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Your Ref: KM2055950

QCPCI

21st December 2012

Date: 16.1.2013

Exhibit number: 145

**Re: Queensland Child Protection Commission of inquiry – Request to ATSILS pertaining to
Core Business considerations**

Dear Ms McMillan,

We refer to your letter dated the 22nd November 2012 (received via email on the 3rd December 2012) in relation to the above mentioned request on behalf of the Commission of Inquiry. The email in question made reference to a return date of the 14th December – but you will note our subsequent request for a one-week extension due to the amount of preparatory work involved. We are pleased to respond and trust that such is of assistance to the Commission. Addressing each question raised in your letter in sequence, we respond as follows:-

1. Funding and Service Delivery

Q1

How ATSILS is funded including where funding is received from, how funding is distributed to the legal practice and if funding is tied to specific business units? i.e. criminal law, family law, child protection.

Response:

Our Organisation is primarily funded by the Commonwealth Attorney-General's Department via an Agreement ("Indigenous Legal Assistance and Policy Reform Program") to provide criminal, family and civil law representation which is aimed at delivering *"high quality, culturally sensitive, equitable and accessible legal aid services for Indigenous Australians"* in Queensland. Our funded role also includes supporting *"law reform and policy development and the delivery of community legal education"*. We also receive some funding from Legal Aid Queensland to help offset the very high costs associated with service delivery in Queensland's most remote regions (Gulf and Cape).

Under our Agreement with the Commonwealth Attorney-General's Department our Organisation is required to provide services in the following categories:

- Information, initial legal advice, minor assistance and referral;
- Duty Lawyer assistance; and
- Legal Casework services for criminal, civil and family law matters.

Under our Agreement, we have service delivery targets (in the sense of the "numbers" of services to be provided) across these categories, which are further refined down into metropolitan, regional and remote regions. Due to funding priorities (e.g. providing services to those most at risk of incarceration), our core business is criminal law services (approximately 75% of our budgetary focus - with civil and family law comprising 25%).

Our core funding is not "tied" to specific legal areas (in the strict sense), although we are obviously conscious of doing our utmost to assist clients across the criminal, civil and family law areas (as well as meeting our funded "targets" across the jurisdictions) – and prioritise our staffing profile and budget accordingly.

Please find **attached** our Corporate (Strategic) Plan.

Q2

Legal Aid Queensland adopts a purchaser/provider model which means that the Grants division purchases legal services from preferred suppliers, in-house lawyers and it grant funds Community Legal Centres. How does the core business of ATSILS work?

Response:

Our State-wide service provision is effected by virtue of having 27 office locations across the State (which includes nine satellite offices staffed by Field Officers). These services are provided directly by in-house staff. On rare occasions we might brief a matter out to an external private service provider (e.g. where we have a legal conflict of interest and the matter is highly meritorious and there is no other legal aid service provider available), but such is only done very occasionally due to budgetary constraints. Virtually 100% of services are provided to clients via our Organisation's own staff (over 180 staff in total – with the largest contingent, 80 being legal practitioners - please see staffing profile details below at question 4.)

Q3

What percentage of legal service provision is devoted to criminal law, private family law, domestic violence and child protection?

Response:

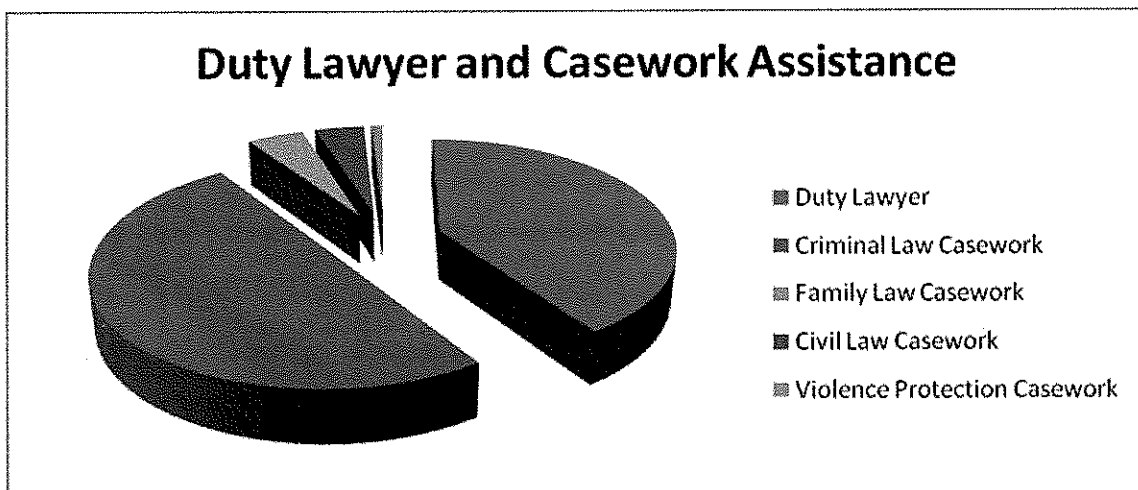
The answer varies depending upon the mechanism utilised for measuring the "percentage". For example, based upon law-type allocation of lawyers – approximately 75% of our focus is criminal law based; whereas on raw "data" numbers, this percentage would be higher (in effect, a reflection that service provision in the family and civil law areas, tend to be more resource intensive - i.e. with fewer client numbers per year per legal practitioner as compared to criminal law practitioners). For example – raw data for the **July 2011 to June 2012 period** reveals:

Table 1

| | Metropolitan | Regional | Remote |
|-------------------------------------|---------------------|-----------------|---------------|
| Advice/Minor Assistance | 12,928 | 25,367 | 7,854 |
| Duty Lawyer | 1,721 | 7,593 | 3,274 |
| Criminal Casework | 3,923 | 7,827 | 3,658 |
| Family Casework | 257 | 519 | 98 |
| Child Protection Casework | 159 | 273 | 95 |
| Civil Casework | 327 | 641 | 267 |
| Violence Protection Casework | 23 | 154 | 109 |

The Table above records a total of 18,331 Casework matters for the financial year in question – with 84.05% being criminal law matters. The percentage of criminal law service deliveries would increase to 90.55% if the “duty lawyer” category was included in the overall calculation (and equated to casework).

From a straight-forward data numbers perspective, we find the following pattern:



Note: in this pie chart, child protection matters are subsumed into the Family Law Casework sector.

Looking at Family Law Practitioners’ data on an office-by-office basis might be more useful:

Table 2

July 2011 to June 2012

| Office Location | Family Law Casework | Child Protection Casework | Domestic Violence Casework |
|--------------------------------|---------------------|---------------------------|----------------------------|
| Beenleigh | 33 | 12 | 14 |
| Brisbane | 73 | 50 | 2 |
| Bundaberg | 42 | 5 | 18 |
| Cairns | 175 [^] | 103 [^] | 67 [^] |
| Charleville | 37 | 13 | 22 |
| Chinchilla* | 2 | 0 | 0 |
| Cunnamulla** | 0 | 0 | 3 |
| Dalby* | 6 | 5 | 2 |
| Goondiwindi* | 2 | 6 | 0 |
| Hervey Bay*** | 6 | 2 | 0 |
| Ipswich | 76 | 66 | 1 |
| Mackay | 32 | 7 | 2 |
| Maroochydore | 61 | 9 | 22 |
| Mount Isa | 28 | 51 | 50 |
| Murgon | 55 | 31 | 35 |
| Normanton | 0 | 4 | 0 |
| Rockhampton | 8 | 10 | 0 |
| Roma** | 0 | 0 | 3 |
| Southport | 36 | 25 | 8 |
| St George* | 9 | 5 | 1 |
| Strathpine | 39 | 7 | 0 |
| Thursday Island ^{^^^} | 11 | 12 | 0 |
| Toowoomba | 66 | 36 | 5 |
| Townsville | 68 | 68 | 28 ^{^^} |
| Warwick* | 9 | 0 | 3 |
| Totals | 874 | 527 | 286 |

* Via Toowoomba practitioner on outreach.

