

TRANSCRIPT OF PROCEEDINGS

THE HON JULIA GILLARD AC, Commissioner

THE ROYAL COMMISSION INTO EARLY CHILD EDUCATION AND CARE

**FRIDAY, 14 APRIL 2023
AT 01.15 PM**

This transcript is intended as a guide only and as an aide memoire with respect to the audio-visual record, which constitutes the official record of the hearing on 14 April 2023

SARAH ATTAR, Counsel Assisting

COMMISSIONER

Thank you very much. We're back. So Council Assisting over to you.

COUNSEL ASSISTING

Thank you. I call Komala Champion and Angela Falkenberg for the next panel session.

< KOMALA CHAMPION AFFIRMED

< ANGELA FALKENBERG SWORN

COUNSEL ASSISTING

I'd like to ask each of you to introduce yourselves briefly and give us a little bit of a sense as to your backgrounds and your present positions, if you can.

ANGELA FALKENBERG

I'm Angela Falkenberg, I'm the elected President of the South Australian Primary School Principals Association. I represent about 520 members. I am in my 41st year of teaching and began in remote schools in the Northern Territory. I probably spent about 18 years working in indigenous education, both here and the Territory. I have worked in five secondary and six primary schools, been principal of three primary schools. And I've been in this role, this is my sixth year.

KAMALA CHAMPION

I'm Kamala Champion. I work for YMCA South Australia. I moved into Children's Services with Y about eight years ago having worked in the health and aged care industry for the rest of my 12, 13 years experience before then, and have worked with our OSHC, early learning and youth programs now for the last eight years.

COUNSEL ASSISTING

And does the YMCA run OSHC programs all over Adelaide within primary schools and including vacation care?

KAMALA CHAMPION

Yeah, so we have 33 out of school hour care programs that run across metropolitan and regional south Australia. We have two early learning centres as well. So we are in regional areas as well as being Metro. I think we have about 490 staff currently working across those

sectors and welcome about 300 through 2000 visits per year from children attending our services.

COUNSEL ASSISTING

When we talk about OSHC, just to set the scene in terms of the various models, Ms Falkenberg, for government run schools, is it correct that an OSHC service has to be financially viable?

ANGELA FALKENBERG

Correct.

COUNSEL ASSISTING

And there can be two governing models then either the school governing council is the approved provider or there's engagement with a third party provider and such as a YMCA type group that's one option?

ANGELA FALKENBERG

Yes.

COUNSEL ASSISTING

And then if the provider is contracted, then the overall service contract is still managed by the school's principal, is that correct?

ANGELA FALKENBERG

Correct.

COUNSEL ASSISTING

We'll come back to some of the challenges inherent in these models later on, but it's helpful just to set that scene first off. If we start with perhaps some more visionary questions, we've had some preliminary evidence about out of school hours care today, and the Commissioner has sat on a round table on this topic already, but what do the two of you with your vast experience see as the core purpose of out of school hours care?

ANGELA FALKENBERG

Well, I think about it from the child perspective, that it's a place you want to go to that's age and developmentally appropriate, that the surroundings will meet my needs at my developmental stage. So I think it should have a high degree of student or the child agency in

this. And, you know, families want to know their children are safe and cared for. And from the school perspective, you know, we want it to be a place that children are happy to go to because they can be quite cognitively tired at the end of the day. So we want them to go off and, whether it's to rest, to play, to connect, to have a caring adult to talk things with, you know, it should be a place, I can't emphasise enough, that they belong, that is safe and meets their needs at their point and stage in time.

KOMALA CHAMPION

So we see it as a recreation and leisure part of the development of school-aged children. We're not there to educate them. We're not there to do their maths homework or, you know, teach them to read, but to do that education leisure. And it is a space where we want them to be safe, healthy, make sure they're fed. And we all know children who aren't fed get a little cranky.

COMMISSIONER

Not just children.

KOMALA CHAMPION

And also a place where the parents feel like they are safe. And I think, you know, that's probably the difference between say what we as an industry and parents see OSHC being. Is, it, you know, is it a place where I'm just, have my children they're safe and they're happy versus, you know, are they being educated? Are they being prepared for the next stage of their life? So yeah, we really focus on that recreation and leisure part of it.

COUNSEL ASSISTING

And from what you've said, are there anecdotally parents who bring children to out of school hours care and have an expectation that it's an extension of the school day?

KOMALA CHAMPION

Yeah. We have a lot of requests, especially in schools that probably are a little bit higher socioeconomic areas that we are there to help them with their homework and make sure they do their homework. And that's actually against the regulations. It's about what the children want to do, giving them that rest time. And so there is a little bit of disconnect sometimes with some things as to what we're there for. But on the other hand, there are lots of parents that think it's a babysitting service where they're happy if the TV goes on and they sit there and they're fine for a couple of hours. So there is a huge range of expectations and things from parents.

COUNSEL ASSISTING

In terms of making it a space where children can rest and play and are happy to go to, what do you see as the elements of quality then in provision that matter most?

KOMALA CHAMPION

I mean, space is always an issue, what that space looks like and how you can set up that space across the board. It doesn't matter I don't think it's a governing council OSHC or a third party provider OSHC. Schools are space poor and quite often OSHC is a secondary thought as to where to go. So, you know, we might be setting up in a hall and packing down every night compared to some that have purpose built rooms that are especially for OSHC. So the environment really does impact that as to what you can do, what facilities are available, if there is a beautiful playground or an oval where they can run, undercover space if it's raining or really hot. So the environment's really, really important for that. But second, well, probably even more important is the staff that you have in those centres. If we have amazing staff that are passionate and are there for the right reasons and are doing their job the way that they should, then the children are happy, safe, and want to be there.

COUNSEL ASSISTING

I definitely want to focus on staff, but can I just clarify from what you've said that YMCA runs OSHC services both within government schools and within private schools?

ANGELA FALKENBERG

Yes. Yeah.

COUNSEL ASSISTING

And so you operate in a range of services, some might have an OSHC space and some of your services might have to fit within school halls and the like, is that the case?

ANGELA FALKENBERG

And that's not a Department versus an independent schools problem, that's a school versus school problem. It can be that the school has, you know, outgrown their capacity or that they have, you know, had to turn a classroom into the Japanese room and therefore there's no longer a classroom. But a lot of the Catholic schools I know now are trying to make those purpose built spaces because they realise it's really important to have a space that's there. And so, yeah, it really depends on how old the school is and how long it's been around, how many children are there, what maintenance they've been able to do over the years, those sorts of things.

COUNSEL ASSISTING

What do you see as key to a quality purpose built facility?

ANGELA FALKENBERG

I think it's a space where there's transition spaces for the children. We, you know, are getting them, either they're really tired coming in from, you know, they've been dragged out of bed to get to school early, or they've been at school all day and they're a little bit tired and need space, or they've got lots of energy and they just need to run it out, they've sat in a classroom for hours, still, which you know, can be an issue. So having those spaces that are identified as spaces that they can do all those things, you know, there needs to be somewhere they can do some art and craft without worrying about getting paint on, you know, a carpet or there needs to be somewhere they can go and run. And so I think it's about knowing what spaces you need and then creating those spaces for the children.

COUNSEL ASSISTING

What do you see as the key features Ms. Falkenberg for a quality OSHC service?

ANGELA FALKENBERG

I think in a primary school, an agreement that space is quarantined for OSHC. You know, as Komala has talked about, when a school's number increases, you know, because OSHC does not have the designated footprint, therefore that space could be used for the teaching and learning, which in the context of the school is the priority. So we, you know, I have had insights where, you know, the junior primary classrooms become OSHC at three o'clock. And so it requires a great degree of commitment to the flexibility by the teachers because you can't leave anything packed up. And then there is that issue, is there paint on the carpet and so on? So I think, you know, quarantining space that does allow for the transitions and the flexible use of the space, because if you have a child who perhaps is in a wheelchair, you'd have a different use of space versus a greater group of five year olds or a greater group of, of 11 year olds. You know, we're always about the fit for purpose piece, but in primary schools, we accept, there's a degree of agility that needs to be produced.

COUNSEL ASSISTING

Can we focus a little bit on staffing because I know that both of you have a lot to share about that. Perhaps if we start with your thoughts about opportunities for training and professional development and how we might improve that, and then come to looking at attraction and retention of quality staff within the sector and how we might meet some of the challenges

ANGELA FALKENBERG

It would certainly in the main be left to an individual, if it's a governing council run centre, it is left to them to recruit, induct and develop staff. But that requires, you know, a budget that's set aside, which again goes back to that profit piece, you know, that it's not losing money, that you can invest. A lot of the staff - it's a part-time job. So they may in fact have other jobs in the daytime, they might be doing study, so their availability is challenged. And when we have a pupil free day, which might be focusing on an aspect, you know, let's say belonging, because we identify that that's so critical to achievement, but when we are having the teachers do that, the OSHC is open to take the children that aren't in class. So those staff aren't able to participate. I think it does need a much greater focus but then I think also, you know, is it a pathway piece in terms of career and I'll be interested, for many it's a transition piece for themselves and others do it for a long period of time and have a great degree of value. So I think it would depend on the prior experience, but how much, when education changes so rapidly, so keeping people up to it is really critical. And I don't think we do that well.

COUNSEL ASSISTING

When you talk about people using it as a transition, are we talking about students who might do some work in the OSHC space towards the end of an early years degree, for example?

ANGELA FALKENBERG

Or a teaching degree, yes, social work degree. You know, we've had people doing architecture who have a commitment to working with young people. So again, I'm not sure about the retention of people over time, how many continue to do it, but the many of the people I've worked with, it's been a job on the way to another job.

COUNSEL ASSISTING

And before I ask you Ms Champion to weigh in on this, what do you think can be done to make it a more viable profession rather than a transition phase?

ANGELA FALKENBERG

Well, I think that's back to how the community views it. I mean, you spoke about, is it babysitting well, actually I think there's a greater role it can play particularly in vulnerable communities to how we support those children. I think about retired teachers or other professions who could contribute projects of interest or passion, you know, rather than some, you know, other requirements for work in the, you know, the qualifications et cetera. And I think one of the challenges given it is part-time work, if they have another job, for example, in the school, they can't be, it's two different employing requirements. And the second job is taxed at 50%, even if it's still only equals 20 hours a week. So I think it's a bit of a, it's a turnoff. And I think there are, you know, support staff in schools, we call them school support officers, SSOs

that would be willing to work, particularly with children that might have a disability to transition across, but there's barriers - it's not easy.

COUNSEL ASSISTING

What are the key barriers that you think of preventing the transition for SSOs.

ANGELA FALKENBERG

One is different requirements for employability, you know, certificates and so on. Two different employers, two different sets of paperwork. I just wonder if we could think about, and I don't want it to be seen as an extension of the school day because that's different again, but you know, if someone who works with children from nine to three could work with the same children from three to six easily, that would be a step forward.

COUNSEL ASSISTING

Ms. Champion, what would you like to share in terms of what you've gleaned from your time at YMCA in terms of staffing challenges, whether it's maintaining professional development or attracting and retaining staff.

KOMALA CHAMPION

So probably, you know, if we look at say 500 staff that we have, 80% of those staff are transient staff, if we can keep them for two to three years, we are really excited that, you know, they've stayed for so long because they do come in at the start of a degree. They start and, you know, they're probably not the terms we would generally use, but unqualified staff coming in, they get two years through their degree and they become qualified. That's when they're, you know, so needed and wanted by organisations, then they can become, do TRT work. So they, they might get a day of relief teaching, which is obviously going to help them with their career more than working in the OSHC and pay them a lot more for that day. So there's a lot of options for those types of students to move forward and move through. Trying to get them to see OSHC as a career becomes very difficult because we are working bizarre hours, you know, we're there first thing in the morning and we're there last thing in the afternoon and there's that big gap in the middle. It very rarely, unless it's a very big service, is a full-time job. We're in the great position that we can offer some of our staff that are looking for full-time hours other roles within the organisation to build that up. But if it's a single OSCH, or a school, OSHC there is not those opportunities. So it really is one of those things where it might be really suitable hours for some people, but as they change their life circumstances, it becomes less suitable. And when it comes to the training, I think, you know, our staff are working when the teaching staff aren't. So if there is professional development, even if the school's willing for us to join into that, then we need to be looking after the children during that time, same as you know, during school holidays, you know, our staff are working the most hours and a lot of them want to work extra hours then to get some extra money. So trying to get times where they're able to do that, that study, especially if they are already studying and they're at uni during the

day, the last thing they want to do is then head off to a training session at 6.30, 7 o'clock at night. So it is difficult finding that time to concentrate on the professional development.

COUNSEL ASSISTING

Ms Falkenberg, you mentioned belonging. I think you were referring to the Early Years framework document and by extension that's now applicable to OSHC through, I'm probably going explain this wrong so you can correct me, but through 'My Time, Our Place'?

ANGELA FALKENBERG

Look, belongings emerge, the OECD data, analysis over years has shown that it is related to academic achievement. So I guess I describe it as cultural and psychological safety that, you know, free to be my authentic self. So when we are thinking about children who are disengaged or perhaps struggling, one of the questions we ask is, do they feel connection? So I'm thinking of belonging, yes, in the framework sense, but also in that sense of my own right to be me and supported. And so, you know, as we've known more, we understand more about cultural safety now and thinking about what that means, or what does it mean to be a child, you know, with a disability or a child who's, you know a refugee child. It's that bigger awareness that we think if we get that right, then the rest of it flows. And that's why I'll talk about the importance of student agency, that they have a voice, which says, this is what an afterschool before school where I feel safe means to me, does that make sense?

COUNSEL ASSISTING

It does. And just to clarify, OSHC provision in Australia is supported by that framework that you've mentioned 'My Time, Our Place', which essentially extends the principles from the Early Years Learning framework to children over five years. So there is a framework against which people within OSHC are giving that service is that correct.

ANGELA FALKENBERG

Yes. I'm thinking, it's also about the adults.

COUNSEL ASSISTING

I know you're referring to belonging in a different sense.

ANGELA FALKENBERG

To so different. It's the bigger, it's the bigger piece, but it's grounded in that very sensible you know, awareness of how do we ensure that children they belong to the centre and therefore actually experience it as quality.

COUNSEL ASSISTING

When we talk about staffing, can one of you just highlight what the base requirements are in terms of how many education qualified people do you need and what flexibility there for you to have additional staff who might come from different areas? You mentioned an architect might want to do some work experience.

KOMALA CHAMPION

So we have a set of qualifications that all, not all necessarily education qualifications, but if someone has finished two full years of certain degrees, I know human movements is one of those, teaching, early childhood diploma. So there is a range of qualifications that's considered qualified, and we must have one qualified staff per 30 children. So the first staff for the first 15 is always qualified. And then the second 15, there can be, what's considered an unqualified staff. The reality is those people should be trying to work towards some level of qualification, but in OSHC and the need for the amount of staff and the type of staff we get, that's not always the case. And some of them, the qualification that they're working towards doesn't include anything to do with educating children. So we don't see that those qualifications at the moment are suitable for an OSHC environment. You know, the fact is someone who is doing architecture or has a degree, is doing speech pathology or, you know, any type of degree you're doing the basics of that education part. And you can then offer those children such different experiences. You know, if we had someone who was an architect, they could be building creations with the children that can be part of their stem work that we can extend through, or sure. You know, if it's music, they could be having music lessons or, you know, doesn't have to be a lesson, but a music experience and things like that. So I think we need to start looking at, as a recreation and leisure activity, what are the qualifications that we could use to help us have more staff that are considered qualified, but also broaden the range of activities we can then engage the children in.

COUNSEL ASSISTING

And importantly, I suppose, for your purposes, broaden the pool of people you might be able to rely on given the trickiness of a morning session and an afternoon session.

KOMALA CHAMPION

Yeah.

COUNSEL ASSISTING

I'm struggling to think of a solution around that. I don't know whether either of you have one.

ANGELA FALKENBERG

I think, you know, if I take the architect one, they can also be the community footy coach. So, you know, they already have experience working with children and they have another profession. And I think, look, you know, if it is bound in, you know, legislation, that's, that's the thing we need to look at, because what we're about is safe environment. So they're still having their working with children's check. We still expect them to have, you know, other understandings. I like your term leisure and recreation, and for some kids, it's genuine safety, that home environments might be struggling for a whole lot of reasons. And that can be from domestic violence, from poverty of, you know, food resources, housing, instability, that in some of them, you know, we've been able to connect kids into OSHC to actually extend the time when they are feeling safe and supported, and therefore a range of adults who can model and provide other ideas is just healthy. You know, we talk about a village to raise a child, but the village is full of all these different people.

