



## SPARK AND CANNON

### TRANSCRIPT OF PROCEEDINGS

Telephone:

Adelaide	(08) 8110 8999
Brisbane	(07) 3211 5599
Canberra	(02) 6230 0888
Darwin	(08) 8911 0498
Hobart	(03) 6220 3000
Melbourne	(03) 9248 5678
Perth	(08) 6210 9999
Sydney	(02) 9217 0999

---

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 28/08/2012

Continued from 27/08/2012

..DAY 11

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

COMMISSIONER: Good morning, everyone. Just before we start, Mr Copley, Mr Hanger, I'm assuming that the body politic you represent includes the courts, does it? 1

MR HANGER: Yes, that's - - -

COMMISSIONER: There's a definitional debate about that, I suppose. I'm assuming it is. I'm just wondering what the procedure is when a witness might be mildly critical of the court processes and whether - and who should inform the chief magistrate or the chief judge who's responsible for the administration of those courts. I assumed that it would be you, but I should have checked with you first. 10

MR HANGER: We haven't done, no.

COMMISSIONER: You may consider it not necessary.

MR HANGER: That was my view, based on what the professor says.

COMMISSIONER: Fair enough.

MR HANGER: That's not being insulting to the professor - - - 20

COMMISSIONER: No.

MR HANGER: - - - but I thought she's expressing an opinion which is an opinion reasonably held, and I didn't think that the courts needed to - - -

COMMISSIONER: Be alerted.

MR HANGER: - - - be alerted to that. 30

COMMISSIONER: Okay, that's fine.

MR HANGER: But thank you for the warning.

COMMISSIONER: I'm comfortable with that. What about you, Mr Copley, do you think we need to do anything more?

MR COPLEY: No, I don't.

COMMISSIONER: Leave it to Mr Hanger's discretion?

MR COPLEY: No. The witness has undertaken what she says is a study and she's gathered up the views of people who are involved with the courts, both from within the courts and outside the courts, and she's attempted to summarise the various different points of view. 40

COMMISSIONER: Fair enough. And it may not arise in this particular case, but I suppose I'm just flagging it for the future as well.

MR COPLEY: Yes.

50

COMMISSIONER: But we need to be mindful if somebody is the subject of adverse comment or criticism, at least someone needs to be letting them know, just as a matter of courtesy, apart from anything else, rather than - - -

1

MR COPLEY: If it gives you any confidence, it is a matter I turned my mind to and was - knew that the counsel for the crown and the crown solicitor had the witness's statement and thought: well, if there was anything there that they felt they needed to get instructions from, from any relevant judicial person, they would obtain those instructions in time to cross-examine the witness, and if they couldn't they'd ask for it to be stood down.

10

COMMISSIONER: It seems you were right, Mr Copley.

MR COPLEY: Yes.

COMMISSIONER: That's fine.

MR COPLEY: I have regard to the content of the witness's statement in perhaps taking that approach in the circumstances of this particular witness.

20

COMMISSIONER: All right. Thanks, Mr Copley. Over to you, Mr Copley.

MR COPLEY: But, I mean, the matter that you raise, as I understand it, would be equally a concern in connection with the next witness, who has various criticisms to make of the department. But I suppose it was perhaps clearer to you that Mr Hanger was representing the interests of that department.

COMMISSIONER: It was. I'm just mindful of the separation that exists.

30

MR COPLEY: Yes.

COMMISSIONER: (indistinct) and I'm not quite sure of the scope of the term "crown". I'm more comfortable with the term "government" than "crown".

**TILBURY, CLARE** on former affirmation:

MR COPLEY: Prof Tilbury, yesterday afternoon I said that we would next turn to - and we will now - that part of your statement which concerns that term of reference that deals with the transition of children through, and their exit from the child protection system. The position is, isn't it, that to some extent you can bring some observations to bear upon that term of reference because you conducted a study in 2007 of the school to work transition of young people in care?---That's right, yes.

40

And that study was conducted in conjunction with some other people and it involved both conducting a survey and

50

conducting an interview with a number of young people who had been in care?---That's right. 1

And it also involved obtaining information concerning a group of 202 young people who'd been in care and attempting to match the information that you'd obtained there and the categories relevant against a sample of 202 young people who had never been in care?---that's right.

And you set out what your findings are in connection with that at paragraphs 31 and 32. Would it be correct to say - and we don't need to perhaps read them out - but would it be correct to say that - would it be right to put it this way, that unsurprisingly the children who had been in care had perhaps not as clearly defined, if any, career aspirations, for example?---Well, they often had clear career aspirations but they tended to have lower level aspirations than their peers. What was particularly noticeable was that they lacked the skills to plan for the career they wanted. 10

So by "lower level aspirations" did you have in mind that there were jobs in the community that in your subjective opinion would be regarded as - - - ?---Generally jobs that were more technical and didn't require university qualifications, or indeed any post-secondary qualifications at all. So there were differences between the two groups in terms of the level of training required for the job. So they tended to aspire to jobs with lower level training. 20

So in your categorisation of employment, for example, the job of a garbage man, you would regard as a lower level career aspiration simply because it didn't require any post-school study, for example?---Yes.

Okay?---And it pays less. 30

Right?---And there's less prospects for career advancement, and so on.

And it goes without saying, of course, that if that's what a person wants to do and they can get a job and make ends meet doing that job, there's nothing wrong with that, is there?---No, nothing wrong.

But your research revealed that on the whole children that had been in care didn't have the same ambitions as - or weren't as ambitious as the children who'd never been in care?---Yes. 40

What if I posit to you that that's not very surprising? ---Well, yes, we did expect to find that their career development would be less developed, but the point of the study is to find out in what particular areas are they missing out and also to test our assumption, of course. We might assume that children in care aren't doing as well as others, but it's important to test these things out because - - -

And when you tested the assumption you found it to be valid?---We found it to be correct.

1

Yes?---Because ultimately the aim is then to assist young people in care to develop their career aspirations and resources and skills and so on. So in order to find out how best to design an intervention to assist them you look at what particular areas the gaps are in, who might be resources to assist them in those areas, so it's about building up the knowledge about how to make the change, obviously.

10

So if we concentrate on the finding that children in care did not perhaps demonstrate an ability to know how they might progress their career ambitions compared with children who'd never been in care, whose responsibility do you say it is to improve that lack of knowledge for children in care? Who's job's that?---It's generally speaking - once parents would take an interest in what you wanted to do when you grew up and encourage you, notice what you were good at, think about different jobs that might be of interest to you, provide different opportunities for you to explore career options.

20

Well, a parent - - - ?---So I think a child's guardian certainly has - - -

A parent, for example, might see that a child at school is interested in such and such and suggest to the child that he go to a university open day or something of that nature?---Yes.

But all of those sort of services surely aren't possible for children in the child protection system where the concern is with really meeting their day-to-day needs. What do you say to that?---I say that the guardians' responsibility is broader than their day-to-day needs and that the guardians' responsibility is to help the child have a happy upbringing and to lead to a satisfying adult life. So it's not just about their day-to-day needs, it's also about their future.

30

40

50

Well, if you've identified a problem or a deficiency how do you say it should be remedied? What's your opinion about how it could be remedied?---Well, what we suggested was that child safety officers, so the worker who works with the child, and the carer have certain responsibilities and we made some suggestions about resources that they could access to try and really think about how they might be able to assist young people to develop their career in the future. We thought there were resources that should be made available to children in care, particularly related to education, because obviously achieving an education is the key to achieving the sort of career you might like to achieve, and we thought that schools could take a greater role in relation to the education of children in care than they currently do.

1  
10

But schools surely would, if they provide - or arrange for someone to come to speak to the children about - or students, rather, because they're 15 or 16 now, careers post school, would allow all children in grade 11 or 10 or 12 to attend those information sessions regardless of whether they were there?---Yes, of course they do, and many children we interviewed had gone to such careers days and found them really interesting, but, I mean, the general knowledge around career development is that parents play the most significant role in helping children develop career interests and aspirations and giving them the resources and skills to plan the career they want. So it's not just for schools. I think that parents or in this case the guardian of the children also have a role.

20

Could it be the case, though, that these children are merely reflecting the fact that they don't have someone as vitally interested in them as a person as the child who has lived at home in a stable family life for the preceding 16 years? Couldn't these findings simply be reflective of that and that it's too much to expect a carer or a case worker to be able to provide these sorts of needs for a child in care?---So I think the findings certainly do reflect that, but I don't think it's a simple matter and I think because children in care often don't have that advantage of a parent who is interested in them and concerned about them then the child protection system as a whole, you know, through the department, needs to take other steps to ensure that these children have a chance in life, and so that's very much the case with all the research around career development and education in care that it's not just a matter of when the child enters care and they start to - you know, perhaps they're fortunate enough to have a stable placement, that that will bring them up to par with their peers. There actually have to be more steps taken in order to make sure that the children catch up on what they've missed out on due to their maltreatment experiences and pre-care experiences. So I think it is importance that we prepare these young people for a decent future and schooling and career development is an essential part of that. It's a big part of what makes our life satisfying.

30  
40

1

You seem to have foreshadowed before that the responsibility wouldn't simply fall on the Department of Communities but should be spread across to the Department of Education?---Yes, I think schools definitely have a responsibility, sure; yes.

But concretely or as specifically as you can, what suggestion or what remedy do you see to this problem, as clearly as you can state it?---Okay, well, I'd just like to make the point that career development for children doesn't start when they're 15 or 16, career development starts when children are very young, when people around them who are interested in them start asking them, "What do you want to be when you grow up?" So I think it starts - - -

10

Well, it could start with role models, couldn't it?---Yes, it could start with role models.

And often a father is a role model for a boy?---Yes, and a mother is a role model for a boy.

Well, yes, of course?---So, yes, role models. I think opportunities to experience people in different occupations. For example, there was a real difference even in the kids in care with not in care in terms of part-time work. Many kids have a part-time job and that gets them an idea about what it's like being in the workforce, but many kids in care, for a whole lot of reasons, don't get to have a part-time job so they don't have any understanding of how - what it's like to go to work and how you have to turn up on time, get along with a whole range of people, all those sorts of things that part-time jobs for kids teach them. Clearly educational tutoring and remedial assistance for children at all ages is required, more than what is currently provided. There is some provision for that. I think carers need support to advocate for children at school. I mean, the fact is that often carers haven't had a post-secondary education either, just the profile of carers that we currently have, and they don't feel very confident in advocating for the children that they're looking after at school. They often don't know about the career resources that are around, so training for carers would really assist in that regard. I think post-secondary education scholarships should be provided for children in care. If they've been in care, particularly long term, and they've achieved well enough to go to university then I think they should receive assistance from the state to go to university, even though it's post 18. So that's some practical suggestions. I think there needs to be generally speaking more emphasis on future planning for children who are in care, so beyond those day to day needs, more thinking about, "What does this young person want to do as an adult and how can we assist them to have a decent quality of life as an adult?"

20

30

40

In your study did you find any claims from children in care that they couldn't get a job because there was some stigma

50

attaching to their status or discrimination against them or anything like that?---No, we didn't find anyone who had been knocked back on a job, but they did feel that other people don't regard them - you know, "Other people will think that because I'm in care I'm a troublemaker." That was a view that was expressed by some of the children, but it was just borne out of their general experience, not that they had been rejected for a job on that basis. 1

COMMISSIONER: Professor, you said before that - where you mentioned profiling carers?---Yes. 10

Have you done a profile of carers in Queensland?---No, I haven't; no. There have been studies done of the demographics of carers. I'm not sure what the current state of the department's data is.

What about the profiling of the children in out of home care, has that been done?---In Queensland?

Yes?---Well, different studies would have looked at different aspects. So, for example, our study looked at a range of educational variables compared to children not in care. 20

But you don't know of any study that's done a full demographic and geographic profile of each of the children in care?---Well, the department would put out some information about demographics of the children in care and some aspects of their child protection history.

Yes?---Not in a comprehensive study, but there's certainly - - -

That connected the child with their family, their siblings, their history generally?---No, not to my knowledge. 30

That might be a worthwhile study to undertake to work out and to identify any common characteristics or differentiations between the cohorts from different regions, say if you break it up by local government region?---Yes.

Would that be a worthwhile thing?---I think the more we know about that cohort of children and what their needs are the better, because in some - you know, there are generalisations made that I think aren't always borne out and so it certainly would help planning and resource provision to know more about them. 40

Yes, because it seems to me what you're saying is that there's no point formulating a policy for children, vulnerable children, generally, apart from the universal and broader secondary, but you need to target it to the particular child and the particular context of their family?---Yes, but that really is what case planning or case work with a child is intended to do, to tailor interventions to the particular needs of that child and 50



their family.

1

Okay, so what's wrong with - well, is that tool as sharp as it needs to be?---Well, I think there clearly are differences in the approach, because otherwise we wouldn't see children in care having such unmet needs, which I think clearly there is evidence that they're not doing very well across the board.

10

20

30

40

50

Or you wouldn't see them staying for so long?---Yes, possibly. Yes, if their needs could be met within their family.

1

So what's happening, do you think in those case management situations or what's not happening, maybe?---Yes. Well, I think in hearing from other witnesses today about workforce development and so on and supervision, professional supervision of practice and a whole range of system factors.

All right. Thank you.

10

MR COPLEY: Thank you.

Now, in 2010-2011 you were a participant as an investigator in a study that was conducted across Australia concerning an assessment of all of the various states Childrens Court, weren't you?---Yes.

And the study was to examine the challenges that were currently facing these courts and possible strategies that the courts would adopt to overcome the challenges for the future. Although there were nine studies going on into all the various jurisdictions, you did the study that was relevant to Queensland in conjunction with a gentleman called Paul Mazerolle from Griffith University?---That's right.

20

Can you just explain to us what the sources of information were for you to study?---Well, we looked at legislation and government reports and annual reports and so on to get the broad context of the courts.

So publicly available information?---Publicly available information.

30

Yes?---But we also interviewed judicial officers and other key stakeholders from the courts, so we interviewed a District Court judge who held appointments in the Childrens Court of Queensland, magistrates who presided over Childrens Court at the Magistrates Court level and then people who worked in the Department of Communities Justice and Attorney-General, police and so on who had roles in the day-to-day operation of the Childrens Courts throughout the state.

Did you interview any organisations, be they publicly funded or just ordinary solicitors in private practice who regularly appeared in the Childrens Court?---Yes, we did, lawyers, Legal Aid and various community legal centres; no lawyers in private practice.

40

It was the case, was it, that generally speaking all of the people or most of the people you interviewed were of the view that a special court or a court especially tailored to the needs of children was necessary?---Yes, that's right.

50

So there was broad support for the court to exist, as it has done, for many years in Queensland?---Yes. 1

Was it the case that most of the people you interviewed took the view that by the time matters came to court, the difficulties that the children were facing in their lives were fairly well entrenched and that the court could only do so much to help them?---Yes.

And, of course, it's the case, isn't it, that what order or orders a court can make is prescribed by the statute under which the court operates?---Yes. 10

Did any of the participants in your study have any comments to make about the way in which the Childrens Court - by that I mean the Childrens Court of Queensland and the Childrens Court constituted by magistrates was operating in this state?---Yes. Though I think in relation to the last point about the problems that children and families have, I think many stakeholders felt that there was a need for more assistance to be provided to the families and to the children to try and resolve the problems that led to them leading to court and they feel the court making an order is an important thing to do at times for a child's protection, but sometimes we're concerned that if only there were more help that could be provided to the families so these problems could be resolved before they get to court. 20

By help are you referring to legal assistance or - - - ?---No. I'm referring to social welfare assistance to help the family resolve the problems that exist in the family.

Okay. That perhaps goes back to the question I asked before, but in relation to the way the court is structured in Queensland - - - ?---Yes. 30

- - - did any of the participants have any observations to make about that?---In relation to the structure of the courts, I'm sure you know Childrens Court are at the Magistrates Court level and there's the Childrens Court of Queensland. In fact, the vast majority of child protection matters are heard at the Magistrates Court level so the Childrens Court of Queensland have very few, you know, number of matters in relation to child protection and so I think there were some views that there weren't really opportunities for matters to be reviewed by a higher court - Childrens Court - child protection matters that is. 40

There is in fact a right of appeal, isn't there?---There is, but in reality it's very difficult for parents to either fund their own representation or obtain legal aid for appeals on matters to the Childrens Court of Queensland. It's just a fact there aren't many appeals and so I think people see, you know, these are very serious matters being dealt with at the Magistrates Court level with life changing implications for the children involved. Many parties aren't represented at the lower level Childrens Court either and so I think there was some

50

concern that, you know, because Childrens Courts are spread throughout the state and many magistrates don't deal with many child protection matters at all that sometimes there isn't consistency of decision-making across the state in relation to child protection matters, combined with, you know, the lack of case law and the lack of opportunity for review of decisions that perhaps this might be, you know, to the disadvantage of children and parents who appeared in the court. 1

But by lack of opportunity to review decisions, you're meaning the lack of resources to a party to take a decision on appeal, aren't you?---Yes. 10

Because there is a right under the legislation for a person who's not satisfied with a magistrate's decision to seek to appeal it, isn't there?---Yes. You can apply to have an order revoked in the Childrens Court as well. It's the means that parties have to take that legal action. That's very limited.

Did any of the stakeholders express any view about the - I suppose the standing of the judicial officer who should be required to make a decision such as to place a child in care until the age of 18?---No, he didn't. 20

Or the hierarch in the court system at which that decision is made?---No. People didn't make comment about that.

Okay?---There wasn't any criticism of the standing of the judicial officers, but the creation of the Childrens Court of Queensland was intended to raise the status of the Childrens Court and this has to some extent happened with juvenile justice matters because quite a few matters go on appeal - youth justice matters go on appeal to the District Court of Queensland, so the Childrens Court of Queensland has, you know, a body of knowledge and expertise about youth justice matters, but the same doesn't happen in child protection matters. If you like, the child protection area of the court hasn't benefited from the creation of the Childrens Court of Queensland and the appointment of a District Court judge as the president of the Childrens Court of Queensland in quite the same way that the youth justice jurisdiction has. 30

Do you see the fact that matters more frequently go on appeal as being a healthy thing in the sense that judges or judicial officers higher in the hierarchy can provide guidance or enunciated principles for those lower in the hierarchy?---Yes; and I think that's something that the participants - most of whom are legally trained in our study - had a view that that was a good thing in the justice system to have those reviews, I guess, opportunities for reviews of decisions. 40

Okay. Were there any views expressed about the way in which generally the department was conducting itself in child protection cases in the Childrens Court?---Yes. To

generalise I'd say many of the lawyers had, you know, criticisms to make of the way child protection officers presented their cases in court, and then the child protection workers had criticisms of the way lawyers deposed themselves in court. So to be fair, all the criticism wasn't one way.

1

10

20

30

40

50

All right. Perhaps we can just deal - - - ?---The concerns about - - - 1

Perhaps you can just tell us, so that we know, what the concerns or criticisms were of the child protection workers about the way the lawyers handled matters. Could you tell us about that first?---That often lawyers don't come into a case until quite late in the piece, so they mightn't know all the details of it, and that the court remains quite adversarial, so that lawyers who are used to operating in that adversarial way can be quite antagonistic to child protection workers. According to child protection workers, mightn't understand the needs of children who've been maltreated, so it would be those sorts of concerns. 10

So would you say that those criticisms of lawyers might have been fairly subjective in the sense that the child protection workers might have felt uncomfortable being cross-examined or asked to account for why they wanted to take the child off the parent?---Yes. All the opinions expressed were subjective in as much as we were asking people their opinions based on personal experience.

Yes, but it's of course sometimes difficult to be objective if you're the decision-maker and your decision is the one that is being closely scrutinised when you're in the witness box, isn't it?---Yes. It's not easy being in the witness box. 20

COMMISSIONER: In court.

MR COPLEY: What criticisms did the lawyers have of the department and how it was conducting itself as a litigant in the Childrens Court?---There were concerns particularly related to the late filing of applications; the taking of parents by surprise, if you like, so that there was a feeling that sometimes parents didn't know the case against them until quite late in the piece and so they were unable to be prepared themselves if they were self-represented or for their lawyers to be prepared; they felt that the department mightn't have presented a balanced picture, if you like, that the department didn't present some information that might show the parents to be trying their best, if you like, to improve the situation, that sometimes the department might only present information to put the parents in the worst light in order to argue their case that a particular order should be made. So there was concern around those procedural - I suppose the timing and the procedural aspects - - - 30 40

A remedy for the provision of late information - one remedy would be for the party who feels aggrieved by that to apply for an adjournment of the case until that party was able to digest the information and decide whether they needed to get evidence to combat it?---Yes.

Was there any discussion about that as being a remedy for delay provision of information on the basis that the late

provision of information is often unavoidable?---Yes, and then equally concerned about multiple adjournments now when what is being decided here is the future for a child. So there's a child - sometimes arrangements are waiting on a court decision about what the future holds for that child and so there is concern about multiple adjournments when it means more uncertainty for the child.

1

There might be competing interests at stake there, mightn't there - - - ?---Of course.

- - - in that the parents don't want to lose their child?  
---Yes.

10

And it might be in their interests to seek an adjournment if late information has been provided, but the case dragging on mightn't particularly be in the child's best interests?---I think stakeholders in the court have come to different views about what works and what doesn't work and I don't think either of them is necessarily right or wrong but I think we recognise that different people have different roles to play and they see things differently, and I think in the Childrens Court people don't particularly understand the role and responsibility; the child protection workers and the lawyers, and vice versa, and that creates difficulty. And one of my conclusions about that is that there ought to be more forms of alternative dispute resolution prior to a hearing happening so that some of those issues could be sorted out between the parties.

20

Did any of the lawyers or judicial officers refer you to any practice directions? So the Childrens Court either at the District Court level or Magistrates Court level had issued to provide guidance to both the department and parents about how the matters were to be progress through the system?---I've been advised that there aren't any practice directions for child protection proceedings in the Childrens Court. There is one practice direction that I know of that relates to, I think, taking evidence in cases of sexual abuse.

30

If you just bear with me for a moment.

COMMISSIONER: While Mr Copley is finding his place, did you have a look at an alternative process along the lines of, say, the Queensland Civil and Administrative Tribunal and their compulsory conferences and things like that?---I'm generally aware of procedures in QCAT, and indeed some people talked about the merits of that sort of process. There is ADR in the Childrens Court, so family group meetings are meant to be a forum to resolve things before they go to court and there are also court-ordered conferences in the Childrens Court. So there are opportunities, but perhaps they could be enhanced to improve opportunities for ADR and the court.

40

I was just thinking of the different culture, adversarial

50

as opposed to - - - ?---That's right.

1

- - - resolution, solution-based focus that might at QCAT as opposed to a court where it is quite experienced in alternative dispute processes and tends to mould the lawyer to the procedure rather than the other way round?---Yes.

Lawyers are very comfortable in courts and court structures, not quite so comfortable in tribunals like QCAT. What do you think about that as the structural form fashioning the function, if you like?---I certainly think that that plays a role, that there might be more opportunities to have more conferencing in different venues. I think in the Childrens Court people are - judicial officers are familiar with a more adversarial criminal proceeding and child protection matters are completely different to anything else they have to deal with, actually, so I think there is a level of discomfort about, "Am I doing the right thing here? Would there be a better way?" Amongst some magistrates. People did put to us, though, that QCAT - you know, can take a long time for that sort of forum to make decisions, much longer than the Childrens Court and so if you like that is another dimension to having those sort of more inquisitorial proceedings, is they're often lengthy.

10

20

It's tricky, isn't it? I mean, on the one hand you say, "With what's the speedy justice here," but it's very easy to dispense with justice rather than dispense justice by focusing on how long it takes. It's a bit like ordering a meal in a good restaurant, it might take time but it is worth the wait. Justice might be a bit like that?---Yes, I think the only consideration there is then that we are dealing with young children for whom time marches on and sometimes - - -

30

At a quicker rate than for adults?---Yes, that's right. So we should be thinking about the time frame for the children, not just the time frame of the adults making decisions.

Yes, true, but again, the object of the exercise - - -? ---Is to make the right - - -

No. Sorry, I over talked you - must be that timeliness is an element of justice, it is not a substitute for it. And at the end of the day if you had to choose, better to get it right the fifth time than get it wrong 10 times quickly?---And I think in the Childrens Court in the child protection jurisdiction it's particularly important that all the parties feel that they have been heard, particularly parents, because if parents can feel that they were heard then they're less likely to be difficult post an order being made, so there's more opportunity for them to accept that this is how it is.

40

50



That's what I always thought was the beauty - Mr Hanger will know more than I will, but the beauty of mediation and similar processes that even though people might still be dissatisfied with the result, they tended to be more accepting of the process than they are because it's not party driven, judge controlled. They're part of the process. I'm just wondering about that uncertainty with the time thing. I mean, if you treated it as though it is going to take a long time. You said this up-front - - - ?  
---Yes.

1

- - - but each time there's a link in the chain, it's not a separate stage in itself, it's all part of a continuum, maybe they will understand that and that won't create anxiety, but they will see that as a process, an integrated process, that will produce in the end a good result and maybe they will find that more accepting or maybe they will be more accepting of that?---Yes. I think the other thing is you can have different forms of ADR so, you know, I think Victoria is looking at a more graduating model so they use family group meetings perhaps more than once to try and resolve a matter and then they might go to a pre-court conference and then they're looking at sort of a judicial forum for conciliation. So instead of a failed conference being the next - the contested court hearing - then the judicial officer has an opportunity to try and resolve the matter as well.

10

20

Yes. I mean, I think one thing we've got in this system is plenty of time. The kids aren't going anywhere, are they?  
---No.

It's part of, maybe - it might even have aspects of family support built into the system where the parents come along and each time they come along instead of seeing themselves as having lost something, they actually might have gained something from the process?---And they may feel progress is being made and, you know, they're in a different position now than they were the last time. Yes.

30

They understand more, they're understood more. I'm not sure that, you know, taking the time is necessarily a bad thing as long as there's obvious reason for it and it's actually achieving something because I thought - when I was on the Family Court, a lot of people who came were dissatisfied with the fact that what they were able to give was a glimpse of their lives and their problems to a judge in the day hearing. The right question was never asked and they always wished they could have given a better answer?  
---Yes.

40

But other people control things and notions of relevance control it, rules control - - -?---Yes.

- - - how much they can say and what they're asked and even the questioning by the lawyers is governed by that subconsciously. They don't ask an inadmissible question?  
---Yes.

50

So you don't get the chance to answer in what's relevant to you. I think if you altered all those things - - - ?  
---Yes.

1

- - - and it was actually operated by people who weren't judges. You know sometimes the best legislation is drafted by non-lawyers because they don't bring any of that assumed knowledge or assumed practice to bear on it?---I think you can see in the Family Court that there have been a lot of developments in ADR and, you know, they've used the experience in ADR to develop conferencing and mediation and so on in particular ways to suit the business of the court and I certainly think it would benefit from the Childrens Court to use some of those learnings from the Family Court in a way the ADR is carried out.

10

Have you read any of Thea Brown's work on the Unified System?---Yes; and we did raise that with participants in our study actually and, you know, some people thought it had merit and a lot of people don't have - - -

But not of (indistinct)?---Yes. That's right.

20

Yes, Mr Copley?

MR COPLEY: The witness referred to the absence largely of practice directions in these courts. Perhaps it is important to clear up what practice directions there may be. I tender practice direction number 1 of 2006 issued by the Childrens Court of Queensland by the then president of that court.

COMMISSIONER: Does that relate to evidence in sex cases?

MR COPLEY: No. Copies will be made available to everybody at the bar table of these three documents. The second document is a direction from the president of the Childrens Court regarding subpoenas and the third is a direction from the Brisbane Childrens Court regarding applications for orders under the Child Protection Act.

30

It is understood these documents still obtain even though - yes, they're dated 3 March 2008 in each case. So I've provided copies of those documents to counsel for the crown and to all the other parties at the bar table and I'm not asking the witness to comment upon them, but they're just to put forward as far as the commission can understand its knowledge of what practice directions are available in those jurisdiction and, no doubt, counsel for the crown, if there are others, will be able to clarify that.