** Via Charleville practitioner on outreach.

*** Via Bundaberg practitioner on outreach.

[^] Includes outreach work into the Cape.

^{^^} Includes 16 outreach matters to Palm Island.

^{^^^} Thursday Island data only represents 9 months' of services (not 12) – as we only took on service delivery in this region from the 1st October 2011.

Proviso (to Table 2) – please note: currently on ATSILS’ data base, all child protection and family law matters are opened thereon as “family law matters”. The above figures (distinguishing family law and child protection matters) were extrapolated out based upon feedback from the practitioners concerned as to their percentages of work in each area. Further, it is apparent that some Domestic Violence/Violence Protection matters have in some instances been opened on the data base as being “family law” matters – hence the reason for low figures in this area for offices such as Brisbane (where domestic violence matters were actually assessed by staff their as representing 14% of file matters) and Strathpine (5%). Data base and procedural changes will be instigated in 2013 to address such.

Q4

How many lawyers are employed by ATSILS? How many full time lawyers are in each office across Queensland?

Response:

Table 3 below outlines office locations and associated full time lawyers:

| Beenleigh Office | |
|--|------------------------------|
| Legal Practitioner – Criminal Law | 2 |
| Legal Practitioner – Civil/Family Law | 1 (0.5 + 0.5) |
| Brisbane Office | |
| Legal Practitioner – Criminal Law | 9 |
| Legal Practitioner – Civil Law | 2 |
| Legal Practitioner – Family Law | 1 |
| Law Reform + DIC Monitoring Officer | 2 (1 x 1) |
| Para Legal/Junior Lawyer | 3 (one in each law division) |
| Bundaberg Office | |
| Legal Practitioner – Criminal Law | 1 |
| Legal Practitioner – Civil/Family Law | 1 |
| Cairns Office | |
| Legal Practitioner – Criminal Law | 12 |
| Legal Practitioner – Civil Law | 1 |
| Legal Practitioner – Family Law | 1 |
| Legal Practitioner – Child Protection | 1 |
| Law Reform Officer | 1 |
| Charleville Office | |
| Legal Practitioner – Criminal Law | 2 |
| Legal Practitioner – Civil/Family Law | 1 |
| Chinchilla Office (satellite office of Toowoomba) | |

| | |
|--|---|
| Field Officer only(part time) | |
| Cooktown Office (satellite office to Cairns) | |
| Field Officer only | |
| Cunnamulla Office (satellite office of Charleville) | |
| Field Officer only | |
| Dalby Office (satellite office of Toowoomba) | |
| Field Officer only | |
| Goondiwindi Office (satellite office of Toowoomba) | |
| Field Officer only | |
| Hervey Bay Office | |
| Legal Practitioner – Criminal Law | 1 |
| Ipswich Office | |
| Legal Practitioner – Criminal Law | 3 |
| Legal Practitioner – Civil/Family Law | 1 |
| Para Legal/Junior Lawyer (civil/family) | 1 |
| Mackay Office | |
| Legal Practitioner – Criminal Law | 1 |
| Legal Practitioner – Civil/Family Law | 1 |
| Maroochydore Office | |
| Legal Practitioner – Criminal Law | 2 |
| Legal Practitioner – Civil/Family Law | 1 |
| Para Legal/Junior Lawyer (civil/family) | 1 |
| Mount Isa Office | |
| Legal Practitioner – Criminal Law | 3 |
| Legal Practitioner – Civil/Family Law | 1 |
| Murgon Office | |
| Legal Practitioner – Criminal Law | 3 |
| Legal Practitioner – Civil/Family Law | 1 |
| Normanton Officer (satellite office of Mount Isa) | |
| Legal Practitioner – Criminal Law | 1 |
| Legal Practitioner – Criminal/Child Protection | 1 |
| Palm Island Office (satellite office of Townsville) | |
| Field Officer only | |
| Rockhampton Office | |
| Legal Practitioner – Criminal Law | 3 |
| Legal Practitioner – Civil/Family Law | 1 |
| Roma Office (satellite office of Charleville) | |
| Field Officer only | |
| Southport Office | |
| Legal Practitioner – Criminal Law | 1 |
| Legal Practitioner – Civil/Family Law | 1 |
| St George Office (satellite office of Toowoomba) | |
| Field Officer | |
| Strathpine Office | |
| Legal Practitioner – Criminal Law | 1 |
| Legal Practitioner – Family Law | 1 |
| Thursday Island Office* | |
| Legal Practitioner – Criminal Law | 2 |
| Legal Practitioner – Civil/Family Law | 1 |
| Toowoomba Office | |

| | |
|---|----|
| Legal Practitioner – Criminal Law | 2 |
| Legal Practitioner – Civil/Family Law | 1 |
| Townsville Office | |
| Legal Practitioner – Criminal Law | 10 |
| Legal Practitioner – Civil Law | 1 |
| Legal Practitioner – Family Law | 1 |
| Warwick Office (satellite office of Toowoomba) | |
| Court Support Officer only | |

* We also have a Field Officer situated at Bamaga on the mainland (but no actual office).

Table 4: Summary of Organisational Staffing Profile as at 1st July 2012:

| Staffing Profile Summary by Position Categories | |
|---|------------|
| Legal Practitioners | |
| Criminal Law (including Regional Managers) | 58.5 |
| Civil Law | 4 |
| Family Law (including 1.5 exclusively Child Prot.) | 5.5 |
| Civil and Family Law Combined | 12 |
| Total | 80 |
| Junior Lawyers and Para-Legals | |
| Junior Lawyers/Para Legal (mostly family/civil) | 5 |
| Total | 5 |
| Field and Court Support Officers | |
| Court Support/Field Officers (criminal law) | 47 |
| Total | 47 |
| Administration and Finance Staff | |
| Administration Staff (including IT, Data and HR) | 33 |
| Finance Staff (excluding Finance Manager) | 3 |
| Total | 36 |
| Law and Justice Advocacy Development (LJAD) | |
| Law Reform and Community Legal Education* | 3 |
| Deaths in Custody Monitoring | 1 |
| Total | 4 |
| Prevention, Diversion, Rehabilitation and Restorative Justice (PDRR) | |
| Prisoner Support Officers (Through Care) | 6 |
| Total | 6 |
| Executive Team | |
| CEO, PLO and CFO | 3 |
| Total of all staff | 181 |

* Includes the Community Development Officer. No NATSILS-specific staff included (+2).

It will be noted from the above Table that 19.5 lawyers (out of a total of 80) provide family/civil law services (24.37% of lawyers). If the junior lawyer support positions are included, this brings the number to 23.5 of 85 (27.64%). Hence the estimate referred to above of 25% of legal staff being civil/family law focused.

Q5

How do children and young people in regional and remote areas access ATSILS lawyers?

Our Organisation operates 24 hours per day, every day of the year (including Christmas Day). Each service region has Court Support/Field Officers and lawyers on-call every day after-hours. This after-hours service provision is however (in theory) restricted to criminal law matters (e.g. after-hours arrests). In some remote areas, after-hours services might of necessity (e.g. due to geographic location relative to our nearest office) have to be restricted to telephone advice.