COUNSEL ASSISTING

And really what's coming through from what you're saying, I think is once we broaden our idea of the purpose of O then we start to broaden these skill sets we might bring in to expose our young people to, is that a fair summary?

KOMALA CHAMPION

Yeah, I think so. And it's that safety, you know, getting men into the workforce in childcare is, you know, not the easiest job for them to do. And I think that we've got a lot of those children that need a really strong male, you know, support in their life and a role model. And that might be the only place that they're going to get it. It might be the only place they're going to get a meal that day. So OSCH is not just about, you know, following the regulations, there's so much more and because they do feel a little bit more relaxed, we find that there's something that they might disclose to an educator that they haven't told anyone else, because they feel comfortable and it's not an authority figure anymore, it's more that support figure. So I think, you know, OSHC isn't just a place that extends school hours, and somewhere that you can continue working for the children's development, here's so much more that you can do.

COUNSEL ASSISTING

You've mentioned the importance of bringing in gender balance into your staffing. I think one of you mentioned when we connected last week that you see untapped potential in bringing older people in as a resource for OSHC. I'm sorry, I don't remember which of you it was.

ANGELA FALKENBERG

It was, I think it was me. Yeah, absolutely.

COUNSEL ASSISTING

Can you speak to that?

ANGELA FALKENBERG

Well, I think workforce shortage, I just know, I think the data nationally is there are 300,000 registered teachers who aren't actually in schools, so they might have maintained registration, but they're doing something else. So if you think about how do we attract them back, you know, there's a term called job crafting, which is that notion of 'what I love to do I can do you know to benefit others, which actually benefits me'. And so I'm thinking about, well, if I was a musician, a music teacher, or I'm an artist, and I could come and run a designated session a week, and that allowed children to experience that or have that skill. I mean, they would be qualified, but I think there's a whole lot of other retired professions who still want to do things, not in an everyday way, but maybe a session a week. So again, we broaden the opportunities and we build the workforce. I just think it's a chance to be creative. I don't, you know, have an answer, but I think there's a whole lot of people out there with skills that we are not using.

COUNSEL ASSISTING

Within the services that you are aware within the schools that you are involved with through Principal's Association, is there a high turnover of staff?

ANGELA FALKENBERG

Oh, I think that's, we were talking before about, you know, the difficulty attracting and then keeping, because in this marketized economy at present, people can earn a whole lot of money going and working, you know, as a barista in Broome, \$110,000 a year, apparently. So if you want to go and make, you know, quick money for a short period of time, OSHC probably isn't the way to do it. Although I do know there are OSHCs that offer above award rates in order to attract and retain people.

COUNSEL ASSISTING

What reflections do you have [indicating Komala Champion] given that you're from a, a provider perspective in terms of the turnover?

KOMALA CHAMPION

We, our turnover for us is actually quite good, it's around that, we do retain staffer for around that two to three year period which is actually amazing for, I think, an OSCH provider. But it's becoming a role that is really difficult to do. So the challenging behaviours, the level of inclusion for children with disabilities in mainstream schools now, and then going into OSHC, the expectations of the regulations and, you know, following a curriculum, it's no longer something that's an easy job to do. And I think some staff come in thinking, this will be great, I

get to play basketball with some children for three hours and, you know, I'm going to get paid to do that, and that's gonna be great. But the reality is you might get to play basketball with children, but you are also breaking up a fight and trying to engage a child who's not, you know, trying to feed these, like, there's so many other things that they want to do. And that's just, if you're an educator on the floor. If you're then the director of a service, you also have to think about your budget and rostering and all of the HR processes, finance processes, you need to be programming. Are you compliant with all the regulations? You know, and we're not paying these people huge amounts of money. And yet we're expecting them almost to be running a small business all by themselves. You know, then there's organisations like ours that can give those support around there, but you're still on the floor having to do those things day to day. So it's no longer just a nice, easy after school job that I think a lot of teaching students think that they're going into. It's certainly a great career path for them because it's going to teach them what they're about to come up against. But yeah I think it's difficult.

COUNSEL ASSISTING

So within YMCA, how are you helping to meet those challenges that come within increased complexity around curriculum and regulatory burdens. And we'll come back to the regulatory body in the moment, but are you having to do more training and more ongoing training or what's being done in that area?

KOMALA CHAMPION

We certainly have had to do a lot of training. We have training running every week around a number of different things. A lot of it is training that our own staff have had to put together because there just really isn't that specific OSHC training out there that's accessible. A lot of training organisations work nine to five and that makes it really difficult for us to access those. We have a support system around our educator. So we have regional managers who are helping them with their day to day compliance. And employing staff, recruiting staff can take a lot of your day if you're trying to do that. We have a pedagogy and practise manager who helps all of our staff with their program and gives them education support around My Time, Our Place and how to implement that. And then we have a safeguarding quality and assurance manager who helps them with their environment and how to deal with some of those challenges. Saying that, we still struggle. My job this week is to find training for our staff in how to deal with children with a disability in mainstream OSHC and that just doesn't exist. So trying to find some of those trainings is a little bit more difficult to do.

COUNSEL ASSISTING

So you see a real need for more OSHC related training modules across a range of educational issues that might come up in the OSHC space.

KOMALA CHAMPION

Yeah, I think

COUNSEL ASSISTING

And a more centralised point for gathering information?

KOMALA CHAMPION

Yeah, I think so. It's a case of, I think OSHCs are placed in a school and it's almost an afterthought. So you might have, in some of our schools, we have amazing inclusion units where there are children with really high needs in those units. But that unit finishes at 3.20 and those children don't have anywhere to go other than OSHC which then might just be the hall where they have, you know, 60, 100 other children running around from mainstream school. They've gone from a one on one staffing ratio to a one to 15. And even with additional support, you know, it doesn't go to one to one, it'll go maybe two to 15. So I think that there's a lot of things. With OSHC, it's sitting in a school, it has the same age children, the same complexity of children, but without the same funding or resources or supports that a school staff do. And if you've been in that inclusion unit teaching all day, that's your background and your speciality, and you have so much wraparound training for how to deal with those children. That's not the same as my 20 year old educator. That might be two years into her degree. Certainly hasn't had that ability and there's only so much training that we can procure for them to help them with that.

COUNSEL ASSISTING

And so then we come back to your suggestion, Ms Falkenberg, that we need to look at making a transition for one of those specialised educators to be able to move across the space without some of the employment and tax barriers.

ANGELA FALKENBERG

Yeah. Correct.

COUNSEL ASSISTING

Can I come to this issue of governance and you've both mentioned it. I want to stick with you Ms Falkenberg for a moment. One of the options within the schools that you are familiar with because of their principals would be that they're through a governing council running their own OSHC service. What are the key challenges that you are hearing from them in terms of complexities around curriculum or regulatory burdens and the like.

ANGELA FALKENBERG

So one of the greatest challenges is the time that it takes as a principal to support governing council, to support the OSHC director, to address things like facilities and so on that is unrecognised in their job and person specification. So if you win a principal job where there is

an OSHC and you are finding it overwhelming, the feedback can be 'well it's optional, so you could choose to not have it', but that's guaranteed kind of career suicide for a principal to say to the governing council, 'sorry, community, we're not doing it'. So you know, there is information on the Department's website, there are people the principals can call, but most of them will tell me, it's one of the things that keeps them up at night and that is the regulatory stuff. You know, they've, they're on a fast track to know what to do, you know, your responsibilities are outlined, you know, the finance piece, working with council, inducting new council members as well to understand the running of OSHC. It's a challenge. And I think, you know, a lot of the OSHC that is governing council run is built on significant goodwill. It's kind of voluntary labour if you like. And while that sounds harsh, I think for it not to be recognised as a valued part of a leader's role in a community is just wrong.

COUNSEL ASSISTING

And in terms of the significant work required by the principal, in terms of oversight in the governing council models, is that factored into job descriptions or pay scales for principals?

ANGELA FALKENBERG

No, no, it's not. And so whether you have an OSHC of 10 or an OSHC of a hundred, it's not part of it, whether you have new staff or experienced staff, you know, there, those things are complex. But it is seen as an optional extra in a school, but I don't know of any principal that would be brave enough to stop one, unless it was financially unviable.

COUNSEL ASSISTING

And in terms of trying to address at least the principal workload issues, is it a matter of re-looking at job and person specifications and wages, or is it a case of looking at a different employment or role that would oversee the OSHC aspect of administration?

ANGELA FALKENBERG

I think OSHC like a preschool, like a disability unit, all brings complexity, that it would be good that that was acknowledged in the principal role. And it might therefore influence the pay scale because we have a scaled pay system. Or it provides additional leadership time at deputy or assistant principal to run it effectively. So I could give my deputy some of the responsibility, but I don't actually get the funded time for them to do it. So there's a lot of, lot of collaborative work, a lot of goodwill. And you know, when it's going well it's perfect, when it's not, it's tough.

COUNSEL ASSISTING

In terms of running as a private provider, Ms Champion, what makes for a good service in your view in terms of a working relationship with the principal of the school, whether it's a private or a government school.

KOMALA CHAMPION

The relationship between us as a provider and the school leadership is the most important thing to make that OSHC work beautifully. If there's a great relationship and there's open communication and discussion, then there's no problems because the problems are sorted before they get to be a problem. It's when, you know, the principal might say, look, actually my business manager's going to deal with that and you can talk to them, but most of your issues are around the children of the school, and you need someone who is there as part of the children's day and everything. And, you know, business managers do a great job, but they're looking at the business of the school, not the children in the school. So I think it's about having someone that you can go to talk through issues. Our directors, you know, we might be a third party, but they'll see the principal of that school a lot more than they'll ever see me because they're there and that's their school and it's their children. It's not the school's children or the OSHC's children. It's the whole community's children. And I think that communication is the only thing that makes a really good service and we can see services breaking down if that communication isn't there.

COUNSEL ASSISTING

We've talked a little bit in this Commission so far about the importance of information sharing across services to get the best outcome for children. I'm interested to know from either or both of you, what happens on the ground in terms of information sharing between OSHC and schools in terms of particular, maybe identification of development issues or behavioural issues and the like?

ANGELA FALKENBERG

Certainly it's in the child's and the staff's interest that that happens. And I have seen teachers walk a child over to OSCH and say 'hey can I just tell you about their day, you know, they're a bit dysregulated and maybe they need a bit more time just quietly, you know, reading'. And sometimes it is, you know, we're struggling with, you know, Bob, what works in the classroom? You know, I think we're really open to that. I do worry though that, we've got a problem at the moment where people are quite exhausted in general, you know, the education profession post covid. So I worry how well we might be doing that when people are fatigued. But it's often, it's an accepted practice, but would I see it in documentation? To an extent, and I'd be interested in what you think (gestures to Champion) but when they are your children, when we see that, they're our children in the community, in the school, of course you want them to do well in both places. Where I've not seen it well was when I shared with another site. That was more problematic.

COUNSEL ASSISTING

In terms of expansion then you would have some difficulty with that as a model?

ANGELA FALKENBERG

Unless there were some really good MOU's around how we would do that. And I think, if I go back to that village idea, if I'm sharing with a school up the road, it's still the same community. So stop thinking about schools but about what's in the interests of the community. And I think that would be very much about the service and how the staff in that expect it and did the communication because you've identified it Komala, it's so critical, communication is everything because relationships are based on that. So yes, an expansion model, yes, but really clear around bits that get in the way and what are we going to do about them. Elephants in the room in fact, get them out there.

COUNSEL ASSISTING

So I don't overlook it, you've both mentioned regulatory burdens, and we are going to hear from the Education Standards Board later today. But can you help us understand what the key challenges are of the current regulatory scheme and what additional supports might help compliance and improvement.

KOMALA CHAMPION

The Education and Standards Board has made a really big shift in the last 12 months from being an educative service for OSHC's and for people through to compliance. And we understand that their job there is to regulate the industry but the reality is it's an industry that includes basically birth right through to your primary school aged children and the regulations are the same whether you are running a long day care centre or an OSHC. And this what is causing I think a lot of the burden on that paperwork. Because what you can run and do and manage within a long day care centre when you're there for 12 hours a day, the same children are coming over and over, there's a definite idea of what that centre is supposed to be versus children who are older, and coming in to a centre, the type of staff we have are different qualified staff than the early learning centres. It's becoming a real shift and a real problem trying to get through an assessment because you need to have documentation on every child in your service and prove that documentation. But some people, Bob might only come one morning a week and he's there for half an hour. And in that half an hour, you've given him some cornflakes and piece of toast. And that's your interaction with that child. It doesn't mean that that's been a bad service. It just means that's what that child needs and what that family needs, but 'My Time Our Place' and the regulatory framework around that expects so much more of what an OSHC does, because it's the same with what an early learning centre does.

COUNSEL ASSISTING

If you were designing the regulations to govern OSHC what would you say is the key minimum requirements?

KOMALA CHAMPION

I think it needs to be more in line with the school requirements. So because it, these childcare subsidy funded, there is still those ideas that they have to be signed in and out of the service, there must be rest areas. There must, there's a whole lot of things that you must have. That's not what they have at school. And so they're actually coming from an environment school where they have a lot more independence and ability to express themselves and do what they need to do yet. Yet they come into an OSHC where we then all of a sudden wrap them almost again in the cotton wool that they were in when they were, you know, two and three year olds toddling around where they needed that extra support. So I think for me, it would be starting to look at the regulations for the different age groups as to what's actually appropriate for those age groups. The other thing we're finding is the amount of paperwork and, you know, we want to keep the children safe as well, but a waiver for staff shortages at the moment, if we want to have a waiver with one less qualified staff, used to be quite an easy process, you'd explain what you are doing, how you were looking for staff and what you needed and how long you thought for. And it was sort of, you know, a two week turnaround process. Now there's risk assessments and you need to do all your rosters and your time sheets and your ads that you've put in the paper for staff, you know, there is significant amount of documentation needed to get that same waiver. And we've actually had some of our waivers not be given to us until after the date that we needed them. So, you know, your time that you've needed, it's been and gone and you finally get your waiver through. So I think the burden of regulation now has become so high that we're having to put on staff purely to deal with that burden.

COUNSEL ASSISTING

Do you have any insights you'd like to share on that?

ANGELA FALKENBERG

I love the word burden. Yeah. I think, you know, even when you asked the question, you talked about the current framework, it is so much more dense than it was 10 years ago. I'm nervous about what 10 years time will look like. And I think if I go back to the child piece in this, that kind of the blind adherence to the standards at times denies individual kids' agency. You know, and I think people are so worried about, you know, litigation, if I don't do that, they do it. But over here, a group of kids that actually aren't enjoying it. So I think I like the, you know, when you spoke about, yes, we want them to be safe, we're going to sign them in and out. But how much of the work of adults now goes to the documentation, because that's what my people talk about, the burden of documentation away from actually talking to a child. Like if you've got additional people on just to do paperwork, there's a whole lot of children that could be benefiting from the adult interaction that miss out.

COUNSEL ASSISTING

Can you give us some of the examples of what those paperwork burdens are?

ANGELA FALKENBERG

Well, it's having all the policies in place that, so you might have a policy template, but it's still got to be contextualised. They can be updated. Then it is, as you said, the documentation about the child, it's about the interactions, it's the compliance around the physical space. You know, what's required like if they're four or five or six or seven, it's just, I mean, teaching itself has suffered that. It's that risk management piece that is actually about avoiding the adults getting in trouble versus what actually those children might need. And I think it does make me wonder in terms of cultural inclusion, how that might be rubbing up the wrong way. Even some parents will say, no, that's great. Let's do it. And you go, ah, no, I can't. Because the risk assessment which you refer to would be so complex, I'm just not going go through it.

COUNSEL ASSISTING

What might some examples be of more culturally inclusive activities that you might be worried about regulatory provisions?

ANGELA FALKENBERG

Well, it might be about use of outdoor extended outdoor space in country communities, for example. You know, we've already got risk assessments around tree climbing, you know. I can just think, you know, wetlands, wading, all of the things that, you know, let's say you got a scientist who said, let's go and do this. Could you imagine that would be easy to just wander into a wetland? No. You know, whereas actually these kids, I mean we know from the work of Carla Rinaldi here, children are capable and competent at very young ages. Yes, we want them safe. Yes. We want people to take care of them, but where's, we want them to go to a wetland. We teach them about the wetland. We don't put a fence around the wetland.

COUNSEL ASSISTING

You touched on what might be different for OSHC in more remote places and it's a good segue way because we had a session this morning with some women from Kingston, Kangaroo Island, York Peninsula, so more regional areas of South Australia and all three of them have literally no access to OSHC. And they spoke of difficulties in attracting private providers to more regional towns. I'm interested Ms Champion in your insights. I think you've told me that you run centres in, I think you've got some in Port Pirie, Port Lincoln, Mount Gambier and Millicent. Is that right?

