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TRANSCRIPT OF PROCEEDINGS

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

MS K McMILLAN SC, Counsel Assisting
MR M COPLEY SC, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950
COMMISSIONS OF INQUIRY ORDER (No. 1) 2012
QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 15/01/2013

Continued from 14/01/2013

..DAY 37

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complaints in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION COMMENCED AT 10.05 AM

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COMMISSIONER: Mr Haddrick.

MR HADDRICK: May it please the commission, my name is Haddrick, of counsel assisting. I appear with Mr Simpson, also of counsel assisting, instructed by officers of the commission. This is day two of a dedicated week, Mr Commissioner, in respect of Aboriginal and Torres Strait Islander issues in respect to the child protection system. Before I proceed to call the first witness there are a few housekeeping matters that I need to raise with you, Mr Commissioner.

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The first housekeeping matter is an application for leave to appear, or authority to appear, as it appears in the Act. I'll hand up a letter received by the office of the commission from Ms Coleen Henderson in respect of an application for authority to appear for Dr Brasch, who is at the bar table. The counsel assisting do not object to authority to appear being granted for that party.

COMMISSIONER: Anyone want to be heard on that? Dr Brasch, do you want to be heard?

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DR BRASCH: I have nothing to add, Commissioner, unless I can assist you, to what's stated in our letter that's before you.

COMMISSIONER: Yes. No, I'm satisfied that you have an interest that is sufficient enough to - - -

MR HADDRICK: And I tender that letter - - -

COMMISSIONER: - - - justify its protection - - -

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MR HADDRICK: - - - in the whatever number it is.

COMMISSIONER: I'll grant authority to appear. The letter dated 7 January 2013 will be exhibit 140.

ADMITTED AND MARKED: "EXHIBIT 140"

DR BRASCH: Thank you, Commissioner.

MR HADDRICK: The second piece of housekeeping I have for the commission is to revisit the hearing of 29 November last year. Officers of the commission have advised me that a witness that was heard from that day, [REDACTED], provided an item which became an exhibit. It became exhibit number 129A. The exhibit was entitled My Story. It was subsequently replaced with your permission to be exhibit 126B. At that point in time when it was tendered as exhibit 126A you ordered it to be not published until further order.

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HADDRICK, MR

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██████████ has come back to officers of the commission and requested that his document entitled My Story be not published on the commission's web site. Counsel assisting do not object to that course of action. We propose that you make a non-publication order in respect of exhibits 126A and 126B cumulatively and also that the parties have leave to inspect the documents should they wish to.

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COMMISSIONER: Okay. Does anyone want to do that and/or be heard about the publication of 126A and B? The basis of the non-publication is presumably because something he said will identify his siblings who are still in care. Is that right?

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MR HADDRICK: That is correct, Mr Commissioner.

COMMISSIONER: All right. Ordinarily I'd - the order I've made, I'll just leave, because I've made that it not be published until further order and I just won't make any further order.

MR HADDRICK: If it pleases the commission, so be it.

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COMMISSIONER: And that's the way it will stay unless somebody wants to argue otherwise. All right?

MR HADDRICK: Thank you, Mr Commissioner.

COMMISSIONER: But at least people know then that that's what I propose to do in respect of that. If they had any expectation that I might lift the publication limitation then they should no longer be labouring under that misapprehension.

MR HADDRICK: But it remains free for the parties to inspect the document nevertheless.

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COMMISSIONER: Sure.

MR HADDRICK: Okay. Today's witnesses, Mr Commissioner, there are three witnesses today: the first witness will be a witness that I take; the second witness will be a witness Mr Simpson takes, and the third witness I shall take. At the request of ATSILS counsel assisting have agreed to - subject to your final decision of course, Mr Commissioner - that the evidence-in-chief be effectively taken by counsel for ATSILS, Ms Stewart, so I propose to, with your permission, call Ms Rose Elu, have her sworn, get her to identify her statement, verify that it is correct, and then hand the witness over to Ms Stewart if that is agreeable to you, Mr Commissioner.

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COMMISSIONER: Okay. Anyone.....

AUDIO MALFUNCTION

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HADDRICK, MR

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ELU, ROSE sworn:

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ASSOCIATE: For recording purposes, please state your full name and your occupation?--My name is (indistinct) Elu. I work for the Relationships Australia as an indigenous service delivery advisor. I'm known as Auntie Rose.

MR HADDRICK: Thank you. Might the witness see this document, please.

Ms Elu, can you have a look at the document that's just been handed to you. Is that your statement written by you?---Yes.

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Are the contents of that statement true and correct?---Yes.

Are the opinions expressed in that statement opinions that you hold?---Yes.

At this point I'll hand over to Ms Stewart with your permission, Mr Commissioner.

COMMISSIONER: Sure. Yes, Ms Stewart.

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MS STEWART: Auntie Rose, I just want to confirm that - just out of honour and respect - that I'll address you as Auntie Rose throughout this proceeding?---Yes.

Is that okay?---Yes.

Would you like to make your acknowledgments?---Yes (foreign language).....

AUDIO MALFUNCTION

.....I'm a Torres Strait Islander and this is not my land and I'm asking them to give me the permission to talk to you people today and also assuring that what I'm about to say to you this morning is something that I would like you to understand and take it on board seriously because we are going to interpret or communicate with one another today. And this is significant of the culture and identity, where my people comes from, where God given us different languages, cultures, walk of life on this Earth, and it has given us (indistinct) I would like to ask (indistinct) for that understanding - better understanding (indistinct) and work together harmoniously and be able to.....

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AUDIO MALFUNCTION

COMMISSIONER: Sorry, Ms Stewart, but (indistinct) Ms Elu's statement an exhibit and (indistinct) exhibit 141.

ADMITTED AND MARKED: "EXHIBIT 141"

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ELU, R. XN
ELU, R. XXN

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COMMISSIONER: And it can be published?

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MS STEWART: Yes.

COMMISSIONER: Thank you. Sorry to interrupt.

MS STEWART: If I can just bring your attention to paragraph 34 of your statement where you talk about the vital need for interpreters and you've highlighted the need for interpretation and translation in the Torres Strait region. How significant is the language barrier between the Torres Strait Islander community and the wider community in that area?---Let me give you the picture of the Torres Strait. Some of you may or may not know where the Torres Strait Islands are situated. They're situated between the vast country of Papua New Guinea and Australia, far north of Australia off the Cape York Peninsula, and there are various islands but there's only 17 inhabited. Now, within these 17 inhabited groups there are four groups of islands. There are Far Western Islands which are very close to - two kilometres from the coast of Papua New Guinea. There's Near Western Islands which are very close to the Australian Bight and there's Central Islands, the atoll islands - they're like sandbars - and there's Far Eastern Islands in the Torres Strait which is near the Barrier Reef in the Coral Sea. All these islands have got different cultural groups, different tribal groups. We have three different languages - actually four different languages in the Torres Strait which are Kalau Kawau Ya, Kalaw Lagaw Ya, Meriam Mir and Torres Strait Creole. I come from the Top Western Torres Strait which we speak Kalau Kawau Ya, but I also know the other languages. So within itself on these islands there are various differentiated customs; like, we are in the Top Western. There's only three (audio malfunction) even though we know the customs in the Central Islands of far, far Eastern Torres Strait or the Near Torres Strait, we cannot just do anything without their consent. So the barrier of the languages there are very different but the only communication we can have with the whole of Torres Strait is the Creole, Torres Strait Creole which is a form of Pidgin English, because we are not bound to speak in the languages until we have been permitted to. So there are those differences in languages there and knowledge is very different in understanding and how you respond to that.

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Can I just clarify too the dialects that you have just described? My understanding is that you can speak all those dialects and English is actually your fourth language?---Fifth language. 1

Fifth; so how important would the use of interpreters and translation services be to that Torres Strait Islander community when dealing with departmental people and officers?---Look, it's very important. It's very, very important because most of our people up there, especially on the grass-root level - English is not their first language so to be able to communicate to them you must have an interpreter. The person must be aware that there are language barriers there to be able to present or to be able to ask questions in a way where the people can understand. So in that sense if you were doing this, you then (audio malfunction) people. Even sometimes when you go - not sometimes but most times when you go up there you talk about English - speaking in English to the people in the Torres Strait. Then look at the other way because they're not understanding what you're saying. First of all and foremost, if you're speaking to them in English, they interpret up her in KKY, Meriam Mir, KLY, Creole and the answer that they will give to you is how they interpret in their own language. So there's the vital importance of communicating or even speaking to the people from the other language groups so it is very important to have those interpreters in place. 10 20

Auntie Rose, you have also had exceptional experience serving the community both internationally and nationally on various committees and boards and you have listed those at paragraph 6 of your statement. Is it correct to say that you have also worked for the Department of Communities in family support and on the Child Death Case Review Committee? Is that correct?---Yes. 30

Of particular interest would be the important work you have done as a member of the Kupai Omasker. Have I pronounced that correctly?---Yes, Kupai Omasker.

COMMISSIONER: Is that the customary adoption?---It's the child-rearing practices of Torres Strait Islanders. "Kupai" actually means umbilical cord and "Omasker" are children because we do not have a word for "adoption". "Adoption" is not a word for Torres Strait Islanders. In our custom that is a sharing of children so adoption, I guess, is only labelled in the documents so the system can understand when we talk about the child-rearing practices. 40

"Adoption" is the closest equivalent we have to that in our culture?---Yes.

MS STEWART: Talking here with the Kupai Omasker as the traditional child-rearing practices, one part of that could be what we would say is cultural adoption. Would that be

correct?---Yes.

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Yes, but we need to give it a word that we understand?
---Yes.

Can you just briefly describe the metaphor for the Torres Strait Islander family life, the concept of the Coconut Palm Tree?---Okay. If I can just give a little bit of this background on how it came about, in our working party group for this project which we have been doing for many, many, many years and is still on the table in the government somewhere we had to present for 200 judges in Sydney. We had to come up with something with a metaphor for them to understand what our culture is all about, our tradition, our heritage, our foundation, so we came up with the coconut tree, the coconut tree with the leaves, and there's the coconut trunk and then there's the Coconut Foundation up here. So we, explaining to them in a way that this - the root of this coconut tree is the foundation. Bear in mind we're talking about our culture and our people and the heritage is the trunk and then there's the culture and there's the leaves. So leaves go dead. They fall down. They come up again. The new roots are children. That's a metaphor of this so in that every leaf of this tree represents our people and the young roots that come up are the children. These are the ancestors and the foundation of this tree where we came from and there's trunk of us as a community at large as Torres Strait Islanders.....

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AUDIO MALFUNCTION

THE COMMISSION ADJOURNED AT 10.30 AM

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THE COMMISSION RESUMED AT 11.10 AM

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WITNESS:because we have a very religious background of our people in the Torres Strait we - and a seafaring people, and our identity comes from the ocean, comes from the earth, comes from the water that is above and below us, so these kind of things are very, very concrete in the life of our community, the life of our family. I cannot think for once that culture of our people can be understood by non Torres Strait Islander people in a way how we understood it. In that respect - so we deliver it and we try and give you examples of how it is important, the children in the lives of our people and how nurture them, how we brought them up, how we discipline them, how we love them and how we care for them. Children are very close - I presume all of us are close to - close to our hearts. The only difference that I see is because we have extended family kinship in the Torres Strait (indistinct) earlier on but the children belong to everybody else in the family sector. They're nurtured by all of our extended families. Their benefit and their wellbeing is of vital importance to us, so it is very important in a way how we nurture our own children, how we understand them, how we know what they're on about, and only our people can understand our children. I can understand my own children even though that they were given to me, they're grown up by me, and I understand them fully and my family are the same. So therefore in there says the children amongst our community growing up, nurtured and belonging is of vital importance in that environment, not outside of the environment, within that environment where we live. So it's very important of our kinship with one another. Like I said, we've got mums and dads, aunties and uncles, in your terminology, aunts and uncles, which is not part of - mums and dads, brothers and sisters, cousin, children, nieces and nephews, western terminology. All our children are children to all of us regardless of which island group we come from. So that is the importance of our bringing - our nurturing of our children, so therefore the obligations towards our children is vital in the way how we understand them, how we nurture them and how we relate to them. That's the importance of that.