40

COMMISSIONER: All right. The directions together will be marked exhibit 41.

ADMITTED AND MARKED: "EXHIBIT 41"

COMMISSIONER: Would you like to have a look at them,

50

professor?---Yes, thanks. Perhaps I could just add to that, certainly there are some magistrates who perhaps have issued practice directions but they'll call a meeting of the child protection people, lawyers and so on, and ask them to proceed with child protection matters in particular ways, so they want their - you know, they tell them, "This is how I want it to run here."

1

MR COPLEY: So there might be practices peculiar to particular magistrates?---Sort of a local practice direction, if you like.

10

Yes?---Yes. So where a magistrate has taken particular interest in wanting child protection proceedings to run in a certain way. I think some magistrates have done really good work in that regard.

It could be, for example, that the chief magistrate seems some virtue in allowing magistrates to adapt procedures as they see fit - - - ?---Yes.

- - - rather than seeking to impose a practice direction for everybody to follow, couldn't there?---Possible; yes, yes.

20

Yes. What I wanted to also ask you was were there any comments made about the level of representation on behalf of the department in these proceedings? For example, was there any criticism made of the presence or absence of lawyers appearing for the department in child protection proceedings?---Not that I can recall. The department is generally legally represented in court matters by crown law. Yes.

All right. Now - - -

30

COMMISSIONER: What about the standard of decision-making in the Magistrates Court? Was there any widespread dissatisfaction with that or was it generally within the margin of error?---I think you'll find there's, you know, reasonable levels of dissatisfaction in some pockets around the department about decision-making in the Childrens Court for sure. It very much depends on relationship with your local magistrate and how, you know - what you think of that, so, yes, I'm sure that exists. I would say the more general feeling is the concern about inconsistency, so the fact that one magistrate doesn't know how another magistrate deals with things or the decisions they make and so on and so in that regard the - you know, just recently decisions have been posted online so if a magistrate writes a decision in the Childrens Court, they're posted online and that's really the first time that a magistrate has got to know how another magistrate might deal with things, except when they talk to each other in general conversation. So I think that's been a positive move.

40

MR COPLEY: Did any of the participants in the study have any comments to make about the case plans that were

50

submitted to them as appropriate for the particular child  
concerned?---Yes, there was concern about case plans  
because magistrates have to see a case plan before they can  
make an order and I think there was concern that - there  
were sort of two levels of concern. One was that they felt  
sometimes case plans were submitted that they didn't really  
think the department was going to carry out inasmuch as the  
case plan might say, "The parents are going to receive  
treatment for a drug problem or a mental health problem,"  
or whatever, and there's no guarantee that the parent will  
receive such treatment. So there's that feeling of what  
does - you know, case plans aren't necessarily what  
actually happens. They're not actually implemented, the  
plans that are submitted to the court. There might be  
concern about how much the parents have participated in the  
development of the case plan, which they are meant to do  
through a family group meeting and that, again, affects the  
prospects for the plan actually being implemented. So,  
yes, I suppose there's those. It's really about the  
quality of the plan, why this plan and not a different plan  
is being developed for the child and the family.

1

10

20

30

40

50

Did your study reveal whether or not the views of the children or the child concerned were being - considered to be adequately put before the magistrate?---I think most people would feel that the views of children aren't being adequately put before the magistrate. Of course, there's separation representation in the Childrens Court so a child can have a separate - whose role it is to put the views to the court.

1

The separate representative would be a taxpayer funded lawyer, wouldn't it?---Yes. Through Legal Aid, yes.

10

Yes, and does it require the order of a court that there be a separate representative or can Legal Aid simply seek leave to appear and say that they - or seek leave to appear in the capacity of a separate representative?---I'm not sure, actually.

Okay, well, the legislation will probably tell us that? ---Yes.

Just dealing with the wishes of the child, if the child, for example, is already under the care of the department by the time the final hearing comes on and the parents either have no access or limited access, did any of the magistrates express a view as to whose obligation they considered it to be to be able to put the views of the child before the court?---Well, I can't remember them talking about that explicitly, but I think it's assumed that it's the department that's responsible for putting the views of the child and that sometimes the child might be separately represented. I mean, magistrates have got all different views about these things.

20

Well, just to clear up about separate representation, Mr Commissioner, according to section 110 of the Child Protection Act if proceeding on an application for an order for a child the Childrens Court considers it is necessary in the child's best interests for the child to be separately represented by a lawyer the court may order that the child be separately represented and to make the other orders it considers necessary to secure that representation.

30

COMMISSIONER: Who makes the application, the judge or - - -

MR COPLEY: It would appear that any party - - -?---Any party.

40

- - - could make an application that the child be separately represented. The court is obliged to consider making orders about separate legal representation if the application for the order, that is, the child protection order, is contested by the child's parents or opposed by the child, so that extent the child's wishes would have to be conveyed to the magistrate for him to exercise a discretion whether he makes that order and then the lawyer

50

just act in the best interests of the child regardless of any instructions from the child and, as far as possible, present the child's views and wishes to the court.

1

COMMISSIONER: So they're not really the child's lawyer?  
---No - well - - -

They're representing their view of the child's best interests?---There's two possibilities for a child's - to have separate representation, which is the best interests model, that the legal representative puts to the court their view of the bests interests of the child, and there's direct legal representation. So children also have an entitlement to direct representation, so they can apply on their behalf to Legal Aid to get a legal representative, but I understand there's very little in that application.

10

Presumably that lawyer acts on instructions?---On instructions, that's right, and the contradiction was pointed out to me, that in a juvenile justice matter the child automatically has a lawyer and they're considered capable of giving instructions, but even children of the same age as in the child protection jurisdiction there's always questions raised about whether it's appropriate for them to be giving direct instructions to a lawyer.

20

Sounds like lip service to the UN Charter on the Rights of Children, doesn't it?---Yes. I mean, a lot of it is practical things about the availability of legal aid, how would children know that they could get their own lawyer? Someone has to tell them. How do - - -

How would they know they needed one?---Yes, but there are different ways too. I mean, you can be - a child could have their views put to the court not just through a legal representative. In fact, there's a provision for the magistrate to ask to speak directly to the child and I don't think those sorts of things happen. Again, this is a - I suppose what our study is, it's a small exploratory study. It's looking at opportunities and directions and so what we sought to do was to open up some thinking about different ways that the Childrens Court might be able to operate.

30

MR COPLEY: Thank you. No further questions.

COMMISSIONER: Thanks, Mr Copley. Mr Hanger?

40

MR HANGER: Could I ask you a few questions about paragraph 7 of your statement? You use the term in the second line there of "intensive family support"?---Yes.

Can you define intensive family support?---Yes. So intensive family support would be a service that's provided to families where there are already concerns about the care of children, so it's sometimes called targeted family support.

50

But that doesn't tell me what the service is?---Yes. 1

What sort of service is it?---The service is, generally speaking, intensive, meaning that there's considerable contact between the worker who is providing the service and the family, and so some models of intensive family support would cap the caseload of the worker at say 10 families. So a full-time worker would have a caseload of 10 families, so that indicates to you something about the intensiveness, that they're seeing the family at least once or twice a week.

10

The family support involves then counselling about the family's problems?---The three aspects of the family support would be that counselling therapeutic aspect, so, you know, investigating the parents psychological and social circumstances and trying to assist them with that.

What the problem is and why have we got a problem?---Yes. Some of it would be practical support.

Like?---So it might be things like transport to medical, you know, services, arranging child care, giving the parent - helping the parent with getting, you know, a Centrelink benefit, those sorts of - - - 20

Giving them a break from - - -?--- - - - practical assistance. Helping them find housing.

Sure, yes?---The other would be the education component.

What would they be - - -?---So parenting skills, household management skills, those sorts of services.

Okay, I think I understand. The intensive family support involves basically counselling about the problems, practical support like transport to and from somewhere, making sure the child gets medical treatment when it's necessary, and the third one is helping with skills that the parent might need? ---Yes. 30

Such as what? What sort of - what comes under skill that doesn't come under counselling?---How to manage a child's behaviour, how to manage a child's disability, how to establish routines for a young child.

All right?---How to help a child with homework. I mean, you know - - - 40

Okay?---I think the intensive part of it is important, though, as well.

It's focused?---It's focused. There's a proper assessment made, there's a plan made, the plan is reviewed, and so on.

Thank you. You refer to that as an early intervention and I think you used the word intensive family support in

50

paragraph 9. I take it it's got the same definition there, 1  
which appears to be the department's - basically the  
definition?---It's a fairly widely accepted definition  
these days.

All right. So is there an obligation on the parents to  
involve themselves in this intensive family support? Must  
they be involved?---Well, no, but the parents - if the  
parents want to resolve the problems that have led to the  
department being in their life and perhaps having removed  
their child, then they would generally want to get  
assistance with those problems. 10

One would hope so?---Yes.

In a perfect world they should?---Yes.

But the world isn't perfect. So participation in the  
intensive family support isn't mandatory, it's totally  
voluntary, up to the parents?---Yes.

Yes, and in your experience, I mean your experience at the  
coal face, do the parents always comply with the - or  
becoming involved in the intensive family support? 20

30

40

50



---Well, in my experience whether they become involved depends very much on whether they think they're getting the assistance they need in their family. So sometimes what happens is parents are referred, say, to parenting skills, and parents think, "Well, that's not what I need assistance with. I've got no housing and I need to - I'm subject to violence in the home. These are the things I need assistance with." So they mightn't go to the parenting skills course because they actually think they need something different. So there's a mis-match, if you like. But generally speaking I think these parents, like most parents, if they're getting assistance that's helping them with the problems in their life, yes, they will participate in it.

1

10

I suggest to you that there is in fact an enormous drop-out in the parents getting family support. It's correct, isn't it?---Yes.

To what percentage do the families drop out are getting? You haven't done research on that?---No.

What about your own experience at the coal face?---That's a bit of a while ago now. I don't know. I wouldn't hazard a guess. I think it depends on the service, yes.

20

So if you're not aware of what sort of drop-out rate or what sort of engagement there is, how can you actually say there is a significant under-investment in capital terms in the intensive family support?---Because of the unmet needs of families, I guess, and because I compare expenditure on intensive family support to expenditure on those other aspects of the child protection system.

But the unmet need depends on whether the parent actually goes along and cooperates with intensive family support and attends counselling sessions, doesn't it?---Yes, that might be some of the reason, but not all of the reason. The other thing I'd say is it's not that the parents don't cooperate or participate. That's not - you know, engagement is a two-way process. It really depends on the skill of the worker - - -

30

Of course?--- - - - about their capacity to keep engaged with the parent.

But these are university-trained workers we're talking about?---Not necessarily, not any more.

40

Not any more? It's changed?---It used to be the case.

When did it change? Do you go into that?---I think it's gradually changed over a period of time.

When did it start changing from university-trained social worker?---I think the - the department will, I'm sure, give me the date. There was an actual change in the qualifications required for child safety officers.

50

My learned junior suggests 2007, 2008, roundabout?---Right, yes. But I'll just - I mean, intensive family support services are often provided by the non-government sector where the departmental qualifications don't apply. Of course they'll be trying to get qualified workers into those services, but it's often very difficult to do so. The pay is much less than departmental jobs.

1

COMMISSIONER: Professor, when you use the word "under-investment" are you using it strictly as a reference to financial investment, or do you mean other forms of investments?---Well, I think in that particular paragraph we talk about financial investment, but I've also made another comment about it's not just about the money, it's about the policy thinking and the program development, about what intensive family support is.

10

The commitment filled by both sides?---Yes. Well, no, because even some of the money that is currently going to intensive family support, there isn't a very well thought out program model for how that best should be done that makes good use of the evidence available about what works in family support. So I would like to see much more program development and policy thinking about what the purpose of this intensive family support is, how long we should provide it for, how intensive it should be, how long it should go for. So I'd like to see some more - you know, the money that is spent used more effectively. I think it could be used more effectively.

20

I suppose you could redirect it from the other end to fund these intensive programs?---Yes. But I mean, when you compare it with, say, the amount of thinking that goes into investigations; who should do them, what they should comprise, how the assessment should be made, what the outcome of the - there's actually been a lot of departmental investment in the thinking part of how we should do that piece of work. I don't think the same thinking has been applied to how we used family support best to resolve some of the problems that families have.

30

MR HANGER: With respect, professor, you've just told me that it involves counselling, practical work, and development of skills?---Yes.

And that is what the department is doing, is it not?---Some services might provide some aspects of those, yes.

40

I'm talking about the government service?---Okay. The government service intensive family support is really only what they call - we discussed yesterday - intervention with parental agreement and support service cases. And in some of those cases they may or may not be providing those elements of intensive family support.

The instructions I have are that the intensive family support that is provided is frequently rejected by the

50

parents. They don't turn up for their counselling, they don't turn up for their appointments, and so on?---Yes. 1

You can't argue with that, can you?---I can't argue with the fact that it happens, but I can argue about why it happens, yes. So I'd say it's partly that the assessment, the communication with the family about the nature of the service that can be provided to them. I think sometimes the worker should accompany the family to the service provider, introduce them, make a proper referral - - -

No doubt sometimes they do when they consider it necessary? ---Sometimes they might, yes. 10

This is a matter for the individual. You can't lay down a rule for every situation, can you?---No.

As part of their plan?---Mm.

COMMISSIONER: What do you mean, that the government aren't buying the intensive family support services that are available? They're not paying for them? They're not taking them off the shelf; or aren't they available?--- Well, if we're talking about here the intensive family support services that the government funds, so they fund non-government agencies to run various types of - - - 20

So they buy them off the non-government - - - ?---They buy them off the non-government sector.

Exactly. But - can we keep with that metaphor, I understand it?---Yes. So sometimes they're only paying for part of the service, they're only paying for a parenting skills course run once a week instead of an entire program. I mean, these programs are fairly ad hoc and some places won't have any access to an intensive family service at all - I mean across Queensland. 30

So even if the government wanted to buy it, it's not on the shelf; it's not offered for sale everywhere?---I think if the government made money available you would find a provider to - - -

Would fill the gap?---Yes.

MR HANGER: Private enterprise come in?---No, I think it would be true to say that there'd be many agencies who would provide more family support if more funds were available to provide family support. 40

COMMISSIONER: It's a bit like chicken and egg, you want to see what you're buying. You want to try before you buy?---And indeed the department does that. So they'll put out a set of program guidelines and say, "This is the type of family support we want to purchase," and different providers will apply for - - -

So they're not doing enough of that, is that what you're

saying?---That's my argument, yes.

1

MR HANGER: Professor, isn't it the case that you're blaming the department for failures without thinking about the responsibility of the parents?---Mm.

The parents are the ones who have to want to change, aren't they?---I'm not blaming the department for anything, I'm trying to portray a picture of how I think the situation is and I think there are things that could be done differently. Parents have to want to change, that's true, but it's also possible for a skilled worker to work with families about why it would be good for them to change, because what happens actually is the department gets - you know, some workers can get into adversarial stances with parents and it gets their back up and so they won't participate in it; whereas the more skilled workers in the department, of which there are many, will know how to work collaboratively with parents and get them involved in these intensive family support services and they get to see the benefit that accrues to their family if they do participate.

10

Do you accept that there are plenty of families that you are not going to successfully be able to work with, no matter how good you are?---Yes, absolutely.

20

You refer in paragraph 8 to high levels of notification and re-substantiation?---Mm'hm.

I get the impression you're suggesting that involves that the department has failed in some way?---Yes, I think it's arguable that if more assistance were provided after a first notification or a second notification then we might reduce the chances of that happening to the extent that it does.

30

40

50

It is equally arguable, while I can see the validity of what you're saying - - -?---Yes. 1

It is equally arguable that you're working with hopeless parents?---Well, that's not something I'd argue.

It's equally arguable, isn't it?---Well, I wouldn't characterise parents as hopeless. I'm not sure what you mean in terms - - -

No. No, that's the impression I have. You wouldn't characterise anyone as hopeless, any parents?---Well, I might sometimes - well, I wouldn't use the term "hopeless" but I certainly might come to the judgment and I support the judgment of many child protection workers who do that, "This family isn't going to be able to provide safe, good care for a child and therefore the child should be in out-of-home care." I certainly think that's something that should and does happen. 10

Other jurisdictions when there are frequent renotifications actually put the child up for adoption, do they not?---The decision about whether a child would be put up for adoption wouldn't come as a result of a notification or a substantiation. It would be made a bit later down the track, generally speaking. It's not a subject to - - - 20

Of course. I'm sorry. I'm putting it loosely?---Yes.

I'll go on to this question of adoption now, if I might? ---Sure.

Do you yourself have the view that you get to the point in some cases where a child is best adopted out rather than staying with a dysfunctional family?---My reading of the evidence on this question of long term arrangements, care arrangements, for children who can't be cared for safely at home is that adoption is one option that's most suitable for children in some circumstances, yes. 30

Yes?---I think that should be an option along with other options for long term care.

Yes. Indeed, in England, Scotland, Denmark, Canada, there are adoptions made after a few years of attempts by departments to - - - ?---Yes. Those jurisdictions make - - - 40

- - - rehabilitate the family?--- - - - much more use of adoption. Yes.

In fact, I really don't know the answer to this question. America - - - ?---America, yes.

- - - has a very, very high adoption rate, but is that because of the children services organisation or is it just because Americans put up their children for adoption more frequently than the rest of the world?---I don't know the 50

adoption rate in America. I'm really talking about adoptions from care rather than adoptions generally. 1

Yes. Do the Americans - maybe one has to do it state by state, I don't know - have a facility whereby parents who are no good at parenting have their child taken away and put up for adoption?---Yes. There's a federal act, Adoption and Safe Families Act that's proposed that adoption is the preferred long term alternative care arrangements for children who can't be at home.

The reasoning behind it, I think, being that a child needs to bond fairly early in life if it's going to lead a fruitful life. You're nodding. You agree with me?---That a child needs to bond early in life? 10

Yes?---Yes.

MR COPLEY: Well, the question was the reasoning behind the statute was - I think that's what Mr Hanger was - - -

COMMISSIONER: You agree with that proposition.

MR COPLEY: - - - talking to and get you to answer? ---Well, the reasoning behind - this is my reading of the evidence, you understand? I haven't conducted - - - 20

MR HANGER: I'm accepting as a professor you're entitled to that?--- - - - studies on this myself. I think the idea that adoption is the preferred option, yes, it has arisen out of studies about attachment for children, but not necessarily attachment in the early life because some of these children aren't necessarily young, so children can be attached at a later point in their life to carers and so on and be adopted. I mean, I think it would be fair to say that one of the reasons behind the preference for adoption amongst lawmakers is that they see it as the more cost effective option than long term foster care. I think amongst researchers in this field, I would say the consensus is that adoption should be an option, but shouldn't necessarily be the preferred option. It should be, you know, considered about whether that's the best option for this child given the child's circumstances and adoption of children from care has certainly been more successful with young children than with older children; with children who don't have disabilities rather than children who do have disabilities. So there's a fair bit of variability in the, you know, adoption rates from care. 30 40

Of course. Insofar as the success with the young children and the older children, that is because, I suggest to you, all the medical evidence at the moment is it is necessary for a child to bond with a carer very quickly in life and certainly in under two years?---Well, I'm not sure what you're relying on there about the two-year mark. Attachment is very important for children, yes, definitely.

While obviously there are successful adoptions beyond that

- successful attachments beyond that - it is more difficult once the kid gets older, isn't it?--Well, the child often has other attachments. The child often has siblings and so on, so because adoption actually severs the legal relationship between a child and their parents, you know, there's often caution about, say, adopting siblings to different parents, to different people, so there's other considerations to be taken into account.

1

Of course. Of course. These jurisdictions that have adoption as a real alternative against the wishes of a parent have it done after a court proceedings, don't they?  
---Yes.

10

It's not just a willy-nilly arbitrary thing done by a bureaucrat somewhere. It's done by a court after a hearing?---Yes, yes. Although I think the use of termination of parental rights, as it's called in the US, has proven to be problematic for many jurisdictions there because the result is that they've had children who are so-called free for adoption who - there aren't any adoptive parents on the horizon and I think there has arisen quite a lot of concern for those children in this legal limbo of not, you know - - -

20

Okay.

COMMISSIONER: I think the US being more litigious than we are and Legal Aid - - -

MR HANGER: Yes.

COMMISSIONER: - - - being more active on civil rights that a lot of the current policies are borne out of litigation where children have sued the state for failing to look after them and in the 70's there were cases where hard to place children, that is children who weren't readily placed in the foster care system, were adopted to people who were willing to adopt them but not foster them and they had a phenomenon called Foster Care Drift where the instability created by constant movements between foster care families which were replaced by adoptive parents to stop - - -

30

MR HANGER: Yes.

COMMISSIONER: - - - because the theory was that - on the attachment theory - that you needed stability, bonding, that sort of thing, but I think there was a bit of a counterpoint or backlash against that which suggested that argument about bonding underestimates the resilience of children and the strength of blood ties.

40

MR HANGER: You know a great deal about it, much more than I do.

The only reason I was asking about the American situation, professor, is that my learned junior - I asked him to look

50

at adoption figures for various countries and it's interesting insofar as the United States is three per 100 live births - and I'm not talking about forced adoptions or anything like that - - - ?---This is general, yes.

1

Yes. Three per 100 live births; whereas in Australia it's .2 per 100, so they're, what, 45 times ahead of us? In England and Wales it's .7 per hundred live births?---I believe that - - -

Sweden is 1.1. Norway is 1.1?---Yes. I believe there has been a study done about social attitudes to adoption so, you know, I think we might speculate that in Australia, you know, people don't tend to adopt as much for various reasons and, of course, we've had inquiries into various forms of such - - -

10

COMMISSIONER: I think the consensus was reached in the US that you either fix the families quickly or find new ones, but not rear a child in substitute care by the state.

MR HANGER: Yes. I think that's the English attitude. As I say, I think - - - ?---Well - - -

20

Can I just finish? I think in England they give you two years to get your act together and then if you haven't shown that you can parent properly then, then they say, "You're up for adoption," because they want to have the stability and attachment and bonding - - - ?---Yes.

- - - that should be formed early in life?---Yes, and so they might look for adoptive parents for a child, but of course they don't necessarily find them, and I think England now has moved much more to trying to formalise long-term out of home care and try and develop the right supports for that to make it, if you like, as like an adoption as possible but not the actual legal severing of the relationship between the child and the parents. So I would say that - I mean, there's certainly more use of long-term out of home care in the UK than there is adoption and there's much more formal support given to that as a perfectly valid long-term option for a child, because studies have shown that there are equally good outcomes for children in long-term stable foster care as for adoption and the breakdown rate between the two is the same, because, of course, even adoption unfortunately isn't always long-term.

30

40

50



No?---The breakdown rate of adoptions from children in care, you know, there's been concern about that from time to time.

1

Yes. What is probably troubling for a child is the going into foster care and then coming out and going back to mum and dad for six months and finding that breaks down and going back to another foster carer and so?---Yes.

That would be the problem?---I think any sort of instability, whether it's from foster care to foster care to foster care or home to foster care and back again - I think they're all - - -

10

That's the problem?---It's been established without a doubt that that is extremely problematic for a child.

Now, going back to paragraph 9 - or 8, what are the rates of renotification in the other states? I mean, are we doing worse than they are, or is it similar?---I haven't recently looked, compared renotification rates with other states. These are also reported nationally, the renotification - - -

20

Yes, so it would be easily found?---Available, that's right.

Again, if I can go to paragraph 9, the lack of investment is also evident in relative spending levels. Can you give a figure, comparative figure, there for the other states? ---No, not without my resources. I think relatively speaking - my recollection of it is relatively speaking Queensland spends less on family support than the other - than most of the other states.

That's on what you call intensive family support? ---Intensive family support, yes.

30

Yes, all right. Well, again, that can be looked at, and my friend asked you about that?---Yes.

In respect of paragraph 10, the indigenous issue, I suppose what you are saying there in a way is this is just a part of the bigger picture of indigenous disadvantage, isn't it? It requires a whole of nation solution rather than just Queensland?---Yes.

Okay?---Can I also say I think part of the problem there is not the fact that services are provided. They need to be provided to indigenous families given relative disadvantage. It's the type of services that are provided that I think we need to pay attention to.

40

I'm not sure if I should ask this. What do you think of Prof Langton's comments over the last couple of days?---I haven't seen them.

COMMISSIONER: What did she say, Mr Hanger?

50

MR HANGER: She was suggesting that resources should be allocated on a needs basis, not to Aboriginal people or indigenous people because they're indigenous but because - - -

1

COMMISSIONER: Disadvantaged whites as - - -

MR HANGER: Yes. She thinks that - she's saying that - I think she's saying that this breeds the wrong mentality, that everyone should be looked after according to the need they have but not because they're Aboriginal or anything else.

10

COMMISSIONER: She says it should be needs based, not creed based.

MR HANGER: Not?

COMMISSIONER: Not creed based.

MR HANGER: Yes, precisely.

Family reunification once a child enters care, are you aware of the extent to which once a child enters long-term care, you know, that is to say, the one from say three to 18, the extent to which efforts are made to reunify the family?---In Queensland, no, and in fact there aren't any - to my knowledge the Queensland department doesn't have any data about reunification rates or reunifications after a certain period of time in care.

20

Now, you were asked yesterday I think by the commissioner as to whether children once they left long-term care went back and lived with their parents and I think you suggested they did. Have you got evidence to establish that? ---There's been a couple of major studies, not Australian studies, although I could, you know, certainly find - check that. So, yes - I mean, not my own studies but other studies have - quite a few important studies have shown this return home after reunification.

30

Okay, and do they show that they stayed at home after the first two or three weeks or not?---No. It's the - you know, where a child goes to when they've got no-one else to go to, and often times because children haven't made connections to a supportive adult during their time in care it's their family who they turn to, and not necessarily parents but the siblings, older or younger siblings.

40

Dealing with the issue that my learned friend Mr Copley was asking you about this morning, children in care - let's deal with them, for a start, with foster parents. It's the foster parents' job to get them educated and fed and so on?---Yes.

It's the foster parents' job, one would imagine, to give them the best education that they, the foster parents, are

50

capable, be it private school or non-private school?---Yes. 1

And to give them introduction into careers days and so on.  
Correct?---Yes.

All right, that's in foster care. In your long-term care it is the job of the people in charge of long-term care to expose them to those opportunities as well?---Yes.

We've heard that in the long-term care out of home where they in their teenage years may go into a private dwelling, let's say four or six children in it, they have 10 carers, a total of 10 carers, being a seven-day roster. It's the job again of those people to expose them to careers days and so in, is it not?---Well, I'm not sure. You know, you'd have to look at the funding arrangements that were made for those models. I'm not sure how that's organised, but just to clarify, I mean, if the - in those arrangements, if the department is still the guardian, then the guardian has the responsibility to do that. So it's not solely of the individual carer - - - 10

No, I accept that?--- - - - if the department felt - - - 20

Accepted, and thank you for the correction?---Yes.

You're quite right, and of course if they're going to school that's what they would get through the school system?---Yes.

All right. So while without arguing with you that children in care are at some disadvantage, the truth of it is that they should be exposed to the same - and when I say "should", are exposed to the same opportunities as children who are not in care?---I very much think that that should be the case, yes. 30

Yes?---Regrettably it isn't, though.

Well, you say it's not the case, but that's based on the fact that they don't have the same career aspirations as children who haven't been in care?---And they may not necessarily have a carer who is doing those things for them or with them, taking an interest in them, pointing out what they're good at, you know, helping them with things that they're - hobbies they're interested in taking up, and so on. 40

What you are saying is idealistic but it's not attainable, is it? They don't have the mum and dad to look after them?---No, they don't, so in that case the state has said, "Well, you will be better off with another guardian, with another carer," and has certain responsibilities then to try and make those - you know, a satisfying quality of life for those children. I think it - yes, I think it's very hard to make up for the fact that you've been maltreated as a child, but there certainly are things that can be done to improve the quality of care. 50

COMMISSIONER: Yes.