KOMALA CHAMPION

Yeah. And as well, probably not so regional, but the Fleurieu region, so Strathalbyn and Victor Harbour, which, you know, sometimes feels like it's as far away as some of those more regional areas.

COUNSEL ASSISTING

And what's the bare minimum in terms of numbers to make that viable for you currently to operate a service.

KOMALA CHAMPION

Different services are different. For us we require two staff at all times. So we actually go above a ratio, even if there's only 10 children, we'll have two staff. So YMCA is slightly more expensive than other providers because of that. We look at around having eight to 10 children every morning, if you can get 15 to 20 in the afternoons and then 25 to 30 vacation care, they're very rough numbers, but you know, that's where we start to look at things. But it's also, you know, what size that school is. If there's a school of 600 children, the ability to create a community and create a viable OSHC is obviously going to be better than if you've got a school of 60. You know, 10% of 60, 10% of 600 are very different numbers. So when you start to look at those factors, it becomes, and there are, there are organisations out there that have gone out and have a lot of country schools and financially are now really, you know, a little bit rocky because of the inability to keep those numbers up. And a lot of them it's because those centres might rely on the OSHC heavily for a certain amount of time. So it might be during harvest or there might be, you know, a festival on and things like that in those areas. But then for six months of the year, the families have a lot more flexibility. And then, so the service, you know, is hugely reliant on for six months and then has no children there for another six months. And as a provider, you can't, you know, open and close a service. To open and close a service is very time consuming, you know, and it becomes unviable. And there's only so much, you can sort of keep the money here to last for the rest of the year. So I think for those more regional areas, it becomes really difficult to keep them viable for a long amount of time. And we've also found, so Minlaton's the perfect example where I think that one of the ladies this morning is about to, they're building their new centre. We looked at that as an organisation. And the reality was because we don't have money backing us up, you know, everything that we would do as a not-for-profit needs to come from that community. The setup costs of those and how long it might take to get to those numbers. And surveys are great, but we have, we know that we need to reduce the numbers of what a survey says, because if you're going to answer a survey and you have the slightest inkling that you might need that service at some stage in your life, you're going to tick 'yes'. It doesn't mean that we're going to get that child there every day and the numbers there. So when we do get survey results, now we reduce them by 40% before we even look at the numbers, when we start modelling,

COUNSEL ASSISTING

What would make it, perhaps attractive is not the right word, but would different versions of government contributions that perhaps subsidised agencies such as yours to open in more regional areas, would that alleviate some of those business concerns?

KOMALA CHAMPION

Yeah. So at the moment, especially for department schools, an OSHC must be viable to run whether it's the school running it or whether we run it. So the reality is, if a school's willing to subsidise a provider to come in and run that service, or we are more than happy to provide parts of the service, so, you know, if they need help with their compliance or they want someone to come in and help with training, or even the admin burden around booking and billing and the statements and things like that, that's not allowed within the contract. So it's either third party, you're in it a hundred percent and the whole risk is yours or the school have the service. There is no way of having something in the middle or having, you know, I think one of our services is subsidising the bus at the moment to transport children from their school to another school for OSHC. And it's costing them a hundred thousand dollars a year for that bus, but they can't use that a hundred thousand dollars to subsidise an OSHC service on their own school, which would be much better for those children because the guidelines state that you can't use that money to subsidise an OSHC.

COUNSEL ASSISTING

Ms Falkenberg, in terms of government OSHC services needing to be viable, can you give us a sense of whether in some of our more remote, we know from this morning, a lot of our regional areas don't have services, but anecdotally, are there ones that have had to cease operation because of the viability issues?

ANGELA FALKENBERG

Oh, absolutely. Even in metro, you know, one of my members has only 5% of their community has paid employment. And so there isn't the capacity. Look, if I can go back, I was able to keep an OSHC open by being creative in the space of what was the purpose of OSHC. And, you know, back then, there was the childcare benefit subsidy. So the parents could sign up for that. The gap between that and the OSHC fee was covered by social justice fund in the school. And what it benefited was families who were struggling for all sorts of reasons. So their children could attend OSHC, the CCB made it, you know, viable enough for the seven working families, because that's all we had. And it benefited the families by their children being able to participate in some team sport after school, in having, you know, supportive adults. But you know, that was a lot of leader work to do that, thinking creative and then always thinking, you know, is it quite right? But actually there was some federal grants at the time too that helped around some first nations families. I think, you know, that what is viable is an interesting one, because it's only seen in terms of financial, whereas what's viable for all the other as an asset to the community, to support parents who might be studying, to parent who just need the support or for children to belong to other networks. I think that the notion of viable needs to be looked at not just in the financial sense.

COUNSEL ASSISTING

In your view then what should state and or other tiers of government be doing to help with the financial aspect of the viable?

ANGELA FALKENBERG

Yeah, I think it goes back to the purpose piece. You know, if we're clear about what it can provide as an asset to the community then, for example, you know, kids who might be, not necessarily under guardianship, but engaged with child protection, you know, is that a preventative factor or protective factor for children to participate in OSHC for some pieces. For children where there might be family violence, you know, is that an issue there? Health, you know, we have families who might have a child undergoing treatment and the siblings can benefit by being in OSHC you know, is that a protective health measure? I just think it's, I can keep talking about that village and the child, if it's in the child's interest, how do we make it happen? And does it have to be an education bucket or is it a local council bucket? Because we then connect them with, you know, Trees for Life, I'm just being random here. But I just think when we build stronger communities and build the capability, then everyone does better. So I don't, you know, local council, government, federal government, whatever there is, could people apply? Could they apply for a fund which makes that difference between the, you spoke about the eight to 10 families, because it's the seven families where people say, I'm worried, I've got seven. Okay. But I need another one and I can't get them. What do I do?

COUNSEL ASSISTING

You mentioned Ms Champion about cost being slightly higher because of the educator ratios that you utilise. We had some evidence from Danielle Wood before lunch and she had some insights to share about the Grattan Institute's views of the activity test. I wonder Ms Falkenberg from what you've said earlier, what changes you think could be made to that to increase access for some of those cohorts you touched on?

ANGELA FALKENBERG

Yeah, that's an interesting one. I think, again, I keep saying if the purpose is different, then the activity, can the activity match the purpose or does the activity test need to apply? If I, as principal could be like an authorising person to say, you know, in my professional opinion, these children would benefit and there's these consent forms and that's the end of it. Because sometimes the barrier can actually be the sign up, the paperwork. You know, we have schools who actually have computers in the front office where they sit with families and help them do even Centrelink forms. You know, schools are increasingly accessible to families as a great degree of support. I just think if the parent's consenting and I can then say yes and the funding flows, you know, how might we make it easy?

COUNSEL ASSISTING

Rather than from what you've said, a family having to go through the paperwork burden to show what they're doing and when to justify their access.

ANGELA FALKENBERG

Absolutely. Yeah. And I, you know, I say as the principal of the school and my professional opinion, this child would benefit from X, done.

COUNSEL ASSISTING

And because of the way that that currently works in practise from your experience are some of the more vulnerable children missing out from accessing an OSHC service that might provide a safe space at times.

ANGELA FALKENBERG

Oh absolutely. Parents wouldn't even think about it. You know I spoke to a principal of a low SES school, like a category one, which is our most vulnerable last night. I said, you know, they'll have children sitting at school till five o'clock waiting to be picked up because you know, the families got caught wherever, but it's simply teachers will give up their time to just look after them more than in the front office. So it's not even an option because they know under the current system, it can't be viable. So it's not worth their time and effort to explore having one, but under a different model of the activity test, it might well be of great benefit to families and community.

COUNSEL ASSISTING

I want to leave the Commissioner some time, so just before I do that, as you're both aware, we are looking at the expansion of OSHC so that our younger preschool age children can access it. And I'm very interested in your thoughts about what key challenges we need to meet in terms of the gamut from physical spaces, to how we need to shape curriculum and the like.

KOMALA CHAMPION

I think from our point of view, three year olds in OSHC as they stand now would be too big a hurdle to get across. The spaces aren't necessarily great spaces in some places for the children we already have there. They're certainly not set up or resourced for children that are three. Nappy changing facilities is probably, you know, the most obvious that comes up, we don't necessarily have a nappy changing facility in most OSHC areas. The space isn't set up for them, the staff qualifications that they currently have as three year olds in a long daycare setting are very different to what we have in OSHC. You would then have a three year old and an 11 year old, and that might be great in a service where there's 120 children and you can separate them maybe into four different age groups. But if you only have, you know, eight to

10 children, you're not going to be able to separate them. And then you do have a three year old with an 11 year old. And the difference in that age group and development and the things that they're saying and doing, you know, I wouldn't want my three year old going home after listening to some of our 11 year olds at OSHC chatting away. So I think that, you know, and at the round table, it came up and I think it, they were calling it "POSHC", the preschool OSHC. It really needs to be that wraparound service for our current preschools, where they can have before and after preschool care, rather than go into that school environment. They're just a little bit too young and too different in development, I think at that age for what we could see. And I certainly wouldn't keep the staff that I have if we were starting to, you know, they struggle with those four year olds that are about to start school. They're really going to struggle as it keeps going down in age.

COUNSEL ASSISTING

And on that, I assume you are starting to think about what expansion might mean for you? I also assume that it means you might need increased workforce. So are those things that you're starting to turn your mind to, as we navigate expansion to three year old provision?

KOMALA CHAMPION

Yeah. To start with the ratios reduced significantly. So you would need to have more staff. I think there's a lot of schools that are already saying no to four year old preschoolers coming into OSHC. We haven't gone down that track yet because we are trying to keep it as open and accessible for families as we can. But they're already starting to see the differences and the regulation, you know, keeping a three year old within a confined space that on a piece of paper is your licensed area is a very difficult thing to do. We don't have the gated fences with locks and swipe cards and everything. We're in a school that's very open. Some schools don't even have fences, you know, to keep a three year old within that area and make sure you're still looking at the other, you know, 10 children that you're supposed to be looking after becomes next to impossible. So I think, you know, our spaces aren't appropriate, our staffing at the moment is certainly not appropriate. And the resources are really different that you would need, you know, you still need the little trikes and things like that for a three year old where you don't have that in a school space.

COUNSEL ASSISTING

And so your preference obviously is for a model that wraps around existing preschool facilities. Would you look at catering to that market separately to a more, an older, OSHC service, or would you consider that then to be a more specialised OSHC worker need?

KOMALA CHAMPION

We're in the fortunate position that we have early childhood services as well. So it's something that we would certainly look at and be more than happy to look into. If it's just an OSHC provider that only does OSHC, I don't think that they'll be looking at that, but then you do have

childcare providers that probably would pick up that because it is more of their space. So yeah, I think it depends on the provider and what their current services look like.

COUNSEL ASSISTING

And in terms of key challenges we are going to need to overcome what do you see as the key ones and some possible solutions if you have any?

ANGELA FALKENBERG

Yeah, look, I certainly, you know, the challenges of, you know, the space and nappy changing. Well, I do wonder though, if we engage, you know, the users, the children in the planning, you know, I've seen wonderful work of older children in supporting younger ones as an aspect of embedding their own learning. And so if we said to children, what would it take for us to be able to work safely with three year olds? I wonder what they'd come up with because I have had preschool children in OSHC very successfully. Yeah, some of the older children were a little bit like cattle dogs, just keeping, herding the little ones back in, but there was these beautiful relationships that came from little children, having these very clever older, you know, like being clever can simply mean you make a Lego thing work. Right. So I think that is clever, very, exactly, you know, there's different bars, you know, well, non-alcoholic in this case, but I think, you know, we, in our, in our risk assessment piece sometimes can overthink it because there are many rural communities where children are in classrooms with that age span. But the regulations might need to be more, uh contextualised, I think, to say, how do we do this? And if the educators feel they've got it, can we trust them?

COMMISSIONER

Thank you. I just want to flip back to the governance piece and Angela, you gave us an example where a new principal comes into a school, there's an OSHC, it would cause a lot of community disruption to not keep the OSHC. But could I re-engineer that example and say a school principal who's in a school that's not offering OSHC, what would go through their mind in terms of whether or not they should, and what would go to the decision as to whether to run it or to contract the YMCA or some other third party provider?

ANGELA FALKENBERG

I think first of all, there would be that survey about who would use it and what sessions you'd commit to. Certainly, the schools I have worked with, the capacity of governing council is actually important. I want to, you know, when your governing council has professional people who can, you know, interrogate a piece of, you know, regulation, things are easier. I think if you had a governing council that was more nervous in that space, you'd look at outsourcing. And there are principals who had a school run one and then worked with an external provider through a series of meetings to hand over very successfully. And that was because even the governing council, because they have to have their own subcommittees. And again, a lot of

working parents say, oh, you know, it's a bit hard. I would rather go to YMCA, who've got all the package, all the training, because at the heart of it, we just want our children to be safe.

COMMISSIONER

And in terms of the sort of legal liabilities, would that bear on people's minds as to whether you are moving, you know, if something bad happened, a child hurt themselves, who would bear liability for that, would be that beyond people's minds?

ANGELA FALKENBERG

That is where principals worry. I did say to Kamala earlier that having had three OSHCs, my favourite was when the bus pulled up out the front, they got on it and I waved them goodbye because they were offsite. And, you know, therefore the responsibility was handed over. You know, a very active governing council can do this very well. It can be a very successful model. However, the principal still has responsibilities and authorising requirements and you know, checking in and so on. But you know, they are increasingly, because of the regulations, principals are finding this a burden.

COMMISSIONER

Right. And so they would prefer to contract the third party provider. And that sort of, they've obviously got to maintain that relationship. Or as Komala said, maintaining that relationship makes the whole thing work. But they've sort of shifted the responsibility,

ANGELA FALKENBERG

However, it's still on your school site, you still face the facility sharing issue. And if a parent's not happy, they will still come to you even though it's someone else. So it continues to be just simply some work.

COMMISSIONER

And in terms of principals doing that work, I mean, you talked about how a principal would need to think through, you know the space, the regulations, you know, viability of the service, the business kind of plan, those sorts of things. I mean how active is the support from the Department of Education to a principal to help them think through that? I mean, is there a, you know, this is a sort of tool kit, and, you know, this should help you think through the relevant issues and come back to us if you've got a question, or is it more hands on or more hands off than that?

ANGELA FALKENBERG

I think there is certainly a website, there is a phone number. You can talk to people about a policy. I think it's the contextual piece sometimes where there's a simple regulation and it

doesn't quite fit there, or it's preventing something else from being easy. Or what has presented challenges is the Education Standards Board coming in for an audit, and as a result, there's a huge amount of work that needs to be done by the principal that is on top of their everyday work. So that's why I said before about the burden has grown in 10 years, and I'm worried about 10 more years. So, you know, for some leaders, it's another whole school they run, that's how they see it, but they're running it literally on the goodwill of their own leadership.

COMMISSIONER

Okay, thank you, that's helpful. And Komala, I mean, given what you know from your own provision about viability issues, I mean, viability in terms of number of kids and therefore money coming in, but also viability in terms of being able to access staff, I mean, you are an at scale provider. Can you give us an insight into what is different for a much smaller provider than you that can't amortise training and other costs across multiple sites?

KOMALA CHAMPION

I think we rely on the Department of Education quite heavily as well, because in reality, that's our conduit for all of our contracts and as smaller providers they're relying on each other. So we see OSHC SA has quite an active chat group because they're having to ask each other questions and find out how to do things. And some of the things, you know, as we go through it, for me, it's like, that's our everyday, you know, how are they struggling with that? That should be the basics. So if they're struggling with the basics, how are they continuing with everything else? And the Office for the Early Years is amazing for support, but there, I think there's three women in there at the moment who are doing the majority of the work and they have, you know, I have 33 sites, but they have every Department school that would all be coming and asking them for advice and questions and things like that. So I think those smaller sites just are trying to find anything that they can, and if they don't have a strong principal who's interested, they're floundering and they're just hoping for the best. And I think it's when, you know, an authorised officer comes in from the Board and highlights things that, you know, the world starts to scream about it.

COMMISSIONER

I understand. And coming to the regulatory requirements and the appropriateness of the childcare style regulations, I mean, obviously at the lower end of the age range that you are catering for, the four and the five year olds, that may well be very appropriate, but can you give us an example? You said generally that, you know, you have older children coming across from school and you've got to kind of wrap them in cotton wool. And presumably stop them doing things that in the school context they're able to go and do because the regulatory settings aren't the same. Can you particularise that for us? Give us a few examples.