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Auntie Rose, in paragraph 42 you state that you stand strong in your culture and that Torres Strait Islander people are Christian people of strong faith. Can you briefly explain to the inquiry the importance of coming into the - coming of the light?---Coming of the light. In 1871 the London Missionary Society landed on the shores of our - in the Torres Strait, eastern islands of Torres Strait, an island called Erub. These people came with a book that was written in the English language (audio malfunction) it was written, and also with it they thought they would bring in the light to our people. I, for one, as a Christian person, I puzzled through this all through my upbringing. I used to question my family about this, my

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mother and father, "Why is it that we talk about light when we're already light? Like, we have our environment, we have our ocean, we have our gardens." That gives my parents an opportunity to try and explain to me in stages as I was growing up what was the significance of this light that came to our lives in the Torres Strait. When they arrived on the shores of Darnley Island, the eastern (audio malfunction) news for us, the so-called image of Christ to us. I guess in a way they thought that we were primitive, we were uncivilised, we do not know anything about God. So they brought him to us (audio malfunction) on the shores of Torres Strait to enlighten our people, to be able to say, "This is life we've given to you. You've come out of the (audio malfunction)" Torres Strait Islanders, as humble as they are - as we are, followed that route. "Okay, you bring the light to us. Now, what is this light about? What do you bring to us? We've already got ancestors, we've got totems, we've got identity." (audio malfunction) through the waters of the ocean, through the gardens, through the light. There's always light. The sun rises and the sun sets (audio malfunction) I see the way the Christianisation bring us like to become - we become as Christians. So that was the light that was given to us and yet that produced God to us in the image how they see it. It's never for once that they questioned how the Torres Strait Islander Melanesian people (audio malfunction) image of Christ in their own concept, how they see it. So that was for our people to work on. They (audio malfunction) the person that made us (indistinct) so it was good in that sense. So there was some custom - because we were practising some customs (audio malfunction) hidden away from them that they cannot accept that. They said, "Okay, we don't want you to do this anymore." They were trying to erase our languages (audio malfunction) we maintain that. We said, "Okay, we will embrace this Christianity into our (indistinct) we will embrace this and we will serve the God as you have wanted us to be, but in that journey we have never forgotten that Christ showed to us in a different form of way, but we accept this western form of bringing the light to us. The book that was written in this language, it is nowhere near our language, so therefore it was never understood. So when they come they keep on saying - they brought in the missionaries from the Melanesian, from Vanuatu, Reef Islands, to be able to interpret to us in Pidgin English. So they keep pointing to this book and pointing up to the sky. Now, if we were that heathen we could have killed them, but we didn't do it because there were peace-makers amongst our community, amongst our leaders, amongst our - amongst the people of Darnley, amongst the people of my island. They came to Darnley then we went around to the other islands, and my island, they came on 6 July. So that brought in the uniqueness of light to us. I probably would say that the affirmation of our faith to God in the way that - how he sees it, so we embraced that and we became Church of England, the Anglicans known today, but it's never for one

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minute if you are addressing our people that we would - we would not say that we are Christians, full Christians. We would also interpret in a way our identity and background, where we come from, how God has created us, the significance of the light that came to my people, to our people in the world is that they were brought into light from that part of the world here where we were already in light, but that was embraced and we accepted that. We acknowledge it and respected it up to this day. So we celebrate this every year on 1 July, the coming of the light.

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Thanks, Auntie Rose. I just want to draw your attention to paragraph 44 of your statement. You speak of the natural environment that is Torres Strait Island and as seafaring people your families are nurtured within that environment and you have that affiliation with the ocean and that's a birth right. How do you see that forms your identity, and I suppose particularly - how it forms your identity and how in circumstances where you remove a child from that environment?---Let me just give you a story about myself when I was a baby. I was born on the island - top western island of the Torres Strait, and island called Sibi. Now, there were missionaries that came around to the islands to christen - to baptise our children. My mother had a problem with that. When the news was to get your village to say that they were coming to baptise the little babies my mother said to my father, "I'm not bringing my daughter wherever they want her to be. I'm going to run away with her." So she asked her brother, my uncle, to build a hut at the back of the island, so she went with me to the back of the island. A few days later she said to my father, "I want you to go out to the reef to get the bayliss shell and bring the bayliss shell here." So he went out and got the bayliss shell. When he got that, he boiled it, he took the meat out of there and he polished it up and he said, "Now, what can I do with it now?" She said, "All right, I'll go to my well." She comes from the snake tribe and my father is a crocodile, which is a (indistinct) tribe (audio malfunction) she went to a well because she's got a well of her own. She got the water from the well and she said, "Can you put that in the bayliss shell and take it in (audio malfunction) church (audio malfunction) I will have my daughter christened with that water from my well." But before she did that she took me down to the rocks and there was a spray coming in from the ocean. She just hold me out to the spray and the spray was all over me as young baby, and for her that was acknowledgment and recognition of her identity and my identity as a Torres Strait Islander and how significant it is to be sprayed with this ocean water, before she took me into the church to baptise me with her water from her well. Our people - and I say the sea-faring people - our identity comes from beneath the ocean, above the ocean; the current, the seas, the waves, the sky, the clouds. You can never see anybody - I could never see anybody apart from my visit around the world - are sea-

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farers and Torres Strait Islanders. It's one of the (indistinct) waters of the world and only Torres Strait Islanders can (audio malfunction) and Torres Strait Islanders can only them know what the weather going to be like. I just return from the Torres Strait where we are beginning of the monsoon (audio malfunction) there's things (indistinct) and immigration is saying, "Don't go out there, you will be peril. Don't do that." And people say, "Yes, we're just waiting how the sun will go, the colour of the sun and the moon will go, then set sail." (audio malfunction) all know the Torres Strait (audio malfunction) going back to significant of this is the identity of my people and of me (indistinct) identify me any other way (audio malfunction) somewhere else (audio malfunction) identity comes from the ocean and comes from the earth. That is a significant part of our culture.

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Auntie Rose, can I just get you to just elaborate on a comment that you made before when we were talking about the benefit of family obligations to a child, and you spoke - that doesn't seem to end at any point. In circumstances - because we're here in the child protection inquiry, particularly with removal of children. How do you - can you see any particular Island custom that would go some way to addressing - like, the department had a child protection concern (audio malfunction) addressed, need to remove a child while that's addressed, is there any particular Island custom that you think could be put in place to achieve the objectives like working with the family while keeping the parents (audio malfunction) not the parent - the child safe?---Definitely, definitely. No-one (audio malfunction) right to remove the child from their own environment. I'm going to be strong with this. Now, first of all there's a culture, there's a tradition. The child has been brought up in this culture. The child has been (audio malfunction) culture (audio malfunction) in this culture, and (audio malfunction) and alienated (audio malfunction) culture (audio malfunction) related Torres Strait Islander children, there must be goals in the right protocols or goals with the right people, to engage with the right people to get the proper information, proper knowledge of how to handle the situations before the child can be placed anywhere else. I do not think for once that the child can be taken out of its own environment and put it somewhere where it's alienated. Now, let me tell you something. I did my (audio malfunction) in Melbourne. I went down there as a very young person. First of all it was very, very traumatising for me 38,000 feet above the sea level and on the plane going down to the unknown place. Arriving at the Essendon airport with the people walking around, coats on, speaking different languages, cars zooming, planes coming out of the (indistinct) frightening for me. I was very uncertain in there. Not know a word of English, believe you me. Not know a word of English. I had to - from day one I had to battle. I had to secure myself inside me (indistinct) that I'm from a different world coming to this world - universe, whatever it is, the environment - but I have to try and compete or try to get up, get to the - you know, when you are amongst so many young people that are doing the education - further education - and you one of (indistinct) race and everybody's speaking English, that was traumatising for me. It was frightening for me, very frightening. Every day it was frightening when people wanted to say something to me or do things with me it was frightening for me. So just imagine I wasn't on that age group of young people or young babies or six, seven, eight, nine, 10, that was being taken (indistinct) I was a little bit older than that (indistinct) gone to school, it was still traumatising for me. Take me out of there. I was forever happy when I was being sent home for a holiday, but it was only the guidance of my sponsors, which are non-Torres Strait Islander people, which I pray God for their presence because they

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give themselves to understand my culture even though they never set a foot in the Torres Strait, they have to learn through my family (audio malfunction) daughter was there because she (audio malfunction) further education. That's an example of it and I do not think for once the children can be removed from their own environment (audio malfunction) place where they don't know nothing - don't know nothing about that culture, that environment. So it is very, very vital that - I fully believe that if (audio malfunction) taken out of the Torres Strait it must be gone through the right protocols to be able to place the child (indistinct) comfortable environment where he or she grew up, in the family structure, not with a family that unknown to the children.

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So what would you believe would be the proper structure? Just by way of background, under the Child Protection Act we have a recognised entity and Aboriginal and Torres Strait Islander children, when significant (audio malfunction) are made about them they need to consult with the recognised entity. Would you see that as a - at the moment there is some debate about the limitations that they have under the Act and say (audio malfunction) that was expanded to be able to (audio malfunction) see that as a good way of facilitating communication between the department and the elders in the Torres Strait Islander community to ensure that.....

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AUDIO MALFUNCTION

WITNESS:I worked for the government for 20-odd years and I am aware of how the government operates and how the - you know, how the work.....

AUDIO MALFUNCTION

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.....I was a cross-cultural awareness trainer within the Department of Aboriginal and Torres Strait Islander Affairs for many years doing facilitating on Torres Strait, protocols, communications, identity, language, everything else. Now, that was good. The only thing with that is that was not an ongoing thing. That was just the one thing that you train people for them to be able to go and tick the box to say that "I have done this so I'll be able to work with the Aboriginal and Torres Strait Islander people" which I very lovingly think that that is not - that is not so. I would like to see somebody really have an in-depth knowledge of my culture, my people, how we move, how we turn, how we sleep, how we walk, how we talk. Now, it's a full recognition of all this that God has given us for you and me. You have your own culture. We have our own culture. It's a mere acknowledgment and understanding fully in depth of how our people live and how our people work and it goes for the children as well, how we nurture our child, how we nurture them, how we discipline them, how we cuddle them, how we talk to them. Now, I can never say for once that people working in the areas have a full knowledge of attending to Torres Strait Islander child-placement issues. I'm sorry, I can never believe that. We acknowledge - we respect the work that Child Safety or other departments do because that's in the law. That is l-a-w; like, we are l-o-r-e which is a different law. We respect that. It's not for one minute that I would say we do not respect that. My deliberation today is for you lovely people to understand my culture in depth like I have yours. I lived in Melbourne for 17 years before I even talk in better English and I still struggle with it. I am an academic. I have an academic degree which I am still struggling with. Even this morning questions raised for me - this brain works in Melanesian way. It's not western way. So this is what I want, that recognition of my culture in depth or basic; not to tick the box and say, "Well, I can cater for Aboriginal and Torres Strait Islander people. I know them. I've been to Torres Strait. I did this." Now, that for me is not valid. For me it's somebody that goes in there, training the people, go to the right protocols, get our own people involved in it or be part of it. If we are passionate about the work that we do, we get involved.....

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AUDIO MALFUNCTION

MR HADDRICK:person who, under Aboriginal tradition, is regarded as a parent

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AUDIO MALFUNCTION

.....when it comes to the responsibility - parental responsibility in respect of children in Torres Strait Islander families?---Can you just repeat that again?

Certainly. Perhaps I could put it this way: do you accept 1
or do you now accept that that definition of "parent" is
wide enough to include people who have responsibility for
the care of a child in an Aboriginal or Torres Strait
Islander community or does that need to be restructured?
---It's needs to be restructured because - - -

In what way?---You see, you're talking about here a parent
of an Aboriginal and Torres Strait Islander child who is a
person - who under island custom is regarded as a parent of
the child. Now, let me rephrase this. You cannot put the
child into - we talk about the extended family kinship, 10
right.

Certainly, yes?---Now, to put a child in somebody - with
someone that is not familiar with this child or doesn't
know anything about the child is absolutely no-no. You put
a child in with a person that is related or that has known
this child from the time the child was born. Now, it has
to come from - - -

Can I just stop you there just for a second? I just want
to make sure I understand you correctly. That expression
in section 11 subsection (1) where it says "or someone else 20
having or exercising parental responsibility for the child"
- doesn't that include someone else in the TI family who
has responsibility for that child, at least under
traditional law?---Sorry, just say it again.