1

MR HANGER: Yes.

You don't suggest, I'm sure, for a moment that the department don't take a genuine interest in giving as much of the TLC and education as they possibly can, do you?---I very much think that everyone in the department would, you know, want things to be different for most of the children who are in care. Yes.

10

20

30

40

50

All right. You mentioned consistency in decision-making of the court. We who practice at the bar have trouble anyway with that, but I mean the best way to overcome that is, I think as you mentioned, the availability of decisions by fellow magistrates and so on?---I think so. I mean, a number of people mention to us about just opportunities for professional development amongst judicial decision-makers and I think that would help as well.

1

Yes.

10

COMMISSIONER: In the Family Law Act there's actual provision that says, "Judges should have" - I just forget the phrase, but it's almost a selection criteria, but they have to have an aptitude for, you know, this sort of work. I think I failed, but no other court has such a requirement. I wondered if it would help in the child protection context?---Actually, I think in the Childrens Court of Queensland there's a requirement that you - I can't remember the actual wording, but you have an interest in children's law matters. So that's with the CCQ.

All right. Okay?---But not for the general Childrens Court and Magistrates Court.

20

I wonder how that's tested, I suppose by claiming the matter - - - ?---You'll have to ask the president of the Childrens Court.

I will.

MR HANGER: No, I've nothing further from the professor. Thank you, professor.

COMMISSIONER: Thanks, Mr Hanger. Ms Ekanayake, do you have some questions?

30

MS EKANAYAKE: Thank you.

Professor, I'm Jennifer Ekanayake of the Aboriginal and Torres Strait Islander Legal Service. At paragraph 12 of your statement you make reference and you talk about family preservation and reunification, work is demanding and time consuming and is also intensive. Would you say these are obstacles to reunification of children on short or long term orders?---Would I - - -

40

Would you say they're obstacles? You say that that work is difficult. Would you say that they get in the way of reunification?---I think you have to invest the resources and the time into reunification work in order to make reunification happen, yes. I'm sorry if I'm not quite understanding.

You mentioned that work is difficult - - - ?---The work is difficult.

50

- - - and it takes a lot of time?---Yes.

1

So is that in your opinion - or on the studies you've done - is that happening or is it getting in the way or is it not happening as much as it should?---I think it's happening. I mean, I think my opinion about the work that's undertaken in the department is there are some Child Safety Service centres where practice is really, really good and they really know how to work with families and with children and they're very much on about trying to get children at home, wherever that might be possible, living safely with their family, but there's variable skill levels across, you know, different practitioners in the department and some of them aren't as skilled and aren't as competent in this work. Some officers are busier than others that don't have the time to invest in it. So I think it's happening, but I think it's actually incontrovertible that it should be happening more because that's the main reason as far as I can establish that duration in care has increased so much in recent years. It used to be that more reunification work was happening.

10

Thank you. Could you comment on the long term effects of cultural disconnection and loss of identity for the 1200 plus Aboriginal and Torres Strait Islander children who have been placed outside the child placement principles? ---Well, I haven't done any studies on the long term effects of that myself. I think other studies would show that children developing a strong sense of who they are and their place in the world and who they are in their family is extremely important in all areas of wellbeing. You know, children who develop a good sense of themselves do better in adulthood in health, education, employment and a whole range of domains. So I think it's very important. I think, for example, the Bring Them Home Inquiry brought forth a lot of evidence about the impact of indigenous children being raised without any knowledge of their indigenous cultural heritage and certainly that inquiry found that there were many, many deleterious effects of children not being raised in - you know, Aboriginal children not being raised within an Aboriginal family and Aboriginal community context. So I'd point to that being, you know, an Australian - some Australian evidence of the effect of that, but more generally there are studies about the importance of having a sense of your own cultural identity and that being important to health and wellbeing.

20

30

On the subject of Child Safety Services and their resources, are you familiar with the structured decision-making tools?---I've got a general basic understanding of them, yes.

40

But have you read of any research into structured decision-making tools because I question - I would not put that question to you if you're not familiar with that? ---I'm familiar with some research around structured decision-making tools. Yes.

50

There is a report from the US Children's Research Centre entitled Family Risk Evaluation Validation Prospective Study?---Yes.

1

That's entered at 19. They found that the SBM tools highlighted by us in decision-making for Aboriginal and Torres Strait Islander could be punitive. In your opinion are there alternative culturally appropriate assessment frameworks for Aboriginal and Torres Strait Islander children?---To my knowledge, there are no assessment tools specifically developed for Aboriginal and Torres Strait Islander children in mind. I'd just like to point out that that study put out by the Children's Research Centre - so they're the developers of the Family Risk Evaluation Tool, so it's the developers of the tool then reporting on its efficacy. So, you know, you would want to keep that in mind in reading the results of the study. So, no, there aren't specific evaluation tools - assessment tools. I know that.

10

Thank you. Attachment 3 to your statement refers to - talks about indigenous agencies and that's at page 62, the right-hand column?---I don't have the same pagination as you do.

20

I'm sorry. It's entitled Discussion, that subheading? ---Yes.

You talk about, "Indigenous agencies remain a relatively minor part of the child welfare system service response," which is based on another study and you also say, "Indigenous agencies have very limited powers in relation to decision-making." Now, could you comment on that further?---Well, around about 37 per cent of children in the child protection system are Aboriginal or Torres Strait Islander and you won't find anywhere near 37 per cent of resources even in out-of-home care being allocated to agencies working with Aboriginal and Torres Strait Islander children. So I think they're unresourced and they're small in number. I can't remember off the top of my head just how many indigenous child and family welfare agencies there are, but not enough, given the extent of need of Aboriginal families and Aboriginal disadvantage. I'm sorry, I just missed the second part - their health?

30

Yes?

40

50

Yes?---So Aboriginal family welfare agencies are funded by the Department of Communities to do particular things and mainly here in Queensland funded for one of two purposes: one is to be what is called the recognised entity under the act, I'm sure you're familiar with that; and the other is to provide family support of various kinds. The recognised entities in particular, really they don't have any powers, all they are, they're consulted about particular decisions that are made and they're actually prevented from working with the families so they don't receive funding to work with families, only to be consulted by the department about certain decisions, and that's a constraint on their potential role that I find difficult to understand, so I'd like to see them have the funding and the responsibility in (d) to work with families who are experiencing difficulty with their children. And then there are the other agencies that are family support agencies, but my recollection of that is that in total about \$10 million is allocated to those Aboriginal family support services, so that you can see that 10 million out of all the expenditure, even on intensive family support, is quite small. So if you think: well, we are spending 50 million on intensive family support in total and round about 30 to 40 per cent of those families are going to be Aboriginal or Torres Strait Islander, but there's only 10 million of that 50 specifically allocated for indigenous children and families. It would be different if some of the other agencies also had programs and services and staffing and so on and skills to work with Aboriginal families, but I don't believe that's the case either. I think that's my argument for why they're small in number and have limited powers, limited capacity.

1  
10  
20

Thank you. Going to page 63 now, you say you don't have the same pagination but this is just above the conclusion, the paragraph just above conclusion section?---Yes.

30

You say, "Increasing levels of indigenous input and control should be considered feasible based on the examples of the US and Canada." Can you comment on that further?---Well, in the US and Canada they have indigenous child welfare acts of various kinds and they give authority to indigenous agencies to do certain things in relation to the care and protection of children. So for example to find placements, to do case work with children and families. In fact, in some countries the indigenous agency takes on all the - what we would call the case management for indigenous children rather than it resting with the department. So the department might subcontract to the indigenous agencies to take over that role of the care and protection of children on guardianship orders, and that that's happened in Canada and the US for many, many years. So they're the sorts of models I think we could be fruitfully looking at here.

40

Thank you. The Aboriginal and Torres Strait Islander support sector consists mainly of para-professionals, you were talking about that before. The majority of those

50



workers are mature age, employed full-time and looking after their families. In your opinion what frameworks should be put in place by higher education institutes such as universities and that the sector, between the two sectors, to create a pathway to tertiary qualifications for these workers?---I think there are good models for providing study leave and scholarships and so on for people, for those para-professionals, whether they're employed in the department - because there's many indigenous child protection workers in the department as well as in the non-government agencies - to gain a higher level of degree qualifications. When I worked in the Department in the 1990s there was a cadetship scheme, so staff used to get scholarships and study leave and so on to go off and obtain university qualifications in the field, but that's not happening any more. So certainly - I mean, but to do that workers need to - for many workers it's just not feasible to leave their job and go and study, they need to be bringing in an income, so you need some sort of the scholarship system, I think, to upgrade people's qualifications working in the field.

1  
10

Perhaps on a part-time basis, extended for a period of time?---Yes, that's right.

20

But is there anything happening currently or are the universities looking at any programs?---Not to my knowledge, there aren't any scholarships, schemes or cadetship schemes as such run by any of the state government departments anyway.

Given that the industry could have up to a 60 per cent of Aboriginal and Torres Strait Islander clients, is any work being done by the university to incorporate their needs into training and social workers?---Yes, I can really only comment on my own school, my own university, but certainly throughout a number of courses we teach students and assess students about the particular needs of Aboriginal and Torres Strait Islander children and families and Aboriginal and Torres Strait Islander children with - you know, people with disabilities and a whole range of areas of community service practice, and it is also compulsory for students in our human services and social work degrees to do a course on working with Aboriginal and Torres Strait Islander people. So in that semester-long course they get information and are assessed on different ways - you know, the needs of Aboriginal and Torres Strait Islander people, the impact of colonisation in Australia, what that means for human services professionals, and how human services professionals can effectively work with Aboriginal and Torres Strait Islander people. The courses are taught by Aboriginal and Torres Strait Islander academics and we see it as a very important part of their training, yes. I should say of course we have Aboriginal students undertaking a courses but I think your previous question is really about the people already out there working in the field and how can we get their qualifications upgraded. I certainly think that is something that very much should be

30  
40

- that, you know, there should be more of it because we need Aboriginal staff in those agencies. And I think many of them will take up the opportunity to get a university qualification in their field if it was financially viable for them to do so.

1

Thank you, Professor. I have no further questions.

COMMISSIONER: Yes, thank you. Ms Wood?

MS WOOD: I have no questions.

10

COMMISSIONER: No questions. Mr Capper.

MR CAPPER: Thank you. Craig Capper from the Commissioner of Children and Young People for the Child Guardian. During the course of your evidence you certainly indicated that you would certainly like to see more investment in early intervention and prevention services. In relation to that I guess one of the things that I want to question of you is how we go about designing that; I mean, what data do we need to collect, how do we target those services? From the information that you've been getting it indicates that there are some differences even between child safety support officers and things like that?---Yes.

20

There are variances. I mean, how do we collect the data so that we can better target, and what data - as a researcher what data would you be looking for in that space?---Yes. I think there already are quite a bit of data that could be helpful in this sort of planning process, so we need data about the needs of children and families and we need data about what the service mix out there is in different parts of Queensland, because what we are aiming for is a match here between needs and services. So certainly all the data would be available to do a service mapping of what is already out there and what's in certain geographical areas. And the department itself would have a certain amount of information about, for example, information from when children are notified or substantiated, when they do an initial assessment they'd have information about family needs, and in fact they publish information that they get from the sorts of assessments. So that will tell us what the main areas of need are for families, and then we can look at the research evidence about this population of families in need, so this is families where there is a risk of a child being removed unless they receive support, so there is quite a bit of research out there about those particular families and their needs and I think we need to match those up and make a service system that is suitable for Queensland, I guess, from all those different parts of information.

30

40

50

Do you know of anybody or any research that's actually done that service mapping in terms of where they see the difficulties, where they see the gaps in service delivery? ---Not a Queensland study, no. 1

Okay?---I mean, different jurisdictions would undertake certain sort of needs profile and service maps and so on about what they've got out there in order to plan their provision of social welfare service in different ways.

And certainly I guess flowing from that is when we start to get to introducing these early intervention and prevention strategies and programs, how do we measure the effectiveness of those programs? I mean, what are the measures that you would be looking at as to measure the successfulness? How do we choose one program over another, which one is working, which one is going to work in what space, you know, what regions need - is it going to be more successful and what sort of data would you be looking at from that perspective?---I think the data that you need is: has the child's health and development improved pre and post the intervention and has the family functioning improved pre and post the intervention. So that's in simple terms, isn't it, but then you do an assessment of the child and the child's needs, where they're at, depends on the age of the child what sort of assessment you do and then you would ask the agencies to collect data about the child's health and development at the end and, likewise, with family functioning - so it would depend what the areas of need are that the family have. Are there needs in relation to domestic violence or alcohol or, you know, psychological sort of needs of a parent, a mother say and then at the end, has the service actually improved functioning in the family on any of those areas. So there's really only two outcomes, that the child's safety and wellbeing improves and that the family functioning improves. 10 20 30

Is that being done presently as far as you're aware in relation to the programs currently being delivered within the system?---No, actually. I know there is an evaluation of the initiative called Helping Out Families, but my understanding is the department isn't doing that outcome evaluation mainly because they don't have a standardised assessment tool in those agencies so they're not collecting standardised information about the needs of families pre the intervention, which cuts out opportunities to assess whether you've met the needs post the intervention. 40

Thank you. You also indicated during the course of your evidence that there was a spike in the number of children coming into care post the CMC?---Yes.

Now, you indicate that this seemed to suggest that there was a lack of intervention services. Would you agree though that perhaps it was as a result of - there could have been other factors, for example, the increase in mandatory reporting, the child safety officers' access to

police in remote communities? I mean, you would agree that the spike could also equally be attributable to that? 1  
---Well, yes. Yes. So in a sense we're picking up. We're casting the net wider about, yes, so that's possibly why.

Yes?---I think the other reason that I pointed out yesterday was that there was simple more money put into out-of-home care so there were more placements available and so, you know - - -

Yes?--- - - - you can take the service that's on offer. 10

Yes. I understand that that was the only reason you proffered yesterday. I'm just looking at are there other reasons, so we've certainly got - there's more services to allow more children to be taken out of care - - - ?---Yes.

- - - but that doesn't necessarily mean that that was the only basis for doing it. There was certainly a broader net cast, as you say. There were more mandatory reporters. You accept that?---Yes.

In fact, would it also be a situation - the CMC's reports certainly indicated that the system was - described it as somewhat dysfunctional at that point and so, therefore, children who perhaps weren't known to the system prior to the CMC inquiry - - - ?---Became known. 20

- - - became known to the system after?---Absolutely, yes. I'd just like to say about that, though, that doesn't really explain why - I mean, notifications have been increasing at a dramatic pace for the last 20 years and during all that time the entry rates of care was relatively stable except for that blip post-CMC and now it's back to the relatively - you know, around about 2.5 - - - 30

Could that be - - - ?--- - - - even though notifications have continued to increase.

Yes. Could that not also be attributable to a change in the assessment processes? I mean, we could change the assessment threshold, for example, and that would explain why that's now stabilised back at a level. Would that be correct?---I think undoubtedly there was a change in the threshold. Yes.

Okay?---Unless you accept that somehow the needs of children changed just for that period. 40

Yes. That's certainly what I'm looking at - is that we have had this consistent approach with intakes and you said that yesterday, this consistent level. There's been the blip of those that go into care and then there's been this, again, now gradually settling back to the pre-CMC, I think, is what you indicated yesterday?---Entry rate, yes.

Pre-CMC levels. The fact could also be explained through an adjustment in the threshold level to not have as many

children to bring that back to that level. Would that be right?---Yes.

1

Thank you. I just want to get your views in relation to one particular point. Certainly, there's been a discussion I think - certainly a discussion with you about parents willing and able and that notation. There were certainly discussions about that threshold test. Is there any research been done as far as you're aware in relation to the group of self-placing children, those who, for example, have difficulties or have family problems at home and they leave the home. The parents are still willing to look after them, but they're not able to control the children. The children are just leaving. They're not coming home. In relation to that, where do you see, if at all, those children intersecting with the child protection system? By the definition it seems to say "willing and able", the parents have to be willing and able; the parents are willing but are unable. We could have the same argument about disability children, of course, as well. Where do those children fit, if at all, into the child protection in your view?---I think if those children are at risk of harm and they don't have a parent willing and able then they're in need of protection and whether they're older children or younger children, the act makes an obligation on the state to, you know, provide protection for those children if their parents aren't willing or able.

10

20

Okay. But it's not willing or able, it's willing and able? ---Willing and able, yes.

You would accept there are children out there, though, that are self placing, that aren't within the system presently. There are no orders for those children, but you would say that they should be considered within the child protection framework. Would that be right?---Yes. So just to clarify that, my understanding - I mean, I don't agree with the term self placing but that's generally applied to children who are in the guardianship of the department that have left the placement that the department has identified for them and are living somewhere else. My understanding of the term self placing is that, you know, that is the term that's used.

30

Yes?---They're not children who, you know, have been living at home with their parents and have left home for whatever reason.

40

So leaving aside that terminology - - - ?---Yes.

- - - but you would agree that those children who the parents are not able to control, therefore, they're not able - they don't have parents willing and able to care for them and protect them - - - ?---Yes.

- - - and they leave home, you say that they would also fall within the child protection framework as far as you're concerned?---If they're at risk of harm, so that, you know,

50

they have to be at risk of significant harm for the child protection. 1

COMMISSIONER: It's actually more than that. I'm sorry, I keep harking back to this, but it's not any harm, it's not any significant detriment, it's harm from abuse or neglect or sexual exploitation?---Yes.

No other sort of harm qualifies it?---Well, I think it says it's immaterial how the harm is caused.

Yes?---Yes. 10

But you have got to read that - - - ?---In the context that - - -

- - - in the context of what harm means and harm means, "Significant detriment of a (indistinct) caused by abuse or neglect or sexual exploitation." That's what the act says?---Yes. That's pretty broad, though, isn't it?

What's abuse? It's not defined anywhere. What is it?---I know. 20

What does it look like when somebody sees it?---Well, I think there are definitions around there of, you know, abuse, commonly accepted definitions of abuse, of a physical kind, of an emotional kind.

That's the category. What is abuse? What is the act of abuse?---Well, there are various acts of abuse, but for the Child Protection Act to come into play, the abuse has got to lead to significant harm or risk of significant harm.

30

40

50

No, it's got to be - harm is a significant detriment of a physical, psychological, emotional sort, okay, and what causes that harm has to be abuse or neglect, neither of which are defined, and as I said the other day, neglect is a word Shakespeare invented in the 1600's?---Yes.

1

So what does that mean? Neglect, what is that?---Well, I won't - I'm sure you've read definitions of neglect.

Yes?---I'm not sure if that's - - -

But it doesn't have a constant meaning, my point is?---No. Not at all, no. It's defined differently in different jurisdictions, it's - yes.

10

Yes, so what is my neglect may not be yours?---Yes.

Both from a parental and a child's point of view?---Yes.

Someone has got to decide whether for that particular child it is or it isn't?---Yes, and in the context of this system the child safety officer might make an assessment that abuse or neglect has occurred, it's left the child at risk of harm or whatever, makes the case to the court and the court could make a determination.

20

So when we come to the definition of a child in need of protection, that's a child who can't be protected by an able and willing parent from harm caused by neglect or abuse?---Yes.

Not anything else. Not any other ineffective parent but a parent who can't protect. Not who can't supply all the needs but can't protect from abuse or neglect or exploitation, and that narrows it rather than broadens it, doesn't it - the definition of a child in need of protection, I mean?---Yes.

30

See, I know the act uses "wellbeing" and things like that, but not in terms of whether a child needs protection. It talks in terms of the preferred way of protecting a child who needs it is by family support and things like that? ---Yes.

So to get that you've got to actually pass the threshold of being in need of protection first from abuse or neglect? ---Yes.

40

Which at least one of your parents cannot protect you from? ---Yes.

Is that a satisfactory definition from your point of view? ---Well, I don't see the definition as being, you know, a major problem in the problems that are facing the child protection system in Queensland. I accept that there may be problems from a legalistic point of view, but I think we're always going to rely upon assessments of various kinds about whether a child is being harmed, whether a

50

child is in need of protection, and what you have to have is, I suppose, safeguards in the system that those assessments are made in a proper way, based on proper evidence, and that someone else has scrutinised those assessments, because the effect of making those decisions can be quite drastic for a child and a parent

1

But as you said before, the substantiation rate hasn't changed much, so whoever is making the assessments is coming up with much the same results as we've had for generations at the moment. So it's not in the substantiation that's the problem, is it?---No, I don't think it is; no.

10

Or the entry into care, that's not the problem?---Well, I think - yes, I mean, I think - - -

The entry rates, you said, are stable?---Yes, but they may still be too high - or too low, for that matter.

Okay, but they've been stable for a long period of time? ---Yes, for - - -

Apart from the spike post CMC?---Yes. It doesn't mean it's the right rate, though.

20

Yes, I know. I asked you that yesterday, what is the right, rate, and you can't tell me?---Yes. I'm saying we need to look at the reasons for these changes and think about what practice has changed and how things could be different. I'm not sure if it's answering the question about the young person who self places, but - - -

MR CAPPER: I don't think it does, and I guess the reason that I say that is that my concern with - and I appreciate the commissioner's views on this, but the definition of harm says that harm to a child is any detrimental effect of a significant nature on their physical, psychological or emotional wellbeing. As you pointed out, it says it's immaterial how the harm is caused. It then goes on to say that harm can be caused by physical, psychological or emotional abuse or neglect. That's not a limiting scope, I would say, with respect.

30

COMMISSIONER: You skipped a paragraph.

MR CAPPER: No, I've read exactly from the paragraphs. It says harm can be caused by - or sexual abuse or exploitation can be caused by a single act, omission or circumstance. So in my reading, I would read under 9.3 that harm can be caused by as being an inclusive statement as opposed to an exhaustive statement of how harm could be caused.

40

COMMISSIONER: What else other than abuse, neglect or exploitation would it be caused by?

MR CAPPER: Well, harm could be caused in any way. It

50



could be, as we've said - I mean, it talks about whether or not it's by omission or by a set of circumstances. It could be simply that a child is homeless and nobody is caring for the child that harm could be caused. 1

COMMISSIONER: Well, that would be neglect, wouldn't it?

MR CAPPER: Does it? I mean, that's the issue that we have to consider, but what I'm suggesting is that it doesn't have to be linked to emotional abuse or neglect necessarily for harm to be caused. The words of 9.3 don't limit - - - 10

COMMISSIONER: No, emotional and the others are descriptive. They're just adjectives. You don't need an adjective, according to Hemingway, if you can write, you just need to look at abuse, neglect and exploitation. If you can tell me another mode of causing defined harm I'm open to it.

MR CAPPER: Certainly.

COMMISSIONER: I'm just wondering - it seems that subparagraph (b) was added more recently to include sexual exploitation. 20

MR CAPPER: Certainly.

COMMISSIONER: So physical, psychological or emotional are again descriptive. Abuse or neglect seems to be the - well, I read it as exhaustive. If it's inclusive what does it exclude exclusively?

MR CAPPER: In this particular circumstance I guess the argument could be that the parents aren't being neglectful, they're doing everything in their power to protect the child, but the child is not necessarily obliging or assisting the parents or certainly, you know, is not able to be controlled. So the parents aren't abusing the child or neglecting the child or sexually abusing the child in these circumstances. 30

COMMISSIONER: But they're just not able.

MR CAPPER: They're just not able to care for the child in these particular circumstances because they've got no capacity, for whatever reason, to control the child. I certainly wouldn't suggest that that fits within abuse, neglect or exploitation. 40

COMMISSIONER: But before you get to the question of able and willing you've got to have crossed the threshold of suffering harm.

MR CAPPER: That's right.

COMMISSIONER: From a cause other than abuse or neglect or exploitation. Is that what you're saying?

MR CAPPER: Yes.

1

COMMISSIONER: You can cross it without - by something else.

MR CAPPER: I guess that's the question I'm asking the witness, is do those children fit anywhere within the child protection framework, but certainly what I'm suggesting the broader issue is, we're focusing on the issue as it has to be attributed to abuse or neglect. I certainly wouldn't read the legislation that strictly. What I'm suggesting is that 9.3 is certainly an inclusive statement but it's not an exhaustive statement of how harm may cause - - -

10

COMMISSIONER: So you'd say you need harm and a parent - however caused, and a parent not able and willing, both.

MR CAPPER: Harm or risk of harm and a parent not willing and a - - -

COMMISSIONER: Unacceptable risk of harm.

MR CAPPER: Yes, and a parent not willing and able. Now, as I say, that's why I say that we're not necessarily restricting, or we shouldn't certainly be restricting ourselves to harm only being to emotional abuse neglect or exploitation. There may be other circumstances such as these children.

20

COMMISSIONER: What do you think, professor?

MR COPLEY: Well, in my submission it's not really a question for this witness to answer?---Yes.

She doesn't determine the ambit of the system, she's merely a commentator and a critic of the system. It's the department that determines the ambit of the system so the question is better put to the department.

30

COMMISSIONER: Yes, that's probably right, but I think Mr Capper is just asking whether or not there are other ways of causing harm other than abuse, neglect and exploitation, aren't you?

MR CAPPER: I am, but I'm also asking whether or not these children should fall within the ambit of - this witness's view as to whether the children should fall within the ambit of the child protection system, particularly, I guess, given that there are so many parents who approach the department and say, "I need help. My child's - - -"

40

COMMISSIONER: Yes, okay. I'll allow - can you answer that - would you like to answer that question, professor? ---Well, I mean, I'd like to point out the lack of case law in this area. You know, this is why - - -

It's not a legal question, I think. I think it's a social

50

science question?---Yes, but I think various lawyers in the room are debating what the law is actually saying about this area. 1

They'll do that, yes?---You asked me about safely placing children, and they're children who are generally thought of as already being in the care of the department.

MR CAPPER: Yes. Sorry, I'd moved past that - - -?---But I think if parents, you know, came to the department and said, "I'm concerned about my child. I can't manage their behaviour. They're putting themselves at risk of harm. I'm worried about what's happening to them," you know, yes, I would say definitely that's - the Child Protection Act has a role to play. 10

20

30

40

50

In fact, I can't be certain, but I think this very example was given when the act was being promulgated, that a child who was self-harming - so the parents were committed to helping the child, caring safely for the child, but a child is themselves engaging in some behaviour that's putting themselves at risk, that's why that phrase, "It's immaterial how the harm is caused," it's not about what the parent is doing or not doing, it's whether the child is at risk and needs protection. So I think that's part of the reasoning behind this wording of the act, that we should focus on the risk of harm to the child rather than any parental action or inaction in determining whether the state should step in and provide some sort of response to the child.

1

10

So that comes to the issue of the word "willing". The parents are willing to assist. They are willing to protect the child, but they just can't?---Yes.

So there's an issue with that word within the legislation to some extent, or it's creating some limitation on - the department can't intervene because there is a parent willing, but they're not able to protect the child so the department can't have a role to play based on the legislation as it exists.

20

COMMISSIONER: No, they've got to be both, don't they?

MR CAPPER: Sorry?

COMMISSIONER: They've got to be both; the parent has to be able and willing. There's no point being one, you've got to be both.

MR CAPPER: But it says that, "They do not have a parent able and willing," so the parent may well be willing but not able.

30

COMMISSIONER: Yes, and that's enough for intervention? ---So the department has a role.

You'd be right if it said "or" - if the parent was "able or willing" - but it's both. To qualify for a protective parent you've got to be able and willing.

MR CAPPER: Yes, to quality, but you have to be able and willing. These parents are willing but not necessarily able to protect the child.

40

COMMISSIONER: So by definition they can't protect the child.

MR CAPPER: Well, that's, I guess, the issue, that whether or not these children fall within, because certainly the information available to the commission suggests that parents are being referred away, saying, "You're willing to protect the child, albeit you may not be able to. We can't help you." And so there's certain things - - -

50

COMMISSIONER: That doesn't make them right.

