cent of children in
5 residential care are First Nations in Queensland as at May
6 2025, and in that paragraph you also note some examples of
7 where there was failings within the system in respect of
8 cultural connection and cultural material et cetera, and
9 that was something advised to you by QFCC?

10 A. Yes, correct. So we're extracting that from or
11 inferring that from report and work and consultation that's
12 already been undertaken by QFCC.

13

14 Q. And I note at page 25 of your report that there's only
15 a small number of Aboriginal community-controlled
16 organisations offering residential care.

17 A. Correct. That very much appears to be the case.

18

19 Q. And are you aware of what the barriers might be,
20 because we've talked - some of your evidence addressed
21 pretty limited barriers in terms of capital investment
22 et cetera. But are you aware generally what Aboriginal
23 community-controlled organisations might suffer in terms of
24 barriers of entry into the residential care?

25 A. There are - I can speak from experience certainly in
26 other jurisdictions. Certainly barriers from legislative
27 enablement perspective and from government directions
28 perhaps not fully allowing for or embracing
29 community-controlled organisations to play a full role
30 within the child protection - broader child and family
31 system. The path to becoming, if you like, capable and
32 able to be able to deliver that consistently and at scale
33 is not something that can be achieved easily, and therefore
34 that sort of project to support greater capacity within
35 ACCOs or community-controlled organisations needs to be
36 supported and enabled through funding in many instances or
37 in most instances for that to become an achievable goal in
38 its own right.

39

40 So I think there are also at times - there can be
41 reluctance in local areas for what I've described as
42 mainstream providers to actually embrace the inclusion of
43 Aboriginal controlled organisations within the range of
44 providers that are providing services in that area, and
45 that's why I think it is very important that government
46 provides leadership generally to allow for that to occur in
47 a more supported way.

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Q. The only other question I want to ask you or topic was in respect of A.39, paragraph, and that was the discussion about early intervention. And in that paragraph - I'll give you a moment to turn it up. Page 34.

A. Thank you. I have it.

Q. In that paragraph you said that Queensland invested the least in intensive family support services of any jurisdiction except Western Australia and Tasmania. Is there any correlation between the lack of investment in early intervention and higher numbers in care, whether residential care or otherwise?

A. We have not in this graph shown sort of recent research to demonstrate that link. There are various pieces of research being undertaken both in Australia but also overseas to try and better understand the link between investment in early intervention child and families and the reduction or even the reduction in the growth rate of people migrating through the system into out-of-home care.

I'd say from a policy perspective it is generally accepted that at the moment investment into greater forms of early intervention, particularly which are geared to family preservation and restoration - so what you might call secondary prevention or even tertiary in some instances rather than primary prevention - pays dividends in trying to reduce the number of families that actually do require an intervention to remove a child or can act in favour of trying to restore families where there are the ingredients to be able to do that in the short term.

MR CREAMER: Commissioner, I don't have any further questions.

COMMISSIONER: Yes, thank you.

Mr Jefferson, thank you very much for your assistance both in the preparation of the report, together with your colleagues of course - I understand it was a team effort, with various of you having different particular skill sets - so I thank you very much for that work, and for doing it in a pretty compressed timeframe, and also for your evidence here today and preparedness to assist the Commission. Thank you very much, and you're excused.

A. Thank you very much on behalf of the team. Thanks.

1 COMMISSIONER: Thank you. Mr Diaz.

2

3 MR DIAZ: Yes, I understand Mr Hastie will now address you
4 on the public interest immunity claims and Mr Forrest will
5 in turn reply.

6

7 COMMISSIONER: Yes, of course. Just so I get the scope of
8 this right, Mr Hastie, you have claims for reasonable
9 excuse as to the tender - we're at the tender stage - the
10 furnishing of documents into this Commission in its current
11 function. Material has been provided but under cover of
12 those objections.

13

14 MR HASTIE: Yes, Commissioner.

15

16 COMMISSIONER: And it seems that it's necessary for me to
17 resolve or to determine some of those objections.

18

19 MR HASTIE: Yes, Commissioner.

20

21 COMMISSIONER: I understand there have been discussions
22 between counsel which have narrowed the scope of the
23 controversy, but there's a bundle that I'll have to
24 determine.

25

26 MR HASTIE: Yes, Commissioner.

27

28 COMMISSIONER: So.

29

30 MR HASTIE: Commissioner, there's no more witnesses being
31 called today.

32

33 COMMISSIONER: No.

34

35 MR HASTIE: It's probably better to conduct it in private
36 anyway because we are concerned with documents that we
37 ultimately contend aren't going to or should not be open to
38 the public. Commissioner, if you rule against the State,
39 then those documents will be tendered and used in due
40 course.

41

42 COMMISSIONER: Well, Mr Hastie, we've had this debate
43 previously. I of course accept the proposition that the
44 content of the document should not be disclosed before your
45 claim to privilege of one kind or another is determined
46 because that would defeat the very claim itself. But that
47 can be managed, as we have managed the question or the

1 issue of confidentiality throughout the course of this
2 Inquiry, by having the debate about the document without
3 disclosing its contents. And it is unnecessary, I would
4 have thought, to disclose the content of any of
5 the documents to which you have a claim for privilege of
6 one kind or another, in particular I think the public
7 interest immunity claims, in order for me to resolve the
8 question of privilege.

9
10 I remind myself that the terms of reference direct that I
11 am to make full and careful inquiry in an open and
12 independent manner, and it's the openness of the Inquiry
13 which is significant in the public interest. And so,
14 unless there is a compelling reason why I shouldn't hear
15 argument on a sort of de-identified basis, I'd be inclined
16 to hear the argument openly.

17
18 MR HASTIE: Of course the Act allows - is similarly open,
19 except it allows you to close it --

20
21 COMMISSIONER: Yes. And indeed when there was good reason
22 to, for example, the identification of certain individuals
23 and in particular children, the Inquiry was closed.

24
25 MR HASTIE: Well, I'm happy to see how we go.

26
27 COMMISSIONER: Yes, thank you, Mr Hastie.

28
29 MR HASTIE: Can I hand up, Commissioner, too, a copy of
30 the submissions we make or have made to the Inquiry?

31
32 COMMISSIONER: Yes.

33
34 MR HASTIE: And also a further amended aide memoire
35 which --

36
37 COMMISSIONER: Yes, just to be clear, my understanding of
38 the aide memoire is that, rather than requiring your client
39 - which strictly I could have - to produce affidavit
40 material proving the sort of factual bases of the claims,
41 I've accepted in the interest of expedition and efficiency,
42 Mr Hastie, that the argument can proceed on the basis of
43 the instructions you've received about the relevant factual
44 matters as contained in the aide memoire.

45
46 MR HASTIE: Yes, Commissioner.

47

1 COMMISSIONER: Yes.
2
3 MR HASTIE: Thank you. And can I reduce the scope a
4 little bit further. Commissioner, the Counsel Assisting
5 and ourselves are content to leave the documents for which
6 we've claimed or the State has claimed legal professional
7 privilege for the moment either on the basis that the
8 Attorney may exercise the Attorney's discretion to waive
9 the privilege --
10
11 COMMISSIONER: Yes.
12
13 MR HASTIE: -- or the evidence that relates to those
14 matters can be dealt with in a way that won't affect the
15 privilege.
16
17 COMMISSIONER: Yes. Thank you.
18
19 MR HASTIE: And it's also anticipated that, Commissioner,
20 between ourselves - well, you should be able to deal with
21 the two documents that are presently claimed to be
22 confidential and commercial in confidence.
23
24 COMMISSIONER: And again that, as I'm sure you would
25 agree, is not a claim to privilege but a claim really to
26 protection of the material.
27
28 MR HASTIE: Yes, we'd only be claiming - it would be a
29 matter for, Commissioner, your discretion as it would be in
30 a normal court to decide whether or not and to what extent
31 the document should be kept confidential or redacted or in
32 some other - or dealt with in some other way.
33
34 COMMISSIONER: And, frankly, I think as has been
35 demonstrated I'm sympathetic to confidentiality claims --
36
37 MR HASTIE: I noticed.
38
39 COMMISSIONER: -- for a range of reasons, including the
40 avoidance of argument.
41
42 MR HASTIE: Thank you, Commissioner. And the third area
43 was the question of parliamentary privilege.
44
45 COMMISSIONER: Yes.
46
47 MR HASTIE: That's a matter that it's a privilege that

1 exists under what's now called the Parliament Act of
2 Queensland but it extends obviously back to the Bill of
3 Rights, but it's limited in this respect. Commissioner,
4 can I hand up - I've highlighted it, but if I can hand up a
5 useful summary of some of the principles that are relevant
6 to this case which are referred to by Justice Hall in the
7 President of the Legislative Council of Western Australia v
8 Corruption and Crime Commission [No 2]. It's reported in
9 [2021] WASC 223, is the neutral citation. If I can take
10 you to paragraph 5.

11
12 COMMISSIONER: Mr Hastie, I'm generally familiar with the
13 principle of parliamentary privilege and the fact that it's
14 an impenetrable privilege if it exists.

15
16 MR HASTIE: Well --

17
18 COMMISSIONER: I shouldn't say "if it exists". The
19 principle exists. If it is engaged in relation to a
20 particular statement.

21
22 MR HASTIE: And I was just going to say precisely that.
23 So the privilege - in my respectful submission, the
24 documents clearly would be covered by the privilege, but
25 the prohibition is only to be used against using them in a
26 way that would offend the privilege, and that's made clear
27 by His Honour's comments in paragraph 5 of the judgment, in
28 particular paragraphs of that summary of his conclusions in
29 paragraphs 4, 5 and 6.

