

T R A N S C R I P T

SELECT COMMITTEE ON THE EARLY CHILDHOOD EDUCATION AND CARE SECTOR IN VICTORIA

Inquiry into the Early Childhood Education and Care Sector in Victoria

Melbourne – Monday 8 December 2025

MEMBERS

Anasina Gray-Barberio – Chair

Michael Galea – Deputy Chair

Melina Bath

Georgie Crozier

Jacinta Ermacora

Sarah Mansfield

WITNESSES

Marlo Baragwanath, Ombudsman,

Andrew Adason, Deputy Ombudsman, Prevention, and

Corey Stevens, Principal Investigator, Victorian Ombudsman.

The CHAIR: Good afternoon and welcome back to the Select Committee on Early Childhood Education and Care Sector in Victoria public hearing.

Before we begin I would like to respectfully acknowledge the Aboriginal people and traditional custodians of the various lands that we are gathered on today, the Wurundjeri Woi Wurrung people, and I would like to pay my deep respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee.

I also welcome any members of the public in the gallery or watching via live broadcast. I remind those in the room to be respectful of proceedings and to remain silent at all times.

All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and provisions of the Legislative Council standing orders. Therefore, the information you provide during the hearing is protected by law. You are protected against any action for what you are saying during this hearing, but if you go elsewhere and repeat the same things, these comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of the transcript following the hearings. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and the organisation you are appearing on behalf of today?

Marlo BARAGWANATH: Marlo Baragwanath, Victorian Ombudsman.

Andrew ADASON: Andrew Adason, Victorian Ombudsman.

Corey STEVENS: And Corey Stevens, Victorian Ombudsman.

The CHAIR: Thank you and welcome to you all. We are now going to introduce ourselves. My name is Anasina Gray-Barberio, the Chair and also Member for Northern Metro Region.

Michael GALEA: Good afternoon. Michael Galea, Deputy Chair, Member for South-Eastern Metropolitan Region.

Georgie CROZIER: Good afternoon. Georgie Crozier, Member for Southern Metropolitan Region.

Melina BATH: Hello. Melina Bath, Eastern Victoria Region.

The CHAIR: And we also have some colleagues online.

Jacinta ERMACORA: Jacinta Ermacora here, Western Victoria Region. Hello.

The CHAIR: I do not see Dr Mansfield. That is okay. We would now like to invite one of you or all of you to make your opening statement. Thank you.

Marlo BARAGWANATH: Thank you, Chair. I would also like to begin by acknowledging that we meet today on the unceded lands of the Wurundjeri people of the Kulin nation, and on behalf of the Ombudsman's office I pay my respect to their elders, past and present.

As you know, I am joined today by Deputy Ombudsman Andrew Adason and Principal Investigator Corey Stevens. On 30 July 2025 the Legislative Council resolved two important matters: first, it referred a matter to

the Ombudsman's office requiring me to forthwith investigate the performance of the quality assessment and regulation division of the Department of Education in monitoring, investigating and enforcing Victoria's child safe standards and the national quality framework; and second, it established this select committee to inquire into the early childhood education and care sector. We now find ourselves potentially examining similar issues. In terms of what I can and cannot talk about today, I need to say up-front that the Ombudsman investigations must be conducted in private. This is a requirement of our legislation, which, as you will appreciate, is to ensure procedural fairness is provided and limit any prejudice to our investigation; it means, however, that I cannot discuss the progress of the investigation arising from the Legislative Council's 30 July referral, other than to say that it is ongoing and our report will ultimately be provided to the President of the Legislative Council and tabled in Parliament. We are progressing our investigation as fast as possible; however, timeframes depend on a range of factors, some of which can be outside of our control.

Since starting in the role at the end of March 2024 I have received four referrals from Parliament that I must investigate. This compares to only eight referrals received by the office in its first 50 years. To be really clear, I do not oppose receiving referrals from Parliament – the Ombudsman is, after all, the Parliament's independent investigator – however, it would be remiss of me not to mention the significant resourcing challenges they present and one other relevant limitation to the *Ombudsman Act*. As I said in my recent annual report, although amounts in dollar terms appear stable, I am increasingly concerned that core integrity agencies are receiving a diminishing proportion of resources relative to the public sector they are charged with overseeing. Despite being the most community facing and having an oversight jurisdiction comparable to its peers, the Ombudsman has consistently received the least investment among core integrity agencies. Overall my office's budget is approximately 35 per cent that of IBAC's and 39 per cent that of the New South Wales Ombudsman, despite having a similar remit.

The reason I bring this up is because every parliamentary referral I receive means I have to reallocate resources, slowing down other important investigative work. While I have so far been able to recoup the cost of investigating referrals by Treasurer's advances, this is not guaranteed and makes planning or investing in other functions like prevention extremely challenging. As you will also appreciate, skilled investigators do not grow on trees, which can make standing up an investigation even harder. I have read debates over the years where members have said, 'Oh, well, we can't send that to the Ombudsman; she has too much on already.' To that I would say, rather than refraining from asking me to investigate serious matters of public concern, which this is, please instead ensure that the Ombudsman has sufficient, stable and secure funding to do the job that you and your communities expect.