1

MR CAPPER: I'm not suggesting that. I was asking this witness's views of whether or not they should be within that framework.

Do you think there's a better form of words than "able and willing"?

MR CAPPER: That's a bigger question than I can answer at this stage, but certainly that's the view that we need to - I think perhaps something we need to canvass with witnesses, or certainly this inquiry would consider.

10

COMMISSIONER: Professor, did you want to comment on that? ---On the form of words in the act? No.

Whether that's a best descriptor of a parent - for want of a better word - a non-viable or unfit parent?---I think the example there is not - it's not a problem being raised about the wording of the act, it's a problem being raised about practise that's happening - a concern about practise that's happening. I'm sure we could point to many examples of good and bad practise. I don't see the legislation there as inhibiting the right action to be taken.

20

Okay. Mr Capper, are you happy with that answer?

MR CAPPER: Yes, thank you.

COMMISSIONER: All right, thanks. Anything, Mr Copley?

MR COPLEY: No. May the witness be excused?

COMMISSIONER: Yes. Professor, thanks very much for your time. I appreciate your evidence.

30

WITNESS WITHDREW

MR BURNS: Mr Commissioner, could I announce my reappearance - - -

COMMISSIONER: Yes, Mr Burns.

MR BURNS: - - - for this witness and possibly the next. Thank you.

40

COMMISSIONER: Welcome back.

**LONNE, ROBERT** sworn:

ASSOCIATE: For recording purpose, please state your full name, your occupation and your business address?---My full name is Robert Lawrence Lonne, that's L-o-n-n-e. I'm an academic, and my business address is the School of Public Health and Social Work at the Queensland University of Technology, Kelvin Grove.

50

COMMISSIONER: Thanks, Mr Lonne. What's that noise?

1

MS McMILLAN: I don't know, but it's stopped. I hope it was nothing to do with me. Mr Commissioner, can I announce my appearance. I appear in relation to this witness with Mr Simpson.

COMMISSIONER: Thank you.

MS McMILLAN: Prof Lonne, you executed a statement in relation to the matters before the commission, did you not?  
---I did.

10

All right. And can the witness just be shown a copy of his statement?---I have one here if you - - -

No, I'll just leave that one with you, please, Prof Lonne. Mr Lonne, would you look at these documents, please. Professor, is that a copy of your statement which was executed on 16 August this year, together with appendix 1, which has your curriculum vitae; and appendix 2, which is your 2003 submission to the CMC inquiry?---Yes.

20

I tender those, Mr Commissioner.

COMMISSIONER: Thank you.

MS McMILLAN: I have no idea what exhibit number that is, I'm afraid.

COMMISSIONER: It will be exhibit 42.

ADMITTED AND MARKED: "EXHIBIT 42"

MS McMILLAN: Thank you.

30

COMMISSIONER: No reason not to publish in full, from you?

MS McMILLAN: Not from my perspective. Professor, there's nothing in there that could not be published, is there?  
---Not that I'm aware of.

No, thank you.

COMMISSIONER: Okay. Thanks professor. That will be published.

40

MS McMILLAN: Professor, you have a copy of your statement and those annexures with you. Correct?---Yes.

All right. I'd just like to ask you some questions in relation to your statement, if I could. Firstly, your formal qualifications, you have a bachelor of social worker from the University of Queensland, 1981. Correct?---That's right.

And you have a PhD in social worker from the University of

50

South Australia, 2002. Correct?---That's correct. 1

Has your professorship been conferred on you, or is it an associate professorship?---No, I was conferred as a chair on social worker in 2008 at Queensland University of Technology.

Thank you. I'll just get you keep your voice up if you wouldn't mind?---Sure.

In terms of your work experience, you've held various academic posts in social work at the University of Queensland and the Queensland University of Technology. Correct?---Yes. 10

And your professional activities have been you're the immediate past national president of the Australian Association of Social Workers. Correct?---Correct.

And that is the peak accrediting body for professional social workers in Australia?---That's right.

And just in relation to that, they publish ethical guidelines, don't they, in relation to the practise of social workers?---Yes, both ethical guidelines and practise standards. 20

All right, thank you. And until 1997 you had practised in a range of what might be called front line roles including senior social worker, team leader, management and regional manager positions in Child and Family Services. Correct? ---That's right. Both here and in Western Australia.

In juvenile justice, yes. And I was going to ask you, that's both here and in Western Australia?---Yes. 30

And that includes metropolitan, regional and rural areas. Correct?---That's right.

You have been active, have you not, in the areas of research?---I have.

And you set out in your annexure the many publications that you've either authored or co-authored. Correct?---That's right.

You've co-authored approximately peer-reviewed journal articles?---Yes. 40

Nine texts, including the 2009 book, Reforming Child Protection?---I think it's two books.

Two books. And you presented some 68 conference and seminar papers?---That's correct.

All right. In relation to your statement, if you could take that up in front of you, you contend in paragraph 11 on page 2 that - you say that, "Positives of the current

50

Queensland system since 2003 include" - you itemise those. 1  
And then in paragraph 13 you indicate that the problems  
confronting us with the child protection system are for the  
most part longstanding and entrenched. Again you iterate  
those in bullet point form, don't you, in paragraph 13?  
---That's right.

And I understand in your text, the 2009 book, you go into  
some detail in relation to those matters. Correct?---Yes.  
The book really examined Anglophone countries - the US,  
Canada, New Zealand, Australia and the UK - all of which  
share similar approach to the protection of children. 10

20

30

40

50



Is it correct that one area covered in your book that you haven't listed there is broadening or net widening as an issue?---That's right. 1

All right. Would you like to just expand on what you mean by that?---Our understandings of child abuse and neglect change over time. They are essentially socially constructed so what a particular society and a particular community believes changes over time and what we see when we look at both Australia and elsewhere in the anglophone countries is a change in definition. So, for example, if you look at the work of Henry Kempe, the famous radiologist in the US, who wrote a seminal piece of research that looked at babies - - - 10

COMMISSIONER: Is that the battered child syndrome? ---That's correct. Yes.

In the 60's?---That's right. And so that study that he and his wife had done really put on the map the prospect that parents could wilfully harm their children, but if you go back centuries - you know, you could look at Huckleberry Finn who was abused by his alcoholic father. You can look at the work of Dickens, Nicholas Nickleby, et cetera, Oliver Twist, all of those actually go to the treatment of children and then if you have a look at more recent times with changing legislation in Australia, the definitions have gradually changed and the move away from the - - - 20

MS McMILLAN: The definitions of what, harm?---Well, the definitions - - -

COMMISSIONER: Abuse?--- - - - it was child abuse and neglect and then the language changed to become more about harm and in my view that was a significant net widening as a result of that, so that things - so that life events and incidents that hitherto had not been included under the mantle or the language of child abuse, neglect then became the remit of departments. 30

But before you had Kempe, you had the societies for the prevention of cruelty to children and animals?---Yes, yes.

So they pre-dated that?---And in fact the children's societies came out of the protection of animal societies which is one of the twists of history protecting the animals. 40

Yes. Taking the cart before the horse?---Yes.

MS McMILLAN: In terms of anglophone, can I just ask you to indicate what you mean by anglophone?---Well, anglophone - the English speaking language is the dominant language and those systems are - in those countries tend to be much more forensic and investigatory in their emphasis whereas, in particular, many of the European countries, such as the Scandinavian countries, take quite a different approach which is aimed at child welfare and much more emphasis on 50

family support rather than investigation.

1

Is it correct that in your text you identify perhaps the English speaking countries as being the child protection orientation - - - ?---Yes.

- - - whereas countries in Northern Europe and Scandinavia, you would perhaps indicate or categorise them as an integrated or child focused approach?---That's correct.

Indeed, you talk in your statement later about work you did in relation to Norway. Correct?---That's right. Yes.

10

At paragraph 15 you talk about what, in effect, is probably this broadening or net widening, don't you - - - ?---Yes.

- - - lowering the raft?---That's right.

But that's not necessarily a negative thing, is it?---It just depends because as we've widened the definitions, what we've tended to do then is have a system that's geared towards investigating lower level events and incidents and what that then subsequently led to was quite significant increases in notifications and it's those increases in notifications that led to massive blow-outs in workload which, in effect, changed the emphasis of the departments away from necessarily helping people to much more about investigating and intervening to prevent harm.

20

But is it correct though, professor, that in fact you may have heard some of the evidence before the commission thus far has been - for instance, there's been a very marked increase in relation to notification - - - ?---Yes.

- - - in relation to indigenous children?---Yes.

30

Now, some of the evidence has suggested that the reason for that is it's better identified; that there are more workers who are perhaps on site, if you like, rather than fly in, fly out, who are better equipped therefore to report on suspected neglect. Is it correct to say that that's just the blow-out because of that net widening or could it be that issues such as better identification of harm, for instance in indigenous communities, may be at least in part the reason for this?---I'm not persuaded by that argument and I'll explain my reasons why and I make the distinction between incidents and prevalence. The incidents of child abuse and neglect results from our investigations and then our substantiations. The prevalence is the actual rate of abusive and neglectful events and we know from enough evidence, both here and overseas, that the prevalence is higher than the incidents. In other words, a lot of abuse and neglect that occurs is quite hidden and never comes to the light of day to the authorities and there's a lot of reasons for that, which I can go into if you wish, but for me the argument that says, "Well, if we investigate at least we know what we're trying to deal with," seems to be the wrong way around because what that effectively does is

40

50

say to families: the way of getting attention to the problems that you have in your family life is through an investigation process, which is by its nature intrusive, stigmatising and sometimes quite debilitating to people and - - -

1

All right. I'm sorry. Go on. Yes?--- - - - to me it seems the wrong way to go to have the pathway to services and help and assistance for struggling families to be through that sort of process and I've mentioned in my statement my analysis, along with a colleague of the Victorian Child and Family Services outcomes study, which highlights that point, that there is a social cost to families in having a system that's geared almost solely to investigation.

10

All right. I'll come to that in a little while, but in relation to what you identify in paragraphs 15 and 16 are really identified as societal trends, aren't they?---Yes.

The media scrutiny is one, you say?---Yes.

And also the definition of criteria - and you say the impact in terms of the system overburdened and highly stressed and you talk about - an example about whether, for instance, childhood obesity should be included in the definition of child abuse and neglect?---Yes.

20

So they are societal drivers, aren't they?---That's right. Yes.

So in terms of when you come to look at reform and you say in your last sentence at paragraph 16, "Legislative reform can assist here," what my posit is that there really needs to be changes in societal attitudes, don't they, to perhaps shift away from what you point to in terms of these issues in paragraph 13, the risk averse, forensic - - - ?---Yes.

30

- - - net widening?---I make a distinction between the two. The societal pressures come out of a broad acceptance by the community that child abuse and neglect is morally abhorrent and reprehensible, but it also comes out of, I think, a broader notion of social care within the community that says, "All families have problems and issues and that when families have problems and issues, particularly with the care of their children, that they should be able to receive help." The bottom line is that there are certain behaviours that parents cannot do. So for me, I would distinguish that to then the legislation. The move to a definition of harm was ostensibly done because it - not in all jurisdictions, but in most jurisdictions because the terms "child abuse and neglect" were seen to be unnecessarily stigmatising to those involved and it was thought that the use of the language of harm would soften that and smooth away for a less confrontational process of protecting children.

40

50

I actually think the results now are fairly clear from a number of jurisdictions that it's had the opposite effect, that what it's done is it has scooped a lot more people into a system which has its approach primarily as investigation and that from a systemic point of view what it's done is shift a whole raft of professional social workers and others away from helping people to have in fact their primary function being to investigate.

1

All right. Now, in terms of the issues you articulate at paragraph 19, you say the system has been designed to tackle the most serious forms of abuse and neglect but it's nonetheless unbalanced and offers a single approach to dealing with the diversity. Now, can I just show you this figure, please, professor? Mr Commissioner, for your reference, this is from exhibit 35, page 8.

10

COMMISSIONER: Thank you?---Thank you.

MS McMILLAN: And perhaps - sorry, Mr Court Officer, I'll hand up a copy for the commissioner.

COMMISSIONER: This is the triangle from the - - -

20

MS McMILLAN: Yes.

COMMISSIONER: The framework.

MS McMILLAN: Yes. Prof Lonne, is this what you articulate at paragraph 12 of your statement, the inverting pyramid report, the National Framework for Protecting Australia's Children?---The inverting - the pyramid report was released by the Australian Research Alliance for Children and Youth the day after the COAG national framework for protecting Australia's children was released. This is from the COAG national framework.

30

Right, okay?---Yes.

But this is what you're talking about that this should be the appropriate, if you like, pyramid. Correct?---That's right.

It's just up on the screen so others can see it. Now, is what you're saying with reference to paragraph 19 that there's far too much concentration in the statutory system, if you like, at the apex of the pyramid currently?---Yes, I'm saying that, but I'm saying a bit more. I'm saying that the entry way for either targeted services, the red, or the early intervention services, the yellow, mustard, actually has to come through the statutory system, and that, I believe, is a fundamental systemic problem.

40

All right, because you would be aware of initiatives by, for instance, the Department of Child Safety in relation to RAI; you would know of that?---Yes.

And Helping Out Families, or HOF, as it's been called?

50

---Yes.

1

Now, they would be initiatives that you would no doubt say fit either within the second or third tier of this pyramid, would it not?---I'd say primarily the second, the targeted services.

All right. So given that that has been, we know, since - I think RAI was about 2006. Is that your understanding?---I think there might have been a pilot - some pilots the year before, but I could be mistaken in that.

10

Right, and I understand Helping Out Families was probably about 2008, 2009?---Yes.

So do you see that the investment in these initiatives is some move towards investment within those secondary and - that secondary level of this pyramid?---No, I don't.

All right. If not, why?---While those services, the two that you've mentioned, are laudable, I think if you have a look at the overall finance - the overall fiscal resources that went into the system expansion between 2003 and 2011, overwhelmingly it's gone to the statutory end, and whilst there has been substantial increases in both the secondary and the primary prevention, it pales when compared to the investment that's gone into the statutory services.

20

Well, I suppose it may be contended that there has been a necessity to do that because if you have the huge jump, as we've seen in - I'll call them reports of concern rather than actual substantiated notifications, then it could well be argued, for instance, that there has been a necessity to effectively allocate the funding into that top of the pyramid, the apex of the pyramid. What would you say about that?---I think that's a valid argument. I'd also had too that the history of child abuse inquiries is that in fact even though primarily in this country they've been around scandals, deaths, et cetera, they are typically associated with a spike in notifications, and a lot of that is as a result of the media coverage which puts the issue right before the community. The community then has concerns about particular children and the rate of notifications goes up. I know that there was a New Zealand study done I think late 2007, 2008 when they had some particular issues which demonstrated that. So part of it is the result of tapping into community concerns and anxieties about the welfare of children. It nevertheless is the case that the more money that you put into investigations means that there's less capacity to put money into preventative services, and that's really my point.

30

40

COMMISSIONER: Is your point that it's a bit like the application of Parkinson's Law, that the expenditure matches the money available, so that if you don't give as much money to the tertiary system it won't have as much to spend and therefore you will be able to spend more on targeted and secondary intervention?---In a way I - what

50

I'm clearly saying is that the biggest player on the block, the biggest kid on the block, is the department, and it has access to quite significant amounts of research, particularly from its statutory databases, most of which doesn't find the light of day, and they are in, you know, quite a powerful position to be able to argue persuasively to government for increased resources to match increased demand, particularly through notifications. It's far less easy for the community based services to either access that data or to put up a convincing argument before government, and that's a pattern not just that's happened here in Queensland but it's happened elsewhere.

1  
10

Doesn't the department know about this triangle and the framework like everybody - - -?---Undoubtedly.

Undoubtedly. So why would it be resistant to going to government and saying, "Look, your best demand reduction for the tertiary at the top is by putting more money down here in the middle"?---Well, the national framework says that's what they should do, but from my observations there certainly hasn't been the investment over particularly the last three years since the 2009 national framework to really see this as an area to be boosted. Now, I place a caveat on that, in the sense that following the Queensland Industrial Relations Commission decision to revalue the award in community services the Queensland government put substantial resources, over \$400 million, but in a sense that was to address a longstanding workforce issue, namely low salaries that were meaning the sector's viability and sustainability was in question, not to expand services.

20

But the department, or the chief executive, directs the money that's allocated in the budget for child protection or child safety, however it's called?---Yes.

30

Presumably tertiary services, intervention, costs what it costs. You don't create more demand for it by how much money you make available to it. It's the other way around, isn't it? You meet the demand with the money that you've got? Like, they're paying for tertiary services from their budget but they don't pay any more than they need to pay, do they?---Well, the tertiary services, the flow through in particular not just of the notifications but the children in care, the increasing numbers of children in care from being longer in care and coming into care at an earlier age, for my mind, and being the cost driver, that's pushed the available resources into the statutory system. Now, quite clearly the state has an unambiguous responsibility. If it's the guardian of children it has to provide a satisfactory standard of care and living.

40

It just buys that from the NGOs?---Largely. There's also quite a lot of foster parents who are under the jurisdictional - - -

But it is outsourced?---That's right, largely. But again, if you - and I think I expanded on this in my statement -

50

the move in the late 90s, not just in Queensland but elsewhere in Australia, to move toward an almost solely-based home-care system for alternative care - primarily foster parents, but then increasingly kinship care - has happened at a time where major demographic and economic changes in the country meant that it was decreasingly possible for ordinary families to be able to take on the responsibility of caring was some-one else's children, so there was a - and we moved out of, in many jurisdictions, particularly in Queensland moved out of residential care because it was seen as very high cost, and it is. It costs a bomb, particularly for older children and children who have major emotional, psychological issues to deal with. So we changed settings, we moved to foster care and kinship care model. At the same time when families were finding it increasingly difficult to put a roof over the head and where not just one parent but in two-parent families, two parents had to work just to keep - - -

1

10

Is that why demand outstrips supply?---That's a fundamental demographic issue. Well, it's not just demographic but - - -

Economic as well?---Economic, absolutely. It's about affordability.

20

So you've got less foster parents because they're struggling with their own family, they can't afford another mouth to feed?---Yes, and they're working long hours and do they really want to take on someone else's - - -

And for how long, and what sort of child and - - -?  
---That's right.

- - - all that sort of stuff. Okay. Where are we now in 2012? That was the 1990s?---Well, in 2012 you've gone further down that path. Kinship care has some real benefits, particularly for the children but also for communities, and it's certainly relevant to the thrust of the question about over-representation. The trouble in a policy sense in my view of kinship care is that in some respects it's been born out of a philosophy that because you're related to a particular child you therefore have a familial responsibility to care for the child; and in this sense, it's been underfunded because of the issues I said before, families, whether their kin or not, just have a lot of difficulties caring for extra children. But in particular, the models of kinship care - and this is not just here, but certainly in Canada, that I know of, less so in New Zealand - that the models of - actually, and the UK has been bad as well because there is a major report there.

30

40

MS McMILLAN: This is the Munro report?---No, it is the - there was a UK task force on kinship care from about two years ago - which highlighted that for people engaged in kinship care they're still part of the broader family and part of the broader community and there are all the life issues that they've had in their own family of origin or

50

the community of origin, are replayed; you know, the script is replayed with the placement of the child, and so there are often quite significant sibling disputes between the carers. There can be also major issues for those people about how do you deal with caring for the child when you are still in dispute with your sibling, for example? I just use that as an example; or your cousin or whomever. And the evidence is that departments largely leave families to themselves, to their own devices, and I think that's a real problem. It is a real problem for those particular families and for the model as a whole.

1

10

What would you suggest might improve the situation?---I think the whole framework of kinship care needs to be rethought, and in particular to explicitly understand that when people put up their hand to say, "Yes, I'll take my niece or nephew or cousin or whoever into my family," that there needs to be an explicit recognition that they're not just taking on the care of the child, they're actually taking on long-standing - typically long-standing and significant emotional and relational issues and they need help. They need help to be able to deal with those.

So are you saying that because for a child's perspective obviously there are all sorts of benefits in trying to place them with keen, is there not?---Yes, under the - - -

20

There's identity issues, there's a whole range of issues, there is better - - -?---Placement stability is a lot better.

Stability; historically it's a more stable place, isn't it, kinship?---Yes.

But also there's the prospect of staying in touch with their own siblings, the children?---Yes, connections with family and broader community, yes.

30

And also understanding, as I say, identity issues, health issues?---Yes.

To know whether there is a family history of particular diseases?---That's right.

There's all sorts of benefits. And also probably a likelihood they can remain in the same type of community? ---That's right.

40

Right. So what you're saying is really re-jig it to the extent of putting some intensive resources into assisting those families - those kin to care for those children? ---That's right, and I juxtapose that with the statements that kinship carers have told me about a general parsimonious attitude by departmental staff; you know, the expectation that they should be caring for their kin because they are kin, with little real understanding about the costs that that involves.

50



Because as for other foster carers, kin would face the same challenges, I would imagine, that children when they come into their care will be probably displaying very challenging behaviours, won't they?---That's right. 1

Because they've been removed, presumably because of trauma that have suffered?---Yes.

So that you'd be aware, I imagine, of the Evolve service that's - - -?---Yes.

- - - been put in place to assist foster carers. What you think that would be similarly a very necessary sort of initiative to undertake with kinship carers?---In my view it's probably more essential. 10

Because there is family-of-origin issues that need to be addressed?---Yes, that's right.

All right.

COMMISSIONER: Does the child endowment - if that's what it is still called - follow the child or the parent? 20

MS McMILLAN: Its parent - it's family parenting payment, is what it's called these days?---That's right, and it typically follows the child.

COMMISSIONER: Right, so it will follow the child into the foster home?---That's right. But that can actually be an issue for parents then. If a parent is on benefits, so they're low income, and then the children are removed, their income takes a whack because the parenting payments follow the child. That can be an issue for people who are trying to deal with drug problems, domestic violence, whatever, and then your income takes a southward trend - - - 30

Or your cousin gets it - - -?---Or your cousin gets it - - -

- - - for looking after the child?---That's what I mean, that sort of stuff can tap into long-standing family enmities.

Yes. It is so we've got foster care, we've got kinship care, we've got - - - 40

MS McMILLAN: Yes, residential care.

COMMISSIONER: - - - residential care, we've got adoption, we've got staying safely enough at home?---Yes.

What other options have we got?---There are - and I outline this partly in my statement - the initiatives that I've seen in Alberta, Canada to try and provide quite intensive services to families where there is an absolute a risk of removal, I think are another alternative. Those sorts of 50

programs really fall into the yellow area there, the targeted services. What they recognise is that - what the Canadians have recognised is a few things and I think probably Victoria has recognised this too - first of all that the problems that these parents have are multiple and complex, they don't typically have one problem, they have three or four or five; and those can include, you know, disabled child, alcohol and drugs, mental health, domestic violence, high residential mobility with all its attendant losses of connections with community, et cetera. And they don't just need the intensive service for a month, six weeks, or three months, they actually need it for 12 months, 18 months, two years. And in fact the Victorian study has shown that some of the families need it for longer than that. Why that is an important point is in our Queensland child protection system the time frames are much reduced. The time frames are typically three months, six months, which don't actually fit with the reality of the life circumstances these parents face.

1

10

MS McMILLAN: And in terms - also just one other factor, paragraph 28, that you talk about is for foster carers and kinship carers if an child has come into the home because - and displaying challenging behaviours - - -?---Yes.

20

- - - or indeed is fairly profoundly disabled, then that puts pressure on because would it be your understanding that it is often the female partner that then needs to try to remain at home - - -?---Yes.

- - - to care for that child, either the child themselves or in addition to other children of their own that they had?---That's right.

30

40

50

And that undoubtedly must place economic and other pressures upon the family, mustn't it?---Yes. I'll give a figure that is from the Victorian CAFSOS study, one of the things that we found when we examined that study, it's basically just under 1000 parents and carers, about a third from child protection, about a third from Family Services, which are the community based services, and then a third in out-of-home care. What we found was that the rates of having a disabled child or a child with a learning disability in the house - and I'm going from my memory here, but I'm pretty sure it's right - seven times the general community rate for the out-of-home care, six times the general community rate for the Family Services and it was slightly under that, about five for the child protection. You know, what it means is you're talking about vulnerable families. When you throw into the mix a child with a significant disability and the associated behaviour and emotional problems, you've got people who are, you know, pushed beyond their abilities.

1

10

In terms of just the commissioner mentioned issues of adoption, financially, is it your understanding that if a foster carer or kinship carer adopts, that financial assistance, the parenting assistance - - -?---That's the federal parenting assistance.

20

The federal one - - -?---Yes.

- - - may well continue, but benefits that they may have received from the department in relation to fostering would, of course, end, wouldn't it?---Cease. That's right.

Yes. Can I just ask you, paragraph 29 and 30, you refer to this motel style accommodation?---Yes.

Can you indicate what you understand by this 24-hour motel style accommodation?---I'll say at the outset, this happens elsewhere. To my direct knowledge, it happens in not only Queensland, but in South Australia and New South Wales in Australia and it also happens in provinces in Canada. For me it's one of the archetypal illustrations of a system that is reacting to immediate need, but that's overstretched and then makes an ethical leap that I think is unwise. In other words, what happens is the placement breaks down. The child's behaviour is difficult on a number of levels, challenging, whichever language you want to use. We can't find a placement. We have a responsibility to place the child. Where do we put the child? So it comes out of a very real need, but the net effect is that then children are placed in motels and then around the clock youth worker model is used and there are a number of providers that provide the staff and you have then children sitting in a motel room playing Nintendo.

30

40

In terms of this, what's the source of your knowledge in terms of these sorts of placements? Is it anecdotal or has it been as a result of studies that you participated in or are aware?

50

---The data is almost impossible to get. That's been my experience; trying to actually go fishing for it. You're much more likely to get anecdotal information from departmental people, you know, who admit that it's going on, but there it seems - well, what do we do about it?

1

In terms of these sorts of placements, are there two types - and I'm particularly referring to Departmental Transition Placements Policy, policy CPD602-3, that there are transitional placements and also emergent accommodation?  
---Yes.

10

Now, just explain what you understand transitional placements are?---Transitional placements to my understanding are the ones where there's a clear plan about what's to happen for the children. Quite often you can have events happen for foster carers or for kinship where they're not quite able to care at this immediate point in time and so a plan is made to transition the child to other carers or there's a transitioning of a child and a preparation for the child out of care.

All right?---The other one, the emergent one, is when suddenly a placement breaks down and you've got to find a roof.

20

In terms of your understanding, this motel style accommodation, is that transitional or emergent or both?  
---I don't know that I'm in the best place to make - - -

All right. What's your sort of understanding that's anecdotal, what sort of numbers would we be talking about?  
---The numbers aren't huge, but the fact that they exist - when I say the numbers aren't huge - and I should say, look, this stuff is on the public record. It's been featured in newspaper articles, too, in The Australian, in the Sydney Morning Herald and in the Courier Mail, from my recollection. The major problems that are experienced are for children typically in their teenage years where there are major behavioural issues and that can be aggression or it can be risk of sexual assault of other children - and a very real issue - or where there's large sibling groups and I suppose the points I'm trying to make are not about pointing the finger and saying, "This is the result of bad people in the department." It's not that at all. What I'm saying is what you're finding is that systems that would normally look at this sort of arrangement and say, "We're not going to do that at all," that get forced in there by a set of circumstances, but what it reflects is in fact the (indistinct) state of the out-of-home care system in itself. That's what it reflects.

30

40

So is your point really that one can understand it would be quite legitimate for, say, emergencies or perhaps short term transitions, but is it your understanding it's being used for longer periods - - - ?---It has been. Yes.

- - - than it should have been?---That's right.

50

Right. And that reflects - - - ?---Like six or 12 weeks, I think. You know, what message do we send to young people for that sort of time period? I think it's a really bad message.

1

All right. So you're saying that therefore reflects the lack of options, effectively, for these young people?  
---That's right. That's right.

