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TRANSCRIPT OF PROCEEDINGS

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 17/01/2013

Continued from 16/01/2013

..DAY 39

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.

COMMISSIONER: Thank you. Good morning everyone.

DUFFY, SHANE ANDREW:

COMMISSIONER: Mr Haddrick?

MR HADDRICK: Good morning, commissioner.

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COMMISSIONER: Mr Duffy, good morning?---Good morning, commissioner.

MR HADDRICK: We'll continue with the evidence of Mr Duffy today.

Mr Duffy, yesterday before we adjourned for the end of the day I was asking you some questions about what I described as organisation X which is ATSIILS' proposal that a new entity or a new service provider, so to speak, be established to provide what might be described as secondary services and some tertiary services that bundle around the statutory framework of child protection. Can I get you to tell the commission with as much particularity as possible what the nature of those services is? I asked you this question yesterday and I just didn't think we had an opportunity to zero in on the precise nature of those individual types of services or bundles of services that are provided to children or families that come in contact with the child protection system?---Thank you. Just in response to that, the first establishment of the team within organisation X will be the universal intervention team so that's really around community development and community capacity-building approach so that would consist of community legal education and that's about entity X being able to go out and provide community legal education, initial information and advice primarily, I suppose, if I can use it that way, to people that may be on the cusp of entering into a secondary system. So it's about community legal education. It's about giving the information first and foremost, providing people with the knowledge to guide their way through the maze, but it also would include, I would suggest, the ideology of trying to map the services so being proactive and solution based and being able to refer - after giving initial advice from that universal intervention team to be able to refer them to relevant service providers who may be able to deal with the challenges in their life. It may be around drug and alcohol abuse. It may be about mental health issues. It may be housing, education, employment and training, those other social indicators that bring people into the system.

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Are they the actual service providers or the people who make contact in a range for service providers to provide

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that service?---It would be the employees or organisation X that will be working with the families or the relevant people in this case - - - 1

To open a variety of doors?---Yes, absolutely, to be able to provide referral pathways that are seamless externally for what could be potential clients. The second part of organisation X as a structure is the early intervention team and really that's about being able to get in. There's structures in place, at this point in the time the Aboriginal and Torres Strait Islander family support services who work alongside mainstream services that fulfil this requirement. That would remain the same, and the third structure within the organisation is obviously the legal side and that's the statutory intervention team. Might I say that within the organisation it is the external - - - 10

Sorry, can I just pause you there? You say there would be a separate function or a separate activity, the statute intervention team?---Correct.

Can I just tease out what you mean by that?---The statutory is providing the legal response to the respondents, the parents, in relation to a child-protection matter before the court so that's a legal support. 20

Services?---The advocacy, yes, supporting the individual.

Okay. That particular function or that particular service - does that cut across any of the other players that currently exist?---Internally within this proposed organisation?

No, no, no, currently in Queensland, so other entities that provide that particular service that you're proposing? ---Well, look, not having the full knowledge, as I stated yesterday, I can talk about the governance and corporate structure of our entity and obviously a proposed one. I would suggest there are services across there but I'd also expect that they'd work in tandem to meet the collective need of anyone that's presenting themselves before a court and/or child-protection system. 30

Just playing devil's advocate, the next witness coming after you represents an organisation called QIFVLS?---Yes.

Are you familiar with the organisation called QIFVLS? ---Yes, we have a memorandum of understanding with QIFVLS and work quite well with them. 40

Okay. The entity that you're proposing that should be established, entity X - in doing the statutory intervention function or having a statutory intervention team, would that be covering some, if not all, of the territory or activities or functions that QIFVLS currently provides for

its client base in the north of the state?---I think it complements QIFVLS. Obviously QIFVLS hasn't got the capacity to meet demand, nor has the Aboriginal and Torres Strait Islander Legal Service, hence the opportunity - using your example, the memorandum of understanding of how we deal with clients when they first present, their initial information and advice and, just as importantly, they would refer to the relevant organisation or organisations to meet the - not only the social but the legal need. I think it's important within the - so it is about working in partnership. I just want to go back and talk about the external from the organisation. That's really about having a seamless referral pathway for the parents in relation to organisation X and that in family between the three - between the three teams previously mentioned that there's the information barriers that would be in place within the organisation to ensure that information was confidential should there be a conflict that arises throughout any particular matter.

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Now, one of the questions I was going to ask you from the outset you and I were discussing before the commissioner arrived in the room. Just so the transcript properly reflects the nature of your appearance here yesterday and today, you appear here, in effect, in answering a summons to appear?---That's correct.

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And you have had discussions with officers of the commissioner that the nature of the evidence that you're giving predominantly centres around the corporate functions of ATSILS or sort of its strategic objectives and perhaps policy objectives. So you have spoken to officers of the commission prior to appearing and indicated that if there were legal questions, they were questions probably best left to other officers of your organisation. Is that the nature of your appearance here yesterday and today? ---That's correct. When I was initially contacted, I was asked to appear before the commission and to give a witness statement and my comments were we've got a statement. It was our original submission. Since that time we were requested by the commission to provide further information about our organisation. The question I raised was, "What would you need me to do?" It was based around governance.

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In answering those questions of the commission, that's the letter of 21 December last year under your hand?---Yes.

Which is in response to a letter you received from the commission outlining matters we would like information on? ---Yes, that's right.

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I just need to gauge from you - you have proposed organisation X. You have outlined the sorts of services that it would provide. I just want to press you a little bit more on the services. As you told the commission yesterday, particularly in response to Ms Stewart's

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questions, ATSILS is first and foremost a legal service provider to the indigenous community of Queensland, isn't it?---Well, that's the vast majority of the service delivery component, yes.

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I'm not saying this pejoratively, but your organisation doesn't have experience currently or in the past in the provision of a much wider set of social services as opposed to legal services, does it?---No, since 1972 we've delivered a criminal law service. It wasn't until July 2005 that we extended ourselves through the federal government's tendering process to family law, prison and through care and law reform and policy development and death-in-custody monitoring within the organisation.

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So the services you're proposing that organisation X undertakes is a much wider set of services which might be called human services or social services, if I'm looking for a generic name for them, as opposed to legal services to the indigenous community?---No, what I'm endeavouring to put across is that the organisation will do child protection services but within their strategic direction they take a proactive approach, looking at, I suppose, access to justice, where access to justice principles are working with people so that they can identify if they have a legal need at the very earliest point rather than going into the secondary stage and entering into a court or a justice system, the idea being the core focus will be the child protection function under those three teams but there would be a community engagement role built in to the universal intervention team to engage locally on the ground irrespective of where we are geographically either in a community meeting and/or individually to be able to give basic information and advise them. So I look at that as an access to justice principle that the organisation undertakes.

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If I understand you correctly, you've just told us that these additional services would be approached from an access to justice and that they are - there's an integral link between those services and the legal services that are most likely to either be before or after those services. That leads me to the logical question, and that is what relationship do you see between ATSI and organisation X? If those services are interlinked, if there's a commonality between the social services provided in the child protection space for ATSI kids and the legal services provided for those kids and their parents, what is the role that you see ATSI having in terms of the crossover involved with organisation X?---If I may give a demonstrated case example of where we worked with recognised entities, et cetera, in relation to community legal education. We went on a whole round of where the most - the largest over-representation rates are of our kids in child protection cross Queensland and we went out and we spoke to the community, individuals, recognised entities and talked about the child protection system and the services they deliver. So that really formed the basis for a lot of information that sits within our submission to the commission. We then recently ran a community legal education session in Toowoomba with the recognised entity. So not only did Aboriginal and Torres Strait Islander people turn up but non Aboriginal and Torres Strait Islander people turned up as well. So it was a community legal education session to understand your rights and your roles and responsibilities if you should come into the child protection system. We had foster carers, we had kinship carers, we had service deliverers, we had universities, and I think that part of community legal education was a very fine example of how the Aboriginal and Torres Strait Islander Legal Service worked in partnership

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with a service delivery arm of child protection to provide well needed, well informed information to those people that were in the system. 1

If there is a connection between those social services and the legal services and because everything should be approached from an access to justice perspective - I'm not saying there's anything wrong with that, I'm just understanding the framework in which the services are provided, do you see ATSILS having potential growth in its role and functions in providing the legal services associated with organisation X's activities?---From the advocacy side - and I will come to answer that question, if I may. The advocacy side is a designated position, which is William Hayward's position, which is wholly - as a law reform policy officer he's wholly focused on child protection and developing the internal capacity of the Aboriginal and Torres Strait Islander Legal Service, but also the external capacity of people to understand the child protection system, not only the service providers but also for family and individuals. 10

Okay, let me present it this way. Say, for instance, organisation X got a contract for 200 million, for argument's sake, from the State of Queensland to deliver services X, Y and Z, and service Z was legal services. Do you see organisation X - sorry for using letters for all this - organisation X entering into a contract with ATSILS to deliver that portion of the service mix, that is, the legal services?---No, under our contract obligations with the Commonwealth we can't enter into any contract with anyone, not as part of the tendering process. So even if we try and get contractors to come in as consultants we have to get prior approval from the Commonwealth. The organisation isn't about being contracted to provide any services other than what we're funded for by the federal attorney-general's department. 20 30

But wouldn't it be more efficient for ATSILS, an already existing organisation of at least 40 years standing, that has expertise and qualified personnel and has gone through various manifestations of periods of growth, to conduct those particular activities that organisation X is sort of supervising because it, ATSILS, is the better provider of those particular services? Why not use the infrastructure that's already there?---Well, I question what the word "better" means, with no disrespect. What is better? We're very clearly governed under the Corporations Act and our constitution which determines the way we deliver our services. I don't see the organisation (indistinct) using your example, your proposal, as being the right mechanism. I really - because we're involved in three types of law reform policy (indistinct) et cetera. 40

I suppose - - -?---It would be moving us away. I believe there should be time and space and an entity itself. If it does involve legal, if it has to have legal in it, then the entity should be itself, and if that is the case, then one would suspect if the government or commission recommended that it go to a tender that the tender terms of reference would include - our organisation, I can tell you, wouldn't touch it with a 10-foot pole.

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But as I understand it, organisation X would deliver social services and those social services could be counselling services. Now, I'm not - - -?---(indistinct).

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Counselling services, other forms of therapeutic services which are defined as secondary services, and could provide legal services of some nature and variety in terms of child protection matters either for the parents or representing the subject children of the proceedings. Doesn't it make sense that if - well, there's really one question in between that question, and that is do you see organisation X's staff performing all these functions, so it has a multidisciplinary set of staff, or do you see organisation X delegating or contracting or whatever other entities who are better deliverers of those particular services?---I would suspect that - my thoughts in all of this would be that the organisation delivers all of those services to be able to control (indistinct) component and to be able to support its strategy, its policy development, et cetera, and that if they were talking about external - using your example, they would develop some terms of reference or a memorandum of understanding with external stakeholders to meet the needs, the idea being is Aboriginal organisations historically - and I'll take this, if I may, to a more generic process. Aboriginal organisations in the past - for instance, I worked at a youth shelter with street kids for a number of years, so we were under the supported accommodation assistance program, SAAP. What we tried to do, unbeknown to myself as a young fellow back then moving into that type of service delivery, we tried to do everything for the individual. We tried to do their employment and training needs, their emotional and social wellbeing, we tried to be the be all and end all for that individual.

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And that didn't work, did it?---No, it won't, because what it actually does - and I'd love to be able to draw a picture but I can't, I don't have a whiteboard, but the idea being is you can tell the strength of any community by the way they work together, irrespective of whether you're Aboriginal or Torres Strait Islander or non-indigenous. What really - how do I put it? What's really important to me is for organisations to be good at what you do, but what's even more significant and vital to the client, who is the common denominator for all of us, is to have strong and robust understandings with service providers whose expertise and funding dictates what they deliver. So if

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you came to a mental health issue how did I, a youth shelter, develop a memorandum of understanding on a referral pathway, so try to sit down as an ill-informed, inexperienced, not qualified person and counsel people based on my life experience which would be totally different to that individual? What we did was refer those individuals across to those mental health services and let the experts deal with them.

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But doesn't that underscore the basis of my earlier question? Organisation X could best achieve its goals by then subcontracting, or however it's set up, particular specialist functions to individual entities. So, for instance, there might be an Aboriginal health service that has three general practitioners on the payroll or whatever and they can do that particular area and that's the best solution for that particular locality. Wouldn't that be the best model for organisation X to use its dollars wisely?---I think it's a model. I don't know about the best, but it's a model.

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What would be a better model then?---Well, look, the tender
- and I'll keep talking about this tender, Commissioner. 1
I'm sorry, it's just in my head.

COMMISSIONER: Yes. No, I understand?---This tender, if
it came out, would determine the boundaries and the terms
of reference for how long it would take. That would work
an on fee for service model.

Yes?---What it would entail in that case, using your
example, is if there were four or five other service
providers that provided different services, they would join 10
in as a consortia or a consortium as the lead person for a
tender. They wouldn't be at leave to take the money and
manage the finances and run the core business around child
protection, but nevertheless it would clearly determine
within the tender who you are and what your role and
responsibility would be and how on a fee for service basis,
if we referred a client to you, you would meet their needs
and what the financial arrangement would be to pay for
those services.

Could I just interrupt there, though? Those services that
we're talking about: they're already provided by that 20
agency and that agency might be funded by the federal
government?---Mm.

Why would we as a state agency pay the federal agency
for something that they're already funded to do?
---Commissioner, I'm only going off what was posed to me,
and that's why I said it is a model. The state and
commonwealth divide is well and truly rife.

Yes?---Here's an example where 100 per cent - all bar
600,000 - funded from federal government, and yet we do 30
99 per cent state-based crime.

Yes?---So there's always those divides. And, you know, the
difference between a state and territory government and the
federal government, irrespective of what political
persuasion you come from, there's always going to be an
issue because politics will determine over practical - and
I won't say commonsense because it's different for us - but
practical solution-based outcome for the client.

Well, I'd see an advantage - maybe it's real, maybe it's
just imagined - for the indigenous-controlled model over 40
a non-indigenous controlled agency because they get funding
from federal and state. And if one funding level is
deficient then the other one can just make up the
shortfall. You can't do that in a non-indigenous agency
because child protection is funded by the state and when
the money runs out for that it runs out. You can't pinch
from Peter to pay Paul. So that's an advantage that
indigenous corporations have over non-indigenous. The

other advantage is obviously they have a cultural business model that provides service in a culturally responsive way to indigenous consumers or clients of their services, and indigenous clients are more likely to go there because they have a cultural connection. Not only that, under the umbrella because of the funding arrangements they can go there to get their teeth fixed as well as to sort out some child protection problems or family law problems. And if they get their teeth fixed they've got a better chance of getting a job than if they turn up for a job application with no front teeth?---Mm.