KOMALA CHAMPION

Yeah, probably the two actually on site, going to the toilet in a classroom, you put your hand up and you say, I need to go to the toilet off you go. They go to the toilet by themselves and they come back and maybe if they haven't come back in a little while someone might go look for them. Whereas in OSHC there needs to be a whole wraparound service around that. You know, we have buddy systems, we have to have tags, you know, in some of our sites to say that they've gone to the toilet. We can't see the toilet, so do we have a staff member going with them? So there's a whole lot of things just around something as simple as, you know, at two o'clock, they could go to the toilet by themselves at 3.30 they need to have someone go with them. The other one is transport and transport has become even more, I love that the bus is a great thing for a school, if the bus comes and the children disappear, but for the provider now that is a particularly difficult situation for us because we now need to have additional staff on the bus. There must be a staff member on a bus. So we have a service in Mount Gambier, Reidy Park Primary School has a really big OSHC. And so there's about 11 or 12 schools that access that OSHC before and after school. And up until January this year, we've had taxis and buses come from different sites. We've had to stop the taxis because now we need to have an educator to have the children come onto the, into the transport and off the transport, which means we'd have to have six to eight educators out in the community, getting into the transport with the children and coming in. So there's now four schools that unless the parents book the taxi themselves and pay for the taxi and organise that they can't access the service anymore because we just don't have one, the staff or the financial ability to do those sorts of things. Yet, if you're going to and from school, my children walk, they leave primary school and they walk home and no one's checking them or anything like that. So again, you know what we expect of a school-aged child isn't necessarily what we are then having to provide as a provider to do that. And that makes it a little bit, more tricky and reduces some of that child agency and independence that they have.

COMMISSIONER

And with all of these things which are obviously impinging on supply, you know, the willingness of school principals and school governing councils to say, let's have an OSHC, or maybe let's expand our OSHC, and you know, the willingness of third party providers, obviously, because you are at scale, maybe the decisions are different, but for many to be whether they should take an extra site or even be in OSHC at all. So with all of these sort of pressures on supply, can you give us some insights into growth of demand? I mean do you see that mismatch? Have you got waiting lists for services or are schools asking you to be a third party provider, and you're not able to step up because you're not able to expand at that kind of rate.

KOMALA CHAMPION

We would love to be in a lot more schools than we are. We have three schools currently that in the last three weeks that have approached us wanting to commence a service in their school. The schools are small. They understand that they are not viable services, but there is no way for them to get around the current guidelines to start that service. I think it's those small

schools and it's not necessarily just regional areas. You know, the three schools that have approached us are metropolitan, considered metropolitan, schools. They're small schools, they don't have an OSHC on site, or their OSHC provider can no longer provide the service because they don't have the staff or there's some other issues. But the process is a six month process to go out to tender and to procure a new provider to start with. So it's quite a lengthy process and there's a lot of paperwork. We do get to a school, if we get through all of that, and find that the principals aren't really sure what they've signed up for or what their needs are or what they're, you know, relying on us to do. And then there's the schools that no one will tender for, because there is no way of taking on that risk and there's no sort of background for us to fall onto. So we can take a little bit of a risk, because we do have sort of that size, but we are still a not for profit, we're not a loss company. We can't continue. So we, we do have a few services that we carry because it's the right community and we know that they're there and we're, we've been there for a long time, but we certainly couldn't continue bringing on those types of services and still be here in five years' time to continue. And we'd rather be able to give a great service to the schools that we are in and those communities rather than give a substandard service to more. And that's the way it would be at normal.

COMMISSIONER

I understand. Well, that's been very helpful. Thank you very much. Thank you for joining and thank you joining us again because you've participated in other Commission activities, but thank you to both of you. It's been great.

< RESUMING 2.45 PM

Commissioner, I call Associate Professor Peter Hurley and we have him on screen.

< ASSOCIATE PROFESSOR HURLEY AFFIRMED

COUNSEL ASSISTING

Associate Professor, are you currently the Director at the Mitchell Institute?

ASSOCIATE PROFESSOR HURLEY

I am.

COUNSEL ASSISTING

Is it correct to describe that as an education and health policy think tank based out of Victoria University?

ASSOCIATE PROFESSOR HURLEY

Yes.

COUNSEL ASSISTING

And with a particular focus on education policy and international education systems?

ASSOCIATE PROFESSOR HURLEY

Yes.

COUNSEL ASSISTING

And at the Mitchell Institute, I understand you've led a program of work that's had a particular focus on early childhood education and care, but also spanning to lifelong learning.

ASSOCIATE PROFESSOR HURLEY

That's right. So we look at all parts of the education system from early childhood, all the way to universities and beyond.

COUNSEL ASSISTING

And today we are particularly interested in having you speak to us about the work that the Mitchell Institute has done with respect to childcare accessibility and in particular that formed the basis to a paper you published in March last year called "Deserts and Oasis: How Accessible is Childcare in Australia". And for those tuning in the link is available on our website. Associate Professor you haven't been able to follow our sessions today, but we started with three women, working mothers who've spent many years campaigning for increased access to childcare in their communities within south Australia, each of which I think, and we'll look at a, a plan later on actually fall within areas that when you did your modelling are a childcare desert. So we're very interested to have you help us put this into a national context. Can you start by explaining to us where we get the term childcare desert from and what it means?

ASSOCIATE PROFESSOR HURLEY

Sure. And I actually did manage to watch this morning's session, so I did hear the stories. It's very interesting to hear. So the term childcare deserts, it actually comes from the research literature and it's this idea of looking at the number of available places versus the number of children vying for each service. And the childcare desert is described as an area where there are, there's less than one place per three children, or more than three children vying for every place.

COUNSEL ASSISTING

Now, ultimately the work that you've done illuminated that about 9 million Australians or 35.2% of the population live in neighbourhoods classified as childcare deserts. I want to ask you to help us understand what work was done by the Mitchell Institute, in terms of, I understand it involved research to measure spatial accessibility of childcare services across Australia. What was the process that you undertook?

ASSOCIATE PROFESSOR HURLEY

Well, why don't I just talk very quickly about the research and how we came to it?

COUNSEL ASSISTING

Yes thank you.

ASSOCIATE PROFESSOR HURLEY

It's probably better thought of as research into the relative scarcity of centre based daycare, that's not as catchy as childcare desert. But essentially what it is, it's a supply and demand measure. What it does is it takes the supply of what we call childcare, in this instance centre based daycare, so that's the number of licensed places, and it compares this to the potential demand, so that's the number of children age zero to five years who are not yet at school. And essentially what this shows is the relative access to childcare by region. So, as an example, there are about 600,000 places, childcare places available across, certainly licensed places, across Australia. And that's the supply. And there's a bit over 1.5, 1.6 million children, and that's the potential demand. And so what this means is there's about, you know, just under 0.4 childcare places available per child. And what we did with this method is, it takes that ratio and then it distributes it across the whole of Australia. So that 0.4 for childcare places per child is distributed across the whole of the country and those areas where there's more children but fewer places receive a lower score, and those places with fewer children, but more places receive a higher score. And so what our research found was that more advantaged areas had better access to childcare than disadvantaged areas, that inner metropolitan areas have better access than outer metropolitan areas and very strikingly, metropolitan areas had much, much bigger access than region of rural areas.

COUNSEL ASSISTING

If we stick with the model of your research for the moment, you've mentioned that it's focus was on centre based daycare. Do I take it that you excluded services that were solely out of school hours providers, or family daycare providers and government preschools and private preschools?

ASSOCIATE PROFESSOR HURLEY

That's right. So the family based, so centre based daycare. First of all, outside school hours is, it's kind of excluded anyway, because it's only looking at children who are not yet at school. We excluded preschool and we did exclude family daycare, which is about, I think about 10% of families who are using childcare subsidy programs are family daycare. So we were only looking at centre based daycare for various reasons, which is actually by far the largest proportion or component of the childcare service system.

COUNSEL ASSISTING

I think though you were able to account in some way for children attending at preschool. Can you give us perhaps a simplified version of how that was done?

ASSOCIATE PROFESSOR HURLEY

Yeah. What we did is we just removed, it does capture some preschool. It's very complicated as I think the Commission knows, the childcare system. What we did is we removed, children who would've been attending preschool from the calculations. So we adjusted the demand and that's a way of accounting for children who would otherwise be in 15 hours or 30 hours of preschool at the age of four. So there is some adjustment that's made for this. We could do this work again and then look a bit more closely at how preschools affect affected, but we are mostly interested in the childcare subsidy component of the early childhood system.

COUNSEL ASSISTING

And so in terms of South Australia, perhaps using the modelling work you've done in a more nuanced fashion, we would need to take into account some of these limitations. One is the preschool factor.

ASSOCIATE PROFESSOR HURLEY

There is. Yeah. And look, all research has it has limitations. In terms of this limitations, absolutely, there's no preschool or, or family daycare included within that. Like, as I said, we do adjust a bit for it. It's also not adjusted to say the different levels of potential use. Some families use childcare more than others, particularly those who are well off or have, who have jobs, parents with both, both parents with jobs, carers with jobs. It's also licensed childcare, not necessarily available places. A lot of centre based daycare centres will have more places than they have available childcare. So for instance, they might have a license for 40 places, but they only have one person who could work at the centre. So they only offer 20 places. And there's also other variations within the centre based, you know, within childcare, like, you know, some centres don't offer services for children under the age of two, for instance. So there's all these kind of nuances within the system that can be very difficult to capture, but I think it does give really a good sense of the relative accessibility of centre based daycare by region.

COUNSEL ASSISTING

Absolutely. Just before we start to look at South Australia and then a national comparison, it's also, I think, fair to point out that when you were looking at supply within particular areas, you were looking at distance to drive, not walking and not taking into account public transport and the like?

ASSOCIATE PROFESSOR HURLEY

That's exactly right. So I mean you have to create a parameter around, when you do the calculations and we created a parameter using driving time. So it was 10 minutes within a metropolitan area and I think it was about 20 minutes, 15 to 20 minutes, I can't quite remember, in regional areas and then areas that were, or neighbourhoods that were closer to the centre, they got a higher score than areas that were say 20 minutes away. So it's all these kind of adjustments that are done to give good picture about the relative availability of service.

COUNSEL ASSISTING

I'm hoping we can bring up Figure one, it's the picture of greater Adelaide, just bear with us a moment Associate Professor. It really gives the best illustration, I think, as to the nature of the work that you did. We are looking here at a picture of greater Adelaide, as it says, and immediately what is apparent to us are large areas of different shading. Can you talk us through what the different colours mean for starters?

ASSOCIATE PROFESSOR HURLEY

Well, this is actually where the term deserts come from, because if you, it's actually not just childcare, this idea of deserts also exists in other parts of the research around food and so on. But if you take that, the number of available places and you say, okay, there's fewer, you know, zero at some areas or 0.1 places per child in some areas versus up to the places with the most available childcare and you mapped it this is what you get when you map it. And so those red areas, which are where there's lower levels of childcare accessibility, much like a desert, and the green areas where there's, more childcare available. Now, this is obviously it's Adelaide, it's actually a very typical kind of distribution in the metropolitan area. And you'll see this repeated in all the major capital cities in Australia. So the green there'll be usually within the centre of the town of a city, there's more childcare available and the further you go out, the childcare availability lessens, and then often you get these kind of pockets of green, which you can see up in the north or in the east there, where there are some areas in outer suburban areas that have relatively high levels. Sometimes these can be in new suburbs, and this kind of model is repeated across the country.

COUNSEL ASSISTING

And I'll ask you to flesh out a little bit the comparison nationally, but I just wonder if we can bring up from the Mitchell Institute's website, the wonderful greater South Australian map, which, if you were with us for the session this morning, what this really illustrates very starkly, I think for us at the Commission is the geographical makeup of South Australia and the extent to which we are characterised by these really dark areas, which fit within that definition of desert.

ASSOCIATE PROFESSOR HURLEY

That's exactly right. And, you know, it can be a bit of potluck in regional areas, that's what I certainly found, in maybe there might be some towns where there's actually quite a large amount of supply, or there's a few childcare providers, but, and then there might be some where there's very few there's an under supply. The kind of model that you get when you look at this is the centre has more, and then the outer bits have less. And that happens to say across the whole city and somewhere like Adelaide, but also happens in say on, in smaller ways, around, around the country where a major town might also have a few kind of providers or the bulk of providers, and some satellite towns will have fewer providers. Or you might get a town, which might be able to support one childcare centre, but it's full. And so there's lower levels of supply, so it can be very stark and you get these vast regions of red and lack of supply.

COUNSEL ASSISTING

And before we perhaps take that off the screen, what it does illustrate, I think, for those familiar with South Australia, is certainly all the areas that the panel providers come from this morning were in that very dark red, suggesting there were, at least based on your modelling, no places available in terms of long daycare. So it's, I think a very stark illustration, and I should say for those tuning in that there is that interactive map available on the Mitchell website, which I spent a very long time playing with I have to say, it's just fascinating. You touched upon greater Adelaide being like relatively indicative of an Australia wide pattern. But I think what you found was that when you looked nationally Queensland, the ACT and WA had above the national medium in terms of access to childcare places First of all, what was the national medium?

ASSOCIATE PROFESSOR HURLEY

I think it was about 0.37, 0.38. Yeah.

COUNSEL ASSISTING

And in terms of the states that were above that what can South Australia learn from them? Do you have any theories as to how they achieved that? Was it simply geography or, I mean, it can't be in terms of WA there must be similar challenges.

ASSOCIATE PROFESSOR HURLEY

Actually, WA I had lower levels of childcare.

COUNSEL ASSISTING

Oh, I'm sorry. Thank you.

ASSOCIATE PROFESSOR HURLEY

Yeah. Yeah I think first of all, Queensland has a bit of a different model. So for instance, there's a lot more preschool delivery within centre based daycare providers, which can affect the number of centre based day care providers. The ACT is a very interesting one because it's, well, it's a very urbanised area, you know, and there's high levels of female workforce participation and that results in more kind of childcare that's available. In terms of the lessons learnt its, you know, that overall, there's probably more childcare places or what we call centre based daycare, what we call childcare, in places it's like Queensland. But it's the same, it's the same picture in terms of, you know, some places have a lot more, others have a lot less. Some regional towns have a lot more, but then a lot of regional areas have less accessibility. So I think it comes down to the system and the design of the system more than say what one state's doing compared to another state.

COUNSEL ASSISTING

You also did some work in terms of comparison with towns and proximity to schools. Can you explain to us what was done and what you, what insights you gleaned from that?

ASSOCIATE PROFESSOR HURLEY

Yeah, sure. Look, I think it was a very interesting thing to look at. Say the availability of schools now, schools are obviously a very different model. It's a very, very different system. Schools have been around for a lot longer than say the, our childcare system or the CCS system as it's known. And we wanted to compare if there, is there this kind of difference in the availability of schools compared to centre based daycare? What we found was that you're much, much more likely to have a school. Almost all communities will have a school, even if there's rather a small school. And it was about, the population threshold seemed to be about 1500 people. So if there was a town that had more than 1500 people living in it, it most often had a daycare centre as well. Now that daycare centre may full, or it might be small, it might not be big enough, you know, all those things, but it still had one. Whereas below 1500, that's when you're starting to see that there are fewer childcare, you know, fewer centre based daycare providers but there will be schools who are operating that. I mean, they're very different systems, but the point about say a school system is that it's easier to plan. It's compulsory, it's done within a kind of a central system where we say, we need to put a school there because we know we have this number of children. Whereas the centre based daycare or childcares,

have a lot of different kind of variables, it's extremely complicated. So it's a lot more difficult to plan.

COUNSEL ASSISTING

Now the detail is all set out in your paper, but you found about 360 towns with a population under 1,500 that did not have a centre based daycare, but have a school. We've been talking a lot today about what the best models are for regional communities in terms of providers of childcare. And we've touched upon with Danielle Wood before lunch the commitments by the Victorian and the New South Wales governments, which have taken slightly different approaches to whether government drives building and running centres as opposed to bolstering the market. What advice would you have for the Royal Commission about leveraging schools and trying to increase access to some of these more remote areas?

ASSOCIATE PROFESSOR HURLEY

I think that it is a model that makes a lot of sense. It's going to be very difficult to provide these services, these centre based daycare services, in these regions and in these areas using the current kind of approach. So the approach that Australia uses, so, if you think about, say that kind of continuum, you've got between zero, all the way from, through centre based daycare through preschool, through the school. The further along you go, the more it kind of moves into the schooling system. The centre based daycare model is kind of known as, or anything covered by the childcare subsidy is kind of known as a demand side subsidy model. So what that means is it focuses on increasing the demand for childcare by providing a means tested subsidy and then setting up a system so that the supply, the childcare providers, can respond to that demand. The economics of it in these regional areas just isn't there, or it's too risky. I mean, in many ways we kind of put risk and reward at the centre of our childcare system because it's, I mean, if it's too risky there, then childcare providers aren't going to operate there. Whether that means that there's not enough people or maybe that the, there might, you know, there's a lot of investment that goes into opening up a childcare centre so you've got to be be sure that that commitment's going to last for a longer time. That can be very risky for a lot of providers. So that economics is going to happen for anyone whether they're a not for profit provider or a for profit provider and it's, it can be very risky for them. So they're going to go overall where there's the most reward. And the most reward is generally those areas that are, they can charge more, and those kind of regional areas and those rural areas can be way too risky. So, I mean, if you're thinking about this idea around how is it that we can, you know, look at this problem or fix this problem or, or so on, I mean, having a, some kind of government intervention I think is probably going to be the only way that that that's going to occur.