Well, I'm just focusing on the words in subsection (1) of
section 11 there and I'm making sure that the section is
wide enough to include people in your community who have
responsibility for the bringing up of children, at least
the moral responsibility in the community, and I'm looking
at the words "or someone else having or exercising parental
responsibility for the child". Doesn't that include other 30
members of the broader family who might have a traditional
responsibility for bringing up the child?---Well, yes, it
does, but it has to be - you see, this one confused me.
Yes, we have an extended family, right. Now, anybody in
that extended family is able to put their hands up and say
that "I will look after that child". Now, that person
would be - - -

If I could just stop you there, you used the words "we have
an extended family". Can I get you to look at
subsection (3) there - sorry, subsection (4). It says, "A 40
parent of a Torres Strait Islander child includes a person
who under island custom is regarded as a parent of the
child." Doesn't that expression include someone, an adult,
in the extended family who has responsibility for the child
according to traditional custom?

COMMISSIONER: Firstly, can we just ask this general
question: under island custom - I will ask this question
first: is there a common island custom or do the customs

vary between the islands?---Custom varies between the islands. 1

All right?---I'll tell you about my island custom.

Okay?---If it's up in my island, as a protocol I cannot talk to other islands, but I do know that there are different laws there. Now, in my island everybody knows everybody there. It's all extended family. Now, remember we talk about the tribal groups.....

AUDIO MALFUNCTION 10

.....happening in this culture, in this totem, in this clan, a child can be.....

AUDIO MALFUNCTION

.....can be given only in that crocodile and snake.

Okay. Now, let's stay with your island. Under the custom of your island, is there someone regarded as a parent who is not the mother or father - the natural mother or father of a child?---Yes. 20

Who?---It would be within the family structure. There would be someone there that would be mother and father to the child.

All right; and does your custom regard that person who would be mother and father - or father to a child be a parent?---Yes.

You have the same concept of "parent". Who decides who that person is?---We have elders. We have people in authority in the community and our family, in our clan. They will sit around and then appoint a person to take care of that child. 30

Right. So under our law the document would tell you who the parent is or how you identify the parent?---Mm.

Am I to understand that under your island's custom it would depend on the decision of the elders and you couldn't say who a parent was until the elders said who it was?---Yes.

All right. 40

MR HADDRICK: Can I also have the witness have a look at this other section of the act, section 83?

COMMISSIONER: Just before you do that, can we go back to subsection (1)? Do you have a.....

AUDIO MALFUNCTION

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.....customs of parental responsibility?---Come again? 1

Okay. Do you have a thing that under your custom is regarded as parental responsibility?---Yes.

What does that include? What is "parental responsibility" according to your custom?---It's included (indistinct) from the time the child is born, growing up, adolescence, initiations, everything else.

I will tell you what I think it means in ours. It's not defined in this piece of legislation, but it is defined in the Family Law Act as meaning..... 10

AUDIO MALFUNCTION

.....with being a parent. So it's not just rights. It's also duties. Is that a similar concept to yours?---In your thing, no, definitely not. I have to disagree - I mean, then again that's your - that's your law, like, you know.

So who was allowed to exercise parental responsibility for a child under your island custom?---I'll give you an example. I think I said it before. If it's a girl, the aunties are responsible for the welfare of that girl piccaninny and a boy piccaninny - the uncles are responsible for that as they grow up. It's not the mother and father. Mother and father are only there because they will come back and tell them this is what this child is. They're there to direct them but they're not people to, you know, interfere because that's a part of our custom. 20

So is the responsibility for the welfare of the child shared between the mother and father - - -?---Mother and aunts and uncles. 30

- - - and aunts and uncles?---Yes.

And is it shared according to an agreement between them or under customary law, that is, can you.....

AUDIO MALFUNCTION

MR HADDRICK: Read subsection (4)?---Yes.

Okay. Let me explain how that subsection works. Under the Child Protection Act when the department brings an application before the court, the Children's Court, for an order in respect of a child, if the court thinks that the order should be made, the child is placed with - the authority to place a child is given to the chief executive of the department. That is currently described as the "director-general", the department. Now, that section you just read details how the director-general is required to exercise her discretion in placing a child in care and it 40

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effectively steps out four levels of - four options and it says there "in the following order of priority" so the child shall be placed with a member of the child's family first, secondly, if that's not possible, a member of the child's community or language group or, thirdly, another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group or, finally, another Aboriginal person or Torres Strait Islander.

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Now, I just wanted to clarify, given that you were asked about this order of priority previously, do you disagree with that order of priority? Do you think that that's a sensible approach to deciding where a Torres Strait Islander child should be placed with.....

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AUDIO MALFUNCTION

.....is one that organising or replacing the child is fully aware and know which is the best family or the best people to put the child in. You know why I said that, because I've said it that people go in there and they go out there to the communities and they pick up anybody just to say, "The child will go there," without any proper consultation again, any proper acknowledgment. So because they acting in a - let me finish.

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Yes?---They acting in a way that they want the best interests of this child to be put there, where they see fit, but it has to be - the person that has to do that is of Torres Strait Islander, obviously Aboriginal person that would put - Torres Strait Islander - has to be Torres Strait Islander person, and that person must be aware that where the child would go, where the best person that would look after the child. Because I've seen that some kids have been taken there somewhere to the other families where they have no idea and no knowledge of this family even though that - you see, we go back to cultural language groups again because this is where the dilemma is. You see, one thing you got to understand, we have a different language - interpretations or language speaking people in the Torres Strait or even on the mainland. We have people like that. Now, we using the one word - one language is the creole. Now, if you are a person that have a better understanding of expressing this creole, KKY, KLY, (indistinct) even Moto, you can have a better way of doing things. If we don't have that then we make mistakes, we just putting the child somewhere that you are not fully aware if this is the right parent. You chose it on your own, it will go there. With proper consultation with the people, are these people okay to look after this child? I know there is a confidentiality of saying sometime you place the child, you don't want the family to know, but you - I think in a way that if one knows about that family you would ask, "Is this okay, this family, for this child to go there?"

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So let me understand if I have your criticism summed up correctly: you don't have a problem with how the law is written in terms of where a child should be placed; what you have a problem with is who is making that decision and the qualifications of that person making the decision in respect of where the child should be placed. Is that correct?---Yes.

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Okay. And you think that person making that decision, that

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delegate of the chief executive, should have a greater understanding of the traditions and culture - - -?---Yes. 1

- - - of that particular Torres Strait Islander community?
---Definitely.

Okay?---Definitely. God has given us this culture, identity, the language. Each and every - look, I'm sitting here today, I'm speaking to you in your beautiful language, which I'm struggling in a way sometimes, that's why I ask you questions all the time, because I'm thinking (indistinct) now, it took me 40-odd years to become speak fluently in English. I still have not really absorb it. Like, I would fully say that as an elder of the community and working in the community at large with these obstacles that I experience with the communities, that must be addressed properly with that in-depth knowledge. No-one is given the right to come to the Torres Strait and say, "Well, I will do this, okay, because it's all written in black and white." My language is not written in black and white except for my (indistinct) writing with black and white. Now, that is something that I have a problem because if that happens, that happens. And so what we to say? We only just say, "Okay, this is our culture, this is our tradition, this is this." And are we taking notice of this seriously in a way? Are we there to conduct ourselves as - - - 10 20

Okay - - -?---You came long way for me to be able to understand properly, accept, embrace it. This law, mind you. And I work with that in this Westminster system in this nation of Australia and in the Torres Strait.

Okay, well - - -?---There is my cultural law there and my people there; they still have it and they empowered by it, strengthened by it, and yet we have non-Torres Strait Islander govern us and to be able to tell us, "This is what you should do," without in-depth knowledge of my culture. 30

COMMISSIONER: It's even more fundamental than how you work out what the best interests for a particular Torres Strait Islander child is because before you can even intervene on the basis that a child is in need of protection you have to find that that child does not have a parent able and willing, and if you don't know who the parent is because the elders have decided it might be a number of people exercising parental responsibility for the child at the same time, you can't possibly conclude that that child does not have an able and willing parent if you don't know who they all are. 40

MR HADDRICK: Which then leads us to the possibility that there might be no particular adult exercising parental responsibility, there might be a number of people who think that others exercise parental responsibility, so I should - - -

COMMISSIONER: Well, it might be that you're intervening without authority because you don't know?---You see, it's all come from the culture. It's a puzzle. 1

MR HADDRICK: Yes, well, can I ask - - -?---It's a puzzle - - -

Can I ask you this direct question?---Yes.

Can it be the case that sometimes in your community where a number of adults have parental responsibility for a particular child, that that number of adults might neglect their responsibility thinking that somebody else is responsible for the child? 10

COMMISSIONER: Do you mean actually fulfilling responsibility?

MR HADDRICK: Yes.

COMMISSIONER: Because responsibility is something you have as well as something you do.

MR HADDRICK: Do, yes. 20

So if a number of people have responsibility for a child does it ever happen that a child will sort of slip through the cracks; that is nobody is looking after that child because they think that everyone else is looking after that child?---No. Of course we have - in this day and age in life that we experiencing things that aren't.....

AUDIO MALFUNCTION

.....people all going to approach the Islander families that look after the child. If that child slip off with this couple here or that auntie and uncle, the child knows there's another auntie and uncle over there, so, you know, they pick up, they not lost in that. You understand what I'm saying? 30

Yes, I do?---So they're not lost in that. Because we're talking about the extended kinship, you know, we can't talk about the best interests of this (indistinct) we're talking about the best interests of my children or my people in the Torres Strait. How do you define the best interests of the Torres Strait Islander child? How do you define this in that area that you - when you say that this is the best interests of the child to be over there, there, there; how do you define that when it's my cultural understanding, my culture? 40

I think that's a good question?---How do you do that? I want you to answer this.

MR HADDRICK: Well, that's for the parliament to answer

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that. But the Act does try to answer it and it's in section 5A and 5B. it sets down what you say the best interests, it calls it the wellbeing and best interests of a child. And then in 5B, which you don't have in front of you in those papers it sets - - -?---They all define that in their own mentality, the best interests of that child, which is from another culture; but how we define, as the people of that culture.

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Do you accept as a general rule that the way the law is written responsibility should be placed in one parent's hands or both parents' hands of a child?

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COMMISSIONER: Natural parent?

MR HADDRICK: Yes or no?---No.

How should the law be written to accommodate where parental responsibility is shared amongst a number of adults?---The law should be written in a way - now, first of all, if I was somebody writing up the law I would write it in KKY first before English. I would write it that way, because if you go - if it's in English and KKY (audio malfunction) because I would have a better understanding then with KKY than English. So if the law has to be written, again I go back to being just knowledge. If you speak my language we just feel like (foreign language) If you know what I'm saying and I understand you (indistinct) then you know you can write the law according to (audio malfunction) if you don't know, you don't write it. That's plain as a fact (foreign language) then you do it. If I say to you, "This is the way I'm going to write it. You write it the way I want you to write it," and I have a look at it, I examine it. If it doesn't - see what I'm saying? I look at you again until I'm satisfied what is - what I'm saying to you. So (indistinct) if you don't know, you don't do it, because we're talking about languages. We're talking about this superior language of English (audio malfunction) KKY, KNY, Creole (indistinct) it was like this - it took me so many years to - it's my passion. I (indistinct) It took me so many years to pick up the language because I made myself to understand, to be able to communicate, because I'm thinking Torres Strait Islands are this small in this universe. Nobody knows about them. They're isolated. They're in a remote area. We're not just talking about the Torres Strait. There's (indistinct) communities on the Cape which are part Torres Strait Islanders and the way that I was brought up there, I speak Aboriginal dialect of the Cape, and there's those languages there that I embrace. You know, to be able to write it in there it will always be - we always say that. It loses the value of what you're trying to say.

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Okay?---If you say it in English and you don't well understand your language, doesn't say it all.