In addition to resources, we also need to ensure we have the powers to do the job. For the most part we do; however, we should be able to obtain cabinet information where necessary for the purposes of an investigation and be able to include such information in a report to Parliament where it is in the public interest to do so. This was recommended by my predecessor in her investigation into the politicisation of the public sector, and it is equally relevant today.

Coming back to why you invited me today, while I cannot comment on our referral, I can assist the committee by outlining my jurisdiction in relation to the early childhood education and care sector and talk to the findings from a September 2022 parliamentary report by the Ombudsman's office concerning a former youth worker's unauthorised access to private information about children. Corey Stevens here led that investigation.

In relation to complaints, we receive on average 18,000 complaints each year about matters within our jurisdiction, which essentially covers all public bodies, including departments, councils and statutory authorities and private bodies performing public functions on behalf of the state. The Ombudsman is also Victoria's human rights complaint handler and investigator, which is particularly important when we think about laws, policies and public services that impact children – from health to education and even criminal justice – and that every child in Victoria has the right to such protection, as is in their best interest and is needed by them by reason of being a child.

In relation to early childhood education and care services in Victoria, most are managed by private bodies that are not within the Ombudsman's jurisdiction. The exceptions are services operated by state and local government – for example, out-of-school-hours care and public schools. Data from the Australian Children's Education and Care Quality Authority indicates there were 4941 early childhood education and care services managed in Victoria as at 1 October 2025. Of these, 340, or 7 per cent, of them were operated by state or local

government and a further 202, or 4 per cent, were operated by government schools. The remainder are operated by private for-profit providers, not-for-profits and independent schools. This means about 89 per cent of early childhood education and care services are not within the Ombudsman's direct jurisdiction. That said, my office can receive complaints about the state regulators, including the quality assessment and regulation division of the Department of Education and the Social Services Regulator, which will have an expanded role under the social services regulation amendment Bill currently before the Parliament. This maintains our independent oversight role as distinct from our role as a regulator.

Moving to the 2022 investigation, as I am sure you know, the report relates to youth and family services rather than early childhood services. However, many of its lessons on data protection, worker screening and human rights apply wherever systems interact with children and their families. The investigation examined the conduct of a former youth worker who was convicted of sexually assaulting a child, who the report referred to as Zack. After the youth worker's conviction the media reported that the worker had misused credentials provided by his former employer, a community service organisation, to access sensitive information about children, including, potentially, Zack. Aside from the lessons on information security, data governance and ensuring trauma-informed communication when dealing with victim-survivors and their families, most relevant to your inquiry, the report highlighted serious limitations in Victoria's working with children check framework as it existed at the time. The then Ombudsman asked: how did this person get a job working with children in the first place? When he applied for a job in Victoria he was already the subject of multiple serious interstate child protection concerns, including allegations of rape and sexual exploitation of a child, and apprehended violence orders, but because he was never charged with a crime, this information did not appear in his national police check, nor was it disclosed to the screening authority. The investigation also found that the inadequacies in Victoria's child safety screening legislation meant that these prior investigations would not have been grounds to refuse him a working with children clearance, even if the screening authority had been aware of them at the time.

The case exposed serious flaws in Victoria's working with children check scheme. The screening authority was unable to use police and child protection intelligence, even where it indicated serious child safety concerns. But just as significantly, Working with Children Check Victoria initially had no statutory basis for revoking the worker's clearance, despite escalating concerns about him. The former Ombudsman recommended amending the *Worker Screening Act* to give the screening authority stronger powers to protect children, including allowing them to consider any relevant information about an applicant's risk to children; refuse or revoke a working with children check if the person poses an unjustifiable risk, even without a criminal record; and reassess clearances proactively, suspend clearances during investigations and act quickly to keep children safe.

We monitor the implementation of our recommendations and acknowledge the social services regulation amendment Bill 2025, as second read in the Council on 20 November. I think it has been passed since by the upper house and is back to the Legislative Assembly. If passed, we believe the Bill would acquit our recommendations to improve the *Worker Screening Act*. Thank you for the opportunity to contribute, and I am happy to answer any questions if I can.

The CHAIR: Thank you very much, Ombudsman Baragwanath. I might start first. Can I ask, just off your opening statement there, you received complaints regarding regulators – how many have you received in the last year?

Marlo BARAGWANATH: In this sector, we have had about QARD – from 1 July 2022 to 30 June 2025 we received 16 complaints about QARD at the Department of Education, which averages about five complaints per year. Complaints typically relate to their handling of complaints and notifications about early childhood and education services, including communications with educators and parents – so not many.

The CHAIR: That is okay. And in terms of specificity, is it that they are not handling cases in a responsive way or to the satisfaction of the complainant?

Marlo BARAGWANATH: A whole range of issues, but, yes, those sorts of things. It is often what we call classic sort of Ombudsman complaints around communication, timeliness of handling complaints, clarity of communication and those sorts of things.

