



## SPARK AND CANNON

### TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 23/08/2012

Continued from 22/08/2012

..DAY 9

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

THE COMMISSION COMMENCED AT 10.06 AM

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COMMISSIONER: Good morning everyone. Yes, Mr Selfridge?

MR SELFRIDGE: Do you wish to take appearances first, commissioner?

COMMISSIONER: Yes, I do, thank you.

MR SIMPSON: Yes, Mr Commissioner, my name is Simpson, initial A.P., counsel assisting. I appear with Mr Haddrick, also counsel assisting.

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COMMISSIONER: Thank you. Could everyone announce their appearances formally today just in case there is somebody who doesn't recognise your voice doing the transcript?

MR SELFRIDGE: Good morning, commissioner. My name is Selfridge, S-e-l-f-r-i-d-g-e, initial J. I appear on behalf of the State of Queensland.

COMMISSIONER: I don't think they're going to have trouble recognising your voice, Mr Selfridge.

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MR SELFRIDGE: I wouldn't think so.

COMMISSIONER: They might have trouble understanding you but not recognise you. Yes, Ms Ekanayake?

MS EKANAYAKE: Good morning. My name is Ekanayake, E-k-a-n-a-y-a-k-e, initial J, representing the Aboriginal and Torres Strait Islander Legal Service.

COMMISSIONER: Thank you. Yes, Ms Wood?

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MS WOOD: Good morning, commissioner. My name is Wood, initial S.L. I'm the official solicitor of the Crime Misconduct Commission.

COMMISSIONER: Thank you. Mr Capper?

MR CAPPER: Thank you. Capper, C-a-p-p-e-r, for the Commission for Children and Young People and Child Guardian.

COMMISSIONER: Thank you. Now, anything arising?

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MR SELFRIDGE: Yes, there are two issues, if I may. The first one is this: it was identified by Mr Hanger yesterday in that Ms McKenzie's statement there would be an amalgam of the two statements that were tendered yesterday as exhibit 32. We seek to change that. I have the original now of the consolidated statement and I would seek to hand that up to you to replace exhibit 32.

COMMISSIONER: All right. We will withdraw exhibit 32 and

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replace it with a new document which will then become exhibit 32. 1

MR SELFRIDGE: Thank you. The second issue is this, commissioner: I have had some discussions with my learned friend on behalf of assistant counsel and the genesis of it is this - there was a series of questions put to Ms McKenzie on notice yesterday. Those questions - there is a whole series of other people now gathering information for the commission's interest. We have agreed that, subject to your approval, we can produce a further supplementary statement to put before the commission. 10

COMMISSIONER: Yes, that's fine.

MR SIMPSON: That seems appropriate to me, your Honour.

COMMISSIONER: Yes, that's good. What about yesterday I asked for some figures though about complaints and things like that against employees?

MR SELFRIDGE: I may be able to assist you with some of those because I have some information thus far. So when I put some questions to Ms McKenzie on behalf of the state - - - 20

COMMISSIONER: Okay. I will leave that one to you then, Mr Selfridge.

MR SELFRIDGE: Yes, thank you.

**McKENZIE, LYNNETTE CATHERINE** called:

COMMISSIONER: What stage have we reached? You were still examining, Mr Simpson, were you? 30

MR SIMPSON: I was still examining, yes. I was just about to move to a new topic in fact.

Ms McKenzie, good morning again?---Good morning.

The next I wish to move to is what we might call educational outcomes?---Mm'hm.

NAPLAN which is the National Assessment Program - Literacy and Numeracy assesses students at different levels and one of them is year 9?---Mm'hm. 40

Now, the NAPLAN results for 2009 indicate the following statistics and there are headings that NAPLAN is judged against, as you may know, reading, writing, spelling, grammar and punctuation and numeracy. Those figures can be broken down into children in out-of-home care and all Queensland students. Now, as a general proposition, are you aware whether there's any great disparity between those two sort of groups, those in out-of-home care and the general population? ---Yes, there is. There's quite a significant disparity

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between the outcomes of all students compared to those who were two years or more in out-of-home care which that data refers to.

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Now, for example, in this 2009 result reading for out-of-home care children - for those who reached the national minimum standard was only 51.8 per cent versus the other, I guess, more general population for Queensland students was 90 per cent?---That's correct.

That doesn't surprise you?---Certainly it doesn't surprise me. I mean, one of the challenges for children in out-of-home care - there are a couple of challenges. Some of them have experienced trauma, have behavioural difficulties, those sorts of things, that impact on their educational attainment and their progress in schools, but the other big factor is mobility of students where they're not always stable in one school and they may need to move between schools whether the children are in out-of-home care or children who are in homes. In their own homes we know that mobility has a big influence on educational attainment and these students tend to have some multiplying factors that are impacting on their educational attainment.

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Well, just touching on that idea of mobility, how does the Education Department or Education Queensland ensure that when these children move from one home to the next and changing perhaps school or staying even within the one school - how do they maintain continuity between the new carers and the old carers as to the educational needs of a particular student?

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---Certainly this is a challenge for schools and obviously for the children themselves. We do have the educational support plans that are required for all children in out-of-home care and one of the criteria around the educational support plans is that when a child moves to a new school, the plan must be reviewed and taken - and the new foster family become involved and the new school becomes involved in looking at what the needs of that child is at that point. So the way that we work through that is to maintain an educational support plan for them and also make sure that the plan is reviewed at the new location.

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All right. Now, you may have answered this yesterday, but does an educational support plan apply to every student who is in out-of-home care?---It applies - there's a definition I gave yesterday in terms of - do you want me to check for the definition again? It's in relation to out-of-home care and guardianship where there's guardianship of the state.

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That's right, yes. I think you answered that yesterday? ---Yes.

So I'll go through the other statistics as well just for the information for the commissioner. With writing children in out-of-home care the minimum standard was only 50 per cent versus other students 85.4 per cent, spelling 55.2 per cent versus 88.4 per cent, grammar and punctuation

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48.3 per cent versus 89.1 per cent and numeracy 68.5 per cent versus 94.5 per cent. Now, you've had the recent injection of about \$6,000,000-odd from the Department of Communities to assist these students. They were the 2009 results. The injection of money was in the 2010-11 financial year. Has there been enough time to measure whether that injection of moneys has made any difference?---I'd need to go back and have a look at the comparison. I can't give you a comparison here. What we do know is that the students in out-of-home care are continuing to be below even in the latest results. Our best result in the last lot of NAPLAN results was for year 7 reading where their difference was 70.6 per cent for students in out-of-home care compared to 94.6 per cent of all Queensland students in terms of reaching that national minimum standard so you can see there's still quite a significant gap there.

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Right. I guess the question then - perhaps you could take some notes and add this to your new statement - is whether this, I think, \$6.3 million that's communities have given to Education Queensland to assist with out-of-home care children is making any difference in their minimum standards as measured by NAPLAN or more generally in terms of their schooling. If the difference can't be shown at present, how more time would be needed before you can actually show a real change or turnaround?---I understand your question and certainly I can take it on oath and give a full answer to the commission, but in a short answer one of the challenges is that we do have case study after case study of students who receive educational support funding through the 6.3 million who it has made a difference for. The extra teacher aide to assist them to adjust to their new school, the extra support with their homework after school, those sorts of things, has made a difference for students. One of the challenges is that if the money wasn't available for those students, would they have done worse? I guess that's what we aren't able to answer, but I will certainly give you a full answer in terms of the analysis that we've got around that.

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You could say, though, that there was a time where you didn't have that money and you would have trending as to how students performed without that assistance. Could you not tell from that previous experience that students were behaving or performing at a certain level versus now?--- Certainly the schools will say that those funds were essential to help with the students in schools and that additional recourse, but I can give a full analysis around the trends over the last few years and provide that to the commission.

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All right. Now, has the department been tracking year 12 outcomes for students in out-of-home care, in other words, whether they are more likely or less likely to head on to further education, whether it be through TAFE or university?---We have through the Next Step survey. We've got data that shows again there's a difference in the post school achievements of students who have been in out-of-home care. For example, you know, three times more students who have been in out-of-home care during that year 12 year; so we look at their last year 12 year if they were in out-of-home care during that last year 12 year, six months later, where are they. About three times as many students are neither in employment or in further learning compared to all students in Queensland. We also know that they tend to have a higher proportion of students who are perhaps doing the certificate courses at TAFE as opposed to going through to university. There's a lesser number of students who have been in out-of-home care during year 12 who go on to university.

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I think the Next Step survey for 2010 showed that 37 per cent of young people placed in out-of-home care during 2010 who completed year 12 were neither learning nor earning compared to 11.4 per cent of children in the general population. Does that sound right to you?---That's correct, about three times higher. That's right.

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Now, do the ESPs address these particular students or are they - is it lost once they pass by year 12?---ESPs are for students that are in schools. Once they leave year 12 I'm not aware of any education support programs for students post year 12 in the TAFE sector or the university sector.

I asked you some specific questions about NAPLAN and, I guess, the general results of numeracy and literacy, before. Perhaps also in your amended statement or addendum statement address whether the \$6.3 million has led to any improvements in those completing year 12 moving on to higher education or into employment?---Yes, I certainly can.

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The last general topic I wish to cover off on with you is surrounding early childhood. I asked you some questions generally yesterday about the Child Care Act and you said you weren't that familiar with it, but perhaps do you have any opinion or information to give the commission with respect to child care or kindergarten programs and how

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they're accessed by children in out-of-home care? Do you know anything about that?---I don't have any knowledge about that.

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All right?---Certainly we can seek that from the officers in the department and submit that to the commission.

Sorry, Mr Commissioner. I have no further questions, commissioner.

COMMISSIONER: Mr Selfridge?

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MR SELFRIDGE: Thank you, commissioner.

First of all, Ms McKenzie, do you have two documents there in front of you, each one being a response document that was formulated in response to questions that were taken on notice?---I don't have that document with me given that the team is still finalising that.

Just whilst in here, do you also have the document Australian Bureau of Statistics?---I do.

You do have that one?---Yes, I do have that.

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First of all, I understand that this first document, the response document, is a moving feast, as such, so there's currently people within the education department who are reformulating this document to give precise and responsive answers to the questions that were put last night?  
---Correct.

Yesterday, rather. Okay, but given the commissioner is interested in those figures relating to child protection notifications made about DETE employees, do you see that on the first page, bottom left-hand column, there's some figures there and some discussion in the response part of that document. Do you see that?---Mm'hm.

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Now, can I just make it clear, commissioner - can I just make it clear that on my instructions these have not been validated - these figures have not been validated. So it's a response to the questions that you've put and we're happy to discuss them on the understanding that - give some evidence on the understanding that they're yet to be verified by the head of human resources at DETE.

COMMISSIONER: Sure, okay. Well, we'll take them on the basis that they're the best figures available but not yet verified.

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MR SELFRIDGE: Sure, thank you.

You might not be aware of this, and it's something that's just come from your legal. Just tell the commission if you're not aware of it as yet. Are you familiar - sorry, are you aware of the 14,000 reports to child safety that were discussed yesterday none involved DETE employees. Are

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you aware of that?---I was made aware of that just before I came in. 1

Okay. That was a question that you specifically asked yesterday.

COMMISSIONER: Yes.

MR SELFRIDGE: That's the latest information and the known information that we have as such, commissioner.

COMMISSIONER: Thank you. 10

MR SELFRIDGE: Now, notwithstanding that, in that column - if I could just quote the column as such, it says, "ESU figures, that's ethical standards unit figures, "in relation to the number of child protection notifications made about DETE employees," okay. That states in the response in the right-hand column, that there's been 18 reports of suspected sexual harm, which are called SP3 notifications, against a student by a staff member for the 12 month period from August 2011 to present. Yes?---That's correct. 20

You see that. Now, at face value, first of all, that seems to be a contradiction in terms to the statement you made earlier. Can you explain that?---I can. Under the departmental policy principals are required to report directly to ethical standards unit if they become aware of any allegations or suspicion of allegations in relation to sexual abuse. Our ethical standards unit reports those directly to the police but not through to child safety as a SP4 notification. So in terms of the 14,000, they wouldn't be known to child safety even though they would be known to police. Police may then refer them to child safety but those figures wouldn't be in our 14,000, they would be in the police figures. 30

That's a distinction - therein lies the distinction, okay. It says here in this document, as I'm reading it, that the ESU material, additional figures, as such, and if I can just quote those, between 1 January 1999 to 30 July 2012, to that's a substantial period of almost, what, 12 and a half years, thereabouts, that SP1 notifications, 3467, so 3467, SP2, 3686, SP3, 947, so a total of 8100, to be exact, in that defined period of January 99 through to July 2012. That's correct of the information known to us at this moment in time?---That's correct. 40

Can you just explain to the commission, please, what SP1 means?---Sure.

I can take you to paragraph 49 of your own statement, if that was an issue, page 8 of your own statement?---Yes, thank you.

Have you got that before you?---I have, yes.



Yes, thank you?---So in relation to the SP1, SP2, SP3, they're based on types of harm. So the SP1 is a report of harm which would be of a low level physical contact, verbal berating or comments or interactions with the student, that is deemed to be a low level of harm and SP2 is then a report of significant harm and then the SP3 is a suspected sexual abuse.

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Okay. So that first one, the SP1 as such, that's suitable - as it's defined at paragraph 49, it's suitable for local resolution. So that's clearly a low level and you use the term "minor type harm" as such, an allegation of harm, physical contact, whatever it might be and that equates to the number SP1 that I already quoted as 3067. So there's a comparative number in terms of SP2. Could you explain that please to the commission as to what that represents, SP2? ---Yes. SP2 is a report of significant harm where there may have been injury or a repeated behaviour and it involves allegations of over familiar or unprofessional conduct with students.

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Can I just go back one step, and I should have asked you this, but SP1, what we're talking about an example known to you?---An example of an SP1 is where a teacher may have yelled at a student and there was a concern that the way in which the teacher interacted with the student wasn't appropriate or another example is they may have grabbed the student as the student walked past; they put their hand out to stop them walking past, which meant they have come into contact with the student so there wasn't an intentional or a physical attack at a high level, but as the student walked past they may have put their hand out to say, "Hey, stop," and they've come into contact. Those would be considered SP1s that can be resolved at the local level but we will still report them through.

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Are they often resolved at the local level?---In 99 per cent of cases they are resolved at the local level. The reports go through so that every employee has a record of those sorts of things so that if those patterns of behaviour continue it would escalate to an SP2 and further investigation.

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I understand?---Yes.

SP2, could you give the commission an example of what an SP2 type of report would incorporate?---Yes. Look, with an SP2 type of report, as I said, it would be where potentially there has been a repeat of some low level behaviours, but the teacher may not have modified the way in which they have, you know, "If you're going to stop a student, you don't put the hand out," so to speak, "you have other ways in which you do that.

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Yes?---Or it may have been that a teacher has grabbed a child's bag, you know, they may have been a bit more forceful as the child is walking past they've grabbed the bag and said, "Hey, you come here," which potentially may

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have caused, you know, a bruising or something on the shoulder in - - - 1

So it's a matter of degree, as such?---Yes. Any form of injury immediately goes to an SP2. So if the student reports that their arm is sore or their shoulder is sore or anything like that, that would escalate to an SP2.

That's as a result of actions by an employee?---That's right.

There's a distinction as I read paragraph 49 with an SP3, though, in terms of that's a report of suspected sexual abuse of a student by an employee. Yes?---That's correct. 10

With the margin, one would imagine that that's all encompassing, as such; there's not a matter of degree, as such?---No.

No?---No.

All such allegations would be immediately elevated to that SP3 level?---That's right. 20

Yes. Just the last thing is the obvious one, in terms of those numbers that I stated and you agreed with, those figures, on an SP1 level and SP2 level - I think I've already mentioned it, they're the comparative of 3467 and comparative with 3686, but at the SP3 level over that period of 12 and a half years is a total of 947, which is significantly different at - - - ?---That's right.

Is there anything else except for that which I've already put to you, Ms McKenzie, that you can elaborate on or seek to elaborate on in terms of this figures or - - - ?---In relation to those figures? 30

Yes?---No, I think the figures over that period - you know, what is that, nearly a 13-year period. That gives an indication of the number of reports that go through. Keeping in mind, not all those reports are substantiated, so they're then investigated and they're not all necessarily found to be substantiated.

In terms of substantiation, would you have any figures in relation to substantiation?---I don't, but we could get that for the commission as well. I don't have that on me at the moment. 40

Would that assist, commissioner, if such figures were produced in relation to the substantiation of that comparative period?

COMMISSIONER: It would and if it was attached to the written addendum that you foreshadowed before, that would be fine.

MR SELFRIDGE: Okay. Thank you.

Just moving on from that, there's another line of inquiry that you were asked to take up and that related to statistics, as with all the other information in those types of inquiries, there's particular interest in statistics. You have before you a one-page document entitled Australian Bureau of Statistics. Yes?---Yes.

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That purports to be a summary of skills by states and territories across all denominations and/or state and non-state government and non-government type schools. Yes? ---Yes.

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Would it ask, commissioner, if I could hand up one of those to you and you could - - -

COMMISSIONER: Thanks.

MR SELFRIDGE: - - - reference to at the same time. Thank you.

COMMISSIONER: Thank you.

MR SELFRIDGE: In terms of the breakdown, Ms McKenzie, that column belongs to Queensland, represented Queensland, and there's a definitive there in terms of numbers as to how many government schools, primary, secondary, combined or special within Queensland. Yes?---Yes.

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Sorry. It just won't pick up a nod of your head?---Yes, there is. Yes.

Yes. Again, under the second - within that column, but under the second broad heading is - defines Catholic schools; the third defines independent schools, non-government and a total of all the same?---That's correct.

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Yes. Commissioner, I don't seek to go through those and state the obvious as such in terms of numbers, but in response to certain things that were put to the witness yesterday, I'm happy to tender that document if it assists the commission in any way.

COMMISSIONER: Yes. Exhibit 33.

ADMITTED AND MARKED: "EXHIBIT 33"

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MR SELFRIDGE: Just before I read that subject, Ms McKenzie, is there anything that you would like the commission to know or relate to in terms of those numbers that are set out in tabular format? Is there anything you - - -?---No.

It's self-explanatory, I would suggest?---Yes, yes.

Thank you.

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COMMISSIONER: So what it means is we've got a total of 1708 schools across all categories in the state?---That's correct, commissioner.

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Yes. That's the third highest in the country which all makes perfect sense.

MR SELFRIDGE: It does make sense comparatively, yes.

COMMISSIONER: Okay. Thank you.

MR SELFRIDGE: Putting those documents to the side for the time being - - - ?---Okay.

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- - - I'd just like to take you back to your statement and ask you a few questions from the statement?---Sure.

The first one is this: there's been a lot of discussion, both with yourself and the other core entities, in relation to mandatory reporting, threshold criteria. I don't need to go there. That legislative framework is explained within the context of your statement and you're providing further material to the commission, but in terms of self-filtering as such, self-filtering in particular to the Education Department or to DEET as it's known, is there anything you'd like to explain to the commission as to what balances or checks within DEET happen or take effect before those reports have been forwarded to the relevant agencies?---Three go to Child Safety and four to the police.

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Yes. We'll go to Child Safety in particular because that's been very much a focal point?---Sure. I guess the key thing to note is that at the school level, prior to any reports going through, we do expect principals to make a determination about whether it's significant and detrimental harm to the child. If they don't believe there's significant and detrimental harm, our principals and guidance officers - and they have the support of the regional offices if they need further information - have a network of non-government organisations and other organisations where they can refer parents to. So prior - - -

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Can I just stop you just for a minute there so we can just discuss that which I've already intimated?---Yes. 1

So as far as the department is concerned, it's obviously encouraged that principals would have regard to whether or not it's significant detriment or harm. Would they liaise with the guidance officers?---Absolutely.

Senior guidance officers?---Yes, absolutely. So there's both - each school has access to guidance officers and then there are also senior guidance officers who are based at the regional office and there's also in the central office our child safety - child protection officers would have a child safety director who the regions can discuss matters with and cases with prior to making a determination. So there's a lot of support for the principals in terms of determining whether they deem it to be significant detrimental harm or risk of harm. 10

Sure; and you also mentioned NGOs, that there's a relationship with - non-government organisations seek advice?---Or to refer families. In terms of referring families to non-government organisations or other support agencies in each of those cases we do need to gain consent from the families in order to refer them on, but in a number of cases, you know, families take up those opportunities. Guidance officers particularly have, you know, access to the list of who's in the area, but I guess I would need to indicate that that across the state is differential. Certainly in the metropolitan area there's many more potential NGO support services for families than perhaps in some of the more remote and rural areas. 20

What are we talking about in terms of NGOs? Go back, for instance, to the commission - - -?---Yes, for instance, in the south-east region there's the trial that we've got going on. The reason we chose the trial around the decision tree for principals is there's a Helping Out Families program and there's an NGO there that provides support. 30

Would that be a common referral made by education to Helping Out Families? Would that be a common referral? ---Yes, I don't know in terms of the numbers of referrals, but certainly in terms of NGOs generally guidance officers have that as one of their priorities to refer out where they identify families have needs, and whether it be to youth and mental health or whether that be to the health sector or whether that be to the Smith Family or other agencies that can provided support to families, then guidance officers do make those referrals out for families. 40

Are we really talking about things at the lower level of scaling where you think that by utilising one of these proactive-type agencies, NGOs, you'd be able to assess that family at risk or a vulnerable family and negating the need to put them through the system as such?---That's right.

Is that what we're talking about?---So our first priority would be to - before we identify a family is going to be escalating a guidance officer would refer them out and obviously it's up to the family as to whether they take up that referral, but, you know, where we can we would prefer to do early intervention by getting other agencies to support the child or the family as opposed to wait till we determine detrimental harm or a significant risk of harm.

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Okay. Are we talking about if Tommy turns up for school and he has not got a packed lunch and this has happened on two or three occasions?---If Tommy turns up to school without a packed lunch, in some cases that could be just they forgot to put it in his bag that morning and it's sitting on the kitchen bench. In other cases it could be it starts to become a regular occurrence.

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Yes, that's what I mean; sorry, that's what I mean in terms of becoming a regular occurrence?---Yes, so in regular occurrence - I mean, we've got - within the schooling system we have a number of schools that run breakfast programs for children and also have other programs, particularly in some of our remote communities. We have breakfast, morning tea, lunch and afternoon tea programs for children and so where the school identifies that there's a large number of students who potentially families - potentially aren't coming to school with breakfast or aren't coming to school with lunch, they form relationships with the local bakery or the local fruit shop and there's philanthropic, I guess, support to support that community. A number of organisations come together to support the children at the school in that community. So we do have the breakfast programs, those sorts of things, but where a school doesn't have those programs if a child has regularly come to school without lunch, usually the first point of call would be - the teacher in primary school particularly would have a word to the parent about that and say, "Hey," you know, and certainly, you know, a call home to say, "Look, they keep forgetting their lunch. Can you just double-check that it's in their bag when they come?" If that seems to be that it's persistent, that the family have been alerted to that but they're persistently not sending the children to school with lunch, then the teacher may refer that to the principal who'd made a judgment about whether or not there's potential neglect happening in that family and send an SP4.