Okay, well, let me ask you this. For the purposes of this commission, this commission has to give a report to government on how the child protection system should change in Queensland. Now, I took you to on one of those pages in front of you section 10 and it said that a child in need of protection is (a), and then it says in (b) "Does not have a parent able and willing to protect the child from harm." What do you think the law should say should be the definition of a parent? How should the law determine who

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the parent of a child is for Torres Island Islander communities? 1

COMMISSIONER: Well, obviously ask the elders?---Yes.

But what obligation have the elders got to tell you?

MR HADDRICK: Well, that's what I'm trying to tease out? ---Yes, that's right.

What is that defining feature that says that that person is a parent of a child?---The elders will have the core knowledge of everything. They would be the one to tell direct if you want to write out the policy or anything on that, you know, or even the explanation of the law. They will direct you through that. They will tell you exactly what they want in writing that. 10

Does everybody know who the parent of every child is? So if I was in a Torres Strait Islander community could I go up and ask, "Well, who is the parent or the adult who has responsibility for little Johnny?" Would I be able to go and speak to anyone and they could tell me who the parent is?---Yes, you can go to anyone. They will tell you. They will tell you who the parents are. You know, one of these things that I have experience, because I studied law in (indistinct) one of the things that I was doing practise was off in the Torres Strait and in the Gulf of Carpentaria. Now, you go into the courtroom with the magistrate and you sit there and you have a person in there, you know, defender. Now, you ask him, because the (indistinct) will be full of brown faces and you ask him, "Who are your parents?" and he's gone, "A, B, C, D, E, F." Everybody is a parent. What do you reckon the magistrate do? He scratch his head. He says, "I don't really know who your real parents are." 20 30

COMMISSIONER: And they're all his real parents?---Yes.

MR HADDRICK: No further questions, Mr Commissioner.

COMMISSIONER: Mr Hanger?

MR HANGER: Thank you for sharing your culture with us. Following on from those last questions, would it be a good idea to put into the act in respect of Torres Strait Islanders that a parent is a person recognised by the elders as a parent?---Yes. 40

Would that help?---That would help. The elders have the core knowledge of everybody that's in the community. They have the - - -

COMMISSIONER: You have to identify who - - -

MR HANGER: Who the elders are. You know who the elders

are?---Well, of course. You don't have to ask me that question. You come up to Torres Strait with me, I'll tell you who the elders are from one island to the other, from (audio malfunction)

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That's the problem with our legal system and the traditional customs?---Yes.

COMMISSIONER: Well, maybe your solution is to try to define "parent" and if you have a look at (audio malfunction) and just have - to be a child in need of protection you have no responsible adult who is able and willing to look after the child, or no appropriate adult or something. So you change the focus from parent to adult, and if a non-parent adult says - - -

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MR HANGER: (indistinct)

COMMISSIONER: - - - "I'm interested in the welfare of that child," then you assess that. It happens in the Family Court that way. "I'm interested in the welfare of that child. I've been assigned by the elders to be responsible" (audio malfunction) directly over the last few months. That's because he or she has been living with mum or dad, and whatever concern has attracted the interest of the department can then be dealt with on the basis of, "Well, I'll take over now."

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MR HANGER: Yes.

COMMISSIONER: If the department thinks that's satisfactory, away it goes.

MR HANGER: That seems a reasonable way forward. I was just thinking, you know, there are provisions, aren't there, I think in federal acts that (audio malfunction) an Aboriginal person is a person recognised by his community as - - -

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COMMISSIONER: That's so, or be recognised as - him or herself as such.

MR HANGER: Yes. A very loose test, but certainly - - -

COMMISSIONER: Yes. I think the focus of being on a parent is maybe a bit distracting.

MR HANGER: Yes, very. I suppose the other problem, which isn't your problem but you might help us on it, is that you've said there are many different cultures, and you're talking about the culture on Saibai. How do we go about dealing with the cultures of all the different indigenous groups in Australia and the other groups on the Torres Strait Islands?---You make yourself available to go and visit each (audio malfunction) mainland is the Torres Strait. I think that's a better way to really resolve

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everything. If we just look at one island - say if we just look at Saibai, Saibai does not say (indistinct) all of Torres Strait. 1

No?---You have to go to Murray, you have to go to Darnley, you have to go to Masig, you have to go to Poruma, you have to go to Warraber, all them islands, but the problem with that is always (indistinct) you know (indistinct) is the money, because no-one can go over there. No-one from the Australian public service - servant, but you can go to every island. You know, one of the problems with that is inexperience. You go to one island and you can get a document there and come here to state this, "I will write this and this is all of the Torres Strait." No, that does not say it all to my islands. Seventeen islands in the Torres Strait (audio malfunction) look at it accurately, possible. It's to go to those different (indistinct) for different island groups sit there and get that knowledge, basic knowledge, before doing anything else. 10

Yes, but the commission has to recommend changes to the law, and you've been very helpful in suggesting changes in respect of your part of the world, but then there will be changes for every other clan throughout Australia and Torres Strait. Isn't that a problem?---It's - yes, look - - - 20

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It's hard?---Yes, we talk about our Aboriginal and Torres Strait Islander - you know, it's a unique race. Let me say this so passionately because I am strong because God has given me two legs to walk on this (foreign language), otherwise I wouldn't be walking in here without a blessing of my ancestors of this country or even if they come or you come to Torres Strait, I'll be giving you the blessing to walk on my land. Do you see the uniqueness of that, the power of there? I mean, it's not a thing that - you know, at the end of the day we're all unity.....

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AUDIO MALFUNCTION

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.....respect one another, acknowledge one another in a way that we possibly can; not in the surface. I don't believe in the surface. I don't want anybody to come to my part of the island, say something here and then go back on the plane and say.....

AUDIO MALFUNCTION

.....my other colleagues, my other beautiful non-Torres Strait Islander people. Learn from us to be able to do the - write up the documents, the law, the legislation, according to what I believe and what I understand so you can understand about me properly; not in a way that, "Okay, I'll go and do this. I'll write this up. This is what they say on Sabai Island," but it doesn't go for the other islands. That's my passion. So in that sense that is very true in a way that, you know, I was really honoured to be here today. I was really honoured to be amongst you people because I feel that my ancestors have given me that strength to be able to communicate to you and get you to grasp it like I grasped you all these 40-odd years of my life. I never once would say that - you know, I learnt through a lot. I was being called many names in my school and everything else and I stand up for it, but I learnt through that and I thank God for that, giving me that. I think I also thank God for this kind of presence today, to be able to communicate with you where you have - you are people that do the work, write up the policies, write up everything. I'm not. I'm here to represent my cultures from you today.

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Thank you very much.

COMMISSIONER: Dr Brasch?

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DR BRASCH: I wouldn't have leave.

COMMISSIONER: You haven't got leave yet, okay.

MR: I have no questions, thank you.

COMMISSIONER: Thanks, Mr Capper.

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MR CAPPER: No re-examination of this witness. Might this witness be excused? 1

COMMISSIONER: Yes.

Thank you very much for coming today. We appreciate you taking the time to help us work out where improvements can be made and for sharing with us your knowledge of your customary law and community.....

AUDIO MALFUNCTION

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WITNESS WITHDREW

MR HADDRICK: The next witness will be taken by Mr Simpson. There needs to be a slight rearranging of the deck chairs. Might we perhaps stand down for a couple of minutes?

COMMISSIONER: I don't think so. Do we need to?

MR HADDRICK: Okay.

MR SIMPSON: Mr Commissioner, the next witness - there are some housekeeping matters to go with that. I might hand you up a copy of her proposed statement before the witness is sworn. It is intended that she may give evidence which identifies a child service centre. This witness also has some children who are currently in her care. Because of the provisions of the Child Protection Act, there is some concern from some parties at the bar table that the evidence may identify some children who are in care. In order to alleviate that problem it is proposed by me and, I believe, supported by at least one other party at the bar table that the evidence given by this witness ought be given in a closed hearing and her statement be published subject to the removal of her name, her signature and the name of the service centre. 20 30

COMMISSIONER: What does the witness want?

MR SIMPSON: Pardon?

COMMISSIONER: Who is appearing for the witness? Ms Brasch?

DR BRASCH: Your Honour, it might now be useful for me to announce my appearance. 40

COMMISSIONER: Yes.

DR BRASCH: May it please, commissioner, Brasch, B-r-a-s-c-h, initial J, instructed by ATSIWLAS. For the record, let me spell that out, the Aboriginal and Torres Strait Islander Women's Legal Advice Service. Commissioner, my client has a story to tell. She has a story where she speaks as an Aboriginal grandmother. She's

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not particularly concerned as to whether her statement is
Livestreamed today or not other than she certainly is
hopeful that what she does have to say in one form or
another will be available for public consumption. 1

COMMISSIONER: If it was Livestreamed and if she said what
she says in her statement, would we offend the
legislation.....

AUDIO MALFUNCTION

MR CAPPER:Child Protection Act particularly. 10
Section 189 of the act says that a person must not, without
the chief executive's written approval, publish information
that identifies - - -

COMMISSIONER: Have you got your pen there, Mr Hanger?

MR CAPPER: - - - or is likely to lead to the
identification of, a child as a child who has been the
subject of an investigation under this act of an
allegation, ie, a child in the chief executive's custody or
guardianship under this act or a child for whom an order is
in force. In relation to that I can - - - 20

COMMISSIONER: Sorry, Mr Capper, what section are you
talking about?

MR CAPPER: Sorry, section 189.

COMMISSIONER: 189. Just give me a moment to read it. I
have read it many times before. I'm assuming this act
applies to me.

MR SIMPSON: The Commission of Inquiries Act actually
overrides this, but it's a concern that the people have
about it. I guess for the point of view that the children
themselves haven't consented to this. 30

COMMISSIONER: They haven't?

MR SIMPSON: They haven't, no, but this witness has.

MR CAPPER: Now, could I take you, commissioner,
particularly to paragraphs 34 to 38 of the statement which
I won't read onto the record for obvious purposes, but
certainly paragraph 34 gives us a very clear locality and
certainly paragraphs 35, 36, 37 and 38 go on to clearly
identify the relationship..... 40

AUDIO MALFUNCTION

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.....bind me and that's not the basis on which I'd make a decision; the basis on which I'd make a decision isn't to comply with a section that doesn't restrict me, but whether for other reasons - including the obvious purpose of that piece of legislation by analogy - any harm is going to be done, any preventable.....

AUDIO MALFUNCTION

.....also.

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COMMISSIONER: Unless we don't - well, that's right. I mean, it's - - -

MR CAPPER: Yes, it's one (audio malfunction) or no rule at all.

COMMISSIONER: Yes, okay.

MR CAPPER: That is the difficulty.....

AUDIO MALFUNCTION

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.....cutting of the live streaming satisfies one issue; the other one is the people in court, and the best you can do, I suggest, is make a direction that there be non-publication of those confidential matters. I rely on the integrity of the people in court not to break that order. Best of a bad lot.

COMMISSIONER: Yes. See, because strictly speaking as soon as - she's already published it to me and to whoever else has got this, so that's a technical breach of the section and me allowing her to repeat it to people in the gallery would be a republication. So I think I will take an expedient approach and adopt what you suggest, Mr Hanger, that I'll take.....

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AUDIO MALFUNCTION

(Reporter's note: witness [REDACTED] sworn in during this time)

.....recognised entities and that sort of thing?
---Yes.

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Right. Now, if I can take you to paragraph 13 of your statement, it says in paragraph 13 and 14 you were asked what child safety to be a kinship carer - sorry, you asked a child safety if you could be a kinship carer for your daughter's five children at one point. Whereabouts was that?---It was about six years ago, seven years.

Right. And they told you, the department, that you were

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[REDACTED] XN

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unsuitable because of a history of domestic violence between you and your husband?---That's correct. 1

Okay. Now, does that history of domestic violence relate to one incident?---No, this was before I'd taken on any of the children.

Okay. All right. So how long prior to you applying to be a kinship carer had this incident of domestic violence occurred?---About 25, 26 years ago.

26 years prior. Was there any occurrence of domestic violence in between that period - - -?---No. 10

- - - and when you applied to be a kinship carer?---No.

Do you know how the department would have known about that incident of domestic violence?---They just did checks. They just went back years.

Did they ever tell you what it was they were relying upon? ---Police evidence.

Police evidence. Did you ever get to see it yourself? ---Yes, I actually did. 20

Right?---When I had to go to a QCAT hearing for one of my other grandchildren.