The CHAIR: Okay, great. Now for the record, the Ombudsman has identified longstanding intelligence gaps in the working with children check since 2022, in the report that you mentioned in your opening

statement. In that context, what is your view about the working with children scheme, the reportable conduct scheme, coming under the single regulator, the SSR? Do you think this will resolve system fragmentation?

Marlo BARAGWANATH: I do not have a view about where the regulation should sit. We obviously made recommendations about how the *Worker Screening Act* should function. It is a matter for government where various aspects of regulatory responsibility sit. We will just continue to monitor complaints and issues that we see as it is implemented. That is really where our jurisdiction comes into play.

The CHAIR: Okay. Given the pattern of findings across multiple reports over the years, do you believe that the current child safety crisis reflects broader cultural issues when it comes to child safety?

Marlo BARAGWANATH: I do not think that is something we can really comment on. We really deal with the complaints and matters that come before our office and look at systemic issues that are raised by those complaints at the time, rather than looking at sort of broader cultural underpinnings of the sector.

The CHAIR: Okay.

Marlo BARAGWANATH: We are currently investigating QARD at the moment. We will obviously have more to say when we table a report. That may look at the structure of the childcare system and those sorts of things, but we are not there yet.

The CHAIR: Okay. You mentioned at the beginning about investment, and that obviously includes investment into the Victorian Ombudsman to ensure that you are able to perform your functions and powers adequately. What are the risks involved when you are not adequately invested in, given government funding, to be able to perform your functions? What gives?

Marlo BARAGWANATH: On any given day we are constantly juggling between what matter should get prioritised in terms of being investigated, what are the systemic issues that we can look at. If we do not have adequate investment, we are constantly having to make those choices. It means some investigations slow down. It means some go faster than others. It means some we just cannot get to as yet. We still answer the phones all day, every day, and deal with the complaints that are coming in the door and work to get those resolved where we can. I would never suggest that people are not getting the help they need when they call the office, but it is really being able to – which is what the interesting part of this role is – look at systemic issues and being able to highlight where things could be done better. We are constantly having to cut our cloth and pick which matters are a priority, rather than looking at everything that comes before the office.

The CHAIR: Mr Stevens, you were the principal investigator during the 2022 investigation. Can you please offer some more information to the committee around the gaps in the working with children check and strengthening that probably still needs to happen?

Corey STEVENS: Thank you. Yes. So we, in a nutshell, identified that there were serious shortcomings in the *Worker Screening Act* as it existed at the time, and shortcomings particularly when compared to interstate jurisdictions. We found that Victoria's scheme was essentially the most limited in terms of what the screening authority was able to take into account when making decisions to grant and revoke clearances. So the fundamental focus of our recommendation was really on enhancing the information that the screening authority could obtain and have regard to, and that would include things that do not just result in criminal charges or substantiated conduct findings but criminal intelligence, apprehended violence orders and serious child protection concerns, including concerns from interstate, as was in the case of the matter that we investigated.

The CHAIR: Thank you. Obviously, we have seen a recent overhaul of the working with children check scheme. Are you confident that the scheme that the Victorian government has brought into place and overhauled is going to ensure that it has the levers to refuse applicants clearance if it reasonably satisfies that they pose an unjustifiable risk to the safety of children?

Corey STEVENS: I think what we can say is that in our view it does acquit our recommendation, so it meets or addresses the shortcomings that we identified in our investigation. So I think it is fair to say we do not have any concerns about the Bill that is before Parliament.

The CHAIR: That is great. Thank you. Just further to the investigation that was done in 2022, is there something here that speaks to the government not prioritising child safety over bureaucratic technicalities when it comes to working with children checks?

Corey STEVENS: I might hand to Marlo.

Marlo BARAGWANATH: Yes, I do not think that is something we can necessarily comment on in terms of where government priorities sit. These recommendations were made in 2022, and they are being enacted this year, and that is probably about all I would say about that.

The CHAIR: Yes. Okay. Thank you. Could you explain to the committee how your office becomes involved with reports? So when complaints are coming through and concerns are raised with your office around suspected or alleged abuse of children, what interaction, if any, does your agency have with regard to speaking to the other regulators, like notifying other regulators – that is, QARD or SSR?

Andrew ADASON: I would not describe the Ombudsman as a regulator. We are an oversight body, and we can take complaints about some of the regulators, so it is a slightly different position that we are in. If we receive complaints that are better directed to another organisation, depending on the complainant and their capability we can provide them that information or connect them directly to the agency that they should be contacting. We also do have information-sharing powers under our legislation. So if we receive information that relates to allegations of child sexual abuse that needs to be reported to police, we can pass on that information – of course we would.

The CHAIR: Does the underinvestment by government impact any of these, like information sharing and intelligence?

Andrew ADASON: Well, no. If we received the information that is required to be passed on to another agency, then we would do that. We would just make that happen.

The CHAIR: I guess what I mean is ensuring that you are resourced enough –

Marlo BARAGWANATH: To do it.