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Okay. So there are some measures, some safety nets as such, that would be utilised by or engaged by teachers at a local level in forming relationships, et cetera, that would be preventative-type measures to stop these children, these families, becoming part of the system at an early stage unnecessarily?---Mm.

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That's what you're talking about, isn't it?---Yes, absolutely. I mean, certainly the first point of call would be to - particularly with young children in the primary schools the relationship between the teachers and

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parents in the main is quite solid and so there is that ongoing conversation about how they're going with homework or those sorts of things. As you move into high school that relationship isn't as strong with parents, but the high schools would still look at - make allowances. I mean, often with the high school children there will be someone in the school they go and let know that they don't have any lunch if they need it or we notice they don't have any lunch and, you know, someone will lend them some money to go to the tuckshop or there are, you know, processes where the tuckshop can provide lunch for them, those sorts of things, so we wouldn't go straight to a referral on that.

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I mean, you say the relationship is not quite as strong at high school. Is that by virtue or by default of children move from class to class and they don't have the same teacher for different things?---It's a little bit of that. It's a little bit of teenagers like to keep their parents at bay a little bit from the school and so I think most parents experience that when you move from primary school to secondary school your relationship with the school isn't as strong as perhaps when they're in year 1 and you were dropping them off every morning and chatting to the teacher.

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So it's about that independence as well?---Yes, independence in their travel to school so often parents don't need to drop them to school. They get to school other ways. They don't have that regular contact with the teacher.

Okay. Just moving topics, as far as SCAN is concerned, there's been a lot of discussion about SCAN and I'm sure you've been privy to some by listening in at the commission as well. Does it work for education?---With SCAN certainly with the inception of the ICM the SCAN officers who are based within education have indicated that that's made in the last couple of years the process run much smoother.

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That was late 2010 that ICM was introduced?---It's my understanding that's when it was, yes.

And you say that that's made it a little bit easier or smoother?---From what I'm advised from our SCAN officers the cases that come to the table at SCAN now are ones that everybody's working on a problem-solving solution to how to wrap the appropriate interagency support around a child that's already met the Child Safety threshold.

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Yes?---What happens is if we have concerns about a child that hasn't met threshold, there's a process we go through and we get to talk about that at the ICM and those SCAN officers that work in DETE believe that that's functioning well for them if they have concerns about harm of children where they would need to raise it.

That of itself arguably would be beneficial, that

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opportunity to discuss and be part of that process and have that knowledge or the sharing of information as such? 1

---Yes, definitely twofold. When a child reaches notification, our SCAN officers advise that to be at the table talking about that particular case and ensuring that the educational side of that child's development is being considered, they're able to then provide easier pathways through to the schooling system and make sure all data and support services that we have to bear within the education system are available for those students.

Sure?---They find that really beneficial, but equally they find the ICM beneficial to be able to bring up cases they're worried about that may not have yet met threshold. 10

Yes. When you say "twofold", do you mean the SCAN itself is beneficial in the sense of putting that information or educational information before that select body and the second part is that the ICM itself is beneficial because really there are issues that aren't currently before - - -?---Correct.

Yes, okay. The reality is - I'll put this to you - that ICM is sort of a second-tier type of SCAN, isn't it?---It is. 20

And it's really where those other core entities are able to raise issues that they feel should be in that forum and should be ventilated and should at least be discussed by the core entities that are present?---Our officers tend to only bring them there if they've already spoken to the regional intake officer. They have good relationships with the regional intake officers with Child Safety. So if a student doesn't meet threshold and one of our principals is concerned that it didn't meet threshold, then they will raise that with the regional intake officer and if the regional intake officer still in that conversation isn't able to perhaps understand what educational officers are trying to explain, because sometimes there's a difference in understanding of what is harm, as we've heard people discuss, then education has the opportunity as a core agency through the ICM to raise it while health and police, et cetera, are there and they may have information on that family that then brings that - potentially could put that child into the threshold. 30

If there was a sharing of information - and, you know, there's been a lot of discussion about sharing information and how that could be done and at what level, et cetera, and so on and so forth. It could be considered or it could be suggested that SCAN and/or ICM might be unnecessary, but you would advocate - would you advocate that that face to face and that opportunity to discuss and to raise points is a benefit in itself, isn't it?---I guess I'd advocate that it's similar to the education support plans that occur at the school level. Where all of the parties are able to meet to discuss the education support plan, the education support plan tends to be more advantageous for the student. 40



So if the foster family is able to be at the meeting, the child safety officer is at the meeting, the relevant staff from education are at the meeting and the student is also able to be at the meeting, then the plan works - is developed in a more fulsome way and all parties are understanding what they can do to work together to support that child's educational progress. Equally with SCAN, where a child is at risk of harm and needs to be protected, then to have all parties looking at what is the best way to protect this child in the complex cases - I don't think every case needs to go to SCAN, but certainly the complex cases - if education is able to be there and understand, we'll take that on board so that - we'll make sure that the school is aware of these other complexities the child's dealing with and we can adjust our program accordingly. It assists in terms of being able to put a good program together for the child.

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It's a two-way process, isn't it? It's not just what you're taking to SCAN. It's what you're taking away from SCAN too?---That's right; that's right, yes.

Or ICM, for that matter?---Yes.

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Okay. As far as children with disabilities are concerned within the educational sector, looking at the Australian Bureau of Statistics at exhibit 33, it's clear that within Queensland there's a series of reports of six special schools. How do we define "special schools" and what do you mean by "special schools"? Are these children complex or disabilities to the extent that they have to be - when I say "disabilities", I'm talking about mental health and physical?---Yes, there's actually a definition under the act that determines the criteria and in terms of entry to a special school and we have a policy around that. In the main if a student needs to gain entry to a special school, they need to have an intellectual disability and in most cases they would also have another disability that means that their needs are not able to be met in a mainstream school and need to be provided educational services through a special school.

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So when you say "intellectual disability and another disability", can you give an example to the commissioner what you mean by that?---So a student might have an intellectual disability but also have a physical disability and they may have an intellectual disability but also have quite significant health issues that require them to have specialised feeding, specialised assistance with toileting, those sorts of things.

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Sure; and notwithstanding those that you've identified, children with intellectual and/or other disabilities, physical or health issues, in the mainstream schooling - it's not uncommon for children with disabilities to be within mainstream schooling?---Certainly students with disabilities are within mainstream schools and the students that I just described can also be in a mainstream school,

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but in these figures it doesn't show how many students with a disability are in schools across Queensland or any other state, but students with disabilities exist in all schools throughout Queensland. 1

Notwithstanding that legislative outline, legislation determining the criteria for membership or gaining membership to special schools, how are those children with disabilities - generally how are those children with disabilities in the mainstream school and how is it determined that they should attend a mainstream as such? Do they just not meet the threshold criteria under the legislation, or how does that work?--In the main in Queensland we have a policy and legislative process which says that children can attend any school. They don't need to just because of their disability attend a special school, but in terms of the decision for a child to attend a special school that's made in conjunction with the parent and in conjunction with the department officers that look after that area. 10

Yes, I understand. So it's very much a process that's not predetermined by virtue of the legislation?---No, not at all. 20

No?---No.

I understand. Going back one step, within your - I think it's paragraph 54, if I remember correctly, 52 or 54 - 52, Child Safety Directors Network. Again there's been a lot of discussion about the utility of the child Safety Directors Network. What's your view in relation to that, Ms McKenzie, in terms of assistance and helping DETE in everyday life in business?---Sure. I need to declare that I don't sit on the Child Safety Directors Network. 30

No, I understand?---So I don't have an intimate knowledge of what happens in the meetings on a daily - on each time they have them.

Do you feel that you're in a position to be able to comment or do you think you would rather defer it? I'm instructed that the person who actually sits on behalf of DETE is actually here today so I might leave that line of questioning for the time being.

COMMISSIONER: Sure. 40

MR SELFRIDGE: There is just one issue I would like to address you on and it's those other people who work within the education system who are part of the everyday school set up by assisting what you could term as child protection and child protective-type issues?---Yes.

I'm talking about nurses in school, nursing staff and the like, guidance officer, et cetera?---Sure.

Now, you've already made mention of the guidance officers

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and what kind of input they have?---Mm.

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What about school nurses in terms of their everyday working role?---Yes, there are two types of school nurses. So there's the school nurses that are employed by the Department of Education, Training and Employment and they're registered nurses that primarily provide assistance in the schools in relation to medical treatment for students, in terms of feeding of students, any sort of medication that needs to be provided to students who require that as part of their, you know, day-to-day existence and need it to be administered while they're at school.

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Yes?---They tend to be based in special schools and they work across special education units where we have students with high needs that require medical assistance during the day.

Would every special school have a nurse there or would the nurses have a few schools that they're responsible for? ---Yes, in the main there would be a few schools that they work across. So they would also train staff within the school if it requires them to have any training about the sorts of support they need to provide to children who may have some medical needs.

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Sure?---So there are those nurses. We also have the nurses that are employed by Queensland Health who are based within our schools, predominantly in our secondary schools, and those - the nurses employed by Queensland Health are more there from a health education point of view so they provide young people and they have within the memorandum the capacity to provide parents with health advice and health education and referrals out to other organisations, so that's the health. We also have youth support workers and the youth support workers are - - -

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Just before I go on to youth support workers - or just before you go on to youth support workers, can I just ask you a couple of questions about these Queensland Health nurses that are within the secondary school environment?  
---Sure.

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You say that they supply health education both to parents and children. Are we talking about physical and/or mental health type education or not?---Certainly they would assist the school in terms of referrals for students with mental health, referrals out for that. They primarily work with students but they do - within the memorandum there is capacity for them to provide parent programs with health education and so on.

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Okay, and would each - again, is a nurse assigned to a certain number of schools, or how does that work?---Yes, that's correct. Not every school has access to the school nurses that are through Queensland Health. I can provide figures on how many nurses we have across the state, but in the main, most schools get access to some - either a part-time nurse, but not every school does across the state.

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You mentioned youth support available within the school environment?---Yes. The youth support workers are managed by NGOs, so they're employed through non-government organisations.

Who pays for them?---Both the Department of Communities and Department of Education, Training and Employment. We have a shared budget around that.

Okay?---So the youth support workers provide support to students who are deemed to be at risk of educational - reaching educational outcomes, and primarily work in the - well, they all work in high schools, but focused on students at risk of not completing their (indistinct) program going through to year 12, and they provide advice to students in terms of the students will talk to them about, you know, "I don't have anywhere to live tonight," and they will then contact the agencies in the area that can provided that support. They will also talk to them about what's happening in their home environment and how they can, you know, still get their homework done and their assignments done despite what might be happening at home. Where they deem them to be at risk of harm they will report that through to the principal and the principal will then make referrals through to child safety. So they're there as, I guess, an assistance to the young person to work their way through whatever difficulties they may be having that are preventing them from achieving well at school.

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Just by virtue of what you stated before, Ms McKenzie, in relation to the day-to-day support that these youth supports offer, it's a broad spectrum, isn't it? We're talking children that are not - missing school work or not achieving academic norms, up to children who state they've

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got nowhere to live or at risk?---Yes.

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Is there anyone else apart from those that you've already identified that would be - others within the educational system that would be - - -?---Yes, sure. We've also got the school based police officers that are based there and they work on a community policing sort of an approach within the young people in terms of they'll give education talks to the young people, they get involved with them through sport and through camps and those sorts of things and often become a significant adult that the children will go to, to talk about any concerns they might be having, whether they be legal or whether they just are another adult who they wish to talk to. If they become aware of any concerns they also have the capacity through Queensland police to refer the students on an SP4 as well, or a report of harm as well.

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Anyone else?---Chaplains. So we have a chaplain program that's funded by both the state and the Commonwealth, so where schools are able to also get some further funding, because it's partially funded by state or Commonwealth. The chaplains are available to provide - you know, to chat to students who might be having a not so good day because something happened. Sometimes students will choose to go to the chaplain because they've got to know the chaplain on a school camp or something like that as opposed to the guidance officer. So there's actually - within most schools we actually have what we call student services teams, because schools will have a range of different people that are within the school that provide - that students may go to, to raise issues of concern and the - teamwork together to put, I guess, a wraparound service on that student and to refer out to the various agencies, you know, prior to it - when we identify that this potentially could be a student who may go to becoming at risk of harm or detrimental or significant harm. So it's that early intervention, I guess, those programs.

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Coming away from the early intervention and going to the pointy end of the stick in terms of those students that are at high risk, as such, and students that are either part of the child protection system or on the cusp of the child protection system - - -?---Sure.

Who in the schools - of those that you've described, who within the school environment would be the person or persons that would take primary responsibility for (indistinct) those type of children?---In terms of decisions about whether there's harm or whether there needs to be, you know, child safety - - -

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Intervention?---Yes, the principal.

Yes, okay?---So all of those parties, if they become aware of anything, that the child is at risk or is experiencing harm, have an obligation to report it through the principal.

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So all roads point to the principal's office, you say?  
---That's right, yes.

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All those people you described?---Yes. If I can just qualify, apart from police and health who have their own responsibilities, those that are employed by police and health.

They have their own mandatory obligations as such?---That's right. That's right.

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One last thing then on this the same topic, notwithstanding that which we've already discussed, in terms of indigenous students, as such, is there anything else in the school environment that - or anyone else that's available to those children?---Yes. A number of our schools would have community education counsellors who are employed to provide the link between the student at school and the community in terms of indigenous communities, particularly, and with those, in relation to that, it's to assist the school to understand the cultural competence that's required in terms of who in the community should the principal be talking to if they're not able to talk to a parent. In many cases with indigenous children where a parent is not available then an elder may come and assist a parent at a meeting, and the community education counsellors are there to provide that interface between the school and the communities.

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These community education counsellors, are they themselves generally indigenous?---Yes.

Who funds or pays for community education counsellors?  
---Department of Education, Training and Employment.

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Is there a policy in relation to that procedure?---Yes, there is in terms of their roles. There's certainly a role description for them.

In terms of numbers, and I don't expect you to be precise with this, but in terms of numbers are you aware of how many of these community education counsellors are available at DETE?

---I'll just double-check. I have some numbers here. I'll just check if they're on there.

Sure?---There's 44 community - full-time equivalent, which means some schools may have a community education worker two times a week and another school might have that same person three times a week. That would equate to one full-time equivalent.

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Okay, but there's 44 in terms of full-time equivalents?  
---That's correct.

Yes, I understand. Excuse me for one moment, please. Outside of that which I've put to you already, is there

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anything else that you - as far as any questions that arose 1  
yesterday from the commissioner or from counsel assisting  
that you'd like to express to the commission in response?  
---At this stage I think given we're still gathering some  
of the information it would be best if we wait to put a  
written submission in to ensure that we provide - - -

Sure. A written statement, you mean?---Yes, the written  
statement, so we provide the fulsome information, because  
we do have people still working through some of the figures  
and the numbers that we requested yesterday. 10

Okay. Thank you very much, Ms McKenzie?---Thank you.

No further questions.

COMMISSIONER: Thanks, Mr Selfridge. Ms McKenzie, I just  
want to ask you a couple of questions about the numeracy  
and reading standards. The results for Queensland students  
in 2010 seem to indicate that insofar as reading is  
concerned indigenous children in grade 9 are 65 - or say  
nearly 66 per cent of them met national minimum reading  
standards compared with 90 per cent of the rest of the 20  
population. That must be a concerning disparity for the  
department, is it?---It is. It is, commissioner. We have  
over the last few years had a program in place and a  
significant focus on closing that gap. The gap in  
Queensland is actually less for indigenous students  
compared to other states and territories, but we are - you  
know, nonetheless we are still concerned and are working  
very, very - in a focused way to close that gap. We have  
seen some trends recently in terms of year 3. The gap has  
started to close for year 3 students, because many, many  
schools across the state have been focused on the prep year  
1 and 2 to try and build it. We know for all children, if 30  
we can improve their literacy and numeracy levels at year 3  
they have a greater success through to the rest of  
schooling. So a lot of our energy has been focused around  
those early years.

Because it's odd, two years earlier, that is, children in  
grade 7, the percentage of indigenous who met the national  
minimum standard was 80 and a half per cent. That's nearly  
15 per cent better and the gap between them and the rest of  
the population was again only 15 per cent, because the rest  
of the population achieved 94 per cent. Why are both in  
the general population and in the indigenous population  
results better for those in grade 7 than those in grade 9? 40  
---Yes, it's interesting. Can I just clarify,  
commissioner, do you have all Queensland results there or  
just state school results?

Yes, I don't know. She's not here. I'm getting this from  
the Children and Young People in Queensland snapshot from  
the Children's Commissioner, so I don't know. Do you know  
the answer, Mr Capper?

MR CAPPER: I'm just trying to find that myself, thank

you.

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COMMISSIONER: Yes, but anyway, you think one might be pulling the other one down if I haven't got the overall figures?---Possibly I can answer the question, because I've just got a note here that the NAPLAN results that are in the Children's Commission report are for state and non-state schools.

Right?---So my question I've just answered myself.

Yes?---Yes, look, that's - - -

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Like any good teacher?---Yes. I mean, that's a concern I mean, we do know that the students as they are going through school, as they move into secondary school, sometimes the relationship for indigenous students - or all students, but, you know, indigenous students would have a similar experience. It becomes less than with your year 7 teacher, which in Queensland is at the top of primary school at the moment. We also know that attendance for students starts to decline as they move into teenage years and start making independent decisions. So I can come back to you with a more fulsome response on that question, but it is a concern in terms of the achievements of students generally.

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Because, yes, the achievements drop across the board significantly in the two years from the top of primary to the first full year of secondary, and that's for both male and female students, and as I say, the indigenous students are performing well in grade 7 at 80 per cent of meeting the national standards but then in grade 9 they drop to 65.8 per cent, but that doesn't seem to - well, yes, it does, but not quite as pronounced, with the numeracy. The overall population result, that is, 95 per cent of grade 7s and 93 per cent of grade 9s are meeting national minimum standards and of indigenous figures 82.5 per cent of grade 7's meet with the national minimum but 74.5, that's a drop of 8 per cent, two years later. I thought you were supposed to improve as you go through school?---You are supposed to improve. Keep in mind, commissioner, that the national minimal standard for year 9 is higher than for year 7. So it's not saying that they haven't learnt along that way.

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No, but the standard is the same for everyone?---Yes, but in terms of comparative, the gap gets bigger for the students. On that data the gap is getting bigger for the students compared to all students. So the minimum standard for year 3 is different to the minimum standard for year 5.

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I know, but only grade 3 is tested against that standard, aren't they?---Yes. So when you look - that's correct. When you're looking at the all students versus the other groups you can - it's at that that particular standard.

No, it's all students at that same standard, I think?

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---Yes.

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Yes, that's right?---Yes, how many reach the threshold that we would expect a year 9 to be at.

That's right?---Yes, the minimum threshold.

So when it's "all", it's not all from grade 3 to 9?---No. No, it's just - - -

It's all grade 9s?---All grade 9s, that's correct.

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Yes, it's all - so it's apples and apples?---That's right.

The other thing I wanted to ask you about, and this may be a toughie, but it looks - according to the Children's Commissioner, the proportion of year 12 completers eligible for an OP, that's an overall position score, decreased from 72, nearly 73 per cent, in 2003, to less than 59 per cent in 2010?---That's correct.

How come?---We had a change of - we had the education and training reforms just over 10 years ago and within that there was an introduction of the Queensland certificate of education which required students to gain successful completion of the courses that they were doing in order to receive a Queensland certificate of education, and in that process we introduced in Queensland recognition for vocational programs to be put onto the Queensland certificate of education and to be given credit for completing within year 12. So Queensland as a state has quite a wide variety of what is deemed to be a pathway - a subject that you receive credit for when you're in grade 11 and 12, so over that period of time students have chosen to complete year 12 with vocational certificates as opposed to university entrance type subjects through the OP system. What's interesting to note, though, with that statistic is that even though there's been a decline in those children that are picking the more university focused academic subjects that count towards an overall position, that the percentage of total year 12s that go on to university has remained constant.

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So what are you saying, that the technical kids don't get an OP or an OP equivalent?---That's correct. So in the first - the data you gave at the - there wasn't as many - - -

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Doing - - -?--- - - - subjects in the vocational area that were credited towards the Queensland - towards their year 12 leaving certificate.

So does that mean - is there a trend that there are less kids going to university now and more of them going into the trades at that earlier stage?---Yes, I understand your question. No, what the trend is, is that where there was, say, 70 per cent of students who were taking OP sort of subjects, modern history, geography, maths C, those sorts

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of things, maths A, maths B, there's now lesser numbers of students taking those sorts of subjects at grade 11 and 12 and more taking vocational sort of subjects at grade 11 and 12, however the numbers, the percentage of students - the percentage of the total year 12 population going to university has remained constant at about 35 per cent. So 70 per cent used to have an OP that could take them through to university and 35 per cent would go. Now, it's about 50 per cent-odd have those subject combinations and still 35 per cent of the total population is going through to university. So those - the numbers going - the percentage of students in year 12 going to university has remained the same, we've just provided credit for other sorts of programs that students can do and provided students with school based apprenticeships and those sorts of things which they receive credit for.

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So if there more less academic kids sitting for the OP type subjects now because they go to the alternative option that suits their learning abilities and - - -?---Interests.

More suitably, then the quality of the OP scores for those left must be improving?---I will have to take that - - -

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Theoretically, wouldn't it?---I will have to take that on notice. That's a question for QSA. At the end of the day the QSA determine the scores from 1 to 25 and the universities are still taking the 35 per cent even though only 50 per cent are going in. So they still have to meet the university threshold to go across.

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Yes, but you would think proportionately there would be more of them doing it because more of them are in that academic rather than technical sphere?---Yes. 1

All right. Really, that was all leading to this: do you keep records or does anyone keep records of the OP scores of kids in long-term out-of-home care?---Yes. The Department of Child Safety provides the Queensland Studies Authority with a data file and the Queensland Studies Authority that has the total data for all year 12's in relation to OPs, et cetera. They do a data matching for Child Safety and provide that across to them. 10

So Child Safety would know the answer to my question, Mr Selfridge.

MR SELFRIDGE: I understand, commissioner.

COMMISSIONER: Thank you.

MR SIMPSON: I think the witness also said that the information is provided to her department, though.

COMMISSIONER: Yes. Also provided to your department, is it?---The OP data? 20

MR SIMPSON: Yes?---My understanding is that - I'd need to check that. My understanding is it's not. It's actually provided directly from QSA to Child Safety and then we get it back through the Children's Commission report - is my understanding, but I can check that in case there is a different process in there.

COMMISSIONER: Is it in the Children's Commission report, Mr Capper - - - 30

MR CAPPER: Not that - - -

COMMISSIONER: - - - that sort of detail?

MR CAPPER: Not that specifically dealt - - -

COMMISSIONER: No, I didn't think so. Okay, Mr Selfridge, anyway, you'll grant it for us.

MR SELFRIDGE: Yes, absolutely.

COMMISSIONER: Thank you. Ms Ekanayake? 40

MS EKANAYAKE: Thank you, commissioner.

Ms McKenzie, you spoke of closing the gap?---Yes.