30
31 COMMISSIONER: Yes, I see. I haven't yet been taken to
32 the documents in question, but the essential prohibition is
33 to use what is - let me speak loosely, if you don't mind -
34 what is said in parliament against a member of
35 parliament --

36
37 MR HASTIE: Yes.

38
39 COMMISSIONER: -- in a way that would be detrimental to
40 that member of parliament in some way.

41
42 MR HASTIE: Precisely, Commissioner. So if, as
43 I understand it, at the moment it's not proposed by Counsel
44 Assisting to use the documents in a way that would be
45 detrimental to the member or offend against the principle,
46 then that's where it stands and there would be no
47 prohibition against the documents being - well, they're not

1 confidential in that sense, as His Honour makes it clear in
2 paragraph 4.

3

4 COMMISSIONER: In a sense by definition they're not
5 confidential, are they, because if they've been before the
6 parliament and attract the privilege prima facie then
7 they're not confidential?

8

9 MR HASTIE: They might be covered by a - it would extend
10 to documents that could be used for parliament. So, in
11 other words, they - I don't want to debate that issue.

12

13 COMMISSIONER: No.

14

15 MR HASTIE: But they could well fall under that category
16 of documents being prepared for use as in this case --

17

18 COMMISSIONER: I thought that's a bit - that the privilege
19 didn't extend that widely. If the document were tabled in
20 parliament perhaps. But if it were some anterior briefing
21 note or something do you say that would be covered by the
22 privilege if it's not restated in terms in parliament?
23 Perhaps it's an unnecessary debate, Mr Hastie.

24

25 MR HASTIE: Yes. I think if we proceed on the basis that
26 at the moment anyway it's not sought to use the documents
27 in a way that would offend the principle then --

28

29 COMMISSIONER: Well, can I say I cannot presently conceive
30 of any way that the documents in question would be used in
31 a way which would offend the protection afforded by the
32 privilege. If in the course of evidence something should
33 emerge which occurs to you might intrude upon that in any
34 way then please raise it with me, and you can be assured
35 that I will be astute to consider the material and use it
36 only in a way which would not offend the prohibition to
37 which the privilege is directed.

38

39 MR HASTIE: Thank you, Commissioner. All right. That
40 sorts that out

41

42 COMMISSIONER: Good. We're cracking on here, Mr Hastie.

43

44 MR HASTIE: We're moving along. So that leaves then two
45 lots of documents both for which the public interest
46 immunity is claimed. One are documents that were produced
47 to the Commission by Child Safety and the other ones were

1 produced by Treasury.

2

3 COMMISSIONER: Just so that we're clear about
4 the material, I have helpfully had prepared - Counsel
5 Assisting me prepared a folder entitled "Public immunity
6 interest" bundle, and that seems to comprise of about 40
7 documents. Well, there's an index of - it comprises of 40
8 documents. That's the bundle you're going to take me to,
9 is it?

10

11 MR HASTIE: Well, unfortunately I don't have it in a
12 bundle form, but we do have the --

13

14 COMMISSIONER: Do you have a tender list, something called
15 "Document tender list PII bundle"? If not, I'm sure
16 Counsel Assisting will provide you with a copy.

17

18 MR HASTIE: Thank you.

19

20 COMMISSIONER: Perhaps if there's a spare bundle, if you
21 could give it to Mr Hastie?

22

23 MR HASTIE: That's my fault. I meant to ask Mr Diaz for
24 that before, Commissioner, because it was indicated that we
25 would have it.

26

27 COMMISSIONER: That's all right. What's the best way
28 through this, Mr Hastie? It may be possible, but I'll
29 leave this to you, if you want to take me through all of
30 these documents seriatim I won't stop you. But it may be
31 that the arguments that you have to make about these
32 documents are the same in relation to a number of them and
33 then there might be some for which there's a different
34 argument. If you're able to shorten things by that sort of
35 taxonomy that will be helpful.

36

37 MR HASTIE: Yes. I was wondering perhaps, Commissioner,
38 if you would take up annexure E, which is just the
39 aide memoire.

40

41 COMMISSIONER: Yes. Yes, I have that.

42

43 MR HASTIE: There's a couple of things to note, and the
44 first one is that document 2 and document 7 in that are no
45 longer being pressed by the Counsel Assisting the
46 Commission.

47

1 COMMISSIONER: No longer objected to?
2
3 MR HASTIE: Being pressed by the Counsel Assisting the
4 Commission.
5
6 COMMISSIONER: All right. Therefore --
7
8 MR HASTIE: So you won't have to rule on those.
9
10 COMMISSIONER: Good. 2 and 7 are accepted is what you
11 would say; accepted as good claims.
12
13 MR HASTIE: Whichever, yes, thank you, Commissioner. If
14 I could then go on to the documents 3 - I'll take you to
15 document 3. You'll see --
16
17 COMMISSIONER: Just so I'm clear about this, Mr Hastie -
18 I'm sorry to keep interrupting you --
19
20 MR HASTIE: No.
21
22 COMMISSIONER: -- but the commentary in the table in the
23 box on the right-hand side, do you have any objection to
24 that which is really a description of the nature of the
25 document being referred to or would you rather that I read
26 it silently?
27
28 MR HASTIE: Well, there's already been a reference to
29 the --
30
31 COMMISSIONER: Well, taking document 3.
32
33 MR HASTIE: Yes.
34
35 COMMISSIONER: I've got a number which doesn't tell anyone
36 anything other than it's been in a database; then the
37 I think description of the document by its title or
38 something.
39
40 MR HASTIE: Yes, Commissioner.
41
42 COMMISSIONER: And then there's a brief characterisation
43 of the nature of the document. I'm asking you whether we
44 can talk openly about the latter or not.
45
46 MR HASTIE: Excuse me, Commissioner. Commissioner,
47 perhaps the basis can be used as an open link. In other

1 words, the fact that it's a briefing note for the Cabinet
2 budgetary committee --

3

4 COMMISSIONER: I was just looking at document 3.

5

6 MR HASTIE: Sorry, I'll take you back to that. The model,
7 for which there are a number of documents which are based
8 on the model, Commissioner, which was being referred to
9 this morning, it comes out of a meeting of the Cabinet
10 budgetary committee.

11

12 COMMISSIONER: So CBRC is an acronym for Cabinet Budget
13 Review Committee or something?

14

15 MR HASTIE: Yes, Commissioner.

16

17 COMMISSIONER: Yes. And so you say as a matter of
18 characterisation in terms of the scope of public interest
19 immunity privilege that it applies to a document that is a
20 model used for the figuring out of something that might
21 ultimately translate into some decision made or to be made
22 by the Cabinet?

23

24 MR HASTIE: Yes, but it's more than that. It was agreed
25 to and decided by the committee. So it has its origins in
26 the committee as well.

27

28 COMMISSIONER: All right. Just take me through the
29 argument I think is probably the shortest course.

30

31 MR HASTIE: I'm happy to do that, Commissioner. When you
32 say the argument, Commissioner, do you wish to be heard on
33 the principles?

34

35 COMMISSIONER: No, not so much that. No. In due course
36 you can give emphasis or address me on the principles to
37 the extent that you consider is necessary for your
38 submission. What I raised earlier was whether the
39 documents in this list could be grouped. But I see in fact
40 we're only now dealing with I think five documents; is that
41 right? Because if you take out 2 and 7 --

42

43 MR HASTIE: Yes, that's two less than eight. That's six
44 documents, yes.

45

46 COMMISSIONER: Whereas I have this big bundle that is 40
47 documents but it probably includes other documents,

1 parliamentary privilege and legal professional privilege.
2
3 MR HASTIE: It does.
4
5 COMMISSIONER: Okay.
6
7 MR HASTIE: It would, Commissioner. I haven't been
8 through the bundle, but it would. So we've got in this
9 compilation of documents simply six from the Department of
10 Child Safety, and then there will be some more documents of
11 the same style from Treasury but some relate to the same
12 thing. In other words, they're all related to or most of
13 them relate to the CBRC decisions and meetings or briefing
14 notes for them.
15
16 COMMISSIONER: Well, given there are only now remaining
17 six documents for which there is a PII claim --
18
19 MR HASTIE: From the department, Commissioner.
20
21 COMMISSIONER: Where's the --
22
23 MR HASTIE: If you go over to annexure E --
24
25 COMMISSIONER: Yes, I see.
26
27 MR HASTIE: -- there's ones that also have that claim
28 because they come from the Queensland Treasury.
29
30 COMMISSIONER: I see. And they are on the - and there's a
31 further 11 documents. No, two are crossed out. So there's
32 a further - it's documents 1 to 6, 7, 8, 9 are omitted, 10
33 and 11.
34
35 MR HASTIE: That's correct.
36
37 COMMISSIONER: All right. Well, perhaps the easiest
38 course is to take me through the documents and where you
39 consider the same issue arises in relation to another
40 document then you can say "as above".
41
42 MR HASTIE: Yes, quite. And once we get through that we
43 probably can easily get through the Treasury documents.
44
45 COMMISSIONER: Yes.
46
47 MR HASTIE: So if I take you to document 1, Commissioner,

1 which I understand is in that bundle that you have.
2
3 COMMISSIONER: Yes.
4
5 MR HASTIE: Document 25.
6
7 COMMISSIONER: Well, the document --
8
9 MR HASTIE: Sorry, 23. Sorry, I misheard.
10
11 COMMISSIONER: Sorry, document 1 on your aide memoire --
12
13 MR HASTIE: Yes, Commissioner.
14
15 COMMISSIONER: -- is a briefing note.
16
17 MR HASTIE: Yes, Commissioner.
18
19 COMMISSIONER: And you say I find the actual document
20 where?
21
22 MR HASTIE: Behind tab 23 --
23
24 COMMISSIONER: Tab 23.
25
26 MR HASTIE: -- in your public interest immunity bundle.
27
28 COMMISSIONER: Thank you. Thank you. Right. Okay.
29 Good.
30
31 MR HASTIE: And, Commissioner, you can see clearly the
32 purpose of the document is identified at the commencement.
33
34 COMMISSIONER: Well, speaking points do you mean by that?
35 I think I can --
36
37 MR HASTIE: It's a briefing note for the CBRC meeting at
38 the top.
39
40 COMMISSIONER: I think I might be looking at a different
41 document. You said behind tab - I see. I see. It's the
42 first of them. I beg your pardon. Yes. I'm with you now.
43 Thank you.
44
45 MR HASTIE: So page 431 just for the avoidance of doubt.
46
47 COMMISSIONER: Yes, I have it now. I turned over to the

1 next document. Yes.