The CHAIR: Yes, resourced enough to be able to carry out those information-sharing functions.

Marlo BARAGWANATH: I think any time we have become aware of something that might relate to harm or self-harm or criminal offending, we would refer that asap. I do not think that is something that we want to be holding onto when there is another authority that can more appropriately deal with the immediate risk to someone. It might mean that other complaints do not get addressed as quickly as possible, but there is no way we would slow down and be like, 'We'll get to that police referral next week' or that referral to QARD next week. That would happen pretty instantaneously.

The CHAIR: Okay. Thank you. Mr Galea.

Michael GALEA: Thank you, Chair. Thank you all for joining us. Ms Baragwanath, in response to the Chair you said that you receive about on average five complaints a year in relation to QARD –

Marlo BARAGWANATH: In the last three years.

Michael GALEA: In the last three years, yes. It actually struck me as being a bit lower than I would have expected. Is that low by most government agency terms or is it all relative?

Marlo BARAGWANATH: We get 18,000 complaints a year about 1000 different public sector bodies, although only about 500 of them show up on average in our complaints data every year, so it is five complaints per year out of the 18,000 that we receive.

Michael GALEA: Sure. Thank you. As you know, the SSR will be taking on a number of functions, including the reportable conduct scheme that is currently administered by the CCYP, as are the child safe standards. Do you have any information on how many complaints you have dealt with for the CCYP in relation to those two schemes?

Marlo BARAGWANATH: No, not off the top of my head. We could take that on notice, though, Mr Galea.

Michael GALEA: Thank you very much. You indicated in your opening remarks, and again, Mr Stevens, just now, that you believe that the SSR Bill that is going through the Parliament and passed the upper house last week acquits the recommendations of the 2022 Ombudsman's report. Can you elaborate in terms of any further detail or any specific things that you think have met those recommendations?

Marlo BARAGWANATH: Corey.

Corey STEVENS: I think the main feature of the Bill that actions our recommendation is the proposal to empower the screening authority with the ability to obtain and consider what the Bill defines as 'child safety risk information'. We have had a look at the Bill and the definition of that term specifically. It does seem broad enough to encompass essentially all of the conduct that we identified in our 2022 investigation that was unable to be considered by the screening authority at that time.

Michael GALEA: Would that include the ability for the regulator to be able to immediately suspend –

Marlo BARAGWANATH: And reassess.

Michael GALEA: the working with children check?

Marlo BARAGWANATH: Yes.

Corey STEVENS: Yes. It is my understanding that the screening authority does have a suspension power at the moment, but certainly our recommendation was to allow that authority to consider what the Bill calls 'child safety risk information' in making that decision to suspend.

Michael GALEA: And that would align with changing the weighting from balancing the need for immediate action with due process for the individual – that shifting of weighting to be much more solely focused on child safety –

Marlo BARAGWANATH: On the child.

Michael GALEA: Would you consider that that measure in particular would acquit the recommendations of the report?

Corey STEVENS: Yes, in a nutshell. I think it is important that the decisions made by the screening authority still provide procedural fairness to individuals who hold clearances or who might be applying for a clearance, but certainly we recognised a need to empower the screening authority to act in those cases where there is fundamentally an immediate risk of harm to a child.

Michael GALEA: That is good to know. Obviously the alignment – making sure that we are here to ensure that the legislation that has gone through is indeed acquitting the rapid review but indeed the very important work that the Ombudsman has done as well, so thank you very much for that.

The SSR will, as you know, have a new shared intelligence and risk-assessment capability that can also take into account broader information. I suspect I know the answer from what you have just said, but would you say that this is also critically important for it to have in order to do its job properly?

Marlo BARAGWANATH: I think for any regulatory agency intelligence is vital for it to be able to effectively understand the context in which it is regulating and to make decisions about where it should put its regulatory effort. Regulators cannot do their work without having well-developed intelligence functions that can very quickly analyse large volumes of data.

Michael GALEA: And from your perspective as one of the integrity and oversight agencies that we have in this state, is it your view that having that all-in-one agency that can be solely responsible is likely to be more effective than having multiple agencies administer different parts of the scheme, where things could fall through the cracks?

Marlo BARAGWANATH: Look, again, where various responsibilities sit is a matter for government, but I think to the extent that information sharing can happen quickly, seamlessly and smoothly, that is to be encouraged, and where risk can be very quickly transmitted and dealt with between agency or within an agency, that is also very important.

Michael GALEA: Thank you. I am wondering as well – we have spoken extensively this morning about the interplay between each state government and the Commonwealth government in relation to funding or different regulatory responsibilities when it comes to this sector. The rapid review talked about the importance of a national approach to systems, and one such example was the national educator register for early childhood. Do you consider this work to be important? Do you consider it to be an important part of the process, or are you more focused on what can be delivered and achieved at a state level?

Marlo BARAGWANATH: Our jurisdiction covers the state, obviously, and state bodies, and that is what we are concerned with – the decisions and actions of state government bodies. That is where our jurisdiction lies. So I do not think that is something that we will be turning our mind to.