What, if any - - -

COMMISSIONER: Aboriginal and Torres Strait Islander Legal Service?---Okay.

MS EKANAYAKE: Thank you.

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What, if any, specific supports are in place for Aboriginal and Torres Strait Islander children who, given the lower levels of numeracy and literacy?---Yes. The department has associated with the closing of that strategy a budget that is provided to schools to support students who - to support indigenous students with their learning. As well as that, there's the national - the Commonwealth government has provided additional funding that through the low SES national partnership, many of the schools that are receiving that have high levels of indigenous students and they use those funds to provide additional teacher aide support in the classrooms to also provide additional support for students who may need assistance with their social skills in order to engage appropriately within a classroom; those sorts of things and also they utilise it to employ additional community education counsellors to support with the communication requirements, et cetera.

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Thank you. You spoke of educational support plans - - - ?  
---Yes.

- - - and there was a discussion on that?---Yes.

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How are education support plans utilised to support Aboriginal and Torres Strait Islander children in care?  
---Yes. With the educational support plan, all students who meet the criteria, whether they're indigenous or non-indigenous, are required to have one and the process is similar in that they need to make sure all the significant adults that are part of that child's program, whether it be the foster family, the child safety officers, community education counsellors; in the case of indigenous students, elders may also come and to hold the meetings. They become involved in determining what's appropriate in terms of the educational program and then what sort of support that child may need.

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You also spoke of referring families to Family Support Services with consent?---Yes.

What is your awareness of the direct referral pathway to Aboriginal and Torres Strait Islander services that are skilled to provide support - - - ?---Yes. Look - - -

- - - for instance, in domestic violence, neglect and parenting capacity?---Yes, yes. Certainly, I'm aware that there are agencies that can provide that specific support and the officers in each of the regional offices across the state would know the exact agencies and also principals and guidance officers in a local area would know those agencies, as well as the community education counsellors within schools would also be aware of the agencies to refer to.

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So how would you say this is being promoted in the sense - make sure that those referrals are made?---Yes. Each of

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the regional offices have contact with the NGOs in the area, but also with the elders in the area. Part of our closing gap strategy is to ensure that our regional offices do have contact with the elders in the area and are aware of the sorts of services that are available for indigenous students. So through the closing gap strategy we promote that principals and regional support staff need to be come aware of who is locally available and to utilise those services.

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How do you think that's working, that referral system?  
---Certainly for all schools and more specifically in terms of schools that are providing education programs for indigenous students. The referrals out to schools, there's two messages: (1) it works well if they've got good relationships on the ground or it doesn't work as well if they haven't managed to get those good relationships on the ground. I mean, picking up the phone and having a conversation and then having that relationship with the person, you can often get much faster service as opposed to, you know, any of the more formal processes. So we encourage principals and guidance officers to make sure that they've got that phone call conversation and just having to make those phone calls so that they are able to maximise those services.

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And, lastly, as you would be aware, section 17 of the Child Protection Act provides for contact with a child by a police officer or a child safety officer at the school. We acknowledge that this is a necessary step to protect a child. What arrangements are in place to support a child before the interview or when the interview happens or after the interview?---Yes. Certainly in those cases, we provide support at the school level through either the guidance officers; the community education counsellors may be involved and in the main we sit in on those interviews as well with the police or Child Safety if the child needs to have somebody with them for extra support. So those judgments are made on a case-by-case basis, but certainly there is multiple staff who have got different levels of training that are available to provide that support and service.

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What would be the extent of recognised entity involved in such interviews or in that process?---I don't understand.

The recognised entity that the Aboriginal and Torres Strait Islander Services - - - ?---I see. The ones are also part of SCAN?

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That's correct. Yes?---Yes. I'm not able to answer that question in terms of what's happening in each of the areas, but certainly again where the recognised entity has a relationship with the SCAN officer, I'm sure that there's calls being made, you know, to those as well, but they've all got a case going through. In that first instance where the police or Child Safety - often they will turn up without the school even knowing they're coming.

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Yes?---Usually, it's somebody within the school that provides that support to the child as opposed to having time to get somebody from outside the school to come through.

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So in the case of an Aboriginal and Torres Strait Islander child, it will be somebody they can relate to who might be there to support them at the - - - ?---Yes. That - - -

- - - interview or after or before?---Yes. Yes, that's right. I mean, whether it be their class teacher or whether it be the community education counsellor, the school principal will make a determination because certainly our concern is for the welfare of the child and we provide that support for the children and it would be a case-by-case basis.

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Thank you, Ms McKenzie?---Thanks.

Thank you, commissioner.

COMMISSIONER: Thank you. Yes, Ms Wood?

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MS WOOD: I have no questions for this witness, commissioner.

COMMISSIONER: Thanks very much. Mr Capper?

MR CAPPER: Thank you.

Craig Capper from the Commission for Children and Young People Child Guardian. In relation to the evidence that we've been hearing, there's been a lot of discussion about the interaction between the agency, particularly data sharing, and the need for that and the importance of that - in relation to that, can you tell us a bit more about, in particular, the - I'm more concerned with health type interactions with yourself in terms of the development of the education support plans and those things and how much information, how much interaction is there between you and Health in relation to developing those and what information are you getting and receiving in relation to kids in care? ---I'm going to need to take that question on notice because I'm not familiar with whether or not there's a health worker at all times at the ESP meetings.

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Sure?---In the main, it tends to be Child Safety, foster carers, the school staff, but I can check that for you to see whether or not we have - there's, you know, a large practice of Health staff being available at those stakeholder meetings.

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Would you accept that the health needs of a child, particularly if there's hearing or sight issues and those things, there would be significant impediments to a child achieving at school - - - ?---Yes.

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- - - and therefore that information would be highly valuable to, particularly in developing an educational support plan for children?---Yes, absolutely I agree with you.

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Okay?---I think, though, that where we would tend to get that information from would be the foster parent or the child safety officer who may be aware of that through the health records of the child, so, you know, if there's information that we need, particularly with hearing and sight and those sorts of things, if those sorts of things aren't rectified then it can impact on their educational progress.

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All right. I guess the reason I'm asking that flows on to this issue, particularly in relation to children in care being suspended or excluded?---Yes.

I mean, obviously, there's behavioural difficulties?---Yes.

You've identified that already. Now, I mean, obviously you've said that before in making the decision to suspend or exclude a child, consideration is given to the child's particular needs or any other issues that may be going on in their life, particularly those health or out-of-home care type issues. The difficulty I'm coming to with that is it appears from the data that the commission has that children who are in out-of-home care are four times more likely to suffer a suspension or exclusion compared to the broader community. Can you explain that in any way?---Yes, certainly. I mean, one of the challenges with students in out-of-home care is a, you know, higher percentage than for all children who have quite challenging behaviours and, you know, in some cases also connected with mental health issues. One of the things that, you know - is part of the play into that is where a student has significantly challenging behaviours - the education support plan and then bringing in the therapist to try and, you know, provide skill development for that child so that they're able to function within a school setting in a safe way and be safe for other children in the setting is what we work through in those education support plans where a child has those challenging behaviours, but there are times when despite the support that can be provided to the child and despite the skill development that the school works with or the therapist work with the child that a principal needs to make a judgment about whether or not the child or young people is potentially at risk of harming others in the school and they would have demonstrated that in some way and hence the increased percentage of those suspensions.

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I mean, I guess the difficulty that I'm having with that notion is yesterday you were telling us that the principals in making those determinations as to whether the children are excluded or suspended has regard to this type of information, that is, that this child does have these special needs and allowances are made for that child, not to excuse their behaviour but certainly that allowances are

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made. Even if we accept that those allowances are being made and, therefore, the number is lower, it's still four times the number of children who are not in out-of-home care that are being excluded. I guess I'm having troubles resolving that?---Yes and I understand why you would be. I guess I look at it from a different perspective and that, you know - I think we heard yesterday that about 20 per cent of these children are identified as having quite challenging behaviours and - - -

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Sure?--- - - - so in the all children population in terms of our students that we deem to be our Peak students within schools, that's around the, you know, two to five per cent. So it's a difficult one and I understand where you're coming from, but when 20 per cent of the children of the population we're talking about have got difficult behaviours, I think that - and where in the mainstream that's not the case - then the four times isn't as dramatic as potentially without understanding that.

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But what else can we do? I mean, beyond excluding them, beyond suspending them, they're clearly having difficulties in educational outcomes. That's evidenced by all of the data that we've already heard?---Yes, yes.

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They're going to have those difficulties at this stage regardless - - - ?---Yes.

- - - but yet we're four times more than likely to remove them from the school for periods of time - - - ?---Yes.

- - - not allow them access to that education during that period?---Yes, yes.

How can we deal with them other than excluding or suspending them?---Certainly, in terms of if there were more funds available to provide a more one-on-one education program for that child so that when they were deemed to be at risk of harming others, they can be supported one on one.

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Has any of that 6.3 million that was given gone to those sorts of programs?---Yes, certainly in lead up to suspensions - I mean, we've got cases where a child is known to have challenging behaviours that they are provided one on one within the school and sometimes even with that one on one, they then may continue to provide challenging behaviours with the adult that is caring for them.

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Sure?---So as well as protecting other students in the school, the principal does need to make decisions around the protection of staff as well. So certainly the 6.3 would be prioritised to ensure that that support is there. However, we also have our own, you know, guidance officers and people within the school that would also be providing a percentage of their time, probably a disproportional percentage, and rightly so because of the needs of the children, to provide the support to look at other ways to

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settle the child and the school.

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I mean, the other issues I'm guess I'm seeing from the data - I mean in terms of the information and obviously you've got our reports from time to time - - - ?---Sure, yes.

- - - and I'll come back to how they're dealt with, but in relation to that data it indicates that, you know, bullying is up from 12 - up to 12.6 per cent from 10.3 per cent in 2010. The kids engaging in truancy for kids in out-of-home care is up to 6.2 from 4.3. That's almost a 50 per cent increase. Suspensions or exclusions have gone up to 13.6 this year compared to 10.3 for 2009-2010. I mean, these numbers are just continuing to get worse. So what are we doing wrong?---Yes. Can I address each of the ones that you just raised?

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Sure. I would be grateful if you could?---Yes. Look, in terms of attendance, of students attending school, with students in out-of-home care their attendance at school is actually on par with those students who are in home care, particularly in primary schools it's on par. In secondary schools, it's about 3 per cent lower. We do know that in secondary schools when they become teenagers and they start to make some of their own choices, their attendance isn't as close. So that gap is not as big as perhaps initially may have been thought, but in terms of the bullying one, I think we need to be careful not to - in terms of drawing conclusions from that because the research around bullying over the last few years has indicated that the percentage of bullying - the percentage of students reporting bullying has continually gone up.

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Yes?---Now, when the people look at that data, one of the things that the experts in the area say is part of that is because of two things: (1) because the questions that are asked, the definitions of bullying have changed over time so more things are then deemed to be bullying when they're asking the children, so hence there's more yes's.

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Yes?---But the other thing is that the education programs in school are such now highlighting the fact that it's not okay and that we need to make sure that children are protected from that and children are coming out and telling us about that. I saw that report that you're referring to and there is that growth, but the data was gathered through conversations with the children about, "Are you being bullied?" and it may be they are being bullied, but I think we also need to look into, you know, "Is it because they're now more aware of what bullying is and that it's not acceptable?" that they are responding. I agree. I'm not saying that everything is fantastic. It is an issue for children in out-of-home care. We know that the data on children in out-of-home care is not as good as those for all students. From the department's point of view, we have met with the Children's Commission and with Child Safety recently based on the data that you're referring to and we're now putting into place - and all of our - the

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education Queensland operational plan and the regional operational plans all now have an expectation of a target to close the gap for students in out-of-home care. We're working off the fact that we have been able to close that gap for year 3 students, particularly in academic achievement, and that we know that if we focus and everybody is very focused on it that we will be able to either identify what are the problems and does it need to have more funds similar to what the indigenous students have had with the closing the gap or is it that we can, you know, look at best practice because part of that target is also to provide best practice examples because we do have good case studies where children in out-of-home care do achieve and do well. So we're as a department very focused in looking at how do we close that gap and trying to get underneath what this data is really telling us.

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And for the inquiry's benefit, that target - you said there's a target. What's the time period for that target to be reached? I mean, I know it's a line in your plan? ---Yes, that's right.

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But beyond that, is there a defined - okay, over five years, 10 years - what's the period that we're talking about looking at closing that gap?---Yes, certainly similar to the indigenous - I mean, we've been working across that one for a few years. We know that we won't close it by Christmas. We will stay on this court until we have closed the gap so it's not something we're saying, "Well, this is this year's focus." So over the next - it's in this year's plan and it will continue to be in all of the regional operation plans and in Education Queensland's plan over the next few years.

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COMMISSIONER: I suppose it has been in the plan for the last 20 years as well?---Could I just clarify what you mean by that?

Well, I mean, it's a problem that's existed forever and it's a problem you have been grappling with forever. Why would we think it would improve over the next few years? What are you going to do differently that could actually make a difference?

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---Yes, I understand what you're saying. Well, I guess if you again compare it to the indigenous education, it's been a problem for many, many, many years. When we put in the strategy of close the gap, every child was case managed, every school was focused around and we were school by school and student by student looking at the progress of those students. We are starting to see in those early years that gap closing. So I think, you know, what you measure you change and if it's - it's now a specific line. It's not just educate all students. It's a specific line now in our plans that says that we will be discussing these strategies. We will be getting the case studies and educating schools about those things that other schools are doing to ensure those things happen.

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So you think you have got a better plan, a more targeted one, for getting the figures that you have been discussing with Mr Capper down now?---Mm.

So the problem has been there but now the strategies are slightly different?---Yes. I mean, I think it's about everybody focused and ensuring that from, you know, the centre officer through to regional office through to schools that the students in out-of-home care are very focused on and we'll be getting, you know, regular reports and measurements on.

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So are you saying now that you're acting on a recognition of the reality that this is a student cohort that has special needs, educational needs and other needs, that all have to be dealt with as a package - - -?---Yes.

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- - - so that they can be educated as their peers who don't have those same disadvantages and vulnerabilities?---Yes. 1

Is that right?---Yes.

Sorry, Mr Capper.

MR CAPPER: Thank you.

Just on that, one of the significant components, I guess, of addressing those issues - you've referred to the plans and the educational support plans. The data that we have is that it's been consistently sitting around about 80 per cent, 82 per cent of children so one in five children in care don't have the educational support plans which we've identified are clearly valuable and obviously will help drive this target?---Yes. 10

What's occurring in that space to try and increase the number - I mean, firstly, why is there still one in five that don't have them is the first issue, I guess. The second issue is: how are we addressing that or has there been any impetus within the Department of Education or the Department of Child Safety to try and drive that number up to make sure we have all kids that need them on those care plans?---Yes, absolutely. 20

Support plans, sorry?---We're working with Child Safety to address a few things around the data and information around that. I guess one of the challenges we have is that sometimes when children enrol in - children in out-of-home care enrol in our schools the principal isn't immediately made aware that the child is a child in out-of-home care. Once the principal does become aware, then we - you know, they have a 30 day period in which to bring the stakeholders together and to put the plan together. So when we've had some of the data matching happen, so Child Safety provides us with the data, we then double-check that we've got every child in - our system recognises a child in out-of-home care and a plan, then that's where some of that 20 per cent is coming from, either the point at which the data is taken we're still within a 30 day period but also we have had some issues in terms of our principals knowing who is a child in out-of-home care. 30

Is there any question on the enrolment form or something like that to flag that with the principal?---Yes. 40

I mean, has that been done to make sure that the principal is aware at the earliest opportunity so that he can start looking for that information or is it just reliant on the data coming from Child Safety to make you aware?---Yes, look, under the memorandum we have the reliance has been on the child safety officer informing the school, "This is a child in out-of-home care." In the main that happens but sometimes it doesn't, but we have now moved in our system. We've got an enrolment system that - a technology system. We also have identified that although we have a place in 50

that system for identifying a student in out-of-home care, it probably isn't in the best place and it needs to be more in the front of the system so we're moving in the next upgrade to have that changed so the conversations we're having with Department of Communities we're looking at ways in which we can improve that knowledge that the schools have.

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And the next upgrade is coming when?---The next upgrade is in the - we have them every holidays so the team are working on getting the upgrade through in the holidays.

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So in the next few months we can expect that to come to the front end?---Yes, by the end of this year; yes.

Now, you've indicated that you've seen our reports and you've got the data and you obviously look at that. What happens with - you get the reports. You get the information that we get. What then happens with that information that you get because - I mean, obviously we're showing the child guardian reports and the information that the child guardian is producing is obviously data that's relevant to you and assists in your decision-making. What happens with it from there?

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---Certainly, as I mentioned before, we've got a director of child safety and they have a role to work their way through those reports and bring those reports to the department's attention about things that we need to do. We respond to the reports in terms of reviewing policies. If something is raised, we will review. I think there was one on chroming where we, you know, identified that we needed to provide more training to principals and make sure our policies were clearer around their response to that. So whenever those reports come out we have a look at them. We look at our policies and then we make adjustments and make adjustments to training, et cetera.

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Now, is there some governance in place around that to sort of say, "Well, yes, we've checked off these things that relate to us and we're addressing these issues"? Is somebody actually auditing compliance with - okay, we know we need to do something there, but is somebody actually going back and looking at that saying, "How have we met that? How are we measuring that"?---Yes, what happens with the full range of reports that come through to the department, whether it be from the Children's Commission or other organisations, is they're all registered in what we call our, you know, correspondence system and with that briefs are required in terms of what are the implications and what are we doing about it. So there is a governance process around and those - if there is a report that has implications for the schooling site and we identify we need to take some action, within the division we have, you know, project plans an time lines that people adhere to and we follow those milestones through.

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Now, is that just reactive or is it proactive? I mean, obviously we're seeing the increase in bullying, the

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increase in truancy, the lower levels of educational outcomes - I mean, are there any sort of processes in place to look at those more proactive - what can we do now proactively in that space or is it just, "The commission has criticised this aspect. We better address that," or is it that you're looking at the data from that more proactive level?---I understand your question. Certainly at the local level, then through the principals through the education support plans they are doing that in a proactive way to ensure that those things are in place for the children. The change that we've now made in terms of it's a specific line, the children in out-of-home care are a specific target group, that's part of that proactive to ensure that we're now going to be monitoring that ourselves and not waiting for the reports to come through.

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And just in relation to, I guess - the final issue that I guess I want to come to is my concern with that notion is that what we can see from the data particularly is - like, most recently, for example, with the educational support plans 55 per cent of children suggesting in 2010-2011 - 54 per cent the previous year of children are saying that the education support plans are not meeting their needs. They don't feel they meet their needs?---Mm.

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I mean, has anything been done in that space given that children are saying they don't believe this meets their needs. 40 per cent are saying they're unsure. This is children or carers are saying either (a) it doesn't meet their needs or they're not sure that it meets their needs. Only five - it was 7 per cent and now 5 per cent say that it does?---Mm.

What's happening in that space to make sure that these plans are more effective for children and they see them as being more effective either for themselves or their foster carers are seeing them as more effective or relevant to them?---Yes, look, that's a really good question and we were quite surprised by that figure in the report and certainly have had conversations with the Children's Commission about how that data was gathered. I understand that was the community visitors have asked the children directly. I guess one of the things we're concerned about is do the children know what an education support plan is because they may have attended the meeting but they may not always know that they have - what the support plan is.

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Sure?---Putting that aside, one of the challenges we have often is whether or not the carer is able to attend the education support plan. The principal must develop the plan regardless of who can come to the meeting so sometimes when the plans are developed the only people at the meeting are the school personnel looking into that and then, you know, in some cases then the carer may not even be aware of what support is going into place.

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Sure?---So our preference is that everybody is at the table and I think that that figure highlights that in some cases

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that's not happening and if there's a perception that, you know, aren't good, those are reviewed on a regular basis with the families so we would hope that the families would raise that with the school, but it's a point well made based on the data.

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I mean, I guess my concern is it's either 93 per cent last year or 95 per cent this year that still say it's not meeting their needs or they're not sure if it's meeting their needs?---Yes.

COMMISSIONER: That can't be all methodological.

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MR CAPPER: Of course, I accept that?---Yes.

But I guess what I'm looking for is when we're starting to talk to families, you say some don't turn up. Do we follow that up?---Certainly.

What do we do in that space?---Yes, certainly. I mean, the focus is to have everybody there. Without everybody there - and certainly what the principals will say is, "Unless everybody's there it's more difficult to put a solid plan in place," but, you know, the schools would be following up if they can't come, but sometimes, you know, families can't turn up. For whatever reason foster families aren't able to be there, but certainly I take your point around the fact that, you know, 93 per cent - the commission's point that 93 per cent, you know, wouldn't possibly not just be all the questions and certainly it's something that we need to have a look at.

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COMMISSIONER: Why don't you negotiate the methodology with the Children's Commission?---We have had the conversation with the commission around that, yes.

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Okay, because there would seem to me to be two things. They would need to know what their needs are to know whether they are being met?---Yes.

And what they think their needs are may not actually be their needs?---Yes.

It doesn't meet my needs if I don't get an hour and a half for lunch, but that doesn't mean to say I need an hour and a half. All right. Mr Capper, sorry, I interrupted you.

MR CAPPER: No, thank you.

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In relation to the data, you indicate that the OP scores are certainly referred to from QSA to the Department of Child Safety. In relation to that information and information about the outcome for children and the provision, is that kept by - all of that's sent to Department of Child Safety, as far as you're aware, and kept in ICMS. Is that right?---My understanding is that certainly the Department of Education, Training and Employment - part of their memorandum provides the data

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that they request and the Department of Child Safety has that data from us and QSA send it across.

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Thank you. Just one moment. Thank you.

COMMISSIONER: Thanks, Mr Capper. I have just got some questions before the witness is excused and I call on you, Mr Simpson.

I just want to go back to those results for the NAPLAN. We identified the fact that in reading the total population of grade 9 that met the standards was 89.5 per cent compared with indigenous of 65.8 per cent in 2009 and yet when you look at and add to those figures for reading for a grade niner in out-of-home care who participated in the national assessment program, it was 52 per cent?---That's correct.

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Which was 14 per cent own on the previous year which was 66 per cent. What is happening there? Do we know?---I'm not able to give an answer to that at this stage. I can certainly look into it in more detail.

Actually we can see what's happening. We just don't know why. We can see that grade niners in out-of-home care are actually - they're reading is getting worse. Their reading in 2009 was 14 per cent worse than it was in 2008?---Mm.

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When we have a look at 2009-2010 suspension and exclusion levels, what we see is that 14 per cent of children were suspended or excluded from school in 2010-2011 compared with 10.3 per cent in 2009. So there were more kids getting suspended and excluded from school, up 4 per cent, and truancy rates 2009-2010 was at 4.3 per cent. 2010-2011 which are the latest figures is 6.2 per cent?---Mm.

By region the percentage of children reported to have been suspended - just before I go onto that, you have got two types of suspensions, haven't you, a short one for up to five days and the long one for up to 20 days?---Yes.

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And they are on the increase generally. The number and rate are both on the increase. Would you accept that? ---For all students or for out-of-home care?

For all students?---I would need to check the figures, but that sounds reasonable.