Clients come to our attention in a variety of ways, including:

- Via direct contact (personally or via a parent/guardian);
- Via notifications from the police (usually involving suspects in custody);
- Via court activities (e.g. staff being in attendance in any event on a duty lawyer basis); and
- Via third party referrals.

In remote areas, involving circuit court activities – we also engage in pre-court circuit activities (e.g. the obtaining of client instructions prior to the day of court itself). Outreach circuit assistance is also provided in some regions (e.g. in the Cape – staff from our Cairns office – all law jurisdictions – will travel into various remote communities). Service provision is maximized in remote and regional areas via the presence of satellite Field Officer locations (see location details above).

Q6

What is the caseload of lawyers specifically dealing with child protection matters in remote and regional communities?

Please provide data on legal service provision in child protection law as follows:

- legal advices on child protection
- legal advice and legal representation on Care Agreements and Intervention with Parental Agreements
- legal advice and legal representation on adoption matters
- legal representation at Family Group Meeting
- legal representation at Court Ordered Conferences
- legal representation at mentions
- legal representation at final hearings in the Children’s Court of Queensland
- legal representation for appeals
- legal representation for young people (17 and under) in relation to bail applications

This information should include details of:

- how many applications for assistance were received?
- how many have been refused? What were the reasons for refusal?

Please provide this analysis from post 2004 CMC to date and include information about legal service provision to children, young people, parents and extended family members.

In terms of the 2011-12 caseloads of lawyers in the child protection area (regional and remote communities): please refer to the various data and office-by-office breakdowns outlined in question 3 above.

It should be noted that our Organisation only provided family and civil law services post June 2005. Further, most of the questions outlined above raise considerations which our current data base does not allow us to provide an answer for. The data entry categories used for files are “Civil, Criminal, Deaths In Custody Inquest, Domestic Violence and Family” the same categories are also used for Quick Advices. There is nothing in our data input categories that stipulate “Child Protection, QCAT” as these are entered under the respective law types i.e. family, civil, criminal. Our data base is essentially set up to comply with our funding body reporting requirements.

The only statistics that are able to be accessed and reported upon are those which fall into (or are sub-sets of) the following categories:-

- Advice Custody Notification Opened
- Advice Matters Opened
- Advice Matters Opened by Staff
- Case Matters Closed

- Case Matters Opened
- Charges by Gender
- Client Count
- Duty Matters Closed
- Duty Matters Opened
- Juvenile Court Outcome
- Matter List by Name
- Matter List by Office & Matter Number
- Matter Numbers by Office & Year
- Matters Numbers by Office, Year and Month
- New Matters by Staff Member
- Open Matters by Staff Member
- Person Age Category Count
- Person Age Count

We can for example provide data in terms of how many family law or civil law related advices were provided to clients in any given reporting period – but we cannot break such down to e.g. the number of child protection enquires/advices or adoption enquires or meetings attended. Proposed data changes (on a national level) might well address a number of these limitations but such is of no utility for present purposes of course.

The supply of historical data (not supplied) is compromised by virtue of the fact that not only did we not provide family/civil law services prior to the 1st July 2005, but we only took on the service delivery responsibilities for the northern half of the State from the 1st July 2008 and the Torres Strait region from 1st October 2011. Further, our staffing profile (as a percentage of overall staff) has increased each year from 2005 – making any meaningful data comparisons (year to year) impossible.

Q7

Please provide data on applications for review to QCAT in relation to placement and contact conducted for children, young people, parents and extended family members in child protection matters. This should include data from 2004 to date.

Response:

Please see commentary above relating to the limitations of our data base. Such information is not available to us. We suspect the overall number is quite low.

Q8

Can ATSILS explain how they currently use ATSILS Cultural Liaison Officers (please include details of how many there are across the State and their role description) to gather the relevant cultural information when advocating for children, young people, parents and extended family members in child protection matters?

Response:

Our Organisation employs Court Support Officers (previously referred to as Field Officers) – mainly in our metropolitan and regional offices; and Field Officers – mainly in the more remote regions of the State (and sometimes on a stand-alone satellite office basis). Both roles are “designated” Indigenous-specific positions within our Organisation – with all such staff being Aborigines and/or Torres Strait Islanders. This is due to the fact that key aspects of the roles of these positions include:

1. Acting as a liaison between non-Indigenous staff and clients so as to establish an atmosphere of trust and understanding on both side.
2. Represent our Organisation within the community by attending (and if required, presenting at) meetings, functions etc., in a manner consistent with our role and objectives.
3. Develop an approved networking system within the local community and enhance that networking through the development of professional relationships with key personnel within the criminal justice system; provide feedback to management regarding local community issues.

Other key duties include attending court and engaging in post-court file management. It should be noted that the core focus of these positions is in the **criminal law** area – although such staff can also assist from time to time in other areas - e.g. with family law or child protection clients; but such is fairly limited due to work demands in the criminal law area.

Table 5 below outlines the locations, designations and numbers of staff so employed:

| Beenleigh Office | |
|-------------------------|---|
| Court Support Officer | 1 |
| Brisbane Office | |
| Court Support Officer | 6 |
| Bundaberg Office | |
| Cairns Office | |
| Court Support Officer | 7 |

| | |
|--|------------------------------|
| Charleville Office | |
| Court Support Officer | 1 |
| Chinchilla Office (satellite office of Toowoomba) | |
| Field Officer (part time) | 1 |
| Cooktown Office (satellite office to Cairns) | |
| Field Officer | 1 (currently vacant) |
| Cunnamulla Office (satellite office of Charleville) | |
| Field Officer | 1 |
| Dalby Office (satellite office of Toowoomba) | |
| Field Officer | 1 |
| Goondiwindi Office (satellite office of Toowoomba) | |
| Field Officer | 1 |
| Hervey Bay Office | |
| Court Support Officer | 1 |
| Ipswich Office | |
| Court Support Officer | 3 (includes Richlands Court) |
| Mackay Office | |
| Court Support Officer | 1 |
| Maroochydore Office | |
| Court Support Officer | 2 |
| Mount Isa Office | |
| Court Support Officer | 2 |
| Murgon Office | |
| Court Support Officer | 2 |
| Normanton Officer (satellite office of Mount Isa) | |
| Court Support Officer | 1 (currently vacant) |
| Palm Island Office (satellite office of Townsville) | |
| Field Officer | 1 |
| Rockhampton Office | |
| Court Support Officer | 2 |
| Roma Office (satellite office of Charleville) | |
| Field Officer | 1 |
| Southport Office | |
| Court Support Officer | 1 |
| St George Office (satellite office of Toowoomba) | |
| Field Officer | 1 |
| Strathpine Office | |
| Court Support Officer | 1 |
| Thursday Island Office* | |
| Court Support Officer | 1 |
| Toowoomba Office | |
| Court Support Officer | 1 (+ 1 from Warwick) |
| Townsville Office | |
| Court Support Officer | 5 |
| Warwick Office (satellite office of Toowoomba) | |
| Court Support Officer | 1 |

ATSILS has several dedicated child protection roles, in particular a number of child protection specific lawyers (please see Table 3 above) and targeted child protection focus is currently delivered within the Law Justice and Advocacy Development Officer to enhance child protection practice and continuous practice development.

Please find **attached** a copy of our Position Description relating to designated Child Protection lawyers.