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So there are those advantages and they have a trickle-down effect?---Mm.

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But what I - and you've also got more open access to the remote communities that the public system has a fly in fly out relationship with because you and your mob are embedded in the community?---That's our family mob.

Yes?---They are our mob, absolutely.

Yes. So see lots of advantages of that. See some past history of alleged mismanagement, financial unaccountability, miscalculations?---Mm.

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Okay, so that's a problem, and it's not only a problem real, but perceived?---Yes.

And dealing with the perception is as problematic as dealing with the reality because perception is reality here. But what I wanted to get to was this: just taking up Mr Haddrick's example, the boarding school option. You see there's almost contradictory media reports about Kormilda College in the Northern Territory closing for lack of funding and how that's a travesty - I'm a Territorian; I remember Kormilda College from way back - on the other hand, Djarragun in Cairns and the former principal being charged with fraud over funding phantom students. Now, I went to Djarragun, seemed to me to be very well run - well, had good facilities, providing a good service. But the department doesn't regard Djarragun as a service provider, possibly for the problems that existed in the past. Now it's got a new headmaster but it does use Djarragun to provide boarding services on an individual case-by-case fee basis, and the fees - lucky for the department - are met by (indistinct) so it's a cost-neutral thing for them. So from a cost point of view it's a practical way to do business if you're in the child protection business. So how would you do it? How do you envisage it being done? Would you provide the Djarragun service through the agency and would you be the service provider and it be the service; or would you contract out boarding services, you'd be the locus of control, have the service agreement with the department, and say, "Yes, we'll provide the boarding school service for you through Djarragun"?---Mm.

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Is that how you'd do it or - - - ?---Commissioner, for me entering any relationship isn't just for the fact of entering into it, there's got to be a mutual benefit and gain to either party. If I can talk about the Aboriginal and Torres Strait Islander Legal Service, we refuse to work with anyone that doesn't operate with the values of honour and integrity. So if that organisation isn't an organisation that's in the upper echelons of respect within community in the way that it delivers services, we wouldn't deal with them. But that example around schooling, without getting into the political side, is about private, public and independent schools.

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Yes?---The Murray School at Acacia Ridge is an independent school - just trying to use your Djarragun example - is a school whose vast majority of students are children on child protection orders or youth justice services, yet they don't receive teacher funding. The blackfellas tend to do what they need to do for their family, do ask for money, but because of the discussion around private, public and independent schools - not only in Queensland but other state and territories and nationally - they're continuing to provide services above and beyond education per se.

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How's it funded?---Well, I would suspect there'd be some dollars from around the youth justice orders and there should be dollars available for the young ones that are on child protection orders. But the school - - -

Is that the only one - only school that does that?
---Dr Chris Sarra has the Stronger Smarter - - -

In Cherbourg?--- - - - institution in Cherbourg and he's got his methodology and theology about how he goes and getting the outcomes for our students on the ground. And independent schools are the same, they employ where possible Aboriginal and Torres Strait Islander teachers because our children feel far more comfortable with them, but there is a blend of non-indigenous people in there as well because (1) teachers, and so the innate stuff I talked about, that spirit stuff that's already in you, and that unspoken where you're not just going by the verbal, you're actually going by the energy and not just the verbal and the body language. But there's got to be a blend of black and white people surrounding these kids.

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Well, at some point, you see, the culture is part of the wider pluralist society and so while you need to be culturally mindful in respect of things that require it, you also have to make sure that the cultural values and the wider social values are shared and that there's a consensus between them?---Correct.

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And that they don't run off in different directions. That applies across all our multi cultures. So while there's an advantage in having separate indigenous schools that are culturally competent and capable, the idea is to produce children from those schools, that is, from all schools, who are capable adults and, from my point of view more importantly, likely to be responsible parents so that you cut the circuit that we currently have where you have passive intergenerational child-protection concerns passed on through the generations because what we did for the child through out child-protection system was not to spit them out of the system fully functional, socialised, adequate, responsible adults and parents. So that's the aim. Surely that must be the ultimate aim of the child-protection system?---Absolutely, and it should go that level lower and - I'm thinking about the international rules so Convention on the Rights of the Child, but a child has a basic human right as - has an access to culture and, using those examples that you have, commissioner, I fully agree. There's one step below and that child must have access to culture, whether it be from a direct service delivery provider or if a child's on a child-protection order within a case plan, people need to understand their roles and responsibilities, the family, the department in particular or any relevant people in the child's life. What needs to take place is the cultural retention of that young person because if you remove a child away from a community, you move - and if they're originally from that community, you move them away from their spiritual connection. You're moving away from the very existence of the blood that flows through their veins and moves through their feet by being on country.

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We recognise culture as a wellbeing need - - -?---Yes.

- - - that needs to be met by the child-protection system, but at the same time, in meeting that cultural need, you have got to be careful not to put an obstacle for other social needs so that cultural - meeting cultural needs can't actually disadvantage you overall in respect of all the other social requirements. So that would be why you would look at a culturally indigenous determination and provider of child-protection services to indigenous; not to keep them separated from the mainstream but to actually enhance their ability to move in and out of the two cultures without any overall disadvantage. All right. The other thing I wanted to ask you was: if model X had all these services that was providing or managing or subcontracting, whatever it worked out at, depending on the tender, what would model X itself, that system - what would its measurable performance indicators be? How would I know that indigenous child protection was better off for it being there than if it wasn't?---Commissioner, the first indicator would be the reduction, the reduction of the number of our children that are entering further into the system, and for those that are in the system reduction in

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staying in on long-term orders and coming out. So they're the benefits. 1

So fewer would come in and more would go out?---Correct, and why more would come out is because around - particularly where we make reference in our submissions around the cultural support plans and we're building - we're building the spirit of an individual that's involved in the child-protection system by ensuring that they have access to their cultural needs. People always say - how can I put this? For anyone in this room - in this court, commissioner, may I say - reflect on your staff is there may be people in this room that were removed or stolen that are non-indigenous and Aboriginal and Torres Strait Islander people. Before I go to that, I acknowledge that I don't mean to mimic people on that, but the ideals and the values of the past is to assimilate, to make a different shades of white because black was no good. The thing for us - and we find it every day where people come out and they self-identify as being Aboriginal or Torres Strait Islander. I actually rejoice the day that our people find the strength to attach such a beautiful positive thing to the aboriginal culture rather than the stereotype which the media portrays constantly on a day-to-day basis and it was really that that child irrespective of age, if culture's not kept in, will continue to wonder and think about, "Why do I feel different? Why is it that I do what I do? Why is it that I feel different?" and when they find out about their aboriginality, all the blocks start clicking in and then they start going to organisations like Link-Up, et cetera, and start connecting back to country, connecting back to family. Our people will always identify. A lot of our - there's a portion of our people that don't want to identify because they've been caught in the entrapment of social dysfunction, drugs and alcohol because of the pictures the media portrays when in fact the vast majority of people don't drink. They don't participate in drugs. They don't bash their women. They don't bash their men. They live wholesome lives. So really what I'm trying to get at is our people need to know about their culture, where they come from, where they sit within a system and that's - our submissions I think make a very valid case of the importance of cultural immersion on the individual. Even if you come from Lockhart River and you're removed to Ipswich, there's got to be some mechanism within the cultural support plans which ensures that child remains in contact with them all. 10 20 30

How do you resolve the tension between that and the importance of family and community and the trend of children in care to return to a community even though they may have been separated without contact for many years with permanency planning?---I don't know if I've really got a clear answer for that, commissioner, or a response. 40

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There's a trend. There has been a trend since attachment theory became popular in the seventies to say, "Well, to recognise that the failure to bond, the failure to thrive in a relationship, needs to be identified early and the relationship ceased if you want to avoid long-term psychological damage to a child," and the experts will say you need to identify that child by three, otherwise there will be not only emotional damage but there will be developmental delays as well as a result and that the solution is not for foster care, whether it's kinship or not, because that's by definition a temporary solution. What's needed is a permanent solution so that the child instead of being emotionally damaged through non-attachment at home gets the opportunity at the earliest possible time to have emotional and developmental needs met by attaching to a new parent, a non-natural but new family that can provide safety, security and stability. Is there a cultural problem with that or cultural tension with that? ---Look, I think the first - the main point, commissioner, is the safety and wellbeing of the child is paramount and culture should take a second part in that in any decision to remove a child. If I could use the words of Julie Labelle who - if you ever saw the Bringing Them Home report, there's a DVD that the Australian Human Commission made where she said, "Hey, I was taken and, you know, I was lucky enough to have a good life, a good education, plenty of food in my belly and my parents loved me, but, no, it wasn't all right that I didn't get to meet my mother and understand my aboriginality." So I hope I've given you a response with that.

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That's consistent with the law as it currently stands?
---Yes.

All right, thank you.

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MR HADDRICK: Can I just pick up on one of the questions the commissioner asked earlier and invited you to respond to? Can I just show you four documents, please?

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Now, you were asked by the Commissioner - my words, not his 1
- about effective safeguards for the spending of money or
the management of procedures. Now, yesterday you mentioned
black politics and I asked you some questions about that.
This morning I Googled Aboriginal Legal Service and the
word "corruption". Now, I - - - ?---I clarified this with
counsel - - -

Yes, hang on - - - ?---(indistinct).

I'll walk through each of the documents and invite you to 10
respond to them - - - ?---Okay.

- - - because you may see some good or some bad in these
particular reports. I've provided to you some excerpts
from - extracts from the Townsville Bulletin, four articles
that were published in the last four and a half years?---
Mm.

The first article is entitled, "Aboriginal legal family
'Corrupt'," and it's dated 26 June 2008 and it's an article
written by a former journalist there by the name of Malcolm
Weatherup?---Mm'hm. 20

The next three articles are all written by a journalist by
the name of Kathleen Skene; two of them are on 7 May 2011
and one's on 11 May 2011. The three titles of the articles
are, "What the family says: record plain for all to see,"
the next one says, "Family first," and the third one says,
"Charity houses: it's board, family"?---Mm.

Now, I'm not inviting you to - and I really don't care
about the accuracy or otherwise of these reports because
I'm not asking you to respond to the accuracy of them or
indeed what are the motivations by the various parties to
agitate these issues in the public domain. But do you 30
accept as a broad proposition that in the mainstream media
Aboriginal organisations quite often get a bad rap and also
are easy targets for allegations of impropriety?---Yes
(indistinct).

And is that one of the features or one of the
manifestations of what you called yesterday black
politics?---Well, it is, and that's about family
domination. Just before I go any further I want to say
that non-indigenous organisations are involved in this type
of process every day and it's not public news because it's 40
not red, black and yellow. But yes, it is about family
domination. I'm well and truly in tune with all of these
articles because we've had to deal with them because people
thought it was our organisation. But it is around black
politics and it is, I suppose, around those other freedom-
fighters from many years ago. I suppose the personnel that
are involved in running organisations. Sorry business or
death has taken place and people obviously have moved on.
Where we're at as - - -

Just before you go on, just out of fairness I should identify for transcript purposes and get you to confirm that the organisations that are spoken of in those four reports are not your organisations, it's not ATSILS? ---That's true.

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That's correct?---That's right, it's only former.

It's what, sorry?---It was a former organisation that delivered services to North Queensland. They were contracted by the Federal Attorney and they were re-tendered and we secured the services from Mackay upwards in 2008.

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So around about the time of these first articles the organisation that is suggested to contain improprieties or corruption, if you use the exact word from the article, that lost a commonwealth tender?---Yes.

And your organisation secured the tender to provide those services in that geographical area?---Correct.

Okay. But asking you more generally, how do we safeguard organisation X - or indeed whatever entities QATSICPP proposed yesterday - from the almost inevitability of being embroiled at some stage in allegations of mismanagement or impropriety?---Well, if a tender - if organisation X was to be put out for tender I would suggest the Queensland government would have (indistinct) criminal history disclosure, particularly the types of services they're delivering. So that's the external purchasing arrangement. Internally there's mechanisms that are involved. I know with us under Corporations Act within the tender process we're to disclose - or being - I'll say legal activities - anything that seems criminal, et cetera, which would then question your honesty and integrity as a director of a company. That was put through to the commonwealth as part of the tender terms of reference. It's also within our tender making sure that there's policies in place to ensure that if a director was charged with - let's say a criminal offence - that it's disclosed to the board and the appropriate action is taken place to protect not only the organisation's reputation, but to protect the services that are being provided.

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Okay. I asked this question of Ms Natalie Lewis yesterday, so out of fairness I should ask this line of questioning of yourself: I took her to a number of provisions in the Crime and Misconduct Act and I identified to her what types of organisations currently - as the act is currently on the statute books - are able to be investigated by the CMC and what constitutes official misconduct as an offence under the CMC Act?---Mm.

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Would you have any problem with organisation X and any of its subsidiary bodies, given that they are bodies spending

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taxpayers' dollars, falling within the ambit of a unit of public administration; that is an entity that one can commit the crime of official misconduct within? Would you have any problem with official misconduct expanding to the operations of organisation X and its subsidiaries?---No. Like yourself, I agree it's public dollars, you have to be fully accountable to the public purse. I think that should be par for the course with any contract where people are purchasing services to make sure that you've got the relevant financial policies and procedures and managing potential risk within an organisation. That's just part of your core business plan. So I fully agree that that should be a part of whatever comes for any funding that is given that relates to public money. 1 10

And what an expansion of what is meant by official misconduct go some way towards responding to these types of allegations which are contained in those media reports that I drew your attention to a few moments ago?---That would be a matter of the state to determine what official misconduct is within whatever piece of legislation it is. I won't go too deep with this other than to say that people did try for a long, long time to contact organisations such as the Office of the Register of - I think it was Aboriginal Corporations and now it's called indigenous because that's the mainstream word - indigenous corporations and raise a whole lot of issues with the relevant people that were - these people incorporate under and nothing was ever done - - - 20

But what you just said then, people tried for a long, long time to make contact - - -?---Yes.

And I assume make complaints that - - -?---Exactly.

