A. INTRODUCTION

1. In this case study the Royal Commission examined the past and present policies of Victoria Police and the Department of Health and Human Services (and its predecessors) (the Department) in relation to reporting and responding to allegations of child sexual abuse at youth justice centres and reception centres. These matters were given particular focus through the experiences of former residents of Turana, Winlaton and Baltara.

2. The evidence that was given by witnesses who had been in the custody of the State was shocking and demonstrated a profound failure by the State to care for children who were particularly vulnerable to child sexual abuse. It is with those failures in mind that the State seeks to develop and implement its contemporary policies.

3. The State acknowledges the failure of its institutions and policies that led to or compounded the abuse suffered by children. Dr Pradeep Philip, Secretary of the Department of Health and Human Services, gave evidence that the Department could and should have done more to protect children from the harm that they
experienced as a result of unacceptable past practices and failings whilst under the care of State.

B. Records

4. The State accepts that, for its former wards, having access to records that were kept of their time in care is important for a number of reasons.\(^1\) Accordingly, the regime to grant access to records under the *Freedom of Information Act 1982* (*FoI Act*) and the practices of the Department in assisting former wards to obtain their records play an important role in the lives of these people.

*Response times — proposed finding 59*

5. Section 21 of the FoI Act allows the Department 45 days to respond to a request for information. The average time that the Department takes to respond to a request is 32 days.\(^2\) However, delays can be experienced due to, amongst other matters:

1. The relevant records containing third party information. If the Department decides to release third party information it is required under s 33(3) of the FoI Act, if practicable, to notify the relevant third party of its decision. The third party then has the right to appeal the Department’s decision. The process for consultation and appeal adds to the length of time between application and receipt of information by a care leaver.\(^3\)

2. The volume of material that is held by the Department that needs to be searched each time a request is made and the number of requests that are made.\(^4\)

3. Previous record keeping practices can mean that files are lost or misplaced.\(^5\)

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\(^1\) See: transcript of S Hodgkinson, C9769:8–15; C9788:9–18 (Day C094) and transcript of P Philip, C9930:12–19 (Day C095).
\(^2\) Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [59].
\(^3\) Transcript of S Hodgkinson, C9813–4:18–14 (Day C094).
\(^4\) Transcript of S Hodgkinson, C9774:30–8; 9780:12–15 (Day C094).
6. Notwithstanding these explanations for why delays can be experienced by former wards seeking information from the Department, the Department accepts that “some former residents of State run youth training and reception centres continue to experience significant delays before receiving their ward files from the Department” as submitted by Counsel Assisting.\(^6\)

**Explanation of redactions — proposed finding 60**

7. The Department seeks to give as much information to applicants as possible. However, under the FoI regime some information must be redacted because it cannot be provided to the care leaver under law.\(^7\) The information that must be redacted includes certain:\(^8\)

   1. Personal information of third parties;\(^9\)
   2. Information provided in confidence;\(^10\)
   3. Information protected by other legislative confidentiality regimes;\(^11\) and
   4. Information that would indirectly lead to disclosure of material that must be redacted.\(^12\)

8. When responding to applicants under the FoI regime, the Department uses templates and fact sheets containing standard statements that explain the types of redactions that may be made to material.\(^13\) The purpose of these documents

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\(^5\) Transcript of S Hodgkinson, C9774:40–7 (Day C094).
\(^6\) Submissions of Counsel Assisting, SUBM.0030.001.0001 at 179.
\(^7\) Transcript of S Hodgkinson, C9779:13–17; C9813:1–3 (Day C094); Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [62] –[63].
\(^8\) Transcript of S Hodgkinson, C9779:5–16; C9779:23–37; C9812:13–37 (Day C094).
\(^9\) Freedom of Information Act 1982 s 33; Transcript of S Hodgkinson, C9799:1–4; C9812:20–24 (Day C094); Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [62], [64]–[71].
\(^10\) Freedom of Information Act 1982 s 35; Transcript of S Hodgkinson, C9812:20–24 (Day C094); Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [63].
\(^11\) Freedom of Information Act 1982 s 38; Transcript of S Hodgkinson, C9779:19–38; C9812:20–24 (Day C094) Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [63].
\(^12\) Transcript of S Hodgkinson, C9784:20–3; C9812:20–24 (Day C094).
is to guide staff on the response to make to applicants and to ensure that the information received by applicants is consistent and appropriate.\textsuperscript{14} In the case of responding to a request that has been received directly from a former ward (as opposed to a request made by an agent of a ward) officers of the Department will also verbally discuss the response with the former ward, including any redactions that have been made and the reasons for these.\textsuperscript{15}

