



SPARK AND CANNON

TRANSCRIPT OF PROCEEDINGS

Telephone:

Adelaide	(08) 8110 8999
Brisbane	(07) 3211 5599
Canberra	(02) 6230 0888
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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 6/11/2012

Continued from 5/11/2012

..DAY 31

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 10.02 AM

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COMMISSIONER: Yes, good morning.

MR HANGER: Mr Commissioner, before my learned friend starts, I wonder if I could mention a matter.

COMMISSIONER: Yes, sure.

MR HANGER: It's come to my attention there's some interest in the appointment of my learned friend Mr Haddrick as one of the counsel assisting. Mr Haddrick was admitted as a legal practitioner in June 2008, called to the bar in 2010, practises in family law, child protection, administrative law, general civil law, regularly appears as an independent children's lawyer - which I would suggest is relevant to this matter - in parenting disputes in family courts, in the Federal Magistrates Court, he's appeared in the Court of Appeal, the District Court, Magistrates Court, Family Court, Federal Court, and QCAT, in civil and criminal matters and jury trials.

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Because of his previous work history he's very familiar and has a strong knowledge of the workings - the machinery of government - which I would suggest would assist the inquiry in making its recommendations. He's undertaking doctorate level research in public law at the University of Queensland. I must say I hadn't met the gentleman before these proceedings began, but as the senior barrister at the bar table I would like to place on record that I've seen evidence of great competence of Mr Haddrick and significantly greater than one would expect of a barrister of several years' experience.

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He's behaved, as far as I can see, very competently. I'd just like to put that on record so that it's clear that as the senior practitioner present it seems to me he's doing an excellent job.

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COMMISSIONER: Thanks, Mr Hanger. I can't see any reason at all why he can't continue to perform the excellent work that he's been doing, so any prurient interest in him I hope doesn't become a distraction for anybody at the bar table.

MR HANGER: That's one of the concerns I have.

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COMMISSIONER: Yes. We've got important work to do and we need the best help from every quarter that we can get it from and I would hate to think that anybody would be interested in destabilising or distracting us from that important task or distracting any interested member of the public. So thank you for that. Yes, Ms McMillan.

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MS McMILLAN: Thank you, Mr Commissioner. I'd just like to thank my learned friend Mr Hanger for his generous remarks in the best tradition of the bar. It's obvious that we regard Mr Haddrick as an important part of the counsel assisting team, if I can put it that way, and it should be noted that I had no hesitation in Mr Haddrick taking this witness, Mr Thompson, through, who's an experienced and, in my submission, a very important witness, to inform the commission.

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COMMISSIONER: All right.

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MS McMILLAN: Thank you. And Mr Haddrick will now take this witness.

COMMISSIONER: All right. Thanks Mr Haddrick.

MR HADDRICK: May it please the Commissioner, I appear, Haddrick, initials RW, counsel assisting, instructed by officers of the commission. Does the Commissioner wish to take other appearances?

COMMISSIONER: No. I note them as being the same as yesterday.

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MR HADDRICK: Okay. Only one witness today, Mr Commissioner. Grant Lloyd Thompson. I call Mr Thompson.

THOMPSON, GRANT LLOYD sworn:

ASSOCIATE: For recording purposes, please state your full name, your occupation, and your business address?---Grant Lloyd Thompson, I'm a forensic assessor, but I'm also a mental health practitioner, registered. My business address is (address suppressed) but I'd ask that in any written statement before the inquiry that might be published, if that could be redacted, please.

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COMMISSIONER: Yes, I suppress the address.

MR HADDRICK: Might the witness see this document - actually, these three documents.

Mr Thompson, you've just been provided with three documents. The first one there, can you just identify that to the commission, please?---The first one is my statement of a witness to the Queensland Child Protection Inquiry.

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And what date is that document signed on?---The document was dated 26 October 2012.

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

Are the professional opinions expressed in that document

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your professionally held views?---They are.

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I tender that document, Mr Commissioner. I also identified that Mr Thompson's personal address on the document has been removed at request.

COMMISSIONER: Thank you.

MR HADDRICK: What is the next document you have there, Mr Thompson?---It's attachment 1 to that statement which outlines my curriculum vitae, and that's dated 26 October 2012.

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I tender that document.

COMMISSIONER: Thank you.

MR HADDRICK: And the third document?---The third document, I think in my statement it's identified as attachment 2 and it's a judgment from the Magistrates Court of Queensland in a matter - - -

If I perhaps just read out the citation and you confirm whether that's that document. It's the decision of the Magistrates Court of Queensland, a decision of Magistrate McLaughlin, the decision was delivered in Ipswich on 26 June 2009 and the parties are the Department of Child Safety (as it then was) v SJ, first respondent, and NB, second respondent. Is that the decision that you have there?---It is.

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For the purposes of the transcript that decision is available on the court's website and is publicly available, so nothing needs to be removed from that document.

COMMISSIONER: Mr Thompson's witness statement and the attachments will be exhibit 114.

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ADMITTED AND MARKED: "EXHIBIT 114"

MR HANGER: Is it convenient at some stage to get a copy of that decision? Is there a spare copy around?

MR HADDRICK: I'm just arranging for officers to the commission to bring across five extra copies for the other parties.

COMMISSIONER: All right. But you can have the tendered copy to read now if you want, Mr Hanger.

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MR HANGER: Yes, may I?

COMMISSIONER: Yes, sure.

MR HADDRICK: Mr Thompson, just to begin, I wish to go

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through some of your professional qualifications so the transcript reflects your expertise. You have a masters degree in counselling from the University of Queensland? ---I do.

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You have a first class honours degree in social work from the University of Queensland?---Yes.

You have a VA in modern history from the University of Queensland?---Yes.

You are an accredited mental health social worker with the Australian Association of Social Workers?---Yes.

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You are a clinical member of the Queensland Counselling Association?---Yes.

A registered member of the Psychotherapists and Counselling Federation of Australia?---Yes.

And you have previously held teaching roles at the University of Queensland?---Tutoring and (indistinct) lecturing at the University of the Sunshine Coast.

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And in particular I want to highlight a particular qualification, from 1982 to 1988 you were a serving police officer with the Queensland Police Service?---That's right.

Or police force, as it was then?---Yes. There were a number of roles in that one as well.

Okay. What I propose to do - do you have a copy of your statement in front of you there?---Yes.

What I propose to do is walk you through aspects of your statement and highlight particular features and ask you to comment on or amplify different aspects. First of all I want you to explain to this commission what is a social assessment report and how they come about, and what is their utility in proceedings for child protection matters? ---That's fine, okay. So look, in terms of a social assessment report, there are a couple of different reports that one might come across, there might be a family report, that would be a report that would be done before the Family Court of Australia. The social assessment report shouldn't be confused with a family report. Family reports are often a lot shorter and in fact some of the judges might ask that a family report doesn't exceed any more than five to 10 pages. Social assessment reports differ very much in terms of the level of complexity that they need to be able to cover, the number of people that are interviewed, and one might even say in another respect the level of competency that the social assessor needs to demonstrate in terms of being able to understand many of the issues that are involved in being able to develop a hypothesis in terms of what's happening for individuals within the family, but

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then also being able to link all of those issues together in terms of risk to the children. So the focus in them is very much in terms of being able to identify risk, whether it is - it's really an assessment in terms of whether the department, who generally have an application before the Children's Court for very intrusive orders - it might be short-term guardianship or short-term custody or long-term custody or guardianship -whether there is grounds for the social assessment to be able to support that application.

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With a greater degree of particularity can you differentiate between the substance of a family report, which the commission would note is something provided in parenting proceedings in the Family Court and Federal Magistrates Court as opposed to a social assessment report? What is the substantive difference between the two documents?---I would probably is saying the level of complexity and certainly the length.

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So as a rule, these days, it would be very, very rare that I would ever hand in anything under 20,000 words. The majority of my reports are around 25 - - - 1

Sorry, just - 20,000 words for a social assessment report? ---Absolutely, minimum, 25 to 30 thousand words. On some occasions where we might have lots of very complex issues, so you might have parents with multiple mental health issues, issues of systemic violence, multiple blended families, so lots of half siblings, step-siblings, step-parents, the issues of substance of abuse, quite a lot of children, sometimes, long-term historic inter-generational issues of matters relating to the child protection system. It takes - and also the other thing that I probably review more in a social assessment than one might ordinarily come across in a family report would be the need to be able to review and practically apply psychiatric assessments, psychological assessments, forensic assessments, paediatric assessments. 10

What do you mean by "practically apply"?---Well, in one sense you might have a - let's say, we might say a mother might have a mental health issue or an intellectual impairment, so I might then make a recommendation to the department or to the separate representative that that mother or parent should undergo a neuropsych assessment or a psychiatric assessment, and that's just for one person. Now, that is an assessment in terms of that one individual's ability to be able to operate or function. It's not necessarily a review of their capacity to function as a parent. 20

But just playing devil's advocate, aren't those features also present in family reports that are provided in parenting proceedings?---That's right, but I think uniformly in social assessments by the time I'm requested to be able to write probably a high level of complex report I would almost universally be engaging - or coming across issues where there were parents with pretty substantial mental health issues, substance abuse issues, issues of violence, and they're - certainly I wouldn't say that they're not relevant, but - - - 30

You would accept there's overlap - - -?---There's definitely - - -

- - - in the tasks?---Definitely overlap - - - 40

Between reports written in the Family Court and reports written in the Children's Court?---That's right, so I wouldn't ever attempt to be able to say that a family report involved non-complex issues. They clearly do and they certainly deserve a high level of competency from the assessor. It's just that in my experience the level of complexity that's involved in social assessment reports is much more relevant. In fact, it's to the extent that

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probably more than a few assessors are probably more
unwilling to be able to address issues in the social
assessment reports, probably because they are so much more
complex.

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Just putting my family lawyer's hat on, 99 times out of a
100 a family report writer is commissioned by the
independent children's lawyer in parenting proceedings.
That's not so in care and protection proceedings?---Not
independent children lawyers, but there's, I suppose, the -
there would be the separate representative or the direct
representative.

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But in that context you effectively have at least two,
possibly three, if you include the recognised entities,
other parties to the proceedings who might seek to have a
report commissioned?---Yes. I've never had a report
commissioned by a recognised entity. I have on one or two
occasions been approached by an independent family member
to be able to say, well, look, you know, if the department
or a separate representative can commission a report why
can't a member of the family commission a report. I guess
when they find out how much they cost to prepare - - -

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They become prohibitive?---That's right. So in terms of
the commissioning avenues there are really only two. I
would do - initially, most people that are writing social
assessment reports will probably get their start being
commissioned by separate representatives. The reason for
that is because the reports are fairly - well, they're not
well remunerated, and then once you've established a
reputation that you can do that then a year or two down the
track you may be invited by the department to be able to be
commissioned to write your own reports for them directly.

Putting aside what you particularly are commissioned to
prepare reports for, what is your experience in this field
in terms of a balance between reports providing by the
department to the Children's Court or reports provided
through the separate representative to the Children's
Court?---You're talking about in terms of the number of
reports that I would write or - - -

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Well, for instance, in any one proceeding, or if you take
all proceedings together, are two-thirds of the reports
that arrive before the court arriving by way of the
department commissioning the report?---Sure, okay.

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What is the balance between the - - -?---Look, I'd probably
say I'm fairly highly recognised in terms of my ability to
be able to prepare social assessment reports and so I'd
receive pretty much an unending series of requests by the
department from around Queensland these days to be able to
prepare social assessment reports, and I certainly do those
because they pay more money and being in private practice I
certainly need to be able to earn enough to be able to make

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a living. I much prefer doing the work for separate representatives.

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Why?---Purely because this is at the adversarial end of child protection matters. Separate representatives - well, for a start they know how to be able to write a good referral, or an adequate - certainly more an adequate referral. So referrals, in that respect, I would assume that separate representatives have undertaken a case file note inspection.

Well, just before I get you to explain how the department and the separate representatives commission you can you explain to us what a referral is and what the contents of that is?

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---Okay, so a referral - before I can undertake an assessment I need to be formally informed of what it is that I'm being commissioned to do. Separate representatives understand that and they will provide me with a very detailed, sometimes up to 20, 30 pages, of a referral. In some respects the referrals are almost as complicated or as lengthy as a medium level report. So they will outline who I'm required to interview, they will have contact details of the people I'm meant to interview, they will have a good summary of the background to the case, they will have an accurate list of the materials that have been provided to me, which is quite crucial if it comes to a contested hearing, because I'm not only examined on what it is that I have reviewed in my own assessment or investigation, I'm also examined in terms of what it is that I've reviewed in terms of the written material. So that is important. There's also the other area that separate representatives will nearly always do and the department will never do, and that's provide me with a good quality chronology. That will go back to the date of - sometimes it might go back to the date of the parents' birth. It will take me through when relationships were established, it will take me through specific dates in terms of forensic histories of the parents.

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What is the consequence of not getting a good quality chronology from the department?---The other area that is really important is they need to tell me - I need to know before I start this assessment process what it is that they want me to answer.

Well, hang on, just before you get to that, what is the consequence of - - -?---The consequence in terms of - everything points down to that end that says, "Mr Thomson, we're commissioning you. This is the background, but the end result of the referral is that this is what we want you to answer or address." If I don't have that, or if that's been poorly formed in terms of the terms of reference, then I have to second-guess what it is that the department or the separate representatives actually want me to assess. Certainly I remember one particular instance from a child

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safety office from outside of Brisbane where they asked me to be able to provide a report and I'd said yes. They then - I asked for the terms of reference and I received an email that was effectively six lines long and I asked for an updated version of the terms of reference. It didn't come. I received - I really had to second-guess what it was that they were requiring. I went down, I did the assessment, provided the social assessment report, received a telephone call the next week from the team leader saying, "Mr Thomson, you've completely misinterpreted what it was we required. We actually required a family report," in terms of the department at that stage was supporting a parent through a Family Court application. My response was, "Well, you know, I'm afraid that's just too bad, because I'm forwarding you now a copy of your child safety officer's referral to me," which really wasn't a referral. That was in the early days and I would not hesitate at all in basically not doing that assessment.

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When are social assessment reports commissioned? When in the process of proceedings are they commissioned?---Okay. It depends who's commissioning it. Separate representatives will only commission a report once an application has been made and they've been appointed as a separate representative for - - - 1

Sorry. When you say an application, an application for orders under the Child Protection Act?---An application for custody - a child protection order.

Okay?---The separate representative has been appointed to represent the children or the sibling group. Then they will approach me to be able to prepare a report. The department, though - the other corollary to that is that I'll sometimes be approached to be able to prepare a report in a matter before QCAT as well. If the department are asking me to be able to prepare a report through the commissioning - the reasons for the commission are probably a little bit more broad. They don't have to wait until there's a matter or an application before the court. They're able to perhaps anticipate that there are issues involved. They may be planning an application and they would like an independent expert to be able to independently review the circumstances. They won't tell me what it is that perhaps they're applying for and they will look to see what my own recommendations are. 10 20

So can I just summarise what I understand to be the effect of your evidence there. Correct me if I'm wrong. There are four times or locations in which you're asked to do a report by the department, either at the outset in preparation of a case plan or in the lead up to proceedings after an application is filed - - - ?---Yes.

