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VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

MELBOURNE

FRIDAY, 14 AUGUST 2015

(20th day of hearing)

BEFORE:

THE HONOURABLE M. NEAVE AO - Commissioner

MS P. FAULKNER AO - Deputy Commissioner

MR T. NICHOLSON - Deputy Commissioner

1 MS DAVIDSON: Thank you, Commissioners. We are continuing with
2 the theme of integrated services and information sharing
3 today. We have a number of witnesses. The first witness
4 will be joining us from New York, that's Jethro Antoine,
5 from the Centre for Court Innovation. We will then have
6 Pradeep Phillip from the Department of Health and Human
7 Services, followed by Marisa De Cicco from the Department
8 of Justice and Regulation.

9 After lunch we will hear again from Ms Bernadette
10 McCartney of Bethany. Then there will be a panel of
11 government and police witnesses. That will include Andrew
12 Reaper, the Deputy Commissioner with Corrections Victoria,
13 Mr Scott Widmer from the Department of Health and Human
14 Services and then Ms Wendy Steendam from Victoria Police
15 and Senior Sergeant Ailsa Howard from Victoria Police.
16 Then finally today we will hear from the Privacy
17 Commissioner, David Watts.

18 The first witness today, however, is joining us
19 from New York and we have him on the screen. It's Jethro
20 Antoine. Can you hear me, Jethro?

21 MR ANTOINE: Yes, I can hear you.

22 MS DAVIDSON: I will ask that you first be sworn.

23 <JETHRO ANTOINE, affirmed and examined:

24 MS DAVIDSON: Mr Antoine, can you identify what your current
25 role is?

26 MR ANTOINE: Yes. I am currently the Director of Technology
27 Programs and the Director of New Jersey Programs at the
28 Centre for Court Innovation.

29 MS DAVIDSON: Have you made a written statement for the Royal
30 Commission?

31 MR ANTOINE: Yes, I have.

1 MS DAVIDSON: Can I ask you to confirm that that is true and
2 correct?

3 MR ANTOINE: Yes, I affirm that my witness statement is true
4 and correct.

5 MS DAVIDSON: I will just ask you a few questions in relation
6 to some things you have talked about in your statement.
7 Firstly, can I get you to outline what the role of the
8 Centre for Court Innovation is?

9 MR ANTOINE: Sure. The centre is a not-for-profit organisation
10 that is often thought of as a think tank that works with
11 jurisdictions, typically courts and communities,
12 throughout the United States and throughout the world on
13 issues around justice reform, alternative sentencing,
14 specialised courts, reductions of community violence. So,
15 we do quite a bit of work here in the States. We have a
16 number of operating projects. These are projects that we
17 planned, created and our staff continue to operate in
18 New York City and within New York State as well as in New
19 Jersey and, as I said before, we provide technical
20 assistance to other jurisdictions.

21 MS DAVIDSON: You talk about in your statement the way that
22 information systems that were built in, say, the 80s are
23 very different from the information systems that we might
24 have these days and how our expectations from information
25 systems have changed. Can I get you to expand on that?

26 MR ANTOINE: Sure. As I said in my statement, in the past with
27 the advent of not only microcomputers but also desktop
28 computers, all of them pointing to in some sense almost
29 the personalisation of data collection, moving data
30 collection closer and closer to individuals who, in the
31 case of justice agencies, people who are collecting

1 information or interacting with people who are in some
2 ways generating information, in what I call - this is my
3 own framing of this - but I call it the second generation.
4 In the 80s and 90s we were still collecting demographic
5 information, information that might reflect events and
6 there wasn't as much of a focus or a recognition that we
7 could in many ways mine that information and gain insight
8 into what we were looking to accomplish. There was less,
9 in my mind, of a strategic understanding of the importance
10 of information and it was more operational.

11 I think today we recognise that not only within
12 an organisation that we are collecting information that we
13 could look into and we could extract knowledge and insight
14 about the subjects or the communities that are giving that
15 information, but we can also look to information that's
16 being collected by partner organisations or systems that
17 we work with in parallel and we can compare and contrast
18 them with that information, again with the goal of
19 extracting some insight from them.

20 MS DAVIDSON: You talk about the idea of moving away - and

21 I think you have talked about this already - from what you
22 have described as almost an accountant's view of
23 information and identifying the strategic, important
24 insight that you can obtain from the information that you
25 might have in a system. How does that potential,
26 I suppose, broader intelligence role, how do you see that
27 that might be able to assist in relation to issues such as
28 family violence?

29 MR ANTOINE: I think again, admitting that I am not an expert
30 on the issues of family violence, but I imagine, like many
31 deeply worrisome conditions or situations that exist in

1 our society, that there are multiple agencies or
2 stakeholders who come into contact with both victims and
3 the perpetrators and I imagine within their own capacities
4 or within their own mandates they are collecting
5 information about what is happening in these situations or
6 about the communities where they occur.

7 I would think that we could get a better
8 understanding of not only the impacts, but a clear
9 understanding of the resources that are applied in these
10 situations, as well as the gaps, as well as the
11 inefficiencies that may occur when we serve or we fail to
12 serve the victims of family violence. But the only way we
13 could do that, in my mind, is to have an understanding of
14 what information is out there that's being collected, how
15 does it relate to other information that's being collected
16 in other agencies or other systems.

17 MS DAVIDSON: So if we were to look at having a system that
18 drew on that information, how important is it to involve
19 all of those users in designing systems to ensure that
20 everyone is collecting helpful information that can help
21 with that sort of intelligence and planning?

22 MR ANTOINE: It is critically important. I would say it's
23 critically important for a very practical reason, which is
24 when we are building complex systems we often get one bite
25 at the apple in a generation. When there is support and
26 emergency behind the creation of a new system or at least
27 doing the analysis that will reveal the need for a new
28 system, it is best that we have as many of the
29 stakeholders at the table as possible. Otherwise, we may
30 find that we have missed an opportunity, we may find that
31 we build a system that cannot interoperate with a crucial

1 partner or critical partner.

2 So, I think planning. I mean it's relatively
3 inexpensive to bring everyone to the table at the very
4 beginning. It is very, very expensive to undo the mistake
5 of leaving someone out and then attempting to incorporate
6 a solution that would address what was lost by leaving
7 them out.

8 MS DAVIDSON: You talk about the court systems in the
9 United States. We have heard quite a lot of evidence
10 during the course of these hearings about some
11 difficulties within the court system because there might
12 have been one system that's developed or is used for
13 criminal matters within a court, another for civil
14 matters. We might have multiple different courts. In
15 fact, we do have multiple courts that deal with issues
16 concerning family violence.

17 Is it a matter of, if we want to create a system
18 that deals with family violence better, is it a matter of
19 getting every single one of those systems redone or is
20 there an opportunity to build a system that seeks to just
21 talk with those other systems and draw the information
22 from those systems and what's the cost of that relative to
23 those bigger projects?

24 MR ANTOINE: Again, I can't say. But what I would say is part
25 of your research and your analysis is going to involve the
26 different options that are available to you. Obviously
27 costing budgets are part of the calculation that will take
28 place. Yes, one of the things that you may discover, for
29 example, is that maybe there is enough energy, political
30 will and resources to build a system of all systems, but
31 practically you have to take into account that that's

1 going to take time. What are you going to do in the
2 meantime? Are you going to build - maybe there's a
3 possibility that you build an intermediate solution that
4 ties together the most important data elements which
5 presents you an opportunity to exchange important data
6 elements between systems. That may be something that's
7 available to you in the meantime.

8 I can't say, but I do think it's important in
9 considering this that you leave those options on the table
10 because a system, I think, that would serve all your
11 needs, a system of all systems, it's going to take time to
12 build.

13 MS DAVIDSON: You give an example of some of the work you have
14 done, for example the Red Hook Community Justice Centre.
15 Can I get you to talk about how that project worked and
16 how it could potentially offer the sort of solution or at
17 least an interim solution for dealing with family violence
18 matters?

19 MR ANTOINE: Yes. In my response I'm actually thinking of not
20 only the systems that we use at the Red Hook Community
21 Justice Centre, which we call the justice centre
22 application, but we also developed an application that was
23 specific to family violence, domestic violence cases,
24 which had very similar elements. The ideas behind the two
25 systems are very, very similar. They were motivated by
26 the fact that the only case management systems, the only
27 systems that were available to us at the time were the
28 systems that were used by the New York State court system,
29 which as you have described is a very old system, terminal
30 based, not graphic in nature, very expensive to deploy.
31 We of course wanted to create something that could be used

1 by a new set of users: case managers, social workers, a
2 judge, a prosecutor, public defender, as well as service
3 providers, third parties.

4 Again, we were motivated by the fact that we
5 didn't have anything, but we also understood that we had
6 to develop an understanding of how each of those actors
7 would use the system and the types of information they
8 required because we understood that it would be necessary
9 to motivate an ongoing adoption of the system.

10 For example - I will give you the simplest
11 example. One of the things that we took great pride in
12 was making sure that we had what we called a judge's
13 screen, a screen that was built, that was tailored to a
14 judge that presented the most important information, the
15 information that a judge would be interested in so that he
16 or she wouldn't have to turn to others for paperwork
17 or - we thought that was important because we knew that if
18 a system was adopted by the judge, then everyone else in
19 the courtroom was pretty much on the hook for using that
20 system.

21 MS DAVIDSON: Is it possible to build into the system the
22 ability for multiple different types of users to have
23 access to the system, but not necessarily to have access
24 to the whole system? How do you work to deal with the
25 issue of - I think you refer to it as data access
26 privileges.

27 MR ANTOINE: Yes. Most systems, I think actually throughout
28 the history of the creation of databases and case
29 management systems, they for the most part have always
30 been built with the notion that there are different roles
31 and the roles reflect the data that is available to a

1 particular user. The simplest example for us is obviously
2 if you are a social worker, I would say you see
3 90 per cent of what's entered into the system. If you are
4 a prosecutor or a public defender, for example, you see
5 probably 60 per cent and the percentage that you don't see
6 is clinical notes, for example, of the social worker. If
7 you are a judge, you may see again a kind of a smaller
8 window, but then there's data that you may enter as a
9 judge that no-one else would see. It might be personal,
10 your notes.

11 So, yes, systems are designed with the
12 understanding that you are creating portals into the
13 underlying dataset that reflect who this person is that's
14 logging in; their role, that is.

15 MS DAVIDSON: Commissioners, I think that completes my
16 questions for Mr Antoine. Do you have any additional
17 questions?

18 COMMISSIONER NEAVE: Yes, I do. Hello again, Mr Antoine. Is
19 it Professor Antoine or Dr Antoine?

20 MR ANTOINE: No, not at all.

21 COMMISSIONER NEAVE: Sorry, I was wondering whether I was
22 giving you the right title. I wanted to ask briefly about
23 the privacy issues. You have addressed that a bit in
24 terms of the data access privileges. But American privacy
25 law is rather more sophisticated, I think, or it has a
26 different basis than our privacy laws. Ours is mainly
27 statutory, yours is mainly common law.

28 I wonder if there have been challenges to these
29 systems which enable a great range of people to have
30 access to various bits of the data from the point of view
31 of breaches of privacy, that information is shared which

1 shouldn't be shared. For example, somebody's health
2 record, the fact that somebody has a mental illness might
3 be something that you wish to protect because of the
4 stigma that's associated with mental illness and therefore
5 there are problems about sharing that, even though it
6 might have some significance to a judge in sentencing.

7 That's not a very good example, but those sorts
8 of questions about sharing information and privacy. Have
9 you had to address those issues?

10 MR ANTOINE: Yes, we have. Actually it's an excellent
11 question, Commissioner. Although our privacy framework
12 has its origins in the common law, we do have federal
13 regulations that have overlapped them and in my time at
14 the centre we have had to deal with that. When a new
15 privacy framework was presented to us back probably in
16 2006/2007, at the time we were building a system that was
17 for a project that had I think a very interesting set of
18 stakeholders or participants. So, not only did we have a
19 community court that had young offenders who were going to
20 be case managed and were being sent to work in programs
21 with a case manager at that community court, but we also
22 had community providers, we also had hospitals, we also
23 had other types of social service agencies who were all
24 aligned in basically a collective that was going to
25 provide services to these young people.

26 When we first came together, the first challenge
27 that was presented was the hospital pointed out, "Wait a
28 minute. It's all well and good that you all want to share
29 referral information, for example. But, hey, we have this
30 young person and we want to send him to you for X." The
31 hospital pointed out that their restrictions in terms of

1 sharing information wouldn't allow them to receive
2 information in a particular form.

3 So what that presented to us was the challenge
4 where we had to say, "Wait a minute, we have to look at
5 all of the parties involved in our information sharing
6 agreement or collective here and we would have to apply
7 the most restrictive framework, the one that applied to
8 the hospital, to a particular aspect of our technology.
9 It was actually just a referral component of the
10 application. We had to de-identify certain things, we had
11 to hide certain information. But, again, that is part of
12 the planning and assessment of your data sharing
13 requirements. You are spot on. Privacy is very, very,
14 very important.

15 COMMISSIONER NEAVE: Thank you. Thank you very much indeed,
16 Mr Antoine. You are excused as a witness. Thank you.

17 MR ANTOINE: Thank you.

18 COMMISSIONER NEAVE: It must be the middle of the night there,
19 so we are very grateful to you for speaking to us.

20 MR ANTOINE: Not at all. It's been a pleasure. Thank you all
21 and good luck on this really great effort.

22 COMMISSIONER NEAVE: Thank you.

23 <(THE WITNESS WITHDREW)

24 MR MOSHINSKY: Commissioners, the next witness is Dr Phillip,
25 the Secretary of the Department of health and human
26 services. If he could come forward, please.

27 <VARUGHESE PRADEEP PHILLIP, affirmed and examined:

28 MR MOSHINSKY: Dr Phillip, could you please outline to the
29 Commission your current position and provide an outline of
30 your professional background?

31 DR PHILLIP: I am currently Secretary of the Department of

1 Health and Human Services, which is a new department
2 created on 1 January 2015. I was previously Secretary of
3 the Department of Health, which commenced in July 2012.
4 Prior to that I was Deputy Secretary, Policy and Cabinet
5 Group, in the Department of Premier and Cabinet.

6 MR MOSHINSKY: Have you prepared a witness statement for the
7 Royal Commission?

8 DR PHILLIP: Yes, I have.

9 MR MOSHINSKY: I understand you want to make one correction to
10 that?

11 DR PHILLIP: Yes, I do. In paragraph 18 there is a
12 typographical error. On the second last line of that
13 paragraph, where it refers to the portfolio asset base of
14 around \$40 million, that should be \$40 billion.

15 MR MOSHINSKY: Thank you. Subject to that change, are the
16 contents of your statement true and correct?

17 DR PHILLIP: Yes, it is.

18 MR MOSHINSKY: Dr Phillip, I would like to start by asking you
19 to address the overall economic cost of family violence to
20 government, both direct costs in terms of provision of
21 specific services which are labelled as family violence
22 related services, but also indirect costs through really
23 everything else that government funds. Are you able to
24 provide us with an overview of that?

25 DR PHILLIP: I can make an attempt. If I could caveat my
26 remarks. This is actually quite a difficult exercise.
27 There are a number of costs that we can think about.
28 There are costs to the economy and then there is cost to
29 government and within that there are direct and indirect
30 costs. One of the difficulties in this area in terms of
31 working out the cost to government is the fact that there

1 are lots of programs that deliver other purposes, that
2 target other purposes, that also deliver family violence
3 services to people, and unpicking that is actually quite a
4 difficult exercise.

5 I'm prepared to do a bit more work, given that we
6 had a request to determine this number only recently.
7 I can do a lot more work and come up with something that's
8 a bit more robust. But certainly there was some work done
9 a few years ago in terms of cost to the economy, the
10 Australian economy, by KPMG.

11 If you take a population based estimate of that,
12 it would suggest that a few years ago the cost to the
13 Victorian economy was in the order of \$3 billion.
14 Nationally that would be around 11 to \$12 billion. In
15 terms of cost to government in Victoria, certainly for the
16 Department of Health and Human Services which provides the
17 bulk of direct programs, we would be around \$64 million in
18 direct programs and a further \$27 million-odd for sexual
19 assault, coming to around \$91 million. That would account
20 for the vast bulk of government costs around this area.

21 COMMISSIONER NEAVE: Can I just ask you to clarify one thing.

22 Mr Moshinsky referred to indirect costs and you have
23 referred to the difficulty of establishing those. But
24 that would include something, for example the cost of
25 hospital admissions or emergency attendances. We do know
26 a bit about the proportion, I think, in the case of
27 hospitals, the proportion of their work. So that is how
28 you would have to go about establishing the cost in that
29 area.

30 DR PHILLIP: That's right.

31 COMMISSIONER NEAVE: It would be pretty rough, but you could

1 say if it was 50 per cent of emergency admissions - it's
2 not - but if it were, then you could say, well,
3 50 per cent of the cost of emergency departments is family
4 violence. That's what you would be doing.

5 DR PHILLIP: That's right. That's how we would try and back
6 those figures out, with all the usual caveats around
7 classification and coding which goes into a lot of the
8 databases. Similarly, we know, for example, we provide
9 about 100,000 people with supports around housing where
10 something like 35 per cent of them cite family violence as
11 a reason for being homeless. We can try, similarly to the
12 hospital exercise, try and back that up. That would give
13 us a greater degree of assurance about a figure, but there
14 would be other areas where there are three or four
15 dominant reasons why an expenditure might be made which
16 would make it a little bit more difficult to untangle
17 family violence as the main cost driver.

18 But certainly we will undertake to give you
19 greater than the national figure about cost to the economy
20 and the DHHS figures, we will try to back out those
21 indirect costs in greater detail for you.

22 MR MOSHINSKY: Perhaps drilling down a bit in terms of the DHHS
23 figure, part of your department, its funding is, for
24 example, for mental health issues. Another part is
25 alcohol and drug issues. You have referred to
26 homelessness. How would you approach the exercise for
27 each of those? I can refer you shortly to some evidence
28 about the proportion of cases where family violence is
29 present. It's quite a considerable proportion. How would
30 one go about the exercise?

31 DR PHILLIP: You might have figures where a proportion of the

1 service is dealing with family violence, but that may not
2 necessarily linearly translate to cost. So we just need
3 to unpack that a little bit because there may be other
4 drivers of cost, one of which is family violence, people
5 might cite it as a higher reason for being there, but it
6 might not necessarily be equivalent to the cost driver.

7 But similar to the exercise the Commissioner
8 raised around hospitals, we would attempt to do that for
9 alcohol and drugs and mental health, though I think in
10 those two areas it will be a little more complicated.

11 COMMISSIONER NEAVE: What would be helpful, I think, for the
12 Commission would be to have the kind of explanation of the
13 reasoning as well as the figure, so that we could say,
14 I don't know, mental health is X million, roughly this
15 proportion of it is attributable to family violence with
16 these qualifications.

17 DR PHILLIP: Yes, certainly.

18 COMMISSIONER NEAVE: That would be most helpful if we could
19 have something like that.

20 DR PHILLIP: We will, and we will articulate the assumptions
21 that we have based this on and certain parts of the
22 figuring will be, in my view, more robust. Others will
23 be, I would say, weaker than an estimate, more a
24 guesstimate, but we will outline which ones we would rely
25 more on than the others.

26 COMMISSIONER NEAVE: It might be helpful for you to know that
27 in New Zealand they have just done a similar exercise
28 right across the whole of government, as I understand it.
29 I don't think we have yet obtained a copy of their
30 methodology. It was a cabinet paper which was published
31 and the estimate was a certain amount for family violence

1 every year. But it included things like courts and the
2 police, which of course are not part of your
3 responsibility.

4 DR PHILLIP: That's right. New Zealand are quite innovative in
5 thinking about cost to government in quite different ways
6 to I think the rest of the world, including looking at
7 things over a life cycle in an actuarial sense. So I'm
8 fairly confident embedded in their numbers will also be
9 some assumptions about growth factors and rates of return
10 that they will make clear, and that's probably how they
11 have calculated it.

12 COMMISSIONER NEAVE: Thank you.

13 MR MOSHINSKY: Can I move then to another topic, which is
14 around really the model of government in the way
15 government provides services. There has been quite a lot
16 of evidence during the course of the public hearings about
17 how government services are provided in a range of areas,
18 not just if I can call it the specialist family violence
19 services, but also homelessness services, mental health,
20 drug and alcohol, and the general picture one gets from
21 the evidence that we have heard is that in many, many
22 areas the method of service provision is to fund others to
23 provide services; in many cases that we have been dealing
24 with, non-government organisations.

25 Can you please give us an explanation at sort of
26 a high level as to really the rationale for that method of
27 service provision and how we have got to this point?

28 DR PHILLIP: That's a pretty broad question. I will have a
29 fair go at that. Governments have a clear role to play in
30 meeting citizen needs in terms of a whole range of
31 services. The question then becomes who should provide

1 them and through what mechanism. There are a number of
2 tests that one would think about in considering this. One
3 would be the test of who best understands the needs of
4 people and how you might deliver the service. You might
5 have a test around efficiency of resource allocation, who
6 would be best at allocating resources efficiently at the
7 service level. Third, you might think about what would be
8 sustainable in terms of the ongoing provision of services
9 in a dynamic way responding continually to the needs that
10 citizens may have.

11 In thinking about these things, wearing my
12 traditional training hat of an economist, you would
13 automatically start thinking about the market, the market
14 mechanism of allocating resources efficiently, and as a
15 general rule we have a whole range of markets that exist
16 that provide in a very, very efficient manner services to
17 people. Why? Because they tend to be multiple providers,
18 they tend to be close to consumers, they understand
19 consumer needs and respond accordingly. Ideally one would
20 think of that as a first best world.

21 But then you come back from that. For other
22 reasons you might think about different sorts of
23 providers. We certainly find in the field of health and
24 human services, where in certain areas the needs that
25 people have are quite local, they are intensely personal
26 and in the past, when no one has provided them, mission
27 based organisations have provided them. This is an area
28 of great debate, I think, in policy circles about how we
29 might think about the provision of social services in
30 either mission based organisations or, as has been the
31 trend in the Western world in particular, increasingly a

1 corporatised view of service provision.

2 There is another role for government, though, in
3 all of this, not just ensuring that services are provided,
4 but whether they should provide directly or others should,
5 but also as regulator to ensure that there are good social
6 standards that are maintained for occupational health and
7 safety purposes, for education purposes and the like. So,
8 they are the sort of things that one considers in thinking
9 about what government provides.

10 Increasingly you find governments are getting out
11 of provision of services where understanding the consumer
12 is absolutely important and face-to-face interaction is
13 important because governments don't tend to be very good
14 at that or being nimble.

15 In the area of health and human services, clearly
16 we provide a lot of funding for organisations who are
17 close to where people are and understand community needs
18 to provide services and you see that right across the
19 spectrum of human services. At the same time, there are a
20 number of services that the government continues to
21 provide because we live in a second and third best world.

22 MR MOSHINSKY: Some of the areas that we have been looking at
23 in these hearings are obviously the specialist family
24 violence services, mental health services, alcohol and
25 drug services, homeless services. In each of those areas
26 there seems to be a substantial part of the service
27 delivery that is funded by government to be done by other
28 organisations; is that correct?

29 DR PHILLIP: Yes.

30 MR MOSHINSKY: In terms of the rationale, you have mentioned
31 three sort of main areas, who best understands the

1 efficiency of resource allocation and sustainability. Is
2 there any re-evaluation periodically of whether the
3 outsourcing model is the best way of providing those
4 services?

5 DR PHILLIP: Yes, it is, and often it's through an economics
6 lens of how efficient and effective these models are. So,
7 yes, there are regular program by program evaluations of
8 these things, and not just here but globally. These are
9 matters that aren't germane to just Victoria or this point
10 in time. Then there are also, I have to admit, trends
11 that occur. You see waves of government provision
12 sometimes being outsourced, sometimes being corporatised,
13 sometimes being brought back in for various reasons.

14 But to your point are there evaluations as to
15 what works, yes, there are on a regular basis, but they
16 are not always driven by just programmatic evaluations.
17 There are bigger issues that are debated in this about the
18 role of government and the nature of what citizens want
19 and how you deliver them.

20 DEPUTY COMMISSIONER NICHOLSON: Can I just ask at this point,
21 Dr Phillip, you have given three reasons for the
22 rationale. Our Commission has heard from a number of
23 people about the importance of supporting the wellbeing of
24 citizens by ensuring strong social capital in communities.
25 Wouldn't one of the rationales for the way in which you
26 allocate resources to services be the extent to which it
27 fosters social capital?

28 DR PHILLIP: In my view, yes, because I have a social welfare
29 function that says the building of social capital is
30 absolutely important. You will find that some of those
31 things are in some of the witness statements, in

1 particular Frank Oberklaid's evidence. One of the things
2 that underpins his analysis is in fact the building of
3 social capital in society. So, yes, to your point. Could
4 one of the reasons be to build social capital?

5 Absolutely.

6 DEPUTY COMMISSIONER NICHOLSON: I guess my follow-up question
7 to that is where in the arrangements for the contracting
8 of services does your department weigh up the contribution
9 to social capital?

10 DR PHILLIP: There are a number of ways we can do this.

11 Recently in Victoria there was a debate about this issue
12 led by Peter Shergold in a review that he conducted a
13 couple of years ago. Not without controversy, but
14 absolutely important for a broader debate, not just in the
15 department, but more broadly in public policy circles as
16 to this issue of social capital and how governments might
17 play a role here.

18 The other way in a more direct sense how
19 departments approach the issue of contracting versus
20 partnership, versus as a pure regulator, is really
21 important because it sends a signal about what matters.
22 The other way you do that is how you specify what any
23 agency needs to start to take into account in the way they
24 deliver their services. So, you might specify in the
25 creation of your market the need for intensely local
26 connections. Often we talk about that in today's policy
27 terms being place based. Actually, it's all about the
28 relationship that you might have with the community, the
29 sort of people who might be involved in decision making
30 and how decisions might be made.

31 So, to give you an example, in our hospitals we

1 now have open access board meetings. One of the reasons
2 for that is to try and bring the community in, into this
3 area of government, and I would contend through building
4 that relationship you are actually starting to build
5 social capital. So there are a number of ways the
6 governments might go about this task.

7 DEPUTY COMMISSIONER NICHOLSON: So, to cite another example, in
8 recent years we saw the re-tendering of community mental
9 health services and it's been argued that the competitive
10 tendering model applied there led to a breakdown in local
11 collaborations, discouraged voluntary contributions and
12 dissipated social capital.

13 DR PHILLIP: I have heard a number of those. The jury in my
14 mind is still out. It's not long since that occurred.
15 Some of the effects that you describe or have been put as
16 some of the criticisms of that model are also the things
17 that happen when you disrupt existing arrangements. So
18 when you disrupt existing arrangements and ask people to
19 re-apply for certain things, you tend to also get some of
20 the effects that you have described. So I think there is
21 a bit of time to pass before we properly evaluate whether
22 that worked or not.

23 I think the more interesting question would be
24 whether the commissioning of a narrow set of services
25 constitutes commissioning or is it in fact outsourcing by
26 another name, and what really ought commissioning to be.
27 The United Kingdom has played in this space now for a
28 little while and there are lots of lessons to be learned
29 about commissioning from them, but one of the things that
30 I think we may start to move towards in rethinking
31 commissioning is to think of it more in terms of outcomes.