All right. I wanted to ask you, paragraphs 24 and 25, you talk about the parents being left feeling angry, alienated and hostile towards any further intervention or help?  
---Yes.

10

In paragraph 25 you say that, "Parents" - you're obviously referring to - "if they don't prove to be forthcoming with relevant information then departmental staff would be likely to act upon incomplete information." In those paragraphs, really, what you're doing is identifying the duality of the role - - - ?---That's right.

- - - that child protection workers have. That is, they are there to investigate and see if harm is to be substantiated - - - ?---Yes.

20

- - - but at the same time saying to the family, "You must work with me," effectively a therapeutic role?---Yes. That's right; or a segue to a fairly - - -

A segue into it?---Yes.

Now, is really that ever going to be possible to combine the two?---In my personal experience, I have done over 1500 child protection investigations and I know that it's possible. It's not possible always but you can have an approach to practice where that is absolutely possible. It doesn't just happen in child protection. It happens in areas like domestic violence, all right, or other social problems where - say, for example, working with young offenders, it's exactly the same and skill practitioners both have a very clear idea about what their legal and other responsibilities are, but also they marry that with the ability to develop a rapport and a trusting relationship with a person. It's in a sense social control and social peer and a melding of those two roles.

30

But, in essence, save domestic violence, if you're working with either a perpetrator or a victim in relation to that, there's not the punitive measures that are necessarily associated with child protection, are there, because for most people there can be no greater fear that their children are going to be removed from them. Correct?---I'm not sure your analogy is a good one. I mean, domestic violence can have absolutely fatal consequences for - - -

40

No. But in terms of working with that person, there's not that policing role, if you like, with it, is there, that

50

there is with the child protection worker who is both assisting families but also gathering information at the same time, are they not?---Well, I understand the thrust of your question, but I'd look at the Northern Territory legislation now which requires anybody who's aware of a person who has been subject to a domestic violence event is required to report, so I think that's a good example of where social policy can go badly awry. That said, I think that the difference for me is about the level of vulnerability here because you have children of a variety of ages, particularly the under fives, who are highly vulnerable and as a departmental officer, you've got to have a very clear understanding of the potential for things to go badly wrong.

1

10

All right. In fact, that leads me into questions in relation to qualifications.

COMMISSIONER: Could I interrupt you there - - -

MS McMILLAN: Of course.

COMMISSIONER: - - - because it's 1 o'clock.

20

MS McMILLAN: I got carried away.

COMMISSIONER: We might leave that until after lunch.

Before we do break, professor (indistinct) - - - ?  
---Yes.

- - - is it like Ontario where you have private children aide services that are simply funded by and supervised by the ministries?---Yes.

Right. It's purely a privatised system, including investigations?---No, no. In Alberta the Department for Human Services does the investigation, similar to here, but there's - and there are also departmental out-of-home care services, but there's also quite a range of not-for-profit largely or not-for-profit service provider in out-of-home care and in treatment services, community based services.

30

I think in Ontario the whole system is privatised. It's just supervised by the ministry?---Yes. No, Alberta is not that same way.

That's the thing about Canada, it's quite a different political system to what we have?---That's right.

40

Excellent. All right. Well, quarter past 2.

MS McMILLAN: Thank you, commissioner.

THE COMMISSION ADJOURNED AT 1.02 PM

50

THE COMMISSION RESUMED AT 2.17 PM

1

MS McMILLAN: Mr Commissioner, Mr Allen from Legal Aid is joining us this afternoon.

COMMISSIONER: Mr Allen, good afternoon.

MR ALLEN: Thank you, commissioner.

MS McMILLAN: Yes, thank you. Prof Lonne, just before lunch I had asked you some questions about the duality of the role of the child safety officer and I understand your evidence to be that you considered that you had successfully been able to combine those two roles when you had worked as a front line worker. Correct?---Not just me, obviously as well.

10

Right. In your book Reforming Child Protection which you wrote with others, at page 140 could I just ask you to read the passage with the two lines - sorry, it's page 140. If you just read that to yourself?---Yes.

Then if I could ask you to read the highlighted passage in the article you wrote with Bente Kojan, is it?---Kojan.

20

Kojan. "A comparison of systems and outcomes for safeguarding children in Australia and in Norway, child and family social work, 2012"?---Do you want me to read that out aloud?

Just to yourself, thanks?---Yes.

Professor, just in terms of your text, in relation to that passage in which you and your authors state, "We view the combination of roles such as protection to all children, investigation, surveillance, prevention and early intervention assistance and support to families, provision of alternative care placements and guardianship of children in care as seemingly impossible for any single agency to handle." Correct?---That's right, yes.

30

All right, and that was your view with your co-authors?---Yes.

"Moreover, these sometimes competing and incongruent roles and associated functions are immensely confusing to those people who come into contact with child protection organisations." Correct?---Yes.

40

"Latterly, we believe that altered structural arrangements are an important step in facilitating the rebuilding of service user trust and the capacity of the child and family wellbeing system to help people in need and to protect the vulnerable." Now, what I've read out to you, does that not indicate that there are inherent difficulties in trying to combine all of those roles in a single agency, let alone within a single case worker, effectively?---Yes, and I'll

50

start - I agree, and I'll start by saying wherever the agency is, wherever the worker is located, whether it's a community services agency or with the department, they still wrestle with those issues.

1

Yes?---So, for example, someone on the front line of a community services agency - and it could be a domestic agency where someone turns up, has been assaulted by their partner and has children, faces the same issues about reporting and about taking an approach which may be interpreted by their client, the woman, as hostile or against their interests. I think the point I'm making is a bit more nuanced here, and I hope we made it better in the book, is that it is certainly possibly for a good practitioner to balance the social care and social control functions. That's the essence of good practice whether you're in the community services or whether you're at a statutory role. The difficulty nowadays is that in Australia, and in Queensland in particular, the role that statutory agencies have taken and the plethora of procedures and policy particularly around mandatory reporting and passing on information, I mean, it is almost - not impossible, but very, very difficult indeed for workers to build trust with families. One of the things the CAFSOS study has shown, the Victorian study, is that there is a price to pay in relation to how we direct people into the health pathway.

10

20

In terms of your review of the Norwegian-Australian systems you will see at the end of that paragraph, "In their eagerness to avoid family breakdowns the Norwegian CWS" - which is the child welfare service, isn't it?---Yes.

"Are perhaps giving parents too many chances and providing supportive rather than protective services." Doesn't that tend to show again the inherent difficulty in providing both support and protective services?---I think that's a different point. What we were trying to drive at there was that when you compare the rates of children in out of home care between Norway and Australia what clearly comes across is that there are very few children in the Norwegian system, young children under five and less so between five and 10 - very few children who come into formal care and that in fact where their big removal of children is, or removal from the parental home, is when children reach their teenage years.

30

Yes?---So what we were making the point there was that in a system that's really - the Norwegian system, where it's really focused on providing early intervention and prevention and support to families, that one of the prices to pay for that system is that you are going to miss some families where despite the early intervention and prevention the family relationships still deteriorate and those issues typically come to the surface, certainly in Norway, in the teenage years.

40

Right, so further then in terms of the CMC recommendation

50



2004 5.12 and 5.13, the recommendations that the case work and investigative functions of the DCS be vested so far as possible in different staff members and that the DCS employ staff with special investigative skills and an understanding of child neglect and abuse issues to investigate complex notifications about abuse of children in care - I take it you would be aware of those recommendations?---Yes.

1

That in some ways would at least go to address (1) the difficulty in both the therapeutic, if you like, working with families, as opposed to the investigative issues, wouldn't it?---It does, and I'd strengthen it by saying my knowledge of the Albertan system is where increasingly they do investigations with a departmental officer alongside a community services agency so that in fact the duality of the roles as well as the crossover between the roles is covered.

10

Right, well, that's what I was going to ask you, that therefore you may well avoid perhaps the pitfalls of say the Norwegian system, in the sense that you're less likely to have children falling, if you like, through the gaps? ---That's right.

20

Now, in terms then - I want to ask you about some of your issues in relation to reform, that at paragraph 59 of your statement you indicate that there's a remarkable consistency between the child protection legislation around Australia?---Yes.

You say that trying to address answers to the system's problems in legislative policy or policy reform are likely to end in little reward. You then go on to say at paragraph 60 that you found yourself increasingly concerned with the legislative changes adopted in Queensland post CMC that have been overly influenced and shaped by departmental imperatives to reduce external scrutiny by the Childrens Court and make it easier for the departmental case related decisions to be resistant to pressure from outside bodies. You say you remain to be convinced that this has improved the protective system. Now, what do you understand are the legislative changes which reduce the scrutiny by the Childrens Court of the department's role?

30

40

50

---I don't have them right here in front of me but my recollection is in about 2008, 2009 there were legislative changes that were put thought at that point that seemingly in a subtle way - but I thought far more significant than that - placed limitations on what the Childrens Court role would be as a review body - a review of departmental decisions, that is.

1

And so does one take it, then, if you like, on the other side of the ledger, that you're of the view that the Childrens Court performs an important oversight role of the department?---My experience of Childrens Court over the years is that by and large they do a pretty good job. There are some weaknesses as far as expertise but when you look at - we've got a pretty big state and there are a lot of different communities. Generally magistrates who perform the role of a Childrens Court Magistrate have a good understanding of their community. That said, the capacity of parents to get proper legal representation in matters before the Childrens Court is highly varied.

10

In fact that's what I wanted to ask you about. That presupposes, doesn't it, that the process in and of itself empowers people sufficiently: (1) through representation, for instance, of themselves; and secondly through representation of their children. You would know, would you not, that there are not a higher percentage of orders made for children to be represented separately. Correct? ---Mm.

20

So that one of the issues in terms of the Childrens Court is whether that process in and of itself provides any transparency - some transparency - and if you like, ability for the parents to participate in the process, doesn't it? ---That's right. But my examination over the years of alternative systems that have sort of used a family tribunal-type set-up is that there's always that tension between the legal requirements for the body to follow to make a decision. The reality is for most of these parents who are having a proceeding taken to remove their children, is that they're in a forum that's completely foreign to them.

30

Yes?---And the capacity of the department to assemble a very good case shouldn't be underestimated. Generally the department does that pretty well. So parents typically are finding themselves in a situation where they don't understand the rules, they don't understand particularly what's happening or the processes, and they're not in a great position to be able to defend themselves or their interests.

40

Further to that, in relation to court matters we understand from the evidence that's been given of the 2009 workload analysis project - performance analysis - that some 47 per cent of a child safety officer's time is spent in seeking an order, on an application amendments or reapplying for orders?---Yes.

50

Yet apparently that only represents 12 per cent of their case load?---Yes.

1

So that that would further compound, wouldn't it, their lack of availability to actually do case work, wouldn't it?---I think it's actually worse than that. What happens - and this is from my personal experience - what happens when there's a contested application or an application to extend an order is that in an environment that is resource-strained within the department the emphasis is naturally put on gathering the evidence to be successful in the court outcome. What that does is fundamentally alter the nature of the relationship between departmental staff and the family. It in essence becomes - not in all cases, but in the majority of cases - adversarial. And any movement there may have been on the parents' part towards a more collaborative or more working relationship are often frustrated. So there's damage that - and I should add that one of my - I was a critic at the time of the new Child Protection Act coming in, of the limited orders. My experience in heading up court services was that it typically takes parents at least a year following a court process to remove their children to get into a position where they're starting to be prepared to listen to what the department has got to say. My fear - and I think it's been borne out - is that if the departmental officers then go back into a process to collect evidence because they feel the family haven't moved sufficiently, therefore there's a need for an ongoing order, it just makes it a very tight circle and sometimes just impossible for parents to move their heads and their hearts into a position where they're open and receptive to help.

10

20

There would be, one would think, irreparable harm from the moment that they sought the initial order, wouldn't there, in terms of the relationship between the child safety officer and the parents?---It's not necessarily irreparable, but there's certainly enough evidence now to show that the initiating of court action is such a watershed moment for most people that it takes them a significant period of time to get over.

30

All right. You say at paragraph 61, "The abolition of mandatory reporting," or major amendment. What do you say - and why do you support that?---For me mandatory reporting offers a lot as far as addressing a broad social anxiety about egregious sorts of harm that could occur to children. We typically have these calls for mandatory reporting following some horrendous event where there's a really barbaric or brutal bit of parental behaviour that is so shocking that the community and the media in particular say, "How can this happen? How do we prevent it?" However, the mechanics of what has happened in jurisdictions - particularly in North America, but also in Australia following mandatory reporting - the mechanics of what actually happens is then you shift the system in a very marked way toward seeing investigation as the service

40

50

that's provided rather than help and assistance to families to protect children. 1

I don't know if you're familiar with the evidence given by Ms Davies, but she indicated - she's a child safety director within Queensland Health, or has been - and her evidence was to the effect that for them to make a notification or a report to the department was really well down the process, that they had been attempting to engage with the family, and it was at that point if they were unable to or there were still issues of harm, that they made the notification. Doesn't that give some credence to the fact that the work may not be being done by child safety, but it's being done, for instance, say through Health, and that's really the end point of a process where they haven't been able to engage sufficiently or assist the family?---That's certainly the case in some cases, but it's not the case overall. I think it's a generalised statement. You need to understand mandatory reporting occurs on at least two levels: one is the legislative basis, and it's now in every state with different - - - 10

Yes?--- - - - legislative requirements in different states. And typically it's for teachers and health staff, and sometimes it's limited to sexual abuse, such as in Western Australia, and sometimes it's more broadly. That's one way of mandatory reporting. The sister mandatory reporting, which isn't legislative, is actually contractual. Quite often what that is, is through the contracting of funded services, usually typically not-for-profit, requires that organisation to have robust policies and procedures in place for the identification and provision of information to the department to prevent abuse and neglect. So what's happened in the community services sector is that now there are a raft of policies across the sector about reporting. But even with both of those systems - and again, there's a mountain of research about mandatory reporting about this - is that what happens is that for those practitioners, whether they're doctors, nurses, teachers, or whomever, who have a good relationship with the parents and the family, they typically go through a very difficult decision-making process before deciding to report. 20 30

Yes?---Quite often they don't report even though they know the legislative requirements require them to. They don't report because they make a reasoned judgment that if they do it will destroy their relationship with the family - that's one part; and the second part to it is that they realise that - sorry, they make a judgment that the department won't be able to help anyway. 40

In terms of your understanding of that, what information shaped that? What's your sources of information for those two conclusions?--A good report to read is Harry's and Clare one, I think I referenced in my statement, which was a very detailed examination of mandatory reporting and the research.

1

COMMISSIONER: Professor Lonne, I gather what - my interpretation of some things you've said in your statement that because for various reasons, including mandatory reporting or - there's another way actually with mandatory reporting. The police unilaterally impose a policy on the department - - - ?---Yes.

10

- - - by reporting all instances of witness to domestic violence?---Yes.

But this would contribute to over-reporting?---Yes.

And because there are so many reports it, in turn, makes the process more forensic and investigative?---Yes.

And that would take extra time and money, but you also make the point that the substantiations, which is the threshold for entry into the system, is stable or dropping?---Yes.

20

It can't be the increases in notifications causing the burden on the post-entry system or what we call the tertiary system, can it?---That's right.

So it's not that. It may be - - - ?---No, no. That's right.

- - - thought to be a waste of time and effort and money? ---Yes. Yes, that's correct.

30

But it's not burdening the out-of-home care system, is it? ---No. That's correct. Sorry. I've said no, that's - yes, that's correct.

Okay. But isn't that where our main problem lies? I mean, we can do something about the reporting and say, "Look, stop reporting all these things because no-one is doing anything about it anyway, they're just going in the bottom drawer." It would be useful if someone did do something about it at the preventative stage, but we can do this on this system which will change that. How would you advise me to do something about the duration, the lengthening duration, of children in out-of-home care which has got nothing to do with notification?---Yes. To my mind that's one of the key nubs of the best issues that face us. My analysis would be this: we would say that once you've rearranged your system to be more forensic and investigatory, the discourse, the practices, the attitudes, the beliefs, the drive, the drive staff behaviour and, importantly, shake the relationships that they have with parents, largely parents, is one of, "I must get the evidence and if I get the evidence and follow procedure

40

50

then I have done my job." However, when you compare that to, for example, the Scandinavian system, the discourse that drives the intervention there is that here is a family in need and if I intervene and offer services, make an assessment of what the needs are rather than the risk - if I make an assessment there, I have done my job. Now, why that's an important difference in the approach to the job and it's not just the approach, it's the thinking that's behind the relationships, why that's critical is that once children are removed, if the parents then feel, for whatever reason, "I can't get help from the department. I don't trust them. They've used information against me. I shared information with them and now I find it, you know, thrown against me," then where do they go for help? The answer is quite often they don't and so what happens is six months, 12 months, two years passes by and from the department's point of view, they look at the parents and say, "See, nothing has happened, nothing has changed. We should go for a longer order."

1  
10

Yes; and they do, but see isn't all that triggered by the level of substantiations as opposed to the level of notifications and the forensic and investigative phase relates to how many substantiations you get and we're getting lesser substantiations rather than more. I'm still not understanding?---Okay. So from the position of the departmental officer at the 12 month, 24 month, et cetera, is they then make a risk assessment. So it's not an assessment of need. In other words, "What are the needs of this family?" it's an assessment or risk, risk to the child, "What risks are there of harm?"

20

This is after the child has been in the system for two years?---This is after the child has come in. That's right. My argument is that that framework is the key that keeps the children then in care because it's a risky business for a departmental officer to say, "Okay. Well, I want to return the children," when there's been no real evidence of change.

30

Isn't it true that with the lower substantiation rate that there are fewer children entering the system to stay longer?---That's right, but if you had your alternative care, your out-of-home care system clogged up then what you find is even though you're bringing in new children at a reduced rate, you're struggling to find placements.

Okay. The other thing you say - sorry, Ms McMillan, but while I remember these things - that the definitional shift from actual harm or injury to the risk of harm, in fact it's - and harm is defined in terms of the significant detriment to wellbeing - - - ?---Yes.

40

- - - which is pretty low?---Yes.

You say this contributes to two things; the more forensic nature of the system?---Yes.

50

But if you based a system of intervention on proven harm or proven injury, wouldn't that make it even more investigative and more forensic because you have to establish these two things to an appropriate standard? ---You need - a well functioning child protection system has both. It has to have a forensic capability. 1

Yes?---The question is how much of the system is that and, for example, if you look at the Victorian system where their Child First, their Family Services entry, two-thirds of the families, two-thirds of the children that enter into their system come through direct approaches by parents and families to those services. I'll just give you another example of how it's different here. In the (indistinct) comparing Norway, one of the things that really - when we were looking at the analysis, one of the things that really struck out to me was that in Norway, 25 per cent of the referrals are from parents. If you compare that to Australia, it's less than 5 per cent. 10

Yes, but they're referring to different points in the system and they're referring to different systems. What you're talking about - it's a definition and I don't want to sort of get too deeply into it because I've been through it with other witnesses, but there is a place for the tertiary intervention, obviously?---Clearly, yes. 20

At the moment we've got 8000 kids in out-of-home care. You say that's too high?---Yes.

Right. What should it be?---It probably should be at least a one-third estimate. That's what I would go on. I watched with interest the numbers go from about, from memory, 3400 or so in 2003. I remember I did some analysis of the department's data in around 2010 and looked at the rise in the number of children in care and found that 60 per cent of it was indigenous children and the sense that I made out of that was that I couldn't see any - in what was then a thriving economy - structural reasons for there to be such a need to increase. I thought it was driven more by risk averse practice within the department and, more broadly, within the community and that my worry at that stage was that children would stay longer and I think there's - Clare, too, has certainly been producing evidence of - - - 30

Okay. I'm starting to understand your major premise and it seems as though the risk aversion, the over - not so much the over investigation because the substantiation rates seem to be - - - ?---Yes. 40

But it's what you do with the substantiations?---Yes.

Once you've substantiated a fairly low level risk to wellbeing - unacceptable risk to wellbeing or something, the child has been rescued from that by being put into - by being taken out of home?---Out of home care, that's right.

1

Instead of being kept in the home and supported at home. Is that what you're saying?---That is, and part of the thinking problem is that quite often people see out of home care as saving the child.

Yes?---At one level it does, it saves them from an immediate risk, but the problem with long-term out of home care is that eventually the chickens come home to roost. So issues such as identity, about, "Where do I belong?", all those existential issues that all children go through and must - - -

10

They have remained unresolved during the period of - - -? ---Absolutely. "Did my parents love me? What did I do wrong?" All those sorts of issues come out.

Okay?---Which, I should say, often then has an impact on the stability of the placement - - -

20

Well, where would you raise the bar? We don't like the definition of harm because it's a significant detriment to the wellbeing, so what would you call it? Or wouldn't you call it harm? Do you want proven abuse and neglect, or a neglect, abuse or neglect?---In my statement I was trying to make the point that I don't think legislative change in the end will be the big driver of reform. It will be the way that the training and the discourse that drives departmental officers in their practice that will be the big change.

So it will be making the least - it will be finding the least worst option?---That's right.

30

And having the confidence in the decision that although it might be criticised, as far as you were concerned at the time it was as good as you could do?---That's right, and I'll give - I'll suggest this: the best interests principle, as we noted, is both in Norway and in Australia, and it's a key part of the United Nations Convention on the Rights of the Child, which I might add clearly positions children's rights within family and connections to community, so it's a broad concept of children's rights, not a sort of dualistic children's rights versus parental rights and it's sometimes portrayed - mis-portrayed as. In the application at times of the best interests principle I know I've heard anecdotes from parents who have had departmental officers - or this is their understanding, the parents' understanding, that they've had departmental officers say to them, "You're not my client, the child is my client, and I'm making this in the best interests of the child, this decision." Now, the net effect of what that does to parents is marginalise them. It also says, "I'm not here to help you," right, "I'm here to look after the

40

50



child." So it establishes or reinforces an adversarial relationship, but the important thing is that it's actually a very narrow understanding of the principle of best interests. I've had four children and raised them successfully and as a parent you constantly make decisions in the best interests of your children, but you don't use a narrow - you don't always use a narrow, "This is what's best right at this moment." I mean, you might if the child was playing with matches, but you're not going to - you know, usually you have a framework that's much broader about raising your child to be a good citizen, that when the child gets to be an adult that they will be able to engage in healthy relationships, they will be a productive citizen.

1  
10

But that's John Stuart Mill's idea of the competent adult?  
---Absolutely.

We're not talking about them, we're talking about families that are headed by - see, it's not the best interests test that the chief executive is applying at that point, it's the test of is the child in need of protection?---That's right.

20

That's not a best interests test?---No, but the best interests test comes right the way through the case management.

How is best to protect the child?---Yes.

Okay, I understand?---And my argument would be that the department needs a much broader - departmental officers need a much broader understanding of what the best interests principle actually means, and that it means that you need to make wise decisions, taking into account a whole range of ethical issues and ethical - - -

30

But, see, don't forget, when the child safety officers are making these decisions on behalf of the chief executive they're doing it at a substantiation point. Now, the substantiation involves a conclusion that the child is at unacceptable risk or whatever and is in need of protection, or suspected to be in need of protection. It's been assessed and investigated. They've concluded that this child is in need of protection, which means by definition they don't have a parent able and willing to look after them?---Correct.

40

Right, so at this point in time, going in and using the intensive secondary supports and things like that, that's going to have a limited application, isn't it? Not all families are going to have the insight that they need to be like the Norwegians and go and put up their hand and say, "I need help. Come and help me," because these parents, neither of them are viable. So they're not going to go and self-help, are they?---They won't if they feel that they've got a lot at stake.

50

Well, they've already been determined as being not willing and able to look after their kid. That's the point of entry. That's the point of entry?---But I'll give you an example to challenge that, is particularly with parents who have drug issues, right, or mental health issues.

1

Yes?---They're people that tend to live their lives who go - - -

Up and down?---Up and down. So at times they can provide great care and are loving parents and at other times they're the exact opposite. They're inconsistent, unreliable, absent emotionally or physically. They're the sorts of people that the system actually should help to a much greater degree.

10

Even while the child in out of home care?---Particularly while the child is - - -

But wouldn't that cause instability if they keep putting the child out of care, in home, out of care, in home, back into care?---What causes instability for the children is - well, there are a range of things that cause it, but when you have parents who are hostile and angry, who - and, you know, there's some - Gary Dumbrill's research from Canada found this, that there were three basic ways that parents dealt with the department. The first way was that they perceived the department's use of power to be power over, they burred up, got hostile and thought that the way they would respond would be to be in conflict and it became a battle. The second group looked at the use of departmental power and concluded again it was power over and the way they went with it was to say, "Yes, sir, yes, sir, three bags full, sir. We'll do whatever you want," and so they complied. They didn't agree with the intervention but they complied to get the department out of their lives as quickly as possible. The third group, and I think this was for me the most illustrative, was that they found the departmental approach to the use of power was power with. In other words, the departmental officers tried to work in to establish a trusting relationship that was a partnership designed to help them address the issues that had got them to where they were at. That group - and again, it was about a third of the overall cohort, although it was a small study. That group in fact found the departmental responses and interventions to be highly successful and welcomed it. My recent analysis of the Victorian study shows that that is absolutely there for a good number of people who are the subject of child protection interventions.

20

30

40

So how do you change the parental attitude? By definition or approach?---I think approach, and I think you may - the most effective way to do that is through the departmental officers.

So that they say, "Look, we're not here to take your children off you forever, we're here to take the child away

50

for so long as he or she needs to be safe because of your current difficulties"?---Yes. **1**

"We're going to help you work with the difficulties, get the kids back home as quickly as possible"?---That's right, but then they follow through. So they're accessible and they follow through with their offers of help.

"And we'll be here for you in your chronic as well as your acute need"?---That's right.

All right. Thanks, Ms McMillan. **10**

MS McMILLAN: Just prior to getting on to the workforce issues, after the paragraphs in relation to mandatory reporting you then go on at paragraph 66 and say that policy and practice should reflect the sound principles of the UN Convention on the Rights of the Child?---Yes.

Now, Prof Lonne, I imagine you're well familiar with the paramount principle, other general principles, the principles for Aboriginal and Torres Strait Islander children?---Yes. **20**

And 5D, the principles about exercising powers and making decisions that already exist in the act. Would you like to have a look at those?---Sure.

**30**

**40**

**50**

Now, Prof Lonne, I imagine you're well familiar with the paramount principle, other general principles, the principles for Aboriginal and Torres Strait Islander children - - -?---Yes.

1

- - - and 5(d), the principles about exercising powers and making decisions that already exist in the act. Would you like to have a look at those?---Sure.

And then I'd also like you to look at Charter 1, which is to be found at page 299 of that act?---Sorry, on page - - -

10

Those sections plus schedule 1, which is found on page 299? ---Yes.

What I'm interested in, what do you say other points of departure, both from those section 5 principles and also the charter, that differentiate them from the UN Conventions on the Rights of the Child?---I should preface this by saying this relates back to my earlier point about the legislative change. The legislation is basically sound.

Yes, we - - -?---The difference between Australian legislation - well, no, let us pick - to Queensland legislation and the UN Charter on the Rights of the Child, the UN Charter conceptualises the rights of children - and it specifies it in quite some detail - but clearly links children's right to family and identity and the whole raft of social benefits that come out of belonging to family. And so the concepts about rights are framed within relationships - the relationships children have all their family members, and then that is then framed in - again in terms of relationship to the broader community, but not just the broader community, but also to communities of culture and connection.

20

30

If you look at 5B, subparagraph (c), page 23, you'll see that the preferred way of ensuring a child's safety and well-being is through supported the child's family?---Yes.

By that in (b), "A child's family has the primary responsibility for the child's upbringing, protection and development"?---Yes.

Just those two subsections, don't they put that as front and centre of the role of the family in a child's life? ---Yes, but it's a family - if you notice the construction of "family" there - - -

40

Yes?---There is no mention of community and there's no mention of culture. Culture is certainly mentioned in other parts of the act.