- - - by the separate representative in the lead up to an application after proceedings have commenced and the fourth time or location or event, trigger point for a report, would be when someone is seeking a review of an order in QCAT?---That's right. A reviewable decision. Yes. 30

Okay. Now, in terms of - do your reports vary in terms of the audience? For instance, does the separate representative get a different type of report to what the department gets?---No. This is very much - once I'm commissioned to be able to write a report, I don't care who I'm writing for. The focus of that report is the welfare of the child. So I don't, in that sense, expect (indistinct) report in terms of the audience. In fact, in some ways certainly the audience is a collection of separate representatives or the department, their legal representatives, the parents. The focus of any report is the child. What I do actually write for, I keep in mind when I'm writing, is that any particular report that I'm preparing could potentially go through to a contested hearing. In that respect, I also keep in mind to being 40

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able to write either to the magistrate or to the members of the QCAT, the panel. What I would like them to be able to do is to be able to pick up my report and not necessarily then have to refer to any other document, but use that as a stand alone document to be able to get a fairly solid understanding of my interpretation of what the issues are.

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I just want to explore that borderline between your report and the department's objectives. Naturally, you're telling us that there is a great degree of independence in your report writing, but you would appreciate and accept, wouldn't you - and putting perhaps aside your personal circumstances - but a person who writes a report is doing a job for the person who pays them and therefore there might be some pressure, perhaps unspoken pressure, for the report to broadly accord with the outcomes that the person who commissions the report wishes to achieve?---Absolutely.

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Yes. In the department's referrals, they do have a template where they do attempt to be able to address the majority of the issues and towards the end of that template there's a statement there saying that, effectively, I'm not meant to have any informal conversations with any other person. There's not meant to be any attempt by any person to be able to informally influence my position or my recommendations. Having said that, the position is a responsible one and people are aware absolutely of just how influential these reports are and I do sometimes feel as though there's a level of pressure to be able to conform to a particular outcome and this is where it's incredibly important for a social assessor to maintain a very high level of independence and courage in the face of a large bureaucracy and a legal system when, effectively, I'm just a person off the street. I have obviously a fair bit of experience and quite a few qualifications, but I have no formal authority. I don't belong to any one large organisation. I operate a very small private practice and the only thing that I have is my reputation as an independent report writer. If I lose that, I lose everything and I guard that very jealously.

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Okay. Just teasing out the question of independence a bit further, and I just want to throw an idea to you and get you to comment up this if you could please, you have identified how you can be commissioned by the department and you've identified how you can be commissioned by the separate representative and you just told us about the natural pressures upon people writing reports to the pressures - I'm not saying that you act upon these pressures - but the natural pressures to make the reports accord with what those who commission the report would like to see in the report ultimately. Would there be any benefit from all social assessment reports coming to the court in contested proceedings by the separate representative, that is the party that represents the children's best interests unattached to the department? ---If I could write purely for separate representatives,

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whether they're immediately attached to the child protection unit at Legal Aid Queensland or through separate representatives in private practice, if I felt that I could work with them and they were going to provide me with adequate instructions prior to undertaking the assessment then I would much prefer to be able to write reports for separate representatives.

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But putting aside the monetary issues which all - - -?
---That is actually putting aside the monetary issues.

Yes. I just want to - putting aside the monetary issues, which all professionals in private practice face, do you think it would enhance the objectivity of yourself and all those who are also writing social assessment reports if those who were instructing them were the separate representative as opposed to the department?---It really would. You know, the biggest single pressure, people often ask me, you know, "Grant, what do you do?" and I tell them, you know, "Psychotherapy and report writing into contested child protection matters," their initial response is, "How could you do that; the emotional pressure of being able to review that content on a regular basis?" It's relevant and a lot of people don't understand how you could do that professionally. I have no issue after working with a particular population set over the last 30 years under a range of different career paths from the police through to therapy and working with people with disabilities and this current incantation. It does not bother me. In fact, I really appreciate the opportunity. It's a privilege to be able to work, to be able to do these interviews and - - -

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If the commissioner is so - - - ?---Yes.

- - - disposed to consider this particular issue, would you - - - ?---Yes. The biggest issue I have is working with the department in terms of the pressure of working with a bureaucracy as large as the department. If I could circumvent the ability to be able to still do this work and to be able to take out the bureaucracy of working with the department, it would be a perfect job in terms of my ability to just be able to concentrate on the welfare of the children and to be able to apply relevant theory to a particular case.

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But it would enhance the independence of your reports?---It would enhance the independence.

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As a flow on from that, when you have parties come in and have interviews or you go to their places and have the interviews, do you find that they're concerned about who you're writing the report for?---Yes, absolutely. I'm often asked. In fact, you know, I've got to do a fair bit of footwork to begin with if I'm writing a report for the department. On more than a few occasions I'll be button holed by a parent who will be saying, you know, "Who's

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actually paying for the report?" and then I need to be able to, hopefully, encourage them. I never ask them to trust me. I don't want them to trust me. I just want them to be able to talk to me, but I need them to be able to have a level of confidence that the work that I'm doing is going to be independent. 1

Can you tell the commission what your experiences are in terms of the parent's reaction when you say that you're working for the department or you're working for the separate representative? 10

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---If I'm working for the department - if you think about - you know, if it's issues of indigenous matters what if it's issues where there is a non-indigenous family who's had inter-generational experiences with the department, the level of trust isn't particularly high with the Department of Communities child safety section. So if there's any thought that I'm - in fact, I will tell them this is an independent report. The department may be paying for the report but they're not purchasing an outcome. And that's pretty much the language that I will use. I'm not sure how much it actually - - -

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And what - - -?---- - - comforts them.

And what is your experience of predominantly parents' receptivity to that assurance?---They will listen to it, but then what I think happens is over the course of the next few hours the form their own judgement as to just how independent I actually am. A lot of that will come through I think, or I hope, in the questioning or the line of questioning, and sometimes some of my observations as I'm exploring the history of the department's engagement they will see, hopefully, that am not willing to be able to accept holus bolus the argument of the department, but I'm quite willing to be able to listen to their experiences and being able to attempt to work with the department, and that I'm more than willing to be able to identify instances or issues when they have a complaint about the department. I will tell them - in fact, you would see in my statement there I digitally record all interviews, and the reason why I record, I clearly - anybody that I do the interview with, they can say that they don't want it recorded, but my opening statement is that the reason why I'm recording this - and it actually makes a lot more work for me - is that this is - the social assessment report is effectively one of the few opportunities that parents will have to be able to sit down with a person who is willing to be able to listen to their argument, to be able to listen to their history from their perspective, and then to be able to report back in a report accurately, that experience. Once they see that, once they see that process involved in the assessment interview, that's when I start getting a lot more information. That's where it starts to differ from being an assessment into an investigation. So an assessment, I would - - -

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I just want to zero in on what your experiences are in terms of parental reaction when you tell them who you're working for, effectively. Do you get a better result or more receptivity or more cooperation - more to the point - from parents and broader family groups when they know that you're not from the department?---Yes. They will ask about what the separate representative does. When I explain that the separate representative doesn't represent the department, they don't represent the parents, they're there are the children; most people would generally understand

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that concept that the children deserve an independent representative, or in this case a separate representative, and that there's value or legitimacy in the children - - -

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COMMISSIONER: That's the difference, isn't it, the separate representative is that they're separate from the children and the parents, they represent their idea of the best interests of the child, that they represent the child?--No, that's right. That's the difference between obviously a direct representative and a separate representative.

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Yes?--What can I say with that? With the - - -

MR HADDRICK: Can I just pick up on that issue of the children's views. In your statement on page 4 in paragraph 6.1 you identify what you call "views and wishes report" and that nicely comes to the issue of what influence, if any, a child's own views should be taken into consideration in an application? Can you explain what you mean by a views and wishes report and how that differentiates from a social assessment report?---For a start there are a lot shorter. There are probably less people to be able to interview. It is principally an opportunity to be able to interview generally the one person, so that's the child themselves or the young person themselves. It could take anywhere from two to four hours with a couple of breaks. It's an opportunity to be able to provide that young person with a chance to be able to express their experience of the history of the child protection matters, so in terms of their own experience and memories of being parented, their experiences of being dealt with by the department, and an opportunity for them, once they've established that history and that I'm listening, an opportunity for us to be able to explore some of the options that they feel as though they may have with respect to their own future. So that may be in terms of their placement options or their opportunity to be able to have contact with parents or with their siblings.

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What age-group typically should a views and wishes report be done? Are we talking about nine-year-olds, 12 year olds, 15-year-olds?---I wouldn't look at really being able to do a views and wishes report with anyone really under the age of about 12 if they're particular competent; 13, 14, 15, 16, absolutely.

What sort of weight do you think the court should place upon that in deciding the applications before the court? ---If the assessor is competent - I'd like to be able to say I think of myself as a competent assessor, so I hope that any magistrate would place a reasonable amount. It's really going to come down to the content of that, so you don't know what the outcome is going to be, obviously, until you actually get into the views and wishes report. So there are some times when you may actually complete a

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views and wishes report where the outcome is that I may recommend that limited weight might be granted to the young person - - -

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The views of the child?---Other times I would have no hesitation about being able to say that - some of the children are very literate, they understand the - from their own age-appropriate level they understand the child protection concerns. They're excellent historians in terms of the history, and I'll check that against the material that may be provided by the department or other ancillary reports, might be by a psychologist or psychiatrist.

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How often do you prepare views and wishes reports?---Very rarely, unfortunately. They're one of my favourite types of reports to be able to prepare. They're effectively split into two areas, so when I'm doing the assessment I do the recording and then I'll do a summary, but the summary isn't a verbatim extract of what it is that they've said, it's a review of several areas of inquiry; and then where they've made particularly relevant comment I'll certainly attempt to be able to give a 100 per cent verbatim quote. Because often they'll be able to - the power of those statements that the children and young people are able to make is pretty solid sometimes. They're able to say in a couple of lines that might take me a couple of paragraphs. And then I don't muck around with those interviews, the summary is provided pretty much as I said; then the second part of that is my interpretation.

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Okay. I just want to tease that out. So the report contains both the verbatim views of the child or quotes of the child and also draw interpretation of what the court could make of those views?---That's right.

Do you see any potential for abuse of those reports? By abuse I mean coaching by parents before those reports are prepared?---Absolutely. In fact, it's not just the views and wishes report that one needs to take that into account, but certainly any assessment interview with any child or young person, one needs to be aware that there could have been coaching either by parents, other siblings, carers, and maybe in some respects the department, but - - -

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But it's through the social assessment report, and to a lesser degree a views and wishes report, are the primary vehicles and where the child's own views are brought to the court's attention?---That's right. And that's one of the main values of it because - and I'd say it's not just for the children but it is for parents that make come from a background - say if they've got an acquired brain injury or a mental health issue or an intellectual impairment, my job in one respect is to be able to make their argument or their review of a particular set of historical circumstances, is to be able to make them literate. So it may take me several hours to be able to draw out that

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information in an assessment interview, that they might not be able to do if they were being examined in court. 1

Did you recognise the potential for misinterpretation in a views and wishes report in terms of you might choose through your professional judgement quotes A B and C, and those quotes, another objective person might think is not an adequate reflection upon the views of that particular child? Do you accept the potential for misreporting? ---There's certainly that potential for misreporting. And again, one of the reasons why I focus on quite lengthy reports is that if a person says it in an interview, I'm not selecting isolated instances of what they've said. If I'm doing a three-hour interview with someone, what you're reading as far as a summary is a summary of everything that they've said. So I may have a hypothesis and I'll be testing that hypothesis when I'm constructing my assessment questions, there will be information in those responses by parents or children that obviously at times won't agree with what my hypothesis is. I think it would be unethical of me to be able to exclude and to pick and choose what it was that was most relevant to be able to suit my hypothesis. So that's why my reports are so long, is because I will include pretty much everything. If they say it I will include either a direct quote of it or I'll include a summary of it. The other respect too is that I keep copies of all these digital recordings and if anybody, if it came down to a contested matter, ever wanted to take me to task in terms of, "I said this or I said that" - - - 10 20 30 40

There would be a further evidence base - - -?---I'm more than happy for that information to be subpoenaed and I can go back to all of my - every one of my digital recordings over several years.

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Can I just ask you, you're but one person who provides social assessment reports?---Yes.

Tell us about the community of people who provide social assessment reports. How many of you are there, how many in Brisbane, how many in regional Queensland, to your knowledge? What is the typical background of those individuals providing this material, or preparing these reports?---Okay. You know, it's - we're a fairly - - -

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You've come across another person, haven't you, in your - - -?---We have a beer, you know, because it's so rare. So it just doesn't happen that often. I have a clinical supervisor who is a fairly well regarded children's therapist and relationship therapist but she also does quite a lot of - probably more family reports these days, but has a good background in being able to prepare social assessment reports. I specifically chose her to be my clinical supervisor, so there's an opportunity there.

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But more generally, I mean, I'm talking about - - -?---In terms of generally I'd probably say when - you find out not necessarily - you don't meet them, but we're certainly aware of each other's professional work, because there are probably so few of us that do this almost on a full-time basis that if I'm asked to be able to do a report say for 2012 and I'm provided with historical information then ultimately on a fairly regular basis I will be reviewing other people's reports. So they will either come from a background of clinical psychology, forensic psychology, more than a few social workers, certainly people with a background in counselling and psychotherapy, and I'm certainly aware that at least one solicitor who has done some additional studies in terms of child protection matters who is writing as well.

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But would we say the community consists of five people, 10 people?---There's a lot of people that attempt to be able to do it on a - well, attempt to be able to do it as a part of their private practice mix.

Yes?---I would probably - - -

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How many serious players are there?---Less than half a dozen, absolutely.

For the whole of Queensland?---Yes.

So there's less than half a dozen people who significantly - devote a significant amount of their professional time to

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preparing the reports that go before the Children's Court?
---Well, as I put in my statement, the work is - it can be emotionally draining, it's complex, it's long. It doesn't pay particularly well, and then at the end of that, you know, you have the bonus of then potentially appearing before a Children's Court magistrate and a raft of barristers and solicitors who are more than happy to be able to pull your report apart. So, I mean, my background in the police and my professional background has set me up quite well to be able to do this. I write fairly quickly. I can write up to anywhere between seven to 13 thousand words a day when I have to. So I can whip through these reports fairly quickly, but the work is hard.

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Yes?---And why would people want to do it?

Well, just moving on to that aspect of where your work is held to account in a court environment, wearing another hat, I'm familiar with the process whereby parties arrive at court, they realise that everyone can sort out their differences if they come to some consent orders to put before the court, but in doing so one party needs to run off and get the report writer's view of the proposed consent orders. How often does that occur?---It happened once and I'll never do it again.