COUNSEL ASSISTING

And that really does tie into what we heard this morning in terms of the panellists - one had been able to find a private provider, but for the other two communities, they weren't attractive and viable for private providers. And so really you are speaking in terms of government being more proactive in providing services in these areas.

ASSOCIATE PROFESSOR HURLEY

Yeah, absolutely. And I remember, I think someone mentioned it in the morning session around this idea around say co-locating of services and this idea of say the speech pathologist and so on. I mean, if you think about, say zero to five and the needs of a child and you know, what we can do to support them and, you know, the child care obviously is a really important component of it. It's often, I think childcare's often thought of as a labour market support program, particularly, you know, federally in the way that it's funded. You were talking before around how is it that we can, you know, increase female workforce participation and those type of things, but there's this other aspect of it, I think in terms of say the child - what's in the child's needs and so on. And those kind of services where they're being able to say, co-locate a lot of these services at schools within the community, that type of thing, so they can get access to speech pathologists if they need it. So I, if you think about the education system, I mean if home is where we start from, some form of early childhood education care is going to be where we end up next, whether that's childcare or preschool, and that's going to start a whole set of transitions for a young person and making sure those transitions happen well is I think really, really important. I'm someone who looks across the whole of the education system and the way that we construct childcare at the moment, it's not able to do more than just provide an hour of care. It does it very well, very efficiently but all those other parts of it that we could be, could be benefiting from, with our childcare system we're unable to leverage.

COUNSEL ASSISTING

It's also important, I think, to point out when we are discussing this concept of childcare deserts, that the point is made in the report that not all are in remote or very remote areas. Can you speak to us about, where they exist in areas that might not immediately, we might not think of immediately in terms of more metropolitan areas?

ASSOCIATE PROFESSOR HURLEY

Often in lower socioeconomic areas, often in the areas where there are higher proportions of people from non English speaking backgrounds, so we're using that as an indicator of cultural diversity. There's a lot of things that go into why people might use childcare and where a provider might set up. There's also a lot of other issues around say workforce. I mean, if you are going to open a childcare centre, you are going to want to make sure that you've got a workforce who can, who can actually work there. But there are some very interesting patterns I think within metropolitan areas and around, there's relatively lower levels of childcare in poorer areas or more disadvantaged areas, I should say, compared to more advantaged areas. And that can be, I think, very problematic. And then there's this other issue about the quality of the provider, which we didn't particularly look at, but often the, you know, the quality of the provider can be, well look, it's, it can be more difficult to find a high quality provider if there's fewer providers available.

COUNSEL ASSISTING

In the work that you've done, the figure I think I'm looking for is 59% of people living in childcare deserts, 5.35 million are actually located in major Australian cities. So it's important for us when we look at those areas of red and green on your maps to realise that red can actually occur within a metropolitan area. And often the work that you've done can help us then at targeting need in those areas that actually really need it.

ASSOCIATE PROFESSOR HURLEY

That's right. I mean, there's, we found that about a million Australians had no access to childcare whatsoever. Almost all of them were in regional and rural Australia. In terms of the lower levels of access to childcare, I mean, everyone I think the same kind of problem, you know, we all need to find childcare. And I mean, if you haven't got childcare available in your particular suburb, in a metropolitan area, that's not as bad because you can just go one suburb over or two suburbs over to the next provider. But if you're in a regional area, I mean that next town or the town after that might be, I think someone was saying hundreds of kilometres away, you know, so it's, absolutely it's a problem or a concern that exists across the country, wherever you live. But I think how people experience it would differ, depending on their circumstances and the city they're living in.

COUNSEL ASSISTING

And we had an example of that this morning with people driving 650 kilometres round trip, or having parents do the same. So it's a good example of the desert perhaps hitting harder in those areas than it might in a more metropolitan area. Is that a fair summary?

ASSOCIATE PROFESSOR HURLEY

Yeah, absolutely. Yeah.

COUNSEL ASSISTING

The green shaded areas that we can see on the maps that the Mitchell Institute has put together, are called childcare oases and you spoke at the very start of the session about where they're more commonly found and you started to touch on that they're in more sort of advantaged areas. Can you flesh that out a little bit?

ASSOCIATE PROFESSOR HURLEY

So we use this term oases just to kind of, provide this idea of greater levels of supply and they're almost always in areas where there's higher, more advantaged areas. They're more, so a lot more likely to be areas where there's greater levels of employment. We measured childcare based on where someone lived, not where they work and about 16% of families prefer to use a childcare provider that's close to work. So there's going to be more supply

around these employment centres. The regional areas, again, were really interesting because you've got some areas that, where there're actually quite high levels of supply in some regional towns, simply because I think they draw in a lot of the services across the region, you know, and that's the same, you know, with hospitals and so on. So I mean, the childcare oasis thing quite interesting. I remember having a conversation with someone about this who works in the area and who works for a provider. Because you know, we spoke to a lot providers when we were doing this work and, you know, got their feedback and their advice and so on. And they were saying, well, we shouldn't be calling them the oases, it should be called a swamp because there's so many of them, or it's a deluge or something. And I thought, well, that's really interesting. I mean, if you are a provider, you would think that that's oversupply because you are trying to look for this kind of point where you've got enough demand for your services and so on. But if you are a family, I mean, that's not an oversupply. It just means you've got more choice. And I think it kind of highlights the difference, the different kind of motivations within the sector and how we've designed the sector.

COUNSEL ASSISTING

If I can come back to this issue of socioeconomic regions and childcare accessibility, you did do some work as part of your modelling about the relationship between access and neighbourhoods and the Index of Relative Socioeconomic Advantage and Disadvantage. Can you take us through that aspect of the work?

ASSOCIATE PROFESSOR HURLEY

Sure. So what we did is, there's about 57,000 neighbourhoods. They're actually known as statistical area level ones, but they're probably better thought of as neighbourhoods and they have about 200 to 400 people living in them. And each one of those areas has a kind of a number assigned to it about a socioeconomic status. So we took that and we looked at all the different neighbourhoods across the country. And we said, all right, if you're in the, we broke them up into 10, you know, into deciles, and compared how, what the access was or the relative access was depending on, you know, this measure of socioeconomic status. What we found was between the first, I think it was the first and the fifth, there's relatively lower levels of access to childcare. And it's when you get to say the sixth, seventh decile that it really starts to start to change. So that the areas that have the highest levels of advantage have by far more places available to them.

COUNSEL ASSISTING

And presumably there's a relationship here then between the current model and it being more attractive to open a service in areas where there's less risk financially.

ASSOCIATE PROFESSOR HURLEY

There's that. I think, I mean, two things I would point out one is that, I mean, it is set up very much as it is, as in the system, is set up to respond to demand. So there's going to be greater

levels of demand where there's greater levels of female workforce participation of mothers. And that's often in areas where there's more advantaged, in more advantaged kind of regions across Australia. And the other component of that is this issue of price. And what we've found is when you look at it from a, on a metropolitan area, the areas that are more advantaged also have, not only do they have more childcare places, but they also charge more per hour. So you've got this, I think that kind of speaks to this idea of risk and reward. There's more reward to open a centre there because you can charge more, and you get more of a benefit from it.

COUNSEL ASSISTING

And on that work that's been done around the correlation between price and accessibility, there's quite a helpful Figure 14 that you produce in your report that gives us a little bit of a national picture. Can you help us understand what we can see on this?

ASSOCIATE PROFESSOR HURLEY

Sure. So each one of those black dots is what's known as SA3. An SA 3 represents about 70 to a hundred thousand of us, and that's for each of the metropolitan areas. And the Y axis there is the number of places available. So the higher dot is on that, the more likely you're going to have to have more childcare available. And the X axis there is the mean fees per hour. So what it basically shows is that as you go up in terms of fees, you get higher levels of supply and that's repeated across every, you know, that's what this shows across every metropolitan, every capital city. I think that it's more pronounced in places like, somewhere like Sydney, for instance, which has some of the highest levels of overall fees charged, some of the most expensive childcare centres are in Sydney, but it is a pattern that's repeated.

COMMISSIONER

Can I just ask a question whilst that's up, just looking at those comparative displays, the steeper gradient, of the sort of best fit line, for greater Adelaide, so that's telling us, is it that the variation from the lowest price point to the highest price point in Adelaide is less than other places?

ASSOCIATE PROFESSOR HURLEY

That's right. But I suspect if we were, if we were able to with Adelaide, for instance, because it's a much smaller market, if we were able to say, take that down to a SA2 level, you would see it, you would see more difference. I think it's just because the only published data is in SA3 but yes, you're completely right. That's, that's what that will show.

COMMISSIONER

Though I suppose population wise the best comparator is Perth and that's far more distributed, isn't it on price point.

ASSOCIATE PROFESSOR HURLEY

Yes.

COMMISSIONER

Which is interesting. Not sure what the explanation for that is, but it's interesting.

ASSOCIATE PROFESSOR HURLEY

I mean, for what it's worth, I mean, some of the things that I was looking, I mean, there's so much data in this and just looking at it, I mean the price thing is interesting. Also if you compare say somewhere like Adelaide and Perth, if you're looking at, or even say Adelaide Perth and say Sydney and Melbourne, what I found when I was looking at it was that a big reason for the difference or one, one of the reasons for the difference is female workforce participation. So there are greater levels of females in the workforce in places like Sydney compared to Perth and Adelaide. And that I think is a big reason for the difference between the two. And I think also somewhere like Brisbane, it could also be because there are, because of the way the system's structured. So that there's more, there's more kind of centre based daycare because of the preschool situation. So, I mean, if you're looking at the comparisons between the countries, sorry between the cities, which is what this does, there's that issue again, I think of female workforce participation and the system design, but overall you get the same kind of patterns.

COMMISSIONER

Thank you.

COUNSEL ASSISTING

In terms of this issue of cost and fee increases and cost being a barrier, I think as part of the changes that are coming into childcare subsidy later in the year, the federal Government has asked the ACCC to look at the drivers of childcare fee increases. What more do you think could be done in this area to look at the issue of fees and rising fees and where they're more expensive?

ASSOCIATE PROFESSOR HURLEY

Look, it's a very complicated system and what you can do to kind of, I mean, when I did this work, I got a lot of people, a lot of places emailing me saying, can I have your data because we, you know, run childcare centres. But they were mostly doing it for property, they were wanting to know where the, the kind of reasons why childcare providers operate in certain regions is, can be very diverse depending upon who they are. This issue of price is interesting because it's, I would argue that we put price at the centre of our childcare system. So where, you know, we say, okay, we'll provide, say units, the whole system around producing units of

care, you know, an hour of childcare, in the most efficient way possible. That's kind of set at about, say \$12, \$13 at the moment, and then there's higher and lower points around, you know, what the government subsidy would be based on that kind of fee or that average fee per hour. In terms of what government could do, I mean, there's a lot of work being done at the moment around say if we move to say 90% fee subsidy, what that might look like. I mean, I haven't got the latest data because they've changed it, you know, they've introduced these new changes that you mentioned. Overall I think the government provides around 62% of the cost of childcare and the other 38%, 35 to 40% is through out of pocket costs. And that obviously is mean tested so that the, you know, the more family owns, the more likely they're going to have to pay high levels of out of pocket costs. I think moving to a more, a clearer kind of 90% or something would go a long way to making it more affordable because there are some families that have very high out of pocket costs because of this model.

COUNSEL ASSISTING

And you note from the work that you've done in the modelling that there's, what we see is this really incentive for providers to operate in advantaged areas where they can charge higher fees, even if there's competition, what do you think can be done to make it more financially viable and attractive to providing less advantaged areas?

ASSOCIATE PROFESSOR HURLEY

Well, I think it would be, I mean, I would encourage looking at the model itself. I mean, at the moment, it's a, as I said, there's this, I mean, it's a demand side subsidy model. So I think if there was say another way of approaching, it might be say a supply side direct subsidy model. So what that means is that you provide money to a provider or you know, it could even be government, it could be government that, that does this to operate a service in a particular area. And that gets around this issue of, you know, all these kind of complicated calculations that have to go into, can we operate here? What's the future demand going to be? You know, what's our, what's our risk and reward ratio, all these very complicated kind of calculations that, that any provider needs to do. In doing that, because I think that those zero to five years, I mean, they're so very important. And if you, if you're able to kind of say directly fund a service, it means you can also put those kind of additional services onto it, all those things, you know, like the speech pathology, like the maternal healthcare services and that type of thing. I think it's a really good opportunity to look at that.

COUNSEL ASSISTING

I want to leave time for the Commissioner, but can I just touch on the work that you did about actually measuring what families are spending? And it's quite fascinating, the point that you make that housing and energy costs, we have a way of measuring when, as a society, we think they've reached a point that's unaffordable, but we don't really have a point at which we have a measurement for childcare. Can you tell us about the work you did about what Australians are spending and what perhaps is done elsewhere in terms of having a yard stick of affordability?

ASSOCIATE PROFESSOR HURLEY

Yes, absolutely. So, I mean, we did some work around this, around counting the cost of childcare to families. And we used HILDA data, the Household Income, and Labor Dynamics in Australia survey, the HILDA survey, looking at the out of pocket cost of families. And we used a measure that is used in America of no more than 7% of family income is spent on childcare. And then we looked at the families across Australia and using the survey data to see how many were exceeding this benchmark. And there were quite a few, there were quite, quite a large number of families that were that exceeding this benchmark. I can't quite remember the percentage, I think it might have been 30% at this point of families who were using childcare. That will change because there's a whole new set of rules that have come in but it does highlight that it is an expense and a consideration in a way that other things aren't. Particularly, school, for instance, you know, a lot of families do choose to spend a lot of money on schooling and that's fine but it's something that families don't have a choice in when it comes to childcare.

COUNSEL ASSISTING

If I can just give a couple of the relevant figures for those who are watching. I think you found that about 39.4% of families who use childcare are spending, or have expenses above that 7% affordability threshold. And another finding I was struck by, that 83% spend more on early childhood education and care than utilities and clothing.

ASSOCIATE PROFESSOR HURLEY

Yeah, it can be a lot, it can be very high out of pocket expenses for childcare.

COUNSEL ASSISTING

We touched this morning with Danielle Wood about those changes to the childcare subsidy, and moving the subsidy for the first child up to 90%, 85%. I'm terrible with numbers on a Friday afternoon.

COMMISSIONER

Her advocacy was to go to 95%.

COUNSEL ASSISTING

Thank you, Commissioner, that's right. Do those changes go far enough in your view?

ASSOCIATE PROFESSOR HURLEY

The ones that just come in?

COUNSEL ASSISTING

Yes. The ones that will come in in July this year.

COMMISSIONER

That's 90%.

ASSOCIATE PROFESSOR HURLEY

I think that, do they go far enough? I mean, look, it will help. It will help a lot of families and it will be cheaper for many families. But there's a big difference between what's coming in and what's been approved and the idea of the move to this 90% universal kind of subsidy, that will have a very big difference on the out of pocket costs for families. And, I mean, I know that they are, that's, what's being investigated at the moment as part of the Productivity Commission. It would herald a major change in how we approach childcare and out of pocket costs and how we pay for it. I think it's worth it and it's a major investment. Yeah, so it can be very confusing when it comes to childcare, because there's so many moving parts to this system and, you know, depending on what, how many children you've got and what your family income is, that's going to dictate around, you know, how much your out of pocket costs are going to be. But moving into a more simpler model, I think would really help a lot of families. But I mean, it will cost us more, I mean, we just need to be aware of that, but I do think it's worth the investment.

COUNSEL ASSISTING

In terms of the source of data that you were using for this aspect of the work, that HILDA survey, that's based on surveys completed by a number of households per year. Is that right?

ASSOCIATE PROFESSOR HURLEY

I think it's about 4,000. It could be 10. I can't quite remember actually, but it's a very useful survey because it's been running since about 2000, I think and so it gives you really good kind of longitudinal look at lots of different things and one of them obviously is the cost of childcare and it's really good because it gets a very kind of detailed thing around expenses and expenditure and, and so which can be difficult to get from other sources.