Michael GALEA: Sure. The rapid review also discussed how appropriate recruitment practices are essential and that no-one should be able to work in the sector unless their credentials are verified and checked and their work history checked as well. Would that be a statement that you agree with, that verification at this step is critical and that there cannot just be a reliance solely on, for example, the working with children check system?

Marlo BARAGWANATH: I think our investigation very directly speaks to that already.

Corey STEVENS: I think ‘yes’ is the answer. In the investigation that we conducted in 2022 we found that the perpetrator of child sexual abuse in that matter had essentially falsified their qualifications while they held a working with children clearance. They had actually never worked with children before, and had gone to the trouble of essentially providing false references and the like. So yes, it is very important that we still screen the workers that come into contact with children.

Michael GALEA: Yes. So you want to have the multiple layers of intervention, in case one system fails, that leaves that – yes.

Corey STEVENS: Exactly.

Michael GALEA: Sure. Thank you. Another thing that came up pertinently in the rapid review was the physical layout of early childhood centres and the visibility between rooms, height levels of windows et cetera. Is that something that you considered in your report?

Corey STEVENS: No, no.

Marlo BARAGWANATH: No – different context. Not in early child care.

Michael GALEA: Yes, no problem. I believe my time is up, so I will leave it there. Thank you.

The CHAIR: Thank you, Mr Galea. I would like to invite you, Ms Crozier, now, to ask your questions. Thank you.

Georgie CROZIER: Thank you very much, Chair. Thank you all for being here. I appreciate the work that you do on behalf of the Victorian public. You do incredibly important work, so thank you. In your opening remarks you did mention at length about the resourcing. Can I put on record that the opposition has been calling for increased resourcing for your office to do this work. And Mr Stevens, can I commend you on this report that you have referred to. In the foreword, the first paragraph says:

The sexual assault of a child by a former youth worker, a person once placed in a position of trust, is inherently shocking. But the impact on one family went far beyond the assault.

It was very explicit in your report that you provided to the public and to government around this particular case and those inherent risks and how shocking it was. You made that recommendation – recommendation 1:

Amend the Worker Screening Act 2020 (Vic) to allow the Secretary to the Department of Justice and Community Safety to:

And you lay it out very well in your opening remarks about strengthening those powers for working with children checks to prevent this from occurring. That report was tabled and made public in September of 2022, yet nothing was done and highlighted until recently. Was the office frustrated with the lack of uptake by the government in addressing this very issue that you raised?

Marlo BARAGWANATH: The power of the office is to make recommendations, not direct. And of course we work as hard as we can to craft meaningful and impactful recommendations that really respond to the risks that we have highlighted in our reports. As to why the government does or does not accept recommendations, that is a matter for them. We follow up on implementation to see how they are going with progressing those recommendations. We do generally – and hopefully I will be tabling a follow up report next year – follow up on recommendations, where they are at, whether they have been implemented et cetera, and, again, say, ‘We have made this recommendation,’ where it is at publicly. We do follow up on the recommendations to see where they are at and whether they are being implemented. Again, ‘frustration’ is probably not quite the right word. We doggedly follow up, though, on our recommendations to see what has become of them.

Georgie CROZIER: I questioned the Department of Education if they had read this report, and they said yes – virtually, as it was tabled, they read it – but they did nothing. I am wondering in terms of follow-up of the implementation, could you provide to the committee the timelines and who you followed up with just so that we have a thorough understanding about what happened? Because I think it is quite important that we understand that basically nothing happened for three years until recent allegations.

Marlo BARAGWANATH: Yes.

Georgie CROZIER: I think that is important, because clearly something has gone wrong here; it has fallen through the gaps. We need to understand when you followed up, who you followed up with. Maybe you could provide to the committee who you followed up with. Was it the Attorney’s office? Who did you follow up with? And what were the responses that you received from those follow-ups?

Marlo BARAGWANATH: Yes. In March 2023 we followed up with justice – I am not entirely sure who at justice – and we were informed that the recommendation was under consideration. In October 2023 we again followed up, and justice informed us that the recommendation remained under consideration and noted that the working with children check scheme was closely linked to the reportable conduct scheme, which we understand was then under review. In July 2023 we separately sought an update on the recommendation from the then Attorney-General and –

Georgie CROZIER: From the Attorney-General herself or the office?

Marlo BARAGWANATH: Yes.

Georgie CROZIER: What was her response?

Marlo BARAGWANATH: We did not receive a response. Then in July 2024 justice informed us the recommendation remained under consideration.

Georgie CROZIER: You have just told the committee that you followed up three times: March 2023, October 2023 and July –

Marlo BARAGWANATH: 2023 and July 2024. Sorry; I had them slightly out of order.

Georgie CROZIER: That is okay. And it was under consideration?

Marlo BARAGWANATH: Yes.

Georgie CROZIER: And the Attorney-General herself provided no response when you followed up?

Marlo BARAGWANATH: No.