The Law Justice and Advocacy Development Officers have delivered several community legal education sessions targeting internal ATSILS staff and broader community stakeholders to increase awareness and accessibility of child protection law and legal representation. The role provides internal child protection advice and assistance to promote best practice and positive results for Aboriginal and Torres Strait Islander children and young people.

Please find **attachments:** Law Justice and Advocacy Development Officer Position Description; and Child Protection - Community Legal Education presentation hand-out.

In addition ATSILS has complimentary roles which can further assist families and children, in particular Prisoner Throughcare Officers who engage with and mentor ATSILS' clients pre and post release from prison/detention (with the specific aim of reducing recidivism). Such might include assisting woman to remain connected to their children whilst in custody and helping them to adjust to parenting roles once released. Prisoner Throughcare officers (a total of six positions across the State – strategically located to service the prison environs) are focused upon reducing recidivism and holistically supporting family sustainability and long-term restoration. ATSILS has designated adult male, adult female and juvenile focused Throughcare Officers who amongst other things, assist in addressing intergenerational cycles within the criminal justice system - ultimately promoting stronger functioning children and parents.

Please find **attached** a copy of our Prisoner Throughcare Officer Position Description.

Q9

Can ATSILS explain how (with their client's consent) they work currently with Recognised Entities to gather relevant cultural information particularly in relation to appropriate kinship placements, potential kin contact supervisors, identify appropriate elders to support and mentor families in crisis and identify culturally appropriate health providers and family support services? How many referrals do ATSILS lawyers make to agencies for family support and/or assistance in matters involving children or young people?

Response:

ATSILS is not a referral agency in the strict sense, although our staff will refer clients and enquirers to third parties where such are available and are the more appropriate service provider. In our legal representation, general advice and litigation with Child Safety we continually promote the engagement and diversion to secondary or targeted support services to assist families in need and address child protection concerns.

Please find **attached** our Child Protection Case Management Standards

ATSILS has provided detailed recommendations regarding Recognised Entity reform in our preliminary submission to the Inquiry dated November 2012. Extracted below is our commentary and recommendations regarding Aboriginal and Torres Strait Islander legislative reform transferring greater responsibility to the Aboriginal and Torres Strait Islander agencies and enabling more meaningful case management authority.

“The statutory child protection system has systematically failed to adhere to the unique best interests and cultural and legal rights of Aboriginal and Torres Strait Islander children, young people and families. This raises the question whether the State is the most appropriate agency to deliver these essential requirements for Aboriginal and Torres Strait Islander families, or if it is more effective to outsource through statutory delegation to best placed Aboriginal and Torres Strait Islander community controlled agencies and community groups. Current Recognised Entity professionals produce meaningful advice and recommendations within significant and non-significant decision making which supports culturally acceptable and safe

outcomes. The important legislated Recognised Entity role should be enhanced as a component of Aboriginal and Torres Strait Islander practice.

A fundamental flaw in the implementation of the existing Recognised Entity model is that professionals have been limited in their participation and consultation roles in relation to decision-making. The role is defined and administrated through legislation, policy and procedural and service agreements. ATSILS have observed the role to have significant limitations in relation to the level of engagement and information gathering with family, kin and community to inform their participation in decision making. This impacts the levels of meaningful cultural and practical statutory support provided to immediate family, extended family and significant community members on whom children and young people in care are ultimately reliant upon for adequate case management.

The Recognised Entity model is limited to participation and consultation in decision making by way of Child Safety services which ultimately hinders the independence of the model. Furthermore, the constraining model limits professional's meaningful engagement with family, kin and community which could allow for comprehensive development of child centred but family focused interventions. Cultural practice is fundamental to ensuring the preservation and enhancement of Aboriginal and Torres Strait Islander children's cultural identity whilst in out of home care. The Department of Communities holds responsibility for supporting and affording the appropriate resources to Aboriginal and Torres Strait Islander professionals to adequately meet the children's needs and negotiate holistic responses to the detrimental impacts of out of home care.

It is clear that Aboriginal and Torres Strait Islander Recognised Entity professionals would be more efficiently utilised in a practical statutory role if given appropriate authority to deliver case work in key points in practice. Proactive legislative amendments could delegate enhanced responsibility to Recognised Entity professionals to deliver targeted case work assistance in family group meeting conferencing, cultural support planning and implementation, assisting children through mentoring/transition to adulthood and a court advisory role. Whilst it may

be argued that this is currently occurring, ATSILS recommends a strengthening of legislation would better support the intention of the legislated Recognised Entity model, most importantly the intended outcomes for families.

It must be acknowledged that Aboriginal and Torres Strait Islander family and cultural structures are a tool for positive empowerment and that a transfer of greater responsibility to the Recognised Entity sector would create integration across core Aboriginal and Torres Strait Islander practices and improve the safety and wellbeing of children. It is important that the current risk adverse and punitive approaches which hinder inclusive family engagement and community based solutions are addressed to allow for more positive outcomes across key child protection indicators such as children's holistic safety and wellbeing, reunification, family and community contact, cultural perseverance and enhancement strategies. Ideally, a cultural shift within the child protection workforce and enhancement of the role of Aboriginal and Torres Strait Islander professionals is required to achieve innovative integration across the child protection continuum.

ATSILS recommends the Queensland Government explore legislative amendments to section 6 of the Child protection Act 1999 to create a more responsive and proficient Aboriginal and Torres Strait Islander statutory response. In particular we recommend the inquiry explore:

The concept and meaning of "significant decisions" with consideration of legislative reform which could redefine this concept to allow for more active inclusion and responsibility of Recognised Entity professionals at significant points in practice. Such could provide guidance at key points similar to the significant decision making points as currently outlined in Recognised Entity contract arrangements with Child Safety. For example, section 6 (4) broadly determines a court role, (although this may require strengthening to provide the authority of the court with independent and professional child protection advice from an Aboriginal or Torres Strait Islander professional) it provides valuable insight of the possibility of delegation of responsibilities such as family group meeting convening;

The adaption of Section 6 (5) to outline a family group meeting convening role. This would prove instrumental in assisting a more balanced process and ultimately facilitating a more family and culturally responsive decision making process which would create increased levels of family based solutions and clearer progression towards addressing child protection concerns, reunification, adherence to section 83 and cultural retention strategies;

Proactive amendments that could assist in developing or strengthening similar case work responses to section 6 (4), and 6 (5) which actively transfer responsibilities for case work activities for intensive cultural preservation and mentoring or supporting transition to adulthood to Recognised Entity professionals. Importantly, through such delegation, family and community will have ownership of responses that transfer the responsibility for children back to the Aboriginal and Torres Strait Islander community; and

The implications and restrictions imbedded in the current conceptualisation of “participation and consultation” in decision making. Ideally, the Queensland public must have confidence in an Aboriginal and Torres Strait Islander statutory assistance agency to actively address over-representation through sufficient engagement and case work activities. The unintended minimisation resulting from the current “participation and consultation” model is restrictive of more positive outcomes. ATSILS suggests that a delegation model with case work responsibility would create more inclusive community and family ownership.

A fundamental redesign of section 6 of the Child Protection Act which enables Aboriginal and Torres Strait Islander professionals meaningful input into the culmination of overrepresentation will require additional amendments across the Act providing the appropriate statutory authority. A current example within the present participation based model is Section 83 where the Recognised Entity role interfaces with Child Safety’s statutory placement function. ATSILS would suggest section 82 Placing a Child in Care direct importance to achieving adherence to cultural retention and placement principle obligations also be explored for possible amendments

affording Aboriginal and Torres Strait Islander professionals more authority determining placements in the best interest of children.