COUNSEL ASSISTING

South Australia, as you know, has an opportunity to look at creating and designing a more integrated data system in the early years. Is there room for, and we've discussed in previous hearings of perhaps reticence about over collecting data and privacy issues and the like, but in your view, do we need more localised data about issues such as this, for example, South Australia specific in order to try and target some of these issues?

ASSOCIATE PROFESSOR HURLEY

Well, I think a lot of it's being collected and it is somewhat scary, the amount of data that is collected these days. And I certainly have gone to some, Australian Bureau of Statistics training things where just actually seeing how much data's being collected, everything from Medicare to Centrelink, actually a lot of it is, is probably there.

COUNSEL ASSISTING

So in terms of south Australian spending on childcare, we would be able to go and access that?

ASSOCIATE PROFESSOR HURLEY

You would be able to, yeah, you probably would actually, it's nascent, if that makes sense. You know, its really coming on, has been coming on for the past, say five to 10 years. So it's a matter of pulling out the right things that you want to look at.

COUNSEL ASSISTING

And in terms of that 7% benchmark, I'm interested in how that gains traction in America, because I don't think it's legislated, is it?

ASSOCIATE PROFESSOR HURLEY

No, it's not. I mean, all of these things, look, it's a very similar thing with that with say childcare deserts. I mean, you have to pick a pick a number essentially, and that can be a bit arbitrary in many ways. I mean, that was the idea with the 7% marker saying, okay, well we'll use this as a way of saying, you know, anything more than this is too much. But I mean the United States has a, I mean, in terms of the model of childcare, it's very similar to Australia. Places like in the Scandinavian countries for instance, will have a very different kind of model. But I think that's why the 7% is relevant to look at. It's a good way to say, all right, well, what are the expenses and how much is the family spending on this thing? And how does it compare to other forms of expenditure?

COUNSEL ASSISTING

I think the way it's described in the submission is that it's used in the preamble to the rules for the Department of Health and Human Services in America. So it carries weight in terms of public policy and the like, but how does it work practically in terms of trying to prevent spending above the 7%, what done in America?

ASSOCIATE PROFESSOR HURLEY

Oh, look, I'd probably have to look into that one to give you a more, a full answer. But I mean, I think it's, the American system's also extremely complicated because I mean, a lot of it is done on a, its funded federally but a lot of the childcare's provided through state kind of initiatives. And they have a very big differentiation in the availability of childcare and the cost of childcare, via state and even within cities within state differences, counties and so on. So I think this idea of say, right, well given something that has such a disparate kind of existence across somewhere like the USA it gives the ability to look okay, well, let's see how different areas, how they're comparing with each other.

COUNSEL ASSISTING

Commissioner.

COMMISSIONER

Thank you. I've got a few questions in different areas so if they come across as a bit of a grab bag, apologies, but just drilling into the higher fees in more affluent areas is there any data set that drills into whether higher fees correlate with better outcomes against the National Quality Standards?

ASSOCIATE PROFESSOR HURLEY

No, there isn't, but you could do it. And it's interesting, the whole National Quality Standards. We had looked at this around, well, let's see if we can compare accessibility to the National Quality Standards and you know, the thought was that the Quality Standards themselves, I mean, how do I say this, they're regulatory instruments, they're not necessarily identifying really good practise. Or if they are, you kind of have to assume that a certain particular, you know, quality, you know, item 2.1 is a proxy for good service. But it does I think point to this issue, with say early childhood, is it's hard to get an idea of what the quality is. And even if you're looking at say this idea of childcare as, you know, really important for later development within children, we're not really picking up that data. We get it at the point of what's known as the Australian Early Development census when they're at school, when they're at five, but before that it's really patchy. But I would suspect, although I haven't done it, although I could look at it, I would suspect that yes, you would, they are more likely to have, you know, be centres that have got higher levels of, you know, exceeding the NQS and that type of thing in these regions.

COMMISSIONER

And any data that, whether higher fees correlates to above award wages for staff.

ASSOCIATE PROFESSOR HURLEY

No, that would be a very interesting one. That would be a very interesting one. Again, you could get it, you could get that, but, no, there's nothing there at the moment.

COMMISSIONER

When we put up the map of South Australia, there were some city edge areas that were green. And I think you made the comment that you do see some outer metropolitan areas that are green. Is that explained by the fact that more modern, what's the word I'm striving for on a Friday afternoon, when there are new housing developments, modern planning requires the build in of services. So unlike the old days when you'd have the houses and then someone would go, oh, we forgot to put in the school, or we forgot to put in this, that, and the other, modern planning practises means that they're in the development plan from the start. And that tends to be inclusive of a childcare centre, is that what's explaining the green in those areas.

ASSOCIATE PROFESSOR HURLEY

That's how I interpreted it. I mean, if you looked at looked, my expertise is more in understanding say the geography in the Melbourne area, I hope that's okay for me to use as an example, but like, I mean, some like Doreen, I think it was like, its a new suburb, you know, and it's got quite a large, I mean, some of the childcare centres are huge like 400 places that are available there, you know, and if you compare that to say another area somewhere like Springvale, for instance, that's more established, lower levels of, of childcare accessibility. So yeah, that's how I interpret it too.

COMMISSIONER

And on the provision in lower SES areas, I mean, I get it that there's, you're able to price to market, so the more money the market, the more you can charge price, that obviously makes sense. But can you just dig a little bit more as to what else is going on there? I mean, because you could put the argument, lower SES areas that have got demand for childcare places, probably land prices are lesser than more moneyed areas to get the land, to build the centre. You may have better access to workforce because they're likely to be areas that are under serviced in terms of job supply. You know, what's the constraint? I'm sure you could dig a little bit in the market model and say there is a model that sustains those centres.

ASSOCIATE PROFESSOR HURLEY

I think look, the childcare system does a really good job of equalising access in many ways. I mean, if you are of lower socio, you know, more disadvantaged area, you get a very high subsidy, you get 85 % subsidy compared to somewhere that, you know, the community might on average only get a 20% subsidy. And there are a lot of childcare providers in these areas. I'm not saying that there's none. But I do think that it's, there is a variation in the access. Often it's also to do with say the number of people who are working. So maybe the demand's a bit

lower at the same time. I think, look, I'm someone who works across the whole of the education system, and there's lots of different things that we think about with, you know, making sure that the education system is kind of equalised. So that, I mean, to put it very kind of bluntly, I suppose, you could even say that the best school is in, you know, the more disadvantaged suburbs. But we don't do that with early childhood and so we don't put any of those loadings on in price so that a provider gets more resources to kind of equalise that disadvantage. I mean, early childhood is known as the great equaliser because it can help remove a lot of that disadvantage for those things that kind of show up in schools and in NAPLAN and so on. But I think that's probably a bit more than access. That's part of the problem. We're not providing more services and more funds to the areas that probably need them and where children and families would benefit the most.

COMMISSIONER

And so, it's not our task to reconceptualize the childcare whole system, because obviously this is, you know, we're talking about the childcare subsidy, they're federal funding flows. But you would say in looking at that system, layering in potential loadings for disadvantage would not only be a good thing in terms of child development, but it would obviously be, in terms of attracting providers, you'd be sending a signal through the subsidy system.

ASSOCIATE PROFESSOR HURLEY

Yeah, exactly. And also, I mean, and also through preschools as well. You know, having a similar kind of model with the preschools, so that, you know, the whole system is geared towards providing, you know, better care and better services, and then all those things in the areas that would benefit most from it.

COMMISSIONER

And just finally, we've had some discussion today about, and at other times during the Royal Commission, about the activity test and what that does or doesn't do in terms of access for more disadvantaged, jobless families in accessing childcare. How do you think that plays into this spatial work about low SES areas being underserved?

ASSOCIATE PROFESSOR HURLEY

I think it plays into it a lot. I mean, and I have been in presentations where people have spoken about this and the activity test and so on, and just hearing the colour of people talk about the difficulties in now, am I going to be able to get this? I've only got eight hours for service, you know, and so on and all these kind of things that can, that kind of compound this inability to go and find work and so on if that's what they want. And that will play its way through in terms of access, because it means that the providers won't open there and it's, you know, there's less services and so on. So I think the activity test absolutely plays a big role in that.

COMMISSIONER

Well, thank you very much. It's been very interesting and great to see the display of all of the material. So thank you for that. It's great to see that. I can imagine that playing with the interactive map becomes a little bit addictive But it's been fantastic to see that spatial display and to enable us to put this morning's evidence in this kind of very deep, very thoughtful context. So thank you very much for that.

ASSOCIATE PROFESSOR HURLEY

Thank you very much. It's been a pleasure.

COUNSEL ASSISTING

I call Kerry Leaver

< KERRY LEAVER AFFIRMED

COUNSEL ASSISTING

Ms Leaver, you're currently the Chief Executive and Registrar of the Education Standards Board, is that correct?

KERRY LEAVER

That is correct.

COUNSEL ASSISTING

When did you start in that role?

KERRY LEAVER

December, 2021.

COUNSEL ASSISTING

Is your background in what we can call, for our purposes, social regulation rather than education?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And have you got experience in assessing quality and performance and reporting performance against legislative obligations in areas such as healthcare and personal injury?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

By way of initial overview, and I want to jump straight into the Education Standards Board given the time, is it correct to describe the ESB as the independent statutory authority that regulates the provision of education and care services to children in South Australia, right through from birth to secondary school?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

Now there's a fair bit involved in the scheme and the regulatory framework, and we'll try and deal with it in as truncated a fashion as we can today. Does the Education Standards Board have authorised officers who have specific powers to monitor, respond and investigate to ensure high standards of competence are met by services in South Australia?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And obviously a primary function of the regulatory scheme is to minimise risks to the safety, health, and wellbeing of the children in those services.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And the ESB then regulates a range of services within the early years covering long daycare, family, daycare, preschools and out of school hours care, is that right?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And as part of the core duties one of those is assessing and determining applications to ensure that providers are fit and proper to operator service is that right?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And then a monitoring and assessment role, which involves a dual role, assessing against the national quality standards, and, and also as part of that, making sure that regulation and legislative requirements are met.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

Now we'll try and just give an overview of the framework for people, but I think as you will admit, it's relatively complicated. The National Quality Framework was introduced in 2012 is that right?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And essentially that introduced a new quality standard to try and drive improvement across long daycare, family daycare, preschool, and OSH across the early year services.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And it sets really a high benchmark for those services in terms of what's expected of them.

KERRY LEAVER

Yeah.

COUNSEL ASSISTING

It includes the National Law and Regulations?

KERRY LEAVER

Yep.

COUNSEL ASSISTING

It includes the establishment of the Australian Children's Education and Care Quality Authority, which we call ACEQUA for short?

KERRY LEAVER

Yep. The National Regulator.

COUNSEL ASSISTING

And then we have the National Quality Standards.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

Now it's sometimes called in paperwork, the applied law system, but essentially did Victoria pass legislation first and then essentially the other states adopted it with an enabling act and some further provisions of their own.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And so in South Australia we have the *Education and Early Childhood Services (Registration and Standards) Act*?

KERRY LEAVER

That's right.

COUNSEL ASSISTING

And that adopts the *Education and Care Services National Law* act that was passed by Victoria in 2010.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And pursuant to that framework, the Education Standards Board was established in 2012 to be our, in SA, the independent statutory regulatory body.

KERRY LEAVER

Yeah. And the Regulatory Authority as termed under the National Law.

COUNSEL ASSISTING

And then your task is to administer the state acts that we've referred to, which pick up on the national, the first act past in Victoria. And then we also have some Education and Early Childhood Services (Registration and Standards) Regulations in South Australia as well.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

That's all quite a mouthful. If we can just start with the National Quality Standard, because a core function of your role is to conduct assessments pursuant to the standard and give a rating to services under seven different headings and then an overall rating is that right?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

So services are assessed and rated by the ESB for each of the seven quality areas. And then there's one overall rating.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

Are you able to run through the seven quality areas or would you like me to run through them quickly?

KERRY LEAVER

I can run through them.

COUNSEL ASSISTING

Lovely. Just give us a potted overview of what those seven areas are.

KERRY LEAVER

Okay. So the first one is Educational Program and Practise, which is about the assessment and rating, sorry, assessment and planning cycle, to provide education, with a focus on education for, you know, operation of the service, and also an element of critical reflection on that program that it's, you know, developing and delivering as intended. Quality area two is Health and Safety. That's where the supervision standard sits. Quality area three is Physical Environment. Quality area four is Staffing. Quality area five is Relationships with Children, Interactions with Educators and so forth. Quality area six is Collaborative Partnerships, how the service interacts with its community and families, and seven is Governance and Leadership, how it goes about running its operations.

COUNSEL ASSISTING

And in terms of areas such as three, which is Physical Environment, would that include incorporating compliance with things like building codes and food and safety standards and the like?

KERRY LEAVER

I think so.

COUNSEL ASSISTING

And in terms of staffing arrangements is ratios that are set for the nation incorporated within that.

KERRY LEAVER

Yeah. And they're in National Regulations.

COUNSEL ASSISTING

And in terms of the National Quality Standards, those seven standards are by legislation standards that must be met by all providers nationally and within SA.

KERRY LEAVER

Yes. So there are 15 standards within the, so the National Quality Standard is made up of seven quality areas of which there are 15 standards that sit underneath those seven areas and yeah. And then 40 elements, in fact, in total, within the whole, of the seven areas. And that's important for how an overall rating is derived.

COUNSEL ASSISTING

And we might come to that when we talk about the amendments that were made in 2018, but can you just tell us at this stage what the ratings tier is? So there's excellent, which can only be awarded by a ACEQUA. What are the tiers that authorised officers can assess and rate at?

KERRY LEAVER

So, for excellent, a service can only apply to ACEQUA if they're rated exceeding by the jurisdiction regulatory authority in all seven quality areas. Exceeding means that a service goes above and beyond the National Quality Standard in at least four of those seven quality areas. And then of those four quality areas, at least two of, areas one, five, six and seven must be rated exceeding. I hope that's clear.

COUNSEL ASSISTING

It'll become clear as we work through some examples.

KEKRRY LEAVER

So four of the seven have to be rated as exceeding to achieve the exceeding rating overall. And the 'meeting standard' means that the service provides quality education and care across the seven quality areas. 'Working towards' standard means that the service provides a safe service but there are at least, there is at least one area requiring improvement and then

'significant improvement required' means the service doesn't meet one of the quality areas or a section of the legislation and there is significant risk.

COUNSEL ASSISTING

We'll come back to that later, but that's not actually currently being used as an assessment measure in South Australia?

KERRY LEAVER

No, it's not currently being used.

COUNSEL ASSISTING

I just want to ask some questions about the actual assessment process. What are the qualifications of the authorised officers.

KERRY LEAVER

So the, I might answer the question with what training do they undergo. There's no minimum qualifications specifically, but ACEQUA, as the National Regulator, trains the authorised officers using a nationally consistent methodology. An authorised officer has to undergo that training and then be 'tested reliable', they call it, and through that testing process if they achieve a reliable status, my role then grants them powers under the Act to undertake the authorised officer duties. And the other point to make about that is that they have to test reliable annually. It's a refresher requirement.

COUNSEL ASSISTING

You helpfully pointed me in the direction of the Guide to the National Quality Standards, which I think you described as a 600 page tome, but what that made clear is that each service is unique. And so there's no precise format for assessments. So can you explain to us how assessments are conducted?

KERRY LEAVER

Yeah, so it starts with the service being notified of an assessment and rating process commencing, and then they have to provide within around three weeks of receiving that letter their Quality Improvement Plan known as the 'QIP' and a self-assessment tool, which is a compliance self-assessment tool that asks them to rate themselves against provisions of the law and regulations. They submit that information. And then the next step is for an authorised officer to conduct the desktop review. They use that information as well as information we hold on the service, which would be their compliance history, any complaints we've received and previous assessment and rating reports. And the desktop review, the goal of that is to really enable the authorised officer to be prepared for the visit and understand that unique service

context. But also to perhaps lead to focus areas they might like to explore during the visit, then they go on site and conduct the visit. Then they go on site and conduct the visit. The purpose of that is to gather evidence. So there are three ways in which they gather evidence during that visit, which are through observation, through citing documentation and evidence, and through discussions with the educators and leaders. Do you want me to keep going? At the end of the visit, so shortly after, in the next day or two, they would hold a post site visit meeting with the service. That's usually used to, I suppose, cover off any gaps they might have identified. And then they spend their time synthesising and analysing the evidence that they've gathered. And that's why a rating isn't given on the day of the visit, it's not possible to do so, there are 40 elements they have to assess quality against. So once that, an analysis has concluded, they draft the report and that report is sent to the service and they are able to provide feedback on that report. And then that the report is finalised roughly within about eight weeks of the site visit.