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Why not?---I find it abhorrent, the actual - that process. I felt as though my views were misconstrued and misinterpreted. My view on this these days is that I'm commissioned to write an independent report. I do good job in providing that assessment. I do a good job in providing a whole range of different recommendations. If those circumstances change and they require an updated assessment I'm happy to be able to do that. In fact, I would consider myself - irrespective of how much money was being offered, I consider myself ethically obliged to be able to write an updated assessment. Having written that report the next stage of inquiry should be in front of a magistrate.

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But isn't it advantageous that if the parties all arrive at court and say, for instance, the department wants a long-term guardianship order, the parents are happy to acquiesce to a short-term guardianship order, and the department forms the view that the evidence - either one of the two orders is open to the magistrate, surely it's conducive to the child's best interests if - just let me finish my preamble. Surely it's conducive to the child's best interests that the department gets the parents working towards reunification and taking responsibility for the child and the department doesn't have to carry the workload of yet another child as in need of protection. Surely it's advantageous that parties enter consent orders where possible for the best interests of the children?---It makes a good argument, doesn't it, but my experience of this is that it's not - look, it sounds great, doesn't it, that all parties - it's easy to be able to say, "We're child

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focused, we're child centred," but the result of the situation actually is that it's adversarially court based and that the department often, and other parties, will do anything that they can to be able to avoid having to have their case work examined in detail before a magistrate. I think that what happens, unfortunately, is in these negotiation processes, and certainly so that when they're properly conducted they're relevant, but sometimes I don't think that what happens in those negotiation processes is actually child focused or child centred. This is about being able to sometimes avoid having poor quality case work examined in the forum of the Magistrates Court - of the Children's Court.

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But hang on, let me just tease this out. Say, for instance, Mr Hanger acts for the parents in a child protection proceeding and I act for the department and we arrive at court one day and we work out that we're really not that far apart on where we think the magistrate should go and there are some different aspects of the child's situation that perhaps need to be the subject of a case plan which is a condition precedent to the making of the orders. Why shouldn't we be able to work out some consent orders and then me put a phone call through to you as my report writer and just have a conversation with you and get your view on whether the consent orders broadly address the concerns that you've raised in your report?---As long as I had confidence that the separate representative, if that's who I was going to be working with, understood not only the legal arguments but as long as I had the confidence that they were operating in a child focused manner, then I would be happy to be able to engage in that level of comment, and in that respect that would make sense, because there's an opportunity for me to be updated verbally in terms of what the current circumstances are and perhaps in terms of what the parents may be able to acquiesce to and in terms of how the department may be willing to be able to engage with the parents. That's fine, that's legitimate.

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But you accept that the department and to a lesser degree the separate representative engage in an act of - I think the colloquial is arse protecting, by phoning you or one of your colleagues and getting your view so that they can then report back to the magistrate before consent orders are made, "Look, we contacted Mr Thomson and he's heard the contents of the consent orders and they broadly accord with his views." You accept that that occurs, don't you?---As long as the process was child focused and child centred and it wasn't just about being able to - as you said, you know, to be able to cover yourself, or the department to be able to cover itself, in terms of being able to not have what sometimes may be inappropriate or inadequate case work highlighted in a court case. If that's their argument, to be able to get out of what might end up being a contested hearing, then I don't particularly want any part of that, but if it's a legitimate attempt to be able to assist the

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parents to be able to work towards reunification with their children or to be able to initiate some level of additional support for the children, then that would be quite legitimate and reasonable.

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But at the end that's really a question - it's a value judgment for each person to make, isn't it, as to the difference between the consent orders and what you or one of your colleagues faces in a report?---There was the one occasion, I suppose, I am thinking of and I've seen it happen a couple of other times is where I got the impression that other legal representatives may have been bullying of the department or the parents or me into being able to accept an outcome that I wouldn't necessarily feel was in the children's best interests.

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But that would be more a case of the department caving in on their own expert's report, isn't it - - -?---Yes, absolutely.

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- - - and not standing by their evidence base?---And this is where I had written in my submission that sometimes - and this is where it takes, you know, a degree of competency and courage on the part of the report writer - they need to be able to stand by - I mean, the report, as difficult as it is to write and as time consuming as it is, it's really just the starting point for what might happen afterwards, so it's the opportunity to be able to - if the report writer is convinced about the recommendations, convinced about the basis on which he or she has prepared those recommendations and the observations then it does, it takes a fair degree of courage to be able to act alone sometimes to be able to carry that through to the end and I'm quite prepared to be able to do that.

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Can I just find out about how you craft and how you observe others to craft their recommendations. What do you stick at the bottom of your report? I mean, in the Family Court and Federal Magistrate's Court, typically, a family report says, "Child to live with mum, substantial time with dad," and perhaps a couple of other orders that are in the best interests of the child. What do you stick at the end of your report?---Well, the pointy end of the report is, effectively, whether I offer my support to the department's application and that's what I imagine everyone turns to and then they'll look through - and then on top of that, I may make some additional recommendations. It's really about, number 1, whether I support the department's application or if I don't, what else am I recommending. So I may actually offer a recommendation that says - I make a recommendation for a lesser order, subject to guardianship. I may recommend custody. If it's a long term order, I may recommend a short term order. Sometimes I may recommend a non-custodial order where the department has been asking for a custodial order. Sometimes, I may actually recommend a much higher order if I think that the department has misinterpreted or missed the actual level of perceived risk to the children.

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Okay. Drilling down from your sort of top level recommendation and what orders should be made, as you're

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aware the department needs to put a case plan before the court before an order can be made. Do you have any involvement in the recommendation of how that case plan is constructed?---Well, in terms of case plan, definitely, so we might be looking at specific recommendations about how a parent may be supported so we could be looking at recommendations that - look, some of the recommendations I would typically make would be recommendation for a neuropsych assessment, general clinical psychology assessment. You might be looking at a psychiatric assessment. You might be looking in terms of children a paediatric assessment, medical assessments, clinical assessments for the children, making recommendations around contact between the parents and the children, the children and their siblings if they're not resident in the same placement. Those would be the examples of the types of recommendations. So it's not only about the type of order that I might recommend, it's about the meat around that, "So what does this family look like?" in the process of going through that custodial - if the custodial order is made.

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Okay.

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COMMISSIONER: At the end of the day, it's the magistrate who makes the best interests based decision and you recommend what you think. What proportion of magisterial decisions reject your recommendations?---If it comes down to the decision of the magistrate, I haven't had any.

What proportion of family reports do you do in contested matters that are decided by a magistrate?---Family matters or social assessment?

Social assessment?---Sorry?

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Social assessment?---Social? So the majority of the reports that I write don't ever make it to a contested hearing. I would estimate that somewhere between five and 10 per cent of the reports that I write actually make it before a magistrate where a magistrate would be in a position to need to be able to make a recommendation.

How many a year would you do?---Probably about 30 reports a year.

Would that be about a quarter of the total number done per year in Queensland?---I actually don't know how many reports would be done per year. I'd actually be interested to find out but - - -

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Well, you said only about four of you do it full-time? ---Yes, but there's a lot of people that attempt to be able to do them on a very part-time basis, so I'm certainly coming across assessors that I've never seen before that are writing reports. I think - - -

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Who are they writing for?---Sorry?

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Who are they writing for? Who are they retained by?
---Well, there's several representatives that are up and down throughout Queensland and they will either write for separate representatives or they will write for the department. The department generally will attempt to be able to identify a local report writer so that they can keep their costs down in terms of travel. What I'm finding, though, is I think they're starting to recognise the value of a well constructed report. In that respect over the last year, certainly, I'm getting more and more calls from regional Queensland and they're bypassing the older local report writers in terms of being able to access a report writer who, hopefully, knows what he's doing. In that respect, certainly I've done recent jobs in Townsville, Rockhampton, Mount Isa - - -

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What happens when there's a negotiated outcome? What role does the magistrate play then?---As far as I'm aware, very little role and that's one of the concerns that I would have. Personally, I'd like to be able to see magistrates - even if there was a negotiated agreement, that's fine. If they want to be able to organise a negotiated agreement, I don't mind personally - not that I have any authority - but I'd actually prefer if the magistrates had the opportunity, not just to be able to act as a rubber stamp for what the negotiated agreement actually was, but then to be able to review the circumstances; maybe not in as much detail as a fully contested matter, but at least just to be able to satisfy himself or herself that what was actually negotiated wasn't at the risk of the child or the children in question; that the negotiated agreement actually was child focused. That would be, in terms of my own recommendations - I would love to be able to see that.

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MR HADDRICK: But you do accept that even when parties come to consent orders and they hand up those consent orders to a magistrate to make, the magistrate has a - and I suppose it's more of a legal proposition, but a magistrate has a duty to form their own view as to whether the discretion inherent in that statutory power should be exercised. That process does exist, but it might just not be seen to the court. Do you accept that that could be the case?---That's right. In that respect, report writers are very much cut off from that whole process. We're not involved in the court ordered conference. We're not generally involved in family group meetings. We may be sometimes invited to be able to offer opinion in terms of those negotiated agreements, but again, you know, if I look back over the last four to five years I've written those 125 assessments, very, very rarely would I receive a phone call - ordinarily from a court coordinator - who's saying, "Look, you know, we're currently in negotiations. The magistrate is standing by. We're looking at this particular order. The parents are consenting to this, this

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and this. The department is going to be able to agree to be able to - you know, this recommendation, this recommendation." That happens very rarely. 1

But you can't tell us - this is obviously a question - that to your knowledge magistrates aren't exercising their own independent assessment when they're deciding whether to make the orders or not. You haven't observed - - - ?---No, I can't observe it. It's a closed process. I'm only invited into that process - it's a closed court - - -

Yes?--- - - - when I'm invited to be able to give evidence. I would certainly hope, certainly, that magistrates would review - - - 10

So for all you know - and I'm not saying this rudely or pejoratively - - - ?---No.

For all you know when the parties organise consent orders and they hand them up to the magistrate and prior to the magistrate making the order, the magistrate gives oral reasons why they've made the orders and identifies aspects of the evidence that's before the court in affidavit form, which includes your report, for all you know that could be happening?---Look, it could be happening. 20

Yes?---I have no evidence to say that it is or it isn't happening.

Okay.

COMMISSIONER: Do you use the same criteria for best interests in protection matters as you do in Family Court matters?---Well, I do very - - -

Very few?---Very few. Again, it's one of the - again, this is very labour intensive. 30

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What I'd actually - I'd see some benefit in it - and it does happen in the Family Court, I believe, is where a magistrate, a Family Court judge, may directly request of a family consultant to be able to do an on-site interview, perhaps, with a young person, and then report almost immediately back. They might make a few handwritten notes and then report directly back to that judge. I would see that that would be a good use of my time in terms of the opportunity for me to be able to - well, it's very immediate. So rather than, for example, if I'm writing a report in October, November 2012, that report might sit there for up to 12 to 18 months before I'm called to give evidence. There's value to that, but there would also be some balance in being able to get me to be able to do a very quick updated assessment interview and I could report back to a magistrate almost immediately in terms of the young person's views and wishes.

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The receipt of your evidence to court is through the written report which is attached to an affidavit, I would imagine?---Yes.

Then you are potentially called as a witness to be cross-examined on the contents of your report?---Yes.

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That happens regularly, that you're called as a witness and cross-examined on the contents of your report?---Very rare, infrequently. Like I said, you know, if I've written 125 reports and I've given evidence in between 5 to 10 per cent, we're probably looking at really the opportunity be able to give evidence on probably less than a dozen occasions.

From your work history and your professional knowledge you touched upon the role of the magistrate previously. I don't want you to identify any particular serving judicial officers but I'd be interested in your comments upon the role of the magistrate in deciding these orders under the Child Protection Act and what further training or expertise, knowledge or temperament that a magistrate should have in exercising these particular functions. Can you offer your views on how the magistracy could better perform the function of exercising its powers under the Child Protection Act?---Okay, well, on the whole I've certainly been impressed by the quality of magistrates that I've had contact with. There's very much a genuine intent on the part of the magistrates to be able to understand the experiences of the parents, the experiences of the children, and certainly also I'd say the attempts of the department to be able to operate in a difficult environment to be able to bring about the reunification of children. I would certainly like to be able to see magistrates - and I'm not saying they don't have this information. Obviously they're there because they're obviously recognised experts in the judiciary and legal process. It would help my work more if they understood - if I'm being cross-examined about

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issues of attachment or different types of psychological models, issues of mental health and how that impacts parenting, it would certainly help me if I felt as though they had a greater understanding of what some of those basic models were so that we were all operating from a level playing field.

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So you see value in those magistrates who constitute a Children's Court, which are a subset of the broader magistracy receiving further - training might be seen to be rude, but further opportunities to gain greater insight - - -?---Absolutely, and I'm not saying that - - -

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- - - into the jurisdiction?---I'm not saying that doesn't happen. Clearly there are many magistrates who are interested in those processes. Not all children's magistrates - clearly there's obviously a dedicated Children's Court down here in Brisbane, and if they're working in that environment all the time I would certainly anticipate that they would have a much higher level of understanding of some of the psychological or family assistance processes that may be operating, but in regional areas there are magistrates that are operating as Children's Court magistrates and they might not have the opportunity to be able to be exposed to some of those arguments on as regular a basis.

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So do you see value in perhaps the chief magistrate or the magistracy in general identifying those magistrates who will hear child protection applications and identify them and not necessarily corral them off but give greater opportunities for those magistrates to become accustomed to the jurisprudence in that particular area?---Absolutely, you know, and it could come from a whole range of different areas. Like, I'll just draw out - even this month we've got two highly relevant experts in child protection that are giving lectures in Brisbane. One is a Professor David Howe, H-o-w-e, who is absolutely a world recognised expert in terms of attachment and trauma for children. There's another chap, a clinical psychologist from America, a fellow called Dave Ziegler, Dr Dave Ziegler, who operates a facility called Jasper Mountain. I think it's in Colorado. It's a dedicated child protection facility. It works with people - children with reactive attachment disorder. I've certainly heard him speak before. Any opportunity - I mean, I - any opportunity for members of the commission or magistrates or anybody, separate representatives, to be able to go and listen to Dr Ziegler or Prof Howe, to be able to go and listen to what they have to say in terms of child attachment and trauma and how families respond to those circumstances, would be a magnificent opportunity.

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I just want to zero in a bit more about your observations as to how magistrates perform their particular functions. Now, you told the commissioner in answer to one of his questions earlier that to date you haven't had any

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magistrate reject your recommendations if and when a proceeding has gone full length and the magistrate has been called upon to make orders that are contested between the parties. That's correct, isn't it?---Yes. There would be aspects of the report that absolutely a magistrate would be - and I would expect them to be able to question. So I'm not saying carte blanche that everybody accepts everything that I write. I would expect people, anybody, from a magistrate down to the sep rep and the parents, to be able to question me in terms of those recommendations.

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Yes, but I'm not asking whether they should follow you carte blanche. I don't wish to verbal you, but I'm just asking about your experiences in terms of do they broadly accept what you've put in your report. Do you find that your report ultimately usually ends up being the orders that are made by the court?---More often than not.

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So that leads me to ask you about do you see the social assessment report as being almost a trigger event, that if the department can't get a report that accords with the department's application the department need not bring the application in the first place?---Well, they can alter their application, I suppose, can't they?