2

3 MR HASTIE: Easily done with the tabs. So you can see the
4 purpose of it. And, Commissioner, as you well know, it's a
5 matter for you to decide whether or not where the public
6 interest lies, where the public interest lies in the
7 confidentiality of the Cabinet, it being a Cabinet
8 document, or the public interest served by the terms of
9 reference for this Inquiry.

10

11 COMMISSIONER: Yes. And I think, if I may say so,
12 Mr Hastie, you've hit the proverbial nail on the head
13 because that public interest surely must be framed in the
14 present context, which is an inquiry at the behest of the
15 government, including importantly to investigate the
16 residential care system and also specifically to examine
17 the issue of accountability at both a ministerial and
18 departmental level.

19

20 MR HASTIE: Yes, Commissioner.

21

22 COMMISSIONER: And I'm putting this to you, Mr Hastie,
23 because that's what surely frames the context of any
24 deliberation of what is in the public interest. It's not
25 an end to the matter, but it does provide the legal
26 landscape in terms of how I should contextualise the
27 question of balancing disclosure on the one hand against
28 the protection of the confidentiality of decision-making at
29 the highest levels or at the decision-making core of
30 government. Do you agree in general terms that that is the
31 relevant context?

32

33 MR HASTIE: Yes, Commissioner.

34

35 COMMISSIONER: Yes. And do you have any submissions to
36 make about how or why you say the public interest weighs in
37 favour of upholding the privilege from production and use
38 by the Commission - leave aside what's said as to the
39 contents of it publicly because that's a different matter -
40 do you have particular arguments that you wish to advance
41 as to the necessity or desirability, however you wish to
42 put it, of upholding the privilege claim in respect of that
43 particular document?

44

45 MR HASTIE: No, Commissioner.

46

47 COMMISSIONER: No. Right. Thank you.

1
2 MR HASTIE: We expect - well, I shouldn't perhaps put it
3 that way. Perhaps I should put it this way. In our
4 respectful submission, a degree of discretion might be
5 required as to how some of these documents are used and the
6 publicity that might be sought to be gained from them - or
7 I shouldn't say - the way they're publicly used; but, other
8 than that, I don't have any particular submissions to make
9 with respect to this document or many more of these
10 documents that fall into this category.

11
12 COMMISSIONER: Yes. You see, the privilege, as I would
13 understand it, is designed to protect the ability of a
14 government at its core decision-making level, which is the
15 Cabinet ultimately, to be able to freely communicate and
16 make decisions about matters which, if disclosed, could
17 have many unintended consequences. Indeed the range of
18 reasons that might demand upholding the privilege are
19 probably quite boundless and would depend entirely on the
20 context of the matters for decision, including whether the
21 matter is an ongoing issue of public importance for the
22 state of Queensland, whether it is a live issue, whether it
23 affects current commercial negotiations, whether it would
24 affect the security of the state of Queensland in some way,
25 there's a myriad of reasons, good reasons, why the
26 privilege would be upheld.

27
28 MR HASTIE: Yes, Commissioner. I'm not advancing that for
29 most of these documents.

30
31 COMMISSIONER: No. All right. Thank you. So you have
32 nothing more you want to say about that document?

33
34 MR HASTIE: Nothing more with respect to that document,
35 other than, as I've said, we would expect that they're not
36 as a whole published. But for the Commission to use them
37 we don't have anything further to say.

38
39 COMMISSIONER: Yes, thank you.

40
41 MR HASTIE: So, Commissioner, I don't know whether you
42 wish to deal with them individually or collectively.

43
44 COMMISSIONER: Well, that's what I was inviting you to
45 tell me. If you've got specific policy arguments that you
46 wish to make about any of the documents then of course I'll
47 hear those arguments. I've merely tried to set up the

1 context in which I consider I need to make the decision,
2 which is in the context of this Inquiry specifically into
3 matters concerning the residential care sector as well as
4 the specific term of reference that requires me to evaluate
5 accountability. They're the two sort of counterpoints,
6 I think, in considering the public interest.

7
8 MR HASTIE: Thank you, Commissioner. Well, perhaps if
9 I could deal from that the documents from the child
10 services 4, 5, 6 and 8 all relate to budget submissions.

11
12 COMMISSIONER: Yes, and you say therefore they satisfy
13 what might be called the first limb of the privilege?
14

15 MR HASTIE: Yes.
16

17 COMMISSIONER: That may or may not be debated. It may not
18 be necessary to debate it. But, leave aside that sort of
19 first limb element, is there anything specifically you want
20 to say about that category of documents concerning the
21 policy considerations that would weigh in favour of
22 upholding the privilege?
23

24 MR HASTIE: No, Commissioner.
25

26 COMMISSIONER: Right. Thank you.
27

28 MR HASTIE: If I could go back to document 3. That
29 concerns the model which, Commissioner, you've heard
30 evidence about this morning.
31

32 COMMISSIONER: I must say presently I don't quite
33 appreciate how the model, good or bad, requiring further
34 improvement or not, is a document which itself would prima
35 facie attract the privilege, leaving aside any second limb
36 analysis of its policy significance.
37

38 MR HASTIE: Perhaps I could just briefly explain,
39 Commissioner, that there was an arrangement at about 2020,
40 as I understand it, or the evidence will follow - my
41 learned friend can open differently if he wishes - where
42 the costing of became an issue and that resulted in the
43 Budget Review Committee making a decision to involve QTC,
44 Queensland Treasury Corporation, which, Commissioner, it's
45 different from the department. The department does the
46 budget. Treasury Corporation has a lot of staff that do
47 investments through the state of Queensland and other

1 tasks.

2

3 So they in the end developed - produced a number of reports
4 which I'll come to. And they went back to the budgetary
5 committee, and it was out of that that the budget committee
6 decided that a model needed to be developed. So the model
7 is a product of a decision of the Budget Review Committee,
8 and that's where the - and it keeps going back to the
9 committee and necessarily forms --

10

11 COMMISSIONER: If I just might push a little bit on the
12 proposition. There must be any number of documents that
13 are produced as the sort of working out or output of
14 something that was considered by the Cabinet, and an
15 obvious example of such a document would be Queensland
16 government legislation propounded to the parliament which
17 presumably doesn't arrive at the parliament for
18 consideration before it's been considered at least as at a
19 level of principle or policy objective by the Cabinet. And
20 there would be numerous other examples of output in terms
21 of documentation and indeed action that is the working out
22 of a decision made at the hard core of government at
23 Cabinet level. Are you saying to me that a document for
24 which you can trace its genesis to a discussion or
25 deliberation of the Cabinet is caught by the public
26 interest immunity privilege, because that would be a pretty
27 wide field?

28

29 MR HASTIE: By the time it gets to legislation it's tabled
30 and it's public, and the government might even release it.

31

32 COMMISSIONER: Perhaps that was a bad example.

33

34 MR HASTIE: I didn't mean to pick on the bad example.
35 But, if you go back to the Northern Land Council case and
36 *Sankey v Whitlam*, there are very broad descriptions in
37 those authorities that deal with what would be covered by
38 the immunity, and particularly drafts is mentioned by
39 I think His Honour Justice Gibbs. And there's good reason
40 for that, for making sure that those things aren't released
41 without the exercise of these sorts of public policy
42 considerations that would be required to exercise.