Back then, though, when you applied to be a kinship carer did you try to challenge that with the department?---Yes, I did.

And what was the flavour of that negotiation? Tell the Commissioner?---Well, because I said it was the - the incident happened well before the children came on board I said why should that history still carry with me? And they said because it's there and it sticks. 30

Right, okay. So first of all let's just go back a little bit. Why would you applying to be a kinship carer? Why was that important to you?---Because I did not want my grandchildren to be placed with families outside the family circle.

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All right?---I wanted them to remain within my family. 1

Was your daughter at that time having difficulties in raising the children?---Yes, she did. There was issues there.

Yes. And after being told that you were unsuitable to be a kinship carer, what did you do?---I just went and seeked legal advice because I just felt that I was being wrongly treated. I needed to become the carer for these children.

Were you told by somebody at the department that for an order for you to look after these children as a carer..... 10

AUDIO MALFUNCTION

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.....child safety service officers having no idea about Aboriginal culture. Now (indistinct) child safety officer you've come into contact - - -?---No, not everyone.

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Okay. So being balanced about it, what's the experience - the broad range of experience of the different child safety officers?---Well, the ones where I spoke about this here, the girl that came to do the visitation with me at the house - she said, "I'd love to learn a little bit more about culture so I know how to, you know, understand these children when they come into care," and I thought that's good, you know. People are out there wanting to know - well, you can share it with them, but there was other ones that just didn't bother. They just had a different outlook.

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Did you think their outlook imposed a different standard on you?---Yes.

To an Aboriginal or indigenous standard, so to speak? ---Yes.

I guess that question supposes - do you think there's a different standard between an Aboriginal family and, say, non-Aboriginal family in the way they raise their children? ---I don't know. Our families are more cultural and we just - you know, we don't tend to go outside that circle. If we need to get information, we try to share it with one another rather than having to go out and get information.

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Now, the system relies heavily upon recognised entities. You understand that process?---Yes.

And the recognised entity to provide advice to department so the department can make informed and proper decisions. Now, one of the recognised entities here in Brisbane is IFACSS. You have got some criticisms of them. Firstly, what interactions have you had with them?---I've had no involvement with them hardly. The only time that they really came to my house is when I had - the oldest grandchild was getting into trouble so they came for her, but I had the other kids also in care with me but there was no interest in them. It was only because this other one was getting into trouble.

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So why do you think there was no interest in them?---Well, it plainly showed me that day when they came that they were only there to see what was going on with this other girl and they've never come and visited after that.

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Right. Being fair to them, do you think perhaps it's because they're not invited by the department to come along?---Well, isn't it their job? Isn't it their - if they know that there's two little children in care, isn't it their position to come out and see if there's any needs? I mean, you can go to the meetings and they will say, "Yes,

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sister, we'll be out there. We'll come and see you." We don't see any faces after a meeting. 1

So what do you expect from - as a grandmother of 28 grandchildren, a lot of them in care, under your care, what would you expect from a recognised entity to assist you?---To come out and be a bit more supportive and see if there's needs out there for them.

Okay. In a practical sense, how often would you have expected them to come out and be supportive of you?---At least once a week like the other service entity. They were coming out once a week. 10

COMMISSIONER: But does the RE, the service centre - is that the function of the RE?

MR SIMPSON: Well, it depends.

COMMISSIONER: What does the act say it is?

MR SIMPSON: I will have to turn up that section. Once it has been turned up, I will come back to that. 20

If it's not the recognised entity to do those things, would you expect there should be other support groups out there or that interact with the department to support Aboriginal people in care?---I was just going to a housing society that - I knew somebody there who had dealings with Child Safety who used to work with them herself and I used to go there and just get my advice. I mean, in that other area the other recognised entity - they didn't do any visits to me either.

COMMISSIONER: See, the recognised entities vary across the board. Sometimes they have dual or even more functions and they get funds like the one at Woolloongabba. It does lots of different functions, including being the RE, but it gets money from the federal government as well as the state government and also provides basic dental care and things like that. Some REs are one person so we have got to work out whether what we're saying about the RE didn't do - is it something it should have done or in fact was envisaged that it would do under the legislation? 30

MR SIMPSON: I think what the witness is trying to convey is that whether it's the RE or otherwise - and you can correct me if I'm wrong. 40

You were looking for something in the community to support you?---Yes.

You can call it the RE, you can call it something else, but you were looking for some sort of indigenous organisation to assist you in your dealings with the department?---Yes.

Is that right?---Yes.

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COMMISSIONER: There are two questions there. Either there was such a body that was around that should have helped you when you needed it or there's no provision for such a body which there should be. So which is the point? Which one of those we you looking at?

MR SIMPSON: The point is if there is - for example, if there is something lacking in the current legislation, would you want that, an organisation or some way of which you are supported in the community?---No.

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Now, you do have some criticism about the contribution at family group meetings also. For all your criticisms, did you make a complaint to anybody about that and were you given any explanation?---Yes, I just went to the legal service.

Right. Now, I want to go onto this idea of - unless I covered it earlier. You said you have never seen a cultural case plan?---No.

Now, how many family group meetings have you been to?
---I've been to many.

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Can you quantify that?---Well, because I was dealing with - my grandchildren were under five different officers so I had five service centres that I was dealing with - four, sorry; four.

You were never shown a cultural case plan?---No.

Do you know though whether the fact was there may be one in place but it wasn't shown to you?---There was just never one there.

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Right?---I mean, all the information that they wanted about cultural awareness and stuff they kept coming and asking me, but that's up to them. I believe that every carer who takes on our children should have a cultural case plan put up or something for them to go on when they've got these children in care because I constantly get phone calls from the carers asking me questions about stuff for the kids when they're things at school and if there's cultural events around that they should be going to.

So, again, did you feel there was any place you could make a complaint about that or did you try and make a complaint about that to try and change that situation for yourself?
---Well, I just went the legal service. I spoke to Child Safety. They sort of didn't thing so I just give up and I just had one of the carers - one of the carers they've got for the grandchildren - she's always interested in finding out stuff.

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At this stage I have no further questions, Mr Commissioner. 1

COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: Could we adjourn until after lunch?

COMMISSIONER: Okay. Is 2.15 suitable to everyone?

MR HANGER: Yes.

THE COMMISSION ADJOURNED AT 12.59 PM UNTIL 2.15 PM 10

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THE COMMISSION RESUMED AT 2.19 PM

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COMMISSIONER: Yes?

MR SIMPSON: I understand Mr Hanger has an application, your Honour.

COMMISSIONER: Yes, Mr Hanger?

MR HANGER: First of all, may I remind you that at one stage in the witness's evidence she accidentally mentioned the centre that was in the suburbs and probably pursuant to your direction that should be deleted when the transcript is written.

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COMMISSIONER: Thank you.

MR HANGER: I would like to reserve cross-examination of this witness. There are matters that she's raised that have not been raised in the written statement and they are factual matters as distinct from matters of opinion. So I would seek to adjourn cross-examination to a date to be fixed. It may be that there is nothing to ask, but if there is if she can come back at some point at a convenient time.

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COMMISSIONER: Anyone want to argue against that?

DR BRASCH: Commissioner, only save for this, I would propose to ask some general questions of Ms [REDACTED] this afternoon but I would seek to have the opportunity to also examine her in the event further documents are produced. She's my witness after all.

COMMISSIONER: Yes.

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DR BRASCH: So if we're back again then I would be asking your Honour - the commissioner's indulgence to also come back and act for her as indicated - - -

COMMISSIONER: Yes. No, that's fine. That makes sense. Thanks.

DR BRASCH: Thank you, commissioner.

MR SIMPSON: I'll just continue with a few more questions then.

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COMMISSIONER: All right, and then after you've finished yours we can go to Ms Stewart, if she wants to, or - you don't have to. I will accede to Mr Hanger's request, so she will be coming back. It's a question of whether you want to start - - -

MS STEWART: Commissioner, at this point we didn't have

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any questions for this witness.

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COMMISSIONER: I'll take that as read then. I won't give you any opportunity to reconsider. No, okay. We'll just play it by ear then. All right, thanks. Mr Capper, what about you?

MR CAPPER: No questions at this time.

COMMISSIONER: All right. Mr Simpson, fire away.

MR SIMPSON: Ms [REDACTED], before the luncheon adjournment I was going through with you that you had some criticisms that you thought should be levelled at say the recognised entity. I want to take you through what - the answers about what the recognised entity has to do and then get your comment on those things. Section 6 of the Child Protection Act sets out that when making a significant decision about an Aboriginal or Torres Strait Islander child the chief executive or authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process. Now, it says in the next paragraph when making a decision other than a significant decision about an Aboriginal or Torres Strait Islander child the chief executive or authorised officer must consult with the recognised entity for the child before making the decision, however if compliance with subsection (1) or (2) 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 must consult with the recognised entity for the child as soon as practicable after the session. So the act says, in essence, they need to consult with the entity. It doesn't actually require the entity to come out and see you, so to speak. So would you be satisfied if I said to you then that might explain why you didn't see the recognised entity on the occasions you thought you needed to see them. You need to answer orally?---Yes.

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Would that explain - - -?---Yes.

Okay, but in a perfect world I guess what you were getting at, and correct me if I'm wrong, is you'd like to see their role or the services that you get from an entity such as the recognised entity or a support group broadened so they can give you more help?---Yes.

So the act doesn't allow for it now, and in other words - and that flows on from the fact they may not be funded to do extra things. You would like to see that expanded. Would that be right?---Yes.

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So if there was funding to be given to them to give you that family support that's what you'd like to see happen? ---Yes.

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Now, I've put some words out there and I don't want to be putting just words in your mouth. Are there any other things that you wanted to say to the commissioner about what you thought you needed in terms of support in being a grandmother and kinship carer before we finish your evidence then?---I just want them to have respect for me as a grandmother, and I believe that, you know, I shouldn't have been stripped of that kinship carer certificate because they had other views. They don't know me properly.

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When you say "they" you're referring to the department?
---The department.

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Okay?---I mean, there's organisations out there who can tell them who I am and what I'm all about, because I'm always out there in the community, and the department knows nothing about me other than that I've just put my hand up to care for my grandchildren.

Very well. All right, I have no further questions then, thank you, Mr Commissioner.

COMMISSIONER: Thank you. All right, in that event we will - - -

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MR SIMPSON: Does Ms Brasch wish to - - -

COMMISSIONER: You had some general questions, sorry, Ms Brasch, yes.

DR BRASCH: I have some general questions.

COMMISSIONER: Yes, okay.

DR BRASCH: It may be that we might not come back, depending on what my learned friend Mr Hanger discovers.

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Ms [REDACTED], you were just asked then about the recognised entity. You will recall the questions from my friend Mr Simpson?---Yes.

You agreed with him that you were looking for be it the RE or some entity to give you support when you have children in your care?---Yes.

That's correct?---Yes.

Would it be correct, though, if you could explain to the commissioner, that it's not only about support for you but there has to be, in your view, or does there or should there be, in your view, some kind of entity which will help the department decision-makers understand your culture and perhaps even more importantly the children's culture?---Correct, yes.

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Can you elaborate on why that is so?---Because they really

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need to understand, and the case is all about the children. Are the children not able to speak up and say how they feel and how they want to - where they want to live and their views on what does happen around them, whether they are surrounded by domestic violence or whatever? That's what my grandchildren are saying. "Why can't we come to court? Why can't we put our hands up and say," you know, "because you protect us." I mean, the department, when they do go to visit the kids they're putting things in the kids' mouths. They're coming home crying to me and saying things.

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Can we focus on the idea of culture, Ms [REDACTED]? You were asked a couple of questions before lunch about cultural case plan and it was your evidence that you'd not seen one for the children that have been in your care?---No.

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Can you explain to the commissioner, please, and to the court why in your view a cultural case plan is so important for a child?---I believe that it's really important for every - you know, every person that has any children in care should know the cultural values that the children need, because, you know, further down the track when they get older and they start to go into the big open wide world they could be meeting up with their own half-sister or half-brother because they're not being told, they're not being shared all this information. They've been taken away from where they would have gotten all their valuable knowledge from us as grandparents. I'm always sitting down with my grandchildren explaining things to them, but the ones that are in care, they're the ones that are suffering, because they're not being told things.