- - - instigate some sort of an investigation?---Yes. 30

Aren't you implicitly acknowledging that these issues are, at least in some parts of Aboriginal organisations, endemic?---I wouldn't say their endemic, I'd say they do exist from time to time and at a very minimal level within our organisation but they also exist in mainstream organisations as well.

Okay. Now, just as a final two topics to question you on: I invited yesterday Ms Lewis to comment upon both the strength of her model and by implication the weaknesses of your model. Out of fairness I do the same to you. I think you've told us what the strengths of your model are?---Mm. 40

But could you identify what the witnesses are of her model as you see it?---Look, thank you. And may I, before I start, just acknowledge the child protection Peak because we have a really good working relationship, albeit robust (indistinct) we agree on far more than we disagree on. I

think I alluded - so thank you for the opportunity to that
- alluded to yesterday where you've got 30 or so services
who would have 30 or so governing committees, I'd suggest
30 or so policies and procedures if at all policies and
procedures exist within those entities, so you've got 30
or so different decision making processes basically on the
same core body of work. My biggest challenge with the
proposed model from the Peak is that the policy of best
practice arm cannot influence the day-to-day operation of
those entities by not being a part of it. So as with
Ms Lewis, with Natalie being the CEO, how does she
influence the boards of each of those respective entities
and then in fact influence how policy and best practice is
implemented on a day-to-day basis within the operations of
the organisation.

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Do you accept as a broad proposition that her model, a decentralised sort of model, has the potential to create spaces between the different services where people fall through the cracks?---I do, and I'd say you need a consistent approach. One of the strengths - if I may, because I'm positive, the half_full cup.

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Yes?---You may draw me back, if it please. One of the strengths of the model that we've proposed is mostly everyone does the same thing the same way, but you do take into account your local diversity, your local community dynamics, family groups, the way you try and meet service delivery demand, the types of services on the ground after you give initial advice and the people you're able to refer across to other organisations.

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As I understand it, she identifies that as one of the strengths of her model. How does your model incorporate local diversity and particular nuances of the way different parts of the Aboriginal and Torres Strait Islander community - the different cultural practices?---Look, the way we deliver services is we employ local people from the community, Aboriginal and/or Torres Strait Islander people and non-indigenous people too that have grown up around Aboriginal and Torres Strait Islander people. Cairns is maybe one example. In the Torres Strait, for example, the way we run our services on Thursday Island and through Bamaga and out through the islands to the borders of Papua is we actively try and recruit Aboriginal and Torres Strait Islander people in our court support officer or field officer role. They're identified positions. We aim to develop, professionally develop, our staff within the organisation, particularly court officers. We've got a range of Aboriginal managers that manage our offices in Bundaberg, Mackay, Aboriginal barristers, Aboriginal solicitors, that manage the legal operations of the organisation. In Thursday Island, for instance, the regional manager is a Torres Strait Islander. The family civil lawyer is Aboriginal woman from Mount Isa who has family relations in the Torres Strait. This isn't just an off-chance. We headhunt people as well. The non-indigenous man that is working up there as a criminal lawyer actually grew up in Papua and through the Torres Strait Islands and speaks fluent Creole. So that's the type of people that over time that we try and get into an organisation to take into account those cultural considerations or the cultural protocol. On the mainland, as I said before, we employ local people. That's a significant part. Where we engage with community to keep up with changing trends, et cetera, is to be able to go - it's our relationship. It's myself, it's people like Will, that go out and deliver community legal education. We were contracted for six and a half years to provide client satisfaction surveys. Under our last tender the Commonwealth said that that wasn't a reporting mechanism that they required. Nevertheless, we keep our staff

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getting client satisfaction surveys, because we feel it's an integral part of the business to measure how we're going. Obviously if I get a - Johnny comes out of court and he's got a great result, he's going to give us a great client satisfaction survey, but what we're about is ensuring that the satisfaction surveys, whether a good response or bad, are taken into account and utilised then in the development of our service delivery to the community. So we do, we do engage at the local level with community justice groups. I sit on a state wide - well, up until the coalition came into power, I sat on the state wide community justice group membership who talked about the justice needs within the community. One of our board of directors, which was a strategic move, was the CEO of the Yarrabah Shire Council and is now the CEO of Mapoon, so he brings local government authority and he brings a local government message through him and the brothers and sisters that are mayors and CEOs of the shire councils across the state into calculation and consideration of the way we deliver our services. So there's the councils, there's the community justice groups, and we also spend a lot of time out on country, not only delivering services to the courts but getting out on the ground and seeking feedback from individuals on a day-to-day basis. We have a client complaint mechanism and I can say our complaints are very few and far between. More often than not it's a misunderstanding of the court process which then again highlights our need to get into community to empower them with the information they need.

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If I could just hold you up there. So I'm to extrapolate from that answer that similarly as ATSILS has that sort of structure, organisation X, which would be similarly structured, would incorporate the same mechanisms or tools to be locally responsive to the community even though it's centrally administered?--Absolutely, and then there's another mechanism built into the constitution of the organisation where the board can convene specialist groups within community should an emerging issue or a hotspot or a fire start burning in a community. So within the constitution it gives leverage for us to be able to engage people to sit down and work with them to give the board strategic advice if they're not content with the operation or dealing with me as the chief executive of the organisation. So there's a variable range of mechanisms in place where we are able to not only communicate with but receive communication back on how we deliver our services.

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You've just told us about variances in staffing arrangements at different localities for your organisation, and by implication the way organisation X should be so composed. Now, can I also raise a topic with you as my final topic that I raised with Ms Lewis yesterday. That was the vexed question of hiring of black and white people by the organisation. By that I mean

should the organisation that's delivering services, a full gamut of services that bundle around the child protection domain, to ATSI families. Should that organisation be solely or predominantly staffed by people who are black?
---No.

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Why not?---Well, first of all, there's the gender equality that needs to be taken into account in that equation as well, man and woman, the cultural considerations that - man talking to woman about women's business and vice versa. No, I don't. In a multidisciplinary team there would be identified positions within the organisation. As an example, within the Aboriginal and Torres Strait Islander Legal Service our court support officers, they're the go-between between the lawyer and the client, and they're - I see those, with no disrespect to lawyers, they're a major integral part of the organisation in ensuring that what's being said has been understood and communicated to a level that the client is savvy with where they're at on that point in time. I also see that non-indigenous people play an integral part too, because it isn't about segregation and separation. What it's about is getting a multidisciplinary team. Hopefully that will have a good gender balance, depending on the area that's hit within organisation X. I would also suggest that for those non-indigenous people that - where we challenge around the professional qualifications is that the Aboriginal and Torres Strait Islander staff through an organisation X are able to develop a mentoring program to give them information and an understanding of the cultural considerations taken - that need to be taken into account in the day-to-day service delivery. I see it as essential that black and white meet the needs, because after all, child protection is everyone's business, it's not a colour thing, but in this case cultural considerations need to be taken into account.

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Okay, well, where the rubber hits the road, organisation X is seeking to employ a social worker. The two candidates - they both have a bachelor of social work; they both have five years' professional experience; they both have experience of working in Aboriginal communities. Which one gets employed, whereby one is black and one is white?
---Well, if you use a proper HR process and you're shortlisting on your written applications - because quite often there's a great divide between your written application and your face-to-face interview. Some people can get someone to write a good application which gets them in for an interview. It would come back to another mechanism you put in place, and that's looking at your referees and what they're saying. When I look at applications I go straight to the back before I even read anything. Who's the referees? Are they a person of standing, are they a person of honour and integrity and people that share some values of the organisation? Ours are care, share and respect.

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So from that I'm to understand that you would believe that there would be candidates out there who are white who are better suited to that particular job than candidates who are black?---Outside the identified position?

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Yes?---The best person for the job and my thing is - well, I won't use my analogy, but man or woman, you know, with opportunities and if you're over 100 staff, you've got to do separate reports for the federal government, but the thing to me is employ the person that's right for the job. I would look more favourably upon an Aboriginal and Torres Strait Islander person because that is what I'm about and I would suggest, as I said in yesterday's evidence and today's, that that's innate stuff, but it doesn't necessarily mean that I would employ that person as the best person for the job.

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So that innate stuff might otherwise be described as cultural competency?---Absolutely.

And that might give the applicant a slight competitive advantage in the process?---Mm'hm.

Yes or no, just for the transcript?---Well, I believe you'd weight your questions and your weighting would be - normally it's you're demonstrated ability or articulate or demonstrate the issues or contemporary issues with impact upon Aboriginal and Torres Strait Islander people. So it all depends how you weight it. I would weight it towards your professional academia and that would be less weighted but, nevertheless, I'd expect someone to be able to demonstrate - and I have interviewed aboriginal people. They can't clearly articulate that even though I know that they know it inside out because they've lived it and breathed it and experienced it. So the idea around an interview process is not just cut and dried like government does, blang, blang, blang. It's dig around, poke around a little bit, give them an opportunity, create a relaxing environment and let's see how people respond then.

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Okay. I have no further questions of the witness, Mr Commissioner, but I should tender those four documents that I showed Mr Duffy and I do so tender them perhaps as a bundle.

COMMISSIONER: The Townsville Bulletin articles will be admitted as a bundle and marked 147.

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ADMITTED AND MARKED: "EXHIBIT 147"

MR HADDRICK: No further questions, Mr Commissioner.

COMMISSIONER: Mr Hanger?

MR HANGER: I have no questions.

COMMISSIONER: Thank you. Ms Stewart? 1

MS STEWART: Just one question, commissioner.

Mr Duffy, can I just get you for the record to clarify your understanding of what "self-determination" means and what that means in the child-protection arena?---There's probably not one level when we talk about cultural competency or community control. Community control is about being able to self-determine how you deliver services on the ground. Self-determination, as I alluded to slightly yesterday, was about your connection to country, understanding family and community and kinship connections and responsibilities and using those as a platform to be able to make decisions in relation to a child-protection example or organisation X. The self-determination is - I don't want to go into alcohol management legislation as an example. Self-determination - you can determine your own future so if you don't own it, you won't participate in it. So if it's going to affect me, then shouldn't I be involved in those decisions which impact upon or have potential impact, good or bad, upon my life? 10

That's all, commissioner. 20

COMMISSIONER: Thank you.

MR CAPPER: I have no questions, thank you.

COMMISSIONER: Thank you, Mr Capper.

MR HADDRICK: Might this witness be excused, Mr Commissioner?

COMMISSIONER: Yes, thanks, Mr Haddrick. 30

MR HADDRICK: Thank you, commissioner.

COMMISSIONER: Mr Duffy, thanks very much for coming and spending two days in the witness box answering questions. I appreciate your submission and the evidence that you have given. I'm sure it will help?---Commissioner, may I thank you for the opportunity and I wish the commission the best in its endeavours to come up with a solution to the challenge.

Thanks very much?---Thank you very much. 40

(THE WITNESS WITHDREW)

COMMISSIONER: Yes, Mr Haddrick?

MR HADDRICK: The next witness, Mr Commissioner, is Ms Rebekah Bassano and I call her so.

BASSANO, REBEKAH CLAIRE sworn:

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ASSOCIATE: For recording purposes, please state your full name and your occupation?---Rebekah Claire Bassano, principal solicitor of the Queensland Indigenous Family Violence Legal Service.

Please be seated.

COMMISSIONER: Good morning, Ms Bassano. Thanks for coming. I appreciate it.

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MR HADDRICK: Ms Bassano, isn't it?---Mrs.

Mrs Bassano, okay. Can I get you to have a look at that document that the officer is showing you now? Do you recognise that document?---Yes, I do.

What is that document?---This is our submission that the Queensland Indigenous Family Violence Legal Service prepared to provide to the commission.

When was that provided to the commission?---Late last night and this morning as well.

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Okay. Who is the author of that document?---I am.

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

And are the opinions expressed in that document the opinions of either you or your organisation?---That's correct.

Okay. I tender that document, Mr Commissioner.

COMMISSIONER: The submission by the Queensland Indigenous Family Violence Legal Service will be exhibit 148, thank you.

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ADMITTED AND MARKED: "EXHIBIT 148"

MR HADDRICK: We will start from the beginning. Who are the Queensland Indigenous Family Violence Legal Service? ---If it's easier, we use the acronym QIFVLS.

QIFVLS, okay. That's what it's going to be called? ---QIFVLS is - it's a new indigenous organisation formed in late 2009. I think it was 10 December so we really started actively in January 2010. At that time there were three areas that came under the federally funded system which were Cairns which serviced the cape in Cape York, the gulf was serviced by Mount Isa and Townsville which serviced down to Ayr and out to Hughenden.

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What's your position in the organisation?---I'm the principal solicitor. I report directly to the CEO.

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So you're effectively 2IC in the organisation?---That's correct. 1

In charge?---Yes.

And you're a legal practitioner?---I am.

Of about 10 years' standing?---That's correct.

And do you, as the principal solicitor of the organisation, perform management functions or professional functions or both within the organisation?---Both. 10

Okay. Now, you identified three different services but you didn't say who they were in different localities. How did the organisation come about?---Okay. There was Tharpuntoo. I believe it was also known as Cape York Family Violence Prevention Legal Service. I'll say that we act for victims of domestic and family violence and sexual assault. That's how we're separate from ATSILS because we don't act for perpetrators at all.

Okay. Before I get to that point, is it a company limited by guarantee, an association incorporated?---We're ORIC. 20

Sorry?---We're governed by ORIC.

The Commonwealth legislation?---Yes.

So you provide reports that you're required to under that piece of Commonwealth legislation to the Commonwealth department annually?---Yes, I understand that to be the case.

Now, you were about to explain or did partly explain - how is your organisation separate to ATSILS?---Okay. We only act for victims of domestic and family violence and sexual assault so our clientele doesn't need a merit-base process either so we need to take instructions from our clients as to whether they've been victims of domestic, family violence or sexual assault. 30

So you're not an organisation that defends or assists in defending individuals who are accused of offences at all? ---That's correct.

You provide victim support?---Yes. 40

What other services do you provide?---Practical support and advocacy; for example, with our clients support officers what we have in place is they are able to assist our indigenous clients and able to take them to any health services that we see may be appropriate, any other counselling. We used to provide counselling but we've

found that was in conflict with our legal service so that
was renegotiated with the federal Attorney-General's
Department and then from there we have linkages with other
indigenous organisations that we can refer to for specific
- for practice support and advocacy and then you've got the
legal representation.

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How much funding do you receive from the Commonwealth?---I believe it's about 8.3 million.