COUNSEL ASSISTING

I'm going to ask you some questions later about your resourcing, but can you give us a sense as to how long in man hours an assessment process would take, even ballpark?

KERRY LEAER

I might answer it slightly differently because I don't think I can do that, which is we aim for a full time equivalent authorised officer to undertake two assessment and ratings a month.

COUNSEL ASSISTING

That's helpful. In terms of the assessment and rating process we're going to come to focusing on the ratings under the NQS, but I also just want to make clear that as part of that investigation process, other non-compliance aspects as against regulations might be found. For example, I had a look at some of the most common offences, if I can use that term, relating to things like using inappropriate discipline, or protection of children from harm and hazards, or inadequate supervision and the like. If some of those possible breaches of regulatory requirements are found, what approach does the Education Standards Board take to the regulatory function in terms of, some of these carry fine provisions, but is there a gradient to which you exercise your regulation and what is that?

KERRY LEAVER

So all of our regulatory activities are responses to alleged non compliance based on risk. And if you are at an assessment and rating and the authorised officer identifies that, those kinds of areas of non-compliance you just listed are quite serious, so depending upon the level of seriousness of the matter, if we are looking at issuing any statutory sanctions, we would actually have to pause the assessment and rating. The law requires us to do that. If we're continuing to investigate and undertake other non-statutory actions then the investigation, the non-compliance response, can run alongside the assessment and rating activity. The other

tools available to the authorised officer, depending again upon what they have found, is the minor adjustments policy, which really allows the service to rectify minor non-compliance that doesn't have an impact on children and/or can be rectified within, you know, two or three days of the visit. And the reason that policy is important is because you really do want the service rating to demonstrate current quality and not be, you know, penalised, if you like, too strongly if it can be easily corrected.

COUNSEL ASSISTING

You used hand washing as an example where you might use this minor adjustment process when you and I spoke, can you flesh that out?

KERRY LEAVER

So you might, if you found something like that, you might then go and observe whether that practise or that poor practise of not ensuring that the children wash their hands before they eat, or when they come inside and whatnot, is across consistently across the, rooms within, for example, within a long daycare. You might also look at whether it was one child and the rest of them wash their hands. So you're assessing that level of risk and impact upon children to make that decision. And you might speak to an educator before making that determination about whether the minor adjustments policy is suitable in that case.

COUNSEL ASSISTING

And in terms of the approach that's taken to regulation, the materials on your website indicate that you support voluntary compliance in terms of having an important role in providing guidance and information to the sector, and a focus on practical and constructive advice on how to comply with law and regulations. And we'll come back to some of the tools that you use and the like. But in terms of non-compliance, if we take an example of a possible infraction that's found, there's a process then for it to be investigated by a separate group. And then you have, as I understand it, different enforcement tools open to you that range from caution letters and compliance notices right up until infringement notices and prosecution.

KERRY LEAVER

Yes.

COUNSEL ASSISTING

But as I understand it, the core ideal is to try and start from assistance towards compliance.

KERRY LEAVER

Absolutely.

COUNSEL ASSISTING

If we can come to some, nitty gritty now. You're aware, I think that in October 2012, there was some media articles that published some statistics about only 44 centres being inspected between January and September 2022, compared to 80 for the same period in 2021. Are you aware of the source that was used in respect to those figures?

KERRY LEAVER

I can't replicate that information, but I understand from the article it's from the National Register, from ACEQUA's website.

COUNSEL ASSISTING

I'm sorry to interrupt you. You are, however, I think able to give us the numbers of assessments conducted since 2016, I think today, aren't you?

KERRY LEAVER

I am.

COUNSEL ASSISTING

Are you able to that?

KERRY LEAVER

Yeah, of course. So in 2016 we undertook 288 assessment and ratings. 2017 was 276. 2018 was 203. 2019 was 197. 2020 was 110 and 2021 was 133 and 2022 was 108.

COUNSEL ASSISTING

I know you've told us you commenced your role late 2021 but are you able to help us understand the drop in numbers, and I anticipate COVID will be part of your answer, but are you able to help us understand those figures?

KERRY LEAVER

The team anecdotally report that there was more FTE allocated to assessment and rating activities a few years ago than there is now. I don't have any, there's definitely no reduction in funded positions or budget and I think what, that makes sense to me in so much as waivers have increased significantly. The process of assessing and approving a waiver application is new work that the regulator has had to undertake over the past, well certainly since 2019. COVID prevented us from assessing and rating for portions of 2021 and 2020 and 2022. I think the other important point which is an ongoing, I suppose, feature of resourcing at the ESB is, if

you have turnover in the authorised officer roles, because of the robust training and onboarding process that must occur it can be quite a long process to onboard an authorised officer and have them independently assessing in the field. They go through a process of supervision and mentoring and shadowing with experienced authorised officers. So like most organisations in the great resignation period, we did have some higher than expected turnover as well. And all of these things are taking place over that three or four year period since 2019.

COUNSEL ASSISTING

So presumably COVID didn't account for all of that high turnover. Do you have any sense as to what was driving the high turnover in the pre COVID stage?

KERRY LEAVER

I don't. I'm sorry. Yeah.

COUNSEL ASSISTING

But I think you've said there was no reduction in funded positions or budgetary implications or strategic decisions that you are aware of.

KERRY LEAVER

Exactly. Other than a change in how teams were, you know, set up, the structure to deliver against the applications, assessment function we have to perform. That's the only explanation I have.

COUNSEL ASSISTING

You've mentioned waivers, and perhaps we'll deal with that before we move on. We are aware from some of the evidence we've had that there are legislative requirements for ratios with respect to staff and children numbers within services in the early years. But are there other things that you can seek waivers for? And can you explain to us what it means to seek a waiver when it comes to staff?

KERRY LEAVER

There are waivers for physical environment, like outdoor areas. In the main, that's the two different types, and waivers against all of the staffing requirement regulations, there's lots.

COUNSEL ASSISTING

It's asking for an exemption from a statutory requirement?

KERRY LEAVER

Sorry. Yes, that's exactly it. Yeah. So that you are compliant even though, because you are exempted from having the required minimum ratio,

COUNSEL ASSISTING

You point out in the materials you've put before the Commission that waiver applications have increased 268% between 2019 and 2022. Are they COVID driven, the increases, do you have any sense?

KERRY LEAVER

I think that was absolutely the first assumption,

COUNSEL ASSISTING

That's staff waivers, I think. Is it?

KERRY LEAVER

Absolutely. Yeah. So predominantly, I think we have two or three waivers for outdoor environments, so predominantly therefore, waving obligations against the early childhood teacher hours spent in a centre, which depends upon how big a centre is, and OSHC educator qualifications. So, I think certainly the ESB thought that, back in 2009, because it was an obvious, you know, trigger. I think nationally, we all thought that would drop off, but of course the workforce shortages in the early childhood and in fact, education sector more broadly are well publicised. And those shortages are I would say driving the continued high number of waiver applications we receive.

COUNSEL ASSISTING

We heard from a couple of witnesses earlier today about applying for waivers in the context of running and out of school hours care service. And they mentioned that in some cases it can take quite a while at the moment to get a response to that application for the waiver. How long does it typically take to process one?

KERRY LEAVER

So the law requires us to process it within 30 days. I don't know, currently sitting here, what the average is. I'd have to take that on notice. I'm not sure.

COUNSEL ASSISTING

And how much assessment work is involved in that process.

KERRY LEAVER

Depends on what the service context is. Are we looking at a waiver extension where the service hasn't had, hasn't been able to staff to the required standards for years? Are we looking at a service that's just requiring, you know, sort of like a bridging waiver, if you like, for a few months? What is the compliance history of that service? There's a lot, those are the main factors that are taken into consideration. And then I think the other one is assessing against, particularly in OSHC right now, adequate supervision and that the service is able to demonstrate that they can maintain the requirements of providing active and adequate supervision with their waiver in place.

COUNSEL ASSISTING

And given the high numbers of applications and actual waivers in place, has your approach to applications changed at all?

KERRY LEAVER

Yes. So the requirement to provide a risk assessment to demonstrate that they'd assess the risk of inadequate supervision in particular, but there may be other unique service risks that they need to assess as part of that waiver, but that would be the most obvious one; potentially being able to undertake their educational program; that might be another one that we ask them to assess. So the minimum information required to submit a waiver is not enough in the context of the regulatory risks that we're seeing right now, they're actual risks, they're not emerging. We have significant increases in incidents being reported to us of inadequate supervision where children are harmed. So it's important that we, you know, proactively undertake regulatory activities to ensure that we are satisfied that the service can meet its obligations with that waiver.

COUNSEL ASSISTING

Can we come now to what we know about services in South Australia and the approach that ESB is taking? And I think we've got some charts that will help us in a moment. Can I just make clear, and you've raised this with me earlier, that you have access to ACEQUA data, which we've spoken about today, and at any given point in time, you can give an idea as to how many services have been rated and what the rating is. But the data is quite fluid and dynamic, and you've done some work for us today based on I think data that was accurate as of February.

KERRY LEAVER

Mmmm.

COUNSEL ASSISTING

And as of February, the figure was 1,270 approved services that were being monitored by the ESB. Do we have a figure one we can bring up now? It's a little bit small, but this figure gives us an overview as of February this year in relation to ratings of services within SA. And we're talking about overall ratings here?

KERRY LEAVER

Yes.

COUNSEL ASSISTING

And we can see on the top line there that, and we are talking globally here, out of 1,270, that 14% had been rated overall as 'working towards', 44% 'meeting', 42% 'exceeding' and a tiny little yellow bit at the end as 'excellent' – I can't make it out.

KERRY LEAVER

And just to make the point though, that it's 96% roughly at any one time of approved services have a rating because there's roughly a 12 to 18 month lag between becoming operational and undergoing an assessment of rating. So yeah, that figure just represents a subset, albeit 96%.

COUNSEL ASSISTING

And so at any given time, it would be unlikely to have 100 % because new services are assessed to become providers and then have an assessment at the end of 12 months,

KERRY LEAVER

New providers are able to operate one or more services and those services, on receipt of their approval, are then not assessed. They have what's called a provisional rating and they are assessed and rated within 18 months of commencing operational.

COUNSEL ASSISTING

It's important to put some of these figures into context, I think. And for example, we look there at family daycare and we can see 50% rated as working towards, but then does the diagram tell us that that actually involved the rating of only 12 family daycare services?

KERRY LEAVER

That's right. Yeah. It's not weighted in any way. And there are definitely, you know, different sizes of the service types across the sector.

COUNSEL ASSISTING

And I think, is it roughly, you estimate about 6,000 children that we're talking about in the family day care setting?

KERRY LEAVER

As a maximum, yeah. Yeah.

COUNSEL ASSISTING

You've touched on some particular features of out of school hours care and we'll try and come back to them time permitting, but we can see there that 21% are 'working towards' and for long daycare, 18%. What are some of the key challenges being faced within OSHC services, do you think in terms of improving their ratings?

KERRY LEAVER

So I might start by saying that across any service type, there are three quality areas that are most likely, or more likely sorry, to be rated as 'working towards', which is quality area one quality area two and quality area seven. In the context of OSHC I think you might have heard that educational programming and practise is different in an OSHC setting than in a long daycare setting. And what we find is that OSHCs are more likely to not be able to evidence an assessment planning cycle for their educational programming. In standard two, sorry, in quality area two, is most likely to be issues with adequate supervision and in area seven, we see things like continuous improvement practises aren't embedded into the practise, the operations of the service. And another example is educators aren't undergoing performance monitoring and reviews as an employee.

COUNSEL ASSISTING

And in terms of comparing that to the results for preschool and kindergartens, and we know a lot of those are, are government provided. Does the ESB provide additional educational resources to non-government providers?

KERRY LEAVER

No.

COUNSEL ASSISTING

In terms of helping them to try and improve their ratings?

KERRY LEAVER

No, it's, rather than I suppose, cutting it up by government and non-government, it's more based on need and compliance status. So we would be providing more resources, support, response, to services that are not demonstrating an ability to meet their obligations.

COUNSEL ASSISTING

And what additional resources be required to enable the ESB to provide more assistance to OSHC facilities, for example, in terms of meeting regulatory requirements?

KERRY LEAVER

I mean, generally speaking, we just need more additional resources across the board but I think, one of the strategies that I'm employing as the new Registrar is to increase educative activities, regulatory activities, generally for all services. But in particular, we do have a regulatory target to support services that have been rated 'working towards' three or more consecutive times. Of that cohort, quite a lot are OSHC, but yes, it would absolutely, it makes sense and is in keeping with our risk based approach to regulation, that we would allocate more resources to the OSHC service type as a general comment.

COUNSEL ASSISTING

We'll come back to that education strategy. I just want to, before we leave these figures, we've spoken about that 4% that don't have a rating, being new providers. What's the procedural policy that ESB have in place at the moment in terms of when you're then going and assessing new services.

KERRY LEAVER

So I recently changed it, instead of 12 months, it's 18 months. And the reason for that is, back to your previous question, so that I can reallocate some resources, again, based on risk. When you receive, when a provider receives a service approval, they've had a fair amount of interaction with the regulator. They're also often gearing up their service, so they don't have a lot of children. They're, you know, they're onboarding their staff, they're gradually increasing their capacity. We've also been through the process of checking their policies and procedures, assessing fitness and propriety. After the service opens, we perform a post service visit at around three months post operation. So my thinking is if you've had all that interaction with the regulator over probably a course of around a three to six month period, and you've only just opened, I would much rather allocate resources to services that need our support that are up and running and are demonstrating non, you know, non-compliance or a lack of willingness and ability. And I really want to give the services, the new services, the best opportunity to achieve a 'meeting' rating. So our strategy is that at that post service visit, it's not started yet, but it's imminent, we will provide them with support around what does a quality QIP look like, how to go about embedding continuous improvement into the service, what does assessment

and rating entail, what can they expect when we come back to the service, which at that point would be about 12 months from the post service visit. So that's the logic.

COUNSEL ASSISTING

Now another important caveat to figure one and that is that it makes clear at the top that this is based on ratings, whether they were done under the 2012 or the 2018 NQS. So the NQS was amended in 2018. Is that correct?

KERRY LEAVER

That is.

COUNSEL ASSISTING

Are you able to give us a sense as to what the implications of the amendments were overall?

KERRY LEAVER

I am, noting that I'm not the expert, and of course ACEQUA would be, but essentially the biggest impact, particularly at the regulatory authority level was the introduction of 'exceeding themes'. So the review delivered a clarity and robust process for how to achieve an 'exceeding rating'. Before 2018 there was a descriptor, if you like, for the authorised officer that talked about identifying high quality practise and consistent practise, but it didn't go beyond that. In 2018, they delivered very clear thresholds, if you like, against these three themes which are that practise is embedded across the service, that there's meaningful engagement with the families and the community and that practise is informed by critical reflection. So each standard has to have these three, has to be able to evidence these three themes to receive an exceeding rating at the standard level, and then each standard within the area. So two, both standards, have to be exceeding for the area to be rated exceeding.

COUNSEL ASSISTING

So it's made it a bit more robust?

KERRY LEAVER

It's significantly more robust, the team would definitely tell me, do tell me. There's also now, and you can find it in the guide, a series of questions that the authorised officer must ask themselves of the evidence, to be able to demonstrate whether, to be able to determine, sorry, whether exceeding themes are present at that standard level. And then, so, yeah, essentially if a service is meeting the standard, the authorised officer is then obligated to assess against succeeding. That was not the case before, that structured way of assessing.

COUNSEL ASSISTING

Now you've provided us with some figures in your written submission, that of services with a rating, only 517, that's 41%, have currently been rated against the 2018 NQS. I think we can depict that on, figure two will help us in a moment, but that leaves 705 who haven't been rated against the 2018 NQS. Now in your written submission, you indicate that the Education Standards Board is prioritising assessing 15% of the 2012 rated services as against 2018, by June, 2024. Can you explain to us how that can be achieved?

KERRY LEAVER

So basically, we know in advance how many services are going to meet that 18 month threshold, and we have to assess, leave capacity to assess and rate those services. Anything left over is really just going to be against assessing those services that are essentially the longest waiting, that have had the longest time since their last assessment and rating. In the main, there's a lot of preschools in that cohort because the ESB has worked on a strategy of earned autonomy and has invested more resources in the services rated 'working towards' over a number of years, so that they have ended up, you know, because a lot of them achieved 'exceeding' in particular under the old standards, they haven't been rated for the longest period.

COUNSEL ASSISTING

Do you think you're on target now to meeting that 15% of 2012 services to be rated by mid next year against 2018?