1 So you might then think - and to give you an
2 example, if that would help. Rather than just
3 commissioning, say, a mental health service stream,
4 another way to think about it might be to think about a
5 cohort, and a cohort that might need a suite of services,
6 be they alcohol and drugs, mental health, better housing,
7 perhaps some sort of counselling, and think about that
8 suite of services, package them up and put that to the
9 market and say, "Who could best deliver those services in
10 a tailored fashion to a particular cohort?"

11 That to me would be us getting closer to a true
12 understanding of commissioning. I think that would lead
13 to few of the problems that you have described.

14 MR MOSHINSKY: Can I then follow on from the point you have
15 just made then. What is the role of government under this
16 model that exists now and how does this occur to actually
17 look at what sort of outcomes are needed, how can they
18 best be achieved and who is then going to help achieve
19 those? How would you describe the role of government in
20 that process?

21 DR PHILLIP: In terms of outcomes, I would always defer to my
22 political masters. They get re-elected every so often, on
23 the basis of a particular view about the sort of outcomes
24 they want to see in society. If I break that down into
25 more concrete sort of issues that might pertain to a
26 department, first of all the core functions don't change.
27 You fund, you purchase, you provide, you regulate. Kind
28 of those things never change. The focus of them might,
29 and that would be from strict provision of programs to
30 rethinking how you might bring those levers to bear for
31 thinking about how you might deliver certain outcomes.

1 Now, that's a debate about public policy and how
2 you might think about public policy that is broader than
3 just the Department of Health and Human Services.

4 COMMISSIONER NEAVE: Suppose that the design outcome was to
5 prevent family violence and to provide a range of services
6 which would keep the victims of family violence safer,
7 allow them to rebuild their lives and which would make
8 those who perpetrated family violence accountable, not
9 necessarily through the justice system. Leave the justice
10 system out of it for now. If you were thinking of a set
11 of outcomes, if the department was thinking of a set of
12 outcomes which would achieve that, how would it go about
13 it in terms of the contracting out process, the model of
14 service delivery which currently exists?

15 DR PHILLIP: It would be consistent with a lot of the things
16 that have come through the Commission; that is, you would
17 move away from strict programmatic provision of services
18 which have an end in their own right, a means and an end
19 in their own right, to thinking about how would you
20 reconfigure these service assets that you have to think
21 about the needs of the individual. So, suddenly you take
22 the focus away from just the delivery of the services
23 being the end in itself to think about how do the various
24 service streams come together to meet a different purpose,
25 and that is the purpose that pertains to the needs of an
26 individual. That is a big shift for governments in the
27 way they think.

28 COMMISSIONER NEAVE: Would it be fair to say that the
29 programmatic approach tends to create silos? If you are
30 thinking about the needs of a person affected by family
31 violence, they might have a mental health problem, they

1 might have a housing problem, they want to be safe, they
2 might have a range of issues about their children and so
3 on. Buying services to do all those little bits, does
4 that tend to distract attention from the need to deal with
5 the individual as a whole person?

6 DR PHILLIP: Yes and no, if I could answer that way. It
7 doesn't necessarily have to distract because programs and
8 silos are inherently not bad things. They provide a great
9 accountability, they allow you to develop service models,
10 they allow you to be incredibly accountable for every
11 dollar that is spent. Why? Because there is an output
12 that is associated with a given dollar. You can measure
13 the efficiency of that service provision, et cetera. So,
14 inherently there is nothing wrong with programs and silos.

15 COMMISSIONER NEAVE: You can say something like 25 men have
16 been put through behaviour change programs, and that's
17 what a program that you fund would do, but that doesn't
18 really answer the whole lot of other questions.

19 DR PHILLIP: That's right. I think a lot of the purpose of
20 government to date has been about providing mass services
21 to people. But I think the big shift and challenge for
22 government is how do you move from the old Fordist model
23 that occurred in industry to an individualised, tailored
24 model, without losing the effects of thinking about the
25 population as a whole.

26 In the theory we often have this debate that
27 population level and individualised level are mutually
28 exclusive ways of thinking. Actually, I don't think they
29 are. I think thinking about individual responses within
30 the context of the population is exactly how you ought to
31 be thinking about it. We see this in lots of different

1 areas. We see this in medicine, for example, personalised
2 medicine, population health, as if the two shall never
3 meet. In fact, the trick to the future about personalised
4 medicine is in the context of thinking about population
5 health. I think that's a similar methodological issue
6 that we are dealing with here.

7 MR MOSHINSKY: You have referred to a big shift and challenge
8 for government in the approach you have just outlined. Do
9 you think as a matter of principle that is a shift and a
10 challenge that should be occurring?

11 DR PHILLIP: The train has left the station, because the reason
12 why I think the shift the shift is occurring is the iPhone
13 you probably have sitting next to you. The information
14 that is now accessible by people, the range of information
15 they can access and the fact that it occurs instantly is
16 changing people's expectations of what they want from not
17 just government, but I think any institution. How
18 organisations, governments, institutions respond to that
19 is absolutely critical, because there was a time where
20 people - I will give you the good example, given my
21 background over the last few years in health.

22 Health is characterised by what we would call in
23 economics "information asymmetry". Clinicians who know,
24 patients who don't. My father would listen to anything
25 that his clinician told him. We would go to his heart
26 specialist and the heart specialist would say, "You have
27 to do X, Y and Z," wouldn't really talk to him, wouldn't
28 really listen to him, and my father would say, "Thank you,
29 Doctor," and do everything he said. I, on the other hand,
30 would question, "Why are you giving me this? What's the
31 reasoning behind it?" The expectation is different and,

1 if I didn't like it, I might think about going to an
2 alternative specialist. That thought would be abhorrent
3 to my father.

4 So suddenly the expectations are starting to
5 change because I have access to more information. My
6 expectation is that I can question and that I can get a
7 tailored service to me and that I won't just accept
8 something that is mass produced.

9 COMMISSIONER NEAVE: But aren't you in this context talking to
10 a large extent - except for the universal services - about
11 relatively disempowered - I would rather use the word
12 "clients" than "consumers", who are often not in a
13 position to negotiate and may not have a very clear view
14 of what their individual needs are. A person who is
15 mentally ill may or may not know - if they are depressed
16 they might know, but if they have some more serious mental
17 illness they wouldn't. A person who needs drug and
18 alcohol treatment may be very ambivalent. So that's
19 another challenge, isn't it, in this area?

20 DR PHILLIP: Absolutely. That's why I think particular social
21 services, whenever we think about market design, at the
22 same time we need to think about advocacy and literacy as
23 a starting point to think about safeguards, primarily
24 because the power imbalance is stark and the information
25 imbalance is stark.

26 MR MOSHINSKY: In terms of the shift that we've been discussing
27 you referred to a move away from strict programmatic
28 delivery of services to a model where you would assess how
29 to reconfigure service assets to think about the needs of
30 the individual. Is that the direction you would like DHHS
31 to be going in?

1 DR PHILLIP: Governments have already started down that journey
2 to start thinking about that and, yes, there is a lot more
3 that we can do thinking about the needs of citizens and
4 how governments and the private sector and the
5 not-for-profit sector tailor their systems around the
6 needs of people. So, absolutely.

7 MR MOSHINSKY: Can I ask you about a specific issue that's come
8 up in the evidence of a number of witnesses, that there
9 seem to be many areas where there are a lot of pilots that
10 are run and a number of criticisms have been made. One is
11 that they might work very well and do some good things,
12 but then they are defunded at the end of the pilot or it
13 doesn't become a permanent program. Another criticism is
14 duplication of different pilots in different places, so
15 there isn't an overarching sort of plan of what needs to
16 be rolled out. Could you speak to this issue of pilots?

17 DR PHILLIP: Sure. In any system and any organisation,
18 innovation is critical. So how do you go about doing
19 that? By and large, the public sector is quite risk
20 averse for lots of reasons. So one of the ways, though,
21 to innovate while minimising risk is to think about
22 pilots, trials. It's in effect a safe to fail sort of
23 environment.

24 Why do you embark on pilots and trials, is to
25 learn something. Yes, it is true that sometimes you will
26 start a pilot and as you go through you realise that you
27 have actually asked the wrong question. In that case you
28 are better off cutting your losses and stopping the pilot.
29 In other instances you realise that the objectives of the
30 pilot were right, but the way you went about it was wrong;
31 we have learnt something and a pilot stops. Are there

1 instances where you generate a pilot and it provides you
2 with quite positive results, affirming results, and then
3 it stops? Yes, and it might stop for a number of reasons.
4 It might stop because the reality is that attention has
5 moved from here to over there, and that does happen. The
6 other reality is sometimes the funding that was provided
7 has now run out and no provision has been made for whether
8 you take this forward or not.

9 COMMISSIONER NEAVE: Can I just stop you with that one, because
10 that's I think what we are hearing. I'm sure Mr Moshinsky
11 will be asking you some questions about evaluation, so
12 I won't go there. But what we are hearing is that there
13 are certainly situations where the evaluations are
14 positive, outcomes are being achieved, they could be built
15 upon and yet the pilot stops because there is no funding.

16 I suppose I wonder how much planning there is to
17 allow for the rolling out of pilots to set a series of
18 priorities and say, "We might attack these priorities in
19 four ways and look and see what works, but once we find
20 out that this one works we will proceed with it and the
21 funding will be set aside for it." It seems to be a
22 terribly wasteful process otherwise.

23 DR PHILLIP: It may be wasteful at one level, but it may also
24 be the case that there might be six things that you might
25 want to do, and you won't be able to do all of them, but
26 you are not sure exactly how to go about each of those.
27 So in each of those six domains you might actually have
28 some trials running.

29 Just in a hypothetical sense, let's say that in
30 all six domains you have three trials in each and one in
31 each domain has succeeded. It may not be the case that

1 you have made provision to fund all six domains going to
2 scale.

3 COMMISSIONER NEAVE: But is there some policy by which, prior
4 to the establishment of a pilot, thought is given to what
5 you might do if it succeeds? It's the planning in advance
6 that I'm concerned and interested in. I must say, and
7 this isn't just your department, across government this
8 seems to be the way that difficult social problems are
9 often tackled. "We will have a pilot, that will shut
10 people up for a while," the pilot comes to an end and
11 nothing happens. We have heard about that, as I said, not
12 just in DHHS, but in a number of other areas as well.

13 DR PHILLIP: I would have to say that thought is given to what
14 you might do afterwards. It's just that you might not be
15 successful. At the end of the day, you are going to
16 compete in the ideas space, and the policy space is no
17 different, and I think this is not just restricted to the
18 public sector. I think we find that in the private sector
19 as well, where a lot of effort, a lot of expenditure is
20 made. It's just that it's not public and deemed to be
21 illegitimate. But a lot of experimentation goes on and
22 projects fall by the wayside even if they show promise.

23 I think the underlying principle here is in the
24 end you have to compete for a fixed budget, whether you
25 are in the private sector or the public sector, and you
26 are not always the person at the table shaping the
27 priorities.

28 DEPUTY COMMISSIONER NICHOLSON: It is quite common in private
29 sector and other areas a different approach is that of
30 adaptive management, where you make a commitment to do
31 something about something, you progressively evaluate it,

1 you build a community and practice around it and you learn
2 as you go. It would seem a far superior approach to this
3 idea of just you have some surplus funds, let's try some
4 pilots, see what happens, no ongoing commitment.

5 DR PHILLIP: I don't disagree with you at all. In fact, I
6 think there is much to be said to that approach. It does
7 force, I think, what the Commissioner raised, even greater
8 emphasis on that planning upfront and indeed perhaps
9 I think ensuring that there are champions for these
10 things, because I think when you come to the competition
11 for budgets or ideas, how senior your champion was can
12 make a difference.

13 MR MOSHINSKY: Before I come to evaluation of pilots, I think
14 you were giving three reasons, but I don't think you said
15 the third reason yet, so I just wanted to give you that
16 opportunity.

17 COMMISSIONER NEAVE: I'm sorry, I think I interrupted you.

18 DR PHILLIP: I think the third reason was the budget. You
19 might have something that works and then you are
20 catapulted into a different realm, which is with everybody
21 else who has great ideas with things that work and you
22 have to compete. It would be nice if it was all simply on
23 the basis of a single measure rate of return, but that's
24 not always the case. It's more complicated than that.

25 MR MOSHINSKY: One of the other criticisms that has come up in
26 evidence is either lack of evaluation or quality of
27 evaluation, whether evaluations are independent. Is there
28 some systematic approach to how pilots are evaluated by
29 government?

30 DR PHILLIP: I think increasingly governments are getting
31 better at this. I think the governance in the public

1 sector is increasingly insisting that we see proper
2 evaluations. So, for instance, I think in budget
3 processes now, if you don't have evaluations, you don't
4 get past the first step. So, building in evaluation is
5 really important.

6 One of the things I think we ought to do more of
7 is in any bid that we make you build into that budget base
8 something that you can't cover as an evaluation. But
9 I think just having the evaluation doesn't necessarily
10 mean, if the pilot shows a lot of promise, that it
11 necessarily gets taken to scale. But I think the
12 discipline of having evaluations built in at the planning
13 stage and into the budget is critically important.

14 MR MOSHINSKY: One idea that's been referred to by Chairperson
15 Neave in the course of the public hearings is whether an
16 independent statutory body might be desirable to conduct
17 evaluations of pilots with the necessary expertise and
18 also continuity.

19 DR PHILLIP: I'm not sure I would be a big fan of that. What
20 I would be a fan of is a group that continually promoted
21 best practice in evaluation, not necessarily conducting
22 the evaluation. I think it's very important that
23 evaluations get conducted very close to where the
24 activity, the pilot, is actually run and by those who run
25 it, perhaps with someone providing some independent sort
26 of assurance or looking over the shoulder, because there
27 is something to be learnt by that process of planning,
28 doing, evaluating.

29 That capability set I think is really important
30 to build up at the front-line. Having a separate entity
31 that did all of that I think wouldn't necessarily allow

1 you to embed capability in the people who are actually
2 doing this work. But what I think would be good is
3 ensuring that there was some group that continually
4 provided best practice evaluations.

5 DEPUTY COMMISSIONER NICHOLSON: Within your department, who
6 provides advice about evaluation? We heard from one
7 witness where an evaluation was carried out towards the
8 end of the program, it wasn't established at the
9 beginning, there was no control group, and when asked,
10 "Where do you get your advice from within your department
11 about appropriate forms evaluation?", I think the answer
12 was, "We don't have that capacity."

13 DR PHILLIP: I think we have people with capacity. How
14 systematised we are is another matter. That is something
15 that we need to do a lot more of. Certainly our budget
16 people are starting to think about in all our budget bids,
17 where there are new things, how we build into our bids
18 provision for evaluation.

19 DEPUTY COMMISSIONER NICHOLSON: It is really about expertise.
20 The sort of advice, how you would - there was an example
21 where it would have been quite simple to have a control
22 group and it wasn't thought of.

23 DR PHILLIP: Sure. Just on that, there is, however, an area
24 that is emerging that requires I think us to think
25 carefully about, and that is how you conduct randomised
26 control trials in the social policy space. There are a
27 lot of ethical issues around that which I think still need
28 to be worked through, but there is a discipline in that
29 which allows you to think about evaluation I think in a
30 very rigorous manner around control groups, et cetera.

31 COMMISSIONER NEAVE: We do have in a few areas, in the area

1 from which I come, bodies like the Sentencing Advisory
2 Council which provides advice to government and does its
3 own research and looks at the research of others and sort
4 of pulls that together. So that's a kind of an expert
5 committee, albeit in a relatively confined area. So that
6 might be a model that could be looked at.

7 DR PHILLIP: That's an interesting idea. I have to say
8 I haven't come across that, but it is certainly the sort
9 of thing I think we might need to think about across
10 government.

11 COMMISSIONER NEAVE: Yes.

12 MR MOSHINSKY: I might move to a new topic. You have referred
13 to Professor Oberklaid's evidence. Another aspect of his
14 evidence was really an overarching approach to how we as a
15 society address public health issues. He referred to a
16 bell curve, and we might bring up the slide of that bell
17 curve. I just want to read you a passage from the
18 transcript when Professor Oberklaid was explaining the
19 bell curve, and it's transcript 2695.

20 I will just read this to you. He said,
21 "Traditionally not only in this country but in every other
22 country we are focused on the hard end where those arrows
23 are. The metaphor for that is we keep on ordering more
24 and more ambulances. People get into trouble, children
25 get into trouble, whether it's family violence, whether
26 it's mental health, whether it's child abuse, whether it's
27 a whole range of problems. We wait until problems become
28 entrenched and then we focus on that hard end, relatively
29 small numbers of people, when many of these conditions,
30 many of these problems exist on a continuum - whether it
31 is stress, whether it is mental health, whether it's

1 wellness, whether it is obesity, whether it is
2 hypertension."

3 "The research suggests and we think very strongly
4 that there will never be enough resources to pay for
5 enough ambulances at the bottom of the cliff. The real
6 question to ask is: what went wrong in our service system
7 that these children, families, young people got to that
8 tertiary end? It really is a failure of the service
9 system. It's not as if we don't have services out there.
10 Something goes wrong if that child or that parent or that
11 person gets to that hard end where they need an ambulance.
12 That's the first thing."

13 "The second thing is that the evidence at a
14 population level that you can fix entrenched problems is
15 very slim. That's not to say we shouldn't try to help
16 people and treat people et cetera. But at a population
17 level there's not much evidence. They tend to be
18 political solutions, not scientific solutions."

19 "So all the research is telling us very, very
20 strongly we need to start much earlier in the life course,
21 much earlier in the cycle. We need to understand that all
22 these conditions exist on a continuum and we need to make
23 sure that all families and all children have the support
24 that they need. If they do and if the service system is
25 responsive so they do get the support they need at
26 critical junctures that whole distribution curve will move
27 over to the left and therefore reduce the number of
28 children who need ambulances."

29 That's quite a high-level approach to public
30 policy in the health area. Could you respond to that?

31 DR PHILLIP: Essentially his argument is if we - so just a

1 normally distributed bell curve. In reality it's probably
2 going to be not so normally distributed, there's likely to
3 be a long tail, but that doesn't detract from his point,
4 which is you could do a lot of work on the long tail,
5 which is fine, reduce a certain amount of disadvantage,
6 but the greater benefit for society is if you take that
7 entire curve and if you have dysfunction right at one end
8 and non-dysfunction - I'm trying to think what the
9 corollary is.

10 COMMISSIONER NEAVE: A happy life.

11 DR PHILLIP: Yes, a happy life, wellbeing at one end, that the
12 trick for the whole of society at the population level is
13 to shift the entire curve, so move the median position,
14 not the mean, but the median position closer to that
15 wellbeing end. If you do that, you get the greatest
16 benefit for society. So his position there is essentially
17 a population level prevention emphasis versus acute
18 service provision. This is the "you keep buying more
19 ambulances" at the area of the long tail. That has a lot
20 of merit.

21 One of the things also that he focuses on goes to
22 this issue for us in family violence, and that is the
23 evolving understanding of what is family violence and who
24 is affected. So it was the case that until the late 80s
25 we all thought that children, who are kind of collateral
26 in all of this, that they just bounced back, that mentally
27 there was no issue, they were fine, they were resilient,
28 and it was the adults who were not resilient.

29 What Frank has done through his work and a lot of
30 other people, particularly in the area of brain
31 development, have discovered is - I think he uses this

1 term "toxic stress" and the effect that it has. So our
2 understanding now of the impact on the brain and early
3 child development in the context of family violence is now
4 different. That's why we wrap the children up into the
5 response so quickly.

6 So that is essentially the thesis that he is
7 putting forward here too. What can you do, though, at the
8 prevention end? The first three years of a child's life
9 just go like that. What are we doing to deal with the
10 causes and determinants of ill health, poor wellbeing,
11 dysfunction more broadly, all of these elements which, if
12 you don't, one of the manifestations might be family
13 violence, other manifestations might be - - -

14 COMMISSIONER NEAVE: Mental illness.

15 DR PHILLIP: Exactly, which he then talks about I think in a
16 lot of his work. So, rather than deal with the ambulance,
17 whether it's the family violence system or mental health
18 system, what can we do at the population level dealing
19 with the determinants of dysfunction.

20 MR MOSHINSKY: You refer to this as really a society prevention
21 model.

22 DR PHILLIP: Yes.

23 MR MOSHINSKY: Are you supportive of that approach?

24 DR PHILLIP: Absolutely. We see this in lots of different
25 places. We see this in a narrow sense in health. We saw
26 this with smoking. An incredible campaign about smoking,
27 a social awareness campaign at a population level,
28 followed by some targeted programs for individuals to
29 access, a lot of pressure, and we are kind of seeing that
30 now too with family violence that, one, the stigma is
31 starting to come back a bit, there's more open discussion.

1 Previously it was fierce advocates who had a very intimate
2 understanding of family violence who were the champions.
3 Increasingly we are seeing more and more people take up
4 this position around family violence in terms of
5 prevention.

6 So awareness itself can have over time a positive
7 impact, because it shines a light on what is going on and
8 what we need to change, both at a population level but at
9 an individual level.

10 MR MOSHINSKY: There has been quite a deal of evidence during
11 the public hearings about the pervasiveness of family
12 violence among people generally and also people in
13 different cohorts. I want to preface my next set of
14 questions by just referring you to some of that evidence.

15 We had evidence from a number of witnesses
16 dealing with people with alcohol and drug issues. For
17 example, Dr Gruenert, the head of Odyssey House, gave
18 evidence at transcript 679 that something in the order of
19 50 to 80 per cent of clients in the alcohol and drug
20 sector have either used or experienced family violence,
21 and Ms Alice Hanna from Jarrah House in New South Wales at
22 transcript 691 said over 80 per cent of the people she
23 sees she would estimate have experienced family violence.

24 In the mental health sector, Dr Fernbacher gave
25 evidence at transcript 1136 that, if we look at the more
26 acute end of mental health, "Women or people who go to
27 emergency departments or are seen by an emergency health
28 team or end up in acute inpatient units, anything between
29 50 and up to 90 per cent of women have experienced some
30 form of interpersonal violence that mostly happens within
31 family violence."

1 If we look at those people who are homeless,
2 there is a very significant number who have experienced
3 family violence. In your witness statement you indicate
4 at paragraph 78 that family violence was identified as an
5 issue for around 30 per cent of families provided with
6 support by Child FIRST and integrated family services in
7 the homelessness sector. Then family violence was cited
8 as a factor among 35 per cent of clients who sought
9 homelessness services in 2013/14 and I think you indicate
10 there probably is some underreporting there.

11 There was other evidence that the Commission has
12 heard in relation to homelessness from Jenny Smith and
13 Sarah Toohey from the Council of Homeless Persons. At
14 paragraph 22 of their statement they indicate that
15 Australia's first longitudinal study of people at risk of
16 experiencing homelessness found that those who have
17 experienced homelessness long-term, of them 64 per cent
18 had experienced physical violence in the home and
19 72 per cent had experienced some form of abuse as a child.

20 We have also had evidence that there often is a
21 clustering of a number of needs in a particular case, and
22 you refer to the co-existence of a number of factors in
23 any individual case in your statement. Given that
24 picture, to what extent does a consciousness of family
25 violence and the issue of family violence pervade the
26 thinking of the department as a whole and the way it
27 approaches really all of its activities?

28 DR PHILLIP: I think the idea of the number of factors
29 co-existing, co-morbidities, is something that has gained
30 traction more generally over the last couple of decades.
31 So not just about family violence, but the way we think

1 about any problem that we are confronted with has now,
2 I think, moved substantially away from single issue to
3 trying to think about other factors, that there are a lot
4 of correlations here with the person standing in front of
5 us, for whatever they have presented with. As a general
6 rule, you then deal with the most immediate. So that's
7 generally I think how people approach things.

8 So the issue of family violence has, I think,
9 become more and more prominent and I think we are seeing
10 the clustering, as you call it, or correlations appearing
11 more and more. I think right across the department we are
12 starting to think about, not just on family violence, but
13 a whole range of things, how does the system start to deal
14 with that, because the system for a long time has been
15 geared at dealing with an episode. So, whether it's the
16 presentation of a particular mental health issue, we know
17 how to deal with that, we can price it, we can fund it, we
18 can deliver it, you don't ask the questions as to whether
19 they have other issues, do they smoke, are they homeless,
20 et cetera. But I think increasingly we are starting to
21 think about how does the system gear itself to deal with
22 these co-morbidities.

23 So I think that thinking is right through the
24 department and family violence is a big issue that we are
25 trying to work through.

26 DEPUTY COMMISSIONER FAULKNER: Can I ask how are you getting
27 that lens? How are you structuring internally to get that
28 look-through lens across all the services?

29 DR PHILLIP: Part of it is starting to have the right
30 discussions about these things. People who work in the
31 areas of dealing with family violence programs are

1 themselves now branching out to think about, "What does
2 this mean in terms of when people present at a hospital,
3 for example, or at community health?" You can see by the
4 type of programs that are being trialled, piloted,
5 Services Connect being one of them, and we heard yesterday
6 out at Gippsland, what's the base for it? Community
7 health.

8 So we are starting to think of those terms as to
9 what are the platforms now that we need to think about if
10 we want to get a broader reach and handle on this issue
11 that is now fair and square the public debate, but also is
12 a key issue dealing with the people who we come into
13 contact with on a daily basis.

14 DEPUTY COMMISSIONER FAULKNER: I'm looking for who are the
15 people who are working on it. I don't mean individually,
16 but is it the family violence program people that are
17 trying to move their information out or is everybody being
18 asked to look at their own part of the pie, basically?

19 DR PHILLIP: I think we are now doing a bit of both.

20 Previously it would always be up to the area that looked
21 at it to kind of fight their way through. But you can see
22 how they've been thinking. In the specification for the
23 Services Connect contract with partnerships, they didn't
24 specify the one platform. They actually left that open to
25 see how people might think about the access question for
26 people in their community. So, they have been trying to
27 broaden their remit, but I think generally as a department
28 we are starting to move to being much more open and think
29 about it across all areas.

30 COMMISSIONER NEAVE: What are the institutional arrangements to
31 encourage that thinking?

1 DR PHILLIP: It's a very good question because I was going to
2 add to the last one. Fundamental to it is a change in
3 culture as to how you view your job and how you view the
4 role of the department. That is a very, very difficult
5 issue because not just our department, but all
6 departments, you kind of grow up with allegiance to your
7 division, your branch, the programs that you run and to
8 think more broadly outside is difficult.

9 There are lots of devices that we trial. I often
10 say to my colleagues, "In the briefs that we write we have
11 a section, a device called 'consultation'. It's a device
12 that was meant to try and say, 'Hey, I work in this area,
13 but I have consulted with someone in another area who
14 should have and does have an interest in this to try to
15 get that cross-divisional collaboration.'" But how
16 effective that is is another matter, because sometimes
17 with the pressure of time you tend to hand it over to
18 someone and they look at a brief and come to it with a
19 perspective, "This does no violence to my area so that's
20 fine, you can say I've been consulted," as opposed to
21 being involved in the problem definition and solution,
22 which is what in my books that device is trying to do.

23 There are other devices that are around that we
24 ought to look at. In the private sector, particularly in
25 consulting houses, nothing goes out without a peer review,
26 a critical friend. So there are other mechanisms to start
27 to think about the connections that we need in developing
28 policies.