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COMMISSIONER: Sorry, could I just interrupt? What about treatment of the perpetrator? Do you involve yourself in that, where the client wants to live under the same roof but doesn't want to do it at the risk of violence?---We will assist them with protection orders, peace and good behaviour type orders, the standard - - -

So you'd go to court, get an order?---Yes.

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Would you ask in your advocacy the judicial registrar or magistrate to include under the new legislation a direction to attend a treatment centre?---We certainly could do that if they were our instructions.

Have you ever done that?---No.

Why don't you get instructions to do that, do you think? ---We possibly haven't tried that.

Well, it seems to me - I mean, look, I'm a child protection inquirer, so as I understand it, family violence or exposure to it, even the existence of it in a household, creates child safety risks that are avoidable or at least can be minimised by focusing not on the event but on the effect on the child and also the likelihood of it being repeated. The way it's presented from being repeated and reduced, the future risk, is get the adults to attend, both - certainly the perpetrator but sometimes both, to attend courses that deal with anger management, understanding relationship issues, resolving them yourselves, cognitive approaches, things like that. So that would seem to me to be a useful thing on two fronts, yours, to your clientele, protect your clientele, and also protect children and preserve and strengthen families. So given that the magistrates and the judicial registrars have the power to do this why don't we ask them to exercise it?---I don't have a single answer for that regarding why our service hasn't done that in the past or since September, since it was - what, we're now four months in, five months into the legislation.

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The legislation is only new, but - - -?---Yes, and it will be a consideration, however our clients are in regional and remote communities and to attend a treatment centre is quite a substantial burden. We do have - - -

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There's your answer right there?---Sorry?

There's your answer right there. It's because the legislation thinks that there services out there that magistrates can order people to go to. The reality is, what the law doesn't know, is that those services are not

there, or if they are, they're inaccessible to the people who actually need them most. But if you did change that - - -?---Yes.

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And I know you act on instructions, but I also know instructions are elicited by lawyers from their clients if they're in the client's best interests?---Yes.

It might be worthwhile thinking in the future that, well, maybe we can achieve a couple of social benefits here in the one - - -?---Certainly. Our clientele closer - even though we're not funded to do Cairns, we've started to take clients in from Cairns and Yarrabah and we've had some young clients that have been in violent relationships. They were prepared to go to Yarrabah to deal with their alcohol management issues and have come back in a better place, but that's because they're in close proximity to where they are. If we've got our clientele - for example, one was in Weipa or Napranum and the partner went to Townsville to do alcohol treatment. That partner's come back, the relationship has gone back into the cycle of violence once again. So I guess it is a treatment and it's an option but it's not an option necessarily that's going to stop the violence.

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Well, it's like everything. I mean, you've got to get to the root cause, and the root cause of violence isn't necessarily alcohol?---Certainly not.

Or, you know - - -?---Jealousy.

- - - a bad temper or jealousy, it's the relationship. So you need to deal with in relation to that relationship, because different relationships with the same two people and others will have a different dynamic altogether and it may not be violent?---No.

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It's because they're in the relationship that - it's the relationship that's violent as well as obviously the individuals. The relationship might be toxic so you might need to deal with something with that?---Yes.

You can't deal with that if they're not both there?---No, that's correct; yes.

MR HADDRICK: Now, correct me if I'm wrong, the nature of your organisation, or one of the primary services it delivers, is the representation of parties in child protection proceedings before the Children's Court of Queensland?---For victims - we can only act for the victim of the domestic and family violence. So we can't represent both parties as that would be a conflict.

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Okay, who is the victim in a child protection proceeding? ---Usually it's the mother. It's a gendered issue, so it's usually the female, or the mother.

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The Department of Community Services brings an application for a short-term or long-term guardianship order in respect of child A. The parents are joined in the proceedings, or are identified as the respondents to the application, both of them, together?---Yes.

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There is a child of the proceedings, the subject child of the proceedings. Who is the victim there?---Well, usually if there is violence then we would have read that in their initial application and we would take instructions. As domestic and family violence is a gendered issue, it is usually the mother or the female in the relationship that's a victim.

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So when the department is - and I apologise for perhaps using sloppy language here. When the department is pursuing an order to effectively remove that child from both parents for a variety of reasons that makes out the statutory criteria and they wish to place that child under the guardianship of the chief executive - I'm just trying to understand what role your organisation plays in respect of the two parents who constitute one of the parties in the proceedings?---Yes.

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I mean, do you sit with one party at one end of the table and just not talk to the other one, or how does that work? ---Okay, by practice we act for the victim.

Yes?---That usually is the mother. We then recommend that the father gets legal advice and they go and see ATSILS or Legal Aid and then we negotiate through their lawyers as well.

What if there is common interest between the parents, that is, they both don't wish to lose their child and neither of the parents, neither the mother nor the father, are the perpetrators of whatever conduct constitutes the grounds that make out the criteria for the order? Say, for instance, the conduct was by, you know, Uncle Joe. Who is the victim then?---We would most likely act for the female in that respect, if that's the case. Again - - -

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I'll just hold you up there. Even though there's no allegation of impropriety by the father he is not a victim under your definition?---I'll need to clarify.

Certainly?---We're a regional and remote service so, for example, if we're out in Doomadgee, Birdsville, somewhere like that and we have two people come in and see us, we would more likely act for the female in that case even if they are not a victim of domestic and family violence, because by that stage it's been identified that there is not really any other legal representation available to them.

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Okay, I'll just hold you there. There's two propositions in what you've said there. First of all, your organisation is called the Queensland Indigenous Family Violence Legal Service?---Yes.

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You said you would normally act for the female?---Yes.

You said that you act for the victims?---Yes.

In that very last sentence you said when people come in - my words, not yours?---Yes.

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When people come in you would normally act for the female even where there's been no allegation of violence against her or the husband or the father?---Yes, we can act in those unusual circumstances.

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Why would your organisation appear to preference acting for the female over the male when there's no allocation of impropriety against the male?---Because you never know with particular circumstances and child protection matters - - - 1

Hang on, sorry, stop there. The expression "you never know" is perhaps not a justifiable basis for preferencing acting for one client over another. Why does your organisation have an in-built preference for acting for the mother and not acting for the father when your organisation is called the Family Violence Legal Service?---Because as I said earlier, violence is a gender issue. 10

COMMISSIONER: No, but looking at the name reflecting the function?---Yes.

Like Vegemite on jar shouldn't be on a peanut butter jar? ---Yes.

The question is wouldn't you be better named the Victims of Family Violence Agency as opposed to what is implied in your current name, that you act for the family, which includes the perpetrator and the children as well is the mother? That's the point, I think, isn't it? 20

MR HADDRICK: Well, and there's the high level all the more basal problem or question, and that is why does your organisation have a preference for acting for the mother when there is no allegation of misconduct by the father? ---If I could answer the Commissioner's question first, I wasn't there but the name was chosen.

COMMISSIONER: Fair enough.

MR HADDRICK: Yes, we're not saying it's your fault?---I'm just saying I don't know why. 30

COMMISSIONER: No, but it is not a bad point and maybe someone can think about that?---Certainly.

Those responsible for calling names - - -?---Yes, are no longer there and as a consequence we've had issues, you know, with rebranding. We thought about that.

Put it on the next agenda?---That's it.

Okay. 40

MR HADDRICK: Do you understand my point, it would be more understandable, or at least justifiable - the other way around - if your organisation was the Women's Legal Service, there would be a preference for a type of client? ---Mm'hm.

But where your organisation purports to be the Family Violence Legal Service but your organisation clearly has an inbuilt preference for servicing female clients - - -

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COMMISSIONER: Might have something to do the funding - access to funding.

MR HADDRICK: Well, that's - - -?---Quite possibly. I don't know why that is. To say that will have an inbuilt response to have actions for females, my response to that is it is our obligation to act for victims of family and domestic violence and sexual assault.

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But why can't a male be a victim of family violence in proceedings before a court?

COMMISSIONER: They can be?---The sociology and the social science around it has suggested that females are the more likely victims to domestic and family violence.

Yes, but if you came across an exceptional case where the victim was the bloke?---Then we would act for the man.

So that's why you say the answer to the question is gender? ---Yes, that's it, it is a gender - - -

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So gender dictates of the client is - - -?---Exactly.

- - - but not a bias in favour of women?---No, it is - thank you, your Honour - Commissioner.

MR HADDRICK: Okay. I just want to understand what functions are performed - quite frankly at the bar table - in child protection proceedings by your organisation. So for instance an application is brought before the court in the Children's Court of Queensland for a long-term guardianship order; DOCS is represented by counsel for DOCS; the child is represented - - -?---I would never say they've got counsel for DOCS, I would say they have a court coordinator, and they're not necessarily legally trained.

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We're going to step through your submission and tease out those particular criticisms one by one. Okay, so DOCS is at the bar table represented by somebody. On occasions the child is represented by a separate representative, and that is a person engaged - usually a legal practitioner - engaged by Legal Aid Queensland?---Yes.

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That's correct, is it?---Yes.

Okay. And at the other end of the bar table a typical protection order proceedings has the parents?---Mm.

Mum and dad, usually?---Yes.

And DOCS has evidence it wishes to place before the court that constitutes why the order should be made because neither of those parents are willing and able to provide the care and protection required under the act. Okay. What role does your organisation play in representing - usually the mother - - -?---Yes. 1

- - - but on occasions, the father?---So in that case there would be ATSILS representing the father; we would have spoken with ATSILS beforehand as to their position of their client and a discussion as to what the position is with our client; and then provided - you know, once we've got instructions we would then speak to the child safety worker and the court coordinator beforehand and then agree to a particular course of action. 10

Now, you've identified on page 3 of your submission that you have a small team of staff?---Yes.

Broken into two professional categories?---Yes.

There are solicitors or legal practitioners who are employed by your organisation?---Yes. 20

And there are client support officers?---Yes.

And could client support officers be sort of akin to what ATSILS calls field officers? Similar sort of role?---Akin, yes, similar, but ours are a lot more in-depth with the practical support and advocacy.

Okay. Would the solicitor who has responsibility for that particular matter to appear in court on behalf of one or both of the parents in a child protection proceedings? ---Yes, the solicitor does and the child safety worker is usually next to the parents. 30

Okay. How often does your organisation find itself in court doing that particular function?---Every court circuit, when we do the Cape, the Gulf, and when there are rural and remote areas that have court sittings, that's when we are appearing, because we're rural remote service delivery, we're not CBD. What we've opened up now to seeing what it's like to take on the CBD for Townsville and Cairns and we appear regularly in those courts as well.

Okay. Now, how many solicitors do you have?---Nine. 40

So would it be right to say that on any one week there would be, what, at least five of them also appearing in a child protection trial or application?---Yes, family group meeting, court-ordered conference - -

And they are day in day out?---That's correct.

Would that constitutes the bulk of the activities of your legal practitioners?---Yes, it does. 1

When I say "that", that being child protection applications?---That's correct.

And so other particular functions under other state legislation, like for instance DVO proceedings - - -?
---Mm'hm.

- - - they are a minor part of your practice?---They work - they seem to be a part of the same child protection file, so if it's necessary we will go and obtain a protection order for our clients, but sometimes by the time our clients come to our service is already been one put in place - - - 10

So they're intricately linked quite often in a factual sense?---That's correct.

Okay. So an example of that would be a female comes to you, she wishes to take out an apprehended violence order or an akin sort of order against her partner?---Yes. 20

You assist her in the taking of that order?---We represent her, yes.

Represent her in the prosecution of that order?---Mm'hm.

Or making the application for that order?---Yes.

And then flow-on proceedings that come out of that, if there are children in the household, you will appear should DOCS bring a parallel application for a protection order in respect of the kids, you will appear in those parallel proceedings?---Yes. 30

Okay. Now, what I'm going to do is take you through your submission page by page and identify aspects of it and simply ask you to explain or provide further meat on the bones or some details, or even better some examples, where you can say that certain criticisms of the system are properly made out.

COMMISSIONER: Before you do that fleshing out, Mr Haddrick, if we had a break now for 15 minutes would be still complete the evidence before lunch, do you think? 40

MR HADDRICK: My view is yes, but of course I'm only - - -

COMMISSIONER: You will?

MR HADDRICK: I will, yes.

COMMISSIONER: Yes. Do you think so, Ms Stewart?

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MS STEWART: Yes, your Honour.

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COMMISSIONER: You think so (indistinct) support,
Mr Haddrick. Do you want to have a 15-minute break?

MR HADDRICK: I'd be grateful.

COMMISSIONER: Others? Okay.

THE COMMISSION ADJOURNED AT 11.40 AM

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BASSANO, R.C. XN

38-36

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MR HADDRICK: You have a copy of your submission in front of you there, Mrs Bassano?---Yes.

May I take you to page 3, please? Can I take you to the second paragraph on page 3? In the second paragraph you outline the staffing composition of your office, that is, half of it are client support and you mentioned there were four and the other effective half is solicitors in your office, and you go on to talk about the role of CSO's. You use that acronym to refer to client support officers as opposed to child safety officers?---Yes.

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So you refer to the function of CSO's in about the fifth or sixth line there as "ensuring the clients' instructions are properly understood". What do you mean by "properly understood"?---As we deliver in the regional remote areas, English isn't the first or necessarily the third language that our clients speak so our client support officers are indigenous and they are able to assist in having a better rapport and relationship than a non-indigenous solicitor can, firstly, obtain when first, second and third time we see a client. So we've found that our client support officer role is integral to part - to ensuring that our clients aren't just saying "yes" and agreeing to things when that's not necessarily what's happened.

20

Do you accept that there might be a practice of what could be described as gratuitous concurrence, that is, people just saying "yes" because that just flows naturally?---That's correct, yes.

And it is the job of the client support officer to effectively flush out that practice?---Yes, in the presence of the solicitor. So the solicitor is still there taking proper instructions from the client. However, sometimes they need to break it down, speak broken English, to ensure that's an accurate reflection of what the intention is.

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And all your client support officers - they're all indigenous Australians, aren't they?---Yes, they are.

Are any of your solicitors indigenous?---No, we don't have that luxury.

40

Okay. Going down to the bottom of the page in the final paragraph you speak of the majority of your work dealing with child-protection matters and domestic-violence issues?---Mm.