43

44 COMMISSIONER: But the model, as I understand it based on
45 my reading of the KPMG report, is some very complicated,
46 inscrutable work of software genius that is able to
47 interrogate data or interrogate a set of assumptions to

1 produce, in this case relevantly, forecasts about demand
2 for residential care. So it's a financial model.
3
4 MR HASTIE: Yes, it's a way of working out how much should
5 be spent or budgeted to be spent.
6
7 COMMISSIONER: It's a tool for doing that, isn't it?
8
9 MR HASTIE: Yes, yes, but not just demand is what I was
10 qualifying with.
11
12 COMMISSIONER: No, all right.
13
14 MR HASTIE: Demand is an input, and out of it comes the
15 money.
16
17 COMMISSIONER: It's is a slide rule. I know they don't
18 exist anymore, but effectively it's a tool for calculation,
19 a sophisticated tool no doubt, but it is a tool for
20 decision-making. It's not the decision. It is not the
21 deliberation. It is not a record of a discussion that
22 would reveal a decision. Is it not a tool for assisting
23 government to make a decision about what to spend and how
24 much to spend about a particular matter?
25
26 MR HASTIE: In the end that's what it becomes. Some of
27 these documents that we're concerned with are before it's
28 got to the stage where it's a final product.
29
30 COMMISSIONER: So we're talking about - this is document
31 3?
32
33 MR HASTIE: This is document 3.
34
35 COMMISSIONER: And --
36
37 MR HASTIE: So that's document 29 in your bundle,
38 Commissioner, behind - it's tab 29, and it's --
39
40 COMMISSIONER: It's a schematic of that model.
41
42 MR HASTIE: Yes, it's a PowerPoint.
43
44 COMMISSIONER: So it's not even the model; it's a sort of
45 PowerPoint schematic explanation of the model?
46
47 MR HASTIE: Well, it's not a model in a sense,

1 Commissioner, that you might have understood it to be a
2 computer model.
3
4 COMMISSIONER: Well --
5
6 MR HASTIE: That's the PowerPoint that sets out what the
7 model is meant - what they're looking at to achieve.
8
9 COMMISSIONER: Isn't it a description of the inputs that
10 are somehow, I assume, included or uploaded into a
11 computerised analysis of the various assumptions and
12 parameters that the model has identified as being relevant
13 to the forecasting challenge? Isn't that what it is?
14
15 MR HASTIE: As I understand, you go back to working out
16 the demand and then you're developing a budget for the
17 spend.
18
19 COMMISSIONER: Using the model --
20
21 MR HASTIE: Using the model
22
23 COMMISSIONER: -- as a tool.
24
25 MR HASTIE: Yes.
26
27 COMMISSIONER: So the --
28
29 MR HASTIE: Commissioner --
30
31 COMMISSIONER: It's all a little bit intangible, but the
32 model is a tool for analysis including forecasting; isn't
33 that --
34
35 MR HASTIE: Can I put it this way: I don't have any
36 additional comments to make about whether or not the public
37 interest favours non-disclosure as opposed to disclosure
38 other than to say that my instructions are that it was an
39 outcome developed in the budgetary committee and therefore
40 that gives rise to the question of which, Commissioner, you
41 can answer purely on the basis maybe even of our
42 discussion.
43
44 COMMISSIONER: Yes, all right. Thank you.
45
46 MR HASTIE: And, with that thought in mind, can I then
47 take you to the last two pages of the annexure E.

1
2 COMMISSIONER: We're moving to the Treasury department
3 documents?
4
5 MR HASTIE: Yes, Commissioner.
6
7 COMMISSIONER: Yes.
8
9 MR HASTIE: And, Commissioner, you will see if you go down
10 the first four documents that they were documents prepared
11 to inform the CBRC.
12
13 COMMISSIONER: Where do I find those documents in the
14 bundle, the actual documents?
15
16 MR HASTIE: If you go behind document or tab 16 it gives
17 you some idea --
18
19 COMMISSIONER: Yes. Yes.
20
21 MR HASTIE: And you can see by the nature of the document
22 what its intent - its uses for the 21/22 budget. And the
23 last heading is the heading "Short description", and
24 there's a short description of what the submission relates
25 to.
26
27 COMMISSIONER: Yes.
28
29 MR HASTIE: That gives you some idea of, just looking at
30 it, what its purpose is and that it would be subject to the
31 Cabinet-in-confidence --
32
33 COMMISSIONER: Do you say this document went to the
34 Cabinet?
35
36 MR HASTIE: To the CBRC, Commissioner.
37
38 COMMISSIONER: Should I understand the CBRC to be a
39 subcommittee of the Cabinet?
40
41 MR HASTIE: Yes, Commissioner. It's usually the Treasurer
42 and Premier, and it will often consist of the relevant
43 minister whose budget they're considering.
44
45 COMMISSIONER: So the relevant minister is like the
46 plaintiff making a claim to the budget subcommittee for
47 more money about something.

1
2 MR HASTIE: Or there might be three other ministers and,
3 yes, the other minister - the person seeking the money
4 comes along and makes a submission; yes.
5
6 COMMISSIONER: I think I understand the process
7 sufficiently at least for these purposes.
8
9 MR HASTIE: Yes. There's a reference in our submissions
10 to the Cabinet Handbook which gives some description along
11 those lines. It's a committee of the Cabinet.
12
13 COMMISSIONER: Yes.
14
15 MR HASTIE: Commissioner, you will see that document 19 is
16 of a similar style.
17
18 COMMISSIONER: Before you move on to another document of a
19 similar style, is there anything in relation to the balance
20 of competing interests, the second limb of the privilege,
21 that you wish to say about this particular document?
22
23 MR HASTIE: No, Commissioner, and neither do I wish to say
24 anything more - if I can just stick to this page for the
25 moment - in relation to documents 2, 3, 4 or 6.
26
27 COMMISSIONER: Yes. Well, in that event, we can shorten
28 this, Mr Hastie, because I can, it appears, decide the
29 questions but I need to consider looking at the documents,
30 considering the legal principles and forming a view about
31 the balance of interests that arise in relation to them;
32 essentially that.
33
34 MR HASTIE: Thank you. Yes, Commissioner.
35
36 COMMISSIONER: All right. Well, on that basis you don't
37 need to, unless you want to, take me to each of
38 the individual documents, unless you want to say something
39 about any particular document that is specific to that
40 document and concerns the public policy question, the
41 weighing up of the competing interests issue, or something
42 different about why the document prima facie attracts the
43 privilege.
44
45 MR HASTIE: No, I don't, Commissioner.
46
47 COMMISSIONER: All right.

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MR HASTIE: That means on this case the only one that - it falls into that category but, because we've been discussing the model, can I just briefly take you to - I don't want to steal my learned friend's thunder, but can I take you to document 36.

COMMISSIONER: Which learned friend are you concerned about?

MR HASTIE: Mr Diaz. He will seek to open it, as I understand it further, Commissioner.

COMMISSIONER: Yes.

MR HASTIE: So document 36 is an email, and if you go over to page 546 you will see the development or reference to the parameter-based funding model budget submission.

COMMISSIONER: Yes.

MR HASTIE: So that's why the model is relevant to each budget submission in each year of course --

COMMISSIONER: It shows that it's being used.

MR HASTIE: Yes, Commissioner.

COMMISSIONER: I won't debate this with you, Mr Hastie, but the fact that an entity presumably as sophisticated as the Queensland Treasury has various models and in this case this particular model to assist it in its analysis, forecasting and determination of necessary budgets is in itself neither surprising nor can I see how that fact or even the working out of a particular model in a particular time could somehow be detrimental to the State and the State's proper interests, save perhaps in cases where the document relates to contemporary ongoing considerations which in turn may have downstream commercial consequences or other - well, mostly I think commercial consequences in the marketplace. If that were the case, I could understand how a particular document that deployed a particular model and produced certain numbers might very much need to be kept confidential so as not to prejudice the State's interest in contracting with suppliers of a service, for example.

1 MR HASTIE: Commissioner, an exemption is being claimed
2 and redactions made to a number of documents that fit into
3 that category and, as I indicated, there's really no
4 dispute about those. So that's been dealt with.
5
6 COMMISSIONER: Yes, I understand. But that's not what
7 you --
8
9 MR HASTIE: These are all historical.
10
11 COMMISSIONER: These are historical, aren't they? That's
12 the point, really. This document relates to 2023.
13
14 MR HASTIE: Yes, Commissioner.
15
16 COMMISSIONER: Yes.
17
18 MR HASTIE: Commissioner, before I go to the - so the next
19 page is a reference to a - and that's a document in your
20 bundle, Commissioner.
21
22 COMMISSIONER: Yes.
23
24 MR HASTIE: Document 37 - sorry, 38.
25
26 COMMISSIONER: 38, yes.
27
28 MR HASTIE: And there is a reference in that email to work
29 undertaken by QTC for Child Safety.
30
31 COMMISSIONER: Yes.
32
33 MR HASTIE: That's all that document says. And now if
34 I could take you back, Commissioner, to document 8 in the
35 bundle.
36
37 COMMISSIONER: Yes.
38
39 MR HASTIE: I meant to take, Commissioner, you to this
40 earlier --
41
42 COMMISSIONER: That's all right.
43
44 MR HASTIE: -- but I don't think it will matter.
45 I mentioned that there was some work done by the QTC.
46
47 COMMISSIONER: Yes.

1
2 MR HASTIE: This is the work that was done by QTC which
3 explains in some detail the budgetary position and the
4 expense position for Child Safety, and it was this work
5 that ultimately led to the development of the model.
6
7 COMMISSIONER: Led to the development of the model itself?
8
9 MR HASTIE: Yes, Commissioner. And that has been directed
10 to QTC being directed to do this work by the budgetary
11 committee, and this document itself was a document that
12 comes out of that.
13
14 COMMISSIONER: So this document is a consideration or
15 reflects a consideration of the reasons for the development
16 of the model itself --
17
18 MR HASTIE: Yes, Commissioner.
19
20 COMMISSIONER: -- or something - so it's anterior to the
21 model?
22
23 MR HASTIE: Yes, Commissioner. And if you go over the
24 first page, for instance, if you go to page 234 --
25
26 COMMISSIONER: Yes.
27
28 MR HASTIE: -- you'll see the heading there about outcomes
29 and value for money.
30
31 COMMISSIONER: Yes.
32
33 MR HASTIE: And the next one about the Child Safety
34 budget.
35
36 COMMISSIONER: Yes.
37
38 MR HASTIE: It gives you some flavour of the document, and
39 no doubt my learned friend will take you to it.
40
41 COMMISSIONER: Yes. And the timeframe of this document
42 is, what, 2023, is it?
43
44 MR HASTIE: April 2020
45
46 COMMISSIONER: 2020.
47

1 MR HASTIE: Yes. It's early, Commissioner.

2

3 COMMISSIONER: All right. Do you accept that the relative
4 antiquity of these documents has a bearing on the question
5 of public interest and the weighing of competing interests
6 in the assessment I need to make as to the competing public
7 interest involved in assessing whether the privilege should
8 be upheld?