9. Redaction decisions are made to ensure that the Department complies with its legal obligations. When explaining the nature of redactions that have been made the Department must ensure that the explanation does not, directly or indirectly, reveal the substance of the material that has been redacted.\textsuperscript{16}

10. For the reasons set out above, the State submits in considering proposed finding 60, submitted by Counsel Assisting, the Commission should note that general responses are provided so that the Department complies with its legal obligations and that in the case of an applicant who does not have an agent a verbal explanation of redaction decisions is given in addition to a written explanation.

\textit{Multiple requests — proposed finding 61}

11. The Department is in the process of implementing its Ward Records Plan. The purpose of this plan is to improve the storage and access to records held by the Department.\textsuperscript{17} Under the plan, 92,000 boxes of registers and indexes have been catalogued and stored and corresponding metadata records created in an electronic records management system.\textsuperscript{18} This has led to improvements in the ability of the Department to respond compendiously to requests for records.\textsuperscript{19}

\textsuperscript{14} Transcript of S Hodgkinson, C9781:20–1; C9803:22–5 (Day C094); Exhibit 30-0011, Family Information Networks and Discovery (FIND) Procedures Manual, DHS.3148.001.0138
\textsuperscript{15} Transcript of S Hodgkinson, C9781:34–6; C9782:21–3; C9784:28–30; C9803:27–35; C9804:2–5 (Day C094).
\textsuperscript{16} See, transcript of S Hodgkinson, C9779:24–9; C9784:20–30 (Day C094).
\textsuperscript{17} Transcript of S Hodgkinson, C9768:42–5 (Day C094); Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [28];
\textsuperscript{18} Transcript of S Hodgkinson, C9795:18–22 (Day C094).
\textsuperscript{19} Transcript of S Hodgkinson, C9773:32–5; C9795:18–22 (Day C094).
12. Where a care leaver’s records are held by a community service organisation, the Department seeks to assist a care leaver to locate his or her records.  

**Support for care leavers — proposed finding 62**

13. The Department does not use agents to deal with members of the public seeking access to records through the FoI regime. The use of the term agent in this context refers to an agent of an applicant who has sought access to the Department’s records on behalf of a care leaver. It follows that the Department has no control over the manner in which these agents (being an agent of the care leaver) provide support to care leavers when requesting and obtaining ward files from the Department. Approximately 70 per cent of record requests received by the Department come through an agent.

14. It follows from what is set out above that in proposed finding 62, submitted by Counsel Assisting, the reference to “or its agents” is inappropriate.

**C. HISTORIC POLICIES AND PRACTICES**

**Policies for responding to complaints of sexual abuse — proposed finding 54**

15. Proposed finding 54, submitted by Counsel Assisting, deals with policies of the Department for receiving and responding to complaints of child sexual abuse from the 1960s to the early 1990s. There was material before the Commission that suggested that the Department had, at least by the 1980s, developed policies that did deal with reporting and responding to allegations of child sexual abuse. Further, it would seem from the face of the relevant documents that,