Can you tell us what some of the other work other than the majority of the work is that your organisation does?---We do Victims Assist work so that's a state - I'm hesitant to

say "compensation" but it's assistance with victims of crime. It used to be the old COVAR. 1

So that's the bringing of applications in the District Court or whichever court jurisdiction?---No, it's simply just an application to the Victims Assist department of the state government and then it's usually an application that outlines what - the injuries the client has suffered as a result of a criminal act against that person.

So your organisation doesn't assist in the bringing of the application. Your organisation assists in the acts preparatory to the bringing of an application?---The actual application is just a form. 10

Sorry, keep going?---It's a form only. It's not an application against another party. It's an application to the state where they are seeking - I'm loath to say "compensation" but they do get some monetary assistance.

They get a sum of money, yes?---Yes, with in hand there might be some other things like therapy or getting the locks changed, windscreens repaired, that type of thing. 20

Okay. Is that function still performed by your organisation or do those applications still get filled out?---Yes. It used to be under the criminal COVAR - criminal compensation legislation which then became the VOCA, the Victims Assist of - I can't - - -

That legislation, I think, was in the last 12 months, wasn't it? The last 12 months - - -?---Two years.

Two years?---Two years.

Okay. Now, turning over to page 4 of your submission - - -?---We also do family law. 30

Sorry?---We also do family law.

Okay. Tell us about that?---Well, we actually see a lot more in our Rockhampton office. Our clientele seem to use the Federal Court system a lot more than the state child protection. There's not as much. I mean, there's still a considerable amount, but we actually access the family law system in our Rockhampton office than in the other three.

So you appear for clients who have applications before the Federal Magistrates Court and the Family Court of Australia?---That's correct. 40

In the family jurisdiction?---Yes.

Do you appear in child-related proceedings, property-related proceedings or both?---Both.

Why would you appear in property-related proceedings?---If it's related to a victim of domestic and family violence or sexual assault, then we're allowed to - our funding guidelines allow us to act in that particular case.

1

How often does that occur?---Not regularly.

That you appear in property-related proceedings?---Not regularly.

So the bulk of your organisation's services in the family law space are provided in child-related proceedings?---Yes, that would be.

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That is, for parenting orders in respect of subject children?---Yes, that's correct.

Okay. Turning over to page 4 of your submission, you say in about the sixth line there in terms of having legal representation for the clients, "We have noticed that in cases where there is legal representation from our service that case plans are negotiated which have specific and measurable outcomes," and then you go on?---Mm'hm.

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By "case plans" you're referring to the plans that are prepared by DOCS in child-protection proceedings that the court must approve - - -?---Yes.

- - - in making a protection order?---That's right.

Can you explain to us why having legal representation has led to more specific and measurable outcomes?---We have found that in a large majority of the cases that we start being involved with the outcomes stated in case plans are things like to be a good parent. Now, that - - -

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That's motherhood statement, isn't it?---Exactly.

It means nothing, doesn't it?---Exactly, and we've found that that's - and it's subjective as well. So what we've found that - by having to tease from Child Safety, "What do you actually mean? What do you want our clients to be able to meet?" as something that we can come back in six months time and say, "They've done the parenting course run by, you know, the Wellbeing Centre" or "They've obtained a protection order," so we've - - -

So you inject some particularity - - -?---That's correct.

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- - - into the case plans?---Yes.

COMMISSIONER: There are arguments for and against. I mean, you obviously don't want it to be so vague as to be meaningless and immeasurable?---Yes.

But you do want maybe to provoke some initiative on the part of the parent so they have to think, "Well, what would a good parent do?" as opposed to being told maternalistically what they would do?---Yes. 1

But what you would like to see is something along the lines of be a good parent by, for example, go and jump through this hoop?---Yes, that's right, take the child to the doctor when they are sick.

Yes, thank you.

MR HADDRICK: Now, in the preparation of those case plans, do I understand the situation to be that the case plans are designed by officers of DOCS who are not necessarily legally trained individuals?---That's correct. 10

So they are people with social work or social science backgrounds - - -?---Yes.

- - - who design these documents which are effectively a parenting tool - - -?---Yes.

- - - to be applied to that child if the order is made by the Children's Court?---That's correct, yes. 20

So you're suggesting that your organisation - and I would assume also similar organisations?---Yes.

By getting involved in the process of the design of the case plans you give greater rigour to the structure of a case plan?---Yes, I would agree.

And that benefits the parents?---Yes.

And therefore the child?---Yes. 30

Now, you go on in the very next line to say, "Anecdotally, we understand that where no such legal representation exists that reviews are not always done or not done according to prescribed dates"?---Yes.

What do you mean by "reviews"?---Legislation provides that six-monthly reviews are required and in the event of long-term guardianships there are 12-monthly reviews that are required to have been undertaken by the department. That doesn't always happen and I would go as far as to say that it's more often than not that it doesn't happen. 40

So more often than not the Department of Community Services is negligent in reviewing existing case plans? ---"Negligent" is a harsh word but I would agree with you.

Well, if there's a duty to do it and it's not done, then it's negligent, isn't it?---I won't really go into legal argument on negligence.

Okay. I will remove the legal word there. They are failing to do what they are required to do under the law?
---Yes; yes.

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And that is not a desirable outcome?---That's correct.

Who's the loser from that effect?---The children.

Okay. Why do you think the department fails to do reviews - your words, not mine - more often than not?---Because of the high turnover of staff. I think I go further to say in the submissions that anecdotally the turnover of staff is about 18 months and if you've got a long-term guardianship order in place or even if you've got a child-protection order, you move through to a short-term order and then you go to a long-term order, that can take three, four years and in that time you would've had possibly anywhere between two to five - - -

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Okay. Well, let's just tease out what that actually means in reality?---Yes.

Say, for instance, a child is subject to a long-term guardianship order at the age of five?---Yes.

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The Children's Court of Queensland makes that order?---Yes.

And then the Department of Community Services personified by the chief executive officer is required to review the case plan that is attached to that order?---Yes.

If there's no review to that case plan, then any improvement in that child's needs, ie, the child is no longer in need of protection, that won't necessarily become apparent?---That's correct.

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So there could be any number of kids out there who simply for the very reason that they have not been reviewed no longer need to be under the care of the chief executive?
---That's correct.

And no longer need to be placed either in kinship care or in foster care?---That's right, and I can even give you an example as recent as yesterday - - -

Yes, please?--- - - - of a discussion I had with a child-safety worker where I had been approached by some clients that were very concerned. The matter had been going for nine years and so in that time they had five children and they were seeking our assistance. I spoke to them briefly. They engaged us. Child Safety wouldn't talk to them until they talked to the parents who allowed them to talk to us and after that I asked - when I spoke to the child-safety worker, that person said to me - I asked him, "When have you done the last review for this matter?" "We

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haven't." I said, "What are the orders?" "Long-term guardianship." I said, "Well, you do know that you're required to provide a review every 12 months?" and, "Where's that in the legislation?" was the response. I said, "Okay. So how do you know these children" - because there's five of them - "are still in need of protection?" and he said, "Oh, I have to look at the file." I said, "Well, you look at the file and you let me know." He couldn't tell me. These children have been placed in care, three of them since - - -

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What sort of care, kinship or residential?---Out-of-home residential with a non-indigenous family and our clients being indigenous.

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So it's indigenous children placed in a white family?
---Yes.

Out-of-home care?---That's it.

Proceedings started nine years ago?---That's it.

And every 12 months there should be a review of the case plan?---At least with a long-term guardianship. If it was a short-term order, it's every six months.

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Okay. So for all you know, eight years ago - - -?---Yes, that's it.

- - - there should have been a review and that review could have determined the children were no longer in need of protection. The factors that gave rise to the initial court order removing those five children off their natural parents may have dissipated or disappeared?---That's right, yes.

30

And the children could have been returned home?---That's right.

But for the fact that nobody had reviewed the case?
---That's exactly right, and to the extent that I was questioned by the child-safety worker where that was in the legislation.

Okay. So you're suggesting that the department itself doesn't understand its own obligation to review and follow up children that the department has asked the court to remove off the parents?---That's right.

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I mean, it probably speaks for itself, but as someone who practises in this area, how would you describe that situation?---Appalling, and from a practice perspective disgraceful. I guess, taking it from a legal perspective, I would be sued by someone if I had such bad practices in place.

Without telling us the names of the kids, what locality or what region are we talking - - -?---Woojil Woojil. 1

Woojil Woojil?---Yes, and, sorry, I'll add to that example of the only reason that my clients - sorry, the organisation's clients were contacted is because they were going to return the children back into community, but that's after a stable placement of - even though at the lowest part it's - at its lowest part they were with non-indigenous families. To take them away for no apparent reason - and I did ask that question to the person and the response was, "Because they're at the lowest end of the placement principle." I said, "But if they're settled, why would you be taking them out of that care?" 10

What were the ages of the children?---Sorry, I couldn't tell you, but the youngest I believe was five. I couldn't tell you the other - there were five in total. They're new clients.

So the order in respect of one or more of the children was - - -?---All five children are under long-term guardianship orders. Four were made in 2011 and one was made I think last year. 20

Is there any reason to believe why the parents are now in a position to receive back the care of those children?---From my instructions, they've done what they have been asked. They actually were saying that they've done the courses that child protection asked them or Child Safety asked them to complete. They've removed themselves from the community because they themselves were even worried about the violence and they've placed themselves down here.

So the only reason, to your knowledge, that those children weren't returned is because nobody bothered to review their case?---Yes. On those facts at this time, yes, that's correct. 30

And your information is as current as yesterday?---Yes.

Okay. Now, is that a typical scenario or is that a one-off?---No, more often than not we have that type of response as to reviews and to the position of the department when it comes to returning children to care. It does not seem to be a position which is familiar to the department in reunification. 40

Do you think the department appears to be, at least in practice, more eager to get the protection order and less inclined to do the follow-up work that flows after the protection order?---Yes; yes, and I believe I put in the submission that may be for a number of reasons, you know, the high turnover of staff, you know, you lose dates, and also the ongoing case management of children in care is substantial.

Yes, you're not suggesting that there's any deliberate decision to avert the attention on the requirements in respect of the children that are in the care of the chief executive, are you?---That's correct; no, not at all.

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It is simply the way the system is structured?---Yes.

The burdens on the system?---Yes.

And the inherent features of the department?---Yes.

For instance, staff training and staff turnover - - -?
---Yes.

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- - - that constitutes reasons why files fall through the cracks?---That's correct, yes.

And when files fall through the cracks, there are kids waiting out there to possibly be returned to the parents?
---That's right, yes.

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Okay. Can I take you over to page 5 of your submission, please?---Yes. 1

In the first paragraph after those couple of headings you say your organisations service model ensures that:

We identified and negotiate for the inclusion and need for identification of ATSI heritage and the continual linkage required with the family.

Can you tell us how that's done?---What we've tried to establish is a more regular approach if children are in long-term care and we've managed to start negotiating with the department, they actually return to their home or their community in school holidays and so they get to - also if there's a death in the family they can attend sorry business and continue to meet with other family members, not necessarily mum and dad, but if there's aunts and uncles, other relatives that are important to that child, that we try to have that inclusion on a very regular basis. 10

And you do that primarily through the expertise of your client service - sorry - - -?---Support officer. 20

Your CSOs?---Yes.

Okay, I'll try and remember the correct title - client support officers?---Yes.

Now, further down on that page you say in the second last paragraph:

We have noted that the child is disadvantaged in keeping connection to the community and culture when the child is removed from the community. This is compounded when parents and the child/children are apportioned to one-hour weekly blocks of supervised time through a majority of the duration of the child safety application? 30

---Yes.

A couple of grammatical things there, but I think we get the drift. Can you explain what you mean by that?---What we have found is when there is a child protection order made and we're going through the process of going through the family group meetings, court-ordered conferences, and to the extent that the order is made, the time that is allocated to each parent is usually two one-hour visits a week. 40

What's wrong with that?---There is no ability for the parents to bond, particularly in a supervised environment a lot of the times it is done at the child safety office and so - I've been to child safety offices across the state and

I found them not particularly warming or conducive to a family arrangement. Our clients are from communities so they're not necessarily used to being inside. They like to be outside, in the air and doing active stuff. You can't do anything in an hour.

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Is the one or two-hour blocks once a week, which are I understand from your submission, are typical contact times the department permits - - -?---That's it.

- - - with the natural parents - - - ?---Mm'hm.

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- - - when there is a protection order in place?---Mm'hm.

Is that typical of the case plan is?---Yes.

And is that typical right across the state?---It has been our experience that's the case.

What would you prefer to see other than one or two-hour blocks?---Well, I guess I've got some experience in the family law and the new regime of, you know, the significant substantial time, the involvement in the weekly and the day to day issues, so picking a child up from school, you know, dropping them back home, even if it's for four hours three times a week, going in doing something with the family like going down to the creek every weekend, so there's regular and constant time with those children and families.

20

So you think the case plan should incorporate that?---Yes.

Isn't that a significant administrative burden on the department to administer that extra time?---It is. However, despite it being an administrative burden, the detriment that it is causing and flowing onto the children that are in child protection, the regime it is at the moment, is so substantial and significant that there are - it's anecdotal that there is a link between children in care to the juvenile justice system to those that grow from juvenile to adults.

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Okay. But flip it around the other way, if a child was taken away from their kinship carer or - predominately their kinship carer or foster care arrangement - - -? ---Yes.

- - - if they reduce the amount of time in that domestic arrangement - - -?---Yes.

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- - - diluted that so that the child could spend more time with the natural parents, might that not damage the developing relationship between the kinship care and foster carer?---I don't see it that a foster carer and a kinship carer should necessarily be the people that end up looking after those children on a long-term basis. What I see as a

more important relationship is that to be with their family in community. If they're from Leichardt, if they're from Doomadgee, if they're out from Biloela, you know, they need to go back there. And for them not to be supported in that process because they've been taken out of their community because it's easier to child protection and the department to do so, and there's got to be a better answer to that, and that's where I - you know, there could be community organisations or community-run organisations similar to that of the safe house that administer the family environment as such where they're cared for in community and so you've still got the parents able to come in, participate, take them to school. Because at this moment even if they are relocated and living with foster families back in community the department won't allow them to take them to school, there and back, it is the - - -

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But that's because it's not in the case plan?---You can deviate from the case plan and there have been times when we've done that, but to even negotiate that the mother or the father takes that child to school, which is a walk of, you know, 100 metres down the road, that's not even acceptable to the department.

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Okay, but nevertheless, one or two-hour blocks of visiting time - - -?---Yes.

- - - per week is wholly inadequate, isn't it?---Yes.