KERRY LEAVER

I don't think so at the moment. No, no. Some of that is, well, most of that is related to having to onboard new authorised officers. And we haven't touched on this, but the Education Standards Board is undergoing a, really a transformation in how we go about undertaking our regulatory operations. And with that pace of change obviously comes some impact on operational capacity.

COUNSEL ASSISTING

Are you advocating for increased workforce and what minimum numbers do you need to improve the assessment numbers against 2018?

KERRY LEAVER

I am advocating for more resources. I do think that ESB can improve it's efficiencies and effectiveness but not to the extent where we will be able to reduce the assessment and rating cycle time anywhere close to the national average of three years. And the minimum that we would require, based on my preliminary analysis of the team's capacity, would be around 20

FTE of which 17 would be authorised officers in the field and then three to, you know, supporting functions.

COUNSEL ASSISTING

When you're talking about a three year cycle nationally, that's three years between assessments and ratings. And currently, where is South Australia sitting?

KERRY LEAVER

About nine years.

COUNSEL ASSISTING

What are your, our ratios of educator, authorised officers, sorry to services compared to nationally?

KERRY LEAVER

Roughly speaking, we have one authorised officer to around 99 services compared to one to 48 nationally.

COUNSEL ASSISTING

You acknowledge in your submission, the difficulties that result in terms of the quality of the data we have because of these issues surrounding the assessment rating cycle and the time. there are implications for us when it comes to trying to assess what we know about how services are performing. And there's an illustration of that in figure two, I think, just bear with me. I'm sorry, perhaps, what should we take from figure two? I've just lost my train of thought.

KERRY LEAVER

So I think the important thing, and I'm not sure whether you could quite get this from figure two per se but, because of the robust nature of the assessment now required against to achieve an 'exceeding' rating across the nation, and this will bear out in South Australia, as we assess and rate more 2012 rated services, you will see a shift in a reduction in the number of services achieving an 'exceeding' rating. The other thing that we have observed, which I suppose is more worrying, well not suppose, it is an emerging issue for us, that over the past two years of the services we have assessed and rated 52% have achieved a working towards rating. So there are some signs that service quality is reducing more than we anticipated it would. We thought we might see services move between 'exceeding' and 'meeting', that was an expected outcome. We didn't anticipate the high numbers of services achieving 'working towards' rating.

COUNSEL ASSISTING

And so, for example, if we take the overall ratings, when we look at figure one, we had 14% overall who were 'working towards', but then when we look at just those rated against 2018, it rises to 33%. So there's a real difference in the quality of the data and what it tells us about performance, whether there's an assessment under 2012 or 2018.

KERRY LEAVER

Yeah, yeah, exactly.

COMMISSIONER

Can I just stop you there to make sure I'm understanding? My understanding of what you said about 2012 versus 2018 was that the change was in the methodology for assessing 'exceeding'. And so it makes perfect sense that if you've tightened the methodology for who's going get 'exceeding', then lesser numbers will get 'exceeding'. But were there any methodology changes between 2012 and 2018 on what would get you in the category of 'working towards'?

KERRY LEAVER

No.

COMMISSIONER

No, so that's not a standards change, is it, that's an actual change against the same standards, correct?

KERRY LEAVER

Correct, yeah.

COMMISSIONER

And can you just give us the figures again about the actual change against the same standards? I think Counsel Assisting just used two figures then.

COUNSEL ASSISTING

It was 14% if we looked at the ratings overall against either 2012 or 2018.

KERRY LEAVER

I can actually go one step further.

COUNSEL ASSISTING

Thank you.

KERRY LEAVER

There were no services rated as 'working towards' in South Australia under the 2012 standards. So that 14% purely represents services that have been rated against 2018. And if you then were to, yeah, like I said, look at just the last two years, the picture sort of worsens again. And because, what we're seeing is, 52% of services that have undergone an assessment and rating in the last two years have only achieved a 'working towards' rating.

COUNSEL ASSISTING

So did I hear you correctly that under the 2012 NQS there had never been a service rated 'working towards' overall?

KERRY LEAVER

Correct.

COMMISSIONER

So there might have been working towards in one of the seven domains?

KERRY LEAVER

No, because if you are 'working towards' in one of the seven domains, you can't achieve an overall meeting rating.

COMMISSIONER

Okay. And now in the last two years, I think you said 52%.

KERRY LEAVER

Yeah. Mm-hmm.

COMMISSIONER

Okay. And is the biggest explanation there inability to have the right number of early childhood teachers? Is it a workforce constraint?

Subsequent to the hearing on 14 April 2023 Kerry Leaver corrected this evidence on behalf of the Education Standards Board. Please see page 18 of the written submission of the Education Standards Board dated 17 May 2023. In short, there were services with a 'working towards' rating under the 2012 standards. There are no services currently rated as 'working towards' under the 2012 standards because all services with that rating have now been re-rated under the 2018 standards.

KERRY LEAVER

No, I don't think so. I have a couple of working hypothesis. I haven't actually considered that one. Mine are, the regulatory authority does not have a presence in the sector. The process of assessing, because of our long cycle times, the process of assessing and rating in and of itself keeps that focus on quality for the sector. And we haven't been able to provide that at the rate that we should, that I think we should be to achieve that national average. And I think that, you know, that plays out when you compare. It's the major difference between, based on those ratios of authorised officers to services, between us and other jurisdictions. They have about 14% of their services overall that they rate and most of them are already on 18 standards, that receive an overall quality rating of working towards. South Australia's is significantly higher than that. The other, I suppose, related working hypothesis I have is that our educative practises have not been as, and the engagement with the sector, whether it's through assessment and rating or other ways that we monitor and engage with the sector, have, I don't have evidence of volume or effectiveness but my observation would be that there has been limited meaningful educative and engagement activities from the ESB.

COMMISSIONER

And just on this, you're talking about services and, so you should be because you are the regulator for across the categories we can see on the screen, you know, family day care, preschool, kindergarten, OSHC, long daycare. But this trend of far more services being in the 'working towards' category, is that equally distributed across preschool, long daycare, OSHC? Or is it, are we getting those big numbers because it's disproportionately in one of those categories?

KERRY LEAVER

Yes. And thank you for raising that because, long daycare and OSHC are over, they are being assessed and rated more frequently because they were achieving the 'working towards' rating and the ESB strategy was to go back and rerate those services that achieved a 'working towards' rating rather than assess and rate services that were already 'meeting' or 'exceeding' under 2012. So there is an overrepresentation there anyway, that we were skewing the data by assessing and rating services we knew to have lower quality or lower ability to meet areas. And in addition to that, there is definitely a pattern, regardless of service type performance, that you are alluding to, which is OSHC services tend to receive a working towards rating more, they're more likely to than a preschool.

COMMISSIONER

So if no one had ever had a 'working towards' under the 2012 standards, then the first time people would've had a 'working towards', the earliest that could've happened was in 2018.

KERRY LEAVER

That's right. Yes.

COMMISSIONER

Right. And have you, are there any services that got 'working towards' then that you've been back to a second time?

KERRY LEAVER

We've been back to services up to four times.

COMMISSIONER

Right. And if your theory that the regulators engagement with services, in and of itself tends to spruce people up, I'm not sure that's very good terminology, but get, make people more responsive, are you seeing that when you go back multiple times, that they're maybe they're still working towards, but they've closed the gap to...

KERRY LEAVER

We do see them close the gap. Absolutely.

COMMISSIONER

Right.

KERRY LEAVER

We went through a period before I arrived of reducing our 'working towards' percentage from 21 to about 14%. So when I arrived, the team were able to demonstrate a successful strategy overall. There had been a reduction in the percentage of services that have achieved 'working towards'. Not so much in the last two years.

COMMISSIONER

Right. So something extra is

KERRY LEAVER

Which may feed into your question around staffing and overall, you know, sector stress and workforce shortages that we see.

COMMISSIONER

So we are really mining aren't we for the slip into something in the last two years.

KERRY LEAVER

Yes, that's right.

COMMISSIONER

Right. Interesting. But, but it does mean, and I'm not criticising for this because on a risk rating basis, it makes a lot of sense, but it does mean that it could be a very, very long time since you've been to a preschool because it came up as 'meeting', at least 'meeting' standards. And so if you risk rate, you wouldn't be going back there, you'd be getting all your risk rating done. And then going back to the sort of cued ones for the next round.

KERRY LEAVER

That's right.

COUNSEL ASSISTING

And you did mention to me when we spoke earlier, that you were concerned a previous approach had been to, I think "park" was the word you used, services that had had a good rating, and then they were sort of put on the sideline for some time, what, what's the approach you're trying to take now?

KERRY LEAVER

So what we're doing is mining, through the 'working towards' services. So we are currently at 180, I think I reported 166 at the time of writing the submission overall across the whole sector. And what we're doing is looking, at the element level, what is driving the inability to achieve a 'meeting' status. So that work continues. But of those 180 services, 31% of them have not met one or two elements. So you can see that there's great opportunity there for us to provide assistance and education in those two elements. And then undertake what's called a partial assessment, which allows us to assess an area rather than all seven, so that we can assist that service to achieve the 'meeting' rating. So that's one part of the strategy. The other one is to, particularly where we're talking about services, I guess, the other end of the spectrum that haven't met the standards for three or four consecutive rating, assessment and ratings, or who have a large number of elements or areas that they're not meeting, continuing to go back and assess them every sort of 12 to 18 months had been the approach, but we're not seeing, I guess, a commensurate outcome that would warrant allocation of resources, very scarce resources, in that way. So the idea is to do something different, provide some broad and narrow, both kinds, targeted education to those services to really help them understand and

maintain compliance. And I think the other element is to actually start to take enforcement action where required.

COUNSEL ASSISTING

When you outlined the different ratings to us you told us that the final one was 'significant improvement required'. Is that being used as a rating anywhere in Australia?

KERRY LEAVER

Yes, it is.

COUNSEL ASSISTING

Is there a reason that we are not using it here as an outcome?

KERRY LEAVER

So, it has been the position of the ESB that as a 'significant improvement required' is defined as there being significant risk to children, that it would be more proactive to apply other regulatory enforcement tools to mitigate the risk rather than apply the rating. I don't have a written policy of that, but that's the team's belief around why that process exists.

COUNSEL ASSISTING

And are you able to help us today with any figures as to how many services might currently have assessments that are three years old or five years old as at the current time?

KERRY LEAVER

I can't give you a factual number. I can take that on notice and provide it, but it's going to be a high number that would be over five, a high percentage. It would be over five years, for sure.

COUNSEL ASSISTING

And I suppose we know that because we know our cycle's nine years versus three.

KERRY LEAVER

Yeah.

COUNSEL ASSISTING

I'm really conscious of the time so I'm just going to hand over to the Commissioner and we will just run a bit over time.

COMMISSIONER

So I just want to, so if we aren't using the 'significant improvement required' because we think a different instrument might be better when that sort of significant risk is identified, what is that instrument? Is that enforcement action?

KERRY LEAVER

Yes.

COMMISSIONER

Yes. And so does that mean we take more enforcement action than jurisdictions that use 'significant improvement required'?

KERRY LEAVER

No.

COMMISSIONER

Right.

KERRY LEAVER

My understanding, pre my arrival, so going on what, from what I understand from the team, is that we had an activity called 'intensive intervention'. So a service would be rated as 'working towards' but the team viewed there to be risks that required mitigation and therefore an authorised officer would be assigned to that service to provide that intensive support around, you know, getting them up to the standard they needed to be. And then they would be assessed and rated again. We don't have any evidence of the effectiveness of that strategy and the team report mixed results anecdotally. So that, and of course, coupled with the resourcing issues we've been talking about, it's actually just not a sustainable model for the Education Standards Board within its current funding envelope. Other jurisdictions undertake similar programs and actually get ACEQUA to deliver those programs to the services rather than the regulatory authority which I think is, you know, something that, that we would certainly be interested in pursuing in the future. But I think it's fair to say that if you were to look at the date that I arrived in my role, you'll see a bigger increase in our enforcement action. You can probably pinpoint the day I started, because I do think there's a need in a number of our regulatory activities for us to basically do more, more education, more enforcement. They go, it's not one or the other, both need to be increased.

COMMISSIONER

And what's the consequence to a service of an enforcement action.

KERRY LEAVER

So they're compelled to take action within a certain timeframe if they don't meet the requirements of that notice, because that's the kind of first tool. Then there can be penalties associated with that and you know, there are then escalating enforcement tools at our disposal. We can apply conditions to limit the service. And of course, ultimately, we can shut the service.

COMMISSIONER

Is it a bit counterintuitive that people would presumably jurisdictions would contract in national regulator services to do the sort of on the ground intensive intervention for quality improvement? That just feels intuitively like the, the closer the regulator is to the service, the better position they are to do that. And so the national one is further away, but there may be some reasons I'm not understanding,

KERRY LEAVER

I guess I hadn't really thought about it being counterintuitive in that way. My immediate, the thing that immediately came to mind when you said it was that one advantage of doing that is that you actually do have separation -

COMMISSIONER

From the regulator.

KERRY LEAVER

of duty because you still have to, as a regulator, be able to apply those enforcement tools and not be, you know, not have regulatory capture and, and be caught with developing those relationships over time. By providing that intensive support, you will naturally develop relationships with people.

COMMISSIONER

Right. So, it's not so much that it's the national body, it's that it's another body and you're not mirroring the regulatory enforcement style functions with the intensive support.

KERRY LEAVER

That's one reason they might do it.

COMMISSIONER

And just looking once again at figure two, just to make sure. So with no one on the 'working towards' before the 2018 standards, but now 10% of preschools are, so that's a real shift then isn't it?

KERRY LEAVER

Oh yeah, yeah.

COMMISSIONER

And have you got any sense as to why there would've been that shift in preschools in particular?

KERRY LEAVER

I don't, other than to say that it would be, it is always the same three areas that are most likely to achieve a 'working towards' status regardless of service type. So, QA 1, QA 2 and QA 7 and elements that I read out before, around being able to demonstrate critical reflection in the assessment and planning, education program, and perhaps keeping policies and procedures up to date, which is a big feature of quality area seven, undertaking performance reviews, I think I mentioned before as well. So similar themes across all service types.

COMMISSIONER

And just looking at OSHC, so I'm just going back through my notes, just in terms of the first of the National Quality Standards, the Education Programs and Practise. I mean, from what we've heard, there's a variety of views about whether that's an appropriate standard to hold OSHC to when the conception of the function is more recreation, leisure. I'm talking about school, age, kids now, recreation and leisure post the education day, if I can put it that way, have you got any reflections on that?

KERRY LEAVER

Only that My Time, Our Place is founded in independence and choice and leisure. It does, I think, account for the setting. The other thing actually that's worth mentioning, you might have heard it already, there is a recent change happening or happened, I lose track of all the changes that are happening. as a result of the 2019 review. South Australia is moving to program level assessment, planning for its education program for OSHC. This is a change for our jurisdiction. Other jurisdictions took that on in the 2018, sorry, 2014 review, but South Australia didn't and they are now. So there will be less requirements. So a child who only visits, you know, sessionally once or twice a week, or indeed it doesn't matter how many times they visit, OSHC won't be required to perform that assessment and planning activity at the child level, but at the program level.

COMMISSIONER

Right. Okay. And we just heard about that before, too, right, the kid that comes once a fortnight for the pre school kind of breakfast session.

KERRY LEAVER

Yeah. You don't have to hold any records now at the child level. I say now, I just don't when it comes in, but it's imminent if it isn't in already. Might be 1 July as part of those national review reforms.

COMMISSIONER

And in terms of the, I mean, balance between resources and efficiency, I mean, this is obviously, you know, very rough way of doing it, but if our, authorised officer to service is one to 99 and the national standard is one to 48, so we are sort double, double-ish, but we're actually three times out in terms of regularity of review, because presumably they all risk rate as well.

KERRY LEAVER

That's right, yes.

COMMISSIONER

So there there's a, I mean, you'd want to do a bit more inquiry, but if you were just doing the, you know, first blush analysis, you'd say, yes, there's a resource problem, but there's a possibly an efficiency methodology problem as well.

KERRY LEAVER

I concur.

COMMISSIONER

Right.

KERRY LEAVER

And that's why we have the organisational development plan that's been in place since I started my role. We actually had an external review just before I arrived and the first task I was given by the Board was to implement the recommendations that identified some cultural issues with being able to have a culture of continuous improvement and measuring performance that was not adequate and also that there were significant opportunities for process improvement. And I think that accounts for what you are observing and I agree.

COMMISSIONER

Thank you.

COUNSEL ASSISTING

Thank you, Commissioner. We can release the witness and adjourn until our May session.

COMMISSIONER

Yes, we can. Thank you to everybody who's supported us today.

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