29 MR MOSHINSKY: Can I just press you on that, if I may,
30 Dr Phillip. If you have a major public health or major
31 public policy issue such as this one, family violence, how

1 does one achieve change to create a consciousness across
2 all arms of the department? Given the department that you
3 head is involved in so many different sectors that are
4 relevant, what institutional arrangements do you think are
5 desirable to achieve change?

6 DR PHILLIP: A lot of internal ones, but the main one is to get
7 people talking. You would have heard evidence over the
8 last few days where I think Frances Diver was here talking
9 about how through our statement of priorities we are
10 starting to put an emphasis on family violence. For lots
11 of reasons it has been the case that I think in the past
12 family violence was kind of a Department of Human Services
13 issue and not really something that Department of Health
14 focused on, but having people start to collaborate and
15 think about this issue more broadly is why we are now
16 seeing that in the statement of priorities in hospitals we
17 have got an issue about family violence and we now have
18 got programs that we are trying to run through hospitals
19 and workers around family violence.

20 So that's how you start to get the sort of change
21 that I think was the premise of your question, through the
22 discussions with the most senior levels first about design
23 and policy in order to get this through lots of different
24 areas. It's one of the benefits of bringing the two
25 departments together. That's only quite recent, but it is
26 an attempt to look at health and human Services as part of
27 the same system. I think in family violence we see that.

28 MR MOSHINSKY: Would that be a convenient time to have a
29 15-minute break?

30 COMMISSIONER NEAVE: Thank you.

31 (Short adjournment.)

1 MR MOSHINSKY: Dr Phillip, I understand you may have an
2 additional comment you wish to make about the last line of
3 questions.

4 DR PHILLIP: Yes, thank you. The Commissioners had asked about
5 how we think about the structure of the department and how
6 we tend to coordinate. The one bit of information
7 I had wanted to highlight was that on Thursday I have
8 actually announced a review of the structure of the
9 department because we created this entity by putting
10 existing structures just together in a minimalist change
11 manner to get through the early part of the new government
12 and it is timely to think about that.

13 Two things that I'd highlight that go to some of
14 the points you have been making is I have created a role
15 within my office which is called "policy coordination and
16 reform" to try and get a greater flavour of coordination
17 through. This sits alongside a division on strategy,
18 again where a lot more of the cross-cutting themes for
19 policy development will sit.

20 In addition to that, in order to drive some of
21 this in a more concrete sense I have also announced the
22 creation of sort of a modern term for these things called
23 a "reform acceleration unit", again which will be to take
24 some really difficult cross-divisional topics and drive
25 them for a period of six to eight weeks in terms of
26 breaking through a particular problem. I thought that
27 might be of value to the Commission.

28 MR MOSHINSKY: When you said Thursday, are you referring to
29 yesterday?

30 DR PHILLIP: Yes, I think it was yesterday. I apologise. All
31 the days are blurring.

1 MR MOSHINSKY: And when you said to look at a number of
2 difficult topics, is family violence one of the topics?

3 DR PHILLIP: Aspects of it may well be one of the topics. I'm
4 keeping some of those open for the moment. But they will
5 be the sort of things that cross a lot of areas, but the
6 intent of it is to try to get people from different areas
7 to start thinking quite differently about the challenges
8 that we have, because the challenges that we have, not
9 just in family violence, but across the board, is this
10 thing about correlations and clustering and how we start
11 to deal with that.

12 MR MOSHINSKY: Can I turn to a more specific issue which is the
13 funding mechanism for the family violence services, so
14 these are the direct family violence services. We have
15 heard evidence from Mr Rogers which indicates that it's
16 part of the homelessness budget, as I understand it, that
17 is used to fund the family violence services.

18 DR PHILLIP: Part of family violence is funded by the output
19 group dealing with homelessness. There is a substantial
20 part of family violence that's also funded out of Child
21 Protection and Family Services output group. So it comes
22 from two different sources.

23 MR MOSHINSKY: And in terms of outreach services, for example,
24 provided by domestic violence organisations, I understand
25 that's all funded through the homelessness budget?

26 DR PHILLIP: Yes, I understand that.

27 MR MOSHINSKY: I understand that's partly for historical
28 reasons that it's part of that budget, is that right?

29 DR PHILLIP: Partly historical, but I think the fact that
30 family violence is funded from two different output groups
31 that don't have the term family violence in them is

1 because the issues of family violence predominantly have
2 arisen in the context of thinking about homelessness and
3 housing, traditional areas for the department, and also in
4 the family services child protection area. So it goes to
5 this clustering point of yours that the emergence of this
6 issue on the public policy radar has come out of the
7 delivery of these other services and they are recognising
8 that, "Wow, an important factor being cited for this is
9 family violence." So that is naturally how the funding
10 source has evolved.

11 MR MOSHINSKY: To what extent does the funding source affect
12 the way people approach the issue and is there a case for
13 perhaps rethinking the way family violence issues are
14 funded?

15 DR PHILLIP: I would have to say that the current way we have
16 been funding this probably has a very positive effect
17 because it is taking this issue of family violence and
18 ensuring that in the other mainstream delivery arms that
19 it's becoming embedded. So in many ways it is ensuring
20 that family violence is being treated more holistically,
21 as opposed to separating it out and thinking about it as
22 yet another silo.

23 So I think it's actually having the opposite
24 effect than we might normally think, that in fact it is
25 taking this issue of family violence and embedding it in
26 some mainstream service areas rather than taking it away
27 and creating another silo.

28 COMMISSIONER NEAVE: If you thought about family violence as
29 much more pervasive than was originally recognised and as
30 a problem which affects enormous areas in social policy,
31 you might, might you not, start with a sort of family

1 violence focus and then have underneath that the areas
2 that provide assistance and support to people affected by
3 it, so child protection, support of families,
4 homelessness, mental illness, drug and alcohol.

5 I wonder if you could comment on the two
6 different ways of doing it. I can see with drug and
7 alcohol there would be people who have those problems who
8 are not affected by family violence. There might be
9 problems doing it that way. But I would like to
10 understand your thinking around that issue.

11 DR PHILLIP: Sure. If I could perhaps provide a little bit of
12 a framework for the way I have been thinking about this.
13 The first is a little bit more theoretical. It seems to
14 me that the way we have traditionally approached social
15 policy, and let's put family violence fair and square
16 there for the moment, and this is just in public policy
17 sector of government, is we have by and large in social
18 policy two big universal platforms: health and education.
19 I think we have tended to sit back and say, "Oh, look,
20 there is this area called disadvantage," and we
21 compartmentalise it and we define it in terms of
22 homelessness, family violence, et cetera.

23 Then I think what we have done in public policy
24 is we have outsourced that. We have outsourced it so it
25 doesn't mess up our narrowly defined but beautiful
26 universal platforms called health and education and we
27 have outsourced it to these departments called Communities
28 or Human Services and these departments have gone and
29 built programs to deal with aspects of disadvantage. Then
30 I think we wake up and evaluate and say, "Well, have we
31 achieved our outcome," and generally not feel very

1 satisfied about it.

2 I think it's because, in our structured way of
3 thinking about it, we have created a system that is
4 necessarily divorced from those mainstream universal
5 platforms of health and education, because the beauty of
6 those universal platforms is they are very good at being
7 able to lift people out, and our objective by and large
8 ought to be to not just treat the symptom, but to get
9 people out of the system.

10 But when there is a disconnection between, say,
11 employment, skills development, mainstream health, and we
12 do know that particularly in other areas of disadvantage
13 they have poor access to health, basic things about dental
14 is never covered, they don't have access to alcohol and
15 drug treatments, and I think it's because we have created
16 a silo in a department and outsourced disadvantage to them
17 and the connections back to those enablers for employment,
18 et cetera, are really hard to build.

19 So, another way to think about it is, rather than
20 compartmentalise family violence or social policy here, is
21 how do we get these universal platforms of health and
22 education, which they have happily narrowly defined, to do
23 more of that leg work around the social determinants that
24 we know so much more about and deal with those people who
25 are kind of marginally attached to the system and do more
26 to lift them out.

27 COMMISSIONER NEAVE: Housing you didn't mention. You mentioned
28 health and education. If one was sort of coming from a
29 human rights framework, economic and social rights, which
30 we don't have in our law in Victoria, but if you did you
31 probably would add housing, you might add employment as

1 well.

2 DR PHILLIP: I agree.

3 COMMISSIONER NEAVE: That would be your other universal, that
4 everyone has a right to be housed to a decent standard.

5 DR PHILLIP: Yes. So how would we use a massive platform
6 called housing, which I would define greater than the
7 provision of public housing, because I think our problem
8 in housing is actually situated within a much more
9 difficult debate about affordability and supply affecting
10 public housing. But that is itself a very important
11 platform, I think, for us to think about, with respect to
12 whether we compartmentalise and I think perhaps create a
13 new silo around family violence. I think we might be
14 better off turning the system on its head and forcing the
15 bigger platforms, health, education, housing, to do a lot
16 more, because one of the things certainly listening to the
17 Commission and the evidence coming out of it is the
18 complexity that we now see around family violence and how
19 it's intertwined with so many other factors.

20 So it seems to me that we ought to do more with
21 where we have a lot of strength, but perhaps don't use
22 that enough, to deal with more people on the margins. So,
23 in terms of Frank Oberklaid's curve, it's right on the end
24 of the tail - those universal platforms are probably quite
25 inappropriate to deal with that - but we might reach a bit
26 more if we get them to do a bit more work.

27 There is the one approach that you highlighted of
28 thinking about it quite separately versus what I think in
29 my head is what we ought to do, which is flip the
30 traditional way of thinking about it, traditional way of
31 outsourcing it, to thinking about how we bring a lot of it

1 back into the mainstream, using the strengths of the
2 mainstream universal platforms to do the heavy lifting.

3 DEPUTY COMMISSIONER FAULKNER: Could I just comment then.

4 There seems to be a little bit of a contradiction in that
5 for me which said that you are quite happy with
6 the placement of the funding sources in two
7 buckets - sorry, you didn't say that; is that what you are
8 going to tell me?

9 DR PHILLIP: Yes, it hasn't been a negative thing, but I don't
10 think that is perhaps the only way we should be funding
11 family violence. But I was just highlighting the fact
12 that it came out of homelessness actually reflected the
13 fact that the issue has emerged out of housing and
14 homelessness and that emergence has actually done some
15 good because in housing and homelessness we are thinking
16 better about family violence. So that's all I was trying
17 to - - -

18 DEPUTY COMMISSIONER FAULKNER: I wonder therefore if you will
19 extend that thought then into saying the other bucket you
20 have, which seems to be about 65 per cent of the portfolio
21 expenditure, is the health in many forms budget and
22 whether or not you have thought about that as a platform
23 and that as a bucket of money that could be more broadly
24 used, and therefore the treatment that people get is more
25 akin to a universal service.

26 DR PHILLIP: Absolutely.

27 DEPUTY COMMISSIONER FAULKNER: Do you want to comment on that?

28 DR PHILLIP: I think that's right. My own view is that we
29 ought to turn those big institutions that we have in the
30 health system much more away from dealing with episodes
31 and acuity to be about health and wellbeing promoting

1 institutions. That will take a lot. It's not without
2 controversy. But I think they are respected natural
3 institutions for people to come into the system and they
4 ought to be doing a lot more.

5 DEPUTY COMMISSIONER FAULKNER: In case anyone should think I'm
6 hypothesising that they become the base, it's just more
7 the thinking that says that, if you were to have a
8 physical ill-health problem, there's a place you can go
9 for emergency care, which is a hospital, but there's no
10 one saying you have to sit on a waiting list for a very
11 long time for an emergency, basically.

12 So it's those sorts of things, the thinking of
13 health, not necessarily the institutions of health because
14 they have all their own problems as well, to saying this
15 is something that we need that certainty about how people
16 are going to get treated when they have the problem of
17 family violence.

18 DR PHILLIP: And it extends, too, so not only in terms of
19 access, but how we assess and how we respond, there are
20 I think important interfaces both in terms of ideas, but
21 also physical locality that we ought to be thinking about.

22 MR MOSHINSKY: Could I raise the issue of system planning,
23 which you indicate in your statement is one of the roles
24 of the department, and the issue of service demand and
25 supply imbalance which you also refer to in your statement
26 and you name it as one of the five challenges. You put it
27 as the first of your five challenges.

28 The Commission has heard quite a lot of evidence
29 about service gaps, waiting lists, insufficient services,
30 particularly in the areas of mental health and alcohol and
31 drugs, but also other areas. Is there a shortage of

1 supply and, if so, why is that occurring? Is it a fault
2 in the planning? Is it there's just not enough money?
3 Where is the problem occurring? Is there a problem and
4 why is it occurring?

5 DR PHILLIP: As you rightly point out, you have heard lots of
6 evidence of waiting lists, growth in demand; for instance,
7 child protection has been growing around 10 per cent a
8 year, sexual assault nearly 10 per cent a year, and you
9 have queues everywhere. It's hard to think we have an
10 optimal system where supply and demand are evenly matched.
11 So that is definitely one of the big challenges.

12 But I think what is also a big challenge is, as
13 we have understood what family violence looks like and to
14 whom it applies, we are seeing that the system needs to
15 start to change in how it responds. If I could, certainly
16 in my read of the literature and hearing people here, we
17 have seen this evolution in terms of who, from
18 predominantly a male perpetrator, female victim, to then
19 over time realising the importance of the children who are
20 also affected. So you then start to move from just a
21 service response, an assessment and service response
22 around the woman to a female plus children, to an
23 evolutionary position where we have realised actually you
24 ought to treat the woman with two hats on, one as victim
25 and two as mother, that there are two elements to that in
26 terms of your service response you need to be quite
27 nuanced about, to now thinking about how do we keep
28 mother, children safe? Well, you actually have to deal
29 with the perpetrator.

30 So again you can see that, as we have been going
31 along this journey we are starting to realise that our

1 service response has to move from just the woman as
2 victim, to mother and child, to woman as mother, woman as
3 victim, to now perpetrator, and I think you heard evidence
4 over the last few days that in fact it's not just a
5 male/female issue, that it's increasingly about a
6 relationship issue, elder, sibling, adolescent, GLBTI,
7 that these are newer forms that we are starting to become
8 much more aware of for which we have very poor service
9 responses because they haven't kind of been built into the
10 model.

11 So, yes, there is the demand pressures that you
12 have highlighted and I guess the reason why I raise those
13 other bits is that just solving the known cues doesn't
14 provide a response to family violence. It does a lot, but
15 it doesn't provide a response to family violence because
16 we actually need to think about how we knit those services
17 together, how we leverage off the service assets that we
18 already have, where in a response to family violence we
19 realise that the whole is greater than the sum of the
20 parts. So that really is where I think we need to turn
21 our attention to in a really meaningful way.

22 MR MOSHINSKY: I will come back to knitting services together
23 in a short time. But just focusing on problems, very
24 significant problems we have heard about in terms of lack
25 of services, services which are funded by DHHS, I think
26 you have accepted there are shortages of services. Why is
27 that occurring? Is it a failure in the planning process?
28 Is there just not enough money and therefore priorities
29 are elsewhere? What's problem?

30 DR PHILLIP: It is probably an amalgam of all of them. You
31 can't plan for something that's emerging and

1 changing - sorry, you can't plan perfectly for something
2 that itself is evolving, emerging and changing, and we do
3 know through a lot of evidence that even what we are
4 seeing as the unmet demand, there's a lot of
5 underreporting, and we are in that phase where news heard
6 can have a positive effect of allowing people to come and
7 openly seek assistance, which is a good thing.

8 So we are in this world where demand is rampant,
9 the nature of the demand, what it looks like is evolving,
10 so we are learning more about it. Even if we had all the
11 resources there to meet it, we probably wouldn't because
12 our service response wouldn't be tailored quickly enough
13 to deal with what we now know.

14 MR MOSHINSKY: Can I just ask you if you could direct it to
15 some specific examples, say, alcohol and drug services,
16 that's one example that's come up frequently. Is there a
17 shortage and waiting lists? Do you accept that?

18 DR PHILLIP: I think everyone knows that there are queues,
19 there are deficiencies in all of those service streams
20 that you have mentioned, including alcohol and drugs.

21 MR MOSHINSKY: So why is that happening?

22 DR PHILLIP: One, because our estimation of demand is sometimes
23 wrong. Two, you don't factor in what some of those
24 trigger points might be for an increase because we don't
25 really know. If I take drugs, for example, we hear every
26 day about the ice epidemic. We kind of know a little bit
27 about the pattern of that. But what are some of the
28 underlying drivers? What is forcing the seemingly happy
29 kid in Toorak in a well-to-do family suddenly to be on
30 ice? We don't know. No one quite knows. So, to that
31 extent our planning, estimation and service response is

1 always going to be deficient.

2 Then there is also the reality that we live in a
3 world of capped budgets, and budgets are fundamentally
4 about choices. Those choices are made every single day
5 and, wearing my old hat as an economist, there is no free
6 lunch, there is always an opportunity cost.

7 COMMISSIONER NEAVE: Can I follow that one up. Did you finish
8 that line of questioning? Yes. The resources, as you
9 said, will probably never be sufficient to allow everyone
10 to walk in the door of wherever they want to walk in and
11 get an immediate service, and that's so in almost every
12 area, emergency departments, whatever it might be.

13 DR PHILLIP: Yes.

14 COMMISSIONER NEAVE: But you may have to make hard choices
15 about what you cease to fund in order to fund other things
16 better. So, instead of having a very, very thin scraping
17 of margarine across the bread, you might want to have more
18 on one half of the bread and none on the other half. I'm
19 wondering whether thought has been given to what might be
20 appropriate to abandon in order to ensure that there are
21 adequate resources in other areas. How does the
22 department go about identifying inefficiencies,
23 inappropriate expenditures, programs that should be shut
24 down, all of those sorts of things, in order to refocus
25 the effort and put the money somewhere else?

26 DR PHILLIP: Commissioner, the Department of Treasury and
27 Finance on an almost daily basis puts that pressure on us
28 in terms of thinking about what your priorities are and
29 are you spending money adequately and efficiently and
30 consistent with government priorities. The issue you
31 raise about what would you cut is constantly on my mind

1 because it seems these days we are always in a budget
2 cycle. You never drop out of it. You are always dealing
3 with demand pressures, budgetary pressures and needing to
4 think about how you might deal with them, not just at
5 budget time, but all the way through the year.

6 COMMISSIONER NEAVE: I understand the budget bid process, but
7 how do you do it internally? That's what I'm really
8 trying to understand. What's the process by which you
9 make a decision internally that, "We will push this and
10 let that one go"?

11 DR PHILLIP: As a general rule, at an executive level we try to
12 think of what our priorities for the coming year are and,
13 as much as we can with the marginal dollar, try and align
14 our thinking about new expenditure with that. That
15 doesn't mean you stop doing all the other things, but it's
16 all in terms of the marginal dollar going forward.

17 Sometimes you might find it particularly where you
18 actually might have a little bit of cash to do things
19 yourself. But by and large our system works in the
20 following manner: that you highlight your priorities at
21 the margin and use that as the basis for how you will bid
22 for budget funds. That is always true in departments
23 where cashflow is extraordinarily tight and where you know
24 that demand is rampant in pretty much every area of
25 service. So, do we on a daily basis move some funds
26 around to deal with emerging issues? Yes. Do we do that
27 for systemic issues? Less so outside of the budget
28 process.

29 In terms of your question about efficiency, we
30 have a very strong budget committee process that starts to
31 look at every division, every area. They are pretty

1 ruthless, I think, these days because there is no room for
2 luxury anymore to think "We can play with this or play
3 with that." Given that we are operating extraordinarily
4 tight budgets just in time, it's something that this
5 budget committee pays a lot of attention to.

6 COMMISSIONER NEAVE: By the margin I assume you mean new
7 projects or new priorities. What's the balance
8 between - roughly what proportion of your budget goes to
9 the maintenance of large hospitals and all of those things
10 and what's left over when you have done all of those big
11 things that you have to keep doing, what's left over for
12 the marginal priorities?

13 DR PHILLIP: It can vary. It's not the easiest question to
14 answer, Commissioner. But, as a rule of thumb, I would
15 say that if I take the last few years of health where
16 budgets have been increasing every year, and the same in
17 human services, but certainly in health you would have
18 \$400 million, \$500 million of new things every year on top
19 of a budget of about \$11 billion. So it's not a
20 significant proportion that you would be able to play
21 with.

22 COMMISSIONER NEAVE: Thank you.

23 DEPUTY COMMISSIONER NICHOLSON: Perhaps just to make this a
24 little bit more concrete relating to the two last
25 questions, predicting or anticipating demand and also
26 decisions about what you stop doing to do other things.
27 We have heard from Professor Vinson, and you are probably
28 aware he has conducted successive studies over the better
29 part of 20 years which have identified certain communities
30 in Victoria where there are abnormally high levels of
31 family violence and other social ills. It's not as if it

1 is hard to anticipate. We have known these communities,
2 they haven't changed over successive studies, yet we
3 continue to do the same things that aren't working. Your
4 department could reasonably be expected to anticipate
5 that, and yet we don't do anything about it; we don't
6 change what we are doing.

7 DR PHILLIP: I think your last comment is where I might start.

8 We might not seem to be having a big enough impact.

9 I think there are things that we are doing. The question
10 is how effective is that.

11 DEPUTY COMMISSIONER NICHOLSON: His data would say it's not
12 effective, if the objective is to reduce these social
13 ills.

14 DR PHILLIP: Partly the complexity of what we are dealing with
15 is quite extraordinary. I don't mean that as an excuse.
16 In no way do I mean that as an excuse, but I mean that as
17 how we understand what the problem is. I think it is fair
18 to say that we have gone through decades where our
19 thinking about this issue, looking back now, we would find
20 abhorrent.

21 So we went through for many, many decades
22 thinking that this is all about the woman's fault and why
23 didn't she leave home. Our service response was kind of
24 all geared around that. So you might have housing
25 services, but they don't get triggered for family violence
26 unless the woman leaves home. For decades we have kind of
27 operated like that.

28 But our understanding of family violence is now
29 shifting and we now need to take, I think, to come back to
30 your point, a quite different approach. We are starting
31 to see that. Yesterday you heard from Kildonan about

1 their Families@Home project; quite a refreshing and very
2 different approach to think about the family in the home
3 in the context of family violence. Five years ago,
4 10 years ago, we would not have thought about that. We
5 would have thought about family violence service gets
6 triggered when the woman leaves the home. We would think
7 it abhorrent if she didn't leave the home. We didn't
8 think about a policy response about why not the
9 perpetrator leave the home.

10 So I think the complexity of who is affected by
11 family violence and the nature of this is evolving quite
12 rapidly now and our service response, though, is probably
13 still lagging.

14 But the Kildonan example yesterday was quite
15 intriguing. I was here to listen to that. It was a pilot
16 that was funded under the Innovation Action Plan for which
17 it is continuing. I suspect that part of the success is
18 the extraordinary leadership, which is not often a service
19 design issue, and part of that leadership is how they have
20 managed to get local businesses to also accept that this
21 is something they should be part of. So there are some
22 interesting local factors, but certainly something I want
23 to look at carefully about what elements of it, though,
24 could be taken to scale.

25 MR MOSHINSKY: Can I ask you some questions about the
26 integration of services. You referred a short time ago
27 that we need to knit services together and other
28 witnesses, such as Professor Oberklaid, talking about
29 glue. There seems to be a general acceptance from you
30 that there needs to be greater integration of the services
31 from the victim's perspective. How does one achieve

1 change? What does one do practically as the head of the
2 department to actually drive that change?

3 DR PHILLIP: One of the things that I have noticed in the
4 debate is there is quite a bit of talk about integration,
5 but what that means and where that applies can sometimes
6 get a bit confusing. We also tend to conflate integration
7 and coordination quite a bit sometimes in the discussion.
8 So integration can mean different things to different
9 systems.

10 Thinking about it, you could think of integration
11 as creating one provider who provides multiple services;
12 an integrated provider but who might have a view across
13 all those services for one person. So the individual only
14 has to deal with one provider and gets everything. You
15 could think then as a broker, perhaps, who does that
16 integration; so again trying to think of different models.

17 But I think with family violence where you have
18 certain characteristics which are, one, the clustering
19 point that you raised earlier, that is someone presenting
20 with family violence is also presenting with lots of other
21 things and may not actually present first and foremost as
22 a victim of family violence - they might come into an
23 emergency department, the kids might go to school and the
24 teacher might be picking something up, the child-care
25 worker might be noticing certain things. So you have this
26 complexity and presentation issue.

27 You also have as a result a system characterised
28 by the need for multiple services to be provided and, from
29 a market sense, multiple providers who might be providing.
30 So that's kind of my picture of the landscape that we are
31 dealing with.

1 So then how do we think about this? It seems to
2 me there are four key parts or elements to the system, the
3 first of which is access. So how would I think about
4 access? I think if someone is not necessarily going to
5 present for the symptom of family violence, they might
6 come in in lots of different ways, and if this is an
7 endemic social problem then you need to have access points
8 that are extraordinarily broad. So where people are,
9 where they can walk in, where they can be noticed, you
10 want to have a breadth of access points. So part of the
11 design of the system would be that.

12 The second is assessment. The third, for me, is
13 response. This is where I think the integration point
14 comes in because, as I think about it, assessment must be
15 consistent and holistic around the needs of the
16 individual. What I mean by that is it has to be informed
17 by the trauma of the individual, and in doing so that's
18 where we have things like the CRAF that Scott Widmer gave
19 evidence about earlier; it's where we need to think about
20 data sharing platforms, including the privacy issues with
21 the Privacy Commissioner coming on later this afternoon;
22 it's where we need to think about the sort of workforce
23 training; and also where I think this debate about
24 specialist and generalist kind of sits is that assessment
25 leading into the third element, which is response.

26 So for me the integration is consistent
27 assessment that is holistic around the needs of the person
28 leading into a coordinated pathway response for the
29 person. So that's the point of integration. Integration,
30 I don't think, is at the access end. It's actually about
31 how you take diverse streams of services, diverse

1 providers and diverse entry points and preserve the best
2 of those characteristics, find a way to make a consistent
3 and holistic assessment of their needs and wrap the
4 response around an integrated pathway. So that's
5 integration, to me. That's what I see as my role, first,
6 starting to articulate what that means and what it might
7 look like and then to work with people about how we might
8 actually make that a reality.

9 MR MOSHINSKY: We have had evidence about - and I think you are
10 familiar with this from the evidence yesterday - a number
11 of different models of what better integration might look
12 like. It might involve some co-location physically of
13 people. It might involve embedding expert family violence
14 workers in other organisations. There are a range of
15 different models. What is the department doing to
16 investigate whether different models should be adopted and
17 then implement the model it decides should be adopted?

18 DR PHILLIP: You can see some of these things occurring in, for
19 example, the Service Connect trial. The Service Connect
20 trial, some of the things that are coming out of that is,
21 "What does this key worker do"; bringing together now
22 quite diverse perspectives about different funding streams
23 and service streams to the task of assessment and planning
24 a pathway. So one of the things we are learning out of
25 that is, "What are the capabilities? What are the other
26 sort of referral points for this key worker to be able to
27 do that consistent, holistic assessment and develop a
28 pathway?"

29 Also the Service Connect trial is something we
30 will learn about the data platform. I have to say in the
31 area of family violence the data is a quagmire. I think

1 it's because it's never been the primary intent to create
2 a classification system or a coding system around family
3 violence, but also because it's presenting through such a
4 diverse range of services: from the police, to the GP, to
5 the school et cetera.