9

10 MR HASTIE: It doesn't always, but in this case it
11 probably does.

12

13 COMMISSIONER: In this context you don't submit that's an
14 irrelevant consideration?

15

16 MR HASTIE: No. And I'm not submitting that it's so
17 contemporary that you should not exercise the power in the
18 public interest to allow it to be produced.

19

20 COMMISSIONER: Yes. I mean, obviously the effluxion of
21 time in itself cannot be a decisive factor. I mean, there
22 may be very good reason to maintain the confidentiality of
23 a document that's created 20 years ago.

24

25 MR HASTIE: Yes.

26

27 COMMISSIONER: Indeed there's some statute about documents
28 being released after a certain amount of time. But, even
29 without that guidance, one can easily imagine that
30 documents continue to have the potential to cause harm to
31 the State or prejudice in some way even though they may
32 have been created many, many years ago. But it depends
33 very much on the character of the document, doesn't it?

34

35 MR HASTIE: Yes, Commissioner.

36

37 COMMISSIONER: And its subject matter.

38

39 MR HASTIE: So, Commissioner, that was actually a
40 departmental document, the one I showed you. And I was
41 taking it to you that it was under the heading "Child
42 Safety documents which were claimed public interest
43 immunity". That was actually document 8.

44

45 COMMISSIONER: All right. So that was one that you didn't
46 take me to that is a department document or relevant -
47 produced by the department as opposed to the Treasury?

1
2 MR HASTIE: Yes, Commissioner.
3
4 COMMISSIONER: Yes.
5
6 MR HASTIE: And it's still a QTC document.
7
8 COMMISSIONER: Yes.
9
10 MR HASTIE: As is the document on that page 6, for phase
11 2, reported the same thing.
12
13 COMMISSIONER: Page 6 of?
14
15 MR HASTIE: So, no, document 6, just above document 8,
16 you'll see the QTC Child Safety phase 2 report.
17
18 COMMISSIONER: Yes, I see. So that falls in the same -
19 where do I find that in the bundle?
20
21 MR HASTIE: 7, Commissioner.
22
23 COMMISSIONER: Okay. All right. I see. So these are
24 different - are they separate copies of the same document?
25
26 MR HASTIE: No, one's phase 2.
27
28 COMMISSIONER: Yes. They look the same, almost.
29
30 MR HASTIE: So document 7 actually has the last day on it
31 6 April 2020.
32
33 COMMISSIONER: Yes. Yes, I see. But it's the same thing.
34 It's the --
35
36 MR HASTIE: It's the product of the same work, but a
37 different document.
38
39 COMMISSIONER: Yes, which in turn leads to the development
40 of the model.
41
42 MR HASTIE: Yes, Commissioner.
43
44 COMMISSIONER: Right. Okay.
45
46 MR HASTIE: And then, Commissioner, just going back to the
47 last page of annexure E --

1
2 COMMISSIONER: Yes.
3
4 MR HASTIE: -- document 10 has been added. That was a
5 workshop we were talking, Commissioner, about drafts and
6 the like. That's a workshop for the parameter-based
7 funding model.
8
9 COMMISSIONER: Where do I find that document in the
10 bundle?
11
12 MR HASTIE: 28, Commissioner.
13
14 COMMISSIONER: Thank you. It's November 2021. Is this a
15 document that is anterior and related to the development of
16 the model?
17
18 MR HASTIE: Yes, Commissioner. It's a model design
19 workshop. You'll see that on the first page. It looks
20 like a more complicated PowerPoint than some, but looks
21 like that kind of document.
22
23 COMMISSIONER: Right. All right. So it falls broadly
24 into the same category as the two earlier versions of
25 similar documents?
26
27 MR HASTIE: Yes, Commissioner.
28
29 COMMISSIONER: Yes. Thank you.
30
31 MR HASTIE: The last document, Commissioner --
32
33 COMMISSIONER: Yes, document 11, isn't it?
34
35 MR HASTIE: It's document 11 and it's document 33 in the
36 bundle.
37
38 COMMISSIONER: Yes.
39
40 MR HASTIE: And it relates to the budget deficit, or
41 that's the subject.
42
43 COMMISSIONER: The budget deficit of the department?
44
45 MR HASTIE: Yes, Commissioner.
46
47 COMMISSIONER: In 2021?

1
2 MR HASTIE: Yes, Commissioner.
3
4 COMMISSIONER: Is there anything - so how does this prima
5 facie attract the privilege?
6
7 MR HASTIE: Well, it's going to the - it will end up going
8 to the Budget Review Committee.
9
10 COMMISSIONER: And on your instructions does it go to the
11 Budget Review Committee, this document?
12
13 MR HASTIE: It's providing instructions for the purposes
14 of going to that committee. If you go through the email
15 train it's directed to that purpose of working up what's
16 going to be - what's going to occur at that committee.
17
18 COMMISSIONER: For the purposes of the department making
19 submissions to the committee; is that what it's directed
20 to? Do I need to read this? There's a lot of documents
21 behind tab 33. Is this one of those chains where I've got
22 to start at the back --
23
24 MR HASTIE: It is.
25
26 COMMISSIONER: -- mind numbingly work my way through?
27
28 MR HASTIE: It is, Commissioner.
29
30 COMMISSIONER: That's all right.
31
32 MR HASTIE: So if you --
33
34 COMMISSIONER: It's all right. It's very difficult for
35 you to take me through the document. It will take too much
36 time. It's better if I read it.
37
38 MR HASTIE: Again, Commissioner, I'm not making any
39 additional submissions --
40
41 COMMISSIONER: No, no. There's no --
42
43 MR HASTIE: -- about this or any of the other documents.
44
45 COMMISSIONER: Nor are you making any additional
46 submissions at a public interest level about this document.
47

1 MR HASTIE: That's correct.

2
3 COMMISSIONER: Yes, I see.

4
5 MR HASTIE: Either limb.

6
7 COMMISSIONER: All right. Thank you. Thank you,
8 Mr Hastie. Mr Forrest? Can I say, Mr Forrest, based on
9 what Mr Hastie - the position he's taken --

10
11 MR FORREST: Yes.

12
13 COMMISSIONER: -- I'll leave it to you, but it seems that
14 the matter can be resolved by me at a relatively high level
15 of principle.

16
17 MR FORREST: Yes.

18
19 COMMISSIONER: So if you can assist me with that that
20 would be --

21
22 MR FORREST: Yes, I agree with that observation. So,
23 turning to the PII claims, we started with 40. Two claims
24 we've accepted have merit. That leaves 38 documents.
25 There is a principled way through that deals with all but
26 five of those documents, and the starting point from the
27 standpoint of principle, as the Commissioner has already
28 observed, is the terms of reference.

29
30 By those terms of reference this Commission - you,
31 Commissioner - were charged by the Governor in Council to
32 conduct a full - I emphasise "full" - and careful inquiry
33 into a range of identified matters. The very first of
34 those matters is residential care, and in particular this
35 Commission is tasked with investigating the factors
36 contributing to the growth and reliance on a billion dollar
37 residential care sector.

38
39 Pausing there, the reference to the price of the sector is
40 probably a fairly significant indication that Governor in
41 Council intended that this Commission explore at least to
42 some extent cost, budgeting and therefore the budget
43 process. It's a matter of, if not public record, something
44 that the Commission's aware of from public documents that
45 it has seen that in that budget process all roads
46 eventually lead to or come into contact with the CBRC, the
47 Cabinet Budget Review Committee.

1
2 In the broad, the terms of reference make plain that your
3 investigation has two necessary dimensions. The first
4 dimension is to look backwards, that is into issues and
5 trends that have emerged in residential care since the 2013
6 Carmody Inquiry. But the second aspect is that it requires
7 the Commission to look inwards, that is into the machinery
8 of government, and the way in which those issues and trends
9 were or were not as the case may be addressed by relevant
10 actors.

11
12 And it's clear from looking at the terms as a whole that
13 the Commission is being invited to scrutinise the knowledge
14 and the decision-making of four relevant actors: that is,
15 frontline department staff, department leadership, the
16 responsible ministers, and previous governments. And in
17 that inquiry a central and perhaps the central thread that
18 runs through the terms of reference is a search for
19 accountability and specifically ministerial accountability.
20 I won't take you, Commissioner, to the terms but I note in
21 particular paragraphs 3(a)(iv), 3(b)(xi) and 5(b).

22
23 So far as residential care is concerned, in our submission,
24 that presents you, Commissioner, with two critical
25 questions. The first is has the growth and reliance on the
26 billion dollar residential care sector been driven by
27 factors that are entirely out of anyone's control. Now, if
28 the answer to that question is "yes", then the
29 accountability question doesn't arise. But if the answer
30 to that question is "no" then the critical question, the
31 accountability question, is this: in respect of those
32 factors, what were the things that could and should have
33 been done to prevent the growth and reliance on the billion
34 dollar residential care sector, and who was it that could
35 and should have done those things?