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When you say "told things", by that you mean who their family is?---Where they come from, their cultural ties. Their backgrounds, where they come from.

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In your experiences and observations, Ms [REDACTED], could you share with the court the effects you may have seen on children when they're removed from their culture?---They've been distorted. They, you know, want to know things, they - "How come they're taking us away, nan? Why can't we stay with you?" you know. "You don't do anything wrong to us. Mum has never done anything wrong to us What is it?" You know, it's not good for the children, and when I get the contact visits and they've got to go they're clinging to me because they want to come home with me. They don't want to be taken anywhere else but with me.

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If you could extend it out a little more for the commissioner, so if we extend your answers beyond your children and being removed - your grandchildren and removal from you, but removal from their culture.

Any observations you can share you've seen children, what happens to them when they're removed from their culture? ---Well, I've had incidents where my grandchildren, when I've had them on the weekend and I've taken them to a cultural thing and have done something nice and that taken it back to the carers and I said to them, "Take it home," and they said, "No, Nanny, we're not allowed to have them things in our house." And then one of the carer's sons was taking one of the grandchildren out and he said, "Don't dress like a dirty Aboriginal." You know, what is that - that's really scarring my grandchildren. They shouldn't be spoken to like that.

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So would it be correct to say then that has potential long-term implications when that child grows, when they're older they potentially lacked the ties to that culture, their knowledge of their culture, where their roots are? ---That's right. They're being scarred by that.

You mentioned in a couple of answers before lunch - you were asked questions I think from my friend counsel assisting - you were asked if you made complaints about certain things that had happened and in your answers you said you raised it with the legal services?---Yes.

20

Could you elaborate for the Commissioner? What do you mean? Who were the legal services or what are the legal services?---Well, I went to ATSIILS themselves and I went to ATSIWLAS. Also the Housing Society, two lovely women there, very strong women that said, "We'd love to help you," but because they're a housing service they referred me on to ATSIWLAS, and that's where most of my help come from. But the two ladies at the housing service was my tower of strength, going through those two.

You were in court this morning and she heard Auntie Rose give her evidence this morning. I'm not going to ask you if you agree with it, I appreciate it's different cultures. But we can pick up on a couple of themes that were addressed with respect to Torres Strait Island - or her perspective and culture of Torres Strait Island. Could you - would it be correct to say within your culture that a family is more than biological mum, biological dad and their specific children?---No, we have extended; the aunties, the uncles. We go outside of it and as long as we feel comfortable, yes, they're the ones that we want to be taking care of our children.

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And is it their role - would it be correct to say it's their role if something is happening, say the biological mum and biological dad - natural mum, natural dad - it is for the extended family to step in and assist?---Yes, I believe it should happen and I do seek that from my own family when the kids - they don't listen, "Oh well, I'll go and get my sisters or my older brother," who they really respect. Even, like, the two ladies that are sent from

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Housing, if I go over there and I take them over and they have a bit of a yarn to the girls and then they're - - - 1

Would it also be correct to say, Ms [REDACTED], that in your culture - speaking specifically, your culture - that the idea of the parent is more, it is broader than just the natural mother, the natural father?---That's right.

And could you expand upon that for the Commissioner?---I seek outside help because sometimes you just need that extra help to strengthen you in the rearing of your children. Sometimes they don't want to listen so I seek help from my brothers or sisters or aunties or uncles or cousins, ones that they look up to as a role model or that they respect, and nine times out of 10 my kids, they're happy with that, they'll go and talk, they'll find somebody who they feel comfortable with and they will talk to them. 10

You're a grandmother. Could you explain, if you could, please, to court, share your observations with the court the importance of grandmothers - and to be fair, grandfathers as well - within your culture, and particularly when - for example in your circumstances - when children have been taken into care?---As a grandparent, well, because it's a decision that sometimes my kids make: "Mum, the kids will probably be safer with you," and the kids - that's their decision, "We want to stay with Nan because we feel comfortable with Nan. We don't want to be stained with white people. Why can't we stay with our Nan?" That's where I got this case where the kids were in care and they run away and child safety hasn't take any notice of them for about two or three months and decided to throw their hands in the air and say, "Well, you're the grandmother," and that's where they left, with me. And because they said they feel safe, "Nan, we feel safe with you," and because I've been sick, the kids - it's just taken on that bit of extra thing with them, they say that they want to be around me because they know I'm unwell. 20 30

Thank you, Mr Commissioner.

COMMISSIONER: Thank you. All right, in that event can we ask you to come back at some later time for further questions that Mr Hanger and others might want to ask you? We don't know what date that is yet but we'll liaise - someone from the commission will liaise with you and through Dr Brasch and we'll fix the date that's convenient for you and everybody else?---Yes. 40

In the meantime - were you summonsed to appear or did you appear voluntarily?

DR BRASCH: It was a summons, yes.

COMMISSIONER: So in the meantime the summons continues to

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be operative and we'll notify you of the return date when we have it. What is the anticipated time frame, Mr Hanger? Have you got any idea? 1

MR HANGER: Well, I know that Thursday is a short day but it may be there are several files that have to be dug up so I think that's - - -

COMMISSIONER: It could be this week or next week.

MR HANGER: Unlikely this week. And I think we then going into another two weeks on - - - 10

COMMISSIONER: The other matter.

MR HANGER: - - - the other matter, so it would be straight after that, I imagine.

COMMISSIONER: All right. So it will be within the next month or something like that. Within the next month, then. Okay?---All right then.

Thanks very much for coming?---Thank you. 20

I appreciate it. We'll see you next time?---Thank you.

WITNESS WITHDREW

MR SIMPSON: Mr Commissioner, the next witness is available by telephone. It will be on video link. Your associate might just need a few moments to set that up, so you might wish to take a short adjournment while that occurs.

COMMISSIONER: No, I'll stay here, I think. 30

MR SIMPSON: Okay.

COMMISSIONER: I'll watch, see how it's done.

PEREIRA, CATHERINE ELIZABETH EVELYN affirmed:

ASSOCIATE: For recording purposes please state your full name and your occupation?---Catherine Elizabeth Evelyn Pereira. I the principal solicitor with the Aboriginal and Torres Strait Islander Women's Legal Service North Queensland. 40

MR SIMPSON: Good afternoon, Ms Pereira.

Commissioner, I hand up a document.

Ms Pereira, do you have a document in front of you which starts with the title Acknowledgment and runs to 22 pages, which makes up the submission from your legal service to

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the commission?---Yes, I do.

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And do you, on behalf of your legal service, endorse the opinions and recommendations made therein?---Yes, I do.

All right. Commissioner, I tender that document as an exhibit. It's not a statement but it makes the basis upon which this evidence is given.

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COMMISSIONER: The document will be exhibit 143.

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ADMITTED AND MARKED: "EXHIBIT 143"

MR SIMPSON: Thank you, Mr Commissioner.

I might just ask you for some background for the purposes of the recording as to the nature of ATSIWLAS North Queensland and the types of clients you represent as far as they interact with the child protection system. Could you give us a bit of a background?---The Aboriginal and Torres Strait Islander Women's Legal Service North Queensland was set up as a - initially as a unit of the Women's Legal Service North Queensland. It became independent in 2006. All of our clients are Aboriginal and Torres Strait Islander women or they are women who have Aboriginal and Torres Strait Islander children. So when I say "all", there's a few exceptions. Occasionally in outreach work we have non-indigenous. The nature of the work that we do is primarily - probably about 50 per cent is family law. Of the case work that we do approximately 40 per cent is child protection work and, looking at our figures over the last, say, four years, we've had about 40 child-protection matters a year over that time on average.

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Right?---The nature of the child-protection work we do includes court representation, engagement with the clients and liaising with the department, involvement in the family group meetings and occasionally we go to trial if the matter proceeds to trial - sorry, if our clients' matters proceed to trial, we take it trial.

All right. Now, what's the region that you cover? What's the southernmost point of the region your legal service covers from?---Technically we're to cover from Sarina which is just south of Mackay to the Torres Strait and east to Palm Island, west to the border. Now, that's an impossible area to cover considering there's only two of us, but we do have clients as far west as Mount Isa and it's not unusual to have clients from Bowen or Ayr and north to, say, Innisfail.

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When you say there are two of you, does that mean two solicitors?---No, two full-time staff.

Right?---We continue to apply for funding which means that we do get other solicitors on board from time to time, but apart from that I'm the sole solicitor in the service.

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All right. Now, if an indigenous family wanted services from an indigenous service other than yours, would they go to ATSILS?---Yes, they would.

All right?---Or they could go to the Queensland Indigenous Family Violence Legal Service. We have networks with both of those organisations.

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Now, that last one is called QIFVLS, I believe?---QIFVLS, that's right. 1

All right. Now, who formulated the submission and recommendations to this commission?---It was formulated between myself, other staff members at the time which included Kate Lindsay who was a solicitor who worked with us for 18 months and she has extensive - she's Aboriginal heritage, has extensive experience working with Aboriginal and Torres Strait Islander children and adults in New South Wales and Queensland and our community development worker Jodie Vincent. So it was we met; we discussed it; we made the recommendations based on a very long period of consultation actually because child protection has been a particular area of importance to our service for a long time and we have taken what proactive steps we can to try and address some of the issues that we've seen. For example, our service - our community development worker actually developed a project which was independently funded to mentor Aboriginal and Torres Strait Islander women going through the child protection system. So it's been an area of passion for the service for a long time. 10

I might take you then to a summary of your recommendations starting on page 18 and I'm going to ask you for some practical solutions that the commission could take from your submission as to how to go about enacting or putting into practice your recommendations. The first area which I will touch on is recommendation 1. You say the department should better assess the qualifications, skill and experienced candidates for recruitment. Now, does your service or you in particular have a practical way or example upon which the department should do this?---Well, through the normal employment processes, I would expect, and obviously I'm not privy to how the department employs people but they should be seeking the best candidates they possibly can who have the most experience and some relevant community experience as well, preferably experience with Aboriginal and Torres Strait Islander families given that Aboriginal and Torres Strait Islander children are 10 times more likely to be in care than non-indigenous children. 20 30

I guess what I'm going to there is: what is substandard or not appropriate in your eyes as to the qualifications of those people presently employed in your region of a department?---I guess, you know, obviously the department would be employing from whatever call of potential candidates they have. What my point there is that the workers often don't have the skills or the experience to do the best job they could with the work, that's all. 40

All right; and are there any particular skills that you see are lacking and need improvement with respect to dealing with indigenous families?---Okay. Partly it's life experience and - you know, a candidate who's gone through university, recently graduated, hasn't worked very much in

the community setting, hasn't had much exposure to different lifestyles or families or a wide experience in the community is going to find it quite confronting, I would think, dealing with families from different backgrounds to themselves and it's going to create a problem, as it does. There's a great tendency, as I've said later in the submission, for them to see things in terms of bad parents or rescuing children by simply removing them from parents and that's a tragedy. It's a nightmare and tragedy.

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What do you say or what's the recommendation you might give about the use of the strategic decision-making tool as it applies to your clients?---I'm sorry, I'm not in a position to make a comment on that.

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You are aware of the use of the strategic decision-making tool by the department?---I'm aware of it, but I don't have any experience of it.

All right. When your clients - - -?---My experience is as a solicitor.

I know, but what I'm saying is no doubt your clients have been assessed in a certain way by the use of the tool and therefore orders have been sought against them?---Right.

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Do you have a view about whether the tool made an appropriate assessment of your client's capacity to be a parent?---I don't have access to the tool - that's the point - so I don't know how it works. I can only say that the decisions are often unbalanced; sometimes disastrous.

All right. Perhaps you can give some examples of that for the commissioner, what you might think is an unbalanced decision being made?---All right. So a woman - all right. A woman with a baby - sorry, a pregnant woman who's about to give birth to her fifth child and her husband has been accused - sorry, her partner has been accused of molesting one of the children. You can see the danger. However, instead of having any other alternative the baby is removed from the woman and, you know, it's then a very long process to get that child back into her care.