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So the provision of an early report can fine-tune the nature of the department's application?---As I said, you know, in terms of how the reports are commissioned I much prefer - if I was going to do a report for the department I would much prefer to be brought in early to be able to do my own independent review and then to be able to provide a series of recommendations to the department to be able to provide them with a range of options. So in that respect I might make a series of recommendations but then it's up to the department to be able to fine-tune to the experience of being able to do the case management.

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Does the department in its brief to you, in its terms of reference, give you a heads up on broadly where they're going with this proceeding, what their likely goal is, the nature of their application?---Not initially, but certainly on questioning - they may actually be certainly unwilling to be able to tell me and I would expect that to be the case, but, you know, upon further questioning, just by the nature of the intense questioning, I'm going to get a pretty good idea which way they're anticipating that they would like this to go, even in terms of their current case planning and the - - -

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In terms of the court deciding what orders should be made, and having regard to your evidence just a few moments ago about your relative success in convincing the court as to what orders should be made, do you think it's open for someone to say or opine that maybe the court is abrogating its responsibility to make the independent assessment, it's effectively outsourcing it to the social assessment report

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writer?---It could be if the social assessment report
writer was willing just to go along with that whole
process, but again, I would expect - and in fact it's one
of the disappointing aspects for me that I'm not actually
cross-examined more on what it is that I'm writing and that
in many respects people unfortunately are willing to be
able to accept and not question some of my recommendations.

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But isn't that really a chicken and the egg type process?
You're disappointed that you're not cross-examined more,
and I might suggest to you as someone who does it for a
living that if you know you're not going to get anything of
value from that particular witness you don't cross-examine
them, because if you know you can't reverse the
recommendation then there's no point in the exercise.

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Doesn't that in itself underline the reliance that the court has upon the social assessment report writer, perhaps to the exclusion of all or some other evidence?---I think I could definitely agree that the social assessment report, as I've rated in my submission, is one of the most influential pieces of - - -

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Evidence?---Evidence that - - -

There's nothing wrong with that, is there? No?---Not if it's properly written.

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Yes?---But again, you know, perhaps there's maybe and unscrupulous report writer could certainly seek to be able to perhaps even curry favour with the department.

But over time doesn't that process whereby all reliance is on the social assessment report writer; the department shapes its application around the social assessment report writer; the magistrates - see time and time again - happens to agree with the social assessment report writer in at least the broad orders, if not the minute detail; doesn't that sort of move the system to whereby we have an adversarial process to a "have we got a report, and what the report says, goes" type process?---Okay.

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Doesn't it change the - move the centre of decision-making from the court process to what's in your recommendations? ---Yes, it would.

And if you accept that that does have that process, as you just have done, doesn't that diminish the value of the adversarial process?---I'm sorry, could you just explain that question again, please?

Well, if the centre of decision-making moves from the magistrate making orders under the act - I'll start the process: if your recommendations and your colleagues' recommendations are by and large accepted time and time again and the court constantly looks to the recommendations of the social assessment report writer, the department either brings an application consistent with this social assessment report writer or changes the nature of its existing application to the conclusions or recommendations of the social assessment report writer, doesn't that move the centre of decision-making away from the bench - - -? ---Yes.

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- - - and away from the neutral umpire to what one witness of one party says?---Yes.

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I'm not saying that rudely to you or your colleagues - - -? ---No.

- - - isn't that just a natural reaction of what is occurring time and time again? Do you accept that that

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occurs?---Yes. I mean, look, they're complex reports and they can be interpreted in a range of different ways. In lots of ways if you're right, I'd like the opportunity to be able to bring before a court some of the issues that I might have terms of case management, and I think it's a great opportunity to be able to air some of the processes that occur in terms of how the department interacts with children.

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And that fits in with what you said before in terms of you get less and less opportunities to be cross-examined, and I'm suggesting to you that one of the reasons you get less and less opportunities to be cross-examined is because you're becoming the centre of decision-making, perhaps not in a legal sense, but in a realistic sense?---Yes, and this is where I'd say, look, you know, there's great value in terms of being able to have an independent or a separate representative and an independent report writer, so where they still have that opportunity to be able to maintain their own level of independence in terms of either how they write the report and in the terms of a separate representative, how they interpret that report and how they're going to focus in their role as the separate representative for the child. But to be able to work together in terms of being able to bring about the best outcome for that child - because I think the separate representative and social assessor represent different layers of review, so that we're not going to be in a position to allow the department to be able to just have carte blanche in terms of what happens to these children. In this respect I certainly say in some ways I'd suspect I may have even - the Queensland reports pioneered a type of report that doesn't just limit itself to social assessment issues and general recommendations, but in another way is very much an attempt - and a conscious attempt on my part - to be able to hold the department accountable for those decisions.

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Just before you go on, I just want to follow that concept to its logical conclusion?---Yes.

Its logical conclusion - I put to you and ask you to comment upon - is if the centre of where the decision was really made - if the centre is moving from the bench to the final page of the social assessment report writer's report, doesn't that in itself, after a period of time, break down the adversarial process between the department, the parents and the separate representative?---That's right. But that would work - I didn't say "only work", but it would make more sense - I would be happy to be able to enter into negotiations in terms of being able to make or modify recommendations on the spot, maybe in terms of a court-order conference, as long as I had confidence of knowing that the separate representative, who I may have been teamed up with, that I basically had the confidence that they were working to the best interests of the children.

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Does that - - -

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Yes. There's a final proposition on that line of reasoning I just want you to comment upon. If the centre of decision-making has moved as a matter of practical reality to what the expert report writer provides, doesn't that - are we better off in effectively commissioning someone to write a report in your position with the recommendations and say, "that is the outcome in the end," if there's very little chance that the report would be either rejected or overturned or the report writer will abandon their own conclusions in the witness box? What's the point in having a trial of the issues in the first place?---I suppose if the parents took exception to what those recommendations were. I mean, you've got to be able to have the trust of the report writer that they have the training and the competence and the experience to be able to make those recommendations. I personally wouldn't want anyone to be able to have that level of confidence in my reports where they're effectively unquestioned. I think, you know, the parents absolutely deserve an opportunity to question my recommendations and certainly the department's recommendations. I can certainly see value in what you're suggesting.

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I'm just trying to explore the practical realities of how these proceedings unfold and so the commission has the best understanding of where the decision really is taken regardless of the actual legal decision being taken? ---Look, the reality is that once the report is written, who knows where it goes. That's what happens in the majority of times.

Okay?---Because you write the report and infrequently do I find out what the result was. I may be provided with a courtesy phone call from a court coordinator or a team leader or a CSO. Certainly separate representatives will let me know what the outcomes are, but more often than not the report is completed and I may or I may not find out what happens with respect to the children or even how the report was received.

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As a flow-on from that, in your statement at paragraph 7.15, you make reference to what you describe as Children's Court clinics. Can you explain what they are, where they're currently operating, and what are their features? ---Sorry, could we say that again?

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Children's Court clinics. You make reference to Children's Court clinics?---You mean like and report writing unit?

Yes?---That sort of - the moment there is, I understand there is what they call regulations 7 report-writers for the Family Court of Australia. So for example there are dedicated report writers, I understand, are attached to the Family Court.

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Yes?---They're commissioned to be able to obviously write reports, but there is also a regulation 7 list where there is a list of family consultants, I believe around Queensland, and they can almost bid. So there's a list that comes out in terms of the cases that require assessment, they can bid for particular cases, or I believe a judge can actually make a request directly to a consultant to be able to review a particular case.

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Okay.

COMMISSIONER: Can't the magistrates do that in a protection case as well under section 107?---I'm sure they could, but it's never been - like I say, I probably do more work than anybody else in Queensland but no-one - I've never been - I would look forward to it. But I've never - no magistrate has ever requested directly of me to be able to provide a report. I'm not saying it couldn't happen, I'm just saying that it just does not happen as far as my experience is.

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MR HADDRICK: Where do you see the opportunity for reform in that area? Do you see something that the state could be doing or should be doing?---I would welcome any opportunity to be directly commissioned by a Children's Court magistrate to be able to prepare a report.

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I'll just tease that out. Explain that to us a bit more in terms of how that would be different to being commissioned by either the department or a separate representative - - -?---I think - - -

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- - - what are the different features associated with the report directly to the magistrate?---Okay. So I think if I was writing a report at the direct commission of a magistrate as opposed to the other two general referral pathways which are commissioned by a separate representative or commissioned by the department, I would feel as though my level of independence was genuinely protected; that I could then go in with the - no particular authority, but certainly with the inferred attached authority of the magistrate to be able to then go in and make any inquiry, within reasons, and then make a series or recommendations where I felt as though I wasn't - no additional pressure or they're at least going to be far more cautious around implying any pressure on me to be able to come up with a particular set of recommendations.

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COMMISSIONER: Has the department ever asked you to review a case plan and make comments on it appropriately?---Not specifically, not just a case plan, but as a matter of course, Mr Carmody, I would almost always review case plans. When I receive the material from the department, I will always receive copies of the case plans and just as a matter of course, I would always, as a part of a report, review certainly the general terms, if not the specifics of that case plan.

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What about an ongoing intervention case plan after an order for long term guardianship in favour of the department has been made? Do you ever get to see them?---The only time I've been invited to be able to make a comment in that respect would be if, say, the orders were granted and there was a thought around - I'm thinking back to one particular case where long term orders were then granted on two out of four siblings and there was a thought to be able to remove the children from long term carers, who'd pretty much had the care of the children just after birth, and to be able to place the children with a paternal grandmother. In that respect, I was asked not to provide - it was a social assessment report, but it was a placement report and that certainly had to do with case plans and long term - - -

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Have you ever been asked to prepare a report in a variation or revocation of a long term guardianship order proceeding?---No, no. In fact - - -

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Would you have a role in that?---Certainly, again, no-one has asked me to write one of those reports, but certainly I could absolutely imagine that would be a very relevant use of my particular skills and it would be a great adaptation for a social assessment report.

The system has an internal tension that it has got to grapple with. On the one hand, you have the assumption, almost a presumption, that it's harmful for children to disrupt, destabilise their living conditions and their development, on the one hand?---Yes.

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And on the other hand there's a recognition that it's traumatic for a child, and in the long term harmful, to remove him or her for lengthy periods of time from their natural family?---Yes.

And so the thinking is on the basis that the system should do no more harm by removing a child than if it did nothing? ---Yes.

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It needs to keep these two competing considerations always in mind, but how does it do that if it doesn't review the situation after long term guardianship orders are made? ---That's right and I would very rarely ever be invited or commissioned to be able to prepare a report to be able to examine those and I would - that's what I say, I would welcome any opportunity to be able to work with children or with families after long term guardianship orders have been made.

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Look, I would like your comment on this, too. As I understand it, at the end of every month foster carers - given that we put children into as near as possible to their natural home environment, where there's a foster carer in place, at the end of every month the child has an extra three adults involved in their lives to assess how they're going. One is the person from the foster agency, one is the CSO and the other is the CV, the community visitor?---That's right, community visitor and sometimes there may be a recognised entity in there as well.

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What does that do to a child knowing that every month - - -?---It reinforces the concept that they are children in care, that they are different and that in the best attempts of the department or the whole child protection system that they are set aside. Every month it's a reminder to them that this isn't their natural family.

Yes. They can't go to soccer that day because someone wants to see them, some adult wants to see them?---Look, the number of times I've heard that from children is - in fact, it's one of the reasons, sir, why children will disengage from - well, they'll attempt to be able to disengage from the child protection or cooperating with the child protection process. It will be certainly one of the reasons why they would disengage from counselling that may have been identified by the department. I've heard this numerous times from children, "I'm not going to counselling. That interrupts with my dance classes. It interrupts with my soccer practice."

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Being a normal kid?---Well, that's what they want to be. I mean, the value - look, I'm a counsellor and a therapist. I see the value of therapy, but the real value of this for the children is any opportunity for them to be able to replicate or have replicated for them a natural, normal system in existence and if that means not having to stay at home if there's a community visitor attending or if the CSO is attending - - -

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What does it do to a child's psyche to accidentally discover that their foster parents get paid for looking after them?---I think most children - if they didn't know, I think it would be a surprise for them. I think it would - at some point, I think most foster children would review, "Am I actually wanted here? Is this my real family? Are they doing this for money?" However, I think that provided the quality of the care experience, whether it was kinship or foster, if it was a reasonable adaptation of the natural care environment, most children would be savvy enough to be able to understand that this goes well beyond the small amount of money or remuneration. The children will also naturally see, I think, if that amount of money that's being paid to the foster carers - if that's actually going in to being able to pay for things like dance lessons or - - -

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Yes?--- - - - or whatever it is.

MR HANGER: I don't mean to be disrespectful for interrupting here, but I mean they are not paid to look after them. The clear instructions came here the other day, they receive money to go towards their maintenance - - -

COMMISSIONER: Yes?---It's not the same as a - - -

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MR HANGER: I mean, in other states there are payments to look after them.

COMMISSIONER: Yes.

MR HANGER: But they're not in - - -

COMMISSIONER: No, point taken, Mr Hanger. Strictly speaking, you're not paid a wage, but they do receive an allowance by way of income - - -?---If I might give you the example of a case I wrote up last year where I did the interview with the female foster carer. They had the care of three siblings who were ultimately demonstrating reactive attachment disorder; all three children suffering from fairly solid levels of cumulative trauma, sexual abuse. The level of behaviours that the children were demonstrating were such that they had been categorised or the carers were categorised as special carers. My own assessment of the carers was that they were inadequately trained. They were distressed in terms of being able to

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care for the children and the comment from the female carer was that, "This is our job. This is what we do," and I was absolutely flabbergasted. I mean, I often suspected that some carers would see this as their job, so I understand the concept that carers are not paid, that's in terms of an official line, but for the majority of carers that's actually the case. They're not paid, but in this case I actually could not believe that I'd had a carer actually admit that they saw this as a way of being able to make a living and that this was an alternative for her to be able to - and her husband - go out into work.

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All right, thank you.

MR HADDRICK: Could I just ask you to have a look - can the witness please see the decision of the Department of Child Safety v S.J and M.B (2009) Queensland Children's Court Magistrate 1, which was a tendered document.

Could I just draw this to your attention. For the purposes of the transcript, you've brought this to the attend of the commission as a case that you wish to make some comments upon in terms of the department. I just wanted to give you an opportunity, Mr Thomson, to express your views to this commission as to the features of this case that this commission should be aware of and what lessons we should draw from it?---Okay. Look, there are multiple.

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I just remind you that, of course, we're live streaming so no mentioning of individual children's names or identifying individual people above and beyond what is already in the published decision?---Look, there are so many that I'd actually - I hope you're able to assist me in being able to draw some of those out. Look, the first issue in terms of - the magistrate in question drew out the concept that the department repeatedly - and it's certainly been my experience, when a complaint is received by the department the officer that's taking the phone call or the complaint will catalogue it, effectively. They will review the information and they will categorise that information as either substantiated for risk of harm or actual harm or they will categorise it as unsubstantiated. Now, with many of the families that I'm reviewing there will be - there might - the substantiated allegation was serious enough and it's a first event that it may actually trigger the removal of the children.