Georgie CROZIER: Given the serious nature of this report, given the serious nature of sexual assault, given the serious recommendations and the work that you put in, this recommendation was not that hard to

implement. I just find it extraordinary that there was no response whatsoever. Does that occur regularly from your office to government?

Marlo BARAGWANATH: It is a mixed bag, as you can imagine. A lot of them are accepted in principle. A lot of them are implemented fairly quickly. A lot of them are not. I think 90 per cent of the recommendations over my predecessor's term were accepted by government. As to the percentage that have been implemented since then, I would have to check.

Andrew ADASON: I mean, we track.

Marlo BARAGWANATH: We do track.

Andrew ADASON: Our general processes, depending on the nature of the recommendation, will depend on the frequency and that we are following up on it. A recommendation for legislative reform we do appreciate can take some time. We make the recommendations that we think are justified by the evidence in our investigations. We can follow up as much as we can, but ultimately law reform is a matter for –

Marlo BARAGWANATH: The government and the Parliament.

Andrew ADASON: the government and the Parliament.

Georgie CROZIER: Surely in your experience you would have got some response to say, 'Yes, we are working on reforming the legislation or taking into consideration recommendation 1 that you have highlighted.' Given it was a serious issue – Mr Adason, you said at the start of that response 'depending on the nature of the inquiry' – did you deem this so serious that it needed regular follow-up? Or was it just a standard follow-up? Or was there an undertaking from the office that it needed to be followed up given the serious nature of what you had been dealing with?

Andrew ADASON: So of course a very serious subject matter and a serious recommendation – the follow-up, as Marlo has outlined, that we made – and it would have been also made in the context of other recommendations as well, so following up on a suite of recommendations about where they are with various departments and various agencies – in this particular case I think there were conversations between probably Justice and the Department of Government Services, which was also involved in the working with children screening process, but it remained under consideration until, obviously, the Bill is before Parliament now.

Georgie CROZIER: Thank you very much for your work and for appearing before us today.

The CHAIR: Thank you, Ms Crozier. I am now going to invite Dr Mansfield to ask you questions. Thank you.

Sarah MANSFIELD: Thank you, and thank you for appearing today. Your office conducted an investigation, which you reported on in February this year. This investigation was about the Department of Education's responses to allegations and disclosures of sexual abuse at a Victorian government primary school. You found in your report that the department's response at the time was inadequate, and in some respects seriously so, and that, for example, the department did not follow its own policies and it did not meet its legislated responsibilities and therefore failed to prioritise the safety of children and the welfare of their families. Obviously this was in relation to a specific primary school, but are you able to comment about whether that investigation suggested any broader systemic failings with respect to the department's handling of these sorts of allegations?

Andrew ADASON: I think for this particular investigation it was a whistleblower.

Marlo BARAGWANATH: It was.

Andrew ADASON: It was a public interest complaint, so the scope of the investigation was quite specific to the allegations that were under consideration rather than a broader systemic review. It was quite a focused and targeted investigation about this instance.

Marlo BARAGWANATH: But I think through that process we did identify that we thought there should be better internal coordination with the department in terms of support for children that might be victims and their

families and better communication with them – so taking that quite specific issue and then identifying some of those systemic things. Whether that was a cultural issue or a resourcing issue is really a question for the department, but we made those recommendations to improve the system for if there are unfortunately more victim-survivors in the future.

Sarah MANSFIELD: Thank you. You have undertaken a number of investigations over the past decade. The one – I think it has been referenced – in 2015 into the Department of Education; and there was the one that you mentioned before that, although it was focused, identified some systemic issues. I guess from the different investigations you have undertaken around childhood sexual abuse and the department's response to it, are there any broader learnings or insights from those that would be helpful for the committee?

Marlo BARAGWANATH: Dr Mansfield, I think that might be something we need to take on notice, just in terms of – I am obviously less than two years in the role – it might be a reflection piece that we need to do. There definitely is knowledge and views that sit in the office, but we might need to take that on notice and come back to you.

Sarah MANSFIELD: Okay. Thank you. Going to the issue of working with children checks, you have commented on that a little bit. Are you satisfied with the government's response to the working with children check scheme and some of those issues you highlighted earlier that your office had identified with that scheme?

Marlo BARAGWANATH: I think we are confident that the reforms that are currently before the Parliament address the recommendations from our 2022 report. Obviously I do not have broader views about the scheme, and we will not until it is in operation and we see how it is going, but safe to say that the Bill that is currently before Parliament addresses our recommendations.

Sarah MANSFIELD: One of the concerns that comes up is around unsubstantiated claims and how they then might interact with working with children check processes. Do you have any views or recommendations around that?

Marlo BARAGWANATH: As I think Corey mentioned before, we are very comfortable with the revised definition of child safety risk information, that it can take into account things that have not resulted in convictions or disciplinary findings and that it can be intelligence, apprehended violence orders, those sorts of things. We think that broader definition will capture a broader base of information.