6 So how we think about at what point you have a
7 generalist versus a specialist, in terms of the scheme
8 I have outlined I would have to say that at that access
9 point you may well for the majority of access points have
10 generalists or people who do other bits of work but who
11 might have some tools and some capabilities to quickly
12 identify and refer.

13 That assessment point is where you might start to
14 think about generalists versus specialists, but not
15 necessarily for the entire system. It's at that point
16 I think that the debate about generalists and specialists
17 actually is really important.

18 MR MOSHINSKY: I guess my question is: is someone in the
19 department, and where is this located if it is, looking at
20 this whole issue of, "Should we be co-locating more?
21 Should we be embedding more? What does our ideal model
22 look like? How do we achieve this?" Is that work
23 happening and where is that happening?

24 DR PHILLIP: People are looking at, for example, the
25 multi-disciplinary centres that we already have and how
26 that might work and thinking about, "Is it the co-location
27 of all of them, is that what is critical, or is it having
28 an awareness of all of those streams?" So again yesterday
29 we had Gippsland and Kildonan, quite different in terms of
30 how they are looking at this. One had a community health
31 model but a team based approach. Why? Because the

1 tyranny of geography means that co-location would actually
2 be useless to them. It just wouldn't work. The team
3 based approach is important; whereas for others the
4 co-location matters. So we are through this Service
5 Connect partnership work, for example, starting to look at
6 how this works and what lessons can we learn.

7 One of the things I'm very keen to avoid is
8 jumping to a solution that says, "Actually co-location is
9 the answer." No, because co-location is not itself
10 integration. Integration has other characteristics, of
11 which co-location may be an important factor in certain
12 circumstances, but it's not necessarily the answer.

13 MR MOSHINSKY: One of the practical issues that's been referred
14 to is even in a particular area people don't necessarily
15 know all of the other services that exist close by, and
16 services change quite frequently. Do you think mapping of
17 all of the services in a particular geographical area is a
18 desirable thing to do?

19 DR PHILLIP: I think it is a desirable thing to do. One of the
20 things that has started to occur which might start to
21 overcome the problem that you have highlighted is the
22 formation of alliances around Child FIRST, we have area
23 partnerships that are starting to bring different people
24 together. That will also start to help. But I think the
25 creation of locally based directories is important.

26 I think yesterday we heard from Domestic Violence
27 Victoria that they were doing some work that we have been
28 funding around this, and we also fund the Domestic
29 Violence Resource Centre to develop a directory which then
30 goes on The Lookout internet site.

31 MR MOSHINSKY: We had a witness statement from Pat Toohey,

1 Helen Fraser and Miranda Ritchie, and the last two of
2 those came here to give evidence. In paragraph 63 of
3 their joint witness statement they indicate that in
4 New Zealand the Ministry of Social Development maintains
5 the family services directory, which is publicly
6 available, searchable on-line and it lists information
7 about family support, organisations and the services
8 programs they offer to support New Zealand families.

9 That's across all issues. It includes family violence,
10 but it is across all issues. Would that be a good idea?

11 DR PHILLIP: To be held centrally or locally?

12 MR MOSHINSKY: As I understand it, it's held centrally but you
13 can access it area by area to find out what is there in
14 your area.

15 DR PHILLIP: As a starting point I would say start with local
16 and then build to a central. I don't think that's a bad
17 idea at all.

18 MR MOSHINSKY: Is that something you might look at?

19 DR PHILLIP: Something we will look at, yes. In fact that's
20 why I think we are already doing things like funding the
21 Domestic Violence Resource Centre to start to do work like
22 that.

23 MR MOSHINSKY: I was going to move to the next topic. The
24 issue of homelessness has come up. We had a day on
25 homelessness, but it has actually been mentioned on many,
26 many other days. It is a broader issue than family
27 violence.

28 We had evidence from Mr Rogers and he did accept
29 at transcript 1075 that compared to national figures
30 Victoria has less public housing, less social housing
31 available. He gave some indication of the historical

1 reasons for that. There doesn't seem to be any concrete
2 plan to do anything about the extent of homelessness. The
3 indications were that people couldn't realistically expect
4 to get public housing for many years; sometimes they would
5 never be reached. Is there a plan to address this?

6 DR PHILLIP: There are lots of ideas of what we might do, but
7 they also need to be situated in the broader context that
8 I think you alluded to and I raised earlier. The problem
9 with housing and homelessness has to be looked at not only
10 in terms of some of the great number of factors that might
11 lead to homelessness, which we have a reasonably good idea
12 about these days, I think - I don't think it's fair to say
13 we don't know; we do know a lot of the things that drive
14 homelessness - but the supply issue is quite enormous, not
15 just in Victoria but right across the country.

16 MR MOSHINSKY: You mean lack of supply?

17 DR PHILLIP: Lack of supply. Affordability and lack of supply
18 is a big issue. There are numerous reports about the
19 undersupply of housing relative to demand. But it's not
20 just then quantum. It's also composition; the type of
21 housing that is appropriate for family types.

22 The other thing that we don't often like to talk
23 about in public is the fact that a lot of people don't
24 like to have people in public housing living next to them.
25 That is a tragedy and it is something that you see played
26 out in the area of public housing right across the state
27 and right across the country, where particularly when we
28 come to the sharp end, even at the crisis end, you find
29 there are people who don't want to take people in for that
30 purpose.

31 So this issue, while there are certain things

1 that are not as complex because we do know a lot more
2 about it, dealing with affordability requires different
3 sorts of levers. There is currently a national debate
4 going on about negative gearing and what that might mean
5 for general affordability and housing. First home owner
6 schemes. These things play in. They are not excuses for
7 why there is a shortage per se, but if we want to think
8 about housing and homelessness we have to think about that
9 from the infrastructure side, what are the driving factors
10 for homelessness from the social policy side. It is the
11 case, and the evidence is pretty clear, that we have a
12 suboptimal matching of supply and demand for public
13 housing in the state.

14 MR MOSHINSKY: The evidence of Mr Rogers also went to social
15 housing, not just public housing. He accepted the
16 evidence of other witnesses that the national average for
17 social housing was about 5 per cent of the residential
18 housing available and in comparison Victoria has been
19 3.8 per cent.

20 DR PHILLIP: I haven't looked at the time series of this for a
21 long time, but I suspect who does better or worse on this
22 probably fluctuates over time because it usually is the
23 case there are waves of public policy work in public and
24 social housing for a period of time by one government in
25 one place and then it translates elsewhere.

26 One of the other factors that does play, though,
27 on thinking about long-term planning is how we fund these
28 things between Commonwealth and state. Quantum matters
29 less, in my view, because you can always deal with
30 quantum. It's the uncertainty, the fluctuations of
31 funding that I think causes more damage to long-term

1 planning in this area.

2 DEPUTY COMMISSIONER NICHOLSON: Counsel, can I just ask on that

3 last point you make. The National Partnership Agreement

4 on Homelessness, the Commonwealth I think agreed to a

5 further period.

6 DR PHILLIP: For two years, I think.

7 DEPUTY COMMISSIONER NICHOLSON: At that time the Commonwealth

8 minister, I think he said that he was looking for a

9 priority to be given to dealing with family violence.

10 DR PHILLIP: Yes.

11 DEPUTY COMMISSIONER NICHOLSON: What is your department doing

12 about that?

13 DR PHILLIP: We are working on some ideas for the minister

14 because it's to be discussed at a ministerial meeting at

15 some point coming up; I don't quite know exactly when. So

16 we are thinking about different options for the minister

17 to take to that meeting.

18 DEPUTY COMMISSIONER NICHOLSON: You aren't able to give us any

19 indication of your approach?

20 DR PHILLIP: Would you mind if I took that on notice? It's a

21 bit of detail that I ought to be across but I'm not.

22 COMMISSIONER NEAVE: You can get back to us on that.

23 DR PHILLIP: I certainly will.

24 MR MOSHINSKY: I might move to a new topic. One of the other

25 areas that's been the subject of evidence is Child

26 Protection, which is another part of your department. One

27 of the issues, and it's been the subject of quite a bit of

28 evidence with different views expressed, is that Child

29 Protection - the issue is that Child Protection doesn't

30 seem to work sufficiently with men, that the onus seems to

31 be on the mother to be acting as a protective parent

1 rather than addressing the father, who may be perpetrating
2 violence.

3 Ms Allen did give some evidence about that in
4 response that that issue. I don't expect you to be able
5 to give a very detailed answer, but is that an issue of
6 concern and, if so, how do you as the head of the
7 department investigate whether that is an issue that needs
8 further work and should be addressed in a different way?

9 DR PHILLIP: I don't know the specifics of an example that you
10 might have used for that. As I understand, there is an
11 onus on the parent in terms of the assessment about
12 whether they are a protective parent or not. In the case
13 you have just cited it's the mother, I think, who is
14 deemed to be the protective parent.

15 But I would find it surprising if there wasn't
16 greater collaboration around this issue because if in fact
17 there was a violence issue associated with the father two
18 options, as I understand it, are available. One is for
19 the mother to take out an intervention order, and we would
20 be with the mother pretty much every step of the way if
21 that was what she wanted to do. The second is if we were
22 concerned about this in a significant way that there are
23 steps that the department would also take. So I would
24 hope it's an isolated case if we have stood back and done
25 nothing.

26 MR MOSHINSKY: I'm not talking about specific examples. I'm
27 talking about an issue that's raised about a general
28 approach. I should say I don't think Ms Allen accepted
29 that that is a general approach. But we did hear this as
30 a consistent theme from experts in the area that there is
31 an issue here. How do you as the head of department

1 address whether the system needs to be recalibrated,
2 whether there are changes that need to be made?

3 DR PHILLIP: There might be historical kind of overlays to
4 this. Child Protection has really historically always
5 focused on the mother and the child. That's kind of its
6 focus. The perpetrator, the father, is kind of not really
7 in the kind of view, historically. But we know that our
8 practice, though, has changed and, yes, the father is
9 taken into account in the way we go about our work now.
10 But historically perhaps that may be what is coming out;
11 the focus of Child Protection was mother and child.

12 COMMISSIONER NEAVE: There are two practical things that could
13 be done - I don't know whether or not they have been done,
14 are done now; we have heard conflicting evidence on that -
15 one is to support a mother through the process of seeking
16 an intervention order; the second is to investigate the
17 father's conduct. There are three, actually. The second
18 is to investigate the father's conduct more fully than
19 might have been done historically. The third would be to
20 assist the mother in any Family Court proceedings, and in
21 fact the department can become a party in those
22 circumstances. So I think, having identified those, and
23 there may be others, the question really is: if a change
24 of practice is needed in this area, what is being done to
25 ensure that change of practice occurs?

26 DR PHILLIP: Commissioner, I think our practice is that if the
27 mother was going to take out an intervention order that we
28 would be with the mother every step of the way. There may
29 be circumstances where, if it was not going to be an issue
30 that we might not physically be there with the mother in
31 court but otherwise we would be with the mother every step

1 of the way, so the first option.

2 In terms of the second option, investigating the
3 father's conduct, one of the things we are very careful
4 of, I would have thought, given we have a statutory system
5 is not to go beyond that in this narrow Child Protection
6 area but ensure that we have other avenues to investigate
7 the father. One of the things we have done recently is
8 embed some family violence specialists with our Child
9 Protection teams, including one in our after hours team,
10 precisely so we can deal with the father. Also in local
11 areas we are building up much, much greater links with the
12 police because the police also can be an important lever
13 in dealing with the father in that second option.

14 In terms of the third, which was to assist the
15 mother in the Family Court, to the extent that a Child
16 Protection worker is involved I would have expected that
17 we would be there. But there are also other services that
18 we would naturally be in contact with to try and ensure
19 that the mother had every support around that.

20 There may be failings in specific cases, but the
21 logic of our system tells me that on the first we would be
22 there; on the second I know that we are, for instance,
23 embedding some family violence specialists precisely to
24 address the very concern that you have raised and build
25 some capability for our Child Protection workers; and the
26 third, in terms of assisting the mother, I would have
27 thought the logic of our system would say we would also be
28 assisting.

29 MR MOSHINSKY: Are there steps that you could take? If an
30 issue of concern is raised of this character, are there
31 steps you can take to check whether it is a problem and

1 whether changes need to be made?

2 DR PHILLIP: Yes.

3 MR MOSHINSKY: How would you do that?

4 DR PHILLIP: Beth Allen would be one person I would talk to.

5 But certainly there are people in the department, deputy
6 secretary level down, who I would raise this concern with
7 who would investigate. If there was a policy or practice
8 change, then they would get a group together to do that.

9 I feel pretty confident that that would happen.

10 MR MOSHINSKY: I don't want to take you by surprise, but I am
11 wondering whether that is something that you would be
12 prepared to do, to look into this issue, because it just
13 has been raised by so many witnesses.

14 DR PHILLIP: Absolutely. There are a lot of things that are
15 coming out of this Royal Commission that we will be
16 looking at anyway. Some of them are really good ideas.
17 Some of them seem to be at odds with our thinking. Some
18 of them may be, "Have we got some inconsistency?" I think
19 that's one of the things we have to be very mindful of.
20 It is a large system with a lot workers. How do you get
21 that consistency of practice where judgment is involved?
22 That's something that we are working on quite a bit.

23 One of the first things, though, for me, it is
24 often underrated, is when you have a worker having to
25 exercise a judgment call at the margin it's really
26 important that they know what their mission is, who they
27 work for and what the focus is. We have been spending a
28 lot of time organisationally around things like values and
29 culture; often underrated in organisational sort of
30 discussions, especially at the operational end, but it
31 kind of seems to me that when someone is at the front-line

1 with that judgment call and they have to go this way or
2 that way, knowing what they stand for, what the
3 department's perspective is is going to help enormously in
4 making that judgment call. So one of the things we are
5 doing is thinking about what is the identity of the
6 department, given it's a new department, what's its
7 purpose, what are the value set and what is our focus.

8 MR MOSHINSKY: If you could look into that issue and come back
9 to the Commission, that would be appreciated.

10 DR PHILLIP: Certainly.

11 COMMISSIONER NEAVE: Can I just have a follow-up question.

12 What's the process of making a complaint? The particular
13 piece of evidence that I recall was from one of our lay
14 witnesses, that the child was going on contact visits,
15 coming back so distressed that the school was identifying
16 this as a very serious issue, and that was raised with the
17 department and then the issue was whether or not the Child
18 Protection people talked to the school, talked to the
19 father, did those sorts of things. If a person was
20 concerned about a departmental response, what's the
21 complaints mechanism process? Is there somebody who is
22 identified that people are told, "You can go to X if you
23 have a problem"?

24 DR PHILLIP: We have a central complaints unit through which
25 all sorts of complaints get put through.

26 COMMISSIONER NEAVE: I understand, thank you.

27 MR MOSHINSKY: Another point is the proportion of cases that
28 are investigated by Child Protection. As I understand it,
29 when a report is made there are some initial enquiries
30 made but it won't necessarily going to what's called an
31 investigation. There have been figures about the

1 proportion of cases that go to investigation. Then
2 ultimately the further stage might be an application to
3 the court and out-of-home care.

4 There was evidence that Victoria, I think, has
5 the lowest rate of out-of-home care of any of the states.
6 I'm not sure how the percentages look in terms of whether
7 we investigate less or more than other states. Is the
8 proportion that are investigated an issue that the
9 department is alive to, is aware of? I guess the concern
10 is: are sufficient numbers of cases being investigated?

11 DR PHILLIP: This forms part of our risk management sort of
12 discussions. If you were to investigate every complaint
13 I think it would swallow up far more resources than we
14 would have and would not necessarily lead to a good
15 outcome in every case. So you have to make some
16 assessment as to what's the level of risk you are willing
17 to deal with and put systems in place to do that.

18 I haven't in my head reconciled some of the
19 reasons why our figures are the way they are, except I do
20 caution sometimes having a low figure is not necessarily a
21 bad thing. I take my hospital experience where Victoria's
22 cost of providing hospital care is about 20 per cent below
23 the national efficient price: great thing for some people;
24 others would look and say, "That shows you are not
25 investing enough." So we have to be careful how we might
26 interpret some of those figures.

27 MR MOSHINSKY: Would it be possible to obtain comparisons
28 between Victoria and the other states on the proportion of
29 cases that go to investigation?

30 DR PHILLIP: We can, and I think the Review of Government
31 Services, the ROGS Report - I can be corrected if I'm

1 wrong - does publish that. But it is one of the more
2 heavily caveated tables you will see anywhere in that
3 every jurisdiction has a different way of dealing with
4 this, different sort of risk assessment tools, different
5 definitions of when something is investigated, different
6 thresholds. So you will find - if my memory serves me
7 correct - a table with an even bigger sort of space for
8 footnotes for each jurisdiction as to why you can't
9 compare apples with apples.

10 MR MOSHINSKY: If you were able to make that information
11 available to the Commission that would be appreciated.

12 DR PHILLIP: Yes.

13 MR MOSHINSKY: Another question relating to Child Protection is
14 the recent initiative to embed I think about 17 family
15 violence workers within Child Protection. Can you explain
16 why that initiative occurred?

17 DR PHILLIP: Precisely we were just talking about that before.
18 It's one of the things about how you build capability,
19 capacity, ensure that even though you have the statutory
20 system, and you want to think about changing that with a
21 great deal of caution, yet we know that there may be other
22 issues that ought to be picked up. So how are they picked
23 up is precisely why we have done this.

24 MR MOSHINSKY: Is there a process planned for evaluation of
25 that initiative?

26 DR PHILLIP: We will be evaluating this. One of the things we
27 are trying to do, though, ahead of any evaluation is to
28 actually work out what are the outcomes that are
29 measurable for us in this space. Evaluation in the family
30 violence area is something that I have been thinking about
31 for a while and it is quite problematic. It has come up

1 recently in the context of a couple of programs. The
2 question is whose perspective do you take in thinking
3 about whether this is effective. So I could take a budget
4 sort of perspective and go, "Yes, we have some value for
5 money here." But at the end of the day in family violence
6 what makes a kind of consistent evaluation regime I think
7 problematic is I would have thought that it's, "How does
8 the victim feel about the outcome" that matters.

9 So you might have a men's behavioural change
10 program. How does the victim now feel about the male
11 perpetrator matters to whether it's been effective. Does
12 the woman feel any safer or not? We might tick lots of
13 boxes, "Yes, they have been to a program; they have done
14 nine months; they have passed all these tests et cetera."
15 But, if the person still feels unsafe, has it been
16 effective? I don't know the answer to that. In thinking
17 about what are the outcomes of a lot of our evaluations in
18 this area we need to give some thought to those sort of
19 considerations.

20 MR MOSHINSKY: Were there measurable outcomes planned before
21 the initiative took place?

22 DR PHILLIP: As I recall, there are some indicators about what
23 sort of cases are they picking up, what sort of
24 capabilities will get transferred, but kind of also a bit
25 different to effectiveness. So we need to do a bit more
26 thinking about that. But certainly we are thinking about
27 - how we might evaluate this is part of our thinking at
28 the moment.

29 DEPUTY COMMISSIONER FAULKNER: Mr Phillip, just in relation to
30 the evidence that's been brought in relation to Child
31 Protection and family violence and the co-occurrence of

1 those things, the last sort of discussion we have been
2 having about bringing family violence workers into Child
3 Protection I suppose leads to the question about whether
4 you are considering some bigger integration if they are
5 both working with the same families, if they are both
6 spending time trying to make appointments with each other
7 to talk about things, and the same services are being
8 invoked to support families. So I suppose I'm interested
9 in whether it's been raised about whether the Child
10 Protection workforce and the integrated family violence
11 workforces could be more integrated than just a pilot.

12 DR PHILLIP: My starting point is what are the capabilities
13 that we might transfer. I think that's a useful starting
14 point and that's why we have this initiative of some
15 family violence specialists going in there.

16 There is also, though, I think the design
17 question about should the Child Protection system move
18 beyond certain parameters that have defined its statutory
19 functions for a while. Yes, we will think about that, but
20 very, very carefully.

21 But in the meantime there ought to be greater
22 capabilities to be able to pick up some of the factors
23 that we now know are factors associated with family
24 violence and also to build some of the links to ensure
25 that where they are identified that appropriate referrals
26 are occurring. So, yes, I think the question you raise is
27 actually quite a large system change issue.

28 DEPUTY COMMISSIONER FAULKNER: It is a big question.

29 DR PHILLIP: I approach those things with a great deal of
30 caution, but it doesn't mean you have to not do things in
31 the meantime. Some of the things that we can do, like

1 some of the capability transfer, is exactly why we are
2 doing this.

3 MR MOSHINSKY: Can I follow that topic up. As you will have
4 seen from the New Zealand evidence that I referred to, in
5 New Zealand partner violence and child abuse are dealt
6 with together. Is that integration one that would be
7 worth at least considering by the department?

8 DR PHILLIP: I would have to think about that. I haven't spent
9 much time thinking about it. Integration in New Zealand
10 is always raised in lots of different contexts and it's an
11 easier system to kind of work with, primarily because of
12 one form of government, so not always translatable. But
13 certainly what you have raised I will have a think about.
14 I haven't spent a lot of time thinking about it.

15 MR MOSHINSKY: Can I move then to another topic, which is the
16 topic of to what extent the department deals with men
17 generally in terms of the service system response. There
18 seems to be in terms of what we have heard evidence about
19 sort of rather limited service system response. There are
20 the men's behaviour change programs. But, apart from
21 that, there doesn't seem to be much. As you referred to
22 earlier, trying to change perpetrator behaviour is part of
23 the picture. Could the department or should the
24 department be doing more to address that issue?

25 DR PHILLIP: In programs that surround Child FIRST, for
26 instance, there are family based programs that exist which
27 is important. That's not a specific family violence
28 response, but it is probably important to acknowledge
29 because to the extent that you have at quite often
30 difficult times the whole family involved, well, it may
31 well be that you are dealing with circumstances which, if

1 not dealt with, could lead to family violence down the
2 track.

3 Are there programs that involve men in the
4 system? Yes. But, in terms of family violence, men's
5 behavioural change programs are kind of at the pointy end
6 and there are not too many alternatives to that, partly
7 because our thinking about who ought to be considered as
8 part of the response to family violence has kind of
9 evolved. Now thinking about the safety of the woman and
10 children by dealing with the male perpetrator is part and
11 parcel of our thinking. Our system response needs to kind
12 of evolve.

13 MR MOSHINSKY: How do you do that practically?

14 DR PHILLIP: We start thinking now quite deeply about what is
15 it about male programs that you need to kind of focus on,
16 recognising that the greatest behavioural change will
17 always occur when people voluntarily participate as
18 opposed to being mandated by someone; and, two, what's the
19 optimal time that someone should be in a behavioural
20 change program? It's a pretty open-ended sort of question
21 where people who have far greater experience than I might
22 be able to shed some light on it but may not be able to
23 solve the problem.

24 Should we be thinking about new programs dealing
25 with men in the family violence context? Yes. What are
26 they? Do they exist out there really well developed and
27 formed? Possibly, but I wouldn't say that definitively.

28 COMMISSIONER NEAVE: I wonder whether there has been any
29 attempt to draw on the Corrections information, which
30 relates mainly to prisoners, and some criticism has been
31 made of those programs. But that's a particular model,

1 and there's an issue about its transferability to men's
2 behaviour change in the context of family violence. So I
3 wonder whether there's been a little bit of dialogue with
4 the experts, who may well take different views about this
5 issue, within the department for the purposes of deciding
6 what sorts of programs should be funded.

7 DR PHILLIP: Yes, and I think particularly in light of the fact
8 that there's actually a very low proportion of people
9 volunteering.

10 COMMISSIONER NEAVE: Yes.

11 DR PHILLIP: And I think that flips our thinking a little bit
12 to, "If more of the people coming in are because they are
13 mandated, we might need to think about a different type of
14 men's program here." But I think even the Corrections
15 kind of perspective still leaves open this question about,
16 "What's the optimal time? How do you evaluate its
17 effectiveness in terms of the victim et cetera?"

18 COMMISSIONER NEAVE: But they are quite different models. The
19 men's behaviour change programs, as I understand it, focus
20 a lot on understanding the role which gender inequality
21 plays in contributing to family violence, whereas the
22 prisoner programs I think have often been focused on what
23 are the criminogenic factors in a much broader sense of
24 the word. So they are two quite different models. They
25 may not be applicable across the board. But I just
26 wondered whether the department had been engaged in that
27 debate in any way or had indeed talked to the people who
28 advised I think Justice in the context of the prisoner
29 programs.

30 DR PHILLIP: I can't imagine that the discussion hasn't taken
31 place because we actually have pretty good governance

1 relationships now with the Department of Justice and co.

2 I would also add that when the department
3 introduced the men's behaviour change program we were kind
4 of searching for something in the prevention space and
5 something that came from the perspective of the
6 non-criminogenic side - I was going to say softer side,
7 but actually about dealing with - the perspective of
8 family violence is on that family bit, not on the violence
9 bit.

10 In some ways it's been in place because there was
11 nothing else, and nothing else that focused on that family
12 bit and trying to get people to volunteer, because that's
13 kind of an important factor in change. But I think, as
14 the evidence is starting to emerge that volunteering is
15 not so great, the type of violence that's being committed
16 is actually of a far different nature to what we might
17 have thought about some time ago. So thinking about some
18 of the criminogenic factors that you might embed in a
19 change program or deal with in a change program is
20 probably valid.

21 COMMISSIONER NEAVE: I suppose I'm interested in when the
22 department is deciding whether to fund a pilot program
23 what's the sort of process by which you get expert advice
24 on whether that's a good idea or at least worth
25 investigating or neither of the above?

26 DR PHILLIP: It probably is a bit of a grab-bag of things.
27 Quite often we set up interdepartmental sort of committees
28 precisely to try test some of these things. I don't know
29 if that has happened. I don't know if it has happened
30 from the department's side or indeed from the Corrections
31 side. But I think I would be fairly confident that the

1 dialogue has been happening of late.

2 COMMISSIONER NEAVE: Thank you.

3 DEPUTY COMMISSIONER NICHOLSON: Just on the issue of men's

4 behaviour change programs and the like that focus on an

5 individual, Professor Vinson made the point that if you

6 disassociate an individual or a household from the place

7 in the community in which they live interventions such as

8 men's behaviour change programs, particularly in the

9 communities that he has identified, are always going to be

10 ineffective. Has your department thought about

11 alternative approaches?

12 DR PHILLIP: I would have to take that on notice. Discussions

13 have taken place on that.

14 DEPUTY COMMISSIONER NICHOLSON: In a sense it's a more general

15 issue, too, this idea of focusing on the individual and

16 not taking into account the community that they live in.

17 DR PHILLIP: Sure. It's interesting. This idea, though, plays

18 out in other contexts, though. If you took Noel Pearson's

19 work up at Cape York, he says, certainly for the kids,

20 "Take them away to a different school, the school

21 environment, and take them away from some of those

22 influences that keep them away from school and only go

23 back for certain things." There is a whole lot of other

24 complexity around that, but it is interesting that in Tony

25 Vinson's work where he raises that it is something we

26 ought to think about and I will; I will go and find out

27 about what thought we have given to it here.

28 MR MOSHINSKY: Commissioners, I have covered the topics I was

29 proposing to ask about.

30 DEPUTY COMMISSIONER FAULKNER: I have one question. We have

31 heard a bit about the activity at COAG in relation to

1 family violence, and I'm wondering whether it is playing
2 out beyond, I suppose, the legal issues of the enforcement
3 of orders in other states and interstate issues. Are we
4 seeing any discussion about role delineation, because we
5 hear of the Commonwealth Government funding a project and
6 then stopping the funding. We hear that perhaps two
7 projects are funded in the same space because the
8 Commonwealth is funding.