36
37 You'll hear over the next two weeks evidence from all of
38 the four relevant actors: frontline staff, departmental
39 leadership, a relevant minister, and you'll hear about the
40 Cabinet budget review process at least to some extent.

41
42 In our submission, discharging the task of locating
43 accountability will not be possible unless this Commission
44 is able to receive and refer to relevant documentary and
45 sworn evidence about the knowledge and the decision-making
46 of those relevant actors. And, in our submission, the
47 Commission's directed to focus what we call a window of

1 opportunity. We say that there was a relevant period
2 between 2019 and 2023 where there was knowledge at
3 governmental levels that a fiscal crisis was coming but
4 there was still time with effective action to take steps
5 that would have avoided or mitigated the damage.

6
7 If the Commission upholds the State's position on PII in
8 particular and doesn't have a full set of the evidence
9 about the knowledge and decision-making at every level of
10 government, three consequences would follow. First, the
11 Commission would be hamstrung in discharging its statutory
12 task because it wouldn't have the full set of the evidence
13 it needs to make the findings and recommendations it's been
14 asked to make. Secondly, without evidence of the full set
15 of knowledge and decision-making at every level, it is
16 possible that the incomplete body of evidence that this
17 Commission receives will leave a misleading impression
18 either for the Commission or for the watching public as
19 to --

20
21 COMMISSIONER: Can I just ask you this. You used the
22 expression "full set" --

23
24 MR FORREST: Yes.

25
26 COMMISSIONER: -- meaning, I take it, the universe of
27 material that might throw light on the knowledge of the
28 various actors at different levels within the
29 decision-making process.

30
31 MR FORREST: Yes.

32
33 COMMISSIONER: I suspect that it is unlikely that I will
34 have the full set of knowledge, defined in that way.

35
36 MR FORREST: Yes.

37
38 COMMISSIONER: Is the question not really whether I have
39 evidence that is necessary to understand the progress of
40 knowledge at the various levels you've referred to --

41
42 MR FORREST: Yes.

43
44 COMMISSIONER: -- or sufficient evidence of the progress
45 of knowledge from one level in the decision-making
46 hierarchy to the next and so on --

47

1 MR FORREST: Yes.
2
3 COMMISSIONER: -- in order to have a sound basis for
4 drawing inferences and reaching conclusions as to whether
5 relevant decision-makers at those various levels had
6 sufficient knowledge at particular points in time --
7
8 MR FORREST: Yes.
9
10 COMMISSIONER: -- rather than whether I have the full
11 suite of information that might be available to inform any
12 such inferences? I do at least surely need the evidence
13 that is germane --
14
15 MR FORREST: Indeed.
16
17 COMMISSIONER: -- to which relevant individuals at which
18 levels knew what when --
19
20 MR FORREST: Yes.
21
22 COMMISSIONER: -- about the residential care impending
23 crisis, as I think you would put it.
24
25 MR FORREST: Yes. So this is not a roving commission of
26 inquiry. There is a targeted body of admissible evidence
27 that the Counsel Assisting team wish to put before the
28 Commission.
29
30 COMMISSIONER: Yes.
31
32 MR FORREST: That has left a lot out, naturally. The full
33 set is the full set of admissible evidence - what we say is
34 admissible evidence that should be before the Commission,
35 and that consists of the master tender bundle, leaving
36 aside legal professional privilege and commercial in
37 confidence for now, the remaining 38 documents in contest
38 in the PII bundle.
39
40 COMMISSIONER: Sorry, so when you say "full set" what you
41 mean is the full distilled bundle of documents critical to
42 the decision-making?
43
44 MR FORREST: The full set that we wish you to have which
45 we assess gives you a sufficiency of knowledge about
46 knowledge and decision-making at each level of government.
47

1 COMMISSIONER: Yes, thank you. I just wanted to clarify
2 that notion of having the full set of knowledge.

3
4 MR FORREST: That was helpful.

5
6 COMMISSIONER: Yes, thank you.

7
8 MR FORREST: We would all like the ultimate full set, but
9 we're dealing with a full subset, I accept.

10
11 COMMISSIONER: Yes.

12
13 MR FORREST: The third consequence that would follow if
14 the Commission wasn't to receive the 28 contested PII
15 documents is that it is possible that a degree of
16 unfairness would arise for some witnesses. It's possible
17 that some witnesses - and it's important, I think, to bear
18 in mind that not all of the witnesses that we'll hear from
19 over the next two weeks share common legal representation.
20 Ms Linard, for example, is separately represented. It is
21 possible that certain witnesses who will give evidence in
22 the upcoming round of hearings will be unable to give or
23 refer to what I'll call loosely exculpatory evidence.

24
25 So, without anticipating what the witnesses will say, one
26 could imagine a situation in which certain lower level
27 department officials give frank evidence that they did not
28 implement reforms that they understood to be necessary but
29 then be unable, if the State's PII claim is upheld, to give
30 evidence about or refer to documents which show that they
31 tried and in fact their attempts to implement necessary
32 reforms were frustrated by decision-making further up the
33 chain, whether it be by departmental leadership, the
34 minister's office or by the CBRC.

35
36 COMMISSIONER: In other words, some of the documents might
37 be relevant in this way: a particular officer at a
38 particular level in the department is entitled to say, if
39 it's the fact, "I communicated upstream, as it were, these
40 matters."

41
42 MR FORREST: Yes.

43
44 COMMISSIONER: If claims in relation to public interest
45 immunity are upheld, documents that corroborate, if you
46 like, that a department officer at a certain level
47 discharged the obligations upon them to so communicate

1 relevant material --

2

3 MR FORREST: Yes.

4

5 COMMISSIONER: -- in accordance with the chain of
6 decision-making within the department, then that could be
7 prejudicial to their interests.

8

9 MR FORREST: Yes.

10

11 COMMISSIONER: Bearing in mind that I've indicated that
12 I don't, unless it were absolutely avoidable, intend to
13 make individual findings or findings of individual
14 culpability, because this Inquiry is focused on systemic
15 issues more than looking to find individual fault.

16

17 MR FORREST: Yes.

18

19 COMMISSIONER: However, to understand at a systemic level
20 what went wrong, if something did, one would need to
21 understand the chain of decision-making and that includes
22 the chain of information being conveyed as it should be to
23 appropriate decision-makers in the hierarchy of
24 the department and up to and including the ministerial
25 level.

26

27 MR FORREST: Yes.

28

29 COMMISSIONER: Yes.

30

31 MR FORREST: And it could be an awkward and somewhat
32 unfair situation were a department level witness to say,
33 "I understand there was X problem. I understood that the
34 solution required Y dollars." Left on its own that
35 suggests a failing if the Y dollars were not found. It
36 would be somewhat unfair if that person was unable to refer
37 to a submission that's the subject of one of these PII
38 claims to show, for example, that they requested Y dollars
39 and were knocked back.

40

41 So, just focusing on the State's specific claims, it's
42 significant - and this has come out in your very helpful
43 exchanges with Mr Hastie - to understand that we're dealing
44 with class claims, that is based on the category of
45 document that we're dealing with. There's no suggestion
46 across any of the documents that there's anything in the
47 contents that would be prejudicial to good government or

1 good Cabinet government now in Queensland. The claim is
2 made on the legitimate basis that there is, and we accept
3 that this is so, a powerful public interest in core Cabinet
4 deliberations remaining secret and candid.

5
6 COMMISSIONER: Could I decide this controversy on the
7 basis that it is unnecessary for me to decide whether prima
8 facie each of the documents for which a claim for privilege
9 has been made fall within the ambit of the public interest
10 immunity privilege, expressing no view about that but
11 assuming for the sake of the decision that they do and
12 decide the matter entirely on the balance of public
13 interest in either disclosing or maintaining the privilege?
14

15 MR FORREST: Yes, in respect of all but five of
16 the documents.

17
18 COMMISSIONER: Yes, I see.
19

20 MR FORREST: So we are prepared to accept for the purpose
21 of argument or assume for the purpose of argument that all
22 of the documents, bar the five that I'll come to, are
23 broadly Cabinet documents. We'll assume that for the
24 purpose of argument.
25

26 But our submission is that those documents - the public
27 interest in maintaining confidence in those documents is at
28 least in respect of that set outweighed by the
29 countervailing public interest in disclosure. And can
30 I say why that's so at the level of principle. There's
31 four key reasons.
32

33 The first, which we've touched on, is that it must be in
34 the public interest that this Commission discharges its
35 statutory task. I've discussed what that task is. There's
36 also a very powerful countervailing public interest in
37 disclosure because it must be in the public interest that
38 the public, that is Queenslanders, have an understanding
39 about whether previous governments have been careful
40 custodians of the state's money and its vulnerable
41 children, and Queensland taxpayers are necessarily
42 interested in understanding why it is that the residential
43 care services that they pay for have exploded in costs
44 fourfold over the last decade.
45

46 Secondly, that set of 33 documents is, in our submission,
47 highly relevant to and probative of the central matters

1 that we've discussed: who knew what during the relevant
2 period and what, if anything, was done.

3
4 Thirdly, in respect of those documents, they're not
5 available from any alternative source. The Commission has
6 a very diligent and energetic team of solicitors and
7 investigators. No alternative source has been found. So,
8 if those documents don't come from the State, the
9 Commission won't have them at all.