Sarah MANSFIELD: Great. I know you said that you feel that your recommendations have been responded to, but are there any other gaps that you have identified in that working with children check scheme more broadly, around child safety and the early childhood education and care settings, that you think should be considered?

Corey STEVENS: Thank you. I think the short answer is no. We really took the opportunity in our 2022 report to highlight all of the shortcomings that we had identified, noting that in that case we were dealing with a case study of one. It was one specific incident that we investigated. But I do not think there are any other shortcomings that we have identified in the meantime.

Sarah MANSFIELD: Okay. Thank you. Have you received any complaints about the former regulator, QARD?

Marlo BARAGWANATH: Yes, in the three-year period from 1 July 2022 to 30 June 2025 we had about 16, which is on average about five complaints per year, so not a lot. They typically relate to handling of complaints and notifications about various early childcare services.

Sarah MANSFIELD: Are you able to provide any more detail about what the complaints were or the handling of those issues – like, what are the issues that are being complained about?

Marlo BARAGWANATH: We will have to take that on notice, Dr Mansfield, and come back to you on that. And given that it is such a small pool, we also need to be careful that we appropriately de-identify as well.

Sarah MANSFIELD: Yes. It is just for the committee's benefit, to get a sense of the sorts of things that are being complained about. How effective do you think the complaints and reporting mechanisms are when it comes to capturing some of those safety concerns, based on the work that you have done?

Corey STEVENS: We are currently investigating it.

Marlo BARAGWANATH: Given our current investigation, Dr Mansfield, that is probably something we are looking at now, which, given that our investigations have to be conducted in private, I probably cannot comment on at the moment. But you will read all in our report when it is tabled.

Sarah MANSFIELD: Okay. Thank you. I would like to follow up on Ms Crozier's line of questioning, around the 2022 recommendations not being implemented for several years. What risks to child safety do you believe may have remained unaddressed in the interim?

Corey STEVENS: I think they are really the risks that are identified in our 2022 investigation report: so a risk that clearances could be provided to people who might pose an unjustifiable risk to the safety of children but who had not yet been charged with a relevant criminal offence or been the subject of a substantiated finding, and a risk, likewise, that the screening authority might become aware of information of that type and be unable to act until a charge is laid.

Sarah MANSFIELD: Thank you. How often do you think issues that are quite serious and of that sort of nature have gone unresponded to by the department? Do you have a sense of that, from the work that you have done?

Marlo BARAGWANATH: No, Dr Mansfield, and I do not think that is something we would speculate on.

Sarah MANSFIELD: Yes, okay.

The CHAIR: That is your time, Dr Mansfield. Thank you very much. I would now like to invite Ms Ermacora.

Jacinta ERMACORA: Hello. Greetings from Warrnambool. I just want to, if I can, go right back to the basics, and the beginning, of the difference between an ombudsman's role and a regulator's role. Could you give me the 101 on that before I ask any more questions?

Andrew ADASON: Sure.

Marlo BARAGWANATH: Andrew, yes.

Andrew ADASON: The role of the Ombudsman is, at its core, to redress that imbalance of power between the individual and the state. So we act on individual complaints, and we can investigate systemic issues focused on trying to drive administrative improvement and protect human rights. We do not, as a regulator might, license or approve or set the standards for the bodies within our jurisdiction; instead, we respond to complaints and can investigate broader systemic issues. A regulator is also often more focused on a particular sector, whereas our jurisdiction is more than a thousand public bodies – more than however many hundreds of thousands of public officials within the state. Does that answer your question?

Jacinta ERMACORA: Yes. That is fantastic. I felt that was not quite articulated, and it might have been assumed by you that there was clarity on that.

Andrew ADASON: Sure.

Jacinta ERMACORA: It is a very important differentiation I think and a really important role that you play in that space. One of the things I want to drill into a little bit is that you have told us that the SSR Bill acquits the recommendations in your report, but in relation to the regulator being able to immediately suspend working with children checks, if perhaps there was another step, for instance, a show-cause step, prior to that – I think that is what we had as a proposed amendment in the chamber from one of the MPs, so they would have retained their working with children check; that amendment failed – do you believe that the Bill would have still acquitted your recommendation?

Corey STEVENS: We had recommended –

Jacinta ERMACORA: I know what you have just said went to that a little bit.

Corey STEVENS: Thank you. We had recommended essentially that the screening authority have the power to immediately suspend a person's clearance in circumstances that really demanded it. I do not think that power would be used all that often. It is probably also worth noting that the Social Services Regulator is a body that is within the Ombudsman's jurisdiction. So in the event that someone is dissatisfied with an immediate suspension, they could potentially make a complaint to the Ombudsman, and we could potentially make enquiries into that decision.

Jacinta ERMACORA: It provides that natural justice avenue, I suppose. Is that what you are saying?

Marlo BARAGWANATH: It does.

Corey STEVENS: It certainly gives it another level of oversight. Likewise, the feature of the Bill which essentially removes VCAT's jurisdiction to hear appeals of decisions and transfers that into the Social Services Regulator will actually bring those decisions into our jurisdiction. We cannot investigate judicial or quasi-judicial decisions by VCAT, but we can investigate decisions by the regulator.