Recommendation 24.

That the Inquiry recommends legislative amendments to section 6 'Recognised entities and decisions about Aboriginal and Torres Strait Islander children' within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

By way of suggestion, the amended section could read along the following lines:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

(1) The below subsections (2) to (4) apply in instances where a Aboriginal and Torres Strait Islander children are subject to Intake and Investigation and Assessment.

(2) When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.

(3) When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.

(4) However, if compliance with subsection (2) or (3) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.

(5) If the Children's Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must receive a Recognised Entity written court report to inform and have regard to —

(a) the views, about the child and about Aboriginal tradition and Island custom relating to the child, and

(b) the views of a child's immediate family, extended family and community members to whom the child belongs; and

(c) the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community; and

(d) the general principle that cultural preservation and enhancement is central to identity development and long term wellbeing.

Editor's note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

(6) the chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to Independently convene Family Group and Case Plan Review Meeting and conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

(7) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.

(8) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the development, implementation and review of children and young people's cultural support plan.

(9) The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case responsibility for child and family contact.

(10) In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life; Significant decisions only apply across intake, investigation and assessment and placement decision making.

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

- 1. a decision made in the course of investigating an allegation of harm to the child*
- 2. a decision about placing the child in care*

Recommendation 25.

That the Inquiry recommend a second phase of legislative amendments to section 82 'Placing Child In Care' to delegate partial statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular the inquiry recommend the provision of a legislative framework for Foster and Kinship Care agencies to instrumentally meet children and young people's

holistic needs through provision of proficient child placement practices and cultural supports.

By way of a suggestion, the amended section could read along the following lines:

82 placing child in care

(1) The chief executive may place the child in the care of—

- (a) an approved kinship carer for the child; or*
- (b) an approved foster carer; or*
- (c) an entity conducting a departmental care service; or*
- (d) a licensee; or*
- (e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or*
- (f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.*

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

3) The chief executive may grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies the authority to administrate subsections 1 (a), (b), (c), (e)

Recommendation 26.

That the Inquiry recommend a third phase of legislative amendments to section 6 'Recognised entities and decisions about Aboriginal and Torres Strait Islander Children' within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular that the inquiry recommend a third step towards statutory responsibility for children and young people living within long term guardianship arrangements with progression towards greater authority across the child protection continuum for all Aboriginal and Torres Strait Islander children's immediate and long term safety."

Q10

Can ATSILS explain how they advocate in a family group meeting so that cultural planning is incorporated into the case plan developed?

Response:

Our lawyers are provided guidance for this purpose in our Child Protection Case Management Standards (please see page 11 of the relevant attachment).

Case Plans incorporate a 'cultural support plan' - generally this is an opportunity for the Recognized Entity to contribute their particular knowledge and expertise. In the event this does not occur, the legal representative can advocate for the inclusion of specific activities that consolidate cultural retention. Depending upon the child's age this might include traditional hunting activities, initiation ceremonies, tombstone unveilings, weddings and funerals.

Q11

How many culturally appropriate social assessments have been funded by ATSILS in the course of child protection litigation?

Response:

ATSILS receives no allocated funding for social assessments and is reliant on promoting this action in the best interest of children and young people via Legal Aid Queensland. Such might possibly place some constraints upon certain aspects of the assessments and subsequent recommendations from a "cultural appropriateness/competency" perspective.

2. Professional Development and Quality Assurance

Q12

What in-house professional development is offered to ATSILS lawyers undertaking private family law, domestic violence and child protection?

Response:

In order to hold a Practising Certificate as either a barrister or solicitor it is a requirement for our practitioners to attend Continuing Professional Development seminars. Aside from external conferences and the like, ATSILS is also an accredited provider of Continuing Professional Development.

By way of example, please find **attached** ATSILS' CPD Schedule for 2012/13. Past and present CPD presentations specifically relevant to Child Protection considerations include:

- *QCAT- Review Application (Children's Matters) (13.12.12);*
- *Adoption (27.11.12);*
- *Judicial Review of Administrative Decision (10.07.12);*
- *Child Protection – Role of the Recognised Entity (01.11.12);*
- *Child Protection – pre hearing considerations (20.10.12);*
- *Child Protection – ATSI Children Considerations (04.10.12);*
- *Youth Justice Act (20.05.11);*
- *Independent Children's Lawyer (18.01.11);*
- *Advocating Indigenous Australian Human Rights (02.07.09)*
- *Child Protection Application – client advice (19.02.09);*
- *Child Protection Act (25.10.08); and*
- *Juvenile justice – Representation (21.06.08).*

The greater emphasis in more recent years placed upon the presentation of child-protection-related CPD topics is also a reflection of such being viewed by our Organisation as being an area of increased need (re legal representation). Copies of any these particular papers are available upon request.

In addition to our CPD schedule, ATSILS provides bi-annual training in Brisbane over a three day period to our family (and civil) law lawyers.

Please find **attached** by way of an example, our conference agenda for the 2012 program.

Q13

What external professional development is offered/funded for ATSILS lawyers undertaking criminal law, private family law, domestic violence and child protection?

Response:

For criminal law practitioner- the vast majority of CPD is provided via our in-house accredited CPD Program (overseen by our Principal Legal Officer for quality assurance purposes). As outlined above, a degree of CPD is also provided to our civil and family law practitioners via in-house conferences. Such aside, practitioners attend external CPD presentation and conferences on a needs basis (such as to ensure Practising Certificate accreditation and continued growth as lawyers) – with priority (from a budgetary perspective) being given to family and civil law practitioners – and those in more remote regions (where options are more limited). Our in-house fortnightly CPD Program are presented via video conferencing facilities – such that all available practitioners can link-in. We also have a healthy number of external practitioners participate in our CPD Programs – especially practitioners from the Private Bar (who often comment as to the high quality of our presentations).

Q14

How many ATSILS lawyers have completed ICL and Sep Rep training and are on the panel to be appointed as ICL/Sep Reps in private family and child protection law matters? Does ATSILS have any Case Management Standards guiding how child protection work is to be conducted?

Response:

Our Organisation does not have funding for specific ICL or Separate Representative roles and does not promote such training for our family lawyers (as our priority is to assist parent respondents). Should we take on Separate Representative or ICL matters we would be precluded from assisting the parents due to a legal conflict of interests. Consequently, none of the current ATSILS' lawyers have completed Independent Children Lawyers or Separate Representative training. Independent Children's Lawyers training is offered through the Australian Law Council. Separate Representative training is offered through Legal Aid Queensland and we believe it is based upon current requirements.

Whilst we would not discourage a practitioner who of their own volition wished to pursue such training, it is not something (for the reason outlined above) which we would actively encourage.

As to the second question: "Yes" - ATSILS' Child Protection Case Management Standards are **attached**.

Q15

Please provide information about how ATSILS monitors the quality of service delivery by ATSILS lawyers across the State?

Response:

Each Office is subject to a formal audit in the months of June and December each year by their respective Regional Manager – all of whom are legal practitioners (as well as random spot audits by the Principal Legal Officer and/or our Directors of Criminal, Civil and/or Family Law). These audits focus upon ensuring compliance with required policies and procedures (e.g. Case Management Standards).

Data Base audits also have some utility in this area (e.g. by analyzing remand rates of individual staff).

All offices collect Client Satisfaction Surveys from clients which raise a number of service delivery quality questions – such Surveys can also be completed anonymously by clients should they so wish. We average around 2,000 such surveys per annum. These Surveys are

monitored by our Organisation's Data Base Coordinator as well as analyzed by the Principal Legal Officer. Up until recent times it was a funding requirement that an Annual Report be prepared for our funding body in relation to these surveys (which also went to our Board of Directors for analysis).