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So in that respect you're drawing our attention to the contents of paragraphs 17 and 18 on pages 3 and 4 of the decision where the magistrate comments upon the department's - the then Department of Child Safety, now the Department of Communities, way that they action notifications and the evidence base on which they rely upon. Keep going, sorry?---That's right. Okay, so on the basis of - all right, so then - but what we're often seeing is that there isn't just one trigger. What occurs is, or certainly the cases that I review, they could be triggers that occur over several months or they could be triggers that are substantiated or unsubstantiated child protection notifications that occur over one or two years. Certainly I've had cases where - I've reviewed cases where we've had histories of notifications that go back one and two decades, 15 - in fact, I just reviewed a case in the last week or two that obviously I'm not going to go into detail in, but it was 15 years of notifications. Some of those notifications are substantiated, some of them are unsubstantiated, but invariably in the department's material, time after time you see dredged up and included in their material case notes involving unsubstantiated allegations. So what we've got then is that those included in the - - -

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If I can just hold you up there. Isn't that a good thing, that they're recording everything that they hear and see in respect of the matter, so that those matters can be further investigated?---It's a double-edged sword, you know, because again, for an unscrupulous report writer or perhaps a departmental official it doesn't help the process of being able to include every shred of allegation against a person to be able to promote the department's argument. I'm not saying the department in many of those - the majority of cases don't have a case. What I'm saying is that it really does little credit to the department to be able to include in their affidavits every piece of information or every allegation that's been not necessarily proven even by the department's own standards as necessarily meeting the threshold for a substantiated - - -

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COMMISSIONER: Maybe that's their idea of what they keep calling cumulative harm?---And certainly cumulative harm exists.

Yes. What do you say?---I think - - -

It's not a term used in the legislation, but how do you identify cumulative harm, someone who has been harmed by an accumulation of incidents over time?---That's right. So in terms of if we looked at trauma, you might describe trauma as - it's been described as perhaps type 1 or type 2.

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Yes?---Looking at probably a type 1 trauma, so we might have one major catastrophic incident that affects the individual, so the child or the adult's capacity to be able

to function. So it might be, you know, something awful like a really serious sexual abuse, it may be witnessing a murder or a serious assault, but often what we're seeing with children, and again, time after time, is children that have been exposed to multiple incidents of violence or substance abuse within the home, they might not necessarily have been the victims, the direct physical victim of that abuse.

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No?---But that experience of being a witness either to the direct incident or to the - - -

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After - - -?--- - - - corollary issues - - -

So that's what the - harm can be caused by a series or combination of acts or omissions, under the legislation? ---That's right.

Now, that's fair enough, but the concept I'd like you to help me with is this. Where a CSO or an investigator decides that a child has suffered, is suffering significant detriment to their emotional wellbeing as a result of a series or combination of acts or omissions over time, how do they work that out?---How does the department - - -

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Yes, how does a CSO decide that this child is suffering a significant detriment to their emotional wellbeing? What's the definition of significant detriment to emotional wellbeing that's worked on to decide that at risk of emotional harm is a basis for intervention?---For my own basis I'd draw the conclusion that if - effectively how that affects the child's functioning or the capacity to be able to function either on an individual level or on a social or - - -

What's the indicator you look for, for emotional harm?--- I'd be looking at - in terms of symptoms I'd be looking at - - -

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Yes, how do you identify it?---Well, changes to eating patterns, changes to sleeping patterns, changes to their ability to communicate, changes in their ability to be able to demonstrate appropriate developmental gains in terms of developmental psychology.

So something similar to depression or something?---That's right.

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So would it be more helpful for a magistrate or clinician if the legislation instead of using the term "emotional wellbeing" that might mean any number of things to any number of people, if it devolved to particularity by reference to the symptom that you might look for?---I think that would help the CSOs, because I - and again, I noted in my statement that there are some excellent child safety officers and team leaders out there and when I was

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certainly drafting my written statement there was certainly elements of - you might even call it quilt, in that I did not want to discredit either in my statement or in my verbal statement today the high level of regard I hold many CSOs or team leaders or departmental employees. They know their job, but the difficulty is that I'm not seeing a consistency to that. I note in there that in many respects there are as many departments or informal versions of the department as there are front line officers, because there seems to be a lack of an ability to consistently apply the policy and procedures to individual cases.

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In your experience is the risk of emotional harm or having suffered emotional harm a high basis for intervention these days?---Certainly I would say I think there's evidence in now that would indicate that while instances of physical harm and certainly sexual abuse are clearly damaging and going to lead to possibly functional issues for the children, it's this cumulative effect of being exposed to emotional harm that really in the great, broad scheme of things probably does more damage than any other form of harm, although I'm not discrediting, you know, the importance of - or the effect of physical or sexual abuse, but certainly it's that cumulative effect of emotional harm where the child constantly receives informal feedback from their carers that they're unsafe or that their carers are unstable or unreliable.

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That's the most damaging form of harm, you say. It must be the hardest to identify correctly as well, mustn't it? ---Well, again, you know, that's why I think sometimes our systems do tend to focus on fairly spectacular instances of physical harm or sexual abuse - and again, I'm not discrediting the importance of the level of that harm, but I guess we live in a community that is very much evidence based, and it's easy, or easier, to be able to point to a bruise or a broken bone or a child that's suffered from shaken baby syndrome to be able to say, "That's abuse. That's physical abuse."

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We can have them medically assessed or pathology reports done. We can do x-rays of it and say, "That's abuse," or we can conduct - organise to have a medical review done in terms of sexual abuse and we can say, "That's abuse." So in that respect, you know, it's easier to be able to prove - - -

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But the underlying basis - justification - for government intervention into families has to be high. You can't just go into families based on what somebody thinks about the risk of something that's very intangible. You've got to have a real good reason to go in, don't you?---Absolutely, and that's why - - -

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And when the real good reason is accumulative emotional harm, what I'm asking you is how can the system be confident that that diagnosis is being made correctly? ---There needs to be - the people that are - first of all the people that are reviewing those individual instances of child protection notifications, they need to be certainly trained well enough so that when we're reviewing this information, they're able to ask the right types of questions.

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So do the substantiators need to be able to substantiate correctly and not get false positive answers?---Well, they can - you know, it's very broad to be able to say, "Let's substantiate - let's categorise it as substantiated or unsubstantiated."

Yes?---And then not include in those affidavits the rationale in terms of why we substantiated. As an example, I did a case probably about two or three years ago where there were some concerns about - it was called into question about the level of - the type of review that the department had actually initiated to be able to identify a pretty serious case where there were lots of unsubstantiated child protection notifications. So I didn't do this review, I had to review the review in terms of the social assessment report. So the reviewer goes in - I think they'd been a long-term previous employee of the department - and they then proceed - I think there was something like over 30 notifications that had been categorised as substantiated or unsubstantiated. They then said, "Look, you know" - they did a bit of a graph up and they said, "Look, maybe out of the - out of all these notifications 17 of them, we'll agree that it was probably correct to be able to identify it as substantiated or unsubstantiated," but then proceeded for effectively the other 50 to 60 per cent of those substantiated or unsubstantiated notifications, then to say, "Look, this notification should have been identified as unsubstantiated and these are the reasons why. This unsubstantiated notification should have been categorised as substantiated." So, I mean, even someone doing an internal review of the department's process to be able to identify

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whether it's substantiated or not, even that's called into question. So what's my confidence in being able to say when I'm reviewing this information, as to whether something is substantiated or not? 1

Do you accept the substantiation or do you go behind it?
---No, I'll go behind it, absolutely.

How often is it wrong in your view?---Generally I get the sense - - -

Your experience, I should say?---Generally on the whole I'd like the idea of being provided with an opportunity to make up my own mind whether the risk exists and I certainly accept that position that says if children are to be the priority - and they should be - then the people that are put in a position - whether that's a magistrate or a separate representative or a child safety officer or someone like myself - should have the opportunity to be able to make up their own mind in terms of what the actual risks are to a child. What I object to, I suppose, is being told by the department that a particular concern is either substantiated or unsubstantiated and then I'm not provided with a clear indication as to the real rationale as to why they've made that decision. 10 20

Do you think magistrates get enough information to make their judgment calls on whether a child protection order should be made or not?---I don't know how much information they receive. Clearly I would say they would receive as much information as certainly I would be entitled to in terms of the types of material I would review would be historic affidavits. So not only the current affidavit that the department has put together, but the majority of the previous affidavits, criminal history reports, we're looking at neuropsych assessments if they've been done, psychological assessments, paediatric assessments, pathology reviews. Pretty much any of that type of information, any previous social assessments. I would review all of that. You see, that's my job. I get paid to be able to do that. I don't know whether a magistrate would actually have the time to be able to do that. In fact, that's why a good quality social assessment - that's the value of it. Even if they're long, I would hope that people - and that's why I think I get a lot of work, is because people - I've built up a reputation that says, "If you receive a report from Mr Thompson there's probably a better than even chance that he's going to tell you why he's coming to that recommendation." I don't come to any recommendation unless I'm able to support it either directly from the comments that a parent has made or a child has made, or I'll relate that directly back to a concern that the department has made or I'll relate that directly back to a recommendation that a psychiatrist or a psychologist has made. 30 40

Okay, thanks. Mr Haddrick?

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MR HADDRICK: No further questions of this witness.

COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: May I say this, that I won't be able to finish with Mr Thompson today because there are certain matters I do need to get some instructions on.

COMMISSIONER: Yes, sure.

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MR HANGER: And it's just been too short a time.

COMMISSIONER: Yes.

MR HANGER: However, I'll proceed as far as I can and get him back some other time.

COMMISSIONER: Sure, okay.

MR HANGER: Thanks.

Mr Thompson, the dichotomy between secondary care and tertiary care, you refer to, in paragraph 7.2, system 1 and system 2?---Yes.

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A number of people have referred to this kind of problem; that is to say that at one stage you're holding out the helping hand and at the next stage you're the policeman taking a child away?---Yes.

And there are problems with that?---Yes.

And we've heard from others about that. At the same time we've heard evidence that there needs to be more accessibility of information across departments - be it police, education, and so on - for people who need to know in the best interests of the child. How do you envisage being the good guy and holding out the hand of help and training and better parenting as against being the bad guy and taking the child away? How do you envisage that working? How would you like to see it work? Because the problem I see is there's the information cross between the helper and the child protection worker?---There clearly needs to be a link between the information - at some level we need both systems.

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Yes?---I just happen to work at that end of the continuum that deals with highly adversarial matters. That's okay, that's my choice. Having said that, it's easy in that environment to be all consumed with the adversarial process and say, "This is what I do, therefore this is 100 per cent of my experience and this is" - that attempt to be able to validate what it is that the middle does. However, there needs to be far more investment down the other end, which

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says that we need to be able to provide much greater level of primary assistance to the parents. We need to be able to have a system that identifies where risk exists even before it raises its head in terms of child abuse instances. That requires not the department to be able to review that. Certainly they're on focus of it, but that's information that's going to come through from schools, from GPs, from hospitals, from community nurses, a whole range of different areas. And unless that's coordinated - - -

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Okay, no issue with that. My question is does the information held by that body of people who have been doing their best to help go across to the people who are going to go to court and apply for a child protection order?---There is some information. I'm sure the inquiry would have reviewed - - -

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No, should it go across?---Should it go across?

Yes. That is to say, this child has been - results have suddenly gone down at school, there's been a report to child safety of some kind or other, we've tried to work with the parents, they haven't turned up, they haven't cooperated at any meetings, and so on?---There's a level of frustration, yes.

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A level of frustration. Should that information which comes from the helping body go across to the prosecuting body?---There would need to be protocols in terms of how that information was going to be transferred. If all information was transferred the secondary body - so that may be interested in removing children, or at least some level of intrusive work with the family - I would imagine there would be an avalanche of material that they would have to deal with.

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So there would certainly need to be protocols in terms of what the trigger would be as far as, you know, when they came to work with that particular family. 1

The problem I have accepting that there's a good idea there and examining it is does the body that is going to go to court have access to all the previous information that is on the file in relation to the efforts that have been made to help the family first. You can see the problem there. If that is the case, what's different from the present system whereby whatever you say, whatever you do may be used in evidence against you down the track?---I think the difference would be that you're not going to have the same person attempting to be able to demonstrate both roles. So, again, I'll stand by my system 1 and 2 and say that both roles are necessary, they're legitimate and they're required to be able to ensure that children are safe. The majority of the investment should be community building where parents feel as though they're living in a community where they have access to early intervention services, but once that threshold is perhaps reached then there should be another organisation or another body, certainly not the same person, that then has the responsibility. At one point they're offering the carrot and the other point, you know, do we pick up the stick today. It's that system that asks child safety officers to effectively fulfil both roles simultaneously. This leads to a level of definite anger. That's why I'm reviewing a lot of these assessments. This is - - - 10 20

So your proposal might be satisfied by just making sure different people are involved on the part of the - - -? ---Well, look, in one respect - - -

- - - system 1 and system 2?---Look, in one respect that already occurs, so, you know, we've got - again, I don't work for the department, but I certainly hear some of the language that they use. They have assessment investigation teams where effectively, you know, the threshold has been reached and the department will then go in and their role is to be able to do an assessment and an investigation and then make a certain recommendation. There are other teams, I think they call themselves long term guardianship or long term care teams, and their responsibility isn't to be able to necessarily collate information, to be able to support a particular application, it's about being able to work with the children that are in long term care. 30 40

Okay. So what should change? What's wrong with the system there?---Apart from the fact that it's not working - - -

In term of your system 1 and system 2?---Look, personally, I'd like to be able to see if - there's been a long tradition, I think - particularly I think in social work, but not necessarily restricted to social work - social workers perhaps say that: look, we've got the experience.

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We've got the qualifications. We've got the academic research behind us to be able to say that if you employ a social worker, we've then got the understanding to be able to say when we should work proactively with families and then when a threshold has been reached that says, "No, we need to be able to flip that around and we then need to be able to work towards an adversarial model." In that respect, the workers would say, "We don't need to change that. All you need to be able to do is give us more power, more authority to be able to do our job properly." I've watched them try to do their job properly and the end result is this system that does not appear to be working. The only recommendation that I could probably make is to be able to fairly catastrophically separate those two roles where you have a dedicated well resourced investigation unit that if it's going to be - there's going to be a part of this system that's adversarial. Unless it was radically overhauled, I can't see that you're going to be able to - there will be some parents, unfortunately, who are just for a whole range of different reasons, and this isn't about being able to judge or to condemn anybody, this is just about being able to understand - when some parents, unfortunately, are unable to be able to parent or - - -

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All right. I'm sorry. We can accept that. I was really just trying to give you a chance - - -?---Yes.

- - - to say what you alter to draw a line between what you described as system 1 and system 2 and I think you've said "different people" and then you've said, "Well, actually we have different people now," so I think you want a greater separation than what you've - - - ?---There needs to be a greater separation in terms of either a different organisation that's tasked in terms of the legislation and then properly resources in terms of training to be able to properly investigate these types of cases as opposed to the opportunity to be able to work proactively. So that's either to be able to case manage a family so the right resources are identified for that family so that they don't become enmeshed in the adversarial system.