10
11 COMMISSIONER: Well, by definition, if they're Cabinet
12 documents, unless they were inadvertently leaked somehow,
13 they wouldn't be available elsewhere, would they?
14

15 MR FORREST: Yes. So they've been well kept in-house. It
16 seems there's been no leaks. And in respect of that set of
17 33, Commissioner, you've already touched on this, they have
18 some antiquity. So all of those documents --
19

20 COMMISSIONER: Well, relevant antiquity I think you need
21 to say.
22

23 MR FORREST: Yes.
24

25 COMMISSIONER: Because the fact that they're old,
26 relatively speaking, doesn't in itself mean anything. It
27 really depends upon whether the effluxion of time has a
28 bearing upon the sensitivity of the information contained
29 within them.
30

31 MR FORREST: Yes. And that is critical, particularly
32 because we're dealing with documents which touch on to some
33 extent or are implicated in the budgeting process. We
34 understand that's an annual cycle. So the most recent
35 document in the main category that touches on the budgeting
36 cycle is from at least three budget cycles ago. So we're
37 not looking at budgeting decisions that are being made now.
38 We're not looking at current policy controversies that are
39 in the works. We're looking at historical budget
40 decisions.
41

42 COMMISSIONER: Yes.
43

44 MR FORREST: The other thing which I've already mentioned
45 is that it's somewhat reassuring that there's not also a
46 category - sorry, not also contents claims being made in
47 respect of the documents. So sensibly, in our submission,

1 there's no suggestion that disclosure of the contents
2 themselves would be damaging to State business.

3

4 COMMISSIONER: So, given that Mr Hastie has not made any
5 sort of bespoke submissions as to the public policy balance
6 in relation to any individual document --

7

8 MR FORREST: Yes.

9

10 COMMISSIONER: -- what's the basis for the exception of
11 the five documents?

12

13 MR FORREST: Well, can I tell you why I wish to address
14 you on these five?

15

16 COMMISSIONER: Yes.

17

18 MR FORREST: And that's because they fall out of what we
19 call the window of opportunity period.

20

21 COMMISSIONER: Yes.

22

23 MR FORREST: So they're all later than 2023. So I think
24 it's necessary that we give you a bespoke submission in
25 respect of them, but I'll try and be brief.

26

27 COMMISSIONER: No, it's all right. Take your time,
28 Mr Forrest.

29

30 MR FORREST: So the first of the five is behind tab 23.
31 This was a briefing note prepared by the department CFO to
32 the incoming minister.

33

34 COMMISSIONER: Yes.

35

36 MR FORREST: We accept we need to say something
37 specifically about this because this is recent. It has
38 some proximity to Cabinet deliberations. And so we accept
39 that the public interest weighing in favour of
40 non-disclosure is a little stronger than some of the core
41 documents.

42

43 And I'll try to make the submission without actually saying
44 anything about the contents of the documents, but the
45 reason that we say the public interest in disclosure
46 outweighs the public interest in maintaining the privilege
47 is because, in our estimation, this is one of the most

1 relevant and probative documents on the accountability
2 question because it indicates that problems that were known
3 as early as early 2020 were still unresolved in early 2025.
4 And the topics that they go to, Commissioner, you can see
5 under the "Issues" heading. And, without going into any
6 detail, you will see that topics such as budget deficits
7 are addressed, supply mix targets, where there's inadequate
8 supply of low-cost family based care, and use of
9 individualised contracts essentially as an overflow service
10 or a service of last resort.

11
12 COMMISSIONER: But in relation to this document there's no
13 content claimed about --

14
15 MR FORREST: No. So --

16
17 COMMISSIONER: So, that is to say, there's no submission
18 that the disclosure of the content of this material, like,
19 for example, the identified figure for the forecast budget
20 deficit, the disclosure of it would be detrimental or
21 prejudicial to the government?

22
23 MR FORREST: No. So if Your Honour turns up annexure A to
24 my friend's submissions --

25
26 COMMISSIONER: No, I'll accept what you tell me.

27
28 MR FORREST: He'll tell me if I'm wrong, but at
29 paragraph 3 of the submissions it says relevantly that the
30 immunity attaches to the class of documents.

31
32 COMMISSIONER: Yes.

33
34 MR FORREST: We've understood that to mean that the
35 documents that are set out in the aide memoire are all
36 class claims rather than content claims.

37
38 COMMISSIONER: Is it necessary in the course - and this
39 might be a question I need to ask Mr Diaz, but is it
40 necessary to reveal particular figures? I'm talking about
41 this document. If I were to reject the claim for privilege
42 in relation to this document, I still might be inclined to
43 consider - perhaps I should consider - the extent to which
44 it is necessary to reveal particular figures.

45
46 MR FORREST: Yes.

47

1 COMMISSIONER: It may be, but it may not be.
2
3 MR FORREST: Up until now we've had a fairly constructive
4 ongoing conversation at the counsel level --
5
6 COMMISSIONER: Yes.
7
8 MR FORREST: -- where the State's been invited to propose
9 redactions on all grounds, including PII grounds. So --
10
11 COMMISSIONER: I only raise that issue in relation to this
12 document because it's relatively contemporaneous.
13
14 MR FORREST: Yes.
15
16 COMMISSIONER: But it might not matter.
17
18 MR FORREST: Yes.
19
20 COMMISSIONER: That is the revelation of the specific
21 figures may or may not matter.
22
23 MR FORREST: I think - and Mr Diaz will tell me if he
24 disagrees - we probably can accommodate any of those
25 concerns as they arise in the running either by way of
26 redaction, ensuring that the document is not displayed on
27 the screen, on the live stream, and having an arrangement
28 between counsel that if there are sensitive figures they're
29 not put to the witness or otherwise referred to. If that's
30 not possible, that may be a matter for --
31
32 COMMISSIONER: Well, given the way the claim's been
33 argued, it's not germane to the determination of the
34 privilege claim.
35
36 MR FORREST: Yes.
37
38 COMMISSIONER: But it might be something that I should
39 nevertheless consider in the conduct of the hearing. And
40 it may indeed, depending on what the significance of those
41 actual figures being revealed may or may not be, have a
42 bearing on the public interest itself.
43
44 MR FORREST: Indeed.
45
46 COMMISSIONER: But, as you say, there's been no content
47 claim in relation to this particular document.

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MR FORREST: No. No. And certainly the counsel team is alive to the fact that there are heightened sensitivities around documents like this that are close to contemporaneous.

COMMISSIONER: Yes.

MR FORREST: So I think if issues emerge in respect of specific figures I'm confident we can resolve it between the counsel teams.

COMMISSIONER: Yes.

MR FORREST: The next document is behind tab 39. This was an email chain that Mr Hastie took you to towards the end of his submissions.

COMMISSIONER: Yes.

MR FORREST: In our submission, the public interest in disclosing this document outweighs the countervailing public interest for two reasons. One is that the document does seem to be, if it is in the category of Cabinet documents, closer to the periphery. This is email traffic between two departmental officials that undeniably refers to the CBRC and it seems that some of the information discussed may have made its way into a submission that the CBRC saw.

But the second and more significant point is that this is also one of the most significant documents that we would seek to tender on the accountability question because, again, without going into the details of the particular solution, this is a document that shows effectively the belated arrival of a solution that was known since early 2020. And the actual solution is a form of words which appears on page 560 and 561 but was --

COMMISSIONER: Is it the passage at the top of page 561?

MR FORREST: So it's the form of words that appears at the bottom of 560 after the heading "IPS OSD" et cetera. And, without explaining what it does, this will suggest is a solution to a problem that had been bedeviling the department in contracting for very many years which is that, before the solution was implemented, there were

1 perverse incentives in favour of financial delegates
2 entering into IPS contracts which were worse value for
3 money but less money overall rather than entering into OSD
4 contracts which were, as we've heard this morning, much
5 better value for money but cost more over all.
6

7 COMMISSIONER: OSD cost more over all?
8

9 MR FORREST: An OSD contract, because it's longer term,
10 often costs more than a more expensive on a unit basis but
11 shorter IPS contract.
12

13 COMMISSIONER: But overall we have to be careful what we
14 mean by "overall".
15

16 MR FORREST: Yes.
17

18 COMMISSIONER: Do we mean overall in the annual budget of
19 expenditure on residential care or --
20

21 MR FORREST: In terms of the total contract cost.
22

23 COMMISSIONER: Are you saying that if all of the contracts
24 that are currently divided between IPS and OSD contracts
25 were all transitioned to OSD contract that the annual
26 budget would be --
27

28 MR FORREST: No. Quite the opposite. Again, without
29 revealing what the solution is, the problem was that a
30 financial delegate for the department at the contract had a
31 limit on spending they could commit to. Often times IPS
32 contracts, because they were shorter term, even though they
33 were worse value, fell under that limit; whereas OSD
34 contracts, even though we've heard they're better value in
35 the long run, were sometimes over that limit.
36

37 COMMISSIONER: I see. So this document, you would say,
38 helps explain a material reason for the failure to
39 transition earlier --
40

41 MR FORREST: Yes.
42

43 COMMISSIONER: -- or to take steps to transition to OSD
44 contracting --
45

46 MR FORREST: Yes.
47

1 COMMISSIONER: -- or that model of contracting, and it's
2 important to understand that reason in order to understand
3 how it is that the system ended up in its present
4 predicament.