Our funding body (the Commonwealth Attorney-General's Department) also performs its own external audits (seeking feedback from key stakeholders etc) as to our performance across all regions.

The production of key materials (e.g. Case Management Standards.; policies and procedures relating to conflicts of interest and/or the maintenance of Information Barriers etc) both for current staff and upon induction for new staff – has been a major priority in recent years – and is aimed at consistency across all of our 27 office locations in terms of service delivery standards.

Access for staff to internet resources and loose leaf services (e.g. the Law book Company on-line; CCH on-line; Legal Pax on-line; Lexis Nexis on line) is also aimed at enhancing service quality.

Procedures are constantly reviewed - with for example, a current intention to update our Child Protection Case Management Standards – making such more comprehensive.

3. Policy and Law Reform

Q16

What are ATSILS views on current effectiveness and options for future reform in relation to:

1. relevant legislation and rules

Response:

The current effectiveness of the *Child Protection Act* (Qld) 1995 and the Children's Court Rules can be enhanced by the following amendments:

- Section 59 of the *Child Protection Act* ('CPA') be amended to provide that before making a child protection order the court must be satisfied that all reasonable steps have been taken by the Chief Executive to provide the family support services necessary to enable the child to remain safety in custody of a parent similar provisions are found in Victorian Legislation.¹
- Sections 67 and 68 of the CPA set out the Court's powers to make orders on adjournment of proceedings. It is suggested that a provision allowing the court to make an order for a minimum amount of contact be introduced.² Notwithstanding the provision for contact in the orders, the regularity of contact is often dependent upon the availability of departmental resources.
- Section 87 of the CPA places a positive obligation on the chief executive to provide an opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances. Often regardless of whether the child protection concerns warrant the need for parental contact to be supervised; contact offered to parents and extended family members is limited supervised contact 1-2 hours per week. Primarily, the basis of the limited contact is because of the lack of departmental resources (staff to supervise). Contact between parents and children placed in care needs to occur outside the clinical environment of the department non-government organisation to facilitate such contact. In the past the Recognised Entities assisted in the facilitation of contact – this is no longer so.
- In order for a magistrate to be satisfied that there is a child in need of protection, he/she only needs to be satisfied to a standard of 'balance of probabilities'. Overwhelmingly, ATSILS family lawyers are of the view that the Court should be satisfied to a higher standard of proof when making a Child Protection Order. Whilst some of our practitioners are strong advocates of a "beyond reasonable doubt" benchmark (given the potential for life-changing impacts of such decisions), our Organisational view is that whilst the evidentiary bar seemingly

¹ S 276 Restrictions on the making of Protections Orders - *Children, Youth & Families Act* (Vic) 2005

² S 86 Children and Young Persons (Care and Protection) Act NSW has such a provision.

needs to be raised – such should be to an intermediate standard, such as that of being satisfied to a high level of probability.

- When determining applications for Long Term Guardianship, the inquiry should consider recommending legislative reform to raise the standard of proof to “must be satisfied to a high level of probability”.
- Amendments to the definition to include a definition of ‘community’ which is consistent with Aboriginal or Torres Strait Islander custom.
- S 19 of the Children’s Court Rules (‘the rules’) be amended to provide that a suitability qualified person to chair court order conferences is one who holds an appropriate qualification in law or dispute resolution, is culturally competent and has the ability to maintain impartiality and communicate effectively with a wide range of persons including children and young persons.
- Amendments to the act to include a consistent definition of parent. Section 11 of the CPA states at subsection (3) ‘A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child and subsection (4) ‘A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child’. However, subsequent definitions of a parent provided for in sections 23, 37, 51AA, 51F, 52 and 205 of the act in the CPA does not include ‘persons who under Aboriginal or Islander traditions’ are regarded as parents thereby precluding such persons from being considered as ‘able and willing’ parents or being made party to Children’s Court proceedings.
- The list of Reviewable decisions be expanded to include review of the chief executive’s actions in relation to the Standards of Care.
- Division 2 Family Group Meetings be amended, or provisions be made for non-governmental independent Aboriginal and Torres Strait Islander Family Group Meeting convenors.
- Amendments to sections 6 and 82 of the CPA as set out at recommendations 24 and 25 of ATSILS’ submission of November 2012 and addressed in this submission.

...the monitoring, investigation, oversight and complaint mechanisms for the child protection system and identification of ways to improve oversight of and public confidence in the child protection system?

Response:

Monitoring, investigation and oversight of the child protection system could be improved by enhancing the powers of the Commission for Children and Young Persons and Child Guardian.

Q17

What are ATSILS views on the current child protection court and tribunal processes? What suggestions for reform does ATSILS have? Suggestions for reform from other jurisdictions in terms of case management and practice directions would be appreciated. Observations or case studies that outline ATSILS lawyers' experiences in representing parents and children and young people in child protection proceedings would be very helpful to explore relevant concerns.

Response:

The Brisbane Children's Court is currently the only court that has a magistrate who exclusively hears child protection matters. Child protection matters in outer Brisbane and regional areas are heard by Magistrates who also hear Criminal and Civil matters. Currently parents might appear before the same magistrate for Criminal or Domestic Violence matters, which at times can lead an "appearance" of bias from the perspective of the parents. The appointment of Magistrates specialising in child protection matters with specialised training should greatly assist the process as well as the parties.

A party requires leave to be legally represented before QCAT in child protection matters. Although leave may be granted, representation is often dependent upon the parent or carer receiving a grant of aid from an agency such as ATSILS or LAQ, or having the financial means to fund the litigation themselves. Unrepresented parties are significantly disadvantaged in situations where the respondent (here, the Department) makes a number of applications and submissions to the Tribunal and there is an expectation for the applicant to respond.

The paperwork involved makes it extremely difficult for a party to understand the process and respond effectively without the assistance of a lawyer. Very often material is not received by the applicant until shortly before a tribunal event, which further limits the applicants opportunity to seek legal advice (from a free legal advice centre) prior to the next tribunal event. Low literacy levels can also be an impediment to a level playing field.

It would be quicker and more efficient for the Children's Court to deal with review matters if proceedings are already before the court, this avoids having to suspend or delay the hearing of important matters such as contact, kinship care and placement pending the determination of other court/tribunal hearings. Delay in these proceedings could have an effect on the relationship between the child and the parents/siblings or result in a situation where an attachment is said to be formed between the child's temporary carer and the child.

Q18

Does ATSILS have a view about the appropriate jurisdiction to consider child protection applications and issues of placement/contact? This should include consideration of how and when the Children's Court and QCAT jurisdictions should interplay?

Response:

While we accept and acknowledge there are some benefits to QCAT retaining some jurisdiction on the basis it is more accessible to parties, unless parents are readily able to be legally represented in the process (given that such also involves the Department with all of its resources and knowledge of legal processes), any advantage associated with such accessibility is greatly diminished.

In our view, jurisdiction for child protection applications and disputes issues of placement and contact should rest for determination with the children's court. This has the additional benefit of building and enhancing specialist child protection knowledge within legal practitioner and on the bench.

Q19

The effectiveness of the current Court Ordered Conference process? What suggestions does ATSILS have for reform (including from other jurisdictions)? Does ATSILS have a view about when Court Ordered Conferences should occur in the litigation process and what the purpose of these should be?