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Okay. The question I was asking you, please just focus on it. It's not getting stuck into you on something - - -? ---No, I know.

- - - it's trying to understand where you're coming from is this: should the information gained in system 1 go across the people working in system 2?---At some point that information needs to come across, definitely, otherwise the people that are looking at potentially - are looking at the intervention role, they won't have that information to be able to act on.

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Yes?---So, yes, you know, at some point that information needs to come across.

All right. Could I go to the question that you were just discussing with the commissioner about substantiated and unsubstantiated and the judgment of the magistrate. There's criticisms for putting up unsubstantiated material, both I think by yourself and by the magistrate. Do you think it would assist if we drew a distinction between allegations that are false and allegations that are unsubstantiated?--Well, again, there would need to be some protocol in terms of being able to identify when something is false or not. I mean, it's difficult to be able to say, you know, when something is false. I mean, I'm not saying you couldn't do it, but clearly, I think, the department have some difficulty in being able to do that.

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You see, the criticism by the magistrate is, "An allegation is substantiated because I say so," and he says you can't do that. He says, "So put up the material, such as a photograph that the house is untidy"?---Yes.

Okay. Even if an allegation is unsubstantiated, it isn't always irrelevant, is it?--No. No, again, it depends on - we don't necessarily know what the rationale in that respect is as to how the department - I'm not saying there isn't rationale, there clearly is, but we're not necessarily told in terms of what that rationale is, whether it's a legitimate rationale.

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Yes, exactly. It's appropriate for a court to want to examine that - - -?---Yes.

- - - because the unsubstantiated allegation may be relevant to the application before the court at the moment? ---Unsubstantiated doesn't mean it didn't happen.

Exactly?---It just means that there was a system whereby the department identified that they weren't necessarily going to act on it at that particular point.

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To take a case, not the one before the magistrate, one I'm going to make up, a complaint of domestic violence with police called to the house and everybody is asleep in bed and the complaint is only five minutes' old. The conclusion may be that the complaint is not only unsubstantiated but probably false. Okay?---Yes, absolutely.

All right?---Yes.

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Now, that kind of thing probably shouldn't be raised in an application down the track for an order?---That's right. Look, it's still that level of whether that type of incident is included in a child protection application that really does the department no service.

That's what I'm coming to. That's why I wonder if it mightn't be useful to treat some complaints as false

complaints?---Yes.

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It is in the opinion of the relevant investigating body?
---Yes. You know, the opportunity - you're really tying
the department's hands behind their back if you limited
them to being able to identify something as - well, there's
actually three, to my understanding. There's either
unsubstantiated, substantiated or the other one is due to
resources they don't have the opportunity to be able to
investigate it. So sometimes just due to that inability -
it doesn't mean that it did or it didn't happen. It just
means that it wasn't investigated.

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MR HADDRICK: Mr Commissioner?

COMMISSIONER: Yes.

MR HADDRICK: We've been going for sort of two hours now
and I'm conscious it's my witness in the box and I'm just
conscious that he perhaps should have maybe five minutes to
break, given that he's been going for two hours.

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I know I occasionally stand up and say this, and it's not always just for the witness. Would you be minded to take a five-minute break to give the witness some time to give him - - - 1

COMMISSIONER: How are we travelling in terms of time. It's 12 o'clock now. How much longer will you be, do you think, Mr Hanger?

MR HANGER: Yes, for today I think I'll be finished by 1.00. 10

COMMISSIONER: By 1.00, okay.

MR HADDRICK: I can, as counsel assisting, give an undertaking that we will recall Mr Thomson to provide further evidence on a subsequent day if it's convenient for him and the commission given the parties have more lengthy material they wish to cover.

COMMISSIONER: All right.

MR HANGER: Well, I definitely will want him back on some other day. 20

MR HADDRICK: Yes.

COMMISSIONER: Well, what would you like to do, Mr Thomson? We can get you back for - I can adjourn now. If you have to come back I can adjourn now and bring you back - - -?---Yes. I'm happy to keep going, sir.

You're happy to keep going?---I'm happy to keep going.

All right. If anyone needs to have a break, they can just do it and we'll keep going and I think we'll finish at 1 o'clock. We'll adjourn then and we'll resume with your evidence at some later time to be arranged after counsel have looked at the material and are in a position to further examine you, okay?---Yes. 30

I'll leave you to work that out with Mr Haddrick?---Thank you.

All right, thanks, Mr Hanger.

MR HANGER: I think we're on common ground. The fact of the matter is unsubstantiated doesn't necessarily mean that it should not be brought to the attention of the court on an application for care and protection?---That's right, and I don't think that the magistrate in that instance was necessarily saying that the information shouldn't be brought. 40

No?---The information was, or the opinion was, and I would agree with that, is that we don't know why it's

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substantiated, we don't know why it's unsubstantiated. There's no particular evidence, necessarily - sometimes there is, but there's not always evidence to be able to say why the department has gone down one particular track.

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Yes?---I think this is one of the issues that I would certainly have, and this is the reason why I've stated in my written statement as well, is that my starting point is the department's material. That's fine, and I will definitely use that to be able to form a hypothesis in terms of what I will eventually determine to be actual risk or non-risk or where there might be some middle ground. Certainly what - that's my beginning point, but what I object to is, as the magistrate had pointed out, is this assumption that we're to be sold by the department that we should just accept that what they say has actually occurred and that their assessment in terms of risk is not relevant to be examined.

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COMMISSIONER: Sorry, can I just ask one question? Risk, that in practice is the term "unacceptable risk" in section 10 interpreted to mean?---For myself it would be - all right, so we actually have an instance of harm. I'm just trying to think of a good example for you of risk of harm.

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Well, just tell me in terms of probability or possibility. Which is it? Or is neither, or something else?---Look, it would be - for me it would be down to the possibility that something may have existed.

A possibility?---That a risk may have existed. So if we're looking at - - -

But a risk is a future event, isn't it?---That's right, but it can be predetermined, or at least you can have a concept as to whether actual risk may exist.

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Yes, there are predictors of risk?---That's exactly right.

Right?---That's the reason why these reports are so long, because parents will often wonder why I'm spending so long doing an interview, talking about their lives and their early childhood, their experiences of relationships, and it's about being able to track patterns.

Predict risk, I know?---That's right.

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Okay, but "unacceptable" is an adjective which implies a degree of risk?---Yes.

What degree of risk does it mean? Is it a risk that's possible, will possibly occur, will definitely occur, is likely to occur?---I would say is likely to occur.

Okay, thank you?---So in that respect I think we need to be

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careful that we're not supporting - certainly in my reports, we're not supporting the department taking children, removing children, from what might be a salvageable home in the event that there is the mere possibility that a risk may exist.

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Now, do you know what degree of risk in practice the department acts on in interpreting unacceptable risk?---No. In fact, I prefer to divorce myself from how the department interprets that, because I would much prefer to rely on a range of independent theory and not be limited to what the department has in 2012 determined by their own policy and procedures.

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Fair enough. Well, you're looking for likelihood, anyway, probability?---Yes.

Okay, thank you. Thanks, Mr Hanger.

MR HANGER: In terms of writing reports I suppose the ideal situation is you would like the ability to talk to whoever you think is an appropriate person?---Within reason, yes.

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Within reason?---I think for the report writer they need to be able to be given reasonable latitude. So, look, the majority of the referrals; this is where the referral is important, they will identify who they would like me to be able to interview, to be able to talk to, but there's always the statement towards the end of the referral that says more or less that the assessor can then have the opportunity of being able to interview any other person. But then there's the caveat that we need to be able to speak with the separate representative or the officers from the department. So we don't have an open licence to be able to interview anybody and everybody.

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I think in your statement to the commission you suggest specific training for child safety workers. Would you be in favour of having a specialist university degree for child safety workers?---Absolutely.

Sort of branching off in the second or third year of a social science course?---Yes. Look, you could do that. Look, being in the police force, you know, as a minimum, when I went through, as a probationary you either did six months or as a cadet there was 18 months. The thought that you would - if we transferred that across maybe to child safety, that you would accept that people had come from a range of degrees and then you provide them with a limited amount of block training and pre-service training and then we have that expectation that we're then going to book them to work in mentored teams with some of our society's most vulnerable families and children, I find that abhorrent.

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I mean, if you did that to a police officer and said, "Look, you know, we accept that you have a basic degree in justice studies or criminology. We're going to give you a crash course for six weeks or eight weeks in terms of policing and we're going to put you in a uniform and put you in a car," I don't - I think there would be an uproar, but we expect child safety officers to do that and I don't think that's fair for the families and I don't think it's fair for the child safety officers and I would certainly see - I'm not necessarily recommending that we're look at some type of child protection academy, but universities are, I think, uniquely placed to be able to offer child protection degrees, or certainly qualifications, that deal with specific issues, whether it's mental health issues, issues of attachment. A whole range of different issues would be relevant to this study.

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Mr Thomson, one of the witnesses suggested that the most difficult part of the work is the work at the front line, on the street, for a child safety officer, and that perhaps you should start in the office and graduate to the street, going in the reverse direction to what they presently do. Do you have any views on that?---I hadn't considered that myself.

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The hard work is the - - -?---The hard work is being - - -

- - - working directly with the family?---Again, I think one of the reasons why I actually quite enjoy any opportunity to be able to talk to any person - and the difficulty with it is sometimes you really have to work hard initially to be able to again, not gain people's trust, but to be able to gain their confidence. You know, it takes years to be able to do that really well and it takes thousands of hours of being able to engage in either clinical interviews or assessments, working with people, and to be able to expect that someone that's come out of a three or a four-year degree that may be in their early twenties with maybe some life experience but not lots, to be able to put them in that position of being able to work with sometimes very traumatic situations, again, you know, I think it's really setting up a lot of those child safety officers for if not failure, certainly a difficult experience in the department.

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Can I come to the evidence that you were giving to my learned friend about consent orders. The view in society at the moment is that people should attempt to resolve their disputes without going to court, if they can at all. Correct?---Yes.

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Of course, we've seen the growth of mediation over the years and encouragement by courts to settle matters out of court. Now, you've expressed a concern about consent orders, in effect, I think, selling the child down the drain?---I mean, that's strong language to say the child would be sold down the drain. I don't think anybody would - - -

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Those are my words not yours?---That's right. I don't disagree fundamentally with the concept of negotiation. I think it's worthwhile. The concept of mediation where there's a form negotiation is absolutely valuable. The concept of a meeting in some harsh conversations in the hour or two before the date of a consent of a contested matter where parents are probably under a lot of pressure, they might not be represented, where the department are represented by their own solicitors and barristers, I think that's a lot of pressure to be able to put people under and I don't necessarily - I'm not saying that it shouldn't happen, but I think it puts a lot of people under a lot of pressure and perhaps agree to, we might call it negotiated agreements, but I just wonder sometimes about that process and how accurate some of those or how well those negotiated agreements actually reflect the welfare of a child. Now, I'll give you an example. There was a case I did quite sometime ago. The matter came up for a contested hearing. I went up to the contested hearing. There's the negotiations, informal negotiations where lots of hurried conversations - so there's nothing formal about them - being able to determine whether it was going to go ahead, whether it was going to be brought down from a long term guardianship application, whether it was going to go short term. My general view was that it needed to be heard in a contested hearing. I personally thought there was plenty of evidence and information in my report that supported long term guardianship, but my observations of that process was that the department, effectively, caved. So what eventuated from that was that there was a consent by the department to be able to amend its order down to short term two-year custody and that matter then went back a couple of years later to long term guardianship. So we then end up in a situation where children were placed under that uncertainty and they'd already been under several short term orders, where they were placed for another two years in short term custody orders where they didn't know what their circumstances were going to be and, again, this goes back to the first case example that I provided where there was going to be another short term order where the likelihood of those parents being able to respond adequately and work proactively with the department to

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achieve anything other than a long term guardianship order was going to be remote and it ended up in the situation where those children were then placed in the circumstance of being under short term orders again and that shouldn't - - -

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Anyone involved in legal proceedings will know that: (a) there is great pressure at the door of the court; (b) that's doubtless why most cases settle; and (c) sometimes they settle because suddenly parties realise the defects in their preparation and cases. I mean, that's part of our system?---The majority of my cases - in fact, again, I'd say one of the value to social assessment reports is that when people have the opportunity to be able to sit down, not just with an assessor - and I'm not just talking about myself. I'm talking about the opportunity to be able to sit down with someone who has several years' experience of being able to draw people out, to enter into a conversation where they don't feel judged, where maybe for the first time in their life they have the opportunity to express their own historical experiences, maybe of their own loss and trauma, their own experiences of being parented, their own experiences of having children. Most people value that and when they see that they're in front of the person that is willing to be able to listen to that, all this additional information comes out and it's at that stage that my report stops being assessment interviews and they become more along the lines of an investigation because new material is being delivered. Now, what then happens is I think the process - when people actually read the report and they see that there's a person that was willing to be able to catalogue accurately their whole life experience, their experience with the department and then they see that experience counterposed with the department's argument or my interpretation of the department's argument, the experiences - in fact, you know, why it's so valuable to be able to listen to the voices of the children where I have those opportunities to do those interviews. When they see that, they will often, I think, come to the point where they realise that there may be value or legitimacy, at least, to the department's application. It's at that point we often see, I think, that parents are willing to be able to consent. I think that's the value often of the social assessment report.

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Mr Thomson, isn't your concern if you're frank about it to yourself, that the consent order is inconsistent with your view of how the case should be decided and you are substituting your view for that of the legal representatives?---Yes, that's what I'm paid to do, though.

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All right?---I'm paid to be able to form an opinion and I'm not unwilling to be able to modify my opinion. I'd certainly be on record quite a few times in terms of being able to modify an opinion on the basis that circumstances had changed, but where circumstances haven't changed and

I'm unwilling - well, again, like I say, you write the report. You don't necessarily know what happens to it afterwards. 1

Would your concerns about these consent orders be satisfied or addressed if we said to the tribunal, "You must sanction a settlement." Do you know what I mean by sanction?---No, if you could explain that please.

All right. If one has a personal injuries action for a person with brain damage and you can settle the case, but you have to go to the court and say, "Judge, we've settled this case, but here are all the papers. Here's the document. Here's the advice by the barrister saying this is a fair deal," and you hand up to the judge the document - - -?---Yes. That would be - - - 10

- - - that would satisfy this concern, if it's a legitimate one?---Yes; and that would satisfy my concern in terms of, you know - again, look, as long as there was a paper trail that demonstrated for whatever negotiated agreement was in the child's best interests. I'm not saying that my reports are inviolate, that I'm right every time, clearly I'm not, and certainly circumstances change. What I am saying is that I don't necessarily trust the system as it exists at the moment to be able to function precisely in a child focused manner; that there are other pressures on the department, on the parents and on the separate representatives and other people that are involved in the process that are outside of a child focused system. 20

You mentioned to my learned friend and in paragraph 7.1.5 a report writing unit in the court?---Yes.