In the majority of cases?---That's correct.

It might be comparing apples and oranges, but you get longer visiting time in some prisons than you do with children?---That's right, yes.

Okay, moving on. I should put the contrary argument to you and invite you to respond?---Yes.

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If the department has formed proper reasons and it in the case plan or the evidence has been brought before the Children's Court and demonstrated that there are proper reasons that it just simply is unsafe for the child - - -? ---Yes.

- - - to spend one hour or greater than one hour of supervised time per week with the parents, isn't that a proper reason for the department limiting the time to one hour?---Certainly, and if that was the case then we certainly wouldn't necessarily be giving the advice to clients to say, you know, "We'll argue that you need to do some looking at yourself, doing some courses, and get yourself in a better place, because clearly, you know, we've got some concerns as to your behaviour with that child."

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But it's your position that areas and over-reliance by the department in crafting case plans for just using a sort of a template, one or two hours contact time as a contact centre?---Not even a contact centre, so yes.

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Where does this one or two hours usually occur?---It's either at the Department of Communities' offices, so child safety offices, and sometimes they'll be supervised in a playground.

So talking about the offices, can you describe them, are we talking - - -?---Government buildings, so - - -

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Government building, government cream and brown?---That's it. And they're - - -

Someone sitting in the corner watching every move?---That's correct. And the areas where I've seen the children being - you know, they have toys but they're very narrow rooms, they're very stark, they're not conducive to interaction - family friendly.

But you accept that it would be difficult for the department to supply - - -?---Yes.

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- - - a much more liberal regime of contact where the children are subject to certain types of protection orders? ---Certainly. I'd do know Mackay have a contact centre that is staffed by volunteers but Department of Communities fund that area and that's run well because it's in a contact centre that is family-focused.

Okay. Going down to the bottom of page 5, the very last sentence:

QIFVLS believes that cultural plan should be a must and not a maybe in regards to Aboriginal and Islander children and families?

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---Yes.

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What do you mean by "cultural plan"?---Involve them in their heritage, in that you have families where although identified as Aboriginal and Torres Strait Islander or both and they have that heritage, for them not to be involved in family gatherings and important events associated with their community can often be quite difficult for them later on in life. You know, they're not going to be with their family when they've got - you know, if they've got sorry business, or if there's a tombstone opening. So they need to be a part of that and a lot of the cases that we see, although they acknowledge it, to move forward and say - you know, to be involved with that family yarning and the story telling, it's not there. Even though they might say the risk of abuse and neglect is associated with the parents, if other family members want to bond with their children there's no such movement.

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Playing devil's advocate, what is so different between that and bonding or particular cultural events that are prominent for the more mainstream community, white population? For instance, attending a funeral?---Yes.

You would call it sorry business?---Sorry business, yes.

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Attending a funeral, Christmas Day, Easter, all that sort of stuff?---Yes.

What's so different between requiring - because you're effectively inviting the commission to form a view that it should be required?---Yes.

What's so different from requiring DOCs to prepare a cultural plan for the subject child or children between indigenous children and non-indigenous children?---Well, there's no reason for them to have a cultural plan for - across the board. I am speaking from a perspective - from an Aboriginal and Torres Strait Islander, from a social justice perspective and a social perspective. There's no reason why you should not have that for all children involved in child protection matters.

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Now, going further down page 6 of your submission, you say, "We note that we rarely experience any mediation based approaches with child safety," and then in the following paragraph you go on to effectively say you go directly to a court process?---Yes.

Those two ideas put - can you explain what you mean by, "Rarely experience any mediation based approaches with child safety," or DOCs?---Essentially when the department - we generally become involved once the department have made an application to the court for a child protection order. So with that we're already in the court process.

40

Do you think you effectively arrive at the carnival too late?---Yes. In experiences where we have negotiated - they've notified that they're going to make an application, we have asked for a meeting with them and the position remains the same, that they're making an application. There's no safety plan or - - -

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So the point you enter into the process, the view of the departmental officials has already crystallised on their proposed course of conduct?---That's correct.

Whereas you think if your organisation or similar organisations were involved at an earlier stage you could agitate for some sort of mediation approach which might remove the necessity of an application. It's being recorded so you will just need to say yes or no?---I'm sorry, yes.

10

You might need to remove the need for an application in the first place?---That's right.

And effectively save the taxpayer the money of implementing a successful court order?---Yes. I can even give a number of examples with those.

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Please do?---What's happened in a number of our Cape areas, we have seen that the department have come in, they've provided us with that information, they've said that they're going to court on that particular day. We've come in, we've asked for a meeting with the team leader and the child safety worker, the recognised entity, if they're around, the appropriate counsellors and therapists that are associated in that community. We've sat down - and usually it's over the phone - - -

Can I just stop you there for two seconds? You said the recognised entity, if they're around?---Yes.

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You said that in almost a - - -

COMMISSIONER: Critical.

MR HADDRICK: Yes, critical context?---Yes.

What do you mean, if they're around?---Usually we don't have recognised entities appointed straightaway or involved right at the beginning of the matter. I know that there were recommendations made that the recognised entity is appointed as soon as possible and notified of such application being made, and in the conduct that I've seen by the department, they are not done so quickly.

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Okay, so that's not necessarily a criticism of the RE? ---No, certainly not a criticism - - -

It's just that they might not have arrived in the scenario yet?---That's correct, as in I'm critical of the department's notification of when a recognised entity is required, as a majority of the urgency applications that are made and - the recognised entity could be appointed and involved to be able to assist in those matters. 1

If I can return you to the question before I took you off to the side about REs, I asked you about - - -?---Early intervention.

- - - early intervention in terms of perhaps using mediation to resolve the issues?---Yes. 10

If you keep going?---So when you have essentially all those service providers around to assist in the client's - both of the clients, you know, the parents, are there as well, we've been able to negotiate orders - from being orders to a safety plan, to an intervention with parental agreement, and they are the least intrusive orders, rather than going straight to an order or an application to seek an order.

Where you successfully negotiate with the department your clients agree with the outcome?---Yes. 20

The department agrees with the outcome?---Yes.

The department has saved the money of bringing the application?---That's correct.

The department has saved the costs associated with any out of home care required?---Yes.

So everybody wins?---That's it, and that's not with the on-costs on flying into community, out of community and things like that, what happens. 30

Speaking globally, those figures of the number of kids the subject of protection orders of one variety or another decrease?---Yes.

Moving on in your submission, you say at the start of that large paragraph on page 6, "Overall it is the exception rather than the norm for child safety to enter into meaningful discussion," and you put that in inverted commas?---Yes.

"Regarding a different proposed course of action." You go on then to effectively congratulate Crown Law, being an agency of the state, that when they get involved in the matter meaningful discussion occurs. Can you tell us what you mean by that?---What we've found is that even when you are going through the process of family group meetings, court ordered conference and the various mentions of those matters, when the matter finally gets set down for a final 40

hearing it's sent off to Crown Law. Once Crown Law has had a look at it we get telephone calls, we have discussions with them and it ends up being resolved in an area where, you know, our client will come to the party, a reduced order might be sought and reunification is back on the table. 1

So when Crown Law becomes engaged in the application or the file there is a refinement of what are the issues on the table?---That's correct.

Also refinement of the proposed or possible court remedial action that could be ordered in respect of the child? 10
---That's correct, yes.

So I take it from that criticism of the system but praise of Crown Law, I take it from that that you would be supportive of a continuation of or an improvement of the division between Department of Communities doing the investigative work - - -?---Yes.

- - - but some other entity, be it Crown Law or some other entity, bringing the applications for protection orders before the court?---Yes, that's correct. 20

I also take it from your criticism and praise there of the department and Crown Law that you think that that entity should be involved in the matter at an earlier stage? ---Yes.

Or as early as possible, for the purposes of refinement of the - - -?---Of the position, yes.

Of the position?---Yes, I would.

Now, further in that paragraph you say in the fourth sentence at the very end, you say, "Further, despite the model litigant principles applying to the Queensland government departments, it is our experience that these principles are rarely considered or followed by child safety"?---Yes. 30

40

Now, by model-litigant principles you're referring to rules of practice or procedure that must be engaged in by public entities who are funded by taxpayers?---Yes. 1

And they are effectively additional rules on effectively litigating fairly when - - -?---Yes, and not vexatiously essentially.

Yes. Now, why do you say Child Safety does not observe the model-litigant principles?---What we have found when there is an application on foot is our clients' position isn't considered by the department so in any family group meeting or alternative dispute that we might have if there is in fact an ability to have informal meetings like stakeholder meetings, the department are very rigid in their scope and are not prepared to deviate from that and - - - 10

Would you describe them as "risk averse"?---I don't think that's possibly the best choice of words for the department's position. Perhaps more so I think is a lack of understanding of the legal process. I've had a number of child safety workers say to me, you know, "I don't want to take this to court. I don't want to take this to court." I've said to them a number of times, "We actually are in court. This is a court process now so, you know, we need to start negotiating," and there have been times where some child safety workers have been prepared to work with us, but more so than not that they carry on their way of rigidity in their position. 20

So when you say "more so than not", you're indicating that more often than not, that is, on the majority of times - - -?---Yes.

- - - it is your organisation's experience that the Department of Community Services and that part of the department that administers child-protection programs and legislation in the state, Child Safety Services, is not interested in engaging in a meaningful way with your organisation or like organisations prior to court?---I can't say about other like organisations. 30

Yes?---I'm not aware of that, but with our organisation that is the case.

Okay; and you say that's more often than not?---That's correct, in all areas that we are in so - - - 40

Which is a large chunk of North Queensland?---Yes, yes, or Central Queensland up so - - -

Now, you identified Child Safety Services there are not, in your opinion, observing the model-litigant principles? ---Yes.

That's a separate chunk of the government to Crown Law? 1
---Yes.

Do you have any criticism or praise to make of Crown Law in their observance of the model-litigant rules?---Yes. The experiences that we've had with Crown Law have been professional and are prepared to negotiate and there are times that, you know, our position isn't necessarily in the best. We'll concede that so there is the give and take and the professionalism associated and respect for other practitioners in the court.

10

Now, that's quite a natural situation. Crown Law is principally made up of lawyers - - -?---Yes.

- - - who would be familiar with at least in a general sense the requirements of the model-litigant principles? ---Yes.

Whereas DOCS is essentially made up of people with social science or human services backgrounds who would not be either trained or familiar with any obligations upon the State of Queensland in general in engaging in litigation? ---Yes.

20

So there's nothing surprising about that difference, is there?---No. However, they have their own legal department.

"They" being DOCS?---Sorry, yes, DOCS have their own legal department. I mean, when I first started in this role - - -

And do you have criticisms of that legal department in how it observes the model-litigant principles?---Not specifically that department. I'm not sure if perhaps they say, "Look, this is the way it should be done," and it perhaps is not observed and down the track of command it gets muddled because in this particular instance I did a file audit, noticed that we hadn't done any notices of address for service and people were wondering why we weren't receiving any documents. So we went through. Did that and introduced that as the course of practice for our organisation and then from there, you know, we send it through to them saying, "Look, you need to provide us with a copy of the documents," or, you know, "We're now the representatives. Please address all correspondence through to us." Child Safety continued to disregard that and negotiate with our clients despite us being known on the record and then from there I actually discussed it, firstly, with Crown Law - - -

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You're talking about a specific case here or a specific category of cases?---A specific category of cases.

So there are a multitude of cases that you can think of - - -?---Yes. 1

- - - where you have notified the department that you act for clients A, B and C?---Yes.

And where the department then doesn't engage with you - - -?---Acknowledge us, that's correct.

- - - as the legal representatives of the client?---That's correct, yes. 10

And they go straight to the clients nonetheless?---That's right.

And that is to both the clients' detriment?---Yes.

MR HANGER: It might be better if my learned friend let the witness give the evidence sometimes.

MR HADDRICK: I'll slow down.

COMMISSIONER: Actually while we have got the interruption, before the break when I asked whether you would be finished by lunch, what time did you think I had in mind for lunch? 20

MR HADDRICK: You and I don't really need lunch, do we?

COMMISSIONER: I had it yesterday.

MR HADDRICK: There's a bit more material here than I initially thought and I suspect that we're going to need to go for maximum an hour after lunch.

COMMISSIONER: An hour after lunch? 30

MR HADDRICK: Yes.

COMMISSIONER: Would you take on board what Mr Hanger suggests? It is more efficient to answer your own question, but it's better for the witness to actually do it, otherwise they get to feel rather redundant.

MR HADDRICK: I hear you loud and clear, commissioner. Are you indicating to me that you wanted to adjourn now or will I go for another 10 minutes? 40

COMMISSIONER: No, I just wanted an update, that's all.

MR HADDRICK: Okay.

COMMISSIONER: So we will go till 1.00 and then we will resume after lunch.

MR HADDRICK: Okay.

1

Just returning to the model-litigant principles that you refer to in that particular, can you explain to us with as much particularity as possible what you say are the criticisms of DOCS in observing those principles?

---Essentially there seems to be a lack of understanding as to being what's required - what's required in a legal process so the steps of a notice of address for service, service of documents, discussing matters with clients in the presence of a legal officer or a legal representative once they've been retained and negotiating from a - rather than a position-based but an interest-based point and that it's not a criticism of the way that they've handled a matter when we are seeking to have changes in case plans or changes in positions or even negotiating with them. What we have found is workers are quite defensive in the way that we're seeking to change or even we say, "We disagree. We don't think that a long-term order is required and we think one year may be with reunification at the end," or, you know, "That allegation - you know, where did that come from?" So when you go to seek to test their evidence, the workers actually become quite defensive.

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That's only natural, isn't it?---It could be. However, if you're doing it as your role and your job, you would expect some form of professionalism when it comes to providing evidence to a court and also in being professional in negotiating with another party.

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How common do you find what you describe as effectively a lack of professionalism - how common do you find that amongst DOCS staff?---It is quite common.

Okay?---I can probably give - not that I would give names, but on a hand I could count those people that have been quite good professionally and are prepared to work with us to, you know, reason with us, provide us with reasons why their position is that and, you know, work towards reunification or the appropriate end goal for the clients and the child.

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When you say "count on one hand", you're referring to the DOCS staff in your sort of catchment area, aren't you?

---Yes, and that's all of - from Rockhampton upwards essentially.