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In the meantime there's all the attachment issues that go with a child being placed with various carers and away from her mother. To me that was a decision that - you know, there must have been some alternative that would be better than that. I'll give you another example. The baby removal ones are particularly tragic and I have another example of a woman in a similar situation. She had just given birth to a baby. The department had had no contact with her to assist her with anything prior to the baby being born. They have turned up shortly after the baby was born ready to remove the child and in that instance we were able to talk them out of it by discussing it with the case worker and then with the branch of the department that dealt with it. Now, had that baby been removed it would be in the same situation as the other woman's baby. So there's a couple of examples. Another unbalanced decision, okay, a woman who has three children in her care, there's one incident. The children are initially - sorry, the department comes to the woman's house and assesses the situation and goes away, then three days later the department turns up, decides to remove the children, even though there was that one incident which occurred three days ago, and then subsequently places the children with a person who is later found to be the subject of allegations by the children, something the department didn't disclose, and then subsequent to that it goes to trial and they're seeking long-term guardianship against those three children, the basis of which I really don't understand, and then at trial, after - when it was disclosed, you know, the department's conduct in the whole matter, it fell over. The department agreed to a short-term custody order of two years. Subsequent to that the children were returned to the woman within six months.

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All right?---The initial - how on earth did they come to the conclusion that those children should be removed until they're 18 when six months later they've decided that the children can be returned to the mother.

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Do you have a view then on whether the point of entry into the system should be through a secondary service rather than going straight to a tertiary service?---The view that has been expressed in our submission is that the evidence gathering and prosecutorial process that families are put through should actually be separate from case management processes. So we're of the view that there should be a way that families can be identified as being in need of some support, that they should be given that support, or at least offered that support to the extent that they're able to access it, and that there shouldn't be any intervention until there needs to be intervention. As I said, in the national framework it talks about a health model, having early intervention instead of the department stepping in, in crises and, you know, work on trying to improve the early intervention opportunities for the families.

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If in - - -

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COMMISSIONER: Sorry, Mr Simpson. If you had something like that would you envisage it being worthwhile to require the department to prove in a child protection application that they had provided, or that it had provided, or at least offered a secondary service of an appropriate kind in a timely way to the parents and/or the children or child as a precondition to the making of an order? That is, the magistrate would have to be satisfied that all that could reasonably have been done to provide this service had been done?---I would certainly see some benefit if that in those cases. My only note of caution in that would be that sometimes there really is a crisis and a child needs to be removed immediately without those other steps having been taken. In my experience that's quite rare, but, you know, in most cases it should be shown that unless there's an emergency that all that can be done should have been done first.

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And of course - - -?---Similar to - yes, sorry.

We're trying to avert the emergency by the earlier intervention in the first place, aren't we?---Yes.

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MR SIMPSON: If that model of secondary intervention initially before referral to tertiary intervention was to be put in place in all cases save for the urgent case where would you see your recommendation in recommendation 7 about parents being advised of their legal rights and referral to a legal service coming into play? Would you see it at that secondary stage or later on when investigations start? ---No, I would see it as appropriate at the very early stages. From the time that the department becomes involved - they're following legislation. They're bound by legislation and parents should be advised that it's a legal process, and quite frankly, our experience - because we do community legal education in addition to legal representation. Our experience is that when parents understand a process they're much more likely to be on board with it and to be able to feel that they have more control over the process. So the earlier there is legal advice, in our view, the better that is - the better the outcomes, if I can put it that way.

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If, however, the secondary service - so your intake process is whereby you find out about a family in need. The family in need is referred to a secondary service, which may not necessarily be the department, it might be a community group of an AICCA - you're aware of that phrase?---Yes.

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If it's that type of organisation, it's not a department organisation, would you still think that a legal service should be advised to the client or the parents at that time?---Yes, I would; yes. The earlier that they understand, you know, the big picture of how the child

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protection system works and that they're now being referred for secondary intervention, then the better the outcomes, because they understand the whole picture. I think they're being subjected to a legal process from the very beginning and they should understand what that is. 1

The commission has heard evidence that that approach might lead to an adversarial approach between families and the department. What do you say to that suggestion?---Well, I don't know what to say about that. All I can say is that I think that if people aren't informed about their legal rights how on earth can they best protect them and act in their children's best interests without understanding that it has legal implications as well. 10

All right. Now, I want to go to your recommendations regarding family group meetings. You've give evidence that you are - at recommendations 11 and 12 you have given recommendations there based on your - no doubt based on your experience of those things?---Yes.

Firstly, do you see any other model other than a family group meeting or a case meeting as being appropriate when children are being removed from their families or placed into care? Is there any other process that could be suggested, such as mediation with a third party?---There's certain benefits in the family group meeting, in that a number of people can be included under the legislation and invited to attend. So it could be the families, it could be the children, it can be support people and legal people. There's advantages in that. Our objections are more in the way that it's carried out and the way that often parents don't understand what's happening. 20

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It's not in a place that's comfortable for a lot of parents. It's often in a departmental office and often the parents are primed to what's going on, particularly if they don't have legal advice.

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You talk there in recommendation 12 about a mutually convenient location. I take it you mean by that not one that's at a courthouse or a government department office? ---Well, it could be. It depends on the client. Not all clients are the same, but to give you an example of an alternative, when I was working in Brisbane, we actually had a family group meeting at a cultural centre and it worked very well. The parents felt that they had more say in the process. They felt more comfortable and the meeting started off very differently to the way most of the meetings start in my experience by starting with an inclusive process where the - some of the support people, Aboriginal women who were present, said they wanted to talk about the parents have achieved so far. They wanted to talk about the positives first before they got down to the other issues. It was a very positive sort of experience, I think, for the parents.

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All right. Now, back in recommendation 11 you recommend funding be made available for independently sources facilitators from a pool of accredited facilitators. What sort of qualifications do you think would be appropriate for such a person to facilitate a family group meeting? ---First of all, they would need to have mediation training. I would have to say that cultural awareness training would be extremely important and they would have to be people who are able to show a degree of impartiality and preferably not come from a departmental background because I think that that puts a certain bias on the facilitator's way of looking at things.

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Now, I don't know whether I have seen here - do you have any views on court-ordered conferences as well and the appropriateness of the current structure for court-ordered conferences?---No, we haven't expressed any views on court-ordered conferences.

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But do you have a view?---Not really; not an express view on that. I think by that time there's usually solicitors involved. I think hopefully it's up to the solicitors to make the most of that opportunity, to make the court-conference process as useful as possible. I haven't had any clients particularly complain about a court conference. In fact I've often seen some quite positive things come out of them. So as a service we haven't expressed any view and I don't have any other view about the court-conferencing process.

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We heard from another witness yesterday about literacy problems being one of the points that - a stumbling block for indigenous clients understanding the orders and the

process that they're going through when dealing with the department. Have you struck that problem too? 1

---Absolutely, yes, and that's why I've said in my submission that, you know, the department is sending a case plan out to a client without giving them the opportunity to work through it with a support person or a lawyer. It's often disingenuous. I think that either they don't know or they don't care whether the client is literate. Case plans are quite detailed and a bit of a challenge to anyone, particularly if you don't really want to read about the horrors of the child-protection process you're going through, but literacy is a problem definitely. 10

COMMISSIONER: Can I just ask there though when you say "disingenuous", do you mean deliberately designed to fail? ---Either that they don't care or - sorry, speaking of the workers, they either don't care or they haven't turned their mind to it. If they haven't turned their mind to it, then it's not disingenuous, but I guess what I'm talking about is cases where, you know, they may know that the client perhaps is unable to read but they've been able to tick a box somewhere and it's just a lot easier because they've followed a process and then they don't have to think about any more. 20

Okay?---So it's an uncaring attitude.

I have heard the argument put that practice is overriding policy because more emphasis is put on procedures and processes within the department than on with factually giving practical expression to the intent of the legislation, but I'm just wanting to test that and I might test it with you. What would be the department's interest in doing that? Why would it not want to produce a top-quality case plan and tick a box rather than get it right bearing in mind that they're open to criticism whichever way they jump?---Look, to be honest, I think that a lot of workers are burnt out. They become cynical about the process. I think that they genuinely are under-resourced and that most of them are trying to cover large caseloads and I think that they also take a cynical attitude to some clients; you know, there's no point in trying or they're a bad parent type of thing; you know, never going to get the kids back anyway so just tick the box and send it out. It's not the department having a view that they don't want to do a top-quality job. It's more an individual departmental worker fulfilling a role, ticking a box and not believing that it matters whether the person understands it or not. 30 40

Okay. Just testing that theory too, if I'm a caseworker and I'm struggling under a heavy caseload, what would my interest be in creating even more work for myself by bringing more children into the system rather than keeping them out?---Well, I don't think they'd see it as bringing more people - more children into the system. I think that

- okay. From my own personal experience my impression is that some departmental workers have already labelled some parents as either hopeless or bad parents, that nothing that the department does or offers them is going to make any difference and, you know, they've got to send out a case plan but they don't expect anything to come of it. So it's not going to bring more children into the system because their children are already in the system. It's not going to make things worse for the parent because in their opinion the parent is a bad parent and doesn't really deserve help anyway or have turned help away so they don't deserve to be helped. I don't know. I mean, I can't - I'm speculating here, but I can only say that I found that there is a sort of carelessness about it or a sort of cynicism that you detect from some workers in relation to some clients.

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I suppose they might get to the right conclusion through a perhaps more careless route but might still end up there anyway if they were a bit more careful. I mean, if they have got some basis for concluding that a parent isn't going to meet a minimum standard no matter what's given to them, they're either right or wrong about that and maybe they hold that view because of past experiences and they might even be right about that, mightn't they?---They may be, but it's not their role to make that judgment. I think that the department's role is to offer a quality service and to do everything in their power to at least give the parents the opportunity to effect reunification with their children.

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That's why I asked you before, it seems to me that if you - 1
you know, we can always find a reason not to do something,
it's harder for us to find a way of doing something that is
difficult and it might be beneficial if instead of just
offering the service, making it available or funding it,
the department might need to take some active steps to
actually link the service with the parent or the children
and that they're the ones that have to take the positive
steps and not the allegedly inadequate parent?---I think
the more support that is offered to parents the better the
outcomes are likely to be and I also think that if the - I
call it the prosecutorial part of the department because 10
that's the bit that makes it very difficult for any
caseworker to develop a good rapport with the client, the
sense that they're constantly being watched, that
everything they do is being held against them, whatever.
So if you have a caseworker that isn't affected by those
things, the more support they offer the parent, the better,
because my experience is that most parents want their
children back with them. My experience is that most of
them haven't set out to do any harm to their children, most
of them love their children, want their children back and
want their children to be in safe homes. And what they
need is the best possible opportunity for that to happen, 20
and they will take the opportunities, we've seen it.

So you see an inherent conflict between the litigation
services and the protection and care services that the
department provides?---Absolutely. Absolutely, they're two
conflicting roles and I don't think they should ever been
combined in the same service. It's an extremely negative
model at the moment from the point of view of families
trying to get reunified with their children.

One of the things I'm toying with is splitting it off, 30
splitting the application part of the process off and
giving it to someone who doesn't have a personal investment
in the application and isn't the evidence-gatherer, but
acts more like an independent broker. What you think about
that?---Well, there's still the problem of the
evidence-gathering against parents. That's one of the real
negatives in the system, particularly when parents see it
all disclosed in affidavit material.

Can I just ask you this: when you say the
evidence-gathering, what is different? We only gather
evidence about a relevant fact, so what's the relevant fact 40
that all this evidence is admissible on?---So I guess the
question is whether or not a parent is able to adequately
protect the child. What happens with workers is that from
the time they begin to have contact with the parents
they're looking for evidence of that, so if they go to
visit the parents at home they're immediately assessing the
state of the home, they're assessing basically everything,
as I've tried to explain in the submission. For example, a
woman who previously had a history of alcohol abuse had

stopped abusing alcohol but a worker turned up at the house, there's a beer can on the table and immediately the assumption was, "Well, she's lying to us, she is drinking and there's the evidence," but she had a guest at the time. To me that's not particularly good evidence that the woman is drinking and they can discuss it with her. It just went straight into the affidavit material saying that the woman was clearly lying to the department. You know, it's those sort of things where then she's - it's almost like a reversal of the onus of proof where then she has to prove that actually it was innocent, that she didn't do that because the allegation has been made against her. That's only a single example. It's not evidence that the children were at risk but it is used to throw into the affidavit material to build a negative picture of a parent. And it's those sort of things that are really concerning.