I think that's what the child guardian says anyway, but by region - this is according to the community visitors and this is by their zones - the highest rate of suspensions and exclusions - this is for all kids - is 21.5 per cent in Logan?---Mm'hm.

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That's more than a fifth of the school population in Logan gets suspended or excluded, is it?---Yes, look, I can't confirm that data. I would need to get the data from the department.

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You don't need to. I will take it as confirmed because it comes from a reliable source?---Has that data come from us or has that come from the community visitors?

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That comes from the community visitors and it's published in the Commission for Children and Young People and Child Guardian 2008-2011 Key Outcome Indicators Update?---I mean, we keep all the data on suspension and exclusion. It's published and really they may have drawn that from our published data but I would need to check - - -

They say the data source here is its own commission which is community visitor data extracted from the child reports between July 2010 and June 2011. There were a total of 4311 responses to this question. The number of valid responses in each zone is set out there?---Mm.

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Anyway, the children's guardian is satisfied enough with these figures to publish them in a report?---Mm'hm.

I will accept them unless someone wants to contradict them. So let's assume that they're correct or close to the mark. It doesn't matter much. She says that Ipswich has got a suspension and exclusion rate of 20 per cent and Logan 21 and a half per cent and together those two are at least 5 per cent ahead of the next one?---Yes. I mean, certainly, you know, without verifying or non-verifying the figures based on the department's figures - - -

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Yes, don't worry about that?---Certainly in terms of low SES communities - low socioeconomic communities do tend to have more challenges in them and, you know, potentially have more issues in terms of assisting students to have appropriate behaviour and skills within the schools.

And likewise with truancy it looks like the same trend in the same places. The truancy rate in Ipswich was 10 per cent compared with Logan at 14 and a half per cent and the next closest was 7.8 per cent which is the Sunshine Coast?---Mm.

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They would worry the Education Department, those figures, wouldn't they, if they were true?---Look, I mean, certainly we know that educational students from low socioeconomic families and low socioeconomic areas have higher risk factors in terms of reaching educational achievement and certainly the Commonwealth funded the national partnerships for low socioeconomic schools based on the fact that we know that it is one of the risk factors for students' education and all of those - all that data that you're discussing then is relevant to that issue. The children from families from low SES do have more challenges in being able to attend school regularly, to achieve at school and also to behave appropriately at school.

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There's nothing very enlightening in the statement, so it's a self-evident fact. That's clearly the case. The question is what are we doing about it to ensure that the figures are trending downwards and not upwards like they are now?---Over the last few years there's been an injection of funds into schools across the country from the Commonwealth government where schools have been deemed to be low SES schools in low SES areas to try and provide additional support services to change that trend and schools that have been involved in those programs have gone some, you know, good outcomes in terms of their educational outcomes, their decrease in truancy, the increase in attendance, to try and address that, but it's an injection of funds that those schools have needed in order to provide additional adults on the ground to assist those children to get a better education and better outcome from their education.

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But only if you learn the lessons of the past and learn the lessons of the figures, isn't it? I mean, there's no point in spending more money in the wrong place. Unless you've got the strategy right the money doesn't make any difference?---That's correct, and I guess that's what the schools that have received the funds have had to put in place, evidence-based strategies that we know work, such as, you know, we've got some schools that have put in family playgroups where the parents of the pre-prep students come along and bring the children so they can, you know, learn some of those basic skills that they need either in socialisation or even some recognition of letters, those sorts of things, before they start school, stuff that other children would have as part of their family environment.

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But whatever extra money was spent after the education department read the child guardian's report in 2008 which said that only 66 per cent of out of care children were reaching national benchmarks, whatever money was spent had the effect of reducing that percentage from 66, which was bad enough, to 52, so it got a minus 14 per cent result. Well, you wouldn't want to invest in a business that did that, would you?---No, I understand your point and I think in that period of time that you're referring to you'll find that a lot of the education support plans were focused around the behavioural issues as opposed to the educational achievement issues, and so what we're finding is that more recently, because the trend has been problematic, that the schools are now starting to move away from, you know, what are the social support services the children need, through plans to - what is the pointy end of how do we increase their reading and writing, et cetera.

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I think we've got the question right and I think we've probably had that question right for some time. What we don't seem to be able to latch on and apply is the answer. Like, for example, did you know that, according to the child guardian, anyway, as many out-of-home - kids in out-of-home care that reached the national standard for

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writing didn't. So 50 per cent did and 50 per cent didn't, and likewise with numeracy, between 2008 and 2009 72 per cent of out-of-home care children reached the benchmark but only 69 per cent did in the following year. See, everyone tells me, well, you know, if you want to reduce the demand for tertiary intervention you've got to improve the universal front end of the system. You've got to get them educated, you've got to get them productive in society and workers, you've got to get them healthy, you've got to do all these things, and then if you do all those things it will follow as night follows day that they won't be in need of protection down the track. Well, assuming that to be true for the moment and assuming that one of the drivers of being in need of protection as a child in Queensland is a lack of education, these figures are telling us at least so far as the figures are available that we're failing children in out-of-home care, so that - and this is kids in grade 9, so, you know, they've only got another three years left to rescue before they do two things, they leave school and become adults. Then they have their own kids so the cycle continues. So if we can break the cycle at school as we do in relation to mental health - and unless someone can say to me, "Well, look, the reason why these figures shouldn't be relied upon is because it includes kids with mental or educational or understanding disabilities," now, not much you can do about that and maybe they're in the wrong place to be educated and maybe our expectations of a national benchmark for them is too high, but we need to drill down through the - someone else should be asking this question. It shouldn't be me in 2012 saying, "How come there are 50 per cent of our kids in out-of-home care in our child safety system who can't read?" "Well, that's very concerning. Let's find out. Well, maybe part of the answer lies in the fact that they can't read because they were never going to be able to read, in which case I can come along to some commissioner one day and tell him that," but at the moment we've got lots of questions, no answers, and we haven't even got answers to the questions that we need to ask before we're going to get the answer to the overall problem. So I don't know, someone needs to work out how you actually act pre-emptively with the money you've got and how you target children who are in need of protection and have been for a long time and how you actually reduce the causes of their ongoing need for protection. If you can get them to read and write in grades 6, 7 and 8 maybe they're not still in out-of-home care in grade 12, or grade 9. Sorry for interrupting.

MR CAPPER: Sorry, could I just correct one thing? I put to the witness that the figure was 95 per cent didn't have an educational plan that was meeting their needs. I apologise, I misquoted that. It's 45 per cent, just over half. The issues weren't vastly different but I didn't want the record to stand that I was misleading the witness. I apologise for that.

COMMISSIONER: Well, sorry, I'd better not interrupt. You don't (indistinct) want to answer any more questions.

MR CAPPER: Thank you.

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MR SELFRIDGE: I do have a couple of questions based on what you've just raised. I won't be - no more than two or three minutes, if - - -

COMMISSIONER: That's okay. I won't have a break. I just had one. Go on.

MR SELFRIDGE: Thank you. Strike whilst the iron's hot, so to speak. Just a couple of things based on what the commissioner - the last questions the commissioner put to you, and also something that Mr Capper raised with you, if I can, Ms McKenzie?---Sure.

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Firstly, in terms of those children in out-of-home care and the statistics that were raised with you, that data, that was apparently put forward by the Children's Commissioner, you're aware, or are you aware, that there was evidence that fell before this commission in the last few days from Detective Superintendent Harsley and from the deputy commissioner in relation to the changing face of Queensland in that particular area? We were talking about Logan and in that region in relation to the different ethnic groups that are there and how there's a change in culture. There's 148, as I recall. I could be wrong, but as I recall there's some 148 different ethnic minorities that were identified by Queensland police within that area. That would have some influence in terms of those statistics that were put to you, would it not?

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COMMISSIONER: Is that evidence or is that a question?

MR SELFRIDGE: Sorry, good point.

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COMMISSIONER: It doesn't matter much, because you're not right. If you have a look at the figures for the non-English speaking - that doesn't include Scots, I suppose.

MR SELFRIDGE: Yes.

COMMISSIONER: The figures - the indigenous figures I read out for numeracy was 78.5 for grade 9s and for the non-English speakers, that is English not their first language, it was 85.4.

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MR SELFRIDGE: The trouble with data, commissioner, with respect, is there's often methodology that's approached in relation what questions are put to raise that data, and also in terms of non-English speakers it's assuming that those ethnic minorities are identified elsewhere as well.

COMMISSIONER: I know, but, see, my point isn't so much - Ms McKenzie is not responsible for the figures or for anything much, but she is representing the department and through her I'm asking questions of the department that I

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would have expected it to have already asked itself. For example, as you say, maybe these figures are wrong. Let's know that. Let's know that they're wrong if they're wrong, or if they're right what are they actually telling us, and they're telling us more than 50 per cent of out-of-home care kids in grade 9 in 2009 can't read. They're telling us that you either accept that and report it every year that it's changed - fluctuated a little bit above or below that figure, or you decide you want to do something about it. You work out why - you break that figure down and find out who they are, what are their characteristics, how they can be helped, whether they can be helped. If they can be helped, what's the best way to help them so that in four years' time you can see an improvement, or if you don't - - -

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MR SELFRIDGE: Yes, and the trend going the other way.

COMMISSIONER: If you don't see an improvement you can say, "Well, we tried these. Now we're going to try these," but there's no point in just keeping reporting the same figure or thereabouts and keep saying, "It's a very worrying sign."

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MR SELFRIDGE: I think you identify that correctly in terms of identified - or go to its source and is this strategy correct? If it's not working, is the strategy correct?

COMMISSIONER: Clearly.

MR SELFRIDGE: If not, we need to change it and we need to work out why it's not working and change it, but that's assuming - - -

COMMISSIONER: If no-one is even asking the question then the figure is not likely to change on its own.

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MR SELFRIDGE: No, unlikely - highly unlikely to change on its own. I take your observations and I'll move away from that point, if I may, and move on to something else. Educational support plans, Ms McKenzie. Some statistics were quoted to you in relation to one in five children don't have any - one in five children in out-of-home care don't have one, and it was quoted at 82 per cent and why was that, but isn't there a fundamental issue there that's not quite addressed in those statistics, and it's this, children are moving in and out of out-of-home care on a constant continuum?---Yes.

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It's not static, it's a fluid thing?---No.

There's orders made for a 24 hour out-of-home care, 48 hour, 96 hours, one week, two weeks, one month, and so on and so forth. So it's constant change?---That's right.

It's only constant in the sense it's fluid?---Yes.

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That would have some impact on whether yourselves and/or indeed the Department of Child Safety would have knowledge on a daily or day-to-day basis as to how many children are in care. We need a better system to keep tabs on it?

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---Yes, certainly there are gaps at the moment in terms of us being aware of every child that is in out-of-home care the minute they're in out-of-home care.

Yes?---You know, as we become aware of it we act to get the educational plans in place, but there is - definitely the communication flow sometimes can be a bit clunky.

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Yes, and that's actually about a (indistinct) IT. They would have to have some system that keeps tabs on these children, because whether we can excuse some of these statistics or not, it has to be better, doesn't it?

---Certainly.

Yes, thank you.

COMMISSIONER: Thanks very much, Mr Selfridge.

MR SELFRIDGE: Thank you.

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COMMISSIONER: Anybody else?

MR SIMPSON: Just a few questions, Mr Commissioner. I might just take the witness back to these educational support plans, and again on this topic of statistics. Didn't you say in your evidence-in-chief, though, that you have to reach a certain standard or you have to be in long - is it a long-term out-of-home care plan, before you qualify to be on an ESP?---I'll check the definition. It's where you're in a guardianship to get an ESP. You don't have to be in two years' - two years is for the NAPLAN results.

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Yes?---But you do need to be in out-of-home care and on a guardianship. I can just - - -

On a guardianship order. It wouldn't necessarily apply to someone who is in out-of-home care for a week, a month, two weeks, as Mr Selfridge put to you?---I'm not aware of child safety's timelines and when people go in and out. We rely on child safety advising us who does and doesn't require one.

All right. Okay, well, we might leave that. Can I just come back to this more basic question. When did the educational support plan programs, if I can call it that, start? In what year?---I'd need to take that on notice. I don't know the exact year that it starts.

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Well, I'll give you a couple of questions on notice then. When did it start?---Yes.

What was the funding initially?---Yes.

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The incremental funding over the years?---Yes. 1

Present funding is 6.647 million?---Pardon?

6.647 million is the current funding for educational support plans from communities, it seems?---Let me just confirm. That would be most likely to be correct.

For the 2011-2012 year?---The data I have is from the August 2011 data. It's 6.9.

6.9?---But I confirm that for you. 10

Perhaps you could also give the forward estimates to be spent on this area, okay. When did the ESPs change from, as you said, more behavioural work to more educational work, and then in terms of the change from behavioural work to educational work, how those within those time-frames match in with the NAPLAN results that the commissioner has been talking about?---Mm'hm.

So I guess more particularly you're informing the commissioner - because there's been in fact a decrease in results, or satisfactory results, was that before or after the plans changed from being more behavioural based to educational based?---Yes. I can provide all that. 20

I have no further questions.

COMMISSIONER: All right, thank you. Ms McKenzie, thanks very much for coming. I really appreciate your time. I know you're busy and your evidence has informed us on relevant matters very well. Thank you?---Thank you.

WITNESS WITHDREW 30

MR SIMPSON: Mr Copley has the next witness.

COMMISSIONER: Mr Copley, come on down. Sorry, we're not having a break this morning. We nearly did, Mr Capper, but you interrupted the opening. Mr Copley, good afternoon.

MR COPLEY: Good afternoon, Mr Commissioner. I recall Elizabeth Fraser.

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**FRASER, ELIZABETH** called:

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COMMISSIONER: Good afternoon, Ms Fraser. Thanks for coming back?---Thank you.

You're on your former affirmation. I didn't realise we had so many of your staff seconded to this commission until I read yesterday's newspaper?---Not everything you read in the newspaper is correct.

I'll have to conduct a search. Thanks, Mr Copley?

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MR COPLEY: Thank you?---Hopefully they're okay. Thank you. Sorry.

That's all right. On Monday when you were here you gave evidence that you had made representations to government to have the law or the regulation changed so that for the purposes of the criminal law a person aged 17 would be regarded as a child and you were asked what response you had had to your advocacy of that position and you said, and I quote, "The previous government indicated their intention was to move there when it was a possibility, that they would make that an option," unquote. Who in the previous government told you that?---That was a letter that I had from a previous minister.

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Which minister was that?---That was Minister Struthers.

When did you receive that letter?---I'd have to check the date, but I can provide a copy of that letter.

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Would it have been some time around September of 2010? 1  
---There were a number of times that we exchanged  
correspondence and I'd have to check the records in terms  
of the dates, but the work that we did in establishing the  
policy position and putting it forward and our advocacy at  
that point, I'd just - yes, I'd have to check it in order  
to give you the precise date.

You issued a policy position paper on this topic, didn't  
you?---I did. Yes.

And that was issued on 15 November 2010?---Yes. 10

So were you encouraged by Ms Struthers' reply to your  
advocacy sufficiently to issue the policy position paper?  
---No. Look, I'd been looking at this issue for a while,  
but within the range of things that we'd been doing and I  
thought it was timely to put forward a policy position on  
it because it didn't seem to me to have been a lot of  
movement in that area and I wanted to see whether or not we  
could influence some change a little bit more strongly, so  
that was when we put that paper together and then we - - -

In that paper there were some recommendations, one of which 20  
recommended that the Queensland government make a  
commitment for action by March of 2011?---That is correct.

Did the Queensland government make that commitment for  
action by March of 2011?---Not in terms of the action that  
I was seeking.

No. They didn't take any action to effect the removal of  
17-year-olds from the adult system of criminal justice and  
put them into the juvenile system of criminal justice, did  
they?---That's correct. 30

Did they ever give any reason why they weren't prepared to  
take that step?---In discussions my understanding was that  
there was certainly some interest in moving in that  
direction and there was some consideration of how that  
might be effected in terms of cost and what was required  
to, in a sense, put that into place. So I'm not aware of  
all the discussions or machinations behind the scenes with  
respect to that. All I know is that there was some  
evidence that government was looking at some of those  
issues and there were some public statements, I think, that  
people made around that time. 40

So who was interested in moving in that direction?---Well,  
clearly, the people that I was directing my advocacy  
towards were the people who had clear responsibility for  
that, so it would have been the minister and the DG and  
there were discussions between my staff and others with  
relevant people in government. I was also aware at that  
time there were a number of people in the broader community  
who were expressing interest in some of that change as well  
and there would have been some public mention of their  
positions and some of them actually wrote to me as well. 50

On an occasion when that change had been previously considered, at least in May of 2007, the minister, Mr Warren Pitt, ended up deciding that they wouldn't make the change because, amongst other things, the youth detention centres were too overcrowded and they'd only exacerbate overcrowding by bringing the 17-year-olds from the adult prison into the youth detention centre so they ruled that out in May of 2007 for a number of reasons, including that one, according to the ministerial media statement issued on that day, May 31, 2007. Was a similar reason proffered to you in 2011 to explain why their desire to move in this direction wasn't being put into action?---I understood from the communications that I was involved in that there was probably a mixture of possibly some people within the government frame who may not have been totally supportive at this stage, but I also understood that it was a matter also largely of resources.

I see. Okay.

COMMISSIONER: You know sometimes we can spend as much energy running on the spot as we can running a marathon. Did you get that feeling that you were making these vigorous representations, publicly putting the position out there in papers, talking to everybody about it, but it was just churn. You were just being given ears, but no helping hand?---I felt there was - I think in any matter such as this where I knew it wasn't going to be an easy issue. Clearly, I think as we discussed at the previous time I was here, the situation has been in place for a long time so we're talking about a major piece of reform or change, if you like, in terms of taking people on that journey as to why 17-year-olds should be within the juvenile justice system and not the adult correction system. They've never not been there. You're not going to achieve that momentum, I guess, or that agreement or that change, given the infrastructure is all set up for the process that's in place. There are already 17-year-olds in adult prisons. I guess, there's a variation of view in the community and, as is always the case with juvenile offending and even adult offending, they're not necessarily the most popular group in the community so often it's a question of building, talking behind the scenes, trying to ascertain what sort of support you can get, who out there is supporting it. Me just bleating on about it, if you like, isn't going to change something, so you've got to build a coalition.

That's your job, isn't it, to advocate - - - ?---Yes, that's right.

Of course it is and you have to put up a good case - - - ?  
---Yes; and then you - - -

- - - financially, structurally, philosophically even, to change the status quo?---That's right and there's got to be some information and evidence which would support moving in that direction. I mean, you don't just reinvest money in a

whole new process on the basis that there's no benefit for society.

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Well, you don't buy a new wheel if you don't think the one you have got is broken?---And you've also got to be aware that there's some benefit for society investigating in a different frame, but there had been a UN report that looked at Australia's performance against the rights of the child and there was another one looming which was going to, in a sense, identify this as yet another issue. The Human Rights Commission was also indicating that they didn't think that was a useful thing. There were things moving in the broader, I suppose, Australian sphere around minors in detention for immigration reasons and I felt that there was quite a few people in the justice system. There were people in other advocacy groups who were all put in that position.

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On the other hand, the Family Court lost the argument on children in immigration centres with the High Court and the United Nations on children has expressed many concerns about children, for example, not being heard in litigation - - - ?---Yes.

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- - - and that's been a very longstanding matter of concern for the United Nations, but made no impact on Australian jurisdiction?---Yes, exactly and I guess in that sense there's always a notion of trying to look at opportunities, whether there are different constellations of people, what are the opportunities and it's always about timing and who's going to actually - - -

Your best argument was that you were the only ones in step or we were the only ones in step?---Yes. Well, when Victoria kicked in then we were the only jurisdiction in Australia.

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Yes?---I think the evidence was fairly strong as well in terms of the importance of access to the supports that young people get in the juvenile justice system.

But you've remedied that by giving it to them in the adult prisons under arrangements, haven't you?---Well, when you're arguing for a change in the policy position, the adult prisons are not a nominated site for us to visit, but I felt in terms of the need to gather more information about what in fact was this cohort, what were the issues for them and to further inform the advocacy position that I could put forward, I negotiated to be able to visit them. Sometimes when you're advocating on one matter, the other is, I guess, slightly - it's admitting that you're going to visit them in the adult prison and like - - -

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Incremental victories can be worthwhile?---Yes.

I just noticed, finally, on the point that on 5 September 2011 when you wrote to Minister Struthers giving her a copy of your annual report on page 41, you're still saying:

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*The commission has continued dialogue with senior officers of the Department of Communities to press for an active response to the commissioner's recommendations, including a clear commitment, a time commitment, to amend the Youth Justice Act 1992 in line with your public policy position paper in November 2010.*

---Yes.

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Still burrowing away there in September 2011?---That's right and we'll continue to burrow away.

All right, thank you.

MR COPLEY: Thank you.

Your view is that children with disabilities, if that is the only reason they're in the child protection because their parent or parents can't cope with their disabilities, should not be in the child protection system and you express that at paragraph 77 of your affidavit?---That's right.

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You say that:

*Scope exists to reduce the number and rate of entry of children into the child protection system by investigating ways to better support parents who have to relinquish their children due to their high needs stemming from disability.*

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Are you simply just saying there that one way to reduce the number of children going into the system is to divert the children who are being relinquished because they're disabled into a different system or are you meaning to convey more than that and by that I mean are you meaning to convey that you have some idea or ideas about how and where those children with disabilities should be placed in the system of care or support - perhaps we'll use the word support - that the state, meaning the whole apparatus of government, including its funding to private organisations provides?---Yes. I'm basically arguing that children with disabilities shouldn't be inflating the child protection figures by using those supports, I guess, to link in with any needs that are being put forward. If a child with a disability in a family - and they do meet the thresholds for child protection - then there's no argument. They need to be dealt with within the child protection system. However, in the broader community there are a range of

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people who are caring for and looking after children with varying levels of disability. For whatever reason, some of those disability issues now are often going on longer, often there are more of them and they're quite severe and some of those people find that over a long period of time their capacity to provide full-time care; the impact on other children in the family, their own lives, is quite significant.

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Yes?---The only way that they can access out-of-home care is through short term versus respite and my argument is that I think there are a small number of children who actually need more than that and they need probably full-time care and the only way that those families can access that level of support is to relinquish them to the child protection system and I think that actually is not something that should happen. There's not a huge number of them - - -

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No?--- - - - and I think they should be being dealt with through the Disability Services support that our community offers to families and I think we should be recognising that there is a cohort of people who have extremely challenging behaviours and disabilities and complexities that they're dealing with and if we're going to as a society work on the basis that those children, you know, have a life and need to be worked in then we need to have the appropriate infrastructure to support them and I don't think that should be through the child protection system.

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Okay. So just to clarify, are you saying that there are children in the child protection system who are in fact not children in need of protection as that expression is defined in section 10 of the Child Protection Act? Is that a yes?---Yes.

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If that's the case then they shouldn't be subject to the jurisdiction of this legislation, should they? Yes?  
---That's correct.