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Going over to page 7 of your submission, in the final paragraph you speak of the recognised entities and providing recommendations or report writing and ongoing support and training for that court process?---Yes. 1

What do you think needs to be done there?---Essentially the recognised entities we've had experience with are placed in a position and are funded through child safety. That in itself I see causes a lot of problems for those people in their own community, because they're seen to be a part of child safety. So child safety doesn't necessarily have a nice name in the communities where we service and from that to be seen to be associated with child safety isn't helpful for their situation. From an education point of view, as to be more helpful in the court process, training would need to happen as to the actual legal process, what's involved, an expectation that - how they can be more helpful for the community and for the children as to recommendations of cultural considerations and how that can be networked into the service providers that they have in that community. I had an experience - I recall one particular RE, still around, and she in one particular matter, a matter that we were able to have the protection order dismissed because of her report, she had assistance from the justice group coordinator. That recognised entity wrote a report on the cultural side of things, her observations of our client and the other party, the observations of the child in community. The community is 200 people, so she had a bit to do with the family. From that report - that was tendered to the court and the magistrate dismissed the order, because he said, "Well, from that, from the position of QIFVLS," and ATSILS acted for the other side, "I don't see any risk of harm to the child," and dismissed the child protection matter. Child protection then came back and said, "We've still got these concerns," and we said, "Well, yes, that's fine, but let's talk about that," and perhaps that was a better view to go in the first place, but from our perspective we wouldn't have been in such a good position if we didn't have the assistance of the recognised entity coming into and being involved in the court process, as opposed to, say, some other areas in Queensland where I've seen 20-year-olds sitting there as recognised entities and telling a client who is in their forties how to - you know, what's the cultural considerations and the association for her children. It doesn't balance out. 10 20 30

When you speak of 20-year-olds you're referring to a 20-year-old person?---A 20-year-old recognised entity, sorry, yes. Sorry, a 20-year-old person who has been appointed - - - 40

Who represents the recognised entity?---Recognised entity's body, yes. I think how they've structured it at the moment, particular areas have been provided the service, or

auspicing the service, and then they delegate out to whomever. 1

There's 11 recognised entities, I think was earlier evidence?---Okay.

I'll be corrected if I'm wrong in that respect?---Okay.

Those recognised entities choose people to speak on behalf of them?---Yes, okay.

No, that's a question for you?---Sorry, I don't know if - you know, in our area - - - 10

Mr Hanger wouldn't allow me to get away with that. I'm pulling myself up before Mr Hanger does, but you have experience of the contribution made to proceedings - - -? ---Yes, by specific people apportioned in that role. So, for example, in one of the areas I see there is a high turnover, similar to that of child safety workers. There's a different recognised entity sitting in a family group meeting or a court ordered conference and then that doesn't provide for any continuity, as opposed to someone that - it was the Cape, the very good one that I referred to earlier. Because she lived in community she knew what it was about and she was able to stand up and provide a contribution, but it was only because she had a justice group coordinator who was familiar with the process that she was able to be contributing at that level in a court process, I guess. To answer your question, I think court reporting writing and education as to the process, as well as having the RE section apportioned to the court would provide for a better service. 20

Mr Commissioner, I'm going to move on to a set of questions about DOC staff in some degree of particularity. Might now be a convenient time? It's a logical break point in my questioning. 30

COMMISSIONER: Yes, okay. We will return at quarter past 2.

THE COMMISSION ADJOURNED AT 1 PM UNTIL 2.15 PM

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THE COMMISSION RESUMED AT 2.13 PM

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COMMISSIONER: Yes, Mr Haddrick.

MR HADDRICK: Before lunch I was taking you through aspects of your submission?---Yes.

Can I just take you back to page 9 of your submission, please?---Yes.

In the final paragraph of page 9 you speak of the child safety staff; that is, some of the staff of DOCS and you speak of - you make some criticisms effectively of the staff. What do you say is wrong with, or in what way are the staff of DOCS deficient?---I would say it's not necessarily the staff as a person, but the support that they're provided through the department. In saying that, the child safety workers appear to lack cultural competency and don't seem to have an insight into the difference between all indigenous parenting styles or the different types of roles parents play in a community and in the Aboriginal and Torres Strait Islander culture when it comes to parenting children. And what may be seen as a risk to one child safety worker may not in fact be a risk to the family at all. There is an example I've provided in the submissions, and not necessarily in this section, but it still applies, is - - -

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Yes, could you give us an example where a white DOCS staff member might misinterpret something that someone who is more culturally competent would observe as not a problem? ---Yes. Particular community and the child safety worker said, "This child is not being watched on the way home from school," and it was brought to the attention that in fact the child was being watched on the way home from school, didn't necessarily be physically walked home from school, but in each house everyone as a collective was watching that child.

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Okay?---So they believe that - child safety worker made the comment that they considered the child to be at risk because no one was watching them walking home from school, when in fact there were plenty of eyes watching.

Now, all things being equal, whether a child is being watched as they go home from school isn't of itself enough to warrant the making of a protection order, is it?---No. Certainly that was not the sole reason for the order, but it was simply another comment made and another allegation made by the child safety worker as to risk and not protective behaviour being done by the parent.

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Page 10 of your submission, the first paragraph after (ii)? ---Yes.

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BASSANO, R.C. XN

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You speak of the best interests test - - - ?---Yes. 1

- - - which is effectively - you're encapsulating the paramountcy principle - - - ?---Yes.

- - - in the Child Protection Act. And you say that it does not - and the risk of harm test - and you're saying that they do not incorporate and indigenous-focused parenting -

Do not incorporate indigenous-focused parenting styles or indicators in the determination of what is risky behaviour? 10

---Yes.

Or words to that effect. How would you change it?---Use different tools.

What should they be?---Well, Tracy Western is a psychologist from Adelaide and she's done a number of assessment tools in relation to indigenous people that she works with. She has based a lot of her research on mental health, first aid and treatment for indigenous people and with that she - she's had to develop her own tools - her own risk assessment tools - and the way to change the understanding for child safety and the community at large as to what needs to be considered in assessing risk and best interests, then there needs to be more input from communities, from people that have been able to do research in such matters with indigenous communities. 20

As more organisation's most senior lawyer you'd be familiar of course with the provisions of the Child Protection Act? ---Mm'hm. 30

I mentioned the paramount principle there are a few moments ago to you?---Yes.

Section 5(b) outlines, "The following are general principles for ensuring the safety and wellbeing and best interests of a child"?---Mm.

So whilst the act stipulates a paramount principle - - -? ---Yes.

- - - "The wellbeing and best interests of a child a paramount"?---Yes. 40

It then goes on to enumerate over one - in essence two pages of the statute - - -?---Yes.

- - - all the factors that should be considered informing a view as to what is the wellbeing and best interests of the child?---Yes.

And then in subsection 5(c) there are two additional matters that should be taken into consideration in forming the wellbeing and best interests of a child in respect of Aboriginal or Torres Strait Islander children?---Yes.

1

And they are that:

The child should be allowed to develop or maintain a connection with the child's family, culture, traditions, language and community?

---Mm'hm.

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And, "The long-term effect of this decision of the child's identity and connection with the family and community should be taken into account"?---Yes.

In what way is - having heard your criticisms of the tests for risk of harm and best interests, in what way are those statutory tests wrong or not sufficient?---Yes, I guess it's they're not being applied in the courts.

Okay?---They're not being applied in determining any child protection orders in matters that we have been - - -

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So you've got no problem with the language of the statute? ---I think it perhaps still needs to be tweaked. I still defer to a lot of the family law and the development of best interests and the paramountcy principles with regard to that and how that slowly evolved, but I think there could still be some refining of this legislation.

But primarily your concern in terms of taking into account cultural aspects in respect of best interests and risk of harm is really a question of practice or implementation by DOCS?---Yes, it is; yes.

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COMMISSIONER: What you mean is that culture can influence the level of risk?---I'm sorry?

What you're saying is that culture can influence the level of risk?---Yes.

So that in the indigenous culture a risk might be acceptable where in a non-indigenous context it might be assessed quite rightly to be unacceptable?---Yes. I guess when you're looking at risk and protective behaviour you're still coming back to attachment and parenting styles, so in the matters that we've seen we had material presented to us by child safety say, "The child seems to be not attached to that parent. The child appears to wander off or doesn't seem to be influenced by the mother or father," or that type of behaviour, when in fact the other research suggests that that's okay in indigenous parenting styles, that the child doesn't necessarily have a primary attachment to one parent, but has a number of attachments.

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17/1/13

BASSANO, R.C. XN

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MR HADDRICK: Okay, could I - - - 1

COMMISSIONER: Sorry, I just want to understand that.
Bringing that back to the statutory definitions?---Yes.

Given that harm is defined by reference to levels of
acceptability or unacceptability - - -?---Yes.

- - - which I think in this context means probable - - -?
---Yes.

- - - risk or likely risk rather than possible risk?---Yes. 10

Is that right? And bearing in mind that harm is defined in
terms of the significance of the effect of the action or
non-action on a particular child?---Yes.

If you were culturally competent you may conclude that
although there are signs of non-attachment, it is not
indicative of a significant detrimental effect on that
particular child, nor of a likely risk of such a detriment
in the future?---Yes.

Would that be the process of reasoning that the risk
assessment requires?---I think that's captured it quite
well, yes. 20

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MR HADDRICK: I just wanted to pick up on one of the propositions the commissioner asked you just a few moments ago?---Yes.

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He invited you to comment upon the proposition that what might be a risk factor for effectively a white kid might not be a risk factor for a black kid when assessed in a culturally competent fashion?---Yes.

Now, I want to zero in on one type of harm, violence. You appeared to, as I recall, accept the commissioner's broad proposition that what might be a risk factor for a white kid may not be a risk factor for a black kid, if I can put it in that sloppy way?---Okay.

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Now, having regard or thinking of the situation of potential to be a victim of violence or having a family or extended family which has a history of or a preponderancy for violent activity, how do you see that fitting into the assessment of risk or harm? Should we make any delineation between how we assess the chances of violence occurring in or around a white child any different to the way we should judge the chances of violence occurring in or around a black child?---I would think that, not condoning violence, the extent to what is violent - what are the risks associated with violence; you know, what is the act that seems to have been ongoing? Is it to do with alcohol? Is it to do with drugs? Is it simply a mix-match of personalities that don't fit well? I really can't give you an answer as to that.

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Okay, but you would agree that there should be no - let me try and approach it from a different angle then?---Yes.

Would you agree with the proposition that there should be no delineation or no - and I put this in inverted commas - "special treatment" or "special analysis" of risk factors when it comes to violence between indigenous children and non-indigenous children?---That would be fair.

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So by extension of that reasoning cultural competency is irrelevant for the purposes of determining risk when that risk is manifested as violence or potential for violence, as the commissioner will properly correct me - where it manifests itself as potential for violence, there is no value or no justifiable value in any sort of greater cultural competency in assessing that risk?---From the position where I'm practising in at the moment the cultural competency is at essentially a very low level. I'm not condoning violence and that is a risk factor, I agree, to a family and there should probably not be any change in that or delineation or special treatment for indigenous or non-indigenous children. However, cultural competency - in our practice it's a broad concept but it has different applications to different communities and understandings.

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The cultural competency of someone in Rockhampton is completely different to someone, say, in Lockhart, somewhere like that. 1

COMMISSIONER: But bringing you back to the test I suggested before, what you do is you say, "Okay. That's a risk factor"?---Yes.

"Does it present an unacceptable risk?" That depends on the chances that it's going to do harm and the consequences if it does?---Yes. 10

The chances that it's going to do any harm will depend on whether a child is likely to see it or be impacted on by it somehow?---Yes.

And then is the impact on that particular child likely to qualify as a significant detrimental effect to wellbeing? ---Mm.

If you say, "Yes, it's a risk factor. Yes, it's probably going to happen again, but this child has seen it so often he or she is almost" - and there will be harm?---Yes. 20

But he or she is almost sensitised to it?---Yes.

Desensitised to it?---Desensitised.

So therefore applying the tests, the harm-based tests, you will conclude the risk that it will happen is almost inevitable?---Yes.

But the consequences of the risk being realised are, although harmful, not in the culturally competent context a significant detriment to the wellbeing of this child? ---Yes. 30

MR HADDRICK: I will move on to the final paragraph.

COMMISSIONER: That might apply in cultural context - - -? ---Yes, I agree.

- - - in a particular family because it just depends on the family, the child?---Yes.

Not a child or children generally?---That's it, and I guess that's where it's causing - some degree of concern is that it's a broad-brush approach rather than a case-by-case - - - 40

That's because the actuarial tool looks at children generally?---Mm.

It's statistical, it's actuarial. It's based on past experiences and it can't be related to the particular child because it's generic?---Mm.

MR HADDRICK: Speaking to your experience as the head solicitor of your organisation, how often, if at all, do you find the argument being put about, so to speak, that the risk of violence is at an acceptable level insofar as the children who are the subject of proceedings?---Almost none.

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Moving to the final paragraph on page 10, in the last sentence of that paragraph you say, "We consider this" - "this" being the skill-set of the Child Safety workforce of DOCS:

We consider this must be particularly difficult for such workers who are often recent graduates from university with little to no experience in such an emotionally charged area and often have little to no experience within communities.

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Can I ask you to explain what you mean by that and, if possible, give us some practical example of where you say that these recent graduates, as you describe them, are perhaps not up to scratch to perform the functions that you think should be performed by the DOCS staff?---Certainly. The majority of the cases that we see have child safety workers that have recently graduated with maybe one, two years' experience out of a social science degree. Social work seems to be - art psychology seems to be the common theme for a child safety worker in the areas that we service. With that they are very young graduates, usually females and are from metropolitan areas. They're not from Cairns; not from communities. They're non-indigenous going into an indigenous community and there is a lack of understanding of protocols of going into a community. There was at one stage - going out to Mount Isa last year a family group meeting was ordered and there was little discussion with the legal representatives in the Wellbeing Centres involved. Child Safety have said, "Yeah, we're driving up today," and I had carriage of that file for that time being. I actually rang up and said, "It's not appropriate for you to come through because there's sorry business happening. Everything is shut. It's not appropriate for child safety to actually be there, it's not appropriate for us to be there," and considering it was directly affecting our client, it was poor timing on behalf of the department in that particular case.