5
6 MR FORREST: Yes. It's identifying --

7
8 COMMISSIONER: I understand that. So it makes it highly
9 relevant.

10
11 MR FORREST: Yes, that's the essential point.

12
13 COMMISSIONER: Yes, thank you. No, I appreciate that.

14
15 MR FORREST: The other two are at tab 38, which is
16 basically a covering email from an official at Treasury to
17 officials at the department attaching the QTC reports. In
18 our submission, this is unlikely to meet the definition of
19 a Cabinet document. This is a covering email between two
20 departmental officials. So we'd say that it can be dealt
21 with on that basis. The final document --

22
23 COMMISSIONER: And even if we were wrong about that, as
24 they say, even if I was wrong about that, what would be the
25 argument - well, there's no - it would come down to the
26 balancing interests.

27
28 MR FORREST: Yes. And the significance of this document
29 for us may be that it shows that relevant departmental
30 officials had, to put it neutrally, lost sight of the QTC
31 report from 2020 and were being reminded of it quite a bit
32 later in the piece.

33
34 COMMISSIONER: Yes.

35
36 MR FORREST: But the final document is at tab 30, and this
37 again is a recent document which we accept there is some
38 more sensitivity about. Our submission on this is similar
39 to the submission on some of the earlier documents and that
40 is that the public interest disclosure is based on its
41 probative value and this is a document that we say again
42 identifies a late-arriving solution or recommendation to a
43 particular problem. And the particular problem, without
44 going into the recommendation or the solution, concerned
45 the use of aspirational targets in forecasting demand.

46
47 COMMISSIONER: Sorry, that's an identified problem that

1 is - sorry, that is a problem identified by this document,
2 is it?

3

4 MR FORREST: It's a problem that was known before this
5 document, but this document identifies a recommendation
6 that may or may not assist in solving that problem.

7

8 COMMISSIONER: Which page?

9

10 MR FORREST: So at page 515, below the words "supplier
11 mix", the first dot point is the recommendation.

12

13 COMMISSIONER: Yes.

14

15 MR FORREST: That's all I wanted to say about those
16 documents.

17

18 COMMISSIONER: Yes.

19

20 MR FORREST: The other documents are in a somewhat
21 different position. None of what I've called the core
22 documents, which I don't address you on specifically, are
23 core Cabinet documents. None of them record Cabinet
24 deliberations. About half a dozen of them, we accept,
25 contain material that was seen by the CBRC. But all of
26 those submissions that were before the CBRC concerned the
27 budget cycles from financial years 20 to 23, and we say for
28 that reason the public interest weighing against them on
29 disclosure dissipates.

30

31 COMMISSIONER: Well, it's one of the factors, isn't it?
32 It's perhaps not the only, but it's a significant factor.

33

34 MR FORREST: No, it's one of the factors. In all of this
35 I think it's fair to say that we view the most significant
36 factor as the strong public interest in this Commission
37 being able to address the accountability question.

38

39 COMMISSIONER: Yes.

40

41 MR FORREST: Mr Hastie's mentioned parliamentary
42 privilege. I don't need to say anything about that save
43 this. We've discussed the parliamentary privilege
44 documents and we think a sensible resolution would be
45 simply if I indicate now on transcript that the documents
46 in the parliamentary privilege table are not intended to be
47 used by the Counsel Assisting team, to use the words in

1 their submissions, in any way that impinges or questions
2 the proceeding of the assembly. Those are the matters.

3

4 COMMISSIONER: Thank you very much, Mr Forrest. I'll
5 consider the claim for privilege overnight. I think it's
6 important to quickly resolve these claims because, unless
7 I do so, it will impede the course of the hearings. So I
8 expect to provide a ruling tomorrow morning. We'll adjourn
9 until 10 o'clock.

10

11 MR HASTIE: Commissioner, can I just briefly respond?

12

13 COMMISSIONER: Yes, sorry, Mr Hastie.

14

15 MR HASTIE: I didn't want to interrupt.

16

17 COMMISSIONER: No, no, I'm getting ahead of myself.
18 Sorry.

19

20 MR HASTIE: I might just have to check with my learned
21 friends a couple of things. One of the documents my
22 learned friend took you to we've accepted the document as a
23 whole might - while subject to the immunity could be
24 redacted in a way that it wouldn't be subject to the
25 immunity. So that wasn't part of our list. So I might
26 need to check with them about that.

27

28 And there's another document as well that we've redacted
29 various parts of but not the whole. So I might need to -
30 my learned friend counted five, but I counted four
31 documents. So I might need to discuss that issue with my
32 learned friends.

33

34 COMMISSIONER: That's fine, Mr Hastie. I have been
35 heartened throughout the course of this Inquiry at the good
36 relations between counsel and the cooperative nature of
37 the conduct of the Inquiry from the Bar table. That
38 obviously is desirable for many reasons, including avoiding
39 unnecessary disputes about things that take a lot of time
40 and unnecessary effort. So please feel free to continue
41 that dialogue.

42

43 I think it is the case, though, that if Mr Diaz is to
44 continue his opening - and I understand he wishes to open
45 on certain documents, including these documents - I will
46 have to resolve or determine the PII claims tomorrow or by
47 tomorrow morning.

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MR HASTIE: I understand that. Looking at them briefly, I don't know that it's going to cause you any additional difficulty. But we just need to sort out the matter.

COMMISSIONER: No, that's perfect fine, Mr Hastie. I encourage you to do so.

MR HASTIE: The only other thing, Commissioner, is should you decide that the documents - the public interest in the immunity not standing is that we ask that the documents not be published as documents; in other words, to take a witness to a document is one thing; to actually publish it and so form - available to the rest of the public is another.

COMMISSIONER: Well, that goes to the question of how and to what - sorry, to what extent it's necessary for the express contents of the document to be disclosed. The Commission has not adopted a practice of publishing documents. I accept that there have been occasions where documents have been projected on the screen for convenience of a witness where there's been no express concern about the content of the documents. It's really a matter for Mr Diaz whether reference expressly to the contents of some of these documents is necessary or not.

MR DIAZ: Yes, we would say that it's essential that the documents actually be displayed so that there is a general understanding of the reason why we're taking, in the first instance, you in the opening submissions to the document, but thereafter the witness and those that are seeking to follow along. If the difficulty is simply with publishing the documents in a public way, I of course don't have any difficulty with that.

COMMISSIONER: But, Mr Diaz, if the document is displayed on a screen or if you open in express terms the content of the document and that occurs in a public hearing which is web-streamed, then that will amount to publication, plainly. So the question for consideration is the extent to which express reference to particular parts, I suppose, of particular documents is necessary or desirable in the public interest or whether some concerns at least can be managed by reference to the document but not expressly to its terms. Plainly if it's a department witness the witness can have the document unredacted, I assume,

1 Mr Hastie.

2

3 MR HASTIE: Yes.

4

5 COMMISSIONER: You can refer the witness to the content of
6 the document without disclosing in express terms what the
7 document says. If, however, it is necessary to disclose
8 the content in order to understand, let's say, the
9 significance of a failure then that may be necessary. But
10 that might better be left for me to resolve in terms of
11 what I say expressly about these matters in the final
12 report because it may be sufficient, again focusing on the
13 systemic nature of this Inquiry, to refer to a fact without
14 disclosing the values, say, that are contained in
15 particular documents that is the supporting foundation for
16 the factual finding.

17

18 In other words, we might be able to manage without express
19 reference to particular matters that are sensitive if
20 there's a good reason for the sensitivity, because the
21 other competing interest, of course, is that the Inquiry be
22 undertaken publicly in substance, and therefore to protect
23 confidentiality has an impact on the openness of
24 the Inquiry and is relevant for me to consider itself
25 because those observing the Inquiry may have no way of
26 really understanding the significance of things without
27 understanding some of the detail by reference to the
28 express terms of a document.

29

30 MR DIAZ: Yes, Commissioner, if I may say so, you have
31 astutely pre-empted the point that I was to make which is,
32 as you may have gleaned as Mr Hastie started to take you
33 through some of the documents, a lot of them contain
34 graphical data or numerical data that is almost
35 impenetrable without in fact having the visual
36 representation before you. And the numbers do matter,
37 they're not just simply numbers, because they show in quite
38 graphic terms over an historical period how historical
39 failures have manifest in the current day. So I think at a
40 high level that's the reason we would essentially say it's
41 important that the documents can be displayed as I am
42 making submissions about them and as witnesses are
43 addressing the documents.

44

45 COMMISSIONER: And particularly in relation to documents
46 that are, relatively speaking, historical it's difficult to
47 see how any prejudice could be identified in relation to

1 the disclosure of the content of those documents.

2

3 I'm merely asking that consideration be given to any
4 reasonable claim for protection at a level of
5 confidentiality, of course assuming that I rule against the
6 claim for privilege. But that will be a consequential
7 issue depending on the privilege ruling, but one that has
8 some bearing on it because it may be that the effect of
9 disclosure should be considered in weighing in the balance,
10 especially for more contemporary documents.

11

12 MR DIAZ: Yes.

13

14 COMMISSIONER: All right. So I'll consider that
15 overnight, and I invite you to have a discussion with
16 Mr Hastie about those matters as well.

17

18 MR DIAZ: We shall.

19

20 COMMISSIONER: We'll adjourn until 10 o'clock.

21

22 **THE HEARING WAS ADJOURNED AT 4.17PM UNTIL WEDNESDAY,**
23 **8 APRIL 2026**

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