9 Given the seriousness that's been applied to
10 other issues where there is a Commonwealth-state overlap
11 - you may not know this - is there a broader set of issues
12 being considered by COAG than just those sort of legal
13 natured issues, about service delivery I'm thinking of
14 particularly?

15 DR PHILLIP: I can go and investigate that and come back,
16 except to say we have seen it play out in the homelessness
17 agreement, that they want to tie some ideas about family
18 violence to housing. So it does at first glance look like
19 there are other sort of activities. But whether that is
20 part of a coordinated plan is another matter.

21 DEPUTY COMMISSIONER FAULKNER: Thank you. I would appreciate
22 that.

23 DR PHILLIP: I will find out.

24 DEPUTY COMMISSIONER NICHOLSON: Counsel, I had one final
25 question. Dr Phillip, I have read where you have spoken
26 elsewhere about the need, I think you said, for the walls
27 of the public sector to become more porous. I'm wondering
28 what does that mean in practical terms for the way in
29 which your department's future attempts to reduce family
30 violence.

31 DR PHILLIP: I have a view about public policy and how we

1 conduct it which is much more involved with service
2 providers and users. I think we used to have a view about
3 public policy, and still do to a large extent, that public
4 policy is made up here, so you have policy designers here,
5 you have implementers and providers here, and of course
6 let's not forget innovators who sit over here; so kind of
7 three discrete groups and they remain discrete.

8 I think that was yesterday's view of public
9 policy; that in fact the way we design is through those
10 three kind of sitting together alongside users and
11 providers. That doesn't mean you palm off responsibility
12 and blame to others outside if things fail, but it is what
13 can you learn from what actually happens to feed into
14 design. So that's what I mean by the public sector kind
15 of becoming a lot more open, transparent, but
16 fundamentally involved in its work with people outside.

17 DEPUTY COMMISSIONER NICHOLSON: So, in practical terms, what
18 sort of things do you have in mind?

19 DR PHILLIP: I can give you a good one. We have been talking
20 about Services Connect and the government trial. I have
21 just been out to market and about to bring together
22 providers, users, actual people on the field along with
23 CEOs et cetera into a forum to say, "We have had our
24 trial. We have seen the evaluation. Now what do you
25 actually do and what stops you doing the right thing," and
26 thinking about, "How does that improve our thinking about
27 the design of Services Connect?" So that's one example of
28 what we are planning to do.

29 DEPUTY COMMISSIONER NICHOLSON: Thank you.

30 MR MOSHINSKY: If there are no further questions from the
31 Commissioners, if the witness could please be excused.

1 COMMISSIONER NEAVE: Thank you very much, Dr Phillip. You have
2 had a long time giving evidence, but thank you. We are
3 grateful.

4 <(THE WITNESS WITHDREW)

5 MS ELLYARD: Commissioners, the next witness is a witness we
6 have heard from before, Ms De Cicco. I ask her to return
7 to the witness box.

8 <MARISA DE CICCO, recalled:

9 MS ELLYARD: Ms De Cicco, you have already been sworn and the
10 Commission has heard from you before. For the purposes of
11 your evidence today you have made a third witness
12 statement which is dated 7 August 2015. Are the contents
13 of that statement true and correct?

14 MS DE CICCO: That's correct, yes.

15 MS ELLYARD: The focus of your third statement is a response to
16 both some evidence which the Commission has already
17 received and some submissions that the Commission have
18 made about the potential role for infringement law and
19 amendments to infringement law in responding to situations
20 of family violence.

21 For the purposes of your evidence you have set
22 out in your statement, beginning at paragraph 10 and
23 following, some general comments about what the
24 infringement system is and perhaps some of the
25 philosophical issues that arise. I wonder would you
26 summarise them, please, for the Commission.

27 MS DE CICCO: Certainly. I have tried to lay out as simply as
28 possible the infringement process. Essentially, in the
29 context of infringements from the evidence that has been
30 provided in various statements to the Commission, we have
31 tried to identify those areas wherein some issues may

1 emerge for those affected family members in these
2 situations; from the evidence that was provided by
3 I believe a lay witness with respect to tolling
4 infringements wherein effectively the affected family
5 member was not nominated and allowed that situation to
6 persist and so therefore had that infringement debt in her
7 name rather than that of the perpetrator of the coercive
8 and violent behaviours.

9 So in my statement I have tried to lay out that
10 the infringements debt process can actually progress in a
11 very mechanical way as laid out in the legislation to get
12 to an enforcement order stage at court. So there are a
13 variety, I guess, of areas wherein we can see that there
14 will need to be improvements.

15 At the moment the Act really presumes that an
16 individual is responsible for the infringement they have
17 incurred. So the legislation does provide for special
18 circumstances and reasons wherein that can be revoked that
19 does presume the individual is responsible. There is no
20 provision, really, in the legislation as it exists now
21 wherein an individual has been coerced into accepting that
22 liability. So I guess from the perspective of the process
23 it is quite mechanical and, unless there is an explicit
24 intervention, that process will just continue to barrel
25 through.

26 MS ELLYARD: In your statement you identify two discrete ways
27 in which family violence issues might arise in the context
28 of family violence, and you have termed them identity
29 issues and causation issues. It is a useful analysis.
30 Would you summarise, please, for the Commission what you
31 are grouping under each of those headings.

1 MS DE CICCIO: Certainly. From the perspective of identity
2 issues this is wherein the person was not responsible and
3 was nominated by the perpetrator of the particular family
4 violence and, I guess, the person responsible for the
5 offending.

6 The causation issue, in looking at the evidence
7 we could quite easily conceive a situation wherein an
8 affected family member was made to drive on a particular
9 toll road where they did not have the appropriate
10 registration and so therefore incurred the penalty, or
11 potentially made to park in a particular area of
12 convenience wherein they would not have otherwise have
13 done and therefore incur infringement penalty and the debt
14 that would accrue. These are two distinguishing features.

15 MS ELLYARD: Would it be fair to say that one group of issues
16 might be easier to solve than the other in that it might
17 be a more straightforward analysis of the identity issues,
18 "It wasn't me; I shouldn't be responsible," and a slightly
19 more complicated process for any system to try to unpick
20 the reasons why someone did something on the other hand?

21 MS DE CICCIO: Certainly that would be the case. Having said
22 that, there would certainly be ways and means by which we
23 could address both circumstances.

24 MS ELLYARD: One of the points that you make and one of the
25 issues that you say needs to be taken into account in any
26 change in this area is we are dealing with matters which
27 are criminal offences. It is a criminal offence to drive
28 without the appropriate authorisation. It is a criminal
29 offence to park in the wrong place. It is certainly a
30 criminal offence to drive too fast or to drive without
31 regard to road rules. Could you unpick for us a little

1 bit the role of this idea that the law has been broken and
2 someone ought to be made responsible, the role that issue
3 needs to play when balanced against the other factors
4 involving family violence and victims who might be being
5 coerced?

6 MS DE CICCIO: I guess it is a little complicated in the sense
7 that it depends wherein the system might actually become
8 aware of the affected family member's situation. If it
9 were in the context of being nominated for, say, road
10 safety or road speeding offences, let's say, the affected
11 family member may have incurred demerit points, may have
12 lost their licence and therefore may be also disadvantaged
13 by having done so.

14 The issue for us would be how do we treat with
15 that particular issue, revoke all of those consequences on
16 the affected family member and then have a process wherein
17 we could identify the person responsible for the
18 commission of those offences.

19 MS ELLYARD: Because of course, as you will be aware, the
20 evidence that was given on a previous occasion - and the
21 evidence wasn't specific to road safety - the idea was
22 that because there's a cohort of victims who will be too
23 scared to nominate the true offender, because that's the
24 perpetrator of family violence, the suggestion was that
25 there should be a process which permits not only the
26 person to not have to nominate anyone but for the
27 infringements effectively to be waived, to be written off
28 the book as part of a more global public policy response
29 to family violence that will protect the victim by also
30 excusing the perpetrator. Could you comment from your
31 perspective on whether that's something that could be

1 considered and why perhaps it wouldn't be considered.

2 MS DE CICCIO: I'm not sure I quite understand how that process
3 would work. Ultimately incurring an infringement, if the
4 person was an affected family member we will not know
5 that. It's quite an automated system. The camera might
6 take an infringement. It generates an infringement notice
7 on the basis of who the registered operator is, the owner
8 effectively of the vehicle, and then that process
9 proceeds. No-one within my area of infringement
10 management would actually understand or appreciate that
11 that person was a victim.

12 MS ELLYARD: Suppose a system existed whereby, for example -
13 and you identify in your statement the three phases
14 through which these matters pass. Say at the infringement
15 stage if the form provided for the person to tick a box
16 saying, "It wasn't me driving. It was another person who,
17 for reasons of family violence, I do not wish to have to
18 nominate. Here is a copy of the relevant intervention
19 order," for example, the suggestion is that there might be
20 a system where not only do you not pursue that person but
21 you don't pursue anyone; you write the infringement off,
22 as it were.

23 MS DE CICCIO: We could develop a process wherein the individual
24 could contact a particular area or could nominate it on
25 the form. That would certainly be possible.

26 MS ELLYARD: You deal with this in your statement. For
27 example, some infringements relate to dangerous conduct
28 where it wouldn't necessarily be proper for the State to
29 take no action at all.

30 MS DE CICCIO: And we would continue to pursue and work with the
31 individual to identify who it was it was, and I think in

1 my statement I give a few examples of how we might
2 overcome that. We currently have family violence
3 intervention order proceedings that are separate from,
4 say, counselling orders that are settled. We could have
5 processes wherein the individual or the applicant for a
6 family violence intervention order could either
7 simultaneously with those order proceedings or potentially
8 at some stage later could then go through a process
9 wherein those infringements, whatever the consequences
10 were, the penalties, be revoked and have the criminal
11 liability transferred to the person actually who committed
12 the offence.

13 MS ELLYARD: Can we turn then to the different ways in which
14 the system might be able to respond, bearing in mind
15 I think some of the submissions about this issue arose out
16 of a concern about the systems burden that's often placed
17 on victims of family violence and the need to reduce that
18 systems burden. As you identify in your statement, the
19 first phase of an infringement matter is what you have
20 termed the infringement stage when the infringement notice
21 is issued. There would be an opportunity there, at least
22 insofar as identity issues are involved, for there to be
23 some formal recognition of family violence or an
24 invitation for the person who has received the
25 infringement to nominate family violence as a reason why
26 they are not liable.

27 MS DE CICCIO: They could certainly nominate that, yes, indeed,
28 they are not responsible in a particularly direct way for
29 the infringement penalty, and certainly I think I identify
30 later in my statement we have made some reforms which are
31 yet to be commenced, that we will streamline that process

1 into one entity so that there will be one process, one
2 internal review for a whole range of infringements. That
3 should, and we could see certainly means by which
4 individuals could contact, say, fines reform into the
5 future and identify that that is the case and subsequently
6 they could have those matters dealt with in a way that
7 does not threaten their safety.

8 MS ELLYARD: The next phase of the proceeding is what you have
9 called the enforcement order stage, and that's the stage
10 where there's presently capacity within the Magistrates'
11 Court sitting in its infringements jurisdiction to hear
12 applications for infringements to be waived because of
13 special circumstances. You identify in your statement
14 that family violence isn't presently included in the
15 definition of what constitutes a special circumstance.
16 Could you reflect a little on what "special circumstances"
17 currently means and what might be the implications of
18 expanding that definition to include family violence?

19 MS DE CICCIO: At the moment the special circumstances
20 conditions largely relate to mental health, some sort of
21 intellectual or other disability; homelessness is also
22 included as one of the areas that will allow a special
23 circumstance revocation to proceed. Again, as I say, the
24 special circumstances are premised upon the individual
25 actually being responsible for. So we could conceive a
26 separate process wherein a set of circumstances could be
27 derived for family violence that would describe and
28 capture most of those issues and have a similar sort of
29 revocation process.

30 MS ELLYARD: So it would be possible. Are you in a position to
31 express a view on whether it would be an appropriate

1 policy response to this sort of issue?

2 MS DE CICCIO: We would see it as having identified a gap that
3 we do need to have a look at. As part of the preparation
4 for my witness statement I did ask my staff to have a look
5 through to see if there were any circumstances that had
6 either been reported to us or had come up through the
7 system that we could identify as being family violence.
8 We thought there may have been a few cases where
9 homelessness had actually underpinned the revocation
10 process. We suspect, but we don't know that that might
11 have been as a consequence of family violence
12 circumstances. So we can see that there is a gap there
13 that we do need to address.

14 MS ELLYARD: Certainly in your statement I think you suggest
15 that from the perspective of your staff it's not
16 necessarily a huge problem. But would you accept that, if
17 we think particularly about that cohort of women who might
18 be just paying the infringements rather than taking any
19 action, it's very difficult from people sitting in your
20 agency's perspective to get a sense of the scale of the
21 problem?

22 MS DE CICCIO: Absolutely.

23 MS ELLYARD: Certainly you will have seen the evidence from
24 those working in financial counselling and community legal
25 centres that they would certainly identify a problem that
26 could be solved if there were a clear pathway from the
27 infringement stage onwards.

28 MS DE CICCIO: Yes, indeed. I think in my statement I have
29 tried to address a variety of means by which that could be
30 done from first instance contact with police, if that be
31 the first time that these matters are raised, or indeed

1 even through the warrant stage wherein a sheriff might
2 actually execute process at a particular individual's home
3 if that were the point at which an individual might want
4 to identify that their infringements and therefore debt
5 and other penalties have arisen in a family violence
6 context. We would need to flexibly, I think, design a
7 multiplicity of points at which an individual could either
8 self-nominate or by a third party be identified to the
9 system so that we could address it.

10 MS ELLYARD: One of the things, and you have commented briefly
11 on this already, that you identify at paragraph 37 and
12 following and then 39 and following, there are these two
13 issues that if family violence is going to be taken into
14 account what level of proof will be required and then,
15 secondly, you identify a role for kind of concurrent
16 Magistrates' Court proceedings both for infringement
17 matters and for intervention order matters.

18 Dealing firstly with the question of proof, could
19 you speak a little bit from your perspective about the
20 kind of proof issues or evidentiary issues that might
21 arise and the flow-on issues if someone feels that they
22 are persuaded that family violence exists what
23 responsibility they might have to independently take
24 action as well as accepting that it exists?

25 MS DE CICCIO: I guess the evidentiary issues that would need to
26 be made out, I could imagine a range of things. I think
27 in the example given the affected family member wasn't
28 allowed to leave the home. There could certainly be
29 evidence advanced as to the fact that it was the partner
30 who actually regularly drove the car. So we could divine
31 ways to actually easily support that sort of evidentiary

1 process.

2 That issue that concerns me a little would be
3 what impact that would have on what is now the family
4 violence intervention order proceeding. If an individual
5 was aware or the perpetrator was aware that in the context
6 of a family violence intervention order proceeding these
7 other issues may be raised as part of a separate
8 proceeding, we would want to consider and consult
9 carefully around how do we ensure that the individual then
10 that doesn't lead to contesting on a far more regular
11 basis the family violence intervention order proceedings
12 themselves. That would bring great distress to the
13 affected family member and cause quite a lot of concern to
14 us if that were a consequence of it. So we would want to
15 ensure that we designed a process that did not have that
16 as an unintended consequence.

17 COMMISSIONER NEAVE: That's really quite difficult to work out
18 whether that might be the case, isn't it? One of the
19 issues that we have had evidence about relates to the
20 ability of courts to attach further conditions to
21 intervention orders and, exactly the same, one of the
22 unintended consequences may be that fewer people consent.
23 I don't think there's any evidence that tells us the
24 answer to that question. You are not aware of any
25 analogies that you could rely on?

26 MS DE CICCICO: No, but we are aware in the context of the road
27 safety area that it is a significant problem of people
28 driving without a licence at the moment, suspended. So it
29 would be a great concern to us in the sense of trying to
30 understand how we might craft these proceedings so that
31 they don't - a driver's licence is so crucial in so many

1 of people's work and other related causes that we would be
2 a little concerned that people would get very anxious
3 about contesting the family violence intervention order if
4 that were to be used as prima facie some indicator of the
5 family violence that may have led to the circumstances
6 wherein the individual was nominated for particular
7 offences.

8 MS ELLYARD: Can I turn then to a different issue which you
9 take up at paragraph 48 and following in your statement,
10 and that's the question of information sharing. You have
11 identified that at the end of last year there was some
12 funding allocated to explore some information sharing
13 strategies in the justice context. Could I invite you to
14 speak a little bit about what stage that project is at and
15 what are some of the issues that are arising as it
16 develops?

17 MS DE CICCIO: I might deal with the second part first. We
18 already understood that one of the key issues - and
19 I think the Commission has already had many witnesses from
20 the justice system, magistrates and others, who have
21 identified some of our perhaps not quite up-to-date
22 systems that are used for particular purposes around the
23 justice system.

24 We have long in the Justice Department in the
25 system tried to gather together relevant information
26 largely on a manual basis to try and ensure that
27 magistrates and others dealing with particular cases
28 understand all of the circumstances relevant, and that
29 might be other allied criminal proceedings, that might be
30 things like infringements, a whole range of things.

31 What we are trying to do in the scoping of this

1 particular project is to try and identify systems that can
2 be used with a multiplicity of existing potentially quite
3 out of date systems that can mine data from those systems
4 to form some sort of comprehensive view of a particular
5 family circumstance. Some of the issues that we have come
6 across are some of the mechanical issues around different
7 systems, different languages that they are written in,
8 different perspectives in terms of capture of data from an
9 affected family member's perspective, potentially a child
10 or an offender. So it's really trying to bring all of
11 that together.

12 MS ELLYARD: You mentioned the evidence that we have heard
13 about some less than current information systems. I think
14 the evidence that the Commission has is that the courts
15 work with a system from the '80s and the police work with
16 a system from the early '90s. From your perspective, is
17 the solution to that the kind of data mining initiative
18 that you have identified or longer term from the criminal
19 justice perspective is there some project to refresh those
20 technologies?

21 MS DE CICCICO: It's on the public record that the Department of
22 Justice and Regulation has in the past tried to refresh
23 the courts' systems, for example, and it's always a very
24 challenging and fraught area designing new end-to-end
25 systems. But it would be fair to say that I believe the
26 courts are looking at their own systems, police have for
27 quite a while been looking at their own system and
28 Corrections has been doing some work on their systems as
29 well.

30 We are mindful that the development of systems
31 that are end to end or that capture a whole range of data

1 through, I suppose, created interfaces are very
2 problematic. They are generally expensive, they take a
3 long time to develop and in many respects you don't know
4 until you are quite close to the end as to whether or not
5 they will work.

6 So we tried with this one to see if there weren't
7 off-the-shelf systems that could be customised to actually
8 mine the data. There are many that have been developed in
9 the US. We are mindful of some of our law enforcement
10 Commonwealth agencies that use similar sorts of systems to
11 do intel and other sort of allied work. So we are hopeful
12 that the market will be able to bring forward a solution
13 that can be implemented in a timely fashion and that won't
14 require years and years of product development.

15 MS ELLYARD: You identify that there's going to be a pilot
16 confined to justice entities that's going to take place
17 effectively over the next two years, 2016 to 2017.
18 Bearing in mind some of the evidence that we have heard
19 earlier about planning for the success of pilots and how
20 things might be rolled out if the pilot proves successful,
21 what's the present thinking about the timeframe over
22 which, if the pilot worked, wider implementation might be
23 possible?

24 MS DE CICCIO: If we can proceed through the scoping stage and
25 actually find a product that can undertake the work that
26 we are hoping then we would probably look to extend that
27 out with colleague agencies over the course of 2017 at
28 least in terms of discussing it with them. If we can get
29 some success under our belt in 2016 we would look to talk
30 to other agencies and beyond even within the sector,
31 people like the Victorian Legal Aid, the Office of Public

1 Prosecutions, those agencies outside the departmental
2 shell. That would put it into I think a 2018/19 budget
3 cycle, I guess, if we wanted to do something more
4 expansive.

5 MS ELLYARD: Thank you, Ms De Cicco.

6 COMMISSIONER NEAVE: This is still within Justice? It is not
7 with the new court services department or I have forgotten
8 what the acronym is, but it's still Justice doing this
9 work?

10 MS DE CICCICO: We are going to try and reach out with
11 the Magistrates' Court in particular, Commissioner, to try
12 and capture some of the Courtlink data because we were
13 thinking potentially Courtlink, LEAP and some of the
14 internal Corrections systems.

15 COMMISSIONER NEAVE: So it is still with Justice. Do I have
16 the acronym right?

17 MS DE CICCICO: Court Services Victoria.

18 COMMISSIONER NEAVE: Are they also doing work in this area or
19 not?

20 MS DE CICCICO: Court Services Victoria I believe is looking at a
21 range of IT systems for each of the jurisdiction,
22 Magistrates' Courts and others. But we were particularly
23 interested in looking at the Magistrates' Courts
24 participating in this exercise.

25 COMMISSIONER NEAVE: Thank you.

26 MS ELLYARD: If there are no other questions, I ask that
27 Ms De Cicco be excused and invite the Commission to come
28 back at 2.

29 COMMISSIONER NEAVE: Thank you.

30 <(THE WITNESS WITHDREW)

31 LUNCHEON ADJOURNMENT

1 UPON RESUMING AT 2.00 PM:

2 <BERNADETTE McCARTNEY, recalled:

3 MS ELLYARD: Commissioners, the next witness is Ms Bernadette

4 McCartney from Bethany Community Services, who has
5 previously been sworn so I won't ask her to be sworn.

6 Ms McCartney, as you indicated when you were here on the
7 last occasion, one of the roles you have been performing
8 during your time at Bethany is as the chair of one of the
9 pilots of the risk assessment management panels that we
10 have heard some evidence about. As we understand it,
11 those panels operate in relation to very high risk cases
12 where there are certain exceptions which permit the
13 sharing of information because of the high risk nature of
14 those cases.

15 The focus of evidence today is about what might
16 we do about the next cohort down, where the risk doesn't
17 meet that very high level, but nevertheless there is a
18 need for an appropriate assessment to be made. So it's in
19 that context that I want to ask you some questions based
20 on your experience about the kinds of information that are
21 useful in a risk assessment process and the ways in which,
22 in your experience, it is useful to be able to access and
23 share that information.

24 May I ask you I guess first the very basic
25 question: why is it that someone conducting a risk
26 assessment in a family violence context needs different
27 kinds of information? What's the purpose of gathering
28 multiple sources of information rather than, for example,
29 relying only on one source?

30 MS McCARTNEY: I'm assuming that - if we start from the premise
31 of relying on the women's testimony, so if we started from

1 that basis, and I'm sure the Commission has heard over the
2 previous five weeks that this is a time of acute stress
3 for women who are experiencing family violence. So, the
4 ability to be able to extract necessary information in
5 relation to really important issues such as protective
6 factors, what is happening around her, and not just her,
7 but also her children, what is happening in relation to
8 what she has done to keep herself safe. For some women
9 they have kept themselves safe for many decades. There
10 have been numerous examples where women have maintained
11 their own levels of safety of themselves and their
12 children for many years quite well, in the absence of any
13 support services, any police action.

14 So there is a number of things that you really
15 need to understand in being able to I guess extrapolate
16 that information from women when they are in acute stress.
17 So we are looking for - sorry, I'm getting a little bit
18 lost now.

19 MS ELLYARD: You have indicated that it's not suggesting that
20 the woman is not a good source of information, but for a
21 variety of reasons it might be not a good time to ask her,
22 there might be limitations on her capacity to tell you
23 everything you need to know. Would I be right in
24 understanding that we could group the topics of
25 information that you need into two: one, information about
26 the victim, her protective and vulnerability factors and,
27 two, information about the perpetrator?

28 MS MCCARTNEY: Absolutely.

29 MS ELLYARD: If we think firstly about information about the
30 victim, from your experience what kinds of information are
31 you usually able to obtain from victims that is relevant

1 to a risk assessment?

2 MS McCARTNEY: It would be information in terms of how she has
3 managed to keep herself safe and, just as importantly, how
4 she's managed to keep the children safe; how she has
5 managed to gain access to services; how she has managed to
6 build - for many women they build almost like an armour of
7 protection and that might include keeping money aside,
8 letting relevant people know, those type of things.

9 MS ELLYARD: What about other sources of information about the
10 woman? Other than the woman herself, in your experience
11 what are the other people or agencies that have useful
12 information about the needs and vulnerabilities of the
13 woman or the victim?

14 MS McCARTNEY: If there are children involved, certainly the
15 schools are a very important source of information. If
16 Child Protection are involved, they certainly have very
17 important information. Police will often have very
18 important information in regards to their attendance at
19 particular incidents and what they have seen, any
20 follow-up work that they have undertaken in their codes of
21 practice or their different ways of engaging with women,
22 or the men in fact. Corrections Victoria often have
23 information. Some of the women that we certainly have
24 seen would be subject to corrections orders, so they
25 certainly have information. Health services, maternal and
26 child health services. There are a number of services
27 where people will interact with.

28 MS ELLYARD: Can I turn then to the other topic of information
29 which is the perpetrator. Is there information about the
30 perpetrator that the victim herself is able to offer?

31 MS McCARTNEY: Definitely. They will often provide - often

1 when you will sit down with a woman and whether it's in a
2 period of acute stress or not, and ask her just to really
3 detail the litany of events, so really to go through the
4 events that she has experienced, and that sometimes will
5 help you paint a picture, but likewise she will often say
6 he is quite habitual in his behaviour, so he will go to
7 this place on this day or if he works, so there's
8 information in terms of when you can gain access to the
9 woman and we certainly had an example where a woman - this
10 was not a RAMP client, but it was a family violence client
11 - where a woman was literally so controlled in her home
12 that the only time that she could actually be without him
13 was when she took the baby to the maternal and child
14 health nurse. It was the only time. He was in the car
15 out the front, but it was the only time she could actually
16 get away from him. So, when the maternal and child health
17 referred her in, we were able to actually connect with her
18 within the maternal and child health centre, so he
19 actually knew nothing about it, and do the whole safety
20 plan and escape plan from a series of meetings within the
21 maternity and child health centre.

22 MS ELLYARD: What about other sources of information about
23 the perpetrator? There is a certain amount you can find
24 out from the victim, but what are the other people or
25 agencies that hold information about the perpetrator that
26 is relevant when conducting a risk assessment?

27 MS McCARTNEY: Certainly if they have come to the attention of
28 police, they are an obvious source of information.
29 Likewise if they have come to the attention of Justice
30 services, so Corrections Victoria, if in fact they have
31 been incarcerated for any periods of time, if they are

1 using drug and alcohol services, mental health services,
2 homelessness services, financial aid, material aid
3 services. There's a huge number of services out there
4 that people, just because they are using family violence,
5 doesn't necessarily mean they are not accessing emergency
6 relief or drug and alcohol services or mental health
7 services or Centrelink. There's just a number of
8 different services.

9 MS ELLYARD: Thinking particularly about information about a
10 perpetrator, if you as a member of a specialist family
11 violence service working and planning on risk assessment
12 with a victim, say a woman, why is it useful to know all
13 of that stuff about the perpetrator? What relevance does
14 it have to the kind of work that you are doing?