What is the impediment to the department that you mentioned before or the organisation you mentioned before of Disability Services dealing with those children and providing the support that their parents are willing, but perhaps not able, to provide when they are children who have not suffered any harm or are not at risk of suffering any harm? What is the impediment to Disability Services taking those children on and supporting those children and their parents?---They don't offer full-time out-of-home care.

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Why don't they offer that? Do you know?---There are a variety of reasons that have been mentioned to me, but it's not part of the service provision that's offered by our community to families with children with disabilities.

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Isn't the correct answer, though, it is not part of the service that's offered by that Disability Services to those families? You say the community?---Well, I'm talking by the government support frame through Disability Services.

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Okay. So the government could easily get these children out of the child protection system if they funded an existing government body to take them on?---Exactly.

Your view is that should occur?---Yes; for those children that are in that situation.

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Yes. Do some of the parents in terms of section 10 - willing to protect their children from harm, but not able to do so, feel a sense of shame or stigmatisation in the fact that they've got to relinquish their child to the Department of Child Safety?---I have spoken to some of them and I've heard and seen and read some of the statements by some of them in different reports. My understanding is that people - the people I'm talking about usually go on for long periods of time. They're usually feeling quite exhausted and they do feel guilty - - -

So it's an option of last resort?---It is an option of last resort.

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Yes. So they do feel a bit stigmatised and uneasy about it?---I think they do. Yes. I think they do.

But from their perspective, they've got no other option, they feel?---And I think we would all feel that.

Yes. Okay. I'm just asking you what they feel - - -?  
---Yes.

- - - not what you or I feel because we're, fortunately, not in that position?---Yes.

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COMMISSIONER: The money would go with those children if they're in out-of-home care as being in need of protection when they're not and move them into disability's out-of-home care then they could take the money that's currently being spent on them by the Child Safety Services with them, couldn't they?---That would be one option, yes.

MR COPLEY: You said before there weren't a large number of these children. Are you able to tell us at, say, June last year, June 30 last year, how many children there were?---I know that in the last financial year, the 2010-2011 financial year, there were 43 of them in care and I think over the 2006 to the 2011 period there were about 65 of them relinquished; there's about 14 a year and as I understand it, about 90 per cent of those have extremely challenging behaviours and so they would be a fairly high cost care option.

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COMMISSIONER: Do you know how much cost per child, approximately?---I don't know that. No.

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MR COPLEY: Has the department responsible for child protection ever made representations to the government to the effect that you're talking about that these children shouldn't be with us; the funding and the responsibility for these children should be with Disability Services? Do you know if that's been done?---I haven't seen - I can't say that I can confirm that has actually been done, but I do know there were a lot of discussions about what might be some options and opportunities for better meeting these young people's needs and I know there was some work and initiatives to try and look at providing some out-of-home care options for a slightly longer period of time than the current respite options offer, say, up to about two years, but it was still going to be - and that was without relinquishment and the sourcing of that was potentially still going to be through the out-of-home care model.

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I'm not sure of all the behind-the-scenes sort of government discussions, but I know that from time to time as an issue it has been looked at over the last decade.

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Disability services and child safety are both in the same department?---Yes.

MR COPLEY: You advocate for this in paragraph 77 of your affidavit?---Yes.

Have you advocated for this in any other public document such as an annual report or in something like a policy position paper such as you advocated for the change about 18 to 17-year-olds?---I haven't put a policy paper out with respect to it, but I have advocated in discussions with the responsible government people and I have been invited to be part of some discussions where policy and program developments were occurring.

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It would be, you would think, wouldn't you, a more popular cause or a cause more likely to engender public sympathy than the cause of where 17-year-old offenders should be housed, wouldn't it?---I would imagine in the broader community, yes. If the inference of that is that maybe there was some prioritisation of effort there, I think probably I would highlight that I think from time to time there have been initiatives that have been looked at and canvassed and I thought there was, you know, potentially some option and movement with so possibly didn't think it needed to come out in quite such a strong advocacy role, but at the other end of the spectrum too my act does also require me to sort of, I guess, put a particular focus on people who may be particularly vulnerable and not be able to speak out for themselves. So I guess in some instances some aspects of the advocacy that I prioritise are in that sort of frame.

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Okay. Now, I just wanted to take you back to one other matter and that concerns your function under your act and, I suppose, the Child Protection Act whereby you can make an application for the review of a decision that you're dissatisfied with under the Child Protection Act. If you can't resolve issues with the director-general, you can make an application for a review to the Queensland Civil and Administrative Tribunal?---That's correct.

It would seem - and you can correct me if I'm wrong, but according to the publicly available information from your commission, there have never been - and correct me if I'm wrong - any referrals made by your commission to QCAT? ---That's right.

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Why is that? Is that because you've been able to resolve everything to your satisfaction with the director-general? ---Yes, it is a position of last resort in some of our brokering and negotiating of particular points with regard to individual children and there have probably been about three instances where there was serious consideration of

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moving to take that up for review within the sort of QCAT context, but in all those cases we were able to come to a negotiated sort of outcome that we thought would work for the young person.

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How long did it take in those three cases to get to the mutually agreeable negotiated outcome?---All of the - you know, I'd have to go back and review those cases in detail.

But you must have just some general memory. Was it a matter you could resolve in weeks or did it take months or - - -?---In all situations where we've got issues that are brought to our attention our aim is to try and work them through to some satisfactory outcome within two to three months and I would imagine that was the same sort of time frame I was working on, but it would also depend on the particular urgency of the cases that you were talking on because if some of the - if I've got something that potentially is - - -

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I'm not talking of any cases?---No; no.

I don't know what they are. You're the one with them in mind?---If it's a particularly urgent issue, then the time around what is driving that urgency, whether I'm brokering it because a child is coming up to the age of 18 and all the planning and sorting out of what's needed for them has been raised with us and we're trying to work through a better outcome in that space, you've got something that's - you know, a time frame that's coming down the track so I'd be working pretty hard to work within that context. There would be deadlines, in other words, that would be driving that resolution time frame or if it was a serious matter of potentially a young person who was in a placement that was considered to be not promoting their safety or something like that, we would be working much more quickly.

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So it doesn't reflect a reluctance to bring matters into the public forum or into a tribunal forum as such?---No.

It's just that you've been able to be persistent enough to get the outcome that you're happy with?---Yes.

Okay?---At the end of the day the main issue is trying to get things resolved quickly to a level that is sufficient to make sure that young person is safe and their critical issue is being addressed.

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Now, in performing your monitoring and reviewing functions over the government department concerned, have you encountered difficulty in obtaining information from the department when you require it or is the department's philosophy to generally comply in a timeous way with any requests that you make for information?---Well, we have a range of areas in which we're seeking and requesting information and - - -

Okay; and on the whole is the department complying

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timeously or are you having some trouble with them in different areas?--I would say that in general terms they are helpful in providing feedback and information. In some instances they can't provide the information. In our systemic monitoring arenas, for instance, there is information that we would like to be able to access from an administrative point of view which maybe they don't have in the form that we're looking at so in some of those instances they are looking at whether or not they can shape their systems to be able to provide that down the track.

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Yes?---So in that instance - I mean, the issue is that there is discussion and helpfulness. I haven't actually been able to get some of that information in the form that I want because we have monitoring plans with each of the agencies that we seek to gain administrative data from, but in general terms I've found people to be helpful and interested. I would have to say that in the time that I've been in the commission there's also been a range of changes, administrative changes, machinery of government changes, since 2005 which does impact on agencies' capabilities to progress an initiatives so in those areas I would say it's been slower than I wanted, but generally it's moving in the right direction. With regard to individual children we would be seeking information from the agency Child Safety at the local level. If community visitors pick up issues, they link in with the service centres trying to come to some quick resolution on issues that children may have or have raised with them or that they've observed with regard to the standard of care that that young person is getting. If they don't resolve that and can't resolve that, then we have an escalation process that moves it up, and in some instances part of our oversight and monitoring is trying to establish how responsive the system is at different levels and in a sense from our point of view a good thing is if things can be resolved locally and quickly. There's another group that have to be escalated up and our complaints team or my assistant commission or directors in those areas would try and broker that more centrally or with more senior people in the department and on occasions it has required me to perhaps put a call through to the director-general. They would be escalations.

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And that gets a result?---And that would get a result and from our point of view what I'm trying to do is diminish that so that it can occur at the local level.

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Yes. No further questions.

COMMISSIONER: Thank you. I've just got a few. We're going to have to break a little bit earlier this afternoon, I'm afraid. Just a couple of things arising out of your statement, in paragraph 7 you say that the rate of child protection intakes can be viewed as a barometer of the health of our community. What we've heard is that intakes have trebled since 2002, but substantiations have remained fairly stable and 80 per cent or thereabouts - more in fact - but on an average of 80 per cent of the mandatory reporters don't reach the threshold.

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Intakes themselves wouldn't seem to be a very reliable gauge of the health of our community. Would you agree with that?---I think that there are - I guess it depends on how you're viewing the information that's coming in and in terms of the sort of things that are being raised at intake level, I think they are evidence, I guess, of areas where potentially people are seeing either levels of vulnerability emerging or some form of disadvantage or something that's occurring in the broader environment that isn't working to protect or promote that child's best interests.

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I see. You're not saying it's a measurement of the health of the child protection system - - - ?---No.

- - - but of the community generally?---Yes. I think in any society, just like the sort of employment stats, just like the stats around our financial successes, et cetera, I think the child protection information should actually be looked at in the context of how well we're travelling as a community.

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Would you agree that a better way to evaluate the child protection system, the statutory tertiary system, would be if they could say, "There are no children in long term care that don't need to be"?---Are you saying that there shouldn't be children in out-of-home care - - -

If they're not in need of protection?---Certainly they shouldn't be there if they don't need it.

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That's right. The way we tell how good our system is working is if we don't have any; we're not - under the definition in the act - in need of protection?---I'm not totally clear on your question. Sorry.

Okay. The system is there?---Yes.

When you intervene, based on an investigation - - - ?  
---Yes, yes.

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- - - and a substantiated notification and you pass the threshold test of a child in need of protection?---Yes, yes. 1

Okay. The system works if everybody who passes that test meets those conditions is taken into care - - - ?---Yes, yes.

- - - stays in care, properly cared for as long as they need it but no longer?---Yes, yes.

And, conversely, if nobody enters the system, no child enters the system, when they are not in fact a child in care within the meaning of the legislation?---Yes. 10

They're the two ways you test if it's working, don't they? ---Yes.

All right. So one checks the other. Can we say that about our system today, bearing in mind what you just said about children with disabilities?---From the information that I have, apart from the disability issue that we just raised, I don't have any evidence that suggests that the kids who are actually in care at the moment shouldn't be there. There are some whose circumstances have sorted quite a bit and they are actually doing reasonably well and who could probably be moved into some long term guardianship arrangements, but it's still a care arrangement, but I'm not aware that we've got any sort of issues where there is a child who's actually in the tertiary system who hasn't met that threshold. 20

Do we take the temperature of that enough, though? We've got a two-year order. We've got an order for up to two years and then we've got a long term order made at the two-year mark and then there's no provision in the statute for regular reviews by the court, is there?---No. 30

Do you think there should be, like there is in mental health and indefinite sexual offenders?---I think there are some decisions that are made that have to be made in a reasonably early phase with respect to whether or not you're working towards reunification and a return of this child to the parent and whether that's a feasible alternative. I think because you're dealing with human beings and children in that frame, there comes a bit of a point where in order to promote their health and their education and their future wellbeing, you've got to give them some continuity and certainty of support and I'm not sure that - I don't know that it's quite the same as saying, "Well, in four years' time we'll go back and see whether or not they can go back," because ultimately by then they've had four years of living in a different sort of frame, if you like. 40

Yes, I know, but they're changing, aren't they, presumably? ---The kids?

Yes. They're getting older?---Yes, but it wasn't ever there issue. 1

They're getting older?---Yes.

Their parents aren't remaining static. Their relationships are developing. Are you saying that once a child basically - once there's an order, a long term order, made that it should stay in place for the stability of the child?---I'm not disagreeing with you in the sense that I think there can be ongoing review, but I think you do have to look at the issue of certainty and stability and what is actually happening for that young person. Yes. That decision necessarily mean that they can't build connections and links and maintain those with their families, but I think if you're going to get reasonable outcomes in terms of education and dealing with - making sure that those young people aren't moving from one place to the other, having to form new relationships and go to different schools and possibly then for things to fail and start again, at some point I think you've got to make a decision that in the interests of that child being able to engage in education, being able to form sort of networks and develop a life down the future, that you've got to actually decide that you're going to continue to support that in a pretty reasonable way. 10 20

But, commissioner, the only reason the state got its clutches on this particular child was because at one point in time it satisfied a statutory definition for being in need of protection. There must be plenty of other children who haven't been brought to the notice or didn't quite satisfy that definition who are in exactly the same situation that you say that these children in care should avoid, for example, there are a lot of intact families, highly mobile, change schools a lot, have uncertainty whose families are dysfunctional. They're just not at significant - or they're not at unacceptable risk of significant detriment from abuse or neglect, but they still have all these other exigencies of family life. They don't cope with them okay. What about these children who were taken into care because of a - presumably, on the basis that it was for a temporary time and then they're kept there for their own good. Is that really what you're saying? 30 40

---I think that the children who have actually met that threshold or being brought into the statutory tertiary system, there has been an assessment and a review of what's actually been happening to them and what are the sort of risks involved, but also there's looking at what are the impacts on their social and cognitive and intellectual development, physical development, what's happening in terms of the attachments they've got. There's a whole assessment that needs to go on in terms of whether these people reach a threshold with respect to whether they need to be brought into care. That then becomes a court order and in a sense what flows after that is trying to then promote some addressing of what it was that brought them into that situation in the first place, but then there is a statutory requirement on the system to provide them with safety and other supports.

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I see you say that in your statement, but I couldn't find it in the act. I'll ask you to show me where it is. Yes, Mr Copley?

MR COPLEY: Mr Commissioner, section 5B subparagraph (f) says that if a child is removed from the child's family, support should be given to him and his family for the purpose of allowing him to return to his family if the return is in the child's best interests. So it's said to be a general principle that would appear to inform the notion of wellbeing and best interests of a child that if he can be returned he should be returned.

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COMMISSIONER: One of the other ones says the preferred way of keeping a child safe is supporting the family.

MR COPLEY: That's paragraph (c).

COMMISSIONER: Well, that brings me to or comes back to - because you say in your statement - you may as well think about this over lunch, if you wouldn't mind - paragraph 17:

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*Once children are placed in the statutory child protection system the state is required by law to not only ensure that child is kept safe but also that they are provided with the necessary supports and services to allow them to enjoy a standard of wellbeing, education and health comparable to their peers outside the system.*

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Can you show me where it says that in the Act?---The part, I guess, that I'm looking at is chapter 4, part 1, which talks about standards of care.

Yes. Standards of care to who?---This is to the children we're talking about.

The children in need of care - in need of protection?---The ones who have been brought into the state system.

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Because they're in need of protection?---Yes.

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Are you saying that once they're brought in because they're in need of protection they can stay in the care system whether they're still in need of protection or not if it's in their overall best interests?---What you're saying is - I'm not moving away, I guess, from the notion that there is a need to be thinking about the notion of children being able to return to their families if that's a possibility, however I guess what I was looking at is the issue around whether or not - how long, in a sense, that process continues to go on in terms of consideration, because you've got to have - and I guess we talked a little bit about those best interests criteria, and part of the things that people need to be thinking about is what is actually the impact of what is happening on that child's life. I think one of the areas there we talked about is their views, and in some instances I think it also - we've got to be thinking about, well, what are the sort of educational opportunities that they're going to be afforded as well given - - -

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Well, you do as the child guardian?---Yes.

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Because your object of the act, your act, is to promote and protect the rights, interests and wellbeing of children in Queensland. That's not the child protection system's function, is it? Yours is much broader?---Yes, it is.

Theirs is to protect children who need it. You have a role as child guardian, in addition to your role in looking after the rights, interests, wellbeing of all Queensland children, a specific monitoring, supervisory role, in respect of those children who are in need of protection; that is, those who are in the system, isn't it?---Yes, who do not have anyone - yes.

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Right, so bearing that in mind, I was wondering if you could help me where under law the state is required to ensure that the children it has taken care under the statutory system must be provided with, quote, "The necessary supports and services to allow them to enjoy a standard of wellbeing, education and health comparable to their peers outside the system"?---In that I guess I was looking at the Child Protection Act which - - -

Yes, I know, so was I. I was just wondering if we're looking at the same one?---I was looking at chapter 4, regulation of cares, part 1, standards of care.

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MR COPLEY: Perhaps the witness can reflect about that over lunchtime.

COMMISSIONER: Yes, okay. Thank you. Half past 2, perhaps we can take?---Thank you.

THE COMMISSION ADJOURNED AT 1.02 PM UNTIL 2.30 PM

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THE COMMISSION RESUMED AT 2.30 PM

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COMMISSIONER: Yes, good afternoon.

Commissioner, you were going to show me where that legal requirement was that you referred to in paragraph 17? ---Right; and probably just highlighting that 18 does highlight that in the affidavit I do talk about the critical responsibility of child protection to ensure that children don't inappropriately enter the system and transition out at the earliest so that is my frame. I think the act describes the state's obligation to provide high standards of care - I see that identified in a couple of places, but in 122 which explains how the - and then it sets out there, "The chief executive must take reasonable steps to ensure a child placed in care under section 82(1) is cared for in a way that meets the following standards," and that talks about dignity and rights, physical care, emotional care needs, cultural and ethnic grouping needs, material needs, schooling, physical and mental stimulation, recreational and general living, receiving education, training or employment, opportunities relevant to the child's age and ability, positive guidance, dental, medical, therapeutic services, opportunities to participate in positive social and recreational activities appropriate to his or her developmental age, et cetera.

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Yes, I see that, but I guess what I was looking for, because I didn't think it was a correct statement of the legal position, was something that said the chief executive had to provide the education and health and all the other services in the context of you saying that once the child was admitted to the system, then it was - that's where they should stay if it was in their overall best interests, whereas my understanding of the legislation is the child entitled to these comparable standards is a child who is in protection because that child needs protection by definition?---Yes.

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So the chief executive is only obliged, in fact only allowed, to supply these services that are available to a child in care if that child remains always in need of protection?---Yes.

Right. So how we got on to that was I asked you: wouldn't it be appropriate to periodically review whether the child remained in need of protection as opposed to asking yourself the question whether the child's overall best interests require the child to stay in care? Do you see the different question?---Yes, I think I do. I guess in my head the way I'm reading it is that the act also goes on to talk about the case-planning requirements for children who need protection. It explains how the statement of standards are going to be implemented to meet their individual needs and there's an ongoing requirement for those to be reviewed and it's clear who needs a case plan. They're children who need protection and who need ongoing

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help.

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And we know who those children are because the definition tells, doesn't it?---That's right.

Who are those children in need of protection? They're the ones who have suffered, are suffering or at unacceptable risk of suffering significant detriment in a defined way as a result of - not just generally, as a result of abuse or neglect?---Yes.

And have no viable parent to safeguard them against it?  
---That's right.

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So isn't that the question the chief executive should be periodically asking herself, "Is this still a child in need of protection within the definition of my legislative remit"?

---And I would agree with that.

Does she at the moment?---The case-planning process should be reviewing that issue.

Does it?---It is required to turn its mind to those issues but it also has to look at the child's needs for long and stable care arrangement and continuity in relationships.

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Only a child who needs to protections?---That's right.

Long-term needs?---Yes, that's right.

So that's always the first question?---Yes, but it should be weighing up what is actually happening in the background with respect to the contact arrangements with the family, what's happening with the family, whether they're moving on as well and where's the child at that point, and that's going to be an ongoing piece of work to sort of make sure that should the parent start to improve and be coming into a situation where that child maybe no longer is in a situation of theoretically needing protection, if you're then talking about any form of sort of reunification, you've still got to weigh up in the best interests of that child how you're going to move that process forward.

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Reunification isn't the best interests test, is it? It's the object - - -?---No; no; no, that's one of the decisions you would be making, that you'd have to weigh up the best interests.

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No, reunification is the object and it should be done if the chief executive is satisfied that the child is no longer at an unacceptable risk of relevant harm from abuse or neglect?---Yes.

Not any sort of harm, but abuse or neglect-caused harm - - -?---Yes.

- - - and has a viable parent. As soon as he or she

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reaches that conclusion, that child is no longer in need of protection, is she?---That's correct. 1

Right?---Sorry, and I totally agree with that. The issue is that part of the actioning of that, I guess, would need to be worked within the best interests of that child because that's a paramount consideration.

It's the paramount consideration insofar as it's made that by section 5A?---Yes.

That is, when you're making a decision where the child's interests conflicts with a competing interest, you always resolve that conflict in favour of that child?---Yes. 10

Otherwise we don't know what it means in this legislation because it's not defined?---That's right, and the return of that child who's on an order back to their parents would then go through the court frame. It would always be open, as I understand it, for those decisions to be reviewable should anyone wish to raise that.

You mean someone like you could go to QCAT and have them reviewed?---The parent could, yes. 20

You could too, but you haven't ever done that?---Not at this stage, no. It hasn't been something that I've done.

Is that because there are not a lot of decisions of that sort needing to be reviewed because once a child's in there for two years, they're pretty much there till they're 18?--  
-There are a lot of them who are actually - I think there's a number of them who are actually moving backwards and forwards in reunifications back with family, so not all those children are in there for that duration. In fact one of the things that we've been trying to establish information around is what is the length of time but also what are the numbers of sort of reunifications and how many of those are successful or not. We have information from our review survey which highlight that of the sort of 2509 that we last looked at who returned home there were 467 of those who had a failed reunification attempt which means that they then come back into care and there's about 306 of those who then had one failure and then it goes on to the total number that we've recorded are nine times where children have had reunification attempts backwards and forwards. I guess from our point of view it's really important information to know what's actually happening in that space and the only data at this stage that we've got around it is what young people have told us of their understanding of how many times they've gone backwards and forwards, but that creates - so not all children who come in are staying there for great lengths of time. 30  
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Some are actually going backwards and forwards in some sort of reunification attempt, which is obviously the purpose of what we're trying to do, but there's quite a large number of those that are not necessarily successful the first time round, but there are also quite a few that are working, so you do get churn within that group. I would also be interested in getting a clearer understanding of how many of them are staying in there for substantial period of times beyond that. You might have some where you've got parents, for instance, who may have - you might have a child who's only got one parent, may be sent to prison or something for a long period of time, and that child might be then placed in care because there's no other relative available, at which stage that child might be there for six, seven years, could be longer. So there's a variety of reasons which might impact on the length of time that kids stay in care.

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I wondered if you'd ever asked yourself that question when you've conducted your child guardian key outcome indicators update?---Yes, we do have a section that the - one of the things that we were able to establish post the CMC review which established those child guardian functions, the critical responsibility that I'd been trying to achieve is a report that gives you some sort of information on systemic outcomes from the perspective of the young children and the critical bit at the front end, which we say has to be effective, is obviously the initial assessment. You want to be absolutely clear that whoever is coming in has to come in - should be in and that there's then an appropriate intervention decision that's made, so that top band in terms of the first two areas on our outcome indicator relate to trying to establish data around that. The next section that we look at is the quality of care that is provided once those children are brought into the tertiary system and the critical issues that we're looking at there are safety, stability and health, education, the individual needs being met in terms of therapeutic responses and the particular statutory responses that are required with respect to Aboriginal and Torres Strait Islander children.