Jacinta ERMACORA: That actually strengthens the integrity of the system significantly. Would you agree?

Marlo BARAGWANATH: I think the issue when matters go before a court or tribunal is that they look at individual cases one by one. The benefit of those matters coming into an Ombudsman jurisdiction is that we do not just have to consider cases individually; we can then look to the broader system to determine whether the system is operating as intended and adequately dealing with the risks that it is charged with dealing with.

Jacinta ERMACORA: Yes. There is a lot more value in the Ombudsman's jurisdiction in that space then, from a continuous improvement perspective?

Marlo BARAGWANATH: Yes. Continuous improvement, systemic improvement and those sorts of things, yes.

Jacinta ERMACORA: That is all I have got. Thanks.

Marlo BARAGWANATH: Thank you.

The CHAIR: Thank you, Ms Ermacora. I would now like to invite Ms Bath to ask her questions. Thank you.

Melina BATH: Thank you very much for being here and for the work you do. From my perspective and understanding, the Ombudsman has always had a very high level of credibility and esteem in our community, and I thank you and the past ombudsmen collectively for maintaining that level of integrity. It was concerning when you said 35 per cent of New South Wales funding is your equivalent. I just had a bit of a Google search, and the Victorian Ombudsman has done more of its own referrals and referrals from Parliament over the last 10 years – if Google is right, and I will put that as a caveat. I want to drill down into some of the comments you have made. It is important, in my opinion, because in the 2022 report to government, you said that you followed up with the justice department in March 2023 and, from my scribble, October 2023. In July 2023 you sent a response request for an update review to the Attorney-General, and then again in July 2024. I would actually like to ask who that was – and you may need to do some research, because the justice department is a big department – and what was the response? It could be in terms of date, person, response date and any other consideration that you had in further follow-up or any other commentary. I know you mentioned it, and I think somebody else asked here if this is normal. I think it is our responsibility as an inquiry actually to tease that out, because if it is not normal, then this is a concern for, at the end of the day, parents and children, and I am sure you are concerned about that.

Marlo BARAGWANATH: We will have to take it on notice in terms of who exactly we spoke to –

Georgie CROZIER: It was me, I think.

Marlo BARAGWANATH: just in terms of who in the department we had various discussions with. In relation to whether it is unusual for a recommendation to remain outstanding for this long, again, we will have to probably analyse some of our data about recommendations. I think, as Andrew said, recommendations for

legislative reform can take a bit longer than some others that are just about policy or procedure, so we would have to do that analysis and come back to you on that.

Melina BATH: Thank you. On that, was this one – the 2022 one – an own motion?

Marlo BARAGWANATH: Yes, an own motion – my predecessor made the decision to investigate.

Melina BATH: Yes, that is right. So, if you could possibly do a sample of own motions versus parliamentary motions, that would also provide some context about the valuable work that you do. Thank you. With respect, noting the funding and resource constraints, how will you monitor whether the working with children powers are being applied effectively in terms of unsubstantiated but credible allegations? How would you monitor this in your resource-constrained environment?

Marlo BARAGWANATH: We do not have an ongoing monitoring function for any part of the public service, so realistically it will be driven by complaints and other things that we see in and around the public service.

Melina BATH: Again, noting that, in terms of any investigation or a thought of monitoring of the shared intelligence and risk assessment capability, you will have to wait until there are complaints and the like, which in a way proposes a challenge because if there are internal investigations, they may not be made public. So how do you provide that insight when you may not be getting intel?

Marlo BARAGWANATH: It is not our role to do that. We do not have that ongoing monitoring function. In terms of the adequate acquittal of our recommendations, obviously, anything that comes to our attention that suggests someone says they have acquitted it, and they have not, we would be very interested in it – but no, not ongoing and no capacity for ongoing monitoring in any event.

Melina BATH: No, I hear that. In terms of this area – so, the education department, child safety and this space – when you are looking at own motions, is it just based on complaints or is there more of a matrix there?

Corey STEVENS: Certainly we do look at complaints, and we look for trends in those complaints, but in the case of this particular investigation it was actually based on some reporting in the media. Our own motion work is discretionary, so we ultimately make the decision as to whether or not we investigate. It would probably be remiss of me not to point out that the resourcing challenges that we face tend to impact that own motion work, because it is the work that gets sacrificed when we have investigations that we must conduct under other mechanisms in our Act.

Melina BATH: Thank you. I think I am all right for the moment. I think I have said what I needed to say and listened to what I needed to hear.

The CHAIR: There are 2 minutes left. Do you have any other questions? Did anybody else online have a final question? No.

Well, on behalf of the committee, we just want to say thank you all for taking the time and providing evidence this afternoon. We really appreciate it. I just wanted to let you know that you will get a copy of the transcript in about a week's time before it is published on the website. For those following along online, the committee is now going to hold a private meeting, so we will just ask for the gallery to be cleared and we will return at 2 pm. Thank you.

Witnesses withdrew.