Response:

The Act does not set out the objective(s) of a Court Ordered Conference ('COC'). In ATSILS' view, the purpose of a COC is for the parties to negotiate a less intrusive intervention or define the issues for trial.

All areas of law commonly have a mechanism that allow for parties to a dispute to come together in an effort to resolve the dispute, or define and narrow the issues before proceeding to a trial.

In Family Law proceedings parties must make a genuine effort to resolve the dispute before making an application to court. ATSILS family lawyers experience has been that it is rare for the departmental staff to attend a COC with a genuine view to finding a resolution.

It would greatly enhance the process if the Department was represented by Crown from the time proceedings in court were commenced.

Feedback from ATSILS lawyers across the State indicates issues with the current COC process. Issues include what appears to be limited preparations from some parties involved; limited or no opportunity to negotiate a less intrusive order because of the lack of decision making authority by the departmental officer present; and the Department's lack of ability/unwillingness to define the issues for trial (given that such is not a child safety officer area of expertise); and the absence of the Department having legal representation at that stage.

ATSILS' suggestions below for reform also have the added benefit of encouraging a less adversarial approach to child protection matters:

COC's should occur at the beginning of the court process and immediately prior to trial. Ideally, The Crown should be present at both (and draft the material) to represent the department.

At the first COC the parties should consult and file a Joint Summary Document (not exceeding a certain length) addressing:

- Areas of common ground/agreement
- Issues in dispute
- What actions need to be taken to resolve the issues in dispute and how that action will be evidenced.

The second COC should occur roughly 4 weeks prior to hearing (before filing of trial material) with parties to consult and file a Joint Case Summary Documents (not exceeding a certain length) addressing:

- Areas of common/ground agreement
- Outstanding issues in dispute
- What actions have taken place since first COC
- Issues for trial – length of trial/ number of witness

- **CASE STUDY:**
- Newborn removed at birth
- Section 21A not complied with
- Older child under a short term order – child protection concerns relating to the newborn are based on historical concerns
- No Investigation or Assessment; no attempt to assess mother's current circumstances
- No drug/alcohol abuse and no domestic violence concerns
- Baby removed at birth and placed with a non-aboriginal family a significant distance away

- Interim hearing on custody heard when baby was approximately 4 weeks old – magistrate declined to make an order for custody to the Chief Executive on an interim basis - baby returned to Mother
- Department still proceeded with an application for 18 month custody order
- Family Group Meeting held
- Court Ordered Conference convened. Despite Chief Executive not having custody of the baby at the time of the conference: the Department would not concede to an order that did not give them custody.
- Matter next for mention nearly 3-4 weeks after COC; matter adjourned for four weeks in order to allow time for the Department to consult with the Crown on the number of witness they required
- Application withdrawn by the Department at the next mention date.

The above case study reflects how it might have been possible to resolve this matter much earlier in the process, had the Department sought legal advice on the merits of the application at an earlier stage.

We refer to our previous submission to the Inquiry in November 2012 and extract for your consideration our recommendation for reform based on the New Zealand model.

5.4.3 The New Zealand Family Led Decision-Making Process

New Zealand is world-renowned for its innovative approach to involving immediate and extended family members as central in the Family Group Conferencing (FGC) legal process, to ensure best outcomes for children involved in the statutory child protection process. The FGC was conceived in 1989 as a response to address the over representation of Maori children entering child protection out-of-home-care and has been adopted in New Zealand child welfare legislation for Indigenous and non-Indigenous children.

The success of the approach is in the incorporation of Maori values recognising the importance of family and placing the family as central decision maker in the process. The intention of this process is to transfer the power and authority of decision-making for children into the hands of the people who have a life-long connection with them and who

have to live with the outcome of the decisions made. Through the FGC process, engagement and agreement with family can often be reached prior to Family Court process enabling the child to remain within the extended family network if unable to reside at home, ensuring familial and cultural connection is maintained. If the matter does go to court, planning can occur prior to the hearing within a FGM enabling agreement between the Department and family about the orders, again giving the family responsibility for negotiating the child's best interests and recognising Maori children's unique cultural needs.

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Recommendation 17

That the Inquiry recommend a review of the effectiveness of the existing Family Group Meeting or Case Plan Review and the Court Order Conference model and process.

In particular, that the inquiry compares the current Queensland model with consideration to adopt/transition to the original New Zealand Family Group Conferencing model which is widely accepted as being independent, solution focused, family and community responsive and child centred in approach."

Q20

The effectiveness of information sharing and disclosure processes in child protection litigation? What suggestions do ATSILS have for reform (including from other jurisdictions)?

Response:

Currently information sharing is limited due to the material filed in the court/tribunal and restricted to the parties to the proceedings (subject to the provisions of S113 of the CPA). Parties seeking further information have to seek Court directions and subpoenas required for access to child safety records.

Comprehensive disclosure rules and practice directions need to be formulated that require the Department to make available all relevant material.

Q21

The effectiveness of how children, young people, parents and their families are supported to participate and how they are legally represented during court/tribunal proceedings? What suggestions do ATSILS have for reform (including from other jurisdictions)?

Response:

Lack of access to advocacy and support is an identified need for parents, children and young people who come into contact with the Child Protection System. ATSILS see the need for a mechanism that facilitates an early referral to a legal service provider in order for parties to obtain legal presentation and support at the earliest opportunity. Ideally this will occur at the Investigation and Assessment stage of intervention.

4. Department as a Litigant

Q22

Does ATSILS have a view regarding the most appropriate departmental officer to take on the role of Applicant for applications for child protection orders?

Response:

The most appropriate departmental officer to be the delegated 'authorised officer' under the Act needs to be the departmental officer who has decision making authority.

Often the child safety officer with case management responsibility for the parent and child is the 'authorised officer', yet has no authority during the litigation processes to negotiate less intrusive orders.

Q23

What is ATSILS experience of working with Court Coordinators, Court Services and Crown Law in terms of preparation of materials and child protection proceedings in the Children's Court and QCAT?

Response:

ATSILS' family lawyers' experience of working with Court Coordinators, Court Services and Crown Law in relation to the preparation of material and how the child protection proceeding are conducted generally is varied.

In some regions the experiences have been very positive in terms of how matters are progressed and court materials have been provided in a timely matter. For others, court documents are often being served shortly prior to a court event, giving no time for a party or a legal representative to consider the material and seek instructions and respond. However, generally across the State, Crown Law does not become involved until the trial. In order to overcome the significant issues that arise in the preparation of the court materials (see response to Question 24), our lawyers have suggested that the court coordinators need to be legally trained (i.e. be eligible to obtain a Practising Certificate).

Q24

Does ATSILS have a view about the quality of departmental applications and supporting affidavit material in child protection litigation including whether information sharing powers and the ability to issue subpoenas have been used effectively to illicit relevant and best evidence?

Response:

In relation to the quality of department applications and supporting affidavit material across the State our lawyers have responded as follows:

- Material in affidavits is voluminous and the quality is often poor and based upon hearsay;
- Affidavit material can be overly heavily laden with references to dated historical concerns;
- The views of the Recognised Entity are usually contained in a paragraph and it is extremely rare for a report to be provided independently from departmental material; and
- In matters that involve the evidence of a parent's engagement with a service, department affidavits will often contain references to "selected" parts of a discussion between the CSO and the service provider – which can present a distorted view of the parent's true engagement. Service providers that provide affidavits to the court should annex full reports thereto.