Subsection (m) over the page, Prof Lonne?---Yes.

That specifically mentions "cultural, ethnic and religious"?---Can do, yes.

50

And then of course 5C specifically refers to Aboriginal and Torres Strait Islander children?---That's right.

1

What I'm just interested in knowing, what is it that you say should be in the act that is not currently there in relation to the UN Convention?---I think for me it's the holistic notion that it is in children's best interests when their well-being and their rights are firmly located within the concept that it doesn't just include linkage and being part of a family, but that family is also connected to community, because it is the family's responsibility on behalf of the community to raise good citizens.

10

Well, in effect you say that there should be some, what, statement of principle that family is a part - what, an essential component of the community in the broader sense? In that how would, in your view, that assist in terms of implementing and shaping the policies and procedures that child safety officers currently work under?---There is a tendency in Australia in particular view children's rights as being very individualised rights for that particular child. I think that's a fundamental misreading of the UN Convention and part of it is about our dominant culture and about individualisation and it is actually often framed in arguments about pitting the children's rights against the parents' rights. That's not how the UN Convention is; the UN Convention does not see children's inalienable rights counterposing family's or parents' rights. That's quite a different concept. If we see it as the form where children's rights are very individualised then interventions can be constructed and justified on the basis of: we're doing right for this particular child at this particular point of time and it's not my responsibility as a departmental officer to worry about the parents' rights. I think that's essentially destructive to a relationship and that's when things are going wrong. So in fact the Department of roles then gets reconstructed to be too conflictual, right, to be fundamentally conflictual and seeing the departmental role as standing up the rights of the child and against the rights of the parents. I don't think that's helpful.

20

30

COMMISSIONER: Well, 5A - the example in 5A sort of almost encourages them to do that?---Yes, precisely.

I'm going to read a passage to you from a book by Nina Bernstein, it's called The Lost Children of Wilder. It's about a case in America where a child named Wilder sued the city of New York for failing to provide her with foster care when she needed it because she was black?---Yes.

40

And over there the foster care was done through charities, usually Jewish and Catholic?---Yes.

And they could choose to take in children based on their religious beliefs, so as a result of the poor and black didn't - - -?---Missed out.

50

Yes, didn't get a look in. So she sued - Legal Aid sued for her - this woman is a journalist, she wrote a book about it. I just want to read a passage in the introduction on page XIII:

1

*The effort to sever the destiny of needy children from the fate of their unworthy parents repeatedly slams against unyielding truths of child development: the need for intensive human attachment, the traumatic effect of childhood separations, the rapid transformation of yesterday's children into today's child-bearers. It defies hard economic realities, too, like the fact that even mediocre substitute care for children, whether in foster home or institution, costs much more than family subsidies, and that adoption, which is ideally both cost-effective and humane, is also governed by unforgiving laws of supply and demand.*

10

Do you agree with that?---I think there are many injustices that occur in our child protection system and the thrust of what I'm getting from that is that somehow we've convinced ourselves that the more expensive option of removing children is a better way to go than putting resources into the front end. So I certainly agree with that thrust.

20

All right. I want to read this passage to you to get your comments on this. This is an Anglophone - you would describe America as an Anglophone-based system anyway:

*The 200-year history of American child welfare is littered with programs once hailed as reforms and later decried as harmful or ineffective, only to emerge again in the guise of new solutions to past failures. Why do these problems seem so intractable, so often only redefined, rather than remedied, by changed laws and new philosophies?*

30

Does that sum up - - -?---Look, it is interesting to see the history of funding of innovative programs. I'm sure Lindsay Wegener from Peak Care can talk to you about this. There are a lot of programs that are funded with new money and can be quite innovative, but by and large the system never properly evaluates them, right, and what evaluations are done are often quite superficial and lead to the problem then of picking up a program and trying to transplant it, so transplant it from Inala to Woorabinda or wherever, and if there's a single great failing in our child protection system it is that there are insufficient and inadequate feedback mechanisms about to tell us what works, for when and for whom. It is a major, major problem. There is simply not enough money invested on trying to work out what's best for this huge array of children and their needs. Instead, the system tends to reduce it down to, dare I say it, simple programmatic responses.

40

50

Thanks, professor. Yes, Ms McMillan.

1

MS McMILLAN: So, professor, I take it you would probably approbate some of the extracts from the Munro review, would you, and I mean by that that recent reforms in that report were seen to have led to a managerial and risk limit approach to child protection - - - ?---Yes.

- - - that was preoccupied with prescriptive procedures, record keeping and monitoring compliance with process?  
---Yes.

10

It was argued there that managerialism is severely undermining the development of professional skills and quality improvement in child protection and is contributing to problems retaining staff?---Yes.

I take it you would endorse all of that?---I would.

It was argued for a reduction in management driven procedure and compliance measurement and a greater focus on skills development, professional supervision and the translation of quality theory in research and practice?  
---Yes.

20

In paragraph 67 of your statement at page 13, is what you've articulated there really effectively that, if you like, more, shall I say, a pragmatic framework?---Yes. Look, for me the importance of - there have been 33 - including this one, there have been 33 inquiries in Australia since 1997 into child abuse and neglect and the differentiations that I make out of those - and this applies equally to the Munro - this inquiry and the Munro inquiry were important because they didn't come out of scandals. Right?

30

Yes?---And instead they were looking at, "Well, why are things not working the way we would want and wish them to?" The other differentiation is to have a look at the senate inquiries and the importance of them, you know, forgotten Australians, bringing them home, et cetera, is that those senate inquiries focused on hearing evidence from the people who were directly affected, namely, the children who were removed and who are now at odds, and the importance of the senate inquiries which obviously led to the national framework were important because they weren't so much about addressing scandals, the apology came, for example, for the forgotten Australians and the bringing them home as well, but why they were important was that they clearly established that despite our best endeavours, the social care system that we'd set up was failing the people it was supposed to help and protect and that for me is the difference between those and the myriad of judicial inquiries that have been state based or territory based.

40

All right. Can I take you back, though, to paragraph 67. You've set out, if you like, I'll put it this way, a checklist of what you say practitioners should adopt.

50

Correct?---Yes.

1

Now, practically speaking, how would you say that could be done in the Queensland context?---At the foundation of that would have to be a retooling of the professional staff and that has to be accompanied with alongside a process that reviews the policies. Now, that said, if you go through the department's policies, there's no end of good policy. Where things go wrong is the way that they are then committed into the everyday lives of individual people.

I'm asking you therefore from a practical perspective, how is it that you see this checklist, if you like, can be implemented in Queensland?---Yes. You have to start somewhere.

10

Right?---And where I would start would be I would form closer relationships between the department and the universities. I would - - -

Although you see that was a CMC recommendation - - -?  
---Yes.

- - - in 2007?---Yes, yes.

20

Yes?---I think when I say "retool" I think the department's practice has to be reshaped and that it's not just a question of change in the culture. You've got to have management on board. You have to have some changed practices and processes, particularly in a way that parents are related to, but you have to take staff with you. You have to retrain staff and bring in staff, bring in new staff, as the turnover goes ahead, with the requisite skills and abilities that you need and my argument would be the key emphasis should be on professional staff's ability to form effective working relationships with people.

30

If I can ask you this: up until the most recent years, all child safety officers had the qualifications basically of social work. Correct?---No.

That's not correct?---It's not correct.

I understood that your criticism from paragraph 33 through to 35 of your statement was in more recent years the diversification of the qualifications, or lack thereof, you say in relation to child protection workers?---These are the rough estimates that I've been able to glean. You might want to talk to Prof Healy about what information she has, but there's been a gradual dilution of the proportion of staff with social work qualifications and there's a number of reasons for that. Some - - -

40

Can I just stop you there. Is it correct that up to 2008, the qualifications were social work, psychology, bachelor of social science, bachelor of arts psychology, bachelor of human services, bachelor of behavioural science?---Yes, yes.

50



So all was either social work, social science, human services, that - - - ?---That's right. Sorry. Yes, there's a language issue.

1

Right?---When you've called it social work, I meant the specific qualification.

Right. Then after that it's now broadened, hasn't it - - -?---It has, yes.

- - - to the current situation where you can include, for instance, persons who have social sciences, including things like anthropology and community studies - - - ? ---Sociology. Yes.

10

Sociology, criminology, et cetera?---Yes.

So up until 2008, the workers on your model, if you like, had the appropriate baseline, you would say, experience in training. Correct?---I would have tightened it up a bit more prior to 2008, but there's certainly been slippage since 2008.

20

You obviously, I infer from paragraph 34, are quite critical of the expansion, for instance, you say to, for instance, teachers, nurses, et cetera. Correct?---Yes, yes.

Now, did you understand that the expansion was largely driven by the necessity of obviously obtaining staff?---I think that was one of the key factors.

Right?---I think there was certainly - well, there was clearly ministerial and director-general statements along the lines I've said in my statement to broaden the workforce.

30

COMMISSIONER: But then the properly qualified workforce from your point of view were the ones under which notification rates went through the roof between 2004 and 2010?---That's correct.

What were they doing? If they were properly qualified, what were they doing?---The qualification is critical, but it's not the only factor and I think the points that we made earlier or that were made earlier about the proceduralism, the proceduralism certainly increased post-CMC inquiry almost immediately. The advent of the structured decision-making model helped that; the changes to the information system which sat alongside the case management system, all of those things played a part.

40

So was it the ones with the proper qualifications who became risk averse and overly bureaucratic?---I think it was all staff. I don't make any distinction here and I don't know that you could anyway.

50

But isn't the staff making the determination as to who's going in or who's staying out of the system the most important decision that they make or how long they stay, too - - -?---Yes.

1

- - - and what they get when they're in there?---That's probably the most important. Yes.

Okay. So we have the right people making the wrong decisions. Is that pretty much it?---Well, clearly - I mean, if you look now at the jump, in particular, around 2005-2006 and the number of children in care - - -

10

Yes?--- - - - my conclusion from looking at that is the proceduralism and the risk averse nature of practice had changed people's decision-making.

20

30

40

50

And since 2008 we've had the wrong people making the wrong decisions?---That's one way - I don't see that now the staffing model is the right one for what needs to change. 1

Yes, but that doesn't give you a lot of places to go if the right people are going to make the same decisions as the wrong qualified people?---But it's not just the staff that needs to change.

So what does it need? We need staff. Right? We've got to get the right staff to make the right decisions? ---Absolutely. You've got to have the right policy and practice settings. 10

You said pretty much the legislation was okay - - -?  
---Yes.

- - - and a lot of their policies are pretty good, hard to fault?---That's right.

But it's the implementation?---It's the lack of centrality of relationship in the equation now. There is not all that much emphasis on the importance of the relationships that staff warm with their clients - with their parents. 20

Yes. If I had to boil your evidence down into one principle, one controlling principle of how to get it right, it would be how the department relates to the family as a unit?---Yes. The family and community.

Within the context of its community?---That's right.

All right?---But let me just say, you know, since you're asking - you seem to be asking me, "Well, how do we get to where we are now?" and we got here, you know - the things that have got us here started well before the CMC. The changes that started occurring in Queensland child protection and the Australian child protection were certainly occurring at the late 80s, early 90s and increased proceduralism and, dare I say, the inquiry led reform pushed that along and it reframed what was then our child welfare system to become much more child protection and forensically driven. Now, it wasn't just that because there was also a lot of literature and research evidence saying that a child welfare approach can actually over focus on parental needs and ignore children's needs. So there were a range of factors. 30

There's said to be an invisible rule of child welfare in the US which is along these lines, "The honest labourer should not see the children of the drunkard enjoy beverages which his own may not hope for." That means people don't like subsidising other people to do their job?---Yes. 40

Is there a sense of that in this: us subsidising families to do what they should be doing for their own children by instinct, we find hard to do - - - ?---Yes. I think that's - - -

- - - because we have to do it on our own?---Yes. I think that's part of it. There is certainly a punitive element to social attitudes in this area.

1

The wider the disparity between (indistinct) the more social discipline is applied by those who find it more difficult to find the dollars to pay their taxes?---That's right. There's plenty of good folk who are appalled, who look at other families who don't care for their children and take a rightly indignant view of it.

10

Because the family they are asked to dip in their pocket for even more subsidies already get child allowance and child endowment, or whatever it's called now?---That's correct, but the rub here is that if you don't provide the sort of supportive services and preventive services then it costs a hell of a lot more in the long run.

That's right. Family services is still cheaper than a foster care system?---That's right.

MS McMILLAN: Thank you.

20

In terms of workplace issues, is it correct that the administrative burden is often cited as a reason for frontline workers leaving their positions, to your knowledge?---Yes.

Is this part and parcel of what you're talking about the managerial nature of this over-mechanistic, if you like, manner in which procedures are implemented through the department?---Yes. There's a wealth of research literature on stress and staff turnover and, you know, some of the key findings out of that is that people go into this line of work out of commitment, commitment to children, commitment to helping people, and if they get into a job where they find that's devalued and their role is different then they tend to move on.

30

Did you find that when you did your comparative Nordic study that there was a staff turnover of about 12 per cent in the years 2005-06 in Norway?---We didn't look so much at the staff turnovers. I think Karen Healy is probably the one that has looked more at that.

All right?---But I'm aware of that research and, yes, there are quite substantial differences in the staff turnover rates.

40

All right. Given on the one hand one could see obviously arguments for having some sort of standardised procedures and implementation - correct?---Yes.

So that she gets consistency and obviously some sort of baseline, if you like, for implementation. You say, as I take it, the downsides are there's a lack of individualisation for what a particular family needs; too

50

much administrative burden upon staff. Correct?---Yes. 1  
Yes, correct.

And an emphasis on risk averse sort of procedures?---That's right.

Right?---And what becomes known as good practice is, "I follow the procedure," rather than, "I have met this family's needs."

But given we identified near the beginning of your evidence that a lot of the drivers in terms of - were social issues in terms of increasing the measures you talked about - - -? 10  
---Yes.

- - - in terms of, if you like, lowering the threshold of harm and also issues such as the media scrutiny of Child Safety issues?---Yes.

How then is it possible in that context, given these social drivers, to change, if you like, both procedures and their implementation within this sort of department?---Well, the department changes continually. It has been on reform agenda since I first started working there in the middle 80's, so that's nothing new. I'll answer you by this: if you look at the changed management and how it's been done in different jurisdictions, there's one way which says, "Well, we have to come up with a grand plan, the grand vision, and this is how it's going to look and we'll have the new model and we'll do that," and that's a tough ask. It takes typically at least seven or eight years and the management literature will say that's how long it takes any organisation to change. It's done - but there's another way or there are some other ways. One of the ways that happened, for example, in Alberta, who had similar problems, the advent of their outcomes based service delivery mechanism actually occurred from the bottom up with services saying they didn't think that the way their programs were centrally directed was helping the people that they wanted to help and in the ways that they needed help. Basically, through a negotiated process, the department - and I thought this was - and I've said this to them - I thought it was quite courageous and risky, said, "Yes, okay. We'll do that," and so there was a number of systems where regions piloted the transfer to this outcome based service delivery without people really knowing what the hell the term "outcome based service delivery" meant. They've now been into it about three years and what they've found is some quite startling innovations and, you know, some of this is available through the Alberta Association of Child Welfare Agency - I haven't quite got the right term there. What they found is that now they're three years into it, that's actually led to quite substantial changes in the department, including the sorts of procedural and policy frameworks. You don't necessarily have to have a grand plan to get effective change. There are other more organic ways and part of that is in fact allowing greater discretion of the people and the agencies 40

on the frontline to reframe practice.

1

All right. In terms of managing staff, you wrote a specific paper on workforce development with Ms Harries and Ms Lance, correct, this year?---That's right.

Could you just have a look at this. You'll see I've just copied the first page and the particular page I want you to refer to. Now, I think that's really the gravamen of what's suggested, isn't it - - -?---Yes.

- - - in ways in which staff can be better supported and managed, correct - - -?---That's right.

10

- - - from the frontline. Now, can I ask you this: how practically could you implement that?---Look, to my mind, one of the things that the department did quite well post CMC was change its staff support systems. That's been one of the probably unheralded successes, particularly - not just in incident debriefing and management but in more general support. The essence of it is that the HR department takes on the critical role of change management and it does that through a range of staff support. Part of it is also saying the message to people and giving staff the forums to be able to talk in open ways about what is not working. You know, my experience of both talking to departmental staff in this state and elsewhere in this country as well as overseas is quite often people welcome - staff welcome that sort of opportunity, and why that's important is it's actually buying them in. You know, when people feel like they have a say they typically - not always, but typically get a higher level of commitment and buy into the change process.

20

30

40

50

So more inclusive?---Absolutely.

1

Staff inclusive, including in particular the front line staff?---That's right.

All right. Any other suggestions for a practical way to implement these points you've made here?---If you're wanting to shift the system to be a more preventative and early intervention system then there has to be a far greater role for community based agencies.

10

These are non-government organisations you're talking about?---That's right.

That's the Victorian experience, isn't it - - -?---That's right, yes.

- - - you cite as support of that, and in terms of - you recently conducted a review of the Victorian child protection system, haven't you?---That's right.

The results aren't yet published. Is that correct?---No, look, I just finished the draft report last week, but I'm sure if the inquiry wanted to have a look at that an approach could be made to the department. I mean, I - - -

20

COMMISSIONER: Is this pre Cummins' recommendations?---No, it's post.

MS McMILLAN: Post.

COMMISSIONER: Post. But his report was only just published this year, wasn't it?---That's right, in January.

February, I think?---February, yes.

30

So is that - what, six months' experience of his recommendations?---No, sorry - - -

Of the existing - - -?---No, what it was, was a study. It's taken just over a year to collect the data of roughly around 300 child protection, 300 family services and about 350 out of home care parents and carers, a telephone survey used to look at a range of core outcomes in the Victorian child and family services framework, and key parts of those were service expectations and service experiences as well as a range of other things, how often children were connected with their culture, with their community, et cetera. So it's a major study and one of the few - well, not just Australian but international studies of its size.

40

MS McMILLAN: Is it your view that that bears out that the non-government sector are most likely to be able to implement, if you like, this power with model that you spoke of earlier?---It unambiguously concludes that.

50

One last aspect. On that page that you've been given there you talk about the gross over-representation of indigenous children and you argue for an indigenised workforce, to have at least one-third who are Aboriginal or Torres Strait Islander?---Yes. 1

We understand the current target is 4.4 per cent?---Yes.

That's a huge increase on that, isn't it?---Absolutely.

Do you think it's viable?---I think it's absolutely critical. 10

But is it viable?---Yes, but it would require an overhaul in the way that you look at training your workforce. You'd have to have a lot more scholarships and those sorts of - you'd have to have a clear career path. Now, there has been some work done in the department on that with the relationship with TAFE, but it's quite limited. Again, if you look at other jurisdictions around the world, there's more that can be done, including, for example, for remote communities, remote indigenous communities, having the trainers go to the communities rather than an expectation that the community will just come to cities, which doesn't work. 20

I take it by the indigenisation you mean child safety officers?---Not just child safety officers. It's the range of staff.

Right, but wouldn't that perhaps be a good argument for this more expansive category of experience and qualification if you're trying to markedly increase the number of indigenous workers?---Yes, and, look, to my knowledge, not all, but a good number of the community services agencies have far higher proportions of indigenous staff than 4 and a half per cent. 30

I tender the extract from the Workplace Development Pathway to Reforming Child Protection Systems in Australia, Lonne, Harries and Lantz, 2012, British Journal of Social Work Advanced Access. Thank you.

COMMISSIONER: That will be exhibit 43. Thank you.

ADMITTED AND MARKED: "EXHIBIT 43"

COMMISSIONER: Sorry, Mr Hanger. Okay, so that's one of your references to your statement?---That's correct. 40

Yes, okay. Yes, thank you, Mr Hanger.

MR HANGER: Professor, the headlines that I take away from your statement are let's do something about mandatory reporting, you must focus on putting resources into very early intervention rather than late in the piece and really we've got to remove fear engendered by child protection officers to parents when they think that they're in trouble

50



in relation to the children. Is that a fair overview or points that you would like to get across before I go further?---Yes. I suppose I'd just change the final point there to be that we need to provide parents with the sorts of help they need when they need it.

1

I stand corrected and there's no issue with that. Professor, doubtless because of your learning in the field and great deal of time spent thinking about, you're way ahead of me in this statement. What I want to do, if I might, is try and simplify some of your ideas, if I can. So I'm going to start at the end, paragraph 110, which says that you're available to elaborate on the specifics and the options available for system reform. Now, my learned friend Ms McMillan started you on that topic a few minutes ago. If I give you, without giving you any money, the chance now to say, "How will I reform the system in Queensland now" - in other words, tell Mr Carmody what you think should be done?---Look, I would start off by saying I don't think there is any money.

10

No?---Which makes the reform process doubly hard.

It's hard, but you saw the terms of reference which say he's got to have regard to the budget?---Yes, and, you know, I can say I've been looking at this situation for a few years and saying the growth in the department's budget was unsustainable.

20

Yes?---The trend has clearly established - - -

That's because of the tertiary care cost of people in long-term care?---Yes.

Yes, but come back to, now, the issue, that is to say, what would you like to do?---The essential issue for me is how do you actually implement the national framework? How do you move from the preponderance of services and resources going to the pointy end to make it far broader, and the structural changes that have to come through that, I think, are that the correct process, the correct structures, for providing assistance to families should be the community based services, Queensland Health, probably Education Queensland as well, Disability Services Queensland. So that's where I would be putting my money. I think with - the biggest dilemma for the department is how do you actually cut back on the money that goes there given you've got this blow-out in the numbers of children in alternative - in out of home care, and particularly the growing numbers in residential care.

30

40

Well, that means we might have to claw back some money from that to spend elsewhere if you want to?---I think that's very hard to do, for a whole bunch of reasons, including the degree of need.

I think you're probably more likely to claw money back from reduced investigations and notifications. I think that's probably where the tightening up has to occur initially. I think it would have to be accompanied by a freeze on spending within the department and that any growth moneys would go in fact to the preventative Community Services and the other departments. That said, I think where money needs to be placed within the department is - my sense of the increases in funding, and it basically went, you know, from about - from my memory it was about 130 million in 2003 and it's about 700-odd now, but putting aside what the exact figures are, there are - I can't believe that there aren't opportunities to prune within the department.

1  
10

Sure?---I think it becomes then a question of what's most important. For me where I would put the money would be in the workforce development.

Tell me what workforce development is - you've mentioned universities before - - - ?---Yes. It's based - - -

I'm trying to pin you down - - - ?---Yes. No, it's - - -

- - - rather than use the - - - ?---If you look at the successful reform processes within our Police Services that were done in the 80's and 90's, you know, similar sorts of problems and basically what Police Services did is they recrafted the way police work would be done, so they changed from Police Force to Police Service and that's not just a language change. It's about a different way of seeing the role. They looked at community based policing and fundamentally they saw that they had to retool their officers. They had to change their promotion systems and do a whole bunch of stuff that - where the department sent different signals about how you would get ahead, what were these skills, what were the abilities that you needed to get ahead in the department. That's where I'd start.

20  
30

All right. So recrafting?---Yes. I use the term "retooling".

Retooling?---And I think it is. It's a whole bunch of ways that you signal that you want different skills and different knowledges and that's what's going to be appreciated. That has to accompany a re-emphasise of professional discretion which was what the Munro report in the UK and also the Cummins report here did.

40

You mention now different skills and I take it you would say that the social workers are the ones who have the different skills or the skills you want for your ideal department?---I would say the human services degrees, which are three years - in a sense, social welfare degrees are perfectly appropriate for child protection workers.

All right. Until recent years, the people doing the work have had human services degrees, haven't they?---That's right.

50

1

And that's certainly been the case since the Children Services Act came in, in 1965?---The human services degrees had their advent in Queensland around the middle 80's, from my memory.

Well, then this is all renamed. Back in the 60's they had bachelor of social work degrees, didn't they?---Yes. At that stage social work degree was a three-year degree and changed to a four-year degree in the early 70's.

Yes, yes. Okay. You talked about retooling. Are we reorganising the university subjects or not?---I think that has to be open for conversation and I say that knowing that the teachings that have existed previously between the department and the universities has been the department saying, "Hey, we need people with specialised knowledge to do these skills," and the university saying, "Well, actually, we've got to train and educate people for not just child protection but for disability, for health, for community services," et cetera.

10

An interesting thing, the same problem with the law faculty, I can assure you. Yes. Okay?---I think you're probably right.

20

But as I understand it, the department has actually funded the university to develop courses that are specifically aimed for - sorry. The department has funded the universities to develop specific subjects or specific strands in courses to provide the service that the department needs?---Yes. From memory, there's some one-off funding around 2004-2005 to do that and then the only other issue that I'm aware of is that the University of Queensland was funded to develop a graduate certificate in child protection, which they funded, from memory, for about two - it might have been three years from about 2005 to 2008.

30

What happened to that?---They then de-funded it.

So coming back to your ideal system and return - picks up the present system. We'll restructure the subjects that are offered in the university degrees. What happens then? What's the next thing you do with your magic wand that I've given you?---Let me say, I don't know that we'll ever get an ideal system. I think the nature of the social problem being dealt with means that we have to settle for something less than optimum.

40

That's right. We took children out of the mines in 1832 and we keep trying to improve the system all the time. Yes?---So I think there needs to be closer collaboration between the universities and there should be room for the development of a specific child protection family support type qualification - a three-year one. I would have thought that that's appropriate. For me, I think the critical part that I would do simultaneously is that there

50

are the team leaders in service centres, you know - there are the child safety officers, team leaders and then the managers. The team leaders are the critical positions to my mind. They are the people who scrutinise the practice and who are the frontline accountability monitoring mechanism.

1

Team leaders are the people who are in charge of the people that are at the workplace - - - ?---That's right.

- - - dealing with the family?---That's right and some of those people are highly qualified, some aren't and when I say "qualified" we're talking about experienced and skilled. One of the problems with the turnover has been that you've had people sometimes rushed into those positions by necessity before they've done the proper developmental work in a professional sense, so I think you need to put a specific program in place and a robust program in place to help people transition from the role of frontline staff working, you know, with families and children into a different role, which is about knowing the frameworks for effective social work and social welfare interventions as well as managing people, as well as managing budgets, as well as managing programs and standards. That's quite a different role. That's where I put my money. I think you'll get more bang for your buck quickly there than you will in putting money towards the court services. As well as that, the Child Safety - I'm just trying to think of the term - senior practitioners I think should be key parts to the 20 change process. They're the people who have been promoted to quite, you know, relatively senior positions and who should have the knowledge and skills and abilities to practise at high levels and know what good practice is, so I'd be both putting input into them as far as the changed directions from the department and I'd be giving them key roles in changing service centre approaches to practice.

10

20

30

What about the frontline workers that the ladies or gentlemen on the street dealing with the families? At the moment, we seem to have, or we did have, I read a 71 per cent dropout rate per year? That means the average person lasts a year and a couple of months before they leave?---Yes, horrific.

It's horrific. It is, isn't it?---Yes.

Why is that happening?---I think there probably were a range of reasons. There has, to my knowledge at least, for all of a decade been a schism between senior management, executive management and leadership and frontline staff and, you know, I could go into the reasons for that, but I think it's - - -

40

I had better ask you that. I'll try to - - -?---The frontline staff - the things that guide them are in fact the procedures and the information system and there's evidence of this happening in the UK, too, where people now

50

spend more time inputting data or taking data out of the information system than they do in actually seeing people and working with people. I think you've got to change the data collection system.