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All right, thank you?---The next band - - -

Thanks, commissioner. Sorry. Mr Copley?

MR COPLEY: Mr Commissioner, I just wonder whether or not it might help to clarify one thing in the discussions between yourself and the witness and it could be my ignorance in understanding the legislation, but under section 62 the duration of a child protection order is catered for - - -?---Sorry, 62 of the - - -

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Section 62 of the Child Protection Act?---Okay. Sorry.

It says that a child protection order must state the time when it ends.

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COMMISSIONER: Yes. 1

MR COPLEY: For an order that doesn't grant custody or guardianship, it could end any time less than a year after it's made. For an order that grants custody or short term guardianship it could end in any time under two years, but for an order that grants long term guardianship of the child then it says in subsection (2)(c) that the order ends the day before that child turns 18 years of age.

COMMISSIONER: And otherwise when they turn 18 years. 10

MR COPLEY: Yes. So it's not clear to me that there is any scope - - -

COMMISSIONER: Scope.

MR COPLEY: - - - in the legislation for the making of the long term guardianship order to be ever revisited if the circumstances of the child and his parents change, such that it's considered that the child can be - the parents can have full parental rights over their own child.

COMMISSIONER: They can't at the moment. 20

MR COPLEY: They cannot.

COMMISSIONER: No.

MR COPLEY: That was what I - I'm told by Mr Hanger I should be looking at section 65. Section 65 says:

*A child's parent may apply to the Children's Court for an order to vary or revoke a child's protection order.* 30

COMMISSIONER: Yes.

MR COPLEY: Then it says:

*However, a child's parent cannot apply for an order to revoke a child protection order for the child and make another child protection order in its place that grants guardianship of the child.*

So I rather interpreted that to mean that on a long term guardianship order, the parent couldn't bring an application to have that undone. 40

COMMISSIONER: It can vary it, but that's all, as I read it.

MR COPLEY: So setting it aside would not be varying.

COMMISSIONER: I don't think so?---No.

MR COPLEY: So the most that a parent could get, if the parent, to put it colloquially, cleaned up his act, would be perhaps a favourable exercise of discretion from the chief executive for the chief executive to allow the child to live with the parent again, but for the chief executive to continue to have long term guardianship of the child.

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COMMISSIONER: That's true because the chief executive can do that. The chief executive can place a child with a parent if she wants to, can't she?---Yes, I think that's correct.

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My questions are about the appropriate placement for the child and whether that's reviewed. If the legislation at the moment doesn't envisage it then maybe the legislation needs to be looked at if that's an appropriate thing to do and I was teasing out with the commissioner whether from her child guardianship point of view regular or periodic reviews by the chief executive of the progress of a child in care or the fitness of a parent or the circumstances in the family household have changed to the point where she, the chief executive, would no longer conclude that the child was in need of protection, whether that was a fruitful inquiry, bearing in mind we have 8300 children in care, many of them under long term orders.

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MR COPLEY: I understand. I obviously wasn't being sufficiently mindful of the fact that your questions were always directed to the element of protection. I was focusing on, I suppose, what the legal consequences were with this issue of long term guardianship.

COMMISSIONER: Yes.

MR COPLEY: I apologise for interrupting.

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COMMISSIONER: No, no, that's all right. Except that protection includes care at the moment, so there are sort of two steps, aren't there? There's should the child come into the system and once they're in the system, how do we care for the child and then for how long. There's access for how long and in what circumstances, subject to the chief executive making some discretionary administrative decisions about where - - - ?---Yes.

- - - and then the court (indistinct) has guardianship and custody of the child?---Yes.

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We're looking at the system - - - ?---Yes.

- - - to see whether we've got the best one. I guess really to cut it short, my question to you as the child guardian in this state is have we got the best one when there seems little room either from a philosophical point of view for those in the system or because of a court's limitations or because of the structure of the act to review the child's need for protection from time to time?

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Is there enough of that? Is there enough scope for that within the current policies, procedures and legislation? ---I would've - and I suppose because I've been looking slightly from a different perspective, I mean, I think that's probably something that needs to be explored and I'm happy to sort of look at that a bit further and even sort of try and put some further advice forward in my submission because in the bit where I've been looking at successful reunifications or not and the transition from care, which I think is a critical component of what the system should be doing well, one of the things I guess that I've been trying to establish is what is the evidence base for the decisions around reunifications and how well is that part done because the other aspect, I suppose, is that you want some proactivity, even on the short term orders, where you're not just getting short term orders lapsing and moving into reunification. You actually want decisions being made for - the protection needs have diminished to the point that those children can actually be placed.

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The object of the system surely must be children safe at home as soon as possible?---Yes, based on a consideration of that as opposed to a lapsing of an order.

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Yes?---Yes, and so at this stage I've been trying to establish, I guess, that there's a proper evidence base to support those reunifications, and I feel that there's sufficient room in there to be proactive and active about that case planning and that attempt to make that reunification happen in as timely and as quick a way as possible, as opposed to - so that you're not, in a sense, having kids drift in the system without consideration. That should be happening through the case plan, is my view, and with the long-term orders my understanding of the way in which considerations around that are is that there is an onus, I thought, on the chief executive not to make sure there wasn't anyone else other than the chief executive who would be a better person for that person to be placed with.

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Yes, I think that's true?---I mean, have the guardianship to, so in that context that should provide a reasonable safeguard that not more children are coming into the guardianship order with the chief executive. The area that I think potentially there is probably quite a lot of room for further consideration is with our Aboriginal and Torres Strait Islander children and some consideration there, where sometimes you get urgent placements and we also know that quite a large number of them are not necessarily being placed with other indigenous carers. There may be opportunity to apply some greater thinking there about whether or not there are other sort of hierarchies of placements that could occur rather than leaving them in - - -

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Well, section 81 is the power of the chief executive? ---That's right.

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Once the chief executive has got custody and guardianship of a child then section 82 tells her where she can place a child?---That's right.

That includes with a parent?---Yes.

Presumably a viable one. All right. I'm just wondering how the chief executive informs herself about those things, because the order is in place but she's still got discretionary decisions to make in best interests about where to place, and that includes back at home. I'm wondering whether we've 8300 children, or whatever we have, in long-term out of home care under long-term child protection orders because no-one is reviewing their protection status regularly enough?---I would agree that those who are on long-term guardianship orders, there is, I think, in terms of how many of those have shifted from the chief executive to someone else, certainly, I think, has moved from about 16 to 21 per cent on recent figures that we looked at, and I think there would be good fruit to have a good look at whether more of those couldn't actually be

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moved into a different arrangement.

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Okay, excellent. All right, thank you. The other thing I just wanted to ask you, you say at paragraph 8 the rate of entry into the system, the out of home care system here, as at last year was seven per 1000 child - - -?---Yes.

That's seven per capita, isn't it?---Yes.

Which is below the national average - just below the national average?---Yes.

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What about the exit rate? How does it fare with the national average?---I don't have that off the top of my head. I thought - and the exit rate is quite a sort of - there's a complexity there, but I could provide some more data on that.

That would be good, because I think you need to look at entry and exit to look at transition?---Yes.

Now, you say at paragraph 14 that the current child protection system is required to cater for the needs of some of the state's most vulnerable and disadvantaged children and young people and then act as substitute parents when the problems have a private origin and may be due to reasons that even pre-date birth and in each generation. Now, you're actually - your concern as child guardian actually isn't with the child protection system, is it? It's the child safety system in your act, isn't it?---Yes. I mean, it links with the - yes, the child protection system. I guess if you're looking at the terminology - - -

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Well, I do?---Yes.

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Being a lawyer, I do look at the terminology, because what the child protection system is in Queensland is a very pertinent question to the terms of my reference, you see? ---Yes.

That's all I'm looking into. I'm not looking into the child wellbeing system. I'm not looking into anything called the child welfare system or the family support system, I'm looking into the child protection system, and you as child guardian have a role to play in the child protection system to the extent, it seems, to me, anyway, and I'm raising this so that others can think about it and make submissions on it at some appropriate time, that your role is to monitor, audit and review the systems, policies and practices of the child safety department, which we don't have one of anymore, and among the services provided that affect children in the child safety system (indistinct) one? You know how you've got roles and responsibilities and functions in respect of all Queensland children?---Yes.

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Then you've got a special function as the child guardian in

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respect of those that are in what your act calls the child safety system, right?---Mm'hm.

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How do you interpret that term? It's defined in section 13?---Yes. I look at the child safety system as being those that are in the tertiary sort of system, so that's the statutory end of the system, and I guess I find the useful frame - and I know there's been quite a lot of discussion about universal and primary and secondary. If you look at the national child protection framework - I'm not sure if you've had a look at that - - -

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COMMISSIONER: I have?--- - - - that all states and territories have signed up to, it has a useful sort of diagram there that talks about universal services, it talks about services for vulnerable cohorts of children, if you like, and families, and they to me are not known individuals, they're areas that are very useful in terms of looking at policy settings and programs that you might be looking at to reduce vulnerability and they're areas around closing the gap of disadvantage, poverty, those sort of issues. Then it talks about at risk and tertiary services, and in my head I see the child safety system as dealing in that at risk and that tertiary end, because they are known children and known families. There's obviously been a lot of discussion around numbers, but generally if you look at that as the group that come to notice, and they to me are the concern of who of those need statutory intervention and removal and some other offering, how many of those can actually be assisted without removal and how many of those families can be assisted, you know, with some early sort of at risk type programs like the Helping Out Families and the RA. That bit of the - - -

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Framework?--- - - - national framework I see as the responsibility of the child safety area.

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All right. Let's move away from the national framework and back to your legislation. Section 13 tells us when a child is in the child safety system in Queensland and in section 1 it says a child starts being in the child safety system. Now, is that the same as the child protection system?---I think it is.

Okay, if the child - executive, child safety - presumably Mr Hanger is about to tell me who the chief executive, child safety, is, shortly - that's in brackets, child safety?---Yes.

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As opposed to chief executive (fostering) becomes aware whether because of a notification which is a term not defined in your act or the Child Protection Act or otherwise of alleged harm or alleged risk of harm to the child?---Mm'hm.

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So it's in the child safety system when there's a notification or an awareness by the chief executive, Child Safety, of an alleged - not suspected but alleged harm or risk of harm?---Mm'hm.

"Harm" being defined in your Act as the same as in the Child Protection Act?---Yes.

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At this stage though the viability of a parent is not a relevant factor as to whether or not the child is in the child safety system?---Mm'hm.

No doubt it becomes relevant when you're looking at what - and this is what I'm suggesting to everybody. That question becomes relevant in the child protection system because "protection" is a term that includes care, whereas "safety" might not?---Mm.

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And then section 2, a child stops being in the child safety system if the chief executive, Child Safety, decides there is no ground for forming a reasonable suspicion that the child is in need of protection?---Mm.

So that's when the child stops being in the system, isn't it?---Mm'hm.

As soon as the chief executive decides there's no reasonable basis for suspecting the child is in need of protection, that is, the child's at unacceptable risk of harm from abuse or neglect without a viable parent. That's the test?---Mm.

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So that's the end of your remit. As soon as the chief executive decides that there's no ground for reasonable suspicion, you no longer have any responsibility under section 18, do you?---Under that particular responsibility, but within the broad remit of the commission - - -

You being responsible for all children?---All children and vulnerable children and - - -

No, I'm talking about children - we're talking about in here - - -?---In terms of the child guardian functions in particular - that's why there's sort of a commissioner and child guardian. The child guardian functions came in with the creation, if you like, of the child safety system and the functions there pretty much line up with the responsibilities for overseeing that group, yes, but within the powers that I have I can utilise other powers within the act to have a look at and deal with some issues that are raised for children who are in the sort of vulnerable arena, but I agree with you that the terminology

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could do with some cleaning up in the sense of making sure that everybody is very clear about - - -

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I will tell you what I think it's important because in paragraph 15 of your statement you rightly - whether rightly or not, you make this observation:

*The suite of services that the child protection system must deliver spans from referral to early intervention and prevention services to assist family functioning through to long-term statutory interim interventions to help keep children safe and restore their wellbeing.*

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I don't know about that one:

*All statutory interventions incorporate a minimum range of mandated services essential in helping children and young people cope with the abuse that triggered their entry to the care and in re-establishing their wellbeing and expected life outcomes.*

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Okay. What you're talking about there is something quite different to either the child protection system as it is under the Child Protection Act or the child safety system as it's defined in your act. You're talking about a system that delivers preventative, early intervention, family support services to children for their wellbeing?---Mm'hm.

That's not the child protection system we have got or the child safety system you have got, is it?---I agree that the specific bits that I oversee in terms of the child safety arena in my act relate to the tertiary and a specific part of that in here I am talking more generally about the child protection.

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You're talking about the child welfare system, not the child protection system, aren't you?---I don't know if welfare - it's a child wellbeing, yes.

Child wellbeing system?---Yes, I'll go with that.

We haven't got one called that?---Well, I think we do in the community. The issue is who has responsibility for bits of it and this inquiry, as you say, isn't dealing with the child wellbeing aspects. If that's what you're saying, that's not in your remit for this inquiry, but I think in what I look at - - -

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That's not to say children don't need all those things? ---No; no.

But what I'm asking you, I guess, is you're suggesting that the child protection system should be providing those -

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should be meeting those needs and I'm challenging that. I'm asking you: is that really what should be providing it? Government certainly should, but should it be the child protection system that does it?---I think you're probably correct in highlighting that that - the way I've worded that I think probably could be refined because what I'm talking about is the broader notion of what we need to do in order to promote children's wellbeing and - - -

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And you're doing that with your hat that looks after all children in Queensland?---Yes, you're right. In that context it's not the child protection system that's delivering that full suite. I agree with you.

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It's part of it?---It's part of it, yes.

Because it looks after their safety aspects?---Yes, and I should have used a different term there.

All right. It's just like the child with a disability shouldn't be parked in the child protection system. His or her needs should be met by the system?---Exactly.

Just not that part of it?---Yes.

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Do you agree?---Yes, I do, and that's why, I suppose, in working through as things move forward I find the national framework a slightly better context for explaining how those various levels come together because ultimately what we're looking at is wanting to get as many children as we can into a positive development and the protection bit, as you say, should be just picking up on the ones that need that protection.

The only problem with the national framework is that we're a federation?---But we've all signed up to it.

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Yes, haven't we?---And probably what we do need is a plan about how we're going to deliver on which bits of it and - - -

The federal government hasn't shown any interest so long as I can remember in child protection until 2009 and that's by way of a COAG framework?---That is correct, but I think the framework that has been signed up to by all states and territories is certainly aiming to try and see whether some clarity can be worked through in terms of who's responsible for which bits and how do you actually apply the mix of national and state and local input to that in a way that we're actually reducing the impost on the tertiary end. I think if we can get some of that working in a coordinated and cohesive way, then it will happen, but potentially within that front end, if you like, the governance around that, the plan around that and how that's going to occur is not entirely clear to me, but if it doesn't, then the numbers that the tertiary system have to deal with - there isn't actually any major strategy for reducing them.

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Yes. I will tell you why I was asking all those questions about what was the child safety in your act and the child protection system was. When you do your Queensland Child Guardian Key Outcome Indicators update, what you're doing there is measuring by reference to key performance indicators who well the child protection or the child safety system in your case is faring, aren't you?---Yes, from the perspective of children.

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Yes, but it has to be also from the perspective of the role and responsibilities of the chief executive if you're measuring the child safety system or the child protection system, doesn't it? I mean, there's no point measuring the success of the current system against an indicator that doesn't actually relate to any of the powers, functions or responsibilities of the chief executive?---No, but I think in this area I guess those outcome indicators were developed in collaboration with, you know, the other parties with a view to saying - if you've got an effective system and it needs to be effective in terms of determining who comes in and making sure that the interventions that you've determined at that point are appropriate, if then the decision is that some of those children will come into out-of-home, that they be provided the support in accordance with the standards of care in the act and the charter of rights and that they be assisted to reunify or transition out of care in accordance with certain things in the act. If it's performing those functions - and I guess what we've tried to do is collect agreed datasets both administrative from agencies and our own data which is the community visitor people going in and actually looking at and talking to and seeing the community reasonableness test, if you like, as to whether those standards are actually being met and views from children themselves - - -

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The system you're measuring in this report might be a little bit broader than the child protection system as properly defined, mightn't it? For example, truancy and suspension from school - that would be measuring the effectiveness of the people responsible for schools and schooling children whether they're in care or out of care, wouldn't it?---No, the data that we have in here with respect to those figures relates to children on orders who - - -

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I know, but how they perform at school isn't because they're on an order. It's because of the way they're educated at school?---That's true, but if they're in care on an order, then there's a responsibility for us to make sure, just like any parent, they're actually doing the best they can out of the school frame.

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Yes, but truancy, I suppose, is out of the school frame by definition, but it seems that in Logan and Ipswich when they do go to school, when they're not truanting, they're suspended for a lot of the time?---That's right.

You can't blame the chief executive for that, can you?---I

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think that it's an issue of looking at the impact of what that is having in terms of their educational outcomes and if you've actually got responsibility for promoting their best educational outcomes because you've brought them into care, then I think there is a responsibility to do everything you possibly can to try and make sure that they're not truanting and they are attending.

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Well, you enrol them in a good school. What more can you do? You make sure they go to school as best you can as a substitute parent and make sure they do their homework and brush their teeth, but other than that you're not responsible for them getting suspended, are you, if you're the chief executive?---No; no, not in that context and that's not what the purpose of this reporting it. The purpose is to try and highlight how are they faring and what are the outcomes.

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How is this cohort faring?---Yes, so that we can make sure that the purpose of why they were removed and what are the outcomes for those children is actually been monitored and reported on because ultimately if you've intervened in their best interest to take their out of a harm situation and there are standards of care, then my view is that there has to be some statutory responsibility to look at has that benefited them.

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See, I would have thought one of the key performance indicators in your system which doesn't appear in your booklet is: have we got any kids in long-term care who could actually be at home safely? Wouldn't that be the test of the system? If the answer was, "No," great. We have got everybody in their place where they should be? ---Yes.

If the answer was, "Well, hang on, we've 8300 kids. Of them 500 of them could actually be at home being cared for safely by a viable parent but for one reason or another they're still in the system" - have we got any children - for example, I would have thought if you're looking at key performance indicators to a child protection system, I would have expected to see that you would have said, "Well, the child protection system is actually paying for the care and treatment of children with a disability whose parents have relinquished their care to the child protection system because the disability system doesn't provide any alternative treatment"?---Mm'hm.

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Wouldn't that be a key performance indicator, because, to be fair to the child protection system, they're representing numbers and costs that really shouldn't be there?---And I think the reality of having a framework like this is that it's fairly recent that we've been able to provide it. I mean, as recent as 2005 when the - - -

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This is your third one, isn't it?---Yes, but I'm saying that in 2005 in the last inquiry of the abuse of children in foster care it was quite clear at that stage that there

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wasn't any sort of systemic framework to measure any of this so it has actually - we've focused through our powers in trying to establish a framework that we can start to talk to people about and discuss what should be in it, what shouldn't be in it. It's not a static thing. I mean, it's aiming to try and assist and facilitate discussion about whether or not this system is actually achieving what it's aimed.

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Sure, but it calls itself "key outcome indicators"?---Mm.

Yes, Mr Copley?

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MR COPLEY: Mr Commissioner, having regard to the time and the distance that might yet be travelled before 4.30, I just wonder whether or not it mightn't be a fair thing to let Mr Armitage who I believe is in the back of the court go until next week because we're not sitting tomorrow.

COMMISSIONER: No, that's true.

MR COPLEY: I can't really see - yes, he's the gentleman with the grey hair.

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COMMISSIONER: I know Mr Armitage.

MR COPLEY: I didn't. It might be better for him to - if he wishes, he can stay, but otherwise know that he's not going to get - - -

COMMISSIONER: I thought he was riveted, but maybe not.

MR COPLEY: I'm just saying may he have permission to leave confident that he won't be called today?

COMMISSIONER: Yes, I will just check. What you're saying to me, Mr Copley, is have I finished yet.

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MR COPLEY: No, not really, but I have another issue to raise with the witness before Mr Hanger and others ask their questions.

COMMISSIONER: All right. I will just check. How long do you think you will be, Mr Selfridge?

MR SELFRIDGE: 10 to 15 minutes maximum.

COMMISSIONER: 10 to 15.

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MS EKANAYAKE: About 10 minutes.

MS WOOD: Nothing at this stage.

MR CAPPER: Probably about half an hour or maybe a bit more.

COMMISSIONER: Half an hour?

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MR CAPPER: Maybe a bit more.

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COMMISSIONER: All right. Mr Armitage, you may leave as you wish, thank you, and we will see you at 10 o'clock on Monday. Will Mr Armitage be first cab off the rank on Monday?

MR COPLEY: He should be, yes.

COMMISSIONER: Straight after the commissioner.

MR COPLEY: Yes.

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COMMISSIONER: All right.

MR COPLEY: Could I just ask one question if you, Mr Commissioner, have finished and before Mr Hanger or Mr Selfridge ask questions?

COMMISSIONER: Certainly.

MR COPLEY: Ms Fraser, it just occurred to me to ask you this: having regard to sections 17 and 18 of the commission's act, where is the legislative mandate to be found for you visiting prisons and speaking with or monitoring or taking account of the concerns of prisoners who are for the purposes of the criminal law not children? Could you just identify that for me in those sections?--- It's not there.

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It's not there?---No, and that's what I indicated before, that what was agreed - my visiting of those children is under administrative agreement with the government.

So why do you - and don't take this the wrong way. Why do you seek to wander outside your legislative field?--- Because my broad mandate talks about my responsibility to promote and protect the interests of all children under the age of 18 and particularly those who are vulnerable and the vulnerability is those who have no-one to act on their behalf or who are in those circumstances and, as I indicated, my preference is to get a legislative change for those young people and then what was agreed with government was that in order to look at what was actually happening for those children build some information and evidence about them. It was agreed that I would visit them under administrative arrangements.

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So you take the view that - - -?---They are part of my broader remit.

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You take the view they're children, even though they're not children, for the purposes of the criminal law?---They are under 18. They just happen to be in adult prisons. 1

I suppose what I'm getting at with you is the law says they're not children for when they're in adult prisons, doesn't it?---Well, I guess I look at them in that context as under 18.

Do you interest yourself in the sexual behaviour of children aged 16 or 17?---In terms of the policy and legislative issues that might arise, yes, and if there's any changes or if we're looking at what in a sense might be the new laws or policies or programs in that space, yes, my broader powers do allow me to - if I've got information of relevance or there is research which is indicative of something that may be of assistance, my broad powers do allow me to engage in that sort of consideration. 10

Just one further thing, before lunch I asked you about those cases that dragged on for a little bit that required negotiation between and the department - - - ?---Yes.