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So how would you prevent that? How would you resolve the conflict?---Well, it's difficult. There needs to be some service that is set up to case manage the clients and unless there really is evidence of harm, that they shouldn't be sort of gathering every piece of evidence to take back and put into affidavit material. If there's evidence of harm, fine, of course they need to have dealt it with; if there's no real evidence of harm then, you know, their mind set isn't about building up a negative picture of the client - the parent - it's then more focused on: well, what can we do to case manage this in the best possible way? It's not our role to prosecute a case against the person; it is our role to look for ways to effect reunification or whatever the issue is.

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Maybe you could build Chinese walls and job descriptions in a way that did separate the therapeutic caseworker with the forensic side of the department?---That's possible.

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All right, okay, thanks.

MR SIMPSON: Just a couple of other areas I wish to cover off. In recommendation 9 you talk about you see as being needed for recognised entities. Can I ask you these - and then you go on to, sorry, recommendation 10 and cultural case plans. Can I ask you this - - -?---I'm sorry, I didn't hear that.

So recommendation 9 and recommendation 10, in recommendation 10 you're talking about cultural case plans?---Yes.

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And in particular you deal with section 83 of the Act and you say that, "There should be an amendment to require statutory requirement with me in the cultural needs of Aboriginal and Torres Strait Islander children in out-of-home care." Just touching on that and in the role of the recognised entity, in the challenge between an independent recognised entity and the department who would

you suggest has the ultimate say on what the cultural case plan should be for a child?---Ideally I would like to see it go to the hands of - by the independent from the department, just because the department hasn't been particularly sensitive to cultural issues - or particularly aware, either, for that matter - and it's an ongoing problem for our clients. I'll give you an example: attending a family group meeting, developing a case plan, been through all the process about what the parents are going to do, how the children are going to be supported and all that sort of things; at the very end of it before it's closed the worker will facilitate a return to the parent and say, "And which mob are you from?" And then they'll have a brief discussion about maybe NAIDOC Day or something like that. Now, sometimes I have some information in the case plan about the child's family but it's usually pretty minimal, and I suppose it depends on the age of the child but from what I observe of our client's experience it appears to me that part of the child's identity is being well connected with his or her family or family members, which may be extensive, and having the opportunity to spend time with those family members and to go to community events such as funerals where they meet with extended family members. To me the identity, the genogram, the experience of actually not being stuck in the foster-carer home but also having lots of opportunities to connect with their family, is part of the child's developing identity. That's how it appears from the outside and that's why we've put emphasis on that. That's also been reinforced by our solicitor Kate Lindsay when she was employed by us. She's of Aboriginal background herself and worked extensively with Aboriginal families in New South Wales and in Queensland and she was strongly of the view that there needs to be the genograms for the child's identity and all of us are of the view that there needs to be very many opportunities for children to spend time with their families as part of the cultural-care plan.

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That all might be so, but what I'm asking you in particular is: should that decision as to what that is be exchanged from, say, the chief executive simply consulting and given over to a body like a recognised entity to make the final call on what that is for the child?---Yes; yes, that's what I'm saying; yes. 1

Okay?---Also we've made recommendations about the recognised entity just because it seems to us that they're pretty much a token gesture and they're not properly supported. They're not given enough independence from the department. They're not given opportunities for professional development and we're strongly of the view that they need to have their role much more reinforced. 10

When you take your matters to a hearing before a magistrate, what has been your experience of the court considering the views of, say, the recognised entity versus departmental officers and where there might be a conflict in those views?---I guess I'd have to think of a specific example. I haven't found the courts to be disrespectful of the recognised entity's view, but the point is this: that often the recognised entity is not given sufficient independence from the department to be able to make independent judgments and to have a voice independent of the department. Now, that is not the case in all places. Certainly my observation is that in Cairns, for example, the recognised entity is far more vocal, more independent and it may be that they don't have exactly the same issues that we have had. 20

I'm just thinking of a new system. If there was a new system whereby the recognised entity was the body that the department had listened to on all matters regarding an Aboriginal or Torres Strait Islander child and there developed some conflict between those two entities, in other words, the recognised entity and the department, would you say that one or the other should win out in a decision-making process or should be taken to a court to work out a solution between the two parties; for example, whether the child is to be taken from their parents or not?---I think I would probably say that, yes. 30

Say that you take a decision to a court rather than, say, enshrine in legislation, for example, that when it comes to removing indigenous children from their parents, the recognised entity is the paramount body versus the department or do you say, "We can't resolve those issues between the department and the recognised entity. You take it to a court"?---I think if they can't be resolved, it should be taken to a court because often in cases where the recognised entity has had a view that's markedly different from the department's view, usually there are some really significant issues there that really do need to be thrashed out and if the RE doesn't have the independence to be able to do that without the department saying, "Well, we've 40

consulted with you and that's the end of it," then the issues don't get heard, don't get dealt with, and if they're really supposed to be about, you know, representing an Aboriginal or Torres Strait Islander point of view, then they need to be given the means to do that and it seems to me they're not at the moment.

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If we follow that model through, that theory through, to the next step, would that model apply to all orders or only long-term orders, for example?---I don't see any reason to separate those issues.

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All right?---I don't know why you would have a different model for a different type of order.

Lastly, if we follow that model through, for example, is the current structure of the recognised-entity system, as we know it now - is that transferable to that model or would you have to set up something else?---I think - - -

I will give you an example. We have heard evidence that some recognised entities make up one person in one area. Do you think there would be capacity in the regions you deal with for a person who's a recognised entity of one to take on such an onerous task of taking matters through to hearing when needed to, when in challenge with the department?---I see; well, there needs to be adequate support for the recognised entity to do that and if they do need to challenge the department on a particular issue, then they need to have the legal support to do that as well; you know, I think that ultimately it's extremely important for the recognised entity to have independence and to have a real voice; not just to be a body that the department consults with but to actually have some sort of say in it. The type of problem that's come up is this: where a recognised entity takes a different view from the department - sorry, a worker of a recognised entity takes a different view from the department and then the department retaliates by complaining against the worker and ultimately the recognised entity doesn't have any way of resolving that issue except through its own internal processes. So obviously if it goes to trial, then the court will listen to what the recognised entity has to say and what the department has to say, but really those issues should have been sorted out a long time before it ever got to trial.

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Thank you. I have no further questions, Mr Commissioner.

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COMMISSIONER: Thank you.

Can I ask one question before I call on others? It has been suggested that in order to change the outcomes for indigenous children you're never going to do it through just a child-protection legislation itself no matter how well it's administered or faithfully with the policies, but

a step in the right direction would be to include in a discrete chapter of the legislation all matters relating to indigenous children, their unique needs and cultural differences so that the child-protection response of the state was more nuanced and culturally responsive and sensitive. Do you want to comment on that?---I think that personally I would see that as positive, because, as you say, it allows for a more nuanced response, and it gives the overall legislation, I guess, more teeth, or it sounds as if it would give it more teeth for Aboriginal and Torres Strait Islander children. At the moment it seems that sometimes they're treated then as some - the other thing you have to think about when you've done everything else instead of them being treated as Aboriginal and Torres Strait Islander children from the outset.

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Well, the act itself looks a little bit like that. You've got little things added on, subsections with capital letters that indicate afterthought?---Yes.

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It doesn't really, arguably, differentiate sufficiently or discriminate between the needs of urban white children and urban indigenous children, for that matter, and rural, regional and remote indigenous children?---Yes.

So even within an indigenous chapter you would still need to be mindful that not only are there differences between the indigenous and non-indigenous children in Queensland but within the indigenous group there are a lot of variations as well?---Yes. Definitely, yes.

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All right, thank you for that. Mr Hanger?

MR HANGER: I have no questions.

COMMISSIONER: Ms Stewart?

MS STEWART: Ms Stewart from the Aboriginal and Torres Strait Islander Legal Service. I just wanted to clarify, in your experience at what stage of the child protection intervention do clients normally come to you for assistance?---It's rarely at the beginning. It's usually once there's a court date set, or it may be some time after that. So we're rarely there from the beginning, although certainly in the baby cases quite often the pregnant woman has contacted us before the baby has been born.

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You were asked a series of questions about the benefit of receiving a referral at an earlier stage, namely the investigation and assessment stage, so clients have that opportunity to get legal advice at that stage?---Yes.

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You would agree that at that stage there's a very good opportunity to advocate on behalf of the client and that could potentially divert them away from becoming parents subject to child protection applications?---Absolutely. That's probably a point I should have made, that that is exactly why we want, you know, the intervention, because we can do so much - sorry, the early referral to legal advice, because there's so much more we can do if we're involved earlier rather than later, and I think it's fairer on the parents in terms of being subjected to a legal process.

You gave some evidence that you have in place a community development officer that works with parents who are going through the child protection system?---Yes.

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How did that come about and what are the benefits you see for the parent in having that support while moving through the process?---The community development worker developed the project herself. As I say, child protection is a huge

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interest for our service and we've been trying to find ways for children to be reunified or not to be removed from their families in the time that I've been here. The community development worker developed the idea herself, applied for funding and ran it as a pilot model. The benefits for the parents were fantastic. They were put into a setting where they were with other mothers going through the same sort of thing, or women - and women who have been through that process and had their children returned to them, and they were able to support each other and discuss how the process worked and how best to manage situations. It was one of those forums that was not adversarial and not patronising, where they were all on the same level and supporting each other, and it worked very well.

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In your submission you've stated about the importance of clients having representation throughout the whole child protection process. I just wanted to get your view on how important you find the family group meeting process as a practitioner and whether it's been your experience that many Aboriginal and Torres Strait Islander clients at times don't understand what is expected of them under a case plan and tend to get on what I'd call that case plan cycle, where you can never really satisfy the department that child protection - if you could just talk to that?---The family group meeting process, as I've said, often parents don't understand it, and this is where I think the role of the legal practitioner is really important. They have to spend the time with their clients before they get to the family group meeting to talk about what it's for. "What do you want to achieve? How are you going to use that opportunity to progress this situation so that you're not just on another six-month cycle?" or whatever it is. If the preparation is done properly the family group meeting can be an opportunity to really drive things along, but if it's just treated as another meeting and, you know, the legal practitioner doesn't put in the work or the department doesn't inform the parents or the parents aren't legally represented, then it's useless. So it very much depends on how much preparation is given to the client before they get into that family group meeting.

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Would you accept that that then has ramifications for the legal proceedings, because there's always then that argument that parents haven't been able to address the child protection concerns as outlined in the case plan? ---Obviously it does have implications for the legal process in that sense, however again it comes down to the sort of support that the parent is given. If the parent is given adequate knowledge about what the process is, adequate knowledge of, you know, what issues are significant issues and which ones are not really issues at all and how the parent can comfortably address those issues in a realistic way, then the process does work, but it does depend on the preparation.

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I've just got one final question. You were asked a series of questions about the recognised entity model. ATSILS has made a submission that suggests that we should make some amendments to section 6 to give the recognised entity some enhanced case management responsibilities, you know - - -? ---We would definitely support that, yes.

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I was going to talk through a few points?---Certainly, but - yes.

Okay, I'll just - I've got nothing further, commissioner.

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COMMISSIONER: Thanks, Ms Stewart. Mr Capper?

MR CAPPER: I have no questions, thank you.

MR SIMPSON: No re-examination. May the witness be excused?

COMMISSIONER: Yes. Ms Pereira, thanks very much for attending by phone. I know you're very busy. We appreciate the time you've taken and the evidence you've given?---Thank you. Thank you for inviting me.

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Our pleasure. You will be disconnected now - or your phone will, anyway.

WITNESS WITHDREW

COMMISSIONER: Yes, Mr Simpson?

MR SIMPSON: That's the last witness for today. Might be adjourn until 11 am tomorrow? There are two witnesses tomorrow.

COMMISSIONER: All right, thank you. Anything else we can usefully deal with now?

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MR SIMPSON: Nothing I have.

COMMISSIONER: No, all right. Thanks very much. We'll adjourn until 11 am tomorrow morning.

THE COMMISSION ADJOURNED AT 3.38 PM UNTIL
WEDNESDAY, 16 JANUARY 2013

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