1

10

20

30

40

50

That's the computerised system?---Absolutely. That's actually about changing the work responsibilities. 1

I think the computerised system has been mentioned a few times, yes?---You also need to change the way that departmental staff development and induction process is being - and it's had a very chequered career. We had gone down the path previously of trying to follow a police service-type model, you know where you get people in for six months. It didn't work. It didn't work because people weren't able to be away from family, et cetera. But I think with contemporary technologies, with information and communication technologies, there can actually be a lot of learning that you can do without people having to come in for in situ face to face training. Certainly the universities are increasingly proficient at that. I would actually take the training out of the department. I'd have them buy it in. My sense of one of the problems with the departmental training is that it has typically been good practitioners that have gone into those units but they haven't always been good educators. There's a difference there. So I'd rejig that too. 10

Could I come back to the drop-out rate. It's been put to me - and I therefore ask for your comments on this - that a significant reason for a drop-out rate is that people going into the profession are going in at a fairly young age - 20, 23, whatever it is, 24 - and have difficulty coping with the stress that's imposed on them quite suddenly at a young age, caused by seeing homes that are filthy, babies that are injured, and so on. And basically because they are so young, are burnt out. The word burn-out is used frequently. Is that a fair comment?---Both the international and the national research on burn-out and work stress in social and human services shows that overwhelmingly most people - and when I say overwhelming, 80 to 85 per cent of people are satisfied with their work. It's a good professional task. It's very challenging and very richly rewarding. And having looked at this stuff, I think there are a lot of war stories that are unhelpful that - unhelpful in the recruitment of new entrants into this profession. That said, for beginning practitioners, being confronted with this type of work early on can be exceptionally challenging. Overwhelmingly what the work stress literature says is this: what's associated with burn-out - and we have rates in the literature, 2.5 to 5 per cent, not the 71 per cent you talked about - but overwhelmingly the burn-out and high work stress which is directly related to staff turnover rates is related to organisational factors, so things like work role clarity, things like support from colleagues, things like - the big one that comes through in every study is having some professional discretion, autonomy, being able to make your own decisions in work is inversely related with work stress; and office climate, so the actual office climate, whether people are - whether there's a sense of camaraderie, et cetera. 20 30 40

Professor, if I suggest to you that the retention rate fell from 71 per cent to - fell from a drop-out of 71 per cent to less than half that after police and teachers and nurses were taken in, does that not indicate that perhaps the maturity of these people accounts for the lower figure of drop-out?---Sorry, you're going to have to run that past me again.

1

The drop-out rate has halved, in effect, since the changes of which you complain were introduced. What does that tell you?---I've not seen that data.

10

No, I haven't put - - - ?---I don't know that anybody else has either because the department has held it very close to its chest.

Nor do I particularly want to be quoted on it because I haven't got a precise figure, but if it's around that figure it tends to indicate that the added maturity of the people coming in with sideways recruitment from nursing and police and teaching - - - ?---I don't know whether you can extrapolate from a broad turnover rate to then say that these new people with these particular qualifications that are turning over less - that's what I'm saying, I'd want to see more detail about data. That's a possible explanation.

20

I can't at this stage give you - - - ?---No. That's a possible explanation. I can think of a range of others.

There could be others. I wouldn't argue with that. I mean, the trouble with relying on experience is you can have years of experience and it can all be bad. And some people can be 35 or 40 and not learned from life's ups and downs. By the same token, you can have - and as an educator I've seen this - very young people who come out with amazing maturity - - -

30

Of course?--- - - - who faced life difficulties and are very good at the job they do because they have an empathy and a warmth and can relate with people. So I'd want to see the departmental data in a bit more - and scrutinise it more closely before I looked at explanations.

Coming to your criticism of mandatory reporting, obviously a lot of resources are taken up with investigating reports that end up non-substantiated. Suggestions have been made here that these reports might be better put into an intelligence system, into a computer somewhere and if the report on one person keeps on coming up it might be worth taking it further. Could you comment on that?---Yes, that's one possibility that should be looked at. I think New South Wales dealt with it a bit differently in the sense that they've had a system there - since the Wood Inquiry where they've referred referrers back to the local team - which is a multi-disciplinary, multi-agency team - to look at whether there are other ways to provide service. I suppose what I would be sensing is that mandatory reporters, whether they get it right or not about the level

40

50

of risk or harm, unless they're doing it purely because - in a risk-averse way - would probably be doing it because they felt some concern for the family and the child, and that someone needs to have a look at it. My sense would be that's where you need offers of help from community-based services as a front line response, rather than a knock on the door from the department.

1

I think Ms McMillan was asking you some questions about a separation of the knock on the door from the department service as distinct from the help because you're having trouble. Isn't that a good idea, to sort of separate the two?---Certainly in our book what we argued for was that there should be a separation of responsibilities - an organisational separation of responsibilities for children in care and the investigation side. The basis for that quite often is the children in care who get the short straw in the sense that when there's unmet need at the investigation end, that tends to be where the resources go. The other part that I would say - and what we've said in the book - is that we argued that having a separate child safety department, you do need to have an investigative response but you need to target it really well. There absolutely has to be very close collaboration and cooperation between police, health and that body.

10

20

30

40

50



We also argued that there needed to be - the helping arm was probably better off being delivered through either community services or through the health system, which were not stigmatised. So the separation of - I said earlier that people can do both and they do in a range of responsibilities, but I think things have gone too far now to go back to a day where there was the Department of Children's Services that did it all. I think the stigma and the opprobrium that there is upon the department from some clients means that its chances of being seen as a helping intervention are probably limited.

1

So there should be a helping organisation people can come to and say, "I've got a problem. I've got no money to feed my child"?---Yes.

10

Or, "I beat my child last night and I need some treatment"? ---Or, "I feel I've come to grips with the child," yes.

Or, "I'm about to beat my child." Yes, okay. Now, isn't it the case that a very large number of people, and I'll just leave it as vague as that, will not seek help, will deny they have a problem?---I don't know that I'd put it at large. No, I wouldn't agree with that.

20

What percentage of people that do have a problem will actually go and seek help? Again, I know it's a vague question and the answer has got to be rough?---Well, the Victorian study that I referred to earlier, close to 90 per cent of the people who were surveyed, of the 300-odd that went through family services, said that their parenting skills had improved since the intervention and the child's health and wellbeing had improved, and then there was a range of indicators on that about safety, wellbeing, their relationship. So I suppose to me that - and that compared to the child protection group was where about half of the people who had come through child protection agreed that it was a help. That's a significant difference.

30

But of those people you just referred to in the first category, the 90 per cent who thought they had improved, were they self-referred?---Yes.

They were self-referred?---Well, two-thirds of them are self-referred.

Correct?---They go directly - and one-third are referred - come through child protection, who then say, "Go and see Child FIRST."

40

Okay, so the answer to my question before was really two-thirds seek help themselves and one-third are sent for - - -?---Yes, under that system.

Under that system. Yes, all right.

COMMISSIONER: That's a large number that's referred to,

50

isn't it? But on what you said before, that is, the prevalence, the actual number of people who are in need and whose children might need protection, is significantly greater than the incidence - - -?---Yes.

1

- - - then there must be a lot out there that we don't know about, or that the system doesn't know about?---And that we will never hear about, or that they will present - they will present later in life when they have relationship issues, or they present to existing services without saying, "Hey, this is the problem."

10

Exactly. So going back to Mr Hanger's point, all those people we don't know about are in this large number? ---That's right.

So it starting to look pretty big, that number, who don't identify - who have got no insight into the problems they have so therefore they don't go and get help. Not only do they deny it, they don't even see it?---I don't know that it would lead to that conclusion, because I'd suggest that many people in their day-to-day relationships have difficulties with their children. They may speak to their doctor, they may speak to their friends, to their family, and seek help through those ways rather than going through a formal system. In fact, I'd suggest that most people would sort of go through family and friends to get assistance before they would necessarily think about going to an agency for professional help.

20

But we're talking about the prevalence of child abuse and neglect, we're not talking about people with difficulties? ---The overwhelming system issue is to deal with neglect rather than physical abuse or - well, nowadays, emotional abuse, which has sort of become a grab bag for anything that doesn't fit anywhere else, but the sexual abuse and the physical abuse which are, at least in my mind, the most egregious, they tend to get dealt with differently.

30

Yes. They're criminal?---Yes.

But just going back to the - if we've got a lot of - if it's more prevalent, abuse and neglect is more prevalent, than the incidence figures are telling us, then there must be a lot of people who aren't getting the help that they need because they either don't ask for it or they don't know they need it?---Or they get help through other forms, other mechanisms, and that can be, for example, if - I'll just give an example of a mother and a father. Mum is finding that she's not relating well to the newborn so the family goes and seeks help from mother-in-law or mother-in-laws, or the husband changes his work pattern and comes home or does more work at home.

40

Yes?---There are lots of ways that people adjust their lives to deal with those family issues.

That sounds like the majority of us, but we're talking

50

about the minority of parents who abuse and neglect their children. Isn't that what you mean by prevalence?---That's right.

1

It's prevalence of abuse and neglect, not prevalence of family difficulties or time management or parental help?--- But it's the family difficulties that if left unsupported place the child in a situation where risk increases and sometimes results in harm.

MR HANGER: The reality is, and I think you gave it either in your statement or evidence-in-chief, that there is a lot of abuse - we know that there is a lot of physical and sexual abuse that we don't know about?---That's right.

10

All right, and therefore in designing our new system we must make sure that we do our best to capture the knowledge about that. Agreed?---No, I don't. I think what we have to do is make sure that there are systems in place to make sure that people who need help are able to get the help when they need it. I'll give this as a corollary. We've made great strides in the way that we respond to sexual assault for adults, particularly in - you know, there's been change in practice and policy at the police services and health, et cetera. We still know that the prevalence of sexual assault is far higher than any of our systems will ever get to know, and that is because people make decisions for right or wrong that they believe are in their best interests, and quite often that means that they're not prepared to go and report crimes. So I think what we need to do is make sure that our systems are not only accessible but humane and caring so that all those who are in a position where they want to receive help can get to - - -

20

But you're talking about adults there. Your analogy, with respect, isn't really very good, because the adult can make a decision for themselves, the child can't. So the point that I was putting to you and with which you disagreed was that we've got to devise a system to pick up as much as possible the cases where a child has been physically or sexually abused.

30

COMMISSIONER: I think the professor is saying, no, sometimes you should leave well enough alone.

MR HANGER: Yes, I think that's what he did say?---Well, I'm saying - and perhaps I should make myself clear. If we - what I'm worried about by what's implicit in what you're saying is that you therefore create a system that's about investigating just to make sure that we know exactly how much is - how close is the incidence to the prevalence, and I wouldn't be - - -

40

No, I didn't suggest that. No, I didn't suggest that? ---Sorry, well, that's good. I think that's where part of our problems have come around.

Yes?---Where we think that merely knowing about something

50

means that we've somehow made it better, and I think at times we haven't fully appreciated the damage that can occur to people from having contact with the system. 1

COMMISSIONER: When ignorance is bliss, Mr Hanger.

MR HANGER: Yes.

COMMISSIONER: Is that what you mean?---No, what I mean - - -

We're better off not knowing and they're better off that we don't know, sometimes?---No, what I'm saying is that we need to have a better appreciation of the iatrogenic aspects of our child protection system, that it can actually make things worse. 10

Sorry, what aspect?---Iatrogenic, which is a medical word that means harm comes out instead of good as the end result.

MR HANGER: So doctor induced. Doctor induced?---Yes.

**20**

**30**

**40**

**50**

Like John Williamson's: the do-gooders do more than harm than good?--Well, yes, it's like someone using the analogy of: the doctor operates and the patient dies, you know, the doctor operates for an ingrown toenail and the patient dies. The outcome is - - -

1

But how would we be doing by finding out how close prevalence and incidents are?--Well, because - - -

Wouldn't we be killing the patient if we did that?--Well, there is a social cost to investigations. When ordinary folk who are not abusing or neglecting their children have a knock on the door, there's a consequence for that.

10

Sure. But the department doesn't investigate all of its notifications - - - ?--No.

- - - does it? It investigates those that the chief executive has a reasonable suspicion involved a child in need of protection, which is a pretty high level. It's harm or - I'd interpret the risk of harm plus a non-parent they have to protect?--But we still know that, you know, less than a quarter are substantiated. Now, even if you say, "There might be some false negatives there," in other words, there would be instances where abuse has occurred but it wasn't discovered. There are also a lot of false positives.

20

Positives. Yes?--And as well as that, there are people who weren't abusing or neglecting their children, but may have just had some family difficulties.

Someone doxed them in?--That's right.

And then, what, so the department shouldn't follow up that just in case it might do more harm to the - - - ?--No, I'm not saying that. What I'm saying is that there's a cost to those people.

30

Who get a knock on the door?--That's right.

Yes, I know, but you're knocking on the door and paying the price of entry just in case there's a child on the other side of that door who needs your help?--That's right, but if we take that to its extreme and the department knocked on everybody's door - in other words, the department - whoever contacted the department, the department have to investigate it, we would probably reach the conclusion that the cost of going out and investigating everyone - I think I've heard already in this inquiry - a quarter of the children in Queensland, which is similar to what happened in the Victorian and New South Wales inquiries, too. So it's a figure you can - there's got to be a balance and the danger of setting up a surveillance system is in the end you just see the service as the investigation rather than the social care.

40

But if somebody rings, you don't know when they ring

50

whether there's a false positive or a positive positive?  
---That's right.

1

Your job is to work out who needs protection and who  
doesn't?---That's right.

How are you going to do that if you don't investigate  
something?---Well, departmental officers do it every day.  
They sift through the information and then make  
determinations about whether this reaches the level that  
requires a departmental intervention.

10

Well, of course, that's an assessment or investigation so  
that - so far so good. So where's the harm done in that?  
Where's the harm in that process?---Well, what happens, you  
know, from my experience of knocking on people's doors,  
there's a lot of fallout for them. They have to - - -

Sure, but how are you going to avoid it? How are you ever  
going to avoid that?---Well, I think - I suppose what I'm  
saying is your system has to take it into account and  
minimise it. It's one of the things that has to be  
minimised.

20

So when you knock on the door, smiley face?---No. What it  
means is that you've got to set the bar at the right level  
so that you're not just running around investigating  
everything.

But they don't. You just said they don't. They sift  
through?---Yes, but there's a question here about whether  
the level is the right level.

What do you reckon the level should be?---I reckon the  
level should be risk of significant harm.

30

But it already is because harm is defined as significant  
detriment?---Well, see, I don't think that's correct when  
you look at the figures Australia wide which has had the  
emotional/psychological abuse and neglect blow out  
astronomically over the last 20 years.

Because people don't know what significant means?---I think  
that is part of the issue.

You see, while you say the mandatory reporters have to be  
kept in check because 80 per cent of them are not threshold  
reports, don't forget the discretionary court is in the  
public. A lot of them are false positives, too?---Sure.

40

But both in your voluntary and your mandatory reporting  
system you're getting over-reporting. That's why we've got  
so many notifications and by comparison, a stable  
substantiation rate. See, doesn't a stable substantiation  
rate say to you: the ones that they're actually  
investigating and knocking on the door have been about the  
same for a long time and it's not influenced by the number  
of notifications, many of which don't reach the threshold,

50

so they're getting it right most of the time by reference to past years that the substantiations in fact are going down or staying the same in 2012-2011 as they were in 2008, so they're investigating the right ones because they're substantiating the same number?---But one of the other ways you can look at it is look at the proportion that aren't substantiated that - - -

1

The first kind?---Well, the three-quarters - the three-quarters or 80 per cent of people who aren't substantiated.

10

You send them off to the targeted secondary or other services - - - ?---I agree.

- - - because they don't need your service. What you're offering is the knock on the door. They don't want that and you don't want to give it to them, but you do want to give them what help they need, which is hard to work out from just a report. At some point you're going to have to ask them if they need any help?---That's right, but it's who asks.

And how they ask?---And how they ask. That's right.

20

Right. Mr Hanger?

MR HANGER: Could I move on to another matter now. In your perfect system or the best system we can devise, what can we do with the out-of-home care in the short term? I mean, we have a lot of people there now that look like they're going to be there for another 14 years or something like that? What can we do about that?---That, as I said earlier, I think is probably one of the most vexed questions. We at present don't have the sorts of resources that are available in the community services sector to work with enough people intensively and for the length of time that's necessary to get them to a position where they can safely care, but that is specifically what's needed.

30

It's a big issue. Yes?---Oh, it's huge.

Yes; and it's a big expense?---Well, it increases exponentially the older the child gets.

Yes?---So it's a lot more expensive for the 12 and 13-year-olds who, you know, have significant behavioural problems than it is when you're dealing with someone five or six who still has behavioural problems but not at the level that they've got at that age.

40

Professor, we've heard evidence that in the teenage years you might get four young people or six young people in a home, like a residential home, but the staff looking after them - there are nine because it's seven days a week? ---Yes.

Any comments on that? I'm guessing very expensive?---It is

50

and the behaviour - you know, I've had occasion to visit some of those when I've been out with our students who have been on placement. That's a really tough work environment and - - -

1

It's tough working in those places?---Absolutely; and the ones that run well have a therapeutic milieu so they have a well designed system that is on about providing the therapy, a living therapy environment, but we've had those historically and they've always - you know, we used to have (indistinct) with the department, what, probably two decades ago now that - - -

10

And we used to have cottage homes, didn't we? Didn't they call them cottage homes with a - - - ?---Yes.

- - - mum and a dad which was - - - ?---Family group homes.

- - - stable environment - - - ?---Family group homes, but that's different to a residential. The residential has a much stronger therapeutic element to the intervention, whereas a family group home was more about, as you've said, a mum and dad carers providing care to sometimes quite large numbers of children, six, eight children, plus their own family.

20

What happened to those? Did people lose interest or did somebody - - - ?---Well, the move that I said earlier in the sort of middle to late 90's where we moved more towards foster care, they were de-emphasised in the policy and practice one. They weren't without their problems, too.

Of course. But they've all got problems?---Yes, that's right.

You just said even working in these homes where there are four to six kids, it's a really tough job for the nine carers there. Why is that because of behaviours?---Oh, yes. You know, sometimes the children and young people are dancing on the ceiling, so to speak, you know. The behaviours can be aggressive, can be demanding, self-seeking, narcissistic. It can be quite difficult behaviour to deal with.

30

40

50



And they all have to get along with each other as well?  
---That's right. They can sometimes bounce off each other,  
if you know what I mean. But it's immensely rewarding work  
too. And so we shouldn't necessarily - and can have some  
great successes - some truly wonderful successes.

1

Of course?---But it's not a magic wand.

So are there any other options you can suggest in respect  
of that?---The emphasis on kinship care, I think I talked  
about earlier, I think.

10

But this only crops up when you can't go to kinship care?  
---Sure.

I mean, that's already happening, isn't it? You try  
kinship care if you can and then you go to this?---Well,  
you should. There are examples where it doesn't happen,  
but - where it doesn't happen as it should.

But that's the ideal, kinship care first - - - ?---That's  
right. Keep somebody in their family and community, that's  
right.

20

Is this an appropriate time?

COMMISSIONER: I thought we were going to sit on. I  
thought everyone was in favour.

MS McMILLAN: Yes.

COMMISSIONER: Obviously Mr Hanger was missed in the  
ballot.

MR HANGER: No-one consults - - -

30

MS McMILLAN: Mr Hanger was somewhat occupied on his feet.  
The others are willing to sit on if that meets your  
convenience, your Honour.

MR HANGER: That's okay.

COMMISSIONER: We could - - -

MR HANGER: No, I've got - - -

COMMISSIONER: You okay?

40

MR HANGER: Yes.

COMMISSIONER: All right. Sorry, I thought you'd been  
consulted.

MR HANGER: You were entitled to think that.

COMMISSIONER: It was the word "everyone" that threw me.

MR HANGER: Now look, indigenous issues - I'm sure you'll

50

be asked about this by my learned friend, but for a start we'd like to have indigenous professional people working in that field if we can. Agreed?--I'd put it stronger than that. I think - - -

1

That's all right?--- - - - I think it's a must.

It's a must, yes?---The difficulty for us now is that we're dealing with the long-term intergenerational effects of colonisation: alcoholism, unemployment, marginalisation, mental health, I could go on.

10

Yes?---And the continued removal of children is what we've been doing historically and it has failed. It then leads to those children coming up through the care system, having their own children; it is a failure.

Okay. So it's imperative that we train as many indigenous people to be involved in the social worker field as possible?---Yes.

What are you doing at the university - you're at QUT - what are you doing to help?

20

COMMISSIONER: To practise what you preach, professor? ---Our rates of indigenous people in our social work and human services courses - and I've only got 2011 figures - is just under 5 per cent, which is double the national population rate of indigenous people. This is an area of my research; when you compare social work and human services to psychology, nursing, any of the other helping professions or any of the other more mechanical professions, we're far and above that. That said, there is - the indigenous population in this country is the fastest growing part of the population. Unless we, in a range of measures, increase the capacity - the capability of our health and social care systems to relate better to indigenous peoples, they simply will continue to have the problems that they've already had. To close the gap is the classic example. Social work and human services can't rest on its laurels. I will be talking to people in Alberta at the department there of human services within the month about strategies to indigenise their service because they've got a 60 per cent over-representation compared with our about 40 per cent.

30

60 per cent over-representation - - - ?---Yes, 60 per cent of the children in their system are Aboriginal children.

40

Right?---And I made an impact last year at a keynote for their annual conference where I called the department there, the department - the Aboriginal child welfare department, it should be called, rather than just the child welfare department. The point is it's not just about getting proportions and percentages to staff. That's pretty critical. It's more about the world view. Essentially what we had with our Australian child protection systems, and what Canada has as well, is a very

50

individualised understanding of children, childhood and family. 1

That's quite different from the - - - ?---Absolutely. It's fundamentally different to Aboriginal and indigenous understandings of children. I'll just give you one example, one that really struck me.

Unless it's important?---Okay.

I'm not quarrelling with your point. You think there is a great need for indigenous workers to work - - - ?---And you need to train the white workers to have a far deeper understanding of family, of community, of spirituality and connection, and of world view - of indigenous world views. 10

COMMISSIONER: Is there any literature on that?---The City of Blackstock has done quite a bit in Canada.

Could you give me the reference later through my - - - ? ---Yes. There is a nascent literature.

Okay, that will do. 20

MS McMILLAN: Mr Commissioner, Mr Blackstock is here the week after next in any case.

MR HANGER: All right. So obviously at the university you're teaching something about the Aboriginal culture - - -?---We have specific courses in our masters and our - compulsory courses in our masters and undergraduate courses, specific units on working with indigenous peoples and communities - so it's called.

COMMISSIONER: Mr Burns. 30

MR BURNS: Professor, you've been asked some questions by the Commissioner and also Mr Hanger regarding mandatory reporting. Just indulge me for a while so that I understand this. At paragraph 61 of your statement you expressed the view that the abolition of mandatory reporting or major amendment of it would go a long way to reducing to enormous and unsustainable demand and pressure on the statutory system?---Yes.

Are you there referring to both types of mandatory reporting, legislative and contractual? Are they the two types?---Yes. And as the Commissioner mentioned, the policy one. 40

All right. Legislative, contractual, policy, the whole lot. So your preferred position would be to abolish all reporting on that point?---My personal view is I think there's a case to be made in relation to sexual assault. I think there's a far more compelling case rather than - - -

Physical assault?---Well, probably in - well, there's physical assault and physical assault. You know, there's

the parent who hits their child with a 15-inch ruler and leaves a bruise, to the one who takes a horsewhip.

1

It comes down to evaluating the report of the incident, doesn't it?---That's right.

So we're talking about whether there's a report at all. That's what I'd like to talk to you about?---Sure.

Is your preferred position that all reporting be abolished? ---No. My preferred position is that the mandatory reporting needs to be very narrowly prescribed. I think there's a case for reporting of sexual abuse. I particularly think that's related to the well-documented instances of institutional abuse in particular and institutional practices that have helped cover that up.

10

So what, we wait for the abuse to happen before the requirement to report is triggered? Is that part of your philosophy?---That's a different issue, that's - because in most cases mandatory reporting follows the event anyway, so - - -

We're talking about the trigger point for reporting?---Yes.

20

I'm just picking up on the language you used. You think there's a case for sexual abuse - sexual assaults?---Yes.

Do I take it that you're talking about reports of actual sexual assaults having occurred - - - ?---That's right.

- - - or reports of a child being vulnerable to that sort of thing?---I had actual.

Okay. So then the answer to my question is we wait until there's a report of an actual offence of sexual assault - - -?---Yes.

30

- - - before a teacher or doctor or police officer is required to report it to the department?---If it were up to me, that's where I would stand.

40

50

Seriously?---Yes, and I would base that on my many experiences of talking to people who have had suspicions of sexual abuse and who base that on behavioural concerns or indicators in relation to children that could come from any amount of other things.

1

COMMISSIONER: But the way around that is not to get them to report their suspicions because that could be very misleading, but getting them to report the facts upon which the chief executive could form a suspicion because it's her suspicion as well?---That's right.

10

Are you saying the facts that should be reported, though, shouldn't go to an unacceptable risk of sexual abuse but should go to evidence of actual abuse? That is, for the doctor it's some physical manifestation of an injury or consistent with past abuse as opposed to likely future abuse?---That's where I would put it, and I would say if you have a look at the - it's being trialed at the moment and it's come through the Australian Research Alliance for Children and Youth. It's being trialed in five spots around Australia, which is a family needs assessment tool which approaches - which is to be used by any range of agencies, including health professionals, education, community services, et cetera, and provides a toolkit for people to engage both with children and with families about what the needs are. I think that's a far better way, which is to empower front line professionals to ask the sorts of questions they need to ask to satisfy themselves what's going on and what the needs of the family are rather than having a system that says to those same people that any suspicion that you have that something untoward is happening you're obliged to report it because there's a risk. I think the trouble with the latter system is that we actually absolve professionals of the responsibility to inquire in appropriate ways with people that they are working with to then make the assessment about what exactly is going on. For me, that's a far better way and far more inclusive way and in fact a far more protective way than just saying to people, "You report and then your duty is done." I hope that's clarified - - -

20

30

I can understand that from the doctor's point of view, because they're a mandatory reporter because of their special access to x-rays and evidence-based information from which they can make a professional judgment, and maybe you're right, maybe they should filter better and not be just, as a matter of policy, "Get it out of my desk onto yours." We've discussed that before in the commission. With the churches, that was raised before as a potential mandatory reporter, priests and nuns and others don't necessarily have any particular expertise that would qualify them as a mandatory reporter of the existing classes, but the argument is that they have a degree of trust and moral authority that allows both victims and perhaps perpetrators to confide in them about sexual abuse by or against which puts them in a position, arguably, of having to pass that on and not keeping it to themselves?

40

50

---But that's what I'm saying. I'm saying if a child says to you, you know, a sexual assault has happened, I think that should be mandatorily reported.

1

Yes, by anybody?---That's right.

To whom?---So - - -

MR BURNS: Well, just to continue - sorry, Mr Commissioner.

COMMISSIONER: I said to whom?---Well, in the first instance it probably should be the police.

10

I think it is, and I think you're probably supposed to do that now?---Well, there's no requirement on ordinary citizens to do that.

No. Yes, quite true, there's not, not to help the police, but that's where it should go. It's not so much - you're not saying the mandatory reporting shouldn't be there, you're saying it shouldn't be a mandatory reporting of all suspicions to the tertiary system?---That's right. That's what I'm saying.

20

It can go somewhere else, in some other system?---That's right, yes.

Like the police or somewhere else?---That' what I'm saying.

MR BURNS: Okay, so maintain the current mandatory reporting structure but to persons in authority other than the department. Is that your position?---That's right. Well, you know, sexual assault is a crime and it should be reported.

30

Just getting back to your answers to my earlier questions, in terms of the trigger point for mandatory reporting has your view changed in the last 10 minutes?---My view about?

What the trigger point should be?---No. What I'm saying is if any person in authority has clear evidence of a sexual assault crime they should be reporting it.

Right, well, that's a system of reporting victims, isn't it?---Well, it's also a system that would entail then a protective response from - - -

40

But it's waiting for a victim before you act. I thought we'd got away from that?---Well, we clearly have a different system now, with all its attendant problems.