15 MS McCARTNEY: It has real importance in terms of safety
16 planning. Often the women will be able to predict an
17 escalation in violence because it's associated in a
18 particular series of events. Geelong is a good example.
19 One of the trends we notice, it sounds very strange, but
20 not strange, is that when the Geelong Football Club play
21 at home and they lose, the increase of police reports goes
22 up considerably.

23 So we have noticed that from afar. So women are
24 well equipped to be able to provide that information in
25 terms of, "I know when these things are going on, this
26 will be the outcome because I have experienced this."
27 It's not particularly random.

28 MS ELLYARD: Then, if we start to think about bringing
29 information together to make a risk assessment, we are not
30 talking about a RAMP, but from your observations at the
31 pilot that you have been involved in, what are some of,

1 I guess, the cross-agency benefits that you have been able
2 to observe from the capacity that exists in that context
3 to share information across agencies?

4 MS McCARTNEY: One particular example that we had was a woman
5 who was living in Office of Housing property. Office of
6 Housing were quite new to the RAMP and the processes and
7 the woman was - I should just say this is
8 de-identified - the woman was potentially subject to a
9 breach and that was due to the state of the property. It
10 was quite sort of unkempt and messy and a few other things
11 going on. So it was really at one of the conversations
12 that happened in the RAMP, and in fact continued post
13 RAMP, was Office of Housing being able to understand that
14 in fact the woman's house was in that state because of all
15 of the reasons that that person from Office of Housing who
16 sat in the RAMP, he could hear the chaos that this woman
17 was currently experiencing, apart from the fact that there
18 was a very violent man on the loose who had been unable to
19 be detained by police. So she was living this very
20 chaotic existence with a number of children as well, and
21 the premise of which they came from was, "We are very
22 concerned about the state of the property and we need to
23 go through our processes."

24 So I think that information sharing around, which
25 was a potential breach or her being evicted from that
26 property would result in a significant risk factor, that
27 was a significant risk factor in being able to maintain
28 her safety, because we had done a number of things. Her
29 housing, the permanency of her housing was critical to the
30 safety plan and the risk mitigation plan of the RAMP. So
31 I think that conversation in being able to draw those two

1 links together was really, really important. So, once the
2 Office of Housing was satisfied, "Oh, okay, I actually
3 understand. We have an important role here. So what can
4 we do to actually help this woman?"

5 MS ELLYARD: Are there any other examples, de-identified of
6 course, that you could offer about circumstances where,
7 for example, a family had not come to the attention of
8 many services, but had come to the attention of one
9 particular service and the ability to share that
10 information assisted other services trying to respond to a
11 family?

12 MS McCARTNEY: We had a referral - this is some years ago
13 now - where police had referred this family into the RAMP.
14 The conversation with the police officer was, "We know
15 nothing about this family. They have never come to the
16 attention of police." The reason they were referred to
17 RAMP was it was a very significant threat to life.
18 I won't go into the details of what the man did, but it
19 was a very, very real and significant threat to this
20 woman's life in front of the children.

21 So I was a bit sort of, "Well, where has this
22 come from?" I did a little bit of checking. No one
23 seemed to know them. We put it to the RAMP. We went
24 around the room. Literally no-one had had contact with
25 this family whatsoever until we got to the clinical mental
26 health services and in fact they had had contact with the
27 male in the context of a previous involvement. It had
28 been very slight involvement, but it was a very
29 significant involvement.

30 So, just in hearing that information we were able
31 to actually comprehend, "Actually, this man" - well, there

1 were a number of sort of psychiatric issues happening for
2 this man that the woman had not disclosed. Whether she
3 knew or not, she had not disclosed these to the police and
4 then later to the specialist family violence services.
5 But it also really enabled us to understand that in that
6 context, I'm not saying because of his psychiatric illness
7 he would actually follow through with the threat, but the
8 risk of his behaviour did increase, but also apart from
9 the fact that he had access to some significant weapons.

10 MS ELLYARD: So in that context the outcome of the risk
11 assessment was quite different because of the access to
12 that information.

13 MS McCARTNEY: Yes, very different. Very different.

14 MS ELLYARD: Commissioners, those were the questions that I had
15 for this witness. Are there any matters that either of
16 you wish to raise?

17 COMMISSIONER NEAVE: No, we don't have any questions. Thank
18 you very much indeed for coming back again.

19 <(THE WITNESS WITHDREW)

20 MS ELLYARD: Commissioners, we are now moving on to a panel of
21 four witnesses, Mr Widmer, Mr Reaper, Assistant
22 Commissioner Steendam and Senior Sergeant Howard. I will
23 ask them to come into the witness box, noting that of them
24 only one needs to be sworn, and that's Senior Sergeant
25 Howard, because the others have appeared before.

26 <ANDREW REAPER, recalled:

27 <SCOTT WIDMER, recalled:

28 <WENDY STEENDAM, recalled:

29 <AILSAS CAROLINE HOWARD, sworn and examined:

30 MS ELLYARD: Senior Sergeant Howard, can I just start with you,
31 please. Where are you stationed at present?

1 SENIOR SERGEANT HOWARD: My current role is at the Security
2 Incident Registry.

3 MS ELLYARD: What is your role there?

4 SENIOR SERGEANT HOWARD: I'm the Senior Supervisor.

5 MS ELLYARD: You, together with Assistant Commissioner
6 Steendam, have made a statement that's dated 3 August
7 2015. May I ask each of you: are you able to separately
8 confirm that the contents of that statement are true and
9 correct?

10 SENIOR SERGEANT HOWARD: It is.

11 ASSISTANT COMMISSIONER STEENDAM: That is correct, yes.

12 MS ELLYARD: May I turn to you, Mr Reaper. You have previously
13 appeared, but for the purposes of today's appearance you
14 have made a second statement that's dated 4 August 2015?

15 MR REAPER: That's correct.

16 MS ELLYARD: I understand there is a word missing from
17 paragraph 25. That word is "common", so that first line
18 should read "In my experience it is not common for a
19 victim".

20 MR REAPER: That's correct.

21 MS ELLYARD: With that minor change made, are the contents of
22 that second statement true and correct?

23 MR REAPER: Yes, they are.

24 MS ELLYARD: If I can turn to you, Mr Widmer, you have also
25 appeared before, but for the purposes of today you have
26 made a second statement dated 31 July 2015. Are the
27 contents of that statement true and correct?

28 MR WIDMER: Yes, they are.

29 MS ELLYARD: May I now start with you, Mr Widmer. At paragraph
30 5 of your statement you give some evidence about the
31 reasons why, from your perspective, there ought to be and

1 needs to be a sharing of information about family
2 violence. Can you summarise, please, from your
3 perspective why it is that we need to talk about
4 information sharing?

5 MR WIDMER: In my statement I have set out that there is really
6 two key purposes to the sharing of information in a family
7 violence context. The first is to assess and manage the
8 safety of victims of family violence and as part of that
9 that would also be about holding the perpetrator to
10 account. Secondly, it's about the linking of recovery and
11 rehabilitation services to victims and perpetrators so
12 that victims can recover from family violence and move on
13 with their lives and perpetrators' behaviour can be
14 changed.

15 MS ELLYARD: May I ask the other members of the panel if, from
16 the views of their respective agencies, information
17 sharing has any different or additional purpose?

18 MR REAPER: Not of any significant difference, other than of
19 course to point out that the primary role of Corrections
20 is in regards to perpetrator accountability. So, our
21 general requirement of the sharing of information is to
22 assist with the identification of perpetrators in order to
23 then deliver the best possible model of intervention,
24 which I certainly talked about when I previously gave
25 evidence. Of course, we also have people under our care
26 who are victims and in those circumstances the sharing of
27 information to best prepare for their release is of great
28 assistance.

29 MS ELLYARD: Assistant Commissioner Steendam?

30 ASSISTANT COMMISSIONER STEENDAM: Probably not dissimilar to
31 DHHS. In the context of family violence it's about the

1 safety of those that are affected by the violence and
2 ensuring that safety plans are in place for them.
3 Secondly, we have obviously the perpetrator accountability
4 responsibilities and criminal investigations that we
5 undertake and equally we have a remit around general
6 community safety and ensuring, if there needs to be
7 information sharing relating to that particular function,
8 then it would also be appropriate in those circumstances
9 and in the course of any criminal investigations and the
10 forums in which we perhaps may find ourselves, being
11 courts and other environments.

12 MS ELLYARD: Given the obvious importance of information
13 sharing and the clear indication that it's of benefit to
14 victims for it to occur, the question then arises why
15 doesn't it occur more often. Each of you in your
16 respective statements identify the various barriers that
17 presently exist to the sharing of all of the kinds of
18 information that at first blush one might think would
19 obviously be shared.

20 Can I turn back firstly to you, Mr Widmer. From
21 the perspective of the DHHS and the information that it
22 holds, what are some of the structural barriers that
23 presently govern or prevent the sharing of information?

24 MR WIDMER: Certainly. If I turn to my statement, I set out in
25 that statement that the starting point often is
26 legislation and legislation is often programmatically
27 based, whether it's the Housing Act or a Children, Youth
28 and Families Act or Health Services Act. What flows from
29 that is that departments will tend, as Dr Phillip said in
30 his evidence this morning, to organise themselves
31 programmatically to respond and deliver the services that

1 are required by that legislation, and in turn will then
2 set about putting a set of protocols and practices and
3 arrangements that are designed to fulfil that mandate and
4 deliver those services.

5 In doing so, there are often a range of balances
6 made about how information is to be treated in those
7 contexts. So there is a balance often between the
8 confidentiality of information, for example health
9 information, and that has to be balanced against how that
10 information might need to be used in other contexts to
11 protect the safety of others.

12 Those balances are often made within programmatic
13 areas, so what you see is that traditionally departments
14 and agencies will develop their systems to support those
15 programmatic focuses. So you will have separate databases
16 that have been developed, separate systems. So, the
17 structural challenge is often in how you are able to get
18 multiple systems between agencies and even within agencies
19 to be able to talk together. So, at a legislative level
20 in the sorts of permissions or restrictions that might sit
21 around information sharing; at a systematic level, and
22 that will be about how programs work together and how the
23 system such as databases are able to interoperate.

24 MS ELLYARD: So there's a few different levels there. Firstly,
25 you have identified that there might be particular
26 legislative constraints on the sharing of information, so
27 that even if the agency is acting under multiple arms for
28 the one person, there might be limitations imposed on the
29 use of that information. Secondly, you have identified
30 that systems might develop that create their own
31 structural difficulties. Have I understood you correctly?

1 MR WIDMER: That's right. Sitting alongside that can then be
2 cultural challenges that may develop as well. For
3 example, anecdotally this Commission has heard lots of
4 evidence of people acting in a risk averse way where they
5 are unsure of whether they should or can share
6 information, may choose not to, in order to be risk
7 averse.

8 MS ELLYARD: If we could take a practical example, given the
9 breadth of your organisation, the possibility that someone
10 might be a client of, for example, Child Protection and
11 perhaps disability services or having a homelessness
12 service that's funded through your organisation. At
13 present is there any protocol or policy that directs
14 people to share that kind of information perhaps through
15 obtaining the consent of the client at one point to share
16 the information across to other points?

17 MR WIDMER: There are multiple protocols. Child Protection is
18 a good example. Child Protection has multiple protocols
19 with a range of agencies and Child Protection is an
20 example of an agency or a function where we actually do
21 have a range of statutory powers that support the
22 collection of information. However, there are around 50
23 provisions in the Children, Youth and Families Act that
24 deal with information sharing and at every different stage
25 in the child protection intervention the settings are
26 slightly different and that can make it very complicated
27 for practitioners and in practice be very challenging.

28 So we do set up a range of protocols that guide
29 how that information sharing should occur and seek to
30 explain what that mandate is and how that works in
31 practice, but even those protocols can be challenging

1 because at its core the legislative basis is complicated.

2 MS ELLYARD: Is consent a complete answer? So if, for example,
3 a person who is a client of disability services or
4 whatever the front point might be says, "I consent to you
5 using this information or passing it on for my benefit to
6 anyone within your entire department," is there presently
7 a system that allows that to take effect?

8 MR WIDMER: Consent is incredibly important. It is very
9 empowering to the Victorians who receive our services. It
10 is important that government agencies take a rights based
11 approach. However, that is not the answer in all
12 circumstances. Consents need to be constructed in a way
13 that they are specific enough that they are capable to be
14 construed as giving sufficient notice to a person about
15 how that information may be shared and for the purpose for
16 which it's being collected. So, a very general one which
17 says "We may send your information anywhere" may not
18 fulfil that purpose.

19 There are of course circumstances in which it is
20 not possible or it is unsafe or unfeasible to obtain
21 consent; for example, sharing information about a
22 perpetrator. It is often either unsafe or unfeasible to
23 obtain the consent of the perpetrator.

24 MS ELLYARD: May I turn to you, Mr Reaper. You have identified
25 that, given Corrections' mandate, most of the information
26 you hold will be about perpetrators, although in some
27 circumstances you will also know about victims. What are
28 the limitations which govern the way in which you are able
29 to use the information you have, say, for example, about
30 someone who is receiving services from you as a sentenced
31 offender, but who is also a perpetrator of family

1 violence?

2 MR REAPER: It is fair to say that we certainly don't in
3 Corrections have the same complexities as the Department
4 of Health and Human Services, but the construct is very
5 similar. Clearly the primary driver is our legislation,
6 being both the Corrections Act and the Serious Sex
7 Offenders (Detention and Supervision) Act and how they
8 apply and connect to both the Privacy and Data Protection
9 Act and the Health Records Act.

10 So it is essentially the Acts in the first
11 instance, or almost entirely the Acts in the first
12 instance that provide us very clear direction about who
13 can share information, what type of information and to
14 whom. It almost entirely deals with offenders and
15 information relating to them and obviously other than in
16 specific circumstances where we are mandated to provide
17 information such as has been referred to by Mr Widmer in
18 regards to child protection, it's almost entirely for the
19 administration of our own Acts or most likely in other
20 circumstances in regards to law enforcement.

21 Not dissimilar, but on a much smaller scale, we
22 also have created various forms of databases and IT
23 solutions to collect and hold our information that creates
24 some mechanical difficulties to sharing information, even
25 when we are able to do so, so we are not dissimilar there.

26 MS ELLYARD: Can I stop you there. Do you mean, for example,
27 the difference between records that might be held about a
28 person who spent some time in prison as opposed to time
29 when they have been under community corrections?

30 MR REAPER: That's right. There are two different databases
31 that hold that information that don't necessarily talk

1 seamlessly to each other, and of course how we then
2 provide information to our most significant partner, being
3 to my left, Victoria Police, also has some mechanical
4 difficulties, but primarily it's the legislative
5 restraints.

6 MS ELLYARD: May I turn then to you, Assistant Commissioner
7 Steendam. In your joint statement you identify a range of
8 issues, including some issues that are particular to
9 Victoria Police because of the kinds of information that
10 you hold that bear on your ability to share information.
11 Could I invite you to speak about those things?

12 ASSISTANT COMMISSIONER STEENDAM: Sure. We are not dissimilar
13 to Corrections in that first and foremost it's the
14 legislative and statutory frameworks that we operate under
15 and consider in the context of our information sharing.
16 So there's the Privacy and Data Protection Act, the Health
17 Records Act that we also need to consider, and the
18 Victoria Police Act which actually has provisions within
19 it that talk very specifically about consequences for
20 sharing information incorrectly and which we need to take
21 into account, and then there are a range of other Acts
22 which have some mandatory obligations for us or that we
23 also operate within.

24 In the context of that, we also have some MOUs in
25 place that allow information exchange with particular
26 government agencies, and again we have some Victoria
27 Police instructions about some of our information sharing.
28 One of the issues for us is also the overlay of not just
29 about information sharing, but our requirements around
30 security of our data, which does and is particularly
31 important to us given the types of data that we hold in

1 our systems and particularly personal and sensitive data
2 and in particular criminal histories.

3 So we need to be mindful of not only the
4 information sharing provisions, but also our security
5 provisions and how we need to maintain and protect the
6 data that's within our arrangements. There are very
7 specific clauses within the Privacy and Data Protection
8 Act that actually talk specifically to some of those
9 standards for law enforcement data and the requirements
10 that we have and, if we share information, the
11 requirements that the agencies that we share with also
12 need to have in place.

13 MS ELLYARD: One practical example of that that you detail in
14 your statement is something that's come up for the
15 Commission about why L17s arrive by fax, and can I invite
16 you to explain why it is that although it's now in
17 automated form at Victoria Police end, many agencies still
18 receive them by fax?

19 ASSISTANT COMMISSIONER STEENDAM: That's correct. I do want to
20 be clear it's a digital fax that's actually sent. So we
21 have arrangements where we enter the information
22 electronically into our systems and then there's an
23 automated process that sends that through to the service
24 providers, and in some instances it will go through an
25 encrypted email where they have the arrangements in place
26 to receive it that way, but in a large percentage of
27 places and in particular the family violence services it
28 will be through a digital fax. That is purely because
29 they are not in a position to receive the information in
30 the way that it's needed to be to meet some of our
31 requirements.

1 MS ELLYARD: So the particular requirements on the sharing of
2 law enforcement data limit the way in which the data can
3 effectively be received?

4 ASSISTANT COMMISSIONER STEENDAM: It's about making sure
5 there's appropriate encryption and protection for the data
6 if we are sending electronically and many of the services
7 don't have those arrangements in place. There is a piece
8 of work that's occurring with Department of Health and
9 Human Services to look at how we might remedy some of
10 those issues, but we have the ability to do it from our
11 systems; it's really about the other side and the other
12 agencies that are receiving having the appropriate
13 protections in place from their end.

14 MS ELLYARD: What's the process by which you check that they
15 have those protections?

16 ASSISTANT COMMISSIONER STEENDAM: In some circumstances we will
17 do specific inspections and we will need letters of
18 attestations that those things are in place, and some of
19 it is done through the arrangements that we put in place
20 through the obligations and the requirements through our
21 memorandums of understanding.

22 MS ELLYARD: May I then take up that issue of memorandums of
23 understanding.

24 COMMISSIONER NEAVE: Just before we do, can I test one
25 proposition. This relates mainly to information sharing
26 between agencies, but there are issues for victims. For
27 example, if somebody is being released from prison or in
28 the case of elder abuse a person may have a violent child
29 who has been confined involuntarily and is about to be
30 released, and they may or may not be informed that that's
31 the case, do these restrictions apply in those

1 circumstances as well? Do they create barriers to a
2 potential victim receiving information which may be
3 relevant to their safety?

4 ASSISTANT COMMISSIONER STEENDAM: It does depend on the
5 circumstances. We get information from Corrections in
6 relation to prisoner releases and we use that to inform
7 perhaps some of our policing responses. If there's a
8 specific threat and a specific piece of information, we
9 would then do a risk assessment in relation to that
10 particular issue and work through a safety plan.

11 In some of those circumstances it would be
12 appropriate to obviously speak to the people that are
13 subject to the threat and in other circumstances it
14 depends on the nature of the threat and the nature of the
15 information and whether that can be validated as to who
16 would be spoken to and how we would convey that
17 information.

18 COMMISSIONER NEAVE: You wouldn't necessarily know, would you,
19 that the release of a particular person who might be in
20 gaol for an offence which is not explicitly a family
21 violence offence might pose a risk to the individual?

22 ASSISTANT COMMISSIONER STEENDAM: No, that's right. Unless
23 that information is conveyed to us and there is specific
24 information given to us, then we may not be in a position
25 to know that.

26 COMMISSIONER NEAVE: So, I could be a woman who had previously
27 been assaulted and open the door and my husband has been
28 let out of gaol and there he is on the doorstep. I know
29 you would do everything to avoid that occurring, but
30 theoretically it could still occur.

31 ASSISTANT COMMISSIONER STEENDAM: And there is some

1 notification that occurs through Corrections to
2 particularly people who have been subject to violent
3 offending, is my understanding. Perhaps Andrew might be
4 in a better position to talk to how that occurs in the
5 context of those that have been victims of violence.

6 MR REAPER: I can talk to that, albeit not in extreme detail,
7 because it relates to victims who are registered and
8 subsequently managed by the victims register. Generally
9 that relates to when people are released or prisoners are
10 released on to parole, as distinct to when they have
11 completed a full term of their sentence and are
12 subsequently released into the community, so there is
13 still variance even at that point.

14 Of course, if we have information that there is a
15 serious and imminent risk to an individual, then we will
16 provide quite detailed information in those circumstances
17 to Victoria Police. But in general it may not be provided
18 if there is no information that we are aware of that meets
19 that criteria.

20 COMMISSIONER NEAVE: The same thing would presumably happen in
21 the example that I gave of somebody who had served a
22 period of time as an involuntary patient or indeed as a
23 voluntary patient.

24 MR WIDMER: Yes. The Mental Health Act contains a similar
25 exemption to the exemption in the Privacy and Data
26 Protection Act around serious and imminent threat to allow
27 the sharing of information to occur.

28 COMMISSIONER NEAVE: So if there was a psychiatrist in the
29 hospital who was aware of the threat, then the person
30 might be notified. But if they were frightened and rang
31 the hospital and asked, "Has this person left," there

1 might be constraints about the release of that information
2 to them.

3 MR WIDMER: I don't work in the mental health space, but I am
4 aware that there is a specific exemption in the Mental
5 Health Act around the sharing of that information.

6 MS ELLYARD: Am I right in understanding, Mr Widmer and
7 Mr Reaper, that both of those exemptions exist for those
8 very high level, serious and imminent risk cases?

9 MR WIDMER: Serious and imminent threat to life, safety, health
10 or welfare.

11 MS ELLYARD: So in the case that might not meet that standard
12 where the history of the offender or of the person with
13 the mental illness is such that they pose a risk, albeit
14 not a risk that meets that high threshold, the present
15 system wouldn't permit the sharing of that information
16 about that person's imminent release with the likely
17 victim.

18 MR WIDMER: That's correct. It may not.

19 MR REAPER: That would also be the case for us, although when
20 we occasionally do receive such calls from victims it will
21 trigger us to analyse all the information that we hold in
22 regards to that individual, including all of our
23 intelligence holdings. Having said that, if it does meet
24 the threshold that we see that the risk is both serious
25 and imminent, rather than responding direct to the victim
26 we will provide that information to Victoria Police.

27 MS ELLYARD: Can I turn to the question of memoranda of
28 understanding. Mr Widmer, you say in paragraph 21 you
29 have identified at least 18 within your department that
30 have reference here and each of the other witnesses have
31 also given evidence about memoranda of understanding. Can

1 I ask where memoranda of understanding sit, in the sense
2 of do they sit at a level where front-line workers have a
3 practical understanding of them or do they exist at a
4 policy level perhaps a bit more remotely?

5 MR WIDMER: Broadly speaking, they exist at the higher level.

6 The exact taxonomy and language used to describe these
7 sorts of documents varies. At a broad level there is
8 legislation that will set out the relevant powers. Where
9 that involves regular and consistent and important
10 information sharing or other interaction, service
11 interactions, agencies and departments will often enter
12 memoranda of understanding, letters of understanding.
13 Sometimes they are even called protocols, they are named
14 in different ways, but they are usually set at a high
15 level and they are really about two, three or more
16 agencies giving at the most senior level the commitment of
17 the agencies to act in a certain way around whether it's
18 information sharing or service provision.

19 Sitting below that will then usually be a set of
20 much more operational guidelines that would usually sit
21 within particular services, they might be a shared one in
22 some cases, but would then provide very operational
23 guidance to staff at the front-line about how that's
24 translated.

25 MS ELLYARD: You have mentioned front-line operational
26 guidance. From your perspective is there specific
27 training, for example, given to child protection workers
28 about, just as an example, the circumstances in which they
29 are allowed to share information or indeed entitled to ask
30 for information from other agencies because a protocol or
31 memorandum of understanding exists?

1 MR WIDMER: That's right. There is significant guidance
2 provided to Child Protection workers and throughout the
3 Child Protection manual there's a range of tools, and I'm
4 sure it's part of the training as well around how Child
5 Protection workers work through all the stages of
6 intervention, and information gathering and consultation
7 and sharing is an absolutely core and critical part of the
8 work that they do.

9 MS ELLYARD: Part of the evidence of the Secretary of your
10 department when he gave evidence earlier today was about
11 the present model which involves a lot of outsourcing in
12 the sense that the department funds a lot of services that
13 it doesn't directly provide. Instead the services are
14 provided through other agencies. What arrangements exist
15 so that those agencies who are acting for the same person,
16 perhaps pursuant to multiple contracts with you, are able
17 to share information with each other about a single
18 person?

19 MR WIDMER: Similarly there are often protocols such as the
20 family violence referral protocol between police, DHHS and
21 funded family violence agencies, and guidelines such as
22 the Domestic Violence Victoria Code that is used by funded
23 family violence agencies, and the code provides guidance
24 around information sharing.

25 The insourcing and outsourcing is not
26 necessarily - it doesn't in and of itself provide a
27 challenge in relation to information sharing. It will be
28 about the legislative settings or the systems that we have
29 in place. So, for example, some of the challenges that do
30 exist are where the government, as I have set out in my
31 witness statement, may have a range of systems and we may

1 require agencies to use one or more of those systems.
2 Those agencies themselves might have additional systems
3 that they use, and there might be a system complexity at
4 that level.

5 MS ELLYARD: So, for example, if an agency is being funded
6 through multiple funding streams to perform different
7 functions and those funding streams carry with them a
8 requirement to use a particular model, the agency working
9 with the one person might be keeping multiple records, as
10 it were, because that is what the system
11 presently requires of them?

12 MR WIDMER: That's right. They might be keeping multiple
13 records in multiple databases, in addition to having, for
14 example, their own case management system as well. It is
15 a significant challenge getting those systems to be able
16 to talk to each other.

17 MS ELLYARD: May I turn to you, Assistant Commissioner Steendam
18 and Senior Sergeant Howard. What training or resources
19 are provided to police officers to assist them to know
20 when they are allowed to share information and for what
21 purposes?

22 ASSISTANT COMMISSIONER STEENDAM: I might actually ask Senior
23 Sergeant Howard to answer that question. She has worked
24 previously at the Academy and has a good understanding of
25 the training that is actually provided.

26 SENIOR SERGEANT HOWARD: In relation to training for
27 information exchange and sharing with other agencies, the
28 training is provided at various career entry points for
29 our members. So, of course the basic recruit training,
30 there is significant foundation work done there to embed
31 those learnings and then, depending on whether you

1 specialise or as you move up the ranks, there's again more
2 relevant training provided in relation to the context that
3 you are going to be working in and at the level that you
4 are in.

5 I would support what Mr Widmer said about the
6 policies and the MOUs being at a certain level and then
7 effectively contextualised to the audience as much as they
8 need it because the front-line operational police, working
9 as they do on the fly, having to make decisions quickly,
10 don't have the time or the resourcing to be able to
11 research in depth. They need to know what they need to
12 know at the time and move on to the next issue.

13 So we have a range of materials in terms of
14 what's available for our members to refer to if they
15 haven't received that information initially in their basic
16 training. We have a learning hub, for example. We have a
17 range of different modules within that learning hub that
18 will deal with the context that they are perhaps being
19 trained on or need to access. Our privacy unit has
20 provided an information sharing guide. It's annexed
21 actually to our statement. It's quite a comprehensive
22 document which effectively is a ready-reckoner. If you
23 have a scenario where you are not sure whether you are
24 able to share information, you can go to that
25 ready-reckoner or consult the privacy unit for advice as
26 to how that works.