While ATSILS acknowledge that s 17 of the Children's Court Rules provide an opportunity for a lawyers to make a strike out application, this depends on the Court's willingness to entertain such an application. There are strong procedural fairness arguments to be made in support of these applications given this affidavit material is generally provided to social assessment writers/separate representatives, which clearly has the potential to influence decision-making and recommendations. All court material is also retained on departmental files.

Q25

What is ATSILS experience of Child Safety Services involvement in criminal matters where young people in care (or with child protection histories) are seeking bail or are being dealt with for matters in the youth justice jurisdiction?

Response:

Common themes in the responses of our criminal lawyers:

- Child Safety Officers who have clients with dual jurisdiction matters generally do not have an understanding of protocols and procedures in the criminal justice system.
- Child Safety Officers generally do not know their clients - at times they are only given the file the day before and meet the child on the day of the court event. In any event what is evident is that there is often a very limited relationship between the CSO and the young person.
- Many Child Safety Officers appear to be somewhat indifferent to the matters that bring the young person before the court and often ask why the matter cannot be finalized at the time.
- Our lawyers have responded that they discourage the child safety officer being present with the child, unless the child consents to the officer being present. The presence of the officer is inappropriate when they are the complainant (in a criminal matter), or when the manager of the care facility is the complainant, our criminal lawyers advise this is a common scenario. Further, not being protected by legal professional/client privilege – a CSO could be summonsed to provide evidence of any admissions made by a child during such an interview.

We refer to our previous submission to the inquiry dated November 2012, and extract below for your consideration our observations on the correlation between Child Protection and Youth Justice, and our recommendations for reform.

“5.3 Child Protection and Youth Justice Correlation

Within Queensland a significant issue and limitation for service delivery planning and implementation is the fact that to-date, Aboriginal and Torres Strait Islander dual youth justice and child protection order data breakdown is unavailable. ATSILS acknowledges current efforts by the Commission for Children, Young People and Child Guardian to make this information available in future reporting. The relationship between the two is well documented in the "Bringing Them Home Report" (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families). This report identified the significant correlation between removal and subsequent contact with the criminal justice system. The underlying causes associated with Aboriginal and Torres Strait Islander over-representation in both the child protection system and the criminal justice system are often the same. In Queensland for example, it has been found that 54 per cent of Aboriginal and Torres Strait Islander males, and 29 per cent of Aboriginal and Torres Strait Islander females, involved in the child protection system go on to criminally offend both as juveniles and adults. Such evidence, in addition to the fact that the rates of over-representation in both systems continue to rise, makes it clear that neither system is effectively addressing the causes of contact.

A renewed focus on effective early intervention activities could however, serve to simultaneously address the underlying causes of, and hence reduce, Aboriginal and Torres Strait Islander over-representation within both systems. More collaborative case planning between Child Safety and Juvenile Justice workers for children who have entered both systems, would also have significant benefits in terms of meeting the holistic needs of these children.

Recommendation 12

That the Inquiry recommend enhancing case management processes to ensure formal collaborative case planning between Youth Justice and Child Safety Services where children and young people are receiving services under dual orders.

This is of significant importance due to the evidence that 69% of Youth Justice clients are known to Child Safety and family function is frequently an identified risk factor for youth re-offending.

Recommendation 13

That the Inquiry recommend the consideration of “justice reinvestment principles” and approach early intervention and secondary diversion as a cost effective approach to minimise future expenditure in the juvenile and adult criminal justice systems.

Recommendation 14

That the Inquiry recommend the use of Queensland Police Service’s ‘Queensland Early Intervention Pilot Project’ (QEIPP) for Boot Camp funding to ensure a culturally competent early intervention approach for Aboriginal and Torres Strait Islander children and young people receiving services under dual orders. A mandatory referral pathway could be established for children and young people known to child safety and youth justice systems.

ATSILS considers the early intervention pilot a proven provider of culturally competent “Boot Camp” style intervention which is of great benefit to at risk offending children and young people (although ATSILS recommends against the use of the expression “Boot Camp” as such carries with it a negative connotation – rather “Cultural Camp” or “Healing Camp” or some such).”

Q26

Based on these practice observations does ATSILS have any suggestions for reform (including from other jurisdictions)?

Response:

Based on the above practice observations and the experiences of ATSILS’ lawyers practicing in the child protection area, we identify a need to consider alternative and innovative approaches to child protection practices.

Aboriginal and Torres Strait Islander parents who come into contact with the child protection system often present with complex issues and needs. Given the consequences for Aboriginal and Torres Strait Islander children who are placed in out of home care, a

service delivery model that has the capacity to intervene early with parents, and to provide a holistic service to parents (and children) is best placed to stop, reduce and then reverse the numbers of children in out of home care. A holistic service delivery model, by necessity should include social workers. The Seniors Legal and Support Service ('SLASS') (Caxton Legal Centre) is a proven model of service delivery (lawyer/social worker) within an holistic framework for particularly vulnerable people. For that purpose meeting the needs of older persons who have experienced/or are experiencing abuse or exploitation.

ATSILS see great benefit in providing a service to parents involved in the child protection system that incorporates lawyers and social workers working in a team - as social workers will play a pivotal role in improving the social and psychological functioning of parents. Clients need to remain engaged and be supported through the process of addressing child protections concerns.

Child protection matters require not just a legal response, but also a social response (given the complex needs of parents and children). When clients feel supported through a process they are more likely to successfully address child protection concerns which will result in better outcomes for Aboriginal and Torres Strait Islander children in out of home care and where they are thus able to be reunified at the earliest opportunity.

Current identified Issues we observe, include lack of access to, or knowledge of, available culturally competent legal advice and support services. To overcome this, it is proposed that a Memorandum of Understanding ('MOU') be implemented between the Department and a consortium of legal/service providers to ensure referrals are made for advocacy and support as early as the Investigations and Assessment stage of intervention. The basis of this recommendation rests on consequences for parents when this is not available in the early stages, such as at the case planning stage and has the effect on our clients:

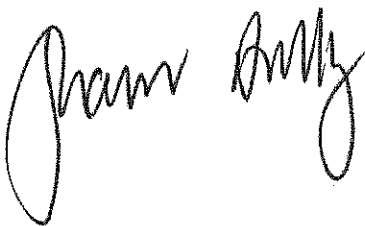
- a. Not having an understanding of the child protection concerns - this can be because of the language used to explain the concerns (or are being confused by in effect being asked to address historic concerns).
- b. Lack of understanding of what they are required to complete to address those concerns and how they are assessed in terms of meeting any given aspect of the case plan. This can be due to:

- Lack of a suitable support person or advocate;
- Lack of material provided to parents that evidences the Department's position such as a recent report from the family support service;
- Parent's inability to articulate their progress;
- Intimidation (albeit inadvertent) due to the power imbalance (clients by themselves with at times 4 departmental staff, the family group convenor and perhaps a self-representative of the child. Further, in such circumstances, **gratuitous concurrence** can also be in operation and
- Male clients being unable to engage with the Department.

Family Group Meetings and case planning reviews are crucial processes in the child protection system. Parents do not always understand the nature of the child protection concerns or what is expected of them under a case plan. Strong advocacy needs to occur during the case planning stages to ensure parents are clear on what they are expected to do under a case plan, and importantly how such is to be assessed. Lack of advocacy results in parents effectively being on a 'case plan cycle', the long term effect is that failure to meet the case plan objectives will at some stage result in applications for Long Term Guardianship.

We trust that our above feedback and observations are of assistance. We would be only too happy to provide additional feedback should such be considered to be of utility.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Shane Duffy', written in a cursive style.

Shane Duffy

Chief Executive Officer