Doesn't this run the same kind of risk as happened, I think, in the Family Court that people say, "Well, the judges are delegating their duty to report writers in the court and they automatically follow what they do." It erodes confidence, I would suggest to you, in the system? ---In the Childrens Court magistrate itself? 30

Well, I was thinking about Family Court?---In the Family Court. Yes.

That's the risk, isn't it?---Look, it comes down - and I was going to say, actually, that the risk could be, I think, partially alleviated if you looked at either having magistrates trained - not trained - if they received a greater opportunity to receive instruction and education in terms of some of the more complex issues. The other issue and I'm loath to actually recommend it really because I'm not sure how it would work, but to be able to appoint on occasions special magistrates, Children's Court magistrates, that had on occasions special - that had a particular background in maybe child protection issues that either worked with a children's magistrate or, if it was 40

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appropriate and they had the correct training, to function as a specialist magistrate in their own right. 1

I won't go down that track?---No.

Because we could talk for a long time about specialist tribunals. I want to talk about Dr Ziegler that you mentioned. Is he coming to Brisbane in the very near future?---Yes.

Do you know when and where?---Look, I believe it's November. I know David Howe - - - 10

It's all right, I want to talk about - - -?--- - - - the 20th - - -

I want to talk about Dr Ziegler, if I might?---I would have the date - - -

All right, you can let us know that?---I could absolutely let you know.

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Dr Ziegler - correct me if I'm wrong, but he's quite famous in America for having established a therapeutic community with impossible to treat kids. Am I right? Is that the guy?---Well, impossible to treat, I mean, that's how it is perhaps marketed, but yes, you're right, children that - - - 1

Forgive my colloquial English, but - - -?---Children that are generally - - -

With very, very challenging behaviours, to be politically correct?---Reactivation disorders where the level of - they really have limited to no level of attachment. 10

Yes?---So he'll work with them over a - not just he, but he has a - the ratio of clinicians to children is very, very - - -

It's quite an expensive program but it's a closed community, is it not?---Yes.

Even if the kids get out of bed or go out of the room there's a laser beam it sets off an alarm to tell somebody Billy's getting out of bed and you've got to do something? ---Yes, last time I listened to one of Dr Ziegler's talks, the incidences of, for example, arson was - you know, the children attempt to be able to burn the place down - was pretty solid, so we talking about children with highly distressed patterns of behaviour. 20

Yes. They're the difficult - the challenging cases? ---They're challenging of the challenging.

But it is a closed community, they can't leave?---Look, I'm not - to tell you the truth of not sure if it's a secure community. Personally I think there's value to having both opportunities. Certainly I've worked with children, I've done assessments with children where really there needs to be a secure community, a secure treatment facility for those children. They're literally on the streets, highly vulnerable, sexually active, active in terms of criminal behaviour, open to - and not just open to, but are actively being abused. It's happening on the streets right now all around us. You know, if you know where to look. I've reviewed cases where people have been sleeping behind court buildings and so right in the heart of where some of those decisions are being made, on the other side of those walls in culverts are the kids, and it's happening right there, literally just a few metres away from where judges and magistrates are making those decisions. 30 40

All right. And Dr Ziegler is a world authority, regarded in the - - -?---Generally. Yes, look, he's fairly contentious in terms of some of his work. Not everyone - I mean, you know, it's highly contentious work, being able to say that you have a particular theory in terms of how

children are going to respond to treatment. But clearly he gets funding and I believe some of the reports that come back from that particular example are pretty solid. 1

Could I come to an issue that the Commissioner raised with you, review in long-term guardianship cases. I have the impression that they're not reviewed frequently. Once you get into long-term guardianship you're probably there for a long time. I wondered if your view is they should be reviewed frequently or that the review - and possibly taking them out of the long-term guardianship - is itself very destabilising? 10

---Look, what I will say, then, is that there have been times where I have supported, in theory, long-term guardianship applications, but my confidence - again, I don't want to keep bashing the department because they do a lot of good work, but what I'm providing here are examples today where they perhaps haven't provided good examples of work. There have been occasions where long-term guardianship has been my initial impression, but if I supported long-term guardianship I had a low level of confidence that the department - if I supported that - that they would be able to work at a responsible level with those children, because they just have not demonstrated the quality of casework that was required. In that respect I would be loath to be able to make a recommendation for long-term guardianship because I know that once those kids go into long-term guardianship, that's pretty much it. They're not coming back to me. So I've actually either held off - - - 20

When you say "they're not coming back to me", you mean me personally for therapy?---I'm not going to be - well, because the point you made was that once they go into long-term guardianship there's a very limited opportunity for an independent reviewer such as myself or a separate representative - why would they, because the department has already got its orders - to be able to have any authority to be able to review what's happening to the children in those circumstances. There is a current situation then we're certainly, you know, we've got the Children's Commission that could potentially inquire into the stability of those placements; there's community visitors; but in terms of the separate representative or someone as myself, we effectively were representing another layer or review for the department; they're not coming back for my review, so I'm loath to be able provide the department with the opportunity to be able to at least receive my stamp of approval for long-term guardianship if I don't have the confidence that the department would adequately - - - 30 40

I'm not sure that you're answering my question. The question was isn't continual review in long-term guardianship itself destabilising?---It certainly could be, but again, if it came down to the difference between me accepting - I would need to have the confidence that the

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department and the Children's Commission and any other statutory organisation had the ability and the legislative requirement or authority to be able to have the confidence that what was occurring for those kids in long-term care was in their best interests. So I'm not saying that there should be regular review, whether it's monthly or whether it's six monthly, but there needs to be some level of review to be able to determine that what's happening to those children in care is in those children's best interests.

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Mr Thompson, we've tried in this commission to look forward to the least worst situation, given an attempt to improve it. What should happen in the long-term guardianship area? ---You're asking me what should happen in terms of the long-term care of children?

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Yes. The past is the past, we've got to try and improve things?---Look, from my perspective once children have been removed from the home, by the time they get to my level of review, which again, you know, it's at that level, it doesn't happen to the majority of families, but by the time it gets to my level time, time and time again I'm seeing that children that are coming into short-term custody are coming back for long-term guardianship applications.

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Yes?---So the issue then is that once they're removed from the children's parents' care, once they go into that level of care, that on the whole the experience is that they should probably stay in care and that you shouldn't be moving around too much. That's either putting them back into the care of their parents where there is perhaps limited evidence that the parents have either developed insight or developed a demonstrated level of change, where it might be considered safe to be able to put the children back. Remember too that these children - - -

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Just hang on a tick. If the system is working they should go back to their parents if the parents have changed whatever the problems were?---There's a level of insight and it is determined safe, yes.

Okay, but to go into long-term guardianship, obviously that has not happened. So once they're in that long-term guardianship was asking you what - - -?---Once they're in that long-term guardianship - - -

- - - what should happen?--- - - - there needs to be an opportunity for those children to have the opportunity to remain in a placement, preferably kinship, preferably - well, if not kinship, then good quality foster care, and then not to move them.

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Thank you. Is that a convenient time, sir? That's all I want to go through today at the moment.

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COMMISSIONER: All right. Does anybody else want to ask any questions now, or do you need to wait till you get documents?

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MS STEWART: I'll only be about 15 or 20 minutes, Commissioner.

COMMISSIONER: Righto. All right, thanks Ms Stewart.

MS STEWART: I know from reading your statement that you've had some experience with the traditional cultures in Papua New Guinea?---I have.

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And you've sought to transfer some of those cultural understandings into your social assessment reports. How is that information transferable in relation to Aboriginal and Torres Strait Islander children and their specific cultural needs?

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---Sure. Again, I'd certainly note that what I'm not attempting to be able to portray is that - and it's noted in the statement - I have any specific or direct knowledge of any contemporary or historic incidents involving Aboriginal and Torres Strait Islander people, but what I would do when I'm doing interviews with people from an indigenous background would be to talk about family; to be able to talk about the importance and the value of cultural and kinship ties and then if it's appropriate, I will then let them know about my own experiences. I don't go on about it, but if they see that there's some value to that, I might receive a statement from either a recognised entity or a mother or a father or sometimes an adolescent saying, "Yeah, you know, that's what we're on about. We're on about family. We're on about the importance of those cultural and kinship ties." So I think what it does then is it attempts to be able to provide them with an opportunity to be able to see that there is a link that, "I'm not portraying myself as Aboriginal and Torres Strait Islander, but I'm trying to get them to see that there's at least some level of link that gives them at least the confidence to know that I understand the value of family and the cultural ties that they might be referring to are often more consuming. There's that concept of - maybe in western society where we talk about the culture of the individual, that it's quite different in terms of what I'm certainly seeing in terms of my own extended family, indigenous practices up in New Guinea in a remote, isolated, traditional village, there's no cult of the individual. When I say "cult" I mean - I have to be careful about that word, but this is the experience of actually belonging to something much larger that's all consuming; that we're no longer an individual, that we actually belong to something much more complex, more consuming and that the ties to that really determine who you are as a person and that's the type of connection that I attempt to be able to - not only insert into the assessment interviews, but I attempt to be able to get across in the assessment reports as well. Does that answer the question?

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It does and it leads me into a question that was posed to you before about how many main players there would be doing social assessment reports in Queensland and I think you identified somewhere between four and six?---Look, there would be - - -

People that spend a significant amount of their practice doing social assessment reports. Would that be - - - ? ---That would be social assessment, but then remember there's also psychologists that will do - look, clearly in terms of assessment reports, because I'm going to talk just about social assessments because it's what I do, but there's quite a few assessors out there that might do a combination of a psychological and a social assessment so there's a little bit of both in there, but in terms of what

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I do, just this sort of stuff, it's fairly limited in terms of the number of people that would do that full-time. 1

Yes. So that would be a fairly correct figure?---Look, and there's a couple of people, I believe, over at - Legal Aid Queensland have a couple of full-time dedicated social assessors. They also do, I believe, some family reports as well, but in terms of a person that just does social assessment reports as nearly 100 per cent of their work, I really don't know of anybody else apart from myself.

Do many of your colleagues that do this type of work, to your knowledge, have specific cultural knowledge because our feedback from the community is there's some disappointment in the social assessment process because a lot of the time the social assessors aren't Aboriginal and Torres Strait Islander - - -?---Yes. 10

- - - or don't have specific cultural knowledge?---Look, I did an assessment several months ago where an assessor had been an indigenous assessor; had to be brought down from another state to be able to do that assessment.

The Northern Territory?---Yes. 20

I think I know that, yes. I'm probably aware of that person that you're referring to. What do you think can be put in place to overcome that - - -?---Well, either there needs to be more work in terms of being able to encourage people from an indigenous Australian background to be able to proceed through the required academic qualifications and experience qualifications and encouragement to be able to work actively with indigenous communities to be able to write these reports. I only do it - in fact, I actually feel when I'm invited to be able to do these reports - I do feel in some respects as an interloper; that in some respects I shouldn't be doing the reports up to a point. I only do them because there's no-one else, really. 30

Okay. Just as a follow up, do you consult with any other professional on the cultural aspect?---Look, whenever I have - - -

Well, to provide input?---For input? I was part of a report writing group, we met a couple of years ago, for a few months and that issue was certainly raised. I'm not saying there's no value to it. It would need to be further explored in that my name when I write a report - there's one person doing that report, my name is at the bottom of it, and I think that to be able to invite - I'd be happy to interview anybody that would be able to provide additional cultural input. In fact, I'd go out of my way to do that. So we need to be able to determine whether there's two things we're talking about here. One is, is a report going to be co-written where there may be a principal assessor and then they're supported in the cultural role of being 40

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able to provide additional input into the actual content and the recommendations of the report or - and I haven't done that yet. I'm not saying you couldn't do it. I'm just saying there'd need to be some protocols developed around that. The other option is what I do - in fact, I did a case recently in North Queensland where it was a recognised entity, certainly interviewed the recognised entity, but there was also a previous recognised entity who was no longer working on the case and I certainly went out of my way to be able to do an interview with her. It was an amazing interview in terms of her ability to be able to inform me around cultural issues that were relevant to that case. We didn't talk around the specific case risks in terms of the children themselves, but a wonderful opportunity to be able to - I might say - inform me of some of the cultural imperatives that are operating not only on the individuals, but on the family and on the community and some of the issues that the community was dealing with in terms of its ability to retain a level of cohesion. That was a great experience and I would recommend that to any report writer.

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You may want to just take that answer a bit further, but my next question just relates to how in paragraph 3 you speak to the importance of extended kinship ties and traditional authorities, such as cultural adoption, can you just clarify for me or further elaborate how you approach those concepts when you're formulating your reports, specifically when we're looking at the best interests of the child framework and, you know, a child's specific cultural rights. How do you kind of link that up?---Okay. Well, look, you know, the concept of family is important, I think, universally. It transcends indigenous and non-indigenous values. I wouldn't say in that respect indigenous people reserve any particular monopoly over family, but there are definitely many examples of where cultural and kinship ties form a much more complex web of how people identify who they are and how they relate and respond to one another that isn't always taken into account perhaps by assessors or therapists who operate from - well, the whole environment has been non-indigenous and, again, that's probably one of the - when I said "unique" in my report, I don't know of too many other people who do what I do unless they were actually - they were identifying as indigenous - who would have perhaps such a close understanding or link to being able to be in some ways a part of that, even - I'm not saying I've lived for many months or years in those communities, but being invited to be able to at least participate and observe as an extended non-biological member of those communities, it's been a real insight for me into the value of family and those things. Does that answer the question?

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I'll probably just clarify a few points, but just starting from the concept of family, you have to accept that with Aboriginal and Torres Strait Islander people there can be a different concept of family. The cultural aspect is it's a more extended concept?---Yes. 1

Whereas the other approach, we tend to look at just the close family unit?---More nuclear.

Yes?---I mean, we have obviously contacts with grandparents and uncles and aunts, but certainly my experience of PNG extended family was that there's a - the opportunity to be able to reside with just a mother or a father certainly exists but there's a much broader context in terms of the level of acceptability of a child being able to reside with a grandparent or an uncle or an aunt and that it's actually - it's not only unusual, it's expected that a child will live for a period of time with other members of the family. There's a much greater level of fluidity between the families. 10

If I can just draw your attention again to your statement, paragraph 7.1.13, where you just talk to your experience because you've had that opportunity to review a lot of departmental material. You've stated that in some incidences the case management is less than desirable. I think woeful was the term you used?---Yes. 20

Now, you did specify that's not across the board, that's with probably certain child safety service centres. With that in mind, how would you describe how the department meets the cultural needs of children? If in some instances we see really good examples in case management but on the other side you go as far as to say it's woeful, with all the cases that you've had an opportunity to review what is your impression of how the department meets the cultural needs?---I think they try to do the best that they can. They're certainly aware of - they're trying to be aware of what the needs are. I don't know that they're provided with the opportunity or the resources to be able to, you might say, properly respond to the families. I would certainly like to be able to see more indigenous case workers and support officers employed with the department. Absolutely - look, I've done some cases over the years where the CSO is well meaning, will just make the family see red. They respond in a way that they may consider respectful, or attempt to be respectful, but the way this is interpreted by members of indigenous families, mums and dads and by some of the children, is seem as highly disrespectful, and the only person sometimes that's really carrying any capacity for the department to continue to work with the families is the indigenous case worker. Look, I've sat down, you know, with kids, and they've said, "I will not talk with her, but it's okay, they understand me," referring to the indigenous child safety officer. 30 40

Yes, I was just about to ask you for an example. So is that quite a common example, about who and who they won't - - -?---It would be not uncommon, yes. Yes, there would be certainly instances where families of - the other side of that too is that some families, irrespective of whether they're indigenous or non-indigenous, they would see that anybody who works for the department would be - I wouldn't say untrustworthy, but they would be not automatically accorded a level of trust.