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How did the department respond, positively or - I mean, how did they take your advice?---They weren't happy with it because they were already part-way there. So by the time we were notified they had left already. 1

That scenario you just gave us: that doesn't speak to the experience or training of the staff, does it?---It does, because if you know that there's sorry business going on in a community you don't enter, as in you find out if it's appropriate for you to go, you find out where are the areas that you should or should not be entering and who is affected. So usually protocol dictates that you ring up the council or you find something that is aware of what's happening and you find out whether it's appropriate for you to hold meetings, work around the streets. 10

From your observations in the catchment areas that your organisation services what are the - you said they're usually female?---Yes.

How often would you come by a DOC staff member who you thought perhaps lacked the experience or skills to perform their function?---It's quite common. 20

Can you be any more particular than that?---Well, a lot of the clientele that we have have child safety workers who are young. They haven't had the experience and six months down the track we have a different child safety worker.

What do you mean by young? Young can be different things to different people?---Young as in, you know, 23, 24-year-olds. You listen to the experiences that they have. They've just come out of uni, they've moved up from Sydney or somewhere like that and this is their first time out in the outback. 30

So they're bright-eyed and bushy-tailed but have no experience?---That's correct, yes.

Would you say by experience you mean life experience? ---Life experience and work - you know, working in that particular area, and you get to know that through what they have put in their affidavits, what they've deposed to in their affidavits. They actually depose to their experience.

Okay?---Not life experience necessarily, but when they were admitted, how long they've been in this area. 40

Now, I put to a couple of witnesses last year this proposition and I probably should put it to you so we have a consistency of evidence. I put a scenario or two possibilities to two or three witnesses. I said given a choice between two candidates, two possible DOCS staff members, one staff member is 22 or 23 years old and has a

bachelor of social work; indeed, may have been a university medallist, for argument's sake, but has on account of his or her, most likely her, age, very little life experience and definitely very little professional experience. Contrast that with say a 57-year-old paediatric nurse who wants to have perhaps a career change, lots of life experience, been a nurse for going on say almost 40 years, worked in paediatrics nearly all that time, but no bachelor of social work degree, no tertiary training in the academics of human welfare sciences, if I could put it that way. Which of those two broad categories do you think best represents the type of workforce that DOC should be engaging to employ?---Specifically because you said she was a paediatric nurse, I would go with the older worker.

Okay. If I took out the fact that she was a paediatric nurse and I just said a nurse?---Still a nurse, I'd still go with the aged worker.

So you think that the broader experience of that allied health role outweighs the qualifications of someone with a BSW?---I certainly do.

Do you actually see that - do you ever see people who might represent - obviously you've told us you see people represent that lower - that BSW category?---Yes.

Do you ever see people who might look like they're in - who are in the DOCS - sorry, do you ever come across DOCS staff who clearly had a career change and gone into this line of work?---Yes.

Knowing what you do about their particular backgrounds, could you compare that type of DOCS staff member in contrast to the recent graduate?---Yes. I mean, there's still some issues that you have certainly with different workers, however you seem to get a lot better outcomes with an aged worker, but in saying that, they often don't stay long in child safety.

Page 11 of your submission, on the fifth line you speak to the quality or lack thereof of the preparation and materials provided by DOCS in child protection proceedings. Specifically, you say, "The current standard of poorly drafted or irrelevant court material." Can you explain that a bit more to us?---We often find that the court material provided has allegations that have been unsubstantiated, that are irrelevant to the current process, that are almost inflammatory. In any other court you would get struck out because it lacks probative value, it's opinion, it's not expert opinion, and the rules of evidence get lost in this jurisdiction.

How often do you find the court materials, the affidavits presented to make the application, are of the standard that

you speak of there in your submission; that is, they're poor?---Most of the time - a large proportion of the time, in fact.

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Seven out of 10 matters?---Eight of 10, I would say.

What are the consequences of that material being poorly prepared, in your opinion?---It ends up that the court takes a specific view. There's really no capacity for the courts at this stage to have interim hearings on matters and so that material goes untested, essentially, until the final hearing.

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How often do you find, as someone who appears regularly in child protection proceedings, that a magistrate sitting as a Children's Court magistrate will deny an application on the basis that the DOCS material doesn't come up to a standard?---I'm yet to have that.

Sorry, you're yet to have what?---I haven't experienced that. I can't recall in the time that I've been the principal solicitor, which is since November 2011, that anyone has had simply made on the papers that the order has been denied.

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No, okay, what - - -

COMMISSIONER: What about a model there, instead of having departmental, unqualified - legally unqualified case coordinators, you separate the functions, take away from the department the litigation function?---Yes.

Give it to some other existing body, add it to some other existing functions, which is a legal agency, does prosecute, enforce, take compliance action on behalf of the state, does know what an affidavit should have in it, does know what isn't probative of risk, doesn't assume expertise that the magistrate may not have and acts as a sort of broker between the department's interests, the interests of the child and the interests of justice?---I think that would - and I believe I've alluded to that in our submissions as well, that it would be - - -

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I haven't come across it yet. I'm sure I will when I read it?---Okay. I thought that I alluded to - - -

I'm sure you have. I just don't - haven't got a - - -? ---Okay, sorry, commissioner. That's essentially what we believe to be the case, is child safety currently do, you know, a number of roles within their case management, being part of a going in and being a pseudo lawyer and, you know, they're not skilled in that area. So it would be a better proposition to remove that role from them.

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Well, they've got an investment in the outcome too, haven't they?---They do, yes.

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MR HADDRICK: Okay, can I flip over a couple of pages and take you to page - - - 1

COMMISSIONER: Do you have to catch a flight?---Yes, your Honour. Boarding is at 10 past 4.

MR HADDRICK: And that's why I said in a review over a couple of pages on page 13 - I'm prioritising, Mr Commissioner.

Can I take you to the second paragraph there, you say, "Our client is report to us that this", "this" being - sorry, you say that your clients are rarely given the opportunity to demonstrate the changes that have been made?---Yes. 10

My words, not precisely your words. What you mean by that? ---Well, the notifications come through and there's allegations made as the parents not acting in a protective manner so through the case plan there are steps that we've suggested to go through, so they go to therapeutic counselling; you know, if they need to have drug testing regularly; go see, you know, parenting courses, those type of strategies to assist in making them better parents according to child safety. Then what happens is there's a reunification occurs, sometimes, and then at the smallest slip-up - example happened the other day for us, reunification has occurred and the mother didn't take the child to a clinic appointments for whatever reason, I'm not privy to that, and now they're bringing an application for a child protection order. So the children have been brief unified and in a month she's missed one appointment and we're going back to court. 20

But we can't necessarily read too much into that because we don't know the facts of that matter - - - ?---We don't. 30

- - - with any degree of particularity, do we?---No. At this stage, though, we did fight quite hard for a child protection order to be reduced to an intervention with parental agreement because we suggested that, you know, this is a bit over the top for a protection order. It's been a 12-month process. We've had the children returned on the basis of overnights, slowly integrated over a period of months; full reunification occurred at the end of December; it is now the middle of January and we're going to court again because, you know, one slip-up.

Okay. Can I take you to page 16 of your submission?---Yes. 40

The last arrow point. You make an observation there that on many occasions child safety of workers attends court events or formal negotiations. I imagine that includes family group meetings, FGMs?---Yes.

As well of course hearings of orders?---Yes. 1

And the persons who attend on behalf of the department don't have the authority to agree to - on behalf of the department or on behalf of the chief executive - agreements that might be formed by representatives from the department and the relevant parties?---Yes.

How often does that occurred?---Regularly.

How regularly?---Most times we go to court, so if there's a - there's been a practice with some areas now to have team leaders accompany the child safety worker and that seems to be a better process. However, when you go to court it's just a child safety worker and the court coordinator. Now, discussions are going ahead regarding change of times or, you know, information to be passed regarding, you know, the child's health, that type of thing, you know, if we need to change something that child safety worker can't agree to that position, it has to go back to the team leader; and if the team leader is away then it gets lost. 10

So does it make to the court on occasions - or FGMs, or indeed negotiations - frivolous?---Yes. 20

Okay. Going over to page - sorry, I should finish that line of questioning by saying: so it would be your position that where possible there should be a departmental person who has authority to agree to - - -?---That's it.

- - - the varying of an application or the making of particular orders - - -?---Yes.

- - - should be in attendance at the least court appearances?---That's right. 30

And also FGMs?---That's right.

Okay. Now we're going over to page 20 of your submission, the fourth arrow point. Now, before this commission there have been proposals for reform that have been agitated by different parties?---Yes.

The essence of one of the proposals is that a large number of secondary services - services that wrap around tertiary intervention - should be delegated or outsourced or in some way removed from the department or various government departments to an indigenous-controlled entity or entities, plural - - - ?---Yes. 40

- - - to deliver those services. There are two variants to the proposal: one is one where there is in essence one organisation that provides all those services; and another variant of that model is where there might be a multitude

of organisations that provide aspects of all those services?---Yes. 1

Now, your statement or your suggestions is:

Consider the creation of hubs in regional areas where parents can be supported in a required way from communities -

by that you mean the Department of Communities?---No, I mean their communities. So when they come back from the Cape or come down from the Gulf or into town from Rockhampton they're living away from their community. 10

Okay, I misunderstood what you meant by communities in that particular paragraph?---Yes.

But you go on to say there should be a one-stop shop for what might be described as secondary or therapeutic services?
---Yes.

And so therefore I take it you see some value in those functions being removed or disengaged from DOCS or other government departments - - -?---Yes. 20

- - - and provided to one or more entities that are more culturally focused?---Yes, and family focused, in fact. The purpose where I see as a hub is that it can be a multitude of things, so you've got - as I said, the therapeutic services, you can also perhaps have parenting courses, and even to the extent that there is a residential facility there so families can still be together, they can be a person who is a live-in carer or supervisor or whatever in the hub so that the parents understand and can work through any concerns and risk that the department may have. With their parenting styles and provide a base for that. 30

Okay. And just taking you over to the last page of your submission, page 21, in your first arrow point you have again emphasised that where litigation is warranted that Crown Law should be the principal lead agency in terms of the state's response or state's involvement in the litigation?---Yes.

So am I to take it from that that you are broadly supportive of earlier intervention in case management by some legally trained body other than DOCS staff?---Yes, we are. 40

Okay. That is the conclusion of my questions, Mr Commissioner.

COMMISSIONER: All right, thank you. Mr Hanger.

MR HANGER: Would you be kind enough to write down on this bit of paper for me the name of the case that you referred to is having been dealt with yesterday? I appear for the department?---Okay.

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And so that will be confidential, you see?---Thank you.

COMMISSIONER: Are you going to tender it, Mr Hanger, or just keep it?

MR HANGER: No?---I can't remember the mother's name, but I do remember her surname.

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Something that would enable us to identify the case referred to?---Yes.

Thank you. Could I have that, please? And in the same vein, if you don't mind, some of the evidence you've given here, my client might like to follow up and look at it? ---Yes.

Would you have any objection to - with a view to trying to save you coming back - if they ask some questions of you in writing would you be prepared to answer them?---Certainly.

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Yes, thank you. And it might save another trip to Brisbane?---That's fine.

Sir, the other matter is simply this, that I'd like to formally adjourn my cross-examination but I certainly have some matters that my clients would like to challenge. However, I think most of them could probably be dealt with in submissions rather than in cross-examination.

COMMISSIONER: And in the event that you'd need to resume cross-examination proper, we can do it by phone, can't we?

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MR HANGER: Yes, we'd certainly be able to. So I'd just like to reserve my rights there, but in the hope that I think it can be dealt with by submission.

COMMISSIONER: You don't need to reactivate it.

MR HANGER: Yes.

COMMISSIONER: Thank you. Ms Stewart.

MS STEWART: Thanks.

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I've only got one question for you. You were asked some questions in the context of domestic violence and whether cultural competency should play a part in that assessment? ---Yes.

Would you agree that cultural competency needs to play a part in the response to the risk?---Yes. 1

In the area that you service how have you found the services that can respond appropriately?---Apart from the Department of Communities?

What else is available in the context of domestic violence? ---A lot of the communities are the ones that have been identified by the federal government - I can't ever remember the acronym - but they have a lot of wellbeing centres and with that there are psychologists. There are also RFDS - Royal Flying Doctor Service has wellbeing centres in some of the areas in the Cape; Mission Australia provides safe houses and with that there is also linkages to counsellors as well there; North West Queensland Women's Domestic Violence Service, they do. There's quite a number of support services available for women - victims of domestic and family violence. 10

Because you work with the victim do you have any understanding about what's available for the perpetrator? I just ask you because in a lot of - well, and you can agree or not agree - when the parties want to stay together and domestic violence is a child protection concern - - -? ---Yes. 20

- - - that needs to be addressed in that context?---Mm.

So if you have any understanding about perpetrator treatments and programs?---From what I understand in some of the areas we service they're not available, and if they are able to access it, it is at some cost to relocating, and that doesn't necessarily allow for the victim to understand where the perpetrator is in their change of behaviour. So it doesn't really afford both parties to change or understand. 30

And just the other point I wanted to ask you about, you mentioned about the quality and volume of material that you get from the department, and that remains untested until the final hearing?---Yes.

What has been your experience about how that material has influenced specifically separate representatives and social assessment reports?---Yes. We've found that it does adversely affect the clients, particularly when they are being interviewed. Unless they have a support worker there to assist them in that language barrier and the cultural barrier their points don't necessarily get across to that psychologist or the social assessment worker providing that report. So we find that it's unfairly influenced towards the department's concerns as if we don't have our material in, which is usually the case before a final hearing, then there's only one side presented. 40

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I have nothing further, Commissioner.

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COMMISSIONER: Thank you. Mr Capper.

MR CAPPER: We have no questions, thank you.

MR HADDRICK: No re-examination. Might Mrs Bassano be excused, Commissioner?

COMMISSIONER: Yes. Ms Bassano, thank you very much for coming. Subject to needing to answer some more questions by phone, you're excused?---Certainly.

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And we appreciate your time and the effort you've taken in both giving us a written submissions and giving your oral testimony, which I found very helpful. Thank you?
---Thank you.

(THE WITNESS WITHDREW)

MR HADDRICK: No further witnesses. That concludes this week's hearing, Mr Commissioner.

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COMMISSIONER: All right. I'll adjourn the hearing of evidence relating to - - -

MR HADDRICK: All matters other than 3E.

COMMISSIONER: - - - all terms of reference other than 3E until 4 February; and hearings concerning 3E will resume on Monday, 21 January at 10 am. Thank you.

THE COMMISSION ADJOURNED AT 2.57 PM UNTIL
MONDAY, 21 JANUARY 2013

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