27 MS ELLYARD: May I ask you about a specific issue, and again
28 I'm happy for either of you to answer. One of the key
29 ways in which we know that front-line police members
30 presently share information is through the use of the L17
31 form to share certain information obtained in the course

1 of their work with family violence agencies both for the
2 victim and the alleged perpetrator. An issue that we have
3 heard about through the consultation process is where a
4 certain amount of information, the information available
5 to the police officer at that initial time, goes out with
6 the L17, but subsequent relevant information which might
7 arrive at a later point doesn't get forwarded because the
8 L17 has already gone.

9 Is there any guidance that's given to police
10 about their ability to provide additional information that
11 would have been on the L17 if they'd had it in their
12 knowledge at the time, at a later point other than that
13 crucial moment where the L17 is going across?

14 ASSISTANT COMMISSIONER STEENDAM: There won't be anything
15 explicitly articulated in the Code of Practice for the
16 response or for the investigation of family violence. But
17 general, I suppose, common sense and practice would be if
18 there's information missing and you attain relevant
19 information that's critical to the service who is
20 providing the response to either the perpetrator or the
21 victim of the incident, would be that you would on forward
22 that information, whether that be through a phone call to
23 the service or whether it be through another mechanism in
24 which you actually convey that information.

25 There won't be anything specifically articulated
26 in the code that talks to that very issue, but there is
27 often follow-up from services back to the informant or
28 back to the station where we have made a referral from an
29 L17 and getting clarification on specific information
30 that's relevant to that referral.

31 MS ELLYARD: May I turn to - unless the Commissioners wanted to

1 take up anything on that topic?

2 COMMISSIONER NEAVE: I just wanted to comment, and I don't

3 think it was in evidence in our hearings, but certainly in

4 our public consultations there was a bit of a perception

5 that any subsequently obtained information couldn't be

6 provided by the police to the agency. This may be just a

7 couple of police officers, but it certainly was referred

8 to as a concern that sometimes relevant information which

9 was obtained after the L17 had been forwarded couldn't be

10 added.

11 ASSISTANT COMMISSIONER STEENDAM: At a policy level, I would

12 say that's not accurate. If there's specific information

13 that should be conveyed, then there are instruments and

14 authorities to actually do that. I think one of the

15 issues, and we were asked before about what are some of

16 the barriers to information sharing. We probably are not

17 dissimilar to some of the other services. Some of our

18 members don't have as good an understanding or the

19 understanding that they need to have on where they can

20 share information and when they can't and sufficient

21 I suppose level of knowledge and, when they don't,

22 sometimes the default position will be, in the absence of

23 knowing they can, they won't.

24 COMMISSIONER NEAVE: Yes.

25 MS ELLYARD: Can I turn to the topic of information storage

26 systems. I think each of you in your statements have

27 identified some of the limitations that exist based on

28 computer storage systems. May I ask each of you in turn

29 to comment on what's being done, if anything, to reduce

30 the difficulty caused by those different recordkeeping

31 systems? Mr Widmer?

1 MR WIDMER: I thought the evidence from Mr Antoine this morning
2 was very instructive, and that certainly is the thinking
3 that is going on inside the Department of Health and Human
4 Services around the opportunities presented now as opposed
5 to, say, 10 years ago for lower cost, nimbler systems and
6 including whether they are cloud based or whether they are
7 server based, but there are opportunities now for much
8 more nimble systems.

9 We have been doing some exploration for some time
10 now, and this is ongoing at the moment, in working out how
11 we are able to get our systems to talk to each other, so
12 looking at where there are opportunities for a software
13 mechanism to sit over the top of databases to be able to
14 extract relevant information out of those databases with a
15 set of permissions so that, if you log in as a worker,
16 whether you are a disability worker or a child protection
17 worker, you have permissions set around your access and
18 that we seek to work out how we can get you access to the
19 other information that sits around a client, where that's
20 appropriate, where it's lawful and where that's relevant.
21 That's ongoing work and that's certainly one of the
22 avenues that we are pursuing at the moment.

23 MS ELLYARD: What about the issue that you identified of
24 agencies who are funded by the department who might
25 themselves at present be required, because of the way they
26 are funded by you, to maintain duplicate recording
27 systems? Is there any work under way to deal with what at
28 face value seems an inefficiency there?

29 MR WIDMER: Some of those systems are built into larger
30 structural arrangements. So, for example, the use of the
31 what's called the SHIP database - - -

1 MS ELLYARD: For housing matters.
2 MR WIDMER: For housing matters, is built into a national
3 collection of homelessness data and information. So, in
4 looking at how an agency that uses what's called our IRIS
5 database, for example, for our family violence counselling
6 services, might also use the SHIP service. There are
7 bigger questions than simply why don't we have the same
8 information sharing platform or the same database. We
9 have to look more broadly at some of those other
10 structural issues.

11 As part of the discussions we are having about
12 how we allow access for workers to the information they
13 need in a more efficient way, we are broadly looking at
14 what are the options that we have around our databases,
15 keeping in mind that some of the interesting directions in
16 information technology, and that's not my area of
17 expertise, but in talking to my colleagues are around not
18 just looking at new giant two-year IT projects, but where
19 are there opportunities to look for smaller collections to
20 bring together and learn in a more iterative way as you do
21 that.

22 MS ELLYARD: You mentioned timeframes. Are there any
23 timeframes at the moment on the exploratory work that you
24 are doing in this area?

25 MR WIDMER: I can certainly take that on notice and find out
26 where that project is up to, if that would be of
27 assistance.

28 MS ELLYARD: Yes. If the Commissioners would be interested in
29 that information, I would ask for that.

30 COMMISSIONER NEAVE: Yes, we would. That would be helpful,
31 thank you.

1 MS ELLYARD: Mr Reaper, can I turn to you. You identified that
2 there are database compatibility issues for Corrections.
3 Is there work being done on that topic at the moment?

4 MR REAPER: Yes, there is work being done. We are currently
5 certainly under active consideration of the development of
6 a single database or IT system for all of the Corrections
7 information, whether that would be a system that replaces
8 all of our existing IT systems or certainly is able to
9 connect them better and just replace those that are most
10 aged is the work that's under way.

11 Obviously going forward, more than ever before we
12 will be very mindful - and I know Ms De Cicco spoke this
13 morning of some work that's already commencing within the
14 Department of Justice and Regulation that will look at how
15 each of our internal systems better connect across the
16 entire justice entity. As we move forward, whatever we
17 develop will be done being mindful of its ability to
18 connect at the very least to our Justice entities going
19 forward. So that's where we are at in that space.

20 MS ELLYARD: May I turn and ask for the police perspective on
21 this issue of the present state of the information systems
22 that are available and initiatives that are being done to
23 improve those systems?

24 ASSISTANT COMMISSIONER STEENDAM: There is constant work going
25 on in relation to our systems. There's a range of
26 databases and systems that we use for all of our policing
27 functions. The two main ones that are relevant to the
28 family violence context is the LEAP system which houses
29 most of our criminal records, as well as our responses to
30 family violence and our intervention orders, and equally
31 our InterpOSe, which is our intelligence and it has a

1 partial case management system as well which is used for
2 more serious crime investigations. So there is a piece of
3 work that is ongoing in relation to those two systems.

4 We have recently had a focus on sustaining those
5 two systems whilst we look at what our future needs are
6 and whether or not there needs to be some replacement of
7 those systems. That's a very specific project that sits
8 under my portfolio at the moment as the CIO. We are
9 looking at the moment at the business requirements for
10 that and what might be our future arrangements, but that's
11 a way off in terms of any changes.

12 What we are also looking at is just how we have a
13 consolidated view of any individual and making sure that
14 our front-line officers have the information that they
15 need in relation to accessing relevant information from
16 those two systems.

17 The other issue for us is we obviously interface
18 with the court system. There is consistent and ongoing
19 work and improvement that's occurring across, I suppose,
20 the information that flows from our systems to the court
21 system but equally from the court system back to our
22 systems.

23 COMMISSIONER NEAVE: Can I ask you about that, the flagging.

24 We heard from Magistrate Broughton, among other
25 magistrates, about the issues that arise in that context.
26 As I understand it, there is now a flagging system so that
27 if there are proceedings in one court at the same time as
28 there are proceedings in another court, that will be
29 easier for the magistrates to access. What stage has that
30 actually reached?

31 ASSISTANT COMMISSIONER STEENDAM: There's been a number of

1 pieces of work recently. I can't talk about the Courtlink
2 system where they are flagging different matters, but what
3 I can say is we have recently done some work where for all
4 criminal charges where there's an identifier, that now
5 goes through to the court system so they are aware whether
6 it's a family violence related matter or whether or not
7 it's a sexual assault matter so that it informs their
8 listing practices and it equally informs their safety
9 planning for the charges and the matters that they are
10 hearing.

11 In the context of, I suppose, consolidation of
12 particular matters, that sits within the Courtlink
13 environment and is actually the work that's going on in
14 the courts, not so much from our side.

15 MS ELLYARD: Assistant Commissioner, may I ask you specifically
16 about the risk register which is part of the proposal that
17 Victoria Police has invited the Royal Commission to
18 consider?

19 ASSISTANT COMMISSIONER STEENDAM: We mentioned that in our
20 submission because it is a system that has been working
21 and I suppose piloted overseas and now is working as a
22 system overseas and there has been some other
23 jurisdictions within Australia that are starting to look
24 at this. I might actually ask Senior Sergeant Howard to
25 answer that question because she has been looking at the
26 pilot and I suppose the outcomes from that. We raise it
27 because we say it has some merit and perhaps is something
28 that the Commission should be looking at and on the merits
29 of that for Victoria.

30 MS ELLYARD: Senior Sergeant Howard?

31 SENIOR SERGEANT HOWARD: Thank you. We reference in our

1 statement a Domestic Violence Disclosure Scheme commonly
2 known as Clare's Law. It was established in the United
3 Kingdom following the murder of a young woman there in
4 Manchester in 2009. She was murdered by a former partner
5 and unbeknownst to her he had a history of violent
6 offending, particularly in a family violence context and
7 violence against women. He had served some periods of
8 incarceration and of course the premise in relation to the
9 disclosure scheme is that, if she had known his history,
10 she would have been able to make an informed decision in
11 relation to the course of that relationship or not. It
12 would have empowered her to make the safety risk
13 assessment.

14 So, the key feature of the scheme and
15 subsequently the pilot schemes that have transferred into
16 Australia now are that they offer a sound structured
17 decision-making process with a focus on the purposeful
18 release of information. So victim-centric, the whole idea
19 of the scheme is to protect the victim, and that is a
20 victim who is at risk of or has been subject to family
21 violence offending, whether that's sexual or otherwise.

22 In the UK the establishment of the scheme
23 followed an extensive period of consultation, community
24 consultation. It was piloted across four policing
25 jurisdictions between 2012 and 2013. Then, due to the
26 success of the pilot program, it was rolled out nationwide
27 there in March last year, March 2014. So, it is in its
28 infancy in the UK, but it is apparently working quite
29 well.

30 Just some basic statistics. Between March 2014
31 and January 2015 there were nearly 4,000 applications for

1 disclosure. Of those 4,000 applications, 1,335 were made,
2 so not all the applications result in a disclosure.
3 That's important to understand. Of the 1,335 that were
4 made, two-thirds of those related to the right to know
5 aspect of the disclosure system. There's two key entry
6 points into how a disclosure can be made; it's a right to
7 ask and a right to know. I will just give the Commission
8 a basic summary of how that works, if you would like me
9 to.

10 MS ELLYARD: So, where the disclosures were made, does that
11 mean that there was something relevant and the relevant
12 test of the appropriateness of letting the woman know was
13 met?

14 SENIOR SERGEANT HOWARD: That's right.

15 MS ELLYARD: So disclosure would always mean, yes, this person
16 has a relevant history.

17 SENIOR SERGEANT HOWARD: That's right.

18 COMMISSIONER NEAVE: Do we know whether that changed women's
19 decision making?

20 SENIOR SERGEANT HOWARD: In relation to the pilot study,
21 there's a lot of information in relation to the pros and
22 cons there. So perhaps I will backtrack and give you
23 those pros and cons. The short answer is, yes, it did.
24 There is no data, unfortunately, and that's one of the
25 negatives or the criticisms that came from the pilot, that
26 there was no measure of the impact on the perpetrator as a
27 result of those disclosures. But, yes, there was
28 definitely a significant change in the victim's behaviour
29 after the disclosure was made.

30 Would the Commission like me to detail some of
31 the pros and cons of the pilot or the system, as we

1 understand it?

2 MS ELLYARD: I'm in the Commissioners' hands.

3 COMMISSIONER NEAVE: It is in your witness statement, is it?

4 ASSISTANT COMMISSIONER STEENDAM: I don't know that it talks to

5 the actual - - -

6 COMMISSIONER NEAVE: Is there an attachment to your witness

7 statement?

8 ASSISTANT COMMISSIONER STEENDAM: Yes.

9 SENIOR SERGEANT HOWARD: The pilot document is attached.

10 COMMISSIONER NEAVE: Yes, I thought it was. We can read that

11 later, thank you.

12 MS ELLYARD: May I just take up one final topic with Mr Widmer

13 and that's the information that you provide in this new

14 witness statement about RAMPs which builds on the evidence

15 you have already given on this topic. You identify that

16 the piece of the project that's currently under active

17 consideration is the information sharing framework. When

18 you gave evidence last time you indicated that it was your

19 expectation that three to six months would see the RAMP

20 roll-out operational. Is that still your understanding?

21 MR WIDMER: Yes, that's still my estimation. We have conducted

22 significant work, as I set out in my last evidence, and

23 since I last gave evidence we have progressed the privacy

24 impact assessment and been working with the Commissioner

25 for Privacy and Data Protection around our information

26 usage arrangement application which the department intends

27 to make and there's still a range of work to go. There

28 are still positions to be recruited, there is still a

29 training package to be rolled out right across 17 areas

30 across Victoria. It is a significant undertaking to roll

31 out the RAMPs across the state and, as the evaluation made

1 clear to us, it's important that we do that carefully and
2 that we make sure that we get the documentation and the
3 other guidelines set up properly.

4 MS ELLYARD: Are you able to indicate the extent to which there
5 is still recruitment to go? We understand that a lot of
6 recruitment happened at the beginning of the year. Is
7 there a large amount of recruitment work still to be done?

8 MR WIDMER: I can certainly take that on notice and find out
9 where that's up to.

10 MS ELLYARD: If you could, that would be good.

11 MR WIDMER: Certainly in relation to the training package, we
12 have trialled the training once. We are learning from
13 that training and we currently expect the package to be
14 developed, which we are developing in partnership with
15 Domestic Violence Victoria, Domestic Violence Resource
16 Centre and No To Violence, the men's peak body. We expect
17 that to be developed by around September.

18 MS ELLYARD: Those three, if I can call them, pieces of work,
19 the completion of the necessary recruitment, the
20 finalisation of the necessary information sharing
21 arrangements and the finalisation and roll-out of the
22 training packages, those are the three parts of the
23 project that need to be put in place before the RAMPs can
24 start operating in the - - -

25 MR WIDMER: That's right.

26 MS ELLYARD: And three to six months is the timeframe over
27 which you would presently estimate those things could be
28 completed.

29 MR WIDMER: That's right.

30 MS ELLYARD: I think you indicated last time that what we are
31 talking about in the rolling out of the RAMPs hasn't

1 affected the ability of the two pilot sites to keep on
2 meeting and carrying out work on a pilot basis.

3 MR WIDMER: That's correct. The two pilot sites continue to
4 operate.

5 COMMISSIONER NEAVE: So we could perhaps expect in our October
6 hearings to hear a little bit more about what stage you
7 have reached?

8 MR WIDMER: That would certainly be my hope.

9 COMMISSIONER NEAVE: Good.

10 MS ELLYARD: Do the Commissioners have any other questions for
11 the panel?

12 DEPUTY COMMISSIONER FAULKNER: I have one. I thought I heard
13 the police witnesses say that probably there is an "if in
14 doubt don't disclose" attitude rather than a
15 pro-disclosure attitude in the culture. Is that what you
16 would describe it as?

17 ASSISTANT COMMISSIONER STEENDAM: Yes, and it's very clear when
18 there's a serious threat and imminent threat that members
19 are quite clear about when they should and how they should
20 disclose information. I think it becomes a lot more
21 ambiguous for them when it doesn't sit within that
22 threshold and many of our members, in the absence of
23 knowing whether they can and being clear about that, their
24 default position will be not to. Some of that also is
25 because of the requirements in the Police Act in the
26 context of not sharing when you shouldn't and the breaches
27 of the Act and discipline breaches if in fact they
28 disclose when they shouldn't.

29 DEPUTY COMMISSIONER FAULKNER: And the same with DHHS? Did
30 I hear the same thing, that there's not a pro-disclosure
31 culture, it's sort of more sort of guided by statute and

1 everything else? I suppose I'm looking - even in your own
2 procedures, I wasn't quite sure of the answer before. Do
3 you actually on a housing application form get people to
4 tick a box saying that "I'm happy for this information to
5 be used" in relation to other health and welfare issues of
6 the Department of Human Services?

7 MR WIDMER: Certainly in providing services to our clients in
8 the ordinary course there would always be consents.

9 DEPUTY COMMISSIONER FAULKNER: But are you saying it's
10 automatic, it's on every form, or are you saying that you
11 might ask somebody? When I go to the doctor, I have to
12 usually tick a box to say that I'm happy to share this
13 information with other medical providers. Is there that
14 sort of pro-disclosure culture, is what I'm looking for.

15 MR WIDMER: Again, that is a complex question obviously across
16 all of the different services, whether they be health,
17 mental health, child protection, disability, housing or
18 homelessness. I think the point that I was making is that
19 I think individual workers can find themselves in a
20 situation where there are specific restrictions that they
21 may face - - -

22 DEPUTY COMMISSIONER FAULKNER: I understand that. I'm saying
23 where there aren't restrictions. I understand you
24 wouldn't ask somebody in a child protection context to
25 disclose everything that's protected, but I'm saying there
26 isn't a specific restriction. Is there a culture that
27 says, when we are collecting information about services,
28 the use of drug services or anything else, is there a
29 tick-a-box like you see on the doctor's forms that says we
30 will in fact give permission to use this information for
31 other health and welfare functions? Is the answer you

1 don't know and you would like to come back?

2 MR WIDMER: The answer would be I would have to take that on

3 notice, certainly. Perhaps if we could work with the

4 Commission around the sorts of services that we might be

5 able to investigate that for, to assist you.

6 DEPUTY COMMISSIONER FAULKNER: Thank you.

7 MS ELLYARD: If there are no other questions, may I ask that

8 the panel be excused and that the Commission take a

9 10-minute break.

10 COMMISSIONER NEAVE: Thank you very much indeed.

11 <(THE WITNESSES WITHDREW)

12 (Short adjournment.)

13 MS DAVIDSON: I will ask that the next witness, David Watts, be

14 sworn.

15 <DAVID GEOFFREY WATTS, affirmed and examined:

16 MS DAVIDSON: Thank you. Mr Watts, can you outline what your

17 position is?

18 COMMISSIONER WATTS: I'm the Commissioner for Privacy and Data

19 Protection.

20 MS DAVIDSON: For Victoria.

21 COMMISSIONER WATTS: For Victoria.

22 MS DAVIDSON: Have you made a statement for the Commission?

23 COMMISSIONER WATTS: I have.

24 MS DAVIDSON: Are you able to confirm whether the contents of

25 that statement are true and correct?

26 COMMISSIONER WATTS: Yes, I can confirm that.

27 MS DAVIDSON: Just drawing on some of the matters you talk

28 about in your statement, you will have heard that there's

29 quite a range of organisations who end up being involved

30 in matters concerning family violence and there's been a

31 lot of evidence about the complexity of the issue and the

1 range of people who might potentially be involved either
2 with a victim, their children or a perpetrator.

3 Could I just get you perhaps to address the issue
4 of what organisations are potentially covered under the
5 Privacy and Data Protection Act?

6 COMMISSIONER WATTS: The Privacy and Data Protection Act
7 applies to Victorian public sector organisations. So
8 that's the very short answer to your question. However,
9 through the outsourcing service provider provisions of the
10 legislation, private sector organisations who are
11 effectively providing outsourced services for the public
12 sector can also be bound, as it were, by the provisions of
13 the Privacy and Data Protection Act.

14 MS DAVIDSON: So is it the case that organisations contracted
15 to deliver family violence services would most likely in
16 many cases also be covered by the Act?

17 COMMISSIONER WATTS: Yes, they would.

18 MS DAVIDSON: You also talk about in your statement the
19 difference between the concepts of confidentiality and
20 privacy and the way that that term is used in light of the
21 Privacy and Data Protection Act. Can I get you to explain
22 that a little bit further and perhaps use some examples to
23 demonstrate what those differences are?

24 COMMISSIONER WATTS: To start with perhaps confidentiality,
25 confidentiality has traditionally been considered to be a
26 right that applies to information that's kept
27 confidential, kept secret, and is imparted in
28 circumstances of confidence. Privacy is different because
29 it doesn't have to be kept confidential, the information
30 doesn't have to be kept confidential, nor does it have to
31 be imparted in circumstances where it's confidential or

1 private.

2 So, privacy inheres in certain conduct. I think
3 in my statement I refer to the six different classes of
4 privacy, a right to be left alone or a right to keep
5 people away from your private life. You may not keep
6 those things confidential, but privacy recognises that
7 those things are private.

8 MS DAVIDSON: We heard from a lay witness who had disclosed to
9 her psychiatrist that her husband had been sexually
10 assaulting her. In that context, what are we talking
11 about? Are we talking about confidentiality or privacy,
12 and what sort of restrictions would apply for that doctor
13 to be able to release that information?

14 COMMISSIONER WATTS: There's a complex answer to your question,
15 but reduced down to as simple terms as I can. If it is
16 health information, it is dealt with under the Health
17 Records Act and so it is not my jurisdiction, but I can
18 very happily provide you with an opinion about it.
19 I wouldn't have thought that anything in the Privacy and
20 Data Protection Act would prevent the communication of
21 that information.

22 What I think the barrier might be is professional
23 obligations of confidentiality. A number of professions,
24 the health profession, for example, have as part of their
25 professional ethics duties of confidentiality. Those are,
26 in my experiences, interpreted differently by individual
27 practitioners, but actually between sectors of health
28 professions.

29 My view about it is that confidentiality is an
30 equitable type obligation, that's where it comes from, and
31 therefore is subject to all of the public policy issues

1 that the law of confidentiality or any other law in equity
2 is subject to. So, I wouldn't have thought that an
3 obligation of confidence prevents you as a health
4 professional providing acute risk information to someone
5 who might help. Certainly I don't think that sort of
6 obligation of confidentiality trumps a right to life.

7 MS DAVIDSON: Moving on to another topic, or picking up on what
8 you have already said in relation to the idea of trumping
9 the right to life, we have heard throughout the hearings a
10 number of sort of examples that demonstrate perhaps the
11 importance of sharing information in the context of family
12 violence and I think you talk in your statement about the
13 idea of life trumping privacy.

14 In that context there are provisions, is that
15 right, in the Privacy and Data Protection Act that
16 explicitly recognise that life trumps privacy in terms of
17 the idea of serious and imminent threat to life?

18 COMMISSIONER WATTS: That's so.

19 MS DAVIDSON: We have heard throughout the hearings that often
20 because of the number of people that hold information,
21 that you can't form a view necessarily about there being
22 that kind of serious or imminent threat until you have
23 actually collected all of that information from people.
24 So, when an exemption talks about preventing - where it
25 would be necessary to prevent a serious or imminent
26 threat, does that idea that you can't actually assess that
27 until you've got the information, does that potentially
28 give rise to a problem for being able to use that
29 exemption, do you think?

30 COMMISSIONER WATTS: Yes, it can, and that's why the new
31 legislation which came into effect last year has a number

1 of mechanisms in it which allow departures from privacy.
2 So it's probably worthwhile saying that. Victoria's old
3 privacy legislation, the information Privacy Act, was the
4 only Australian privacy legislation that did not have a
5 safety valve in it. So every other piece of legislation
6 had a means by which a Privacy Commissioner could permit
7 departures from privacy based on some public interest
8 test.

9 Victoria's didn't, even though it was originally
10 drafted with it in, but it wasn't there. So it didn't
11 allow the flexibility needed to address dynamic risk
12 situations such as the example you posit about serious or
13 imminent, et cetera.

14 The new mechanisms that have been put into the
15 Act which are derived from the New Zealand provisions
16 about information usage agreements, public interest
17 determinations derived from the Commonwealth, are there to
18 permit me to permit departures if there is a substantial
19 public interest.

20 MS DAVIDSON: We have heard through the hearings the risks that
21 being exposed to family violence pose in particular for
22 children and particularly the children's development. We
23 have heard about the very significant and potentially
24 quite long-term impacts on children. There's an issue
25 about the accumulation of a number of incidents, none of
26 which on their own might have perhaps met a test for being
27 a serious and certainly not an imminent threat of the
28 nature that the Act provides.

29 We of course in Victoria have a Charter of Human
30 Rights and Responsibilities that expressly recognises the
31 rights of children to such protection as is necessary in

1 their best interests by reason of them being a child. We
2 also know from international law that the right that we
3 have in our charter against torture, cruel or inhumane
4 treatment also covers not just impacts on a woman's life,
5 but that family violence itself could amount to a breach
6 of those rights.

7 Do you think there is, in terms of potential
8 legislative reform, perhaps a need to have - would you
9 support some sort of reform that would amend that idea of
10 prevention of serious and imminent threat to life and so
11 on to better recognise those sorts of rights within the
12 Act itself?

13 COMMISSIONER WATTS: A few questions in that, but I would
14 support removing the word "imminent". That's what
15 happened in New Zealand when they were faced with similar
16 issues in relation to family violence, the difficulty
17 I think that people had in working out what "imminent"
18 meant in the circumstances that you have described.

19 I don't know that I actually need a section in my
20 Act to tell me to comply with the charter, but I am
21 obviously bound by section 38 and obviously charter rights
22 are something that inform any decision in relation to the
23 public interest, in relation to working out those
24 decisions and in the balancing exercise that our Act
25 requires.

26 MS DAVIDSON: You have identified, I think, three different
27 mechanisms that are in the Act that can be used in a
28 situation where you need - well, two where you need to
29 depart, is that right, from the principles and one where
30 someone needs to have the reassurance that they are
31 acting - - -

1 COMMISSIONER WATTS: There are public interest determinations
2 and temporary public interest determinations which permit
3 a departure from privacy if there is a substantial public
4 interest. Information usage arrangements were, I think it
5 is fair enough to say, stolen from New Zealand with a view
6 to addressing the sorts of issues that I think the Royal
7 Commission is concerned about in terms of multi-agency
8 information sharing and making sure that not only was the
9 Privacy Commissioner happy that there was a relevant
10 public interest, but also the final approval is with
11 ministers, not with me. So it was designed to address
12 that particular situation.

13 The final one is unique to Victoria. It is
14 called certification. One of the things that I have
15 noticed as a privacy adviser, as a lawyer in departments,
16 but also as Commissioner, is how different perspectives of
17 risk within the public sector can just simply stop
18 information sharing taking place and positions become
19 entrenched, incredibly difficult to unravel. I might
20 flippantly suggest that a lot of those are within very
21 risk-averse legal branches, but the certification power
22 was conceived as a means by which those roadblocks could
23 be addressed by providing some degree of certainty and
24 breaking the tangle of different opinions.