- - - that avoided going to QCAT?---Yes. 20

Were you, over the lunch adjournment, able to think about or obtain some record to find out how long it took you to resolve those cases?---I did ask for information around that and I got information, I think, that one of them was in the order of about five or six months and the other one was three months and I haven't got information - - -

Yes?---I haven't got information about the third one at this point.

If something took up to five months or so to resolve, wouldn't it have been easier just to take the view, "Look, this can't be resolved. We'll give it over to QCAT to make a determination about"?---I think you'd have to look at that in terms of the particular case. 30

There's not a philosophical view taken by you that you'd rather keep lawyers out of this area and that it would be best resolved between you and the chief executive in discussions, is there?---No. The issue would be that whilst you may not have resolved everything to satisfaction, providing you're moving forward and certain things are happening and there's progress occurring then, you know, basically you'd maintain momentum on it, so I don't have a philosophical view that - I guess there's a point at which you feel you can take it to court. 40

Okay.

COMMISSIONER: I just want to follow up a little bit on that. How hopeful were you - I just want to see how close you got to getting the legislative change in respect of 17-year-olds in gaol. Were you still heavily in discussion

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with the government officials, from the politicians, say, at the beginning of this year - - - ?---Yes. 1

- - - before the election?---Yes.

How close did you get? What's the closest you came to getting a commitment that it would happen? Are we still looking at it?---I think still looking at it. Yes.

Too much time; it was too expensive?---Yes.

Who said that?---I can't remember. 10

Fair enough. What do you say to that?---I never agreed that it's too expensive. I think we're talking about the potential of young people in this state and I think that the expense of the alternatives is pretty high and I guess it depends what you're adding into the balance sheet on that. I know it is more expensive to maintain a young person in a juvenile detention facility than it is an adult prison, but the services which they get in those different facilities is quite large; the differences there and, as I've said, I think that we should be as a community putting as much effort as we possibly can into changing some of those trajectories whilst we know there is opportunity developmentally to achieve that. 20

Did you challenge the person who said it was too expensive on those - did you put the argument you just put to me to the person who said it was too expensive?---Yes. Yes, I have.

What does he say?---Oh, basically, I think the notion is that, you know, this takes time and you've got to convince; there are priorities. There's all sorts of discussions that one has in that context, but there was certainly effort and work to look at how many people are there. I talked about the fact, "Well, if you could remove most of the kids who are on remand out of the juvenile justice context, you might free up a bit of space." So there's a few options that we could be looking at here. However, as I say, the work of making that happen hadn't - I mean, just hadn't achieved the whole thing. 30

You never got a commitment about time frame, anyway, did you?---No.

Or even a commitment that they would definitely do it? ---No; and I was trying to secure an agreement that they would commit to doing it by a particular time and they didn't commit to that. 40

Thanks very much, commissioner.

MR CAPPER: Could I just - - -

COMMISSIONER: Yes, Mr Capper? Would you prefer to go first? You don't mind, do you, Mr Hanger?

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MR HANGER: No, commissioner.

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MR CAPPER: I don't mind either way, but certainly I just wish to correct one point that was raised by Mr Copley and that's in relation to a child, whether the commissioner is acting outside of purview in relation to a matter. In relation to that, I can bring the commission's attention to section 36 of the Acts Interpretation Act which defines a child as a person under 18 and it's not otherwise defined in the - - -

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COMMISSIONER: In the Act.

MR CAPPER: - - - Commission for Children and Young People Child Guardian Act, so therefore we would say that the definition of child under the Acts Interpretation Act would apply and it would therefore give a - - -

COMMISSIONER: Yes. I think Mr Copley was respecting his - predicating his comment on for the purposes of the juvenile justice or criminal - - -

MR CAPPER: Yes.

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COMMISSIONER: But I take your point.

MR CAPPER: Thank you.

COMMISSIONER: Thank you, Mr Copley (indistinct)

MR COPLEY: Yes, I accept that's the definition in the Acts Interpretation Act.

COMMISSIONER: Yes.

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MR COPLEY: Yes.

COMMISSIONER: All right. Mr Hanger?

MR HANGER: Thank you.

COMMISSIONER: Who is the chief executive, Child Safety?

MR HANGER: You mean the name of the person or how do we get there, I think? I can tell you how we get there.

COMMISSIONER: You want to take me to the legislative arrangements, don't you?

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MR HANGER: Yes.

COMMISSIONER: Have they been put in place was really my interest.

MR HANGER: Yes. I'll take you through that.

COMMISSIONER: Have we got one in place? That's really

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what - - -

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MR HANGER: Under the Education (General Provisions) Act, there is a definition of chief executive Child Safety.

COMMISSIONER: Yes. I'm aware of that one.

MR HANGER: And the definition says, "That person is the chief executive of the department in which the Child Protection Act is administered."

COMMISSIONER: That's in schedule 3 of that act.

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MR HANGER: That's right. The definition section of that act.

COMMISSIONER: Yes.

MR HANGER: Under the administrative arrangements order number 4 of 2012 - and I'll hand this up - the Child Protection Act is administered by the minister for Communities and Child Safety and the attorney-general, which is quite interesting and the responsible head is the director-general of the Department of Communities Child Safety and Disability Services.

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COMMISSIONER: Yes. That makes her the chief executive Child Safety.

MR HANGER: That's right.

COMMISSIONER: Does it make here the chief executive under the Child Protection Act?

MR HANGER: I don't know?---The machinery of governments moved faster than the act.

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Yes. Can I just refer you to the other provisions. The Public Service Act, "The chief executives are appointed by the premier under section 92 and gazetted pursuant to section 93." My learned friend Mr Haddrick has given me - I should add - most of this material. He's just given to me the Government Gazette dated 5 April 2012 where on page 893 of the Government Gazette the department - this gives you the title of the office for the chief executive and under the department of government, which is the Department of Communities Child Safety and Disability Services it says, "The title of the office for the chief executive is director-general, Department of Communities Child Safety and Disability Services." That person under the Administrative Arrangements Act that I referred you to is responsible for the Child Protection Act. So I think that answers your question. Can I hand - - -

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COMMISSIONER: Yes. I was just wondering whose side Mr Haddrick was on. Okay.

MR HANGER: I'm very grateful to him for knowing his way

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around these things.

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COMMISSIONER: Thank you, Mr Hanger.

MR HANGER: You asked me another question, commissioner.

COMMISSIONER: Yes. I'll keep it till later, if that's okay. I'll ask you - - -

MR HANGER: It doesn't really matter how long you keep it, the answer won't be terribly informative, really.

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COMMISSIONER: Really?

MR HANGER: I've got the same problems you have with it and a few more.

COMMISSIONER: All right. We'll keep it for submission.

MR HANGER: You asked about the meaning of section 14 - - -

COMMISSIONER: And you couldn't work out what it meant either.

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MR HANGER: No. I could refine it, but once you start applying a legal mind to it, it's a minefield.

COMMISSIONER: Okay.

MR HANGER: But I've got some ideas about amending it.

COMMISSIONER: Excellent. All right, thank you, Mr Hanger. Have you got any questions?

MR SELFRIDGE: I only have a couple of questions for this witness, thanks. Before I go there, there's a technical aspect I'd just like to address with you, commissioner.

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COMMISSIONER: Yes, sure.

MR SELFRIDGE: Yes. The Child Protection Act - and there's some reference made to section 65 which is the revocation and the variation section so the term, "Subject to a long term order," technically, is it a means of revoking or varying that order?

COMMISSIONER: Yes.

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MR SELFRIDGE: I just wanted to draw your attention to - but I'll put a caveat for me - in no way, in my submission, assists you in relation to that issue that you raised about those children that are subject to long term orders under periodical reviews and, if so, how does it happen and when should it happen. To me that's a very valid point, of course, and that's really the crux of where you were going, so I understand that.

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COMMISSIONER: Yes. 1

MR SELFRIDGE: In terms of the technical aspect in relation to section 65, when one reads subsection (6) in conjunction with - as it refers to subsection 1(a) - it's quite clear that there's scope to revoke that long term order as such, but - and, again, as I say, it doesn't answer or address that question that you raised quite legitimately about, "When does this happen? How does it happen and should it happen more?"

COMMISSIONER: Yes. Well, see, that is something - see, I would have thought that somewhere in the history of Queensland child protection somebody would have tried to convince a court to act under 65(6). 10

MR SELFRIDGE: I've been involved in such proceedings where section 65 revocation applications are made.

COMMISSIONER: On behalf of a parent?

MR SELFRIDGE: Both.

COMMISSIONER: Right. 20

MR SELFRIDGE: Department and parent. So when I say "both" I mean independent of each other, obviously.

COMMISSIONER: So the department asked for the revocation order when the chief executive - now I know who she is - - -

MR SELFRIDGE: Yes.

COMMISSIONER: - - - is satisfied that protection is no longer necessary. 30

MR SELFRIDGE: Yes. I couldn't help you - - -

COMMISSIONER: Well, actually, it says, "When the order is no longer appropriate and desirable for the child's protection." So it's still got to be a child in need of protection, but protected by - otherwise than by a court order.

MR SELFRIDGE: I don't know that I read that into it.

COMMISSIONER: It says it's no longer appropriate. What does that mean? Why - - - 40

MR SELFRIDGE: I suppose how I would interpret that - and I take your point, but how I would interpret is that there's no longer - subject to section 10 of the definition of harm in section 9, "And the children in need of protection," in section 10 is no longer applicable because an order is no longer necessary. That's how I read it.

COMMISSIONER: That's the only way to make sense of it

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but - - -

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MR SELFRIDGE: It is the only way to make sense of it, yes. It's badly defined.

COMMISSIONER: Yes. I don't see there's any point in saying "no longer appropriate and desirable". You just say, "The child no longer needs it."

MR SELFRIDGE: Yes.

COMMISSIONER: "No longer needing protection."

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MR SELFRIDGE: Quite so.

COMMISSIONER: Yes. All right. We have got to have a look at that legislation, obviously.

MR SELFRIDGE: Yes. I don't know. I can't assist you in relation to how many or how often such applications are made.

COMMISSIONER: No. Well, maybe the chief executive can. I'll ask her questions with a bit of paper.

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MR HANGER: I thought the evidence the other day was it was very rare. I thought the director gave a - - -

COMMISSIONER: Yes, I think she did.

MR SELFRIDGE: Yes, that's correct, but was it not Mr Swan that gave that evidence?

MR HANGER: I think it was Mr Swan.

COMMISSIONER: Was it?

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MR SELFRIDGE: Yes, I think it was Mr Swan that gave that evidence, if I remember correctly.

COMMISSIONER: Sorry. Can a child instruct you as the child guardian to make an application under that section? ---I think I can seek to do that.

Have you ever?---No. I might start.

You've got plenty of other things to do, I'm sure.

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MR SELFRIDGE: Ms Fraser, accepting the defined role of yourself acting in your role as commissioner, how does it work under your (indistinct) refined or defined by today's proceedings by the commissioner here. You offer an overview at paragraphs 21 and 22 of what you consider your role to be within the child protection system. I accept in the context put forward today of the Child Safety system, section 30, and what actually specifically your role is in the child protection system, as such. Then turn to paragraph 12, the last sentence of paragraph 12, which

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details an overview of why there could or should be change and improvement in the child protection system. That mandatory reporting aspect, you have no role to play directly in relation to any mandatory reporting, as such, do you?---No. Only in the context if, you know, something comes to my attention, obviously through the community visitor environment and then we would have a responsibility to put that forward. I don't know whether that actually constitutes mandatory reporting, but I - - -

What I mean by mandatory reporting is a legislative provision - - - ?---Yes. 10

- - - that states - - - ?---Yes.

I don't think - I can't see anywhere as such - - - ?---No.

No. Okay?---Not in that same way.

No, not in the same way as those other core providers - - -?---No.

- - - that you speak of who are - - - ?---Ours is more about oversight and - - - 20

Yes?---Obviously, we will report things that come to our attention and bring those - if something that we thought indicated that a child was in a situation of harm, particularly in the community visitor oversight frame. We have a 24 hour sort of window to sort of report back to the police or the - - -

When you say you have a 24 hour window, how is that? Where and how is that defined?---That's a 24 hour sort of policy provision on our - - - 30

Okay. So that derives from policy?---Yes, yes.

I understand. Who would you report it to?---It would be reported to Child Safety and the police.

Depending what it was?---Yes.

Yes. I understand.

MR CAPPER: Sorry. If I may assist. Perhaps we can refer to section 25 of the Commission for Children and Young People Child Guardian Act in this regard. 40

COMMISSIONER: What does it say, Mr Capper?

MR CAPPER: Certainly. In that regard it does provide a mandatory requirement for the commissioner - - -

COMMISSIONER: For the commissioner to report?

MR CAPPER: Yes.



COMMISSIONER: I thought it did.

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MR CAPPER: Section 25 says:

*This applies to information received by the commissioner in the performance of her functions. If based on the information, the commissioner considers a child may be in need of protection under the act, the commissioner must refer the matter to the chief executive Child Safety or to the police commissioner or a child is, or may be, the victim of a criminal offence, they must refer the matter to the police commissioner and if the matter may involve relevant criminal activity, refer the matter to the CMC.*

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COMMISSIONER: That's really what underlines the fact that - what we're concerned about here in the essence, "Is the child in need of protection?" because the commissioner doesn't have to report to the department anybody other than the child in need of protection, does she?

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MR CAPPER: No. That's correct.

COMMISSIONER: Not someone at risk - not somebody at the risk of harm - - -

MR CAPPER: No.

COMMISSIONER: - - - just somebody in need of protection?

MR CAPPER: Yes.

COMMISSIONER: That's what I thought the system was.

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MR SELFRIDGE: Yes, I'm obliged. Thank you. I suppose that's where I was going, but I was possibly unaware of that particular section, but that's where I was going in terms of any process as such.

Turning then to paragraph 69 of your - - -?---Sorry, which paragraph?

- - - statement. Paragraph 69, six nine?---69?

Yes. You were asked some questions by Mr Copley on Monday or Tuesday, I believe - this is the best interests aspects and the definition of "lack thereof" in the Child Protection Act and you're making a recommendation that that consideration should be given by this commission to defining best interests. You also as part of your legislation have - that concept is contained within your legislation as, "Interest is contained and best interest is contained at sections 5 and 6(1) respectively." Do you have a definition yourself of best interests? You don't do you?---No.

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No?---Not in here.

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So you yourself in terms of your everyday role and your remit under your legislation would be assisted in having a definition, and a common definition, as such, for what the best interests principle would be?---Yes, and, I mean, we have to apply it in certain - when certain decisions are being made, such as the ending of an investigation, also specific decisions that I make with respect to (indistinct) decisions, et cetera.

Sure?---And I guess my view is that there would be some value if that was consistently applied across the Child Protection Act and my own act and the courts in trying to get some standardisation around what that - and some guidance, because I think there's a lot of discussion that occurs with respect to that.

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Yes, and it's obviously very open to interpretation as it currently stands?---Yes.

I suppose that's where I was going with this, basically. You, collectively, both yourself and those responsible for administering the Child Protection Act, it would really help if there was some commonality as such with these definitions?---Yes.

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Particularly such as "best on best principles"?---Yes, I think that would be a very good piece of work to complete.

COMMISSIONER: Why don't we start with defining "abuse" and "neglect".

MR SELFRIDGE: But in terms of both acts, commissioner, it's blatantly obvious that there's a whole series of children's type welfare issues and intervention that are really undefined and across the board there is no common definition?---Yes.

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COMMISSIONER: Well, we all use the word "neglect" but - we all use the word - - -

MR SELFRIDGE: "Abuse", yes.

COMMISSIONER: - - - "abuse", but you might need to define it when you're talking in a child protection situation, and "neglect" is a word we use too, but Shakespeare invented that as a word in the 16th century.

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MR SELFRIDGE: As with many other words.

COMMISSIONER: It's meant to throw away or discard, so it can't mean that today, but the act doesn't tell us what it does mean.

MR SELFRIDGE: Well, you've got two schedules. You've got schedule 3 with the Interpretation Act and schedule 7 with the Commissioner for Children and Young People Act, and

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they're very Spartan in terms of the definitions they offer. Obviously it's something that you've turned your mind to and will turn your mind to, obviously.

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COMMISSIONER: Yes, well, even the new Family Violence Act doesn't define "abuse".

MR SELFRIDGE: No.

COMMISSIONER: That's hot off the presses.

MR SELFRIDGE: That's true?---I agree. I think they would be greatly benefited by that, and I guess I did highlight the previous time I was here the importance of that ongoing review. I think when the acts are done I think there is a need for them to come to attention, because as things move on people realise, you know, what more needs to be clarified and how that should be cleaned up and tidied up, and they're certainly areas which this inquiry hopefully will assist in achieving.

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To state the obvious, we all use these terms and constantly, consistently use these terms across the board both in this commission and elsewhere in our working environment, but we don't always have a common understanding and interpretation of them?---That's right.

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Thank you. I've got no further questions?---Thank you.

COMMISSIONER: Yes, Ms Ekanayake?

MS EKANAYAKE: Thank you, commissioner.

Jennifer Ekanayake of the Aboriginal and Torres Strait Islander Legal Service?---Hi.

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Commissioner, your statement at paragraph 80.16 refers to the chronic disadvantage experienced by Aboriginal and Torres Strait Islander people. You further emphasise at paragraph 75.4 the alarming rights of over-representation of Aboriginal and Torres Strait Islander children, in that they are three times more likely to be subject to a child concern report, five times more likely to be subject to a notification, six times more likely to receive substantiated notification and nine times the rate of out of home care?---That's correct.

You also highlight in your statement at paragraphs 76 and 80.16 the need to integrate prevention and early intervention statutory support to respond to the significant needs of Aboriginal and Torres Strait Islander young children and young people. How do you see that integration in statutory support to meet the needs of Aboriginal and Torres Strait Islander children?---I think that there's a lot of work that needs to occur in the area of closing the gap on disadvantage and I think from a - using some sort of framework, I think there are areas of universal services which need to deliver better on that

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issue around education and health. I think there are particular things that have been identified in the closing gap initiatives which highlight the vulnerabilities, I guess, of the Aboriginal and Torres Strait Islander group and there is work at both national and state levels to put in place policies and initiatives to try and reduce that disadvantage, and then I think there are - those play out, because we haven't achieved that outcome yet, with a number of those young people and families coming into the high risk sort of categories and then being looked at in terms of the statutory interventions. I think that the effort around closing that gap and the integration that needs to occur there needs very strong governance arrangement, it needs engagement and local participation and leadership and it needs clear prioritisation in terms of what are we actually aiming to achieve in those particular areas and phasing that over time with direct targets. I think there's been some work done in that space, but the outcomes that we have in the community, whilst I think they've certainly improved over the last decade, 20 years, they're not where we want them to be and I think there needs to be some further work to achieve the sort of initiatives and the engagement work that is actually going to deliver some results. Some of that requires long time-frames, but it also requires clear looking at results and feeding that back into what is working and what isn't. They're the sort of strategies that I think are really important. I think we've also got to recognise that there are some additional areas - I think, you know, there are areas around historical matters which are still playing out in terms of inter-generational factors. It's not so long ago since we were in a community that didn't recognise the status of Aboriginal and Torres Strait Islander people and I think that we've certainly moved on legislatively and in recognition and symbolically, but what we're facing is a legacy of a whole bunch of things in that space. However, there are other things that are compounding, I think, the numbers as well, because you've got the Queensland fertility rates. I think the increase per - for indigenous fertility rates is nearly - is a lot higher than for non-indigenous rates. So you've got increasing numbers of children, if you like, within that time, you've also got quite young birth rates, so teenage parents, with the attendant risk factors there. You've also got low birth weights. So you've got additional complications that families are dealing with in terms of raising children in that environment, and then you've got some of the impacts from alcohol, foetal alcohol issues. So there are compounding factors. I think the good aspect is that we're much more aware and there is commitment, but I think there's got to be stronger governance and much more articulation of a phased program of targets and measurement.

Thank you. The commission has delivered comprehensive monitoring and advocacy to do with child protection practices which benefit Aboriginal and Torres Strait Islander children and young persons. The community visitor

program is an important role for children in care. How is it utilised to promote Aboriginal and Torres Strait Islander children's best interests?---In terms of the - are you talking about the group who are actually in care?

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In care, yes?---Okay. Clearly the numbers of Aboriginal and Torres Strait Islander kids who are in care are too many. In terms of proportion it's over-represented. What we look at is the standards of care with respect to each and every one of those children that we visit and advocate in terms of what we see there for better responses to their individual needs. That could very well be therapeutic responses, it might be better contact with family and culture, it might be educational support. It could be a range of those areas, but in particular we're very keen to make sure that the articulation of what is the commitment to promoting Aboriginal and Torres Strait Islanders' connection with family and culture is actually monitored and that attention is being made to improving the outcome of that so that these young people are not disassociated from their culture, with the attendant issues around identity and sort of connection.

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The blue card system is an important safety net for Queensland children. As commissioner you would be aware of the significant barriers in including Aboriginal and Torres Strait Islander carers. What efforts and practices are in place to make the blue card process more accessible to possible Aboriginal and Torres Strait Islander carers?---I have spent a lot of time trying to make connections with Aboriginal elder groups and community leaders in explaining the objective and intent of the blue card system. Many Aboriginal children were in some of the institutions prior to the Ford era and actually suffered some abuse and neglect in those institutions, also in foster care when the CMC inquiry went through, and I guess part of it is also talking through with them what is the objective of this screening in terms of its application in trying to improve safeguards for kids who are receiving services in particular environments. I think in the period we've spent time trying to establish whether there's a commitment and agreement around that objective. We've then discussed and worked through whether or not the decisions that come out of the legislation actually accord with the sort of decisions that would have been made in Aboriginal and Torres Strait Island traditional practices as to whether or not they would have excluded the same people, albeit through different means, from working with those children. I guess that's needed clarification around the fact that criminal history does not equate to no blue card. What it is, is it's a question of what constitutes the criminal history and does it actually pose a risk or threat to working with children and how then can Aboriginal and Torres Strait Islander people when they're seeking to work in those areas not be - understand that and understand how to work through that process. We have actually formed some good partnerships and in particular with people like ATSILS to try and assist people work through that process.

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Clearly it's sometimes areas around the application process itself and we've got a - we've also got some inter-agency working groups with different representatives from communities and other places to try and assist us make that process accessible and work for people, so that whoever should get through do get through and that we're only in a sense keeping out that small subsection of community that shouldn't be working with children and that that in a sense accords, if you like, with the expectations of what indigenous people would be thinking as well.

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Thank you. Successive audits of the indigenous child placement principle have continued to show deficiencies in the implementation of section 83, with only 15 per cent compliance across all states?---Yes.