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Normally when you're briefed to give your social assessment report it's normally - well, is it normally at the beginning of proceedings? Is that how I understood your evidence? Once you're briefed - - -?---The majority of them happen probably towards the end. So the department has attempted case work, they have come to a conclusion by their own internal process that they're going to lodge the application. The application is lodged and then I'm referred by the - I'll either get the call from the separate representative after the Children's Court has appointed the separate representative - yes, it's at that level. So, I mean, I come into it right in the middle. Probably - in fact, I'm often writing my dates - that's the hardest part of writing these reports, is not actually writing them but it's writing them to a deadline, knowing that there's going to be either a contested hearing date or a particular court mention or a family group meeting or a court ordered conference, and that normally just precedes what is going to eventually be a contested matter. That's when I'm writing the majority of my reports.

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I probably should have clarified, the beginning of court proceedings it might happen?---Yes, that's right. Not the beginning of case management.

No, the beginning of court proceedings. So I take it from that, though, because my understanding is when you're briefed you get the department's material, affidavit material, the application and anything else that's available and at that point there hasn't been an opportunity for the respondents to file material so you've mainly got one side of the story?---Not only one side. It would be an absolute rarity that parents file material. Look, probably less than 10 per cent that I would have any parent who - and again, this is - I've written a report, but it's a system that is heavily weighted towards the department. Parents may be represented, but my understanding on talking to the parents is that it's been probably weeks or more likely months since they've had any contact from their legal rep, the legal rep is poorly informed, they don't seem interested in being able to talk to the parent, and that's why when I come along to be able to do these assessment interviews I'm probably almost the first person after months and sometimes years that actually takes the time to sit down for three or four hours to be able to ask all these questions. I'm absolutely

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flabbergasted that people are still amazed as to why I get so much information that no-one else knows about, and that is the reason, because I'm often the first person that has sat down with indigenous or non-indigenous families to be able to ask the relevant questions.

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I just slightly moved you off topic there?---Yes, sorry, I'm famous for it.

I'll just bring myself back. Because you've had that opportunity at that initial court process to view a lot of the department's material you would have viewed the case plans that would have been in there. Have you got a view on how well drafted the cultural support plans are and how much adherence there is in the child placement principle? I should probably first ask you if you're aware of the child placement - - -?---Yes, okay.

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Yes?---So you want to start with the child placement?

And what the impacts would be on the children?---Yes. Look, the general theme seems to be that on the whole there's part of me wants to be able to say that the whole concept of child placement principle, there's lip service paid to it. That's not quite true. There are genuine attempts by the department to be able to - where children can't be placed in - kept with the family there's a genuine intent on the part of the department to be able to attempt to identify either kinship carers or if not kinship carers then indigenous placement option families. The difficulty with that is that they seem to be pretty few and far between and I don't know that - I just don't know how much legitimate work is being done with indigenous communities to be able to make sure that they're properly supported to understand how important this is, to be able to care for children who may have been removed from their family. I think extra work could be done with the indigenous communities to be able to ensure that if kids can't stay with mum and dad that there are opportunities to be able to stay with kinship carers or with indigenous foster carers and that they need to be properly trained and resourced. There needs to be - and that's not just when they get the kids. There needs to be proactive work done beforehand so that they're in some ways being identified, selected, trained and groomed to be able to take on that role.

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I'll just move on to the second part of my question. What impacts do you see on the kids?---This is - and I don't want to use too emotive language, I suppose, or overly emotive, but there are times, unfortunately, where I feel as though I'm actually a party to like a stolen generation part 2, because what we're seeing is, unfortunately, children that are being removed from these families. If they can be placed with obviously either kinship or indigenous placements as may be, but where children are being placed with non-indigenous carers - and, you know, they're good people. They're not awful people. They provide good opportunity for these kids to be able to live relatively stable lives, to be able to go to school, to live in an environment where they're not being abused. You know, that's - in one respect that's great, in another respect what I think is occurring, though, is people are making comments - not from me, but I've heard it from other kids and other people - two indigenous children living with white families - that's what they are, effectively - is, "Oh, you're learning to be a white person." You're being raised effectively as a non-indigenous person. What that process is leading to, unfortunately, is every time that happens to an indigenous child it's a further example or a further deterioration of the indigenous communities in Queensland and Australia.

That makes the cultural support plan even more important. In your opinion, based on your experience and doing social assessment reports and reading the affidavit material and the case plan is, have you formed a view on the adequacy of the cultural support plans that should be in the case plans?---I don't see an awful lot of evidence in terms of, you know, those cultural case plan is being adequately developed. I'm not saying they're not there, but what I am seeing - and this is in terms of case plan is generally - I'll invariably see in terms of that cultural case plan either the child is to attend ATSI celebrations, NAIDOC week, for example. You know, there might be some opportunity for them to be able to participate in indigenous cultural events at school. But really, you know, there needs to be a much deeper, richer opportunity for carers to be able to promote that for kids.

I suppose on that, that leads to whether - in your opinion do you believe culture is something that you're born with or something that needs to be nurtured?---It needs to be nurtured, absolutely. I did an interview a few weeks ago and certainly there was a young lady who was a mother and she'd said she had very limited opportunity to be able to have first-hand experience of growing up perhaps in an indigenous community or a family. She would certainly make that comment that says, "Look, there's a part of me, like, an innate part of me that knows I'm indigenous but I don't know what to do with that." The other part of what I was going to say before is that like I say, the department respond - you might say responsibly - by being able to

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remove children from dangerous - indigenous children from a dangerous environment, there are attempts to be able to place them in indigenous care; that is not available, they end up maybe living with a non-indigenous family. The process that seems to occur, though, is that at some point in those children's lives they will know some members of their family; not well, they will have a memory of growing up perhaps in a community or within an extended cultural environment, even if it's not safe and secure, but at some point they will attempt to be able to - the majority of occasions, that will attempt to go back, so what the government is - or department, perhaps - the government in general because this isn't just about child safety - the role then is that how do we ensure that when those children to go back - and the majority of times they will attempt to go back - whether they go back as strangers or whether they go back as young people that are able to have lineal experiences, genuine opportunities to develop relationships with grandfathers, grandmothers, uncles, aunts, develop peer relationships with age-similar cousins, other friends in the community, or whether we send them back as - whether they're going to go back anyway, but as strangers. And it's at that level - in fact, I've taken several statements over the years, not from children but from grown men and women in their 30s, 40s, 50s and 60s who've had that experience of saying, "I know I'm an indigenous person. I know it should be a valuable part, and in one respect it is valuable but I don't know what that means because I was robbed of the opportunity to be able to grow up in that environment. To be able to have that experience of knowing really what it meant."

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Just following on from that, do you have any knowledge of the particular provisions in the child protection act that kind of enshrine cultural rights Aboriginal children?---Is it section 83? I'm sure there's - - -

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There are a few but it's about maintaining culture?---Yes.

But in addition to that there are also the chief executive's obligations to facilitate contact and things like that. If I can just follow on from the evidence you've given, in light of that evidence do you believe the chief executive is meeting those particular - - -?---On some occasions, yes, on other occasions, as I said before, there have been times where I've wanted to be able to in some respects make a recommendation for long-term guardianship or even for short term - no, long-term. I've held off on that, I'll either defer making a final approval - excuse me, I will either defer making a final approval for that particular recommendation purely on the basis that the department has not demonstrated adequate case planning to be able to ensure that children in care have the opportunity of being able to have legitimate and reasonable contact with their siblings or other members of their family. So why would I sign off on an application by the

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department to be able to, from my perspective, give them the opportunity for long-term care if - why would I give them more authority and more responsibility when by my standards - and then just my standards - - -

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Yes?--- - - - but they haven't demonstrated to me a legitimate and reasonable case management to be able to ensure that these children had an opportunity to be able to have a reasonable experience of growing up amongst members of their own family and community. And it is at that level that I'd certainly use that, where we started off in terms of my own understanding of the importance of family, extended kinship ties, it's at that level that I'm not prepared to provide my recommendation in support of the departmental application.

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I've got probably one final question. It is around contact, but probably from a different perspective. You commented that you have provided some knowledge and guidance in relation to case management options to the department, including contact schedules?---Yes, regularly.

In practice and the feedback we get, there's always some dissatisfaction about the level of contact to our parents and generally the making of the child protection application then results in the parent getting one hour, two hours' supervised contact regardless of circumstances. What's your opinion on that, specifically how it kind of relates to a child's development needs - - -?---Yes, okay - - -

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- - - the availability of the child and the parents to maintain an attachment, and I suppose finally do you believe the contact schedules that you've seen have been adequate to - - -?---My view on contact is that contact is neither good nor bad, it depends on the quality of contact and the ability of parents in general to be able to ensure that contact occurs regularly and that it's of a good quality. So contact needs to be able to support a child's concept of themselves so that unfortunately if they've then experienced - if they have experienced cumulative harm, if they're experiencing some level of trauma or if they're experiencing a high level of an attachment disorder or an insecure attachment; experience, even of just being in contact with some parents, the sound of their voice, their smell, the tone of voice or a look, is enough in some respects to be able to re-traumatise that child. That's what I'm looking for. So I'm not just doing assessments, I'm also doing - you might call the clinical observations, so I'm looking at the level of attachment that currently exists that I'm aware of. It's on the basis of that quality of the attachment that I would then make a series of recommendations around what type of contact should occur. It's not just what are child says. Clearly, you know, if there is a two or three or an infant - a year old or an infant, it's a little different. You can start

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talking with children. I wouldn't ever call them an interview, but certainly I would start looking at some type of conversations with children from about the age of four, five, six. At the age of seven, eight, nine, to a starting to get into a high level. So I guess what I'm - diverging again.

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It's going to depend on - you can't just say context going to occur and it needs to occur, you know, five hours a week. 1

I probably should just define the question a bit. Do the contact schedules that you see - are they consistent with the attachment needs of children, in your experience?---I would say the department pays quite reasonable heed to the level of, if I might call it distress, in terms of what the children are experiencing and how that's going to interpret into current case plan in terms of contact. So I've generally found the department have been quite reasonable. 10
So if contact is good and it's supporting the child's concept of themselves and it's a benefit to the child, on the whole I've generally been confident that the department have made quite reasonable decisions.

Okay. I've just probably got one final thing to put to you, this scenario. What we see and what our parents report back to us is when they go along to their contact visits, the child - and it can be children over different age groups - arrive for contact in, you know, a heightened - - - ?---State of distress? 20

State, yes?---Yes.

And it can take some time to just stabilise the child to allow, you know, effective engagement with the parent and for an enjoyable time to be had?---Yes.

But then contact is over in that hour or that two hour and then - - - ?---Okay. So what we've then got - - -

Sorry; and then there's kind of an acting out and what we find is then observations are then made by various people and a negative inference drawn from that?---Yes. 30

What do you say to that?---I would say to that that what the department are doing then is they've - because by that stage you've got children in care, so there's already been a determination by the department that the parents are struggling in some manner, either they're unwilling or they're unable or a combination of both, for so many different reasons - - -

I understand that point, though. We have got no final orders at this stage - - -?---No, that's right. No final orders. 40

- - - so just normally - - -?---Okay. So then what we've got, we've got children who are potentially distressed from their experience of living in that family. They've got children who are distressed from the concept or the experience of being removed from the family and being placed with people that they don't know, as good as they may be. We've got parents who are perhaps struggling in

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terms of their ability to be able to parent, or even attend
contacts on a regular basis, and then we put those parents
and those children in a room and, trust me, they're God
awful rooms, and then we say to them, "Well, look, you
know, it's going to be supervised, but basically go for
it." Okay. Then you've got your CSO or you've got your
CSSO, child safety support officer, they might not
necessarily be, you know, furiously writing notes down
there, but they will be catalogued. They will then go back
to their computer and they will say all the stuff that
didn't happen and sometimes all the good stuff that did
happen and that goes on for several weeks and then we end
up - well, isn't there any surprise that we end up with the
determination by a CSO or a team leader saying, "Contact
has been crap," you know, "we're going to limit contact to
one hour a week or one hour a fortnight." What we need
is - - -

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If I could just stop you there because you've identified
that as a problem. What do you say or what would you
propose if we're going to make some changes in this area
that would need to occur?---The parents, if they're
struggling, they need to be able to be mentored. They need
to have people around them, perhaps that they trust. They
need to know that these are examples of, "This is how you
engage with a one-year-old or a two-year-old or
three-year-old," so developmentally appropriate. On top of
that, again, these children are the children - aren't
necessarily just your standard children in that respect
that have - these are children that are demonstrating
examples of disregulation, sometimes low self-esteem,
they're carrying memories of maybe what mum or dad did or
didn't do. You need to be able to put the parents in a -
so what I'm saying is these kids don't just need adequate
or threshold parenting. They need exceptional parenting.
So the concept of being able to then place parents who
don't have perhaps the best history of being able to care
for children in with those children, I mean, it's
irresponsible. So, therefore, we need to be able to have
therapeutic contacts so - certainly the focus of the
contact is for the child, their needs and the development
requirements at that point in time are taken into account.
There needs to have been a little bit of work at least done
with the parent as well so that by the time you put the
children and the parents back together again, there's a
supportive network or an environment where these - they can
come together as a family again. So this is really around
family therapy and an understanding of family systems
therapy.

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I think that concludes my - no further questions.

COMMISSIONER: Mr Capper?

MR CAPPER: Thank you. We have no questions. The matter
has been dealt with through previous questions.

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06112012 19/JJT(BRIS) (Carmody CMR)

COMMISSIONER: Thank you. Mr Haddrick?

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MR HADDRICK: Yes. If that's a convenient time, can I submit that the commission should adjourn until 10 o'clock tomorrow morning when Dr Stephen Stathis and Dr Jan Connors will be the witnesses and I give an undertaken on behalf of the commission to other parties that we'll recall Mr Thomson to give further evidence at a later date.

COMMISSIONER: All right. Well, we'll adjourn until 10 o'clock tomorrow morning. Would you liaise with Mr Hanger in relation to the documents that he has asked for.

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MR HADDRICK: Certainly.

COMMISSIONER: Thank you. Thank you, Mr Thompson, for your evidence.

WITNESS WITHDREW

THE COMMISSION ADJOURNED AT 1.08 PM
UNTIL WEDNESDAY, 7 NOVEMBER 2012

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