25 COMMISSIONER NEAVE: You are talking about systemic responses
26 to these issues, and they are obviously very important.
27 But if you are somebody who is a police officer on the
28 beat or an individual who's concerned with a particular
29 risk to a particular person at a particular time, is there
30 any way that the Privacy Commissioner can provide a quick
31 response, "What should I do in these circumstances," or do

1 people just have to go to the legal sections in their own
2 departments? How is that handled?

3 COMMISSIONER WATTS: Normally that's handled within
4 departments. Normally if someone phones us and asks us
5 that question - if a legal branch, for example, asked us
6 that question, bearing in mind I am a regulator as much as
7 I suppose an advocate, then what we would do in those
8 circumstances is provide the enquirer with the right
9 questions to ask so that they analyse the question
10 properly.

11 There is, in my view - I'm trying to think of the
12 international law term. There's a margin of appreciation
13 in a lot of the language within the Privacy and Data
14 Protection Act, so questions about what is reasonable,
15 what's necessary - - -

16 COMMISSIONER NEAVE: But these are very sophisticated questions
17 for a person on the front-line to have to deal with. Now,
18 of course they might escalate it and ask their manager,
19 but sometimes in a family violence situation they might
20 need an immediate response, "Do I need to go and tell this
21 woman X, Y, Z," or something along those lines. I think
22 what you are saying to me is what they would have to do is
23 speak to their manager or to the legal department, which
24 might then in turn ask you. It seems that that might
25 produce rather a slow response in an urgent situation.

26 COMMISSIONER WATTS: I think there's a better way of looking at
27 that, and I think the better way is that these
28 situations - I think Victoria Police explained earlier
29 this afternoon that they had countless MOUs and guidance
30 within their organisations. Again, as a person who has
31 been on both sides of the fence as practitioner and as

1 regulator, I think one of the common problems that I have
2 seen is in getting decision makers to operationalise
3 privacy and to think through what the issues are in
4 advance.

5 I don't think these issues are rocket science in
6 the least. I don't think they are hard decisions.
7 I think if someone looks as if they are in terrible danger
8 of violence, then there is an immediate response that you
9 make, just the same as I don't think when we interpret any
10 other law that governs our business we engage in those
11 legal niceties. I don't think we all ask ourselves "what
12 is reasonable" each day and seek the advice of legal
13 branch, just as when we are required to establish a safe
14 system of work for our employees, I don't know that we
15 talk to our lawyers each day about it. We operationalise
16 it. We have rules about it. We have practices. But we
17 also understand that there is a margin of appreciation
18 around those issues.

19 COMMISSIONER NEAVE: Thank you.

20 MS DAVIDSON: Mr Watts, I think you identify in your witness
21 statement that to date you haven't received an application
22 for a public interest determination, an information usage
23 arrangement or certification. If you were to receive such
24 an application, the rights to which I have just referred
25 about the rights of children and the right against
26 torture, cruel and inhumane treatment, to what extent
27 would they inform your assessment?

28 COMMISSIONER WATTS: They would be fundamental to it. Could
29 I also just add at that point, although we haven't
30 received formal applications, we have actually had a
31 number of conversations with departments about those

1 flexibility mechanisms. On examination and discussion
2 with them, it's actually been found that they didn't need
3 to actually do it; what they were wanting to do was
4 already authorised under the law.

5 MS DAVIDSON: In terms of that sort of - perhaps I can go back
6 to the issue of risk averseness and the idea of some
7 cultural change. Given potentially the perception of
8 privacy being a barrier, but that potentially resulting in
9 rights being impacted upon, what do you see as being the
10 role of the Privacy Commissioner, your role, in terms of
11 potentially leading and driving and contributing to that
12 sort of cultural change?

13 COMMISSIONER WATTS: I think it's incumbent on our office to
14 provide thought leadership around those sorts of issues.
15 I have long been a critic of the way privacy was initially
16 implemented in this state. It was implemented as some
17 sort of "got you" moment, something that you had to be
18 scared of, and I think those messages have persisted and
19 reverberated.

20 Good privacy is actually good information
21 management, but also enables good information practice.
22 So there's a range of thought leadership issues and
23 projects that we I think need to address. I'm happy to
24 tell you what they are at the moment, if you'd like to
25 know.

26 So, in relation to information sharing and my
27 concerns about how we don't do it very well, and I think
28 other states do it and the Commonwealth does it better
29 than we do, I have jointly convened with deputy secretary
30 levels an information sharing forum to address at a senior
31 level what the information sharing barriers are across

1 government. So that consists of DPC, which is my home
2 department these days, DJR, DHHS, Education, and that's
3 the core group at the moment.

4 To that end we have actually asked each of those
5 participants to provide us with a catalogue, a list of
6 their key information sharing projects, so that we can see
7 if there are synergies between them so that we can see if
8 there is any leadership that's needed in relation to those
9 projects.

10 I have recently written to secretaries saying,
11 "I think we do information sharing really badly," and one
12 of the things I think we could benefit with is some
13 information sharing master classes, not targeted at junior
14 staff. My predecessor organisation did free privacy
15 training, but it was mainly directed at more junior staff.
16 I have cancelled that. We will do that on-line. But
17 I think in a more sophisticated information environment
18 with greater information sharing enabled by more
19 sophisticated ICT, I think it's critically important that
20 our ways of working with privacy are actually understood
21 at a senior level.

22 I found it surprising in Victoria the extent to
23 which at senior levels people actually don't really know
24 what the right approach is, how to go about doing it. So
25 we have written to secretaries saying, "Would you support
26 us developing a curriculum and delivering an executive
27 series of master classes on information sharing?"

28 We are also in the process of developing a
29 document that is what I have been calling a recipe book
30 for information sharing. It's really about how to work
31 with privacy to achieve good information outcomes, and

1 obviously a key component of that is information sharing.
2 That document has taken on a bit of an international
3 dimension and is due to be presented to the regional
4 Asia-Pacific grouping of Privacy Commissioners in early
5 December. We are writing it and we have recently
6 circulated the structure of the document to a range of
7 people, received comments back on that, and we are
8 proceeding to write it.

9 So, those are the things that we are doing at the
10 moment. There is probably more that we could do, but
11 those are designed to address the fundamental issues that
12 I have seen that are impediments in the way people
13 operationalise and work with privacy.

14 MS DAVIDSON: One last question, and you may want to take this
15 on notice if you are not in a position to answer it
16 immediately. I don't know how well familiar you are with
17 the United Kingdom Data Protection Act. I think it uses,
18 in relation to sensitive information for police, the idea
19 of protecting vital interests and it would seem to be that
20 the idea of protecting vital interests as opposed to
21 preventing a serious - ignore the imminent - threat,
22 protecting vital interests of a person potentially I think
23 would enable you to share information for the purpose of
24 assessing whether it is necessary to prevent, so perhaps
25 taking it back a further step in order to facilitate that
26 kind of risk assessment that we are talking about in this
27 context.

28 COMMISSIONER WATTS: We are aware of that international
29 thinking and we are doing some work internally about
30 perhaps a broader information sharing exception, and
31 perhaps suggesting it to the Royal Commission when we have

1 thought it through, that would support not just family
2 violence, but would support other collaborative and joint
3 initiatives that are designed to promote wellbeing or to
4 prevent harm.

5 At this stage our thinking is in the early stages
6 about how to formulate that, but it has this
7 attractiveness to it, I think. Rather than having subject
8 based exceptions to privacy existing in a variety of
9 pieces of legislation, it would actually provide a single
10 pathway to promote information sharing, obviously subject
11 to a public interest test, but that would lead to
12 standardised practices and procedures, et cetera, and
13 provide some certainty around that.

14 I think in my statement I suggest that one of the
15 ways that the Privacy Act could be amended would be to
16 change or amend the code provisions of the Privacy Act,
17 which have never been used. That's because you can only
18 ratchet up privacy. You can't ratchet down. That seems a
19 shame. I'm a firm advocate of actually being able to use
20 the code provisions in much more effective ways. They
21 have been completely ineffective to date, but I'm a firm
22 advocate of using the code provisions in a much more
23 effective way.

24 So, maybe you allow interferences with privacy in
25 certain circumstances, but you might, for example, ask as
26 part of a code for additional security to be provided, or
27 you might just simply ratchet down in certain places.
28 I think one of the attractive features of that is that you
29 can have mechanisms built into that to measure
30 effectiveness and outcomes, you can ask people to be
31 accountable, and I think it actually is probably slightly

1 less complex than the IUA provisions.

2 So I think that would be an incredibly effective
3 tool to be able to use, but at the moment I'm stymied from
4 using it and really it's like it's just never been used.

5 Everyone has ignored it.

6 COMMISSIONER NEAVE: Thank you.

7 MS DAVIDSON: I have no further questions.

8 DEPUTY COMMISSIONER FAULKNER: I have one, and it follows on
9 the question I asked in the earlier session. Is it
10 appropriate and is it under-used to have a general consent
11 box on application forms for public services that are
12 related in the way that a constellation of things that you
13 see in the Department of Human Services occur, such as the
14 co-occurrence of violence, homelessness, perhaps drug and
15 alcohol, to enable departments and not just the Department
16 of Human Services to ask upfront for consent with a
17 purpose, which is to improve the safety and wellbeing of
18 that individual?

19 COMMISSIONER WATTS: That's not at all inappropriate, but it
20 may not be entirely effective. It's very difficult to
21 manage consent based systems. So, if you think of all of
22 the documents that you might have to manage and work out
23 has this person consented, has that person not consented,
24 what happens to the people who haven't consented, do they
25 get second rate services or are they left to be beaten?
26 It's very, very difficult to manage that consent base and
27 keep it up to date and also to ensure that people have
28 consented freely to it.

29 I think in the circumstances that the Royal
30 Commission is considering where people's lives are at
31 stake or their welfare is at stake, that other mechanisms

1 are better and they make it less complex in an operational
2 sense to deal with that. I think a lot of privacy
3 advocates will probably beat me with a stick for saying
4 that, but that is certainly my experience as a
5 practitioner as well. It's really difficult to manage
6 that, manage a consent based system all the time and to
7 keep it up to date.

8 So I would be more inclined to suggest
9 non-consent based mechanisms that have to satisfy a
10 threshold public interest test and then to follow them up
11 to assess them to see if they are working, and as part of
12 that to see if the lack of consent is in fact in any way
13 impeding service delivery or is impacting adversely on
14 those who are supposed to be being helped. I think there
15 are ways of doing that, ways of getting people's feedback
16 and buy-in, but I think consent can sometimes be a clumsy
17 weapon.

18 DEPUTY COMMISSIONER FAULKNER: Is that in all cases? I think
19 you are positing that in cases where you actually have
20 other mechanisms such as a concern for life that there are
21 better mechanisms. Is that true of things where there is
22 a concern for a general build-up of a disability over a
23 lifetime because of what you are experiencing?

24 COMMISSIONER WATTS: I agree with you, but I don't know where
25 to draw the line.

26 DEPUTY COMMISSIONER FAULKNER: Okay.

27 MS DAVIDSON: Thank you, Commissioners. Can the witness be
28 excused.

29 COMMISSIONER NEAVE: Thank you very much.

30 <(THE WITNESS WITHDREW)

31 COMMISSIONER NEAVE: Mr Moshinsky.

1 MR MOSHINSKY: Commissioners, in opening the evidence to the
2 Royal Commission five weeks ago, I noted that
3 notwithstanding considerable efforts made by government
4 and non-government organisations over many years and
5 increased awareness and some improvements, family violence
6 remains a very large and difficult problem affecting the
7 lives of many in our community.

8 Over the past 20 days of hearings, the Royal
9 Commission has heard from a great many witnesses who
10 offered their expertise and their experiences on a wide
11 range of topics related to family violence. That evidence
12 comprised not only the oral evidence they gave in the
13 witness box, but also their witness statements and the
14 attachments to those statements, which contain a great
15 deal of additional and useful information.

16 It is now for the Royal Commission to draw from
17 that large body of knowledge and experience, together with
18 the other sources of information available through
19 submissions, consultations, round tables and research, in
20 making its recommendations for change.

21 Although each day's evidence has had a particular
22 focus, there were clear points of intersection and
23 overlap, and many times when you heard, from a witness
24 speaking about one topic, the same underlying themes and
25 issues which you had heard about from other witnesses on
26 other days.

27 Some themes and issues recurred more than others.
28 While we commend all of the evidence to you and invite you
29 to take all of it into account as you consider potential
30 recommendations, we draw attention most particularly to
31 five key issues which emerged most clearly from the

1 evidence and which might inform your analysis of both the
2 evidence you have heard over the past weeks and the other
3 material which is available to you.

4 The first theme is the impact of family violence
5 on children and the implications that impact has for their
6 long-term development and for the community more
7 generally. Family violence damages children. It damages
8 them in profound and long-term ways and, if left
9 unaddressed, leaves them at greatly increased risk of
10 being a victim or perpetrator themselves as an adult.

11 Any response to family violence which tries to
12 break the intergenerational cycle must start before birth
13 and must continue to be available throughout childhood,
14 working with families through every possible avenue,
15 including health services, schools and early childhood
16 services.

17 The second theme to emerge is the fragmented
18 nature of the system which presently exists to respond to
19 family violence. That fragmentation exists not only
20 amongst specialist service providers with the division,
21 often imposed by funding limits, on the different kinds of
22 specialist support they can provide, but also more
23 broadly.

24 Dr Cumberland spoke of the need for integration,
25 not just within the specialist system, but between that
26 system and the broader system of generalist health and
27 community supports which, the Commission has heard, have a
28 vital role to play in response to family violence. Such a
29 system does not at present exist and results in those
30 needing support having to go through multiple doors, meet
31 multiple and sometimes contradictory criteria for

1 assistance, and tell their story many times.

2 This leads to consideration of the role which can
3 be played by multi-disciplinary approaches. The Royal
4 Commission has heard of many examples of the co-location
5 or embedding of different services together, from
6 financial counsellors in legal services, to social workers
7 in schools and policing units, to specialist family
8 violence workers at courts or in child protection units.
9 There is great potential for a more integrated,
10 multi-pronged approach which will take advantage of the
11 skills of multiple disciplines and provide a more holistic
12 response to those in need. The Royal Commission has also
13 heard about the possibility of bringing together multiple
14 specialist workers and developing their capacity to work
15 across multiple areas and provide a single worker
16 response.

17 A third theme is the crucial importance of
18 housing and the homelessness services which are available
19 to those who need it. Family violence makes the home an
20 unsafe place. A day of hearing was devoted to the
21 question of housing and homelessness in recognition of its
22 significance. However, issues associated with housing,
23 both as a cause and as a consequence of family violence,
24 emerged at many other points during the hearings.

25 The Commission heard of housing shortages
26 limiting the ability of victims to leave violent
27 situations, of child protection concerns for children
28 arising because their mother was homeless, of victims
29 returning home because the refuge or crisis accommodation
30 didn't meet their needs, or victims letting a violent
31 person return or remain at home because there was nowhere

1 else for them to go. A lack of appropriate housing for
2 perpetrators can also be a barrier to them being able or
3 willing to accept help to change their behaviour.

4 The system's ability to respond to family
5 violence is hampered by a chronic shortage of appropriate
6 and affordable housing and homelessness support.

7 Dr Heather Holst from Launch Housing told you that the
8 system was "awash with demand" that could not be met. How
9 to resource and sustain the housing response to family
10 violence will be an important question for the Royal
11 Commission to consider.

12 The impacts of family violence on a person's
13 housing can be long-term. At the extreme end of those who
14 had been homeless for four or more years, 64 per cent had
15 experienced violence in the home and 72 per cent had
16 experienced some form of abuse as a child. Among young
17 people currently experiencing homelessness, 90 per cent
18 had witnessed violence in the home.

19 The Royal Commission also heard evidence of a
20 growing consensus that there should be a much greater
21 focus on assisting victims, including children, to remain
22 in their homes rather than placed at risk of entering the
23 homelessness system. Such an approach requires not only a
24 housing response, but a related economic response and a
25 civil and criminal justice response, and is one example of
26 the many points in the system where an integrated response
27 is essential.

28 A fourth theme is the impact on the justice
29 system. The civil and criminal justice systems are
30 overwhelmed by family violence. Family violence
31 represents 40 to 60 per cent of front-line police

1 officers' time and 40 per cent of the workload of the
2 Magistrates' Court. The need for specialised responses,
3 whether from courts or from police or from support
4 services, comes into inevitable conflict with the sheer
5 volume of the work and the need for every magistrate and
6 every front-line officer to have a capacity to respond.

7 That overwhelming demand has consequences for the
8 legal and non-legal support services which group around
9 court processes and for how credible and effective civil
10 and criminal justice responses can be. Both the
11 protection of victims and the accountability of
12 perpetrators require that civil and criminal justice
13 responses be real and proportionate.

14 The Royal Commission also heard about the
15 limitations presently imposed by court infrastructure and
16 systems, many of which are old, inefficient, and require
17 resources to be diverted to manual administrative tasks.
18 There is large potential for a re-envisioning of how the
19 justice processes can work to protect victims and free up
20 resources to allow an increased focus on perpetrators.

21 The first four themes I have identified represent
22 aspects of the problem which will require a suite of
23 complex solutions. The fifth and final theme is something
24 which could be part of those solutions.

25 That theme is the wonderful and extraordinary
26 quality of resilience demonstrated by the lay witnesses
27 who gave evidence before you and by the many people
28 working at the coalface of prevention, intervention and
29 response.

30 You heard from witnesses who have survived and
31 risen above terrible histories of trauma and violence, and

1 who were able to reflect with clarity and a great
2 generosity of spirit on their experiences.

3 You heard from experts in a range of health,
4 justice and community settings who respond to the needs of
5 victims and survivors on a daily basis and who remain
6 passionate about their work and open to ways in which they
7 can work more effectively.

8 You heard about a number of initiatives for
9 change being driven by front-line workers and by
10 communities.

11 The resilience of individuals and communities is
12 a resource upon which a family violence system can draw
13 and which it ought to support and encourage. Linked to
14 that resilience is great potential for change. The
15 initiatives under way in Maryborough and within the
16 Aboriginal community in the Mallee region are two examples
17 how communities can bring about change.

18 If, as many witnesses said, family violence
19 requires a response from the entire community, then the
20 resilience and change capacity of our community means that
21 a whole of community response is possible and should be
22 encouraged.

23 COMMISSIONER NEAVE: Thank you very much, Mr Moshinsky. As
24 Mr Moshinsky said, today is the final day of the Royal
25 Commission's four week block of public hearings. The
26 focus of our public hearings has been on the best way of
27 responding to the widespread and damaging nature of family
28 violence and the harm it causes to so many people in our
29 community.

30 Eight lay witnesses gave evidence based on their
31 experience of how current systems have helped or failed

1 them. We were all deeply impressed by the courage and
2 resilience of these lay witnesses. Each of them
3 demonstrated a deep commitment to sharing their experience
4 to help other people avoid family violence and to overcome
5 the barriers they had faced in order to live violence-free
6 lives. We give our deepest thanks to these lay witnesses.

7 Together with the evidence gathered in our
8 community consultations and our submissions, their stories
9 will assist the Commission to understand the very real
10 impacts of the policy and system-wide matters that we are
11 exploring.

12 We also heard from 160 professional witnesses.
13 Their evidence described the many different forms of
14 family violence, traced the history of current responses
15 and made many helpful suggestions about how to build on
16 the past and produce better responses to family violence
17 in the future. Several witnesses travelled from overseas,
18 interstate and regional areas of Victoria to give their
19 evidence. Others attended via videolink from a number of
20 different countries or from remote locations.

21 The witnesses have taken substantial amounts of
22 time out of their busy lives to provide witness
23 statements, prepare for giving evidence and appear at the
24 public hearings. We are grateful to all these witnesses
25 for generously sharing their expertise, experience and
26 time.

27 The Commission has heard evidence from people
28 working in a very broad range of areas relevant to family
29 violence, ranging from specialist family violence services
30 to mainstream health and community services, from
31 government departments and agencies to the private sector

1 and community run services, from peak bodies to small
2 community organisations representing particular population
3 groups. We have heard from both senior managers and
4 front-line workers, from policy makers, advocates and
5 researchers.

6 It is rare for judicial officers to give evidence
7 at a Royal Commission. Several judicial officers have
8 participated in these hearings. In particular, the
9 Magistrates' Court and the Children's Court demonstrated
10 their commitment to dealing effectively with allegations
11 of family violence. We had four witnesses from the
12 Magistrates' Court and the Children's Court. I note that
13 we have also received submissions from courts at all
14 levels, including the Federal Circuit Court and the Family
15 Court.

16 The breadth and depth of experience and expertise
17 of these witnesses has provided a very rich source of
18 information which will form our deliberations about
19 possible reforms. We are keenly aware that our
20 recommendations will build on the important work that has
21 been done by many of these people over many years. The
22 evidence has exposed the diversity of those affected by
23 family violence, its intergenerational effects and the
24 significant complexity involved in tackling such a
25 pervasive social problem. We are heartened by the
26 commitment which individuals and organisations have shown
27 in working together towards the common goal of preventing
28 and responding to family violence.

29 A great deal of the evidence has referred to the
30 large increase in people seeking remedies for family
31 violence and the burden this has placed on systems

1 designed to deal with much smaller numbers. The
2 Commission has heard detailed and valuable insights into
3 how to tackle this challenge. Some of the evidence
4 suggested that, although current systems are
5 under-resourced, increasing resources alone may not be an
6 adequate remedy. We will be required to consider how we
7 can use resources more effectively to reduce family
8 violence, to protect those affected by it and to enable
9 them to recover from family violence and also to make
10 those people who use family violence more accountable.

11 The hearings were structured around 20 separate
12 but overlapping modules. The topics which we examined
13 were identified in large part through the Commission's
14 consultation and submission processes. The evidence from
15 the hearings, with the exception of the evidence subject
16 to Restricted Publication Orders, is accessible through
17 the transcripts and witness statements that are available
18 on the Commission's website.

19 I just want to refer briefly to some of the key
20 issues covered in the evidence and these are not intended
21 to be comprehensive: The history of family violence
22 reform and the heroic work that women have done to help
23 women and children escape violence and to highlight the
24 role which gender inequality has played in family
25 violence; the fact that family violence has lasting
26 effects on children which may result in the transmission
27 of violence from generation to generation; the inadequacy
28 of accommodation for women and children leaving violent
29 relationships and the lack of accommodation options for
30 men excluded from the home, which may result in them
31 trying to return; the lack of resources to deal with

1 financial abuse, elder abuse and abuse of family members
2 by teenage children; the need to acknowledge and provide
3 more support to all groups that face barriers in reporting
4 family violence, including members of the LGBTIQ
5 communities, older people, disabled people and people from
6 culturally and linguistically diverse communities; the
7 particular difficulties faced by people affected by family
8 violence and service providers in rural areas; the
9 challenges of holding perpetrators accountable for their
10 violence, helping them to change their behaviour and
11 responding to perpetrators who have complex needs; the
12 importance of universal service providers such as maternal
13 and child health nurses, GPs and teachers, as well as work
14 colleagues, in identifying signs of family violence and
15 providing soft entry points for victims; the need to
16 support women at times that they are at the greatest risk
17 of violence: during pregnancy, after giving birth and when
18 taking steps to leave a relationship; the need to make a
19 range of services available to victims to keep them safe,
20 to equip them to make choices about the options that are
21 right for them and to empower and support them beyond the
22 crisis stage - for some women this may involve wanting to
23 remain in the relationship; the importance of therapeutic
24 interventions, especially for children; the innovations
25 which have been made by police and service providers from
26 the health, legal and specialist family violence sectors
27 to improve responses, including those that make use of
28 technology; the high rate of violence against women and
29 children in Aboriginal and Torres Strait Islander
30 communities and the important work these communities are
31 doing to reduce violence and provide support to members of

1 their communities who are affected by it; the roles which
2 schools and other community organisations could play in
3 preventing family violence; the importance of consistency
4 and reliability in responses from the police and courts;
5 the stress placed on workers in specialist family violence
6 services, police and courts as a result of the huge
7 increase in reporting of family violence incidents; the
8 impacts of fragmented and siloed services on people who
9 are seeking support and assistance; the multitude of
10 initiatives to address family violence which unfortunately
11 remain unevaluated and uncoordinated; and, finally, the
12 need to collect data on the extent of family violence
13 across all affected groups.

14 One of the unusual features of our process has
15 been to hear from a number of witnesses concurrently.
16 Sometimes we use this process to expose differences in
17 views about the most effective responses to family
18 violence. We appreciate the constructive and respectful
19 way in which people with strongly held and sometimes
20 divergent views have participated in our hearings. The
21 Commission has sought to create a space within which
22 different views might be explored and tested as we work
23 towards our findings and recommendations. Our ambition
24 has been to give people who take different approaches and
25 come from different policy backgrounds the opportunity to
26 engage in debate civilly and constructively.

27 We also hope that these public hearings have
28 helped to increase understanding in the community of the
29 pervasive and devastating effects of family violence. We
30 hope that our hearings will result in many fewer people
31 regarding violence within families as a private matter and

1 will foster greater recognition that this is an issue that
2 we all have a responsibility to help resolve.

3 We hope, too, that the hearings have encouraged
4 discussion and debate in the media, in workplaces,
5 educational institutions, sporting clubs, faith
6 organisations and other non-government organisations about
7 how to reduce family violence and ultimately to eliminate
8 it.

9 The Commission will now rise to reflect upon and
10 analyse the evidence and all of the views we have heard
11 about how best to improve the response to family violence
12 in Victoria. In the weeks ahead the Commission will
13 continue to review the submissions, some of which cover
14 topics not addressed in these hearings but which are
15 relevant to our terms of reference. We will also convene
16 a series of roundtable conferences on key topics which
17 will be suited to more targeted and informal examination.

18 The Commission also proposes to hold a further
19 short period of public hearings in the week commencing
20 12 October 2015. The purpose of those hearings will be to
21 explore any further issues arising out of our ongoing work
22 which may require discussion in a public forum. This
23 block of hearings may also provide an opportunity to
24 examine further some system wide issues such as
25 integration, coordination and governance arrangements.

26 Before rising we would like to acknowledge and
27 thank a number of people who have ensured these hearings
28 have proceeded smoothly: the transcribers, who have worked
29 very hard to record all of our public hearings accurately;
30 our technical operators; the team performing tipstaff
31 duties and offering support to witnesses. I would also

1 like to thank the representatives of the media who have
2 attended the hearings and who have reported on the
3 proceedings in a thorough and respectful way.

4 The Commissioners are most grateful for the
5 assistance of and detailed preparation undertaken by
6 Counsel Assisting and the members of the legal team in
7 devising the structure of the public hearings and in
8 identifying and questioning witnesses. We are also
9 grateful for the cooperation of and assistance provided by
10 counsel for the State and her legal team.

11 Finally, we would like to acknowledge all those
12 members of the public who have attended the hearings in
13 person or have followed our public hearings via the
14 webstreaming process. Many of the people who have watched
15 our proceedings have experienced family violence
16 themselves or have witnessed the impact of family violence
17 on those whom they love. Their interest in our
18 proceedings is an important reminder of the terrible
19 effects of family violence and of the significance and
20 ultimate purpose of this inquiry. Thank you.

21 ADJOURNED UNTIL MONDAY, 12 OCTOBER 2015