Because we're alert to risk?---Because - well - - -

We're looking at children at risk?---In fact, part of what I've been arguing is we have a risk averse system that sweeps - that net widens. That's what I've been saying.

50

But I'm trying to drill down to what you're actually saying and your position seems to be you wait until something happens before you act, before anyone reports?---What I'm saying is if people have a suspicion that harm has occurred to a child they should make the - and I'm talking about professional people here in particular - they should make the sorts of inquiries, ask the questions, that are necessary to help them reach a conclusion. Now, if that involves confirmation of a sexual assault I don't have a problem with there being a mandatory system that requires people to pass that to the - - -

1  
10

All right. What if it leads to a conclusion that the child is in an unacceptable risk - or is an unacceptable risk of harm, physical, sexual, psychological? Unacceptable risk. Not that harm has actually occurred but that the child is at risk, is in jeopardy. Should they report then?---No, I don't think they should.

No?---And I think the problems, for example, that have ensued from that, in particular - - -

Because we have too many reports to deal with. Is that the problem?---If I just could finish my point.

20

Sorry?---Is that if you have a look at the notification data and the changes in it over time, is that that notification system has become a grab bag for a whole range of human behaviours and events that are absolutely about people's suspicion rather than identified risk, and what that has then led to is that the system focus is on searching for explicit events of abuse or risk - sorry, abuse or substantial risk of significant harm but that the system then spends so much time in investigation that there are simply not the resources available to help people.

30

COMMISSIONER: So it becomes search and rescue?---That's right.

MR BURNS: Okay, too much searching, not enough rescue? ---I don't know that I'd use the term "rescue", but I'd use the term "help".

Help?---The system doesn't offer enough help.

Right, okay. Well, then let's accept you're right about that. How then does the system, while we're talking about it, detect or identify children at risk of harm if you remove mandatory reporting or change it in the radical way you're proposing, that is, to reduce it significantly? How does the system identify which children are at risk, because you've already said in evidence that there must be a cohort of children, a lot of children, who are at risk, in fact, suffering harm in one form or another, that we don't know about?---That's right.

40

Well, if mandatory reporting, the only reason for its existence is to help the authorities identify children who

50

are in harm's way, if you take that away what do you  
replace it with?---I'd refer you to the Scandinavian system  
where there is no mandatory reporting but where there's a  
very well developed and integrated system that identifies  
families and children in need and then offers services for  
help.

1

COMMISSIONER: That's a different system to the one that  
Mr Burns is talking about?---Yes, I know, and what I'd be  
saying to you is that the - and I'd refer you to the  
article that I've written with Bente, that that's a far  
more effective system in preventing abuse and neglect  
because it's one that renders help to struggling families  
rather than having a system that sees itself having done  
the job the community identifies - - -

10

20

30

40

50



I haven't read your paper that you're referring to or studied the Scandinavian system, but what's the answer to my question? If you take most of the mandatory reporting away, how does society identify the children who are at risk, the children who are actually victims?---It identifies them in exactly the same way as it does now, but it - - -

1

Not without mandatory reporting?---But it channels people down a different pathway, so rather than channelling people towards an investigation, it channels people to services and assistance that they require.

10

COMMISSIONER: Different posts. You report to a different post box. You don't report to the chief executive, you report to somebody else in communities. Is that right? ---You report, say, in Victoria, for example, you report to Child FIRST. You go to Child FIRST to get assistance.

Yes. See, they've got problems like Child FIRST - - - ? ---That's right.

- - - and New South Wales have got its equivalent?---Yes.

20

It was well under way before (indistinct) even started his reply?---But, for example, in Norway and Scandinavia, it's the department that does all that. The department covers all those roles.

Well, arguably, this department does too because we're only talking about an aspect of a department. The departments called Communities, Child Safety Services and Disabilities, that's the department?---Yes.

We're talking about a part of that department. It's got another part that might serve the role you're talking about, but it doesn't bring it to the chief executive referred to in this piece of legislation because her only concern is protecting people who are at unacceptable risk of harm from abuse, neglect, exploitation and perhaps some other source - - - ?---Yes.

30

- - - and has no parent to look after them properly, safely - safely?---Yes.

That's a pretty narrow system that we've already got. This is where you come if you need help with, you know, your drug problem or your mental health problem or the disability that you or your child have because you're in this system. You're in the chief executive's inner ear because you've already come through all the other pathways. You've gone through the maze of pathways that exist and you've ended up here, not because you've got a problem, but because you probably are a risk to your own child and the other parent can't protect that child from you, the risk. Isn't there a need for that system?---There's a need. As I've said all along, there's a need for a forensic system. I don't accept the basis of your argument, but which says

40

50

that the balance is right.

1

That's what I'm trying to get to. What is the balance and how do you get it right?---The balance is that there's a far greater need for Family Support Services - - -

Let's take that as agreed. Who's going to provide that, the chief executive?---No, I don't believe the chief executive should.

Neither do I. So we can take that off her plate. So what's she going to do? What's her role?---Her role should be fairly narrowly defined in relation to the investigation.

10

Should it be investigating children she reasonably believes, from what she's told, are in need of protection? ---Yes.

That's what she does now. That is the system?---But I suppose what I'm arguing is that the threshold that's applied, I'm not convinced - because of the proportion of unsubstantiated notifications - that what happens to those people in Queensland is the service they get to address their problems is an investigation.

20

No, because they're unsubstantiated as a result of that investigation and then she has to do whatever is appropriate with them as she sees fit. The ones that are substantiated go into the care system or some other part of her care portfolio. The others get dealt with as she sees appropriate, which might be a referral to somewhere else. They don't get forgotten and chucked in the box, I don't think?---I suppose we'll have to disagree on that. What I'm saying is that in fact the comparison of responses by parents and families to a child protection investigation is fundamentally different to their response in offers for help or referral. It's that actual process that helps - - -

30

For sure and for those people early on in the process who are going to benefit from non-forensic, non-threatening intervention by somebody who's not a child safety officer, no, I don't think there's any dispute from anyone in this room about that. The question is what should the child protection system, which is part of the Communities Department, do and Mr Burns is asking you should the chief executive who's responsible for looking after children assessed to be in need of protection, that is who are at unacceptable risk of harm and - - - ?---Assess that notification.

40

- - - have no viable parent to protect them, why wouldn't mandatory reporting assist that tertiary system, if it's designed and operated the way it should work?---And my response is that the net effect of the mandatory reporting system is to overwhelm the protective system and make it less capable of doing its core function, which is to

50

protect children.

1

But that's a fault of the reporter, isn't it, on your argument because they're not doing their job well enough? ---Yes, but in the end the department also makes an assessment of any information it receives from a mandatory reporting.

Well, only to say, "Yeah, we're going to do something about that. That 80 per cent isn't our business. This 20 per cent is," and the substantiation rates stay pretty stable for 10 years?---But what I'm suggesting is that in a risk averse environment, it's more likely to have a threshold that's higher.

10

But clearly not because people aren't getting it over the threshold because they're not being substantiated. I mean the risk of that is there, but don't the figures show that that's not what's happening? There is a risk that that will happen, that you'll get not only over-reporting but over-substantiation, but you're not. You're getting over-reporting, but stable, even decrease in substantiation and that's a good thing, isn't it?---I don't believe the over-reporting is a good thing. That's - - -

20

No, I agree with that, but it shows the department is getting on top of the reports that it doesn't need to deal with and substantiating only those that it does?---Yes, and I think in my statement I've said that the Australian systems all up do fairly well in protecting children from the most egregious sorts of harm and I think that needs to be acknowledged.

Which in some cases might be their parents?---In many cases it is. That's right.

30

Yes. They're not the parents who are going to put up their hands and go along for voluntary treatment?---I don't know that you can make that assumption.

Okay. But they're not going to come to the chief executive of the child protection system to get it?---That's right.

And it shouldn't be offered by that system?---That's right.

Because that system is too forensic and too threatening? ---Yes.

40

Okay.

MR BURNS: Just one last thing. Do I understand your evidence to be that of the funding pie, the proportion currently devoted to it for tertiary care, children in care, ought not be reduced, that it's needed?---I wouldn't reduce it.

No. That's what I understood you to say before?---Yes. I would agree I would switch some of the priorities, but I

50

wouldn't reduce it.

1

Okay. I'm just dealing with three tiers of care here, primary, second and tertiary. You wouldn't reduce the amount for care? Do you accept that as a consequence of the cost of care within the funding pie there's less money obviously for primary and secondary assistance?---Yes.

But you make no criticism of the chief executive for devoting the line share of that to tertiary care?---I think there is - my view would be that there was a leadership failure.

10

Look, you just said before you wouldn't reduce it?---No, I'm - - -

How can you criticise for - - - ?---If I can finish my point.

Yes, go on?---I think there has been leadership failure. If you have a look at what happened post-2003 in the CMC inquiry, right, we had absolutely the big money go to the department and it didn't go to the early intervention and prevention services.

20

COMMISSIONER: That's the Department of Safety because they set up a separate one?---That's right.

It doesn't look the same now?---And we had a minister - and I think it was Desley Boyle, but I might be incorrect there, it might have been the woman that followed her, that took pride in Queensland having the best statutory system.

30

40

50

Well, that was in a separate department. There was another department, the Department of Communities - - -?---Yes (indistinct) 1

- - - responsible for primary and secondary care and funded separately. Correct?---That's right.

All right. I'm dealing with the current - - -?---Yes.

I just want to ask you about today rather than dwelling on the past. I asked you before about - - -?---But how - - - 10

No, I asked you before about how much of the funding pie went to tertiary services under the super department, the combined department, and you indicated that you wouldn't reduce it personally?---I said I wouldn't reduce the overall, that's right.

Right. That then leaves whatever remains for primary and secondary care, roughly. There will be administrative costs and things of that nature, but the point is the chief executive can only do what he or she can do with the funding that's provided?---Yes, but our system of government works so that departments put up bids. 20

One department. One department?---Yes, well, it didn't used to be. There was - - -

Well, it is now?---Yes, it is now, and so their decisions had to be made about where you get the best money - best bang for the buck, right, and I think there was a leadership - - -

Okay, look, just stick with me, if you wouldn't mind? ---Right. 30

Where you get the best bang for the buck. Your personal view may be you need to put more in the front end, but at the same time you're also saying you can't reduce the amount of money that's paid at the back end. Do you see the inconsistency of that?---No, because the way governments often handle this sort of dilemma is they cap the money on the existing program that they don't want to expand and they put growth moneys into the areas that they do. That's historically been the way that governments shift the priorities. So they cap this and the area that they want to invest in, that's the one that's given the growth money. That's what I think needs to be done. That's the way out of the difficulty, because the essential problem is the - or an essential problem the department faces is the numbers of children in out of home care and the high cost that that will entail. 40

COMMISSIONER: So what, are you going to cap the money available for investigations and care and then give the growth money to the Department of Communities part that does the universal or does the targeted secondary intensive things?

---Yes. That's what I would do.

1

Is that what you'd do?---Yes.

Somehow they've got to fit their notifications and their funding of the NGOs to provide - and the foster carers to provide the care within the money they've already got, the 711 million?---That's right.

MR BURNS: So if you cap what's currently provided and the funding doesn't increase by a dollar you preserve the status quo, don't you?---No, because I also said that what I would do is I would prune - I think there is - - -

10

Yes, pruning?---There is spending within the current department that could be better spent elsewhere within the department.

COMMISSIONER: So cap it and redirect money that they're spending, like, say, for example, arguably, on caring for children with a disability who have a viable parent?---Yes, that's right, for example.

MR BURNS: Thank you.

20

COMMISSIONER: Any other examples, professor?---I mentioned earlier that quite a lot of the funding for innovation and for early intervention and prevention programs, that comes round on a cycle and quite often it's two, three, sometimes four years for particular programs and then they're stopped and the program is redefined and retargeted. There is still that capacity to become more innovative. In other words, you can redirect the money that you already have that will become available to, for example - you know, this is just an example, of targeting disability, if that was the issue that you wanted to address.

30

Okay. Mr Allen?

MR ALLEN: Thank you, commissioner.

Professor, do you have a copy of your statement with you?  
---I do, yes.

Could I ask you to go to page 15 and those paragraphs under the heading Enhanced Accountability?---Yes.

40

At paragraph 80 you start referring to QCAT?---Yes.

At paragraph 81 you say:

*I remain unconvinced that the Childrens Court or for that matter the Commission for Children and Young People and Child Guardian have demonstrated a consistent and beneficial role in scrutinising departmental case related decision-making for*

50

*operations.*

1

---Yes.

Now, if I could just break that down a little, if we deal with the Childrens Court initially, you're saying that you're unconvinced that the Childrens Court has demonstrated a consistent and beneficial role in scrutinising firstly departmental case related decision-making?---Yes.

10

When you say "or operations", what are you referring to there? Is that a decision to bring an application before the Childrens Court?---No, I was referring there more to there may have been an application, there's an assessment order, and the department has put forward a case plan to have that assessment order carried out but then, sometimes for a variety of reasons, things aren't done. So in the actual operationalisation of the case plan.

So are you talking there about the court's management, the case management of the matter before it?---No, I'm talking about the oversight, because often those things come before the Childrens Court because the family is upset, for example, that particular things that were said in court would be done in the interim period aren't done.

20

All right. Now, you say that you're unconvinced that the Childrens Court has demonstrated a consistent and beneficial role in its role of scrutiny?---Yes.

Why do you say that? What has been inconsistent or non-beneficial about its role, in your experience?

---Because there are different Magistrates courts - and I'm not talking about so much the Brisbane Childrens Court with the Childrens Court magistrate there, but more about around the state. There are differences in the way things are done. So, for example, anecdotally, I've heard of magistrates at the Beenleigh Childrens Court taking a much stronger view about scrutinising what has been happening in the implementation of the department case plans whilst the applications are on foot, and then I've heard, particularly from some North Queensland experiences where matters have been raised before the court and then the department has argued against the court having a right to play that role, or the court simply not being particularly interested in it.

30

40

COMMISSIONER: So a different standard or a different approach?---Well, probably different approach. I don't know whether the - different approach.

MR ALLEN: And seemingly in relation to case management, how involved the court becomes in overseeing the progress of that litigation?---That's right.

All right. Now, that probably ties in, does it, with your

50

evidence earlier this afternoon as to concerns about weaknesses regarding expertise in the Childrens Court. Is that because different magistrates have different aptitude? ---Yes, that's - or interest, but I would preface it by saying certainly my personal experience with magistrates is that they generally get it pretty right.

1

Well, are there any means by which you think that those instances where there are weakness in expertise could be addressed?---The only way that I could think of would be through - well, probably two ways, one which is more controversial than the other. One is through educating or training processes to better inform the magistrates about child protection and related matters.

10

Just pausing there, that perhaps begs the question, when you're talking about weaknesses regarding expertise is that expertise in child protection law or in the social sciences?---It can be both.

Right?---It's probably more the latter, but.

Okay, so the further education would be more towards those social science aspects?---Yes.

20

All right. I interrupted you. You said there was another way?---Well, the second way is really in some jurisdictions where they moved away from just purely having a judicial officer to having either a judicial officer assisted by, for want of a better description, experts. An example probably is the Murray Court here - or an example is the Murray Court here where the judicial officer takes advice from elders, et cetera. So you can go to that sort of model where there's more minds that bring themselves to the issues.

30

40

50



But however, I should just add: the problem, for me, with that as a suggestion is that it probably has flow-on effects for - one of the benefits for me about the Childrens Court is that it's quite an accessible forum for most people. Cost-wise, it's pretty efficient, and the more people you get involved means the costs go up and it becomes less accessible, and so it's not uncomplicated? ---Particularly in regional Queensland, it's easy to get before a magistrate when it's for QCAT or a District Court Judge.

1

Yes?---In relation to the differences - - -

10

COMMISSIONER: Sorry, do they have regional - is it regional, QCAT? Does it have places in regions?

MR ALLEN: It does.

COMMISSIONER: Does it?

MR ALLEN: Yes.

COMMISSIONER: But not as many as the Magistrates Court, obviously.

20

MS McMILLAN: Magistrates is - - -

MR ALLEN: That's how I understand it.

MS McMILLAN: Magistrates also hold commissions under the QCAT Act.

COMMISSIONER: Do they?

MS McMILLAN: Yes.

30

COMMISSIONER: So the same people who are reviewing - - -

MS McMILLAN: Can do.

COMMISSIONER: - - - could also do it now as QCAT.

MS McMILLAN: Yes. That's my understanding, that magistrates hold power in QCAT commission.

COMMISSIONER: Well, QCAT is not going to achieve any difference there.

40

MR ALLEN: Except that QCAT, as I understand it, needs to be constituted by a number of members.

COMMISSIONER: But the other thing is: I thought the Childrens commissioner did not ever make a reference to QCAT about the case loading of - had no complaints to make about the department.

MR ALLEN: Not one, it seems, the evidence was a little earlier.

50

COMMISSIONER: Is that right Mr Capper? Never made a complaint, have they - have you?

1

MR CAPPER: No, not directly to QCAT.

COMMISSIONER: So what's the point of having QCAT replace the Childrens Court?

MR CAPPER: Sorry?

COMMISSIONER: I just do not understand why you say QCAT's a better accountability mechanism if no-one goes to it?---I suppose when I wrote that, I was thinking more of my experiences here in Brisbane, and I hadn't, probably, turned my mind to the regional implications. For me, one of the problems in the present system is when you have parents in the department in conflict about the case plan.

10

Yes?---I think you do, you need a body that's able to apply some expertise.

Negotiate it through?---Absolutely. And there's probably an argument for increased mediation, for want of a better description, processes, but, you know, that's said to me the QCAT model, at least, it's a signal to the department that there is some external scrutiny, with some expertise.

20

Right. So how would it get to QCAT? Who would take it there? The parents?---Yes.

Not the - - -?---It can be carers as well.

Yes, but the parent the substitute, but not the Childrens commissioner because she does not do it?---No, that's right.

30

MR ALLEN: Have you looked at the figures as to how many applications in that jurisdiction actually go to QCAT? ---No.

Or its predecessor, the Children Services Tribunal?---I did look at the Q - those figures around 2006/7, but I haven't more recently, no.

Not subsequently. All right. If we just go back to the Childrens Court briefly. Those discrepancies, as you understand them, between different Magistrates Courts, with respect to case management, part of that was as a result of there being no actual specific rules of the court with respect to child protection matters?---Yes, and also the legislation is, I think, you know, fairly - well, I would think it was fairly clear about it's the departmental responsibility that leaves it ambiguous about what role the court should play - the Childrens Court should play during those assessment order periods, you know, before a hearing or a determination.

40

50

You haven't had access to any draft Childrens Court child protection rules - - -?---No. 1

- - - for consultation?---No.

In the Childrens Court jurisdiction, there's been comment, even within your evidence, about the impost on child safety officers regarding the litigation - - -?---Yes.

- - - that is preparation of matters. Could I ask you as to how that might be addressed? It's not only the fact that it takes them away from other duties that's a problem, but it places them in a quasi prosecutorial role - - -? ---Yes. 10

- - - in dealing with parents, doesn't it?---Yes.

So it's not simply a case of giving them more administrative support for the preparation of court documents, for example. It's really considering removing them from that quasi prosecutorial role, isn't it?---For me, the department's between a rock and a hard place with this because, essentially, the QCAT forum puts them in a position where they have to defend their actions, and that's legitimate, that's what accountability is. You should - - - 20

I'm dealing here with the Childrens Court at the moment? ---Sorry.

Seeking a protection order, for example?---Sorry, you'll need to repeat then; I misunderstood.

All right. In the Childrens Court jurisdiction, the child safety officer does have a role in instigating the litigation?---Yes. 30

Seeking an order of the court?---Yes.

And then progressing it. In that sense, they're in a quasi prosecutorial role or could be regarded as such by a parent?---The applicant, absolutely, yes.

How can that be addressed? You need someone in that role, don't you - - -?---Yes, and someone - - -

- - - to seek an order?---That's right. And, you know, the delegations are to particular departmental officers, including child safety officers. Some officers try to get around it by having a court officer who takes all applications who is the actual applicant, but - and that can get you around it in the sense that - in a sense of someone a little bit divorced from the actual relationships - direct relationships with the parents is the applicant, but they still have to draw, ultimately, draw upon the affidavit evidence of staff who have been in direct contact. And, you know, I know from the Victorian study that around about a quarter of the child protection cohort 40

50

raised issues of confidentiality being breached by departmental officers in the court process. And what they meant by that was: hey, I told the officer this and next second it's in an affidavit. I don't know how you get around that. Essentially, the Childrens Court has to have all the information before it to make an informed decision and that means that departmental officers are bound to tell them that.

1

COMMISSIONER: Mr Allen, I am sorry to interrupt you. How much longer do you think you will be?

10

MR ALLEN: I was thinking I'd be about another five to 10 minutes.

COMMISSIONER: Okay. What about the others who have not asked any questions yet? How long do you think - - -

MS EKANAYAKE: Not long at all, commissioner.

COMMISSIONER: I am in everyone else's hands and in your hands, professor. I am content to sit on for another half hour. Would that see us all through? Is everyone else willing to do that? I will not be offended if someone has got to go. What about you, professor, preferably? ---Speaking personally, I'd prefer to deal with this today because I have a research grant proposal to get done by Friday that I need to devote some time to.

20

Sure. Well, it seems like we are all in agreement - - -? ---Sure. Thank you.

- - - so we will keep going. Thank you.

MR ALLEN: What do you say as to a perception that the child safety officers who are instigating those proceedings in the Childrens Court do not have sufficient support with respect to legal advice? So appropriate legal advice to guide their actions at a sufficiently early stage? And the criticism that such legal advice really comes too late in the process when matters are about ready for a final hearing? Do you have any view on that?---I'll offer my advice, you know, also mindful that I was the manager of court services for four years in the mid-90s where we had the responsibility of aligning Crown law representation for departmental applications. One of the benefits that came out of the CMC inquiry was far greater attention to this exact area and there were more resources directed to child safety service centres to have advice and support locally, locally accessible.

30

40

50

That said, the increases in contested litigation that certainly took off around 2005-06 has put the system under all sorts of bother. My personal experience with social workers and human service workers in the department is that this is an area that they do not generally feel comfortable with and they're not particularly good at it. So, you know, drawing together an affidavit that is succinct and goes to the issues in dispute is quite difficult for many of them.

1

Yes. So does that mean, for example, that a lot of material goes into an affidavit which closer to the hearing are the subject of argument as to its admissibility or - - -?---That's inevitably what happens if there's extraneous material and too much hearsay and I know the Childrens Court can hear hearsay, but, you know, my experience was generally it didn't like it for obvious reasons. The trouble is that not a lot of frontline staff have much of an idea about the legal framework for understanding evidence and how much weight should be given to it, so what they tend to do is throw everything in, everything that anyone has ever said to them and you end up with a huge affidavit that takes them days, gets them stressed and isn't all that much help.

10

20

No?---And not only that. It's actually damaging often to the relationship with the parents who look at it and say, "Everything that I've ever said to this person is now in evidence against me."

Those officers are there because of their particular expertise in social work or related social sciences. They're not because of their legal expertise?---That's right.

So, really, they need to be given timely and better legal support at the commencement of that process?---That's essentially and sometimes it's about - and this can be one of the tensions in the decision-making where legal officers look at the material and reach a view that it's not sufficient. There can be quite significant tensions then between the departmental staff who in their professional view have determined that the child is at risk and, you know, the lawyer looking at it from a legal perspective says the case isn't strong or isn't strong enough.

30

Yes. But if that's something which needs to happen because of the nature of the system being a legal one, that should happen at an early stage rather than a later one, shouldn't it?---I agree.

40

Because otherwise the damage has been done by the whole process - - - ?---Yes.

- - - which may ultimately be discontinued, but the damage has been done to the family and the relationship with the officer?---Yes.

50

So, once again, that is another compelling reason why the child safety officers should be given more legal support at an early stage of proceedings or even, indeed, before institution of them?---Yes; and I'd probably argue for more opportunity to mediate with people at an early stage.

1

Should that be by way of court ordered conference or tribunal conference or some other type of mediation process which occurs even before the matter goes before a court or tribunal?---I don't know that that would work because sometimes there is an urgent need for safety and for removal and it needs to be legally based, but in a rethought system, you could probably - you know, there's a lot of applications where it's not imperative and where an application could be taken where the child remains at home and there is mediation entered into as part of that early process. That is possible.

10

Okay?---That would require some substantial modification to the relevant parts of the act, but, I would have thought.

So you see a mediation as having an important role after an application is instituted?---Yes.

20

And that therefore would be appropriately something which was monitored by the court?---Yes.

Okay. As part of its case management?---Yes.

Is there really a compelling need at the moment for some improved alternative dispute resolution process?---Yes, because the reality is that contested court hearings, in my experience, don't change anybody's view about anything. They just entrench already rigid positions.

Could I ask you about the division in jurisdiction between Childrens Court and QCAT. QCAT, of course, has a role in considering applications regarding decisions of the chief executive with respect to children who are already the subject of orders, so for example, placement and access to parents?---Yes.

30

So it considers decisions made by the chief executive after the Childrens Court has already been involved and made assessments and orders which really give the QCAT jurisdiction?---Yes.

Is there some need why there should be that division of jurisdiction between the Childrens Court and QCAT? I would have thought that if a Childrens Court magistrate has had to wade through all the evidence, hear the arguments which lead to the making of an order, they might possess some type of knowledge which assists with respect to the review of the chief executive's decision made pursuant to that order. Why would QCAT bring some further knowledge?---I think if you - I understand the jurisdictional boundary issue you're referring to. To my mind, if you wanted to get rid of that, you would need to move to a model where

40

50

the Childrens Court magistrate had assistance from some others because you're then into the operationalisation of the case plan and, you know, to be fair to the departmental officers, you know, we all set plans and then reality hits in and we have foster parents who can't, for example, deliver the children on a particular day or we have parents who don't turn up for contact visits or any number of things and I suppose my unease with the Childrens Court having that role is just the social science/social work type knowledge base that the particular magistrates may not have.

1

But that's assuming that QCAT is going to bring more of such a knowledge base to the matter?---That does make that assumption, yes.

10

And as Ms McMillan has pointed out, in the regions, QCAT may simply be the magistrate so there would be - that different knowledge base would provide no basis for the split jurisdiction there, would it?---I suppose where I'm coming from is that case related matters can get exceedingly complex and they involve fine judgments about not only the term - what the issues are and how best to address them in the case plan, but then the actual operationalisation of that and any case review function has to be able to look at all of those things. The case plan and the operationalisation as well as what's being aimed at, what are the issues at stake.

20

But what does QCAT have that makes it better at that than a Childrens Court magistrate?---Well, there is certainly some social work members of QCAT. I know some.

So is one of the differences, at least insofar as QCAT works in the south-east region, that QCAT may be constituted for this purpose by a legal member assisted by - - - ?---Yes.

30

- - - other persons of appropriate social science background?---That's right.

COMMISSIONER: They do have the compulsory conference and things like - their processes are different to courts, too, aren't they?---Yes. It still has a gravitas about it, as far as an institutional one, but it's not quite the same as the Childrens Court.

40

50

MR BURNS: I think the point was made, perhaps by a previous witness, that there seems to be a lack of consistent jurisprudence from the Magistrates Court in relation to the area of child protection. Do you see - given that and given the anecdotal reports you've repeated of different magistrates taking significantly different approaches to this legislation, is there any argument for an elevation of the most important decisions from a Magistrates Court level to the District Court judge level of Childrens Court?---I would have thought the accessibility issue would come into bear. I mean, District Court circuits are sometimes months between. When you look at regional Queensland, that would be problematic.

1

10

I see. Okay?---You would then have the issue of where do you appeal, which would have to be to the Supreme Court, I would imagine.

Given your experience and, in particular, your experience with court services, apart from some type of - you've already mentioned some possible benefits with respect to court and tribunal processes are a greater focus on alternative dispute resolution - - - ?---Yes.

20

- - - and mediation?---Yes