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20 Transcript of S Hodgkinson, C9796: 46–C9797:26 (Day C094).
21 Exhibit 30-0039, Statement of S Hodgkinson, STAT.0622.001.0001 at [85]; Transcript of S Hodgkinson, C9777–8:9–16 (Day C094).
22 Transcript of S Hodgkinson, C9776–8:4–7; C9793:7–11 (Day C094).
23 Transcript of S Hodgkinson, C9773: 24–29 (Day C094).
24 Exhibit 30-0046, Statement of Varughese Pradeep Philip, STAT.0626.002.0001 at [53]-[56] and Annexure C To Second Witness Statement of Varughese Pradeep Philip, STAT.0626.002.0019; see, for example: Exhibit 30-0011, Director’s Circular - Policy; Procedures for Divisional Action in Matters where Assault on Staff, Assault by Staff, or Assault by Trainee/Ward on Trainee Ward is alleged, 20 September 1982, DHS.3026.0001.0044; Exhibit 30-0011, Director’s Circular: The Incident Reporting System, 1983, DHS.3068.0006.0068; Exhibit 30-0011, Incident Reports, 30 January 1986, DHS.3049.0005.0034; Exhibit 30-0011, Departmental Instruction: Reporting of Incidents Involving CSV, 16 June 1988, DHS.3068.0005.0043; Exhibit 30-0011, Staff Guidelines in Relation to
whilst not institution-specific, they would have applied within Turana, Winlaton and Baltara (see proposed findings 11, 19 and 48). Accordingly, the State submits that in considering proposed finding 54 submitted by Counsel Assisting, the Commission ought to note that some relevant written policies did exist by the 1980s. By making this submission the State does not contend that the policies that commenced operation in the 1980s were adequate to protect children from child sexual abuse at the institutions at the relevant times.

The reporting of incidents — proposed findings 13 and 49

16. Proposed findings 13 and 49, submitted by Counsel Assisting, both refer to factors that prevented reports of child sexual abuse from reaching senior management at Turana and Baltara respectively. The proposed finding in relation to Baltara (proposed finding 49) notes that both hierarchical staffing structures and the culture amongst staff were contributing factors. However, the proposed finding in relation to Turana (proposed finding 13) only refers to hierarchical staffing structures. The totality of the evidence would suggest that both factors (hierarchical staffing structures and the culture amongst staff) were present at Turana at the relevant time. Accordingly, the State submits that in considering proposed finding 13 submitted by Counsel Assisting, the Commission ought to consider whether that proposed finding ought to be consistent with proposed finding 49.

Voluntary placement of children

17. Counsel Assisting notes in paragraph 30 of her submissions:

During the 1970s and 1980s, there was a significant decline in the number of State wards. The introduction of welfare payments for single parents by the Commonwealth Government and the end of the practice of parents placing children voluntarily into children’s homes contributed to the decline.

18. However, parents remain able to place children voluntarily into State care. The Children, Youth and Families Act 2005, under Part 3.5, provides for the...
voluntary placement of children by their parents into out of home care. The number of children under childcare agreements is published annually on the Department’s website.\textsuperscript{25}

D. CONTEMPORARY PRACTICES OF VICTORIA POLICE

Absconding — proposed finding 53

19. Victoria Police is currently developing a State-wide policing model to improve how the organisation responds to children in out of home care who are at risk of sexual exploitation.\textsuperscript{26} Victoria Police is developing this model closely with the Department to ensure that responses are integrated between the two organisations.\textsuperscript{27} A focus of the model is Victoria Police's response to children in out of home care who go missing, as this is a key risk factor for sexual exploitation.\textsuperscript{28} Aspects of this model will be applicable to children who go missing from youth justice centres.\textsuperscript{29}

Date: 10 November 2015

CHARLES SCERRI
Chancery Chambers

LIAM BROWN
Castan Chambers

ASTRID HABAN-BEER
Owen Dixon Chambers East


\textsuperscript{26} Exhibit 30-0041, Statement of S Fontana, STAT.0623.001.0001 at [37] and [46]; Transcript of S Fontana, C9833: 21-41; C9836: 30-45 (Day C094).

\textsuperscript{27} Exhibit 30-0041, Statement of S Fontana, STAT.0623.001.0001 at [37] and [46]; Transcript of S Fontana, C9876-7: 46-5; C9852: 36-39 (Day C094).

\textsuperscript{28} Exhibit 30-0041, Statement of S Fontana, STAT.0623.001.0001 at [37]; Transcript of S Fontana, C9876-7: 46-5 (Day C094).

\textsuperscript{29} Transcript of S Fontana, C9833: 21-41 (Day C094).