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What in your opinion are the barriers to achieving a higher rate of compliance?---The requirement to audit and look at the application of that principle was something that we've looked at very seriously in how do you do that, and when I first looked at that section and what was being reported through the productivity commission and more broadly within the Queensland context, there seemed to be a reporting of a figure which was around the number of indigenous children who were actually placed with indigenous carers. That rate, if you like, was something - at the time when I first looked at it, was in the sort of order of 60 per cent-odd and it's now around about 50-something per cent. When I looked at the section in the act I felt that was not an appropriate way of looking at compliance with that principle, so we set about having some detailed conversations with the department and with the peak body for Aboriginal and Torres Strait Islander child protection matters and several other groups in the community about how we might better monitor what was actually being complied with there, and they ended up with a framework which was around five key steps, (1) that the system in the first place of identifying that the child was Aboriginal and Torres Strait Islander, that there had been engagement with the recognised entity about whether or not there were kin and whatever who could potentially assist with the placement of that child, looking at the hierarchy of placements, the assessment of those, and the final step was if the child wasn't placed or couldn't be placed within that context that there were appropriate sort of considerations being met. It took us a while to establish agreement on that framework and then we found that when we did our first audit there were a lot of things that we couldn't ascertain, in a sense, whether the records were at fault or whether it was actually practice at fault because the recording was not appropriate in terms of what we needed to capture. So the first report was pretty much a zero compliance across all of those areas, albeit in some of them they were better than others, but a lot of the recommendations we made were around recording and systems development to be able to make that auditing and monitoring and reporting much clearer and easier. A couple of years later we went back and did a second audit. We established

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an advisory committee to assist us with that. People with cultural expertise as well as child protection expertise, and we also combined that with a survey with the REs, some case audits and some information from our own CVs to try and look at (1) whether the recommendations had been implemented, and I guess it was pleasing that at that stage 19 of the 28 recommendations we'd made in the first audit had happened, which meant the identification of the children was better recorded, then we through our survey work with the REs and looking at what in a sense was actually - what was the young people's views about how well connected they felt, and that gave us an opportunity to sort of look at not only what was happening administratively but also what were the young people's perception of that. It still didn't show us a huge improvement, in the sense that across all those, whilst individually along the five steps there had been quite a bit of improvement all up, it was really showing 15 per cent compliance, however we have now got agreement on the framework on a lot of the data to be captured, and I've just had advice also that the remaining recommendations will be implemented and the time by which that will happen. So I am hopeful that the next time we do this we will continue to move forward and improving on it.

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Thank you. Would you agree that it's in the best interests and wellbeing of Aboriginal and Torres Strait Islander children that the commission continue to provide a comprehensive monitoring and advocacy role in the area of child protection?---Yes, I do. 1

Thank you, commissioner. The one question was put to you in relation to referring a matter to QCAT. My question actually relates to whether the commission holds records for any of the applications put to QCAT or review applications made to QCAT and the length of time taken to make decisions or provide decisions on those applications?--No; we haven't any of that information, no, only with respect to our links through the blue-card system where we're obviously regularly - you know, we do link with QCAT in that frame. We would have information and data. With regard to my child guardian functions I'm not aware that we get that information as a matter of course. 10

Thank you, commissioner?---Thank you.

No further questions.

COMMISSIONER: Yes, thank you. Ms Wood? 20

MS WOOD: No questions, commissioner.

COMMISSIONER: Mr Capper?

MR CAPPER: Thank you, commissioner.

Just a couple of questions just leading on from some of the evidence that we have got so far. You were asked a question during your evidence about the number of children leaving care and the commissioner asked you if you had any figures in relation to that. If I could point you to page 96 of the snapshot report - I think it's annexure D to your affidavit - the figure reported there says 1658 children exited care. Just under 45 per cent of these had been in care for less than one year. So that would be the figure that you would be able to pass on to the commissioner's inquiry to answer that question on the commission?---Yes. I was aware that we had some data with respect to the snapshot. 30

Yes?---Does that relate to the total number - sorry, my memory is - I thought it might have just been within the realm of - you know, within a year or there's a shorter term to it. I just wasn't sure that that was the same question that I was - - - 40

Sorry, it's page 96?---Yes, I haven't got it with me.

COMMISSIONER: Is that 2011?

MR CAPPER: Snapshot 2011?---Yes.

COMMISSIONER: I have got page 96 - of the snapshot you're



talking about? 1

MR CAPPER: Sorry, I'm not sure if you have the outcome indicators or the snapshot 2011.

COMMISSIONER: The children's snapshot, sorry, yes.

MR CAPPER: Thank you?---Yes, this is the broader report on all children, commissioner.

COMMISSIONER: Yes, I have got it here. 10

MR CAPPER: I can just pass up my copy?---Yes, sorry.

COMMISSIONER: I have got your little Ready Reckoner which I must say was very helpful?---It's about to become an App.

Is it? It was very helpful, thanks.

MR CAPPER: Commissioner, I could just hand you this copy.

COMMISSIONER: Good.

MR CAPPER: Sorry?---It may very well be the correct figure. It was just I had a vision that we were talking something a little broader. Does that answer - - - 20

I will just have it shown to the witness first?---What page was it?

COMMISSIONER: 96.

MR CAPPER: 96. I have opened it at the page?---Okay.

On my reading, that was deemed to be that that's the number of children who left care that year. Would that be correct?---Yes. 30

COMMISSIONER: So technically it says children are considered to have exited care when they're no longer in the custody or guardianship of the department. I suppose just to amplify that, it could be that while they have exited care - well, they are probably still under care if they are under an order even though they might be placed back at home. Is that what you mean?---Mm.

They have exited the system in the out-of-home care sense, but they're still under an order?---Yes. 40

MR CAPPER: It's my understanding that includes children who may have been placed in long-term care outside the chief executive.

COMMISSIONER: Does it?

MR CAPPER: That's my understanding, yes, from the reading of materials I have?---There's certainly some guidance there, but I don't - yes, it probably isn't dealing with

all the duration of time that young people stay in care. 1

COMMISSIONER: Yes, it looks like if they are there after five years, then the percentage of exits is about 14?  
---Yes.

So the longer you stay, the longer you stay?---Yes.

Okay?---Although there are probably fewer of you.

Let's hope, although the number - if that figure is right, 1658 looks like there was a yearly intake of 1400, isn't there? 10

MR CAPPER: That's about right, commissioner?---Roughly.

COMMISSIONER: So in net terms we're losing 200 a year?  
---Which we want to build.

Yes, we want to increase that number?---Successfully.

Safely, yes.

MR CAPPER: Now, during the course of your evidence you were asked in relation to your functions under section 17 and section 18 of the legislation and you also referred to the national framework. Can I just get you to have a look at these two documents? The first document I will take you to is the coloured one-page document. In relation to the first document, is that the strategic plan for the Commission for Children and Young People and Child Guardian, how you propose to undertake the functions going forward from 2012 to 2016, was it?---That's correct. That's the one we released in June this year. 20

Thank you. I seek to tender that, commissioner. 30

COMMISSIONER: Thanks.

MR CAPPER: The second document I have referred you to is you referred during your evidence to the national framework. Is that a copy of the national framework, as far as you're aware?---Yes.

And that's what you've been referring to during the course of your evidence?---That's right.

Thank you?---In particular I've been particularly referring to the diagram on page 8. 40

Thank you. I would seek to tender that also.

COMMISSIONER: Thank you.

MR CAPPER: Now, in relation to your strategic plan, the strategic plan - - -

COMMISSIONER: Sorry, Mr Capper, I will give the strategic

plan exhibit 34 and the national framework exhibit 35. 1

ADMITTED AND MARKED: "EXHIBIT 34"

ADMITTED AND MARKED: "EXHIBIT 35"

COMMISSIONER: As you say, that 64-page document is the framework.

MR CAPPER: That's correct.

COMMISSIONER: Apart from collating it, does the federal government do anything in the child protection arena under COAG?---There are some responsibilities that they have for income support and a range of other things which feed into it and the idea is they have had a three-year phase action plan which is agreed between states and territories for prioritisation and working through and then they just recently reported their first report on the last three-year action plan and they're currently developing their new one. The area, I guess, that I'm interested in is - I'm not terribly clear about the government's arrangements on the universal and early intervention services with respect to what pulls that together and how that gets prioritised across all the different agencies. I think that's pretty hit and miss. 10 20

Certainly Victoria's looks a lot different to any other state since the Cummins report?---Yes, that's right. So whilst people have signed up to it and there is information and targets there, it's not clear to me how it's envisaged they will be delivered from a Queensland perspective and with regard to the statutory end there is agreement, for instance, to progress the national standards and report on those in a consolidated way. That aim of this was to try and achieve some consistency and, I guess, bring together the minds across Australia in terms of what this should look like and I guess it highlights that despite the fact that a number of these statutes are at the state level, the consistency of response to children across Australia should be reasonably the same. 30

Yes, Mr Capper?

MR CAPPER: Thank you.

Just final other issue I wanted to discuss before I go onto my questioning is: a proposition was put to you in relation to the notion of ongoing review by the department of long-term guardianship orders over a period of time and you were questioned whether or not that would be something that you would support. During the course of my reading certainly article 25 of the United Nations Convention on the Rights of the Child certainly stood out to me and it says - at article 25 it says: 40

*The state parties recognise the right of a child*

*who has been placed by the competent authorities for the purposes of care, protection and treatment of his or her physical or mental health to a periodic review of treatment provided to the child and all other circumstances relevant to his or her placement.*

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That would seem to support that notion of an ongoing review from - periodic, whatever period of time would be considered, but that would certainly support that notion, would it not?---Yes.

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Thank you. Now, in relation to your statement, the statement's certainly structured in relation to your functions and those things, but you're obviously occupying the child guardian role at the present time. Can you indicate or outline to the commission your experience prior to that, your positions, your background and qualifications?---Prior to being Commission for Children and Young People and Child Guardian in Queensland which I took up in 2005 I was the executive director of the social policy area in the Department of Premiers. Prior to that I was executive director of corporate and executive services in what was the innovation and - it was looking at communications and sport and rec. It as an acronym that I have even buried now. Prior to that I was involved in the Office of Rural Communities and before that I worked with the overseas aid program in a national level where I was responsible for looking at the funding of non-government programs in an overseas aid context. I was also prior to that looking at the migrant education programs and worked in the TAFE and education areas in Canberra. I also worked in a few countries overseas and in terms of that before that I was working in the child protection and in hospital social work in Canberra.

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And in terms of your qualifications?---My qualifications - - -

MR COPLEY: No-one has questioned the witness's qualifications or aptness for her job. I posit the question: how does this assist you in preparing your report in relation to the terms of reference?

COMMISSIONER: I don't know. Mr Capper?

MR CAPPER: Certainly in relation to each of the witnesses that have come forward so far there has been a reference and we have been taken through their qualifications and experience and certainly that would obviously be a matter - - -

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COMMISSIONER: You are just doing what nobody else has done. Is that right?

MR CAPPER: No, I just want to make sure that - certainly one of the issues for you as commissioner will be to

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determine the weight to be given to relevant evidence that comes before you as well, so that was the purpose, but if we're satisfied the commissioner - - - **1**

COMMISSIONER: Yes, I have no problem at all, but if there was something in the commissioner's background that was relevant to the weight to be attached to what she says, then by all means bring it out, but you don't have to ask the commissioner. You can just tender a bit of paper with all the details on it, if you like.

MR CAPPER: No, thank you very much. **10**

In relation to your strategic plan, the strategic plan outlines how you're going to perform the functions and, you know, looking at it broadly it identifies this approach of looking at all children and then you seem to narrow that to vulnerable children and then further into the statutory children and those children fitting within the tertiary service I would expect you're considering there. Why have you done that in terms of your strategic plan?---Basically it's to make it clear what the legislative mandate is with respect to those different groups and what we actually do and deliver within those specific areas and how we use our powers with respect to what we're doing there. **20**

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Thank you. As a result of your work and as a result of the commission's work, you've produced the series of reports, things such as snapshots and the child death annual report and the key findings, the indigenous placement reports. In relation to those reports and I guess at this stage I want to look more at the universal services. How are those reports or want sort of information, broadly, are we taking from that or are you taking from those reports and your findings in relation to your research in those areas?---The critical thing, I think, is that it's important that we know how all children in this state are feeling so that we can get some understanding of how many of them are doing well, where are the universals in a sense promoting comparative outcomes on critical indicators that are within both national and international standards and then where are the areas of vulnerability and what are the activities and initiatives that potentially may be promoting a lessening of that and where are then the risks emerging? What is, in a sense, available to try and assist that as well as - so that the community and decision-makers, policy makers and service providers can actually use that information to ensure that as they're designing or developing policies and programs, they're actually targeting that with correct information about what is the status of children in the state.

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Thank you. That feeds into the issues of the provision of secondary services that we've been talking about and we've heard about this early intervention and prevention type services and in relation to that we're certainly looking at those people who are at risk of entering the tertiary system and we need to look at, "How do we stop them from getting to that level?" In relation to that your child guardian report shows that 39 per cent of children subject to a child concern report and subject to a further child concern report within 12 months. That's almost half, two in five, are coming back again within 12 months. What is that suggesting to you in relation to the way that we're delivering those services at present or the way those children are being dealt with presently?---It would suggest to me that some of the risk factors that are present and being raised are not being addressed.

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That would be supported by the additional 15 per cent actually escalating to a notification. Would that be correct?---That's correct. Yes; which would suggest that we're needing to think about whether we've got sufficient service response in that arena.

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As we've heard, like, your purview is primarily in relation to children in care. You have a broader overview responsibility in relation to children, but when you say that there's a better response, I noted in your affidavit it refers to "a patchy infrastructure". What did you mean by that?---Well, when the intakes, if you like, arise with the - in terms of Child Safety or wherever they come and we've noted in there that there's a number of them. If the sifting through of that highlights that only a small

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percentage of those need to go through for further investigation, I think there's about 21,000 or so that move into that frame, that's the work that the tertiary system look at. Then you've got this other group who have come to attention and I guess it's what happens to those and I think there's some discussion - you know, some of those need to be referred on because they may not have reached the threshold for investigation and assessment, but maybe there's sufficient there in order for them not to re-emerge and come back again, it would be good if those families could get sufficient support to reduce some of those risk factors. In that sense, that's where the appropriate interventions in my child guardian report 6 and would hope that there would be somewhere that those people could be referred for assistance so that they wouldn't then be re-notified and that data, I guess, is trying to assist understand what is actually happening in that space, how successful are those services in reducing that risk and not having those children re-emerge.

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COMMISSIONER: Under the Child Protection Act, once the chief executive becomes aware, not necessarily the notification or otherwise, then what she has got to do is something - under section 14 - as long as she reasonably suspects that there's a need of protection is immediately investigate and assess or take some other action she considers appropriate. Do you know what other action the chief executive takes when she's aware of alleged harm or alleged risk and reasonably suspects within the meaning of section 14, other than immediately investigating and assessing?---In terms of how I see it is that when that information comes to hand, as you say there's the assessment process, but then it may be that you could refer to another agency or support to try and assist that family reduce that level of risk.

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Because the chief executive, although she's the DG of the department, she's the chief executive of safety for the purpose of this act?---Yes.

That's not to say that she couldn't refer it to another part of the community - - - ?---Oh, yes, yes.

- - - and/or disabilities even though it doesn't fit - - -?  
---That's right because - - -

- - - within the remit of the Child Protection Act?  
---That's right. Because it hasn't reached that threshold there would be other things that - but that is attendant, I guess, on the notion that there's somewhere to refer it to and there is a service that's going to pick it up.

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Yes?---That's what I mean by the statement from what I see and the feedback I get, I think that the secondary system or the referral system that we have is a bit patchy and - - -

A bit chaotic?--- - - - a bit chaotic and if you were to

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refer someone, you might not always - there might not be a service there or it may not, you know, engage with the person that you've referred. In my head, there's a lot of work that we need to do as a state in that space if we're going to take the pressure off because what we're seeing is that 39 per cent of those concerns get re-referred within 12 months and 15 per cent of them end up in a notification, which suggests that whatever happened in that intervention wasn't sufficient to keep them out of escalation.

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Do we know the next step, how many of them went from notification to substantiation status?---Well, we would know that in terms of that seven per 1000.

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1000?---Yes, and we would have some information about how many of those would be substantiated in a - you know, how many of those then become substantiated. I haven't got the figures, I don't think, with me at the moment, but, yes, because there's that sort of notion of intake and then it moves down to a sifting. At the end of the day, the numbers of notifications that are then being assessed by the Department of Child Safety or the child protection end is about 21,000 out of that 112,000 that came into it. So there's a lot that in a sense are either staying in the system or being referred on or were deemed nothing at all needed to happen.

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MR CAPPER: Just picking up on that point, you've indicated that in a lot of cases there's the possibility that nothing has happened. Would that be because of the inability or the unavailability of services to refer them to, or is it simply a matter that the department in your mind is suggesting, "Well, this isn't something we need get involved in. We're just going to file that," and nothing done with it?---I think there are mixtures of both, and I think we've heard here through the course of other witnesses that there is a number of them that don't - nothing happens to and there's no action on those, and I presume that some of that would be because it was deemed nothing needed to happen, and that's fine, that's a perfectly valid reason, but there would have been others where there might have been a decision that it would be good to refer them on to somewhere else. In some instances there would be somewhere to refer them and hopefully they went, and I think the numbers that we talked about as the numbers that are being referred to - the referral for active intervention service, and the numbers who have in a sense exhibited improvements after being referred there. So those numbers we've reported in our child guardian, but there would be others for whom the RAI option is not available, because as we know it isn't available everywhere across the state.

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Thank you. Now, in relation to the issue of the delivery, the development, the monitoring, in relation to those 21,000 that we say - other than the 21,000 that we say meet the threshold for the department to take action on, so with the remaining, thereabouts, 90,000 notifications, some of those may or may not need to be referred for secondary services. When we get to those where do you see the responsibility sitting for those referrals, for the engagement, for the monitoring, for the interaction with those secondary services? Do you see it as sitting with the Department of Child Safety or perhaps somewhere else? ---I see it with the Department of Child Safety.

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And why?---Because I see it as being within that - in those individuals who are at risk and having some issues of

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needing some attention and intervention. We've also reported in there, I guess, that there's quite a large number of those who are Aboriginal and Torres Strait Islander children. So there is a great need for more services in those environments to pick up on that risk factor, and I think if you look at some of the other data that we've had, that's where the growth numbers are.

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Thank you. Now, you were referred earlier to the child safety system, and just feeding off that answer, you've referred in relation earlier to the child safety system and you were asked about whether - and we've got this terminology issue that we were referring to before about child safety system versus child protection system. Now, under section 8 of your act it says, "To remove any doubt as whether this act applies to matters of children in the child safety system even if they're no longer in the system when the matters are dealt with under this act," and the commissioner referred you to section 13 that talks about when a person starts and stops from being in a child safety system?---Yes.

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You were referred to your powers and responsibilities and certainly your monitoring functions under section 18 and it talks about your monitoring functions, but then if I could take you to section 39 of the act, in relation to section 39 of the act it talks about the services to which your monitoring functions relate and it talks about the department's - that the matters that your monitoring functions apply to are the child safety department, a service provider holding a licence to provide care service under the Child Protection Act and a department that's mainly responsible for any of the following matters, including the Aboriginal and Torres Strait Islander policy, administration of justice, adult corrective services, community services, disability services, education, housing prosecutions, legal aid, the public trust and the police service. So in terms of your scope of your monitoring and what the legislation seems to indicate to you is that child protection, or child safety system, as your legislation refers to it, would seem to encompass quite a broad range of departments, not simply the Department of Child Safety. Would that be correct?---Yes, in terms of - - -

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Monitoring?--- - - - the monitoring of provision of support to children in the statutory system, yes.

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COMMISSIONER: Except that chapter 3, powers that are exercisable in relation to the monitoring functions, are only in relation to the service providers, for instance, in section 39, aren't they?

MR COPLEY: That's correct?---That's right.

COMMISSIONER: Yes, so they're the ones referred to in 18(1)(a) as other service providers that affect a child - the child safety system.

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MR COPLEY: That's correct?---That's right.

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So I guess what I'm looking for there is, though, certainly the way that that read is that the notion that - whether we call it a child protection system or a child safety system - I note that you referred to earlier that that was a terminology issue, but in terms of the way the legislation reads, it seems to be much broader than just simply the Department of Child Safety in terms of your monitoring exercise. Would that be correct?---Yes.

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Now, I'm not suggesting that means that that's what fits the child protection system. That's certainly something for this inquiry to consider, but certainly in the way your legislation is drafted, that would seem to be a more expansive definition of the child safety system and much more aligned with perhaps the child protection system, as was put to the commissioner before. Would that be right?

COMMISSIONER: I'm not sure about that, because (18)(1)(a) talks about the child safety department, when there was one.

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MR COPLEY: Yes.

COMMISSIONER: And other service providers, which are those you've identified in 39, that affect child - sorry, that affect children in the child safety system.

MR COPLEY: Yes.

COMMISSIONER: So it's only to the extent that those service providers affect children in the system that the monitoring function and power exist.

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MR COPLEY: Yes.

COMMISSIONER: Yes.

MR COPLEY: Yes, but I guess what I'm getting to, commissioner, is that certainly that confusion is exacerbated by the broad scope of the legislation, particularly for the commissioner's legislation, and certainly the - - -

COMMISSIONER: Yes. It's not saying that those services are in the system.

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MR COPLEY: No.

COMMISSIONER: It's saying that those services can affect children who are.

MR COPLEY: That's right.

COMMISSIONER: Yes.

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MR COPLEY: So where do we cut off - I guess the question then comes to where do we cut off from the child safety system and what affects that into the child protection system, which is a broader question than you've already posited. 1

COMMISSIONER: Yes, and I think the way you deal with it under your act is who is in and who is out.

MR COPLEY: That's right.

COMMISSIONER: When they're in, when they're out. 10

MR COPLEY: That's right?---I think there's also some links as well which are in the Child Protection Act when you look at 7, section 7, which is looking at the chief executive's functions, because that also tends to give you that slightly broader frame in terms of what the chief executive's functions are for the proper administration of the act, and in there you're talking about providing preventative and support services to strengthen and support families, et cetera. So reading down, "Helping Aboriginal and Torres Strait Islander communities to establish programs for preventing or reducing incidences of harm to children in the communities," which I guess go to that issue of - - - 20

COMMISSIONER: Yes. I'm not sure there's not a lack of coherence, again, probably because of legislative changes, that forgets that the chief executive is also director-general of a broader department?---Yes.

So the chief - - -?---Yes, but I was going - when this act was done.

Yes. Look, we'll just have to have a look at - - -?---Yes, but I think it is absolutely timely that there's some clean up, and I've certainly asked and said before, I think, and we talked about this on Monday, about the fact that I felt that the commission's act, my act, we need a bit of a clean up in the sort of chapters 3 and 4 just to get some better clarity for external people in knowing how I deal with certain things, but also things have moved on. 30

Yes?---I think we need to be clear about what's the scope of that power.

A bit of patchwork happening, I think?---Yes. 40

MR COPLEY: Thank you. I note the time - - -

COMMISSIONER: Now, how much longer will you be? I'll adjourn if you're going to be a little while.

MR COPLEY: I'm going to be a little while. Probably only half an hour or three-quarters of an hour, but I just - I'd prefer to probably break.

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COMMISSIONER: All right. Well, can you contact  
Mr Armitage and say not before 11 o'clock for him.

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MR COPLEY: Thank you.

COMMISSIONER: Otherwise we'll adjourn until Monday  
morning at 10.00.

THE COMMISSION ADJOURNED AT 4.33 PM  
UNTIL MONDAY, 27 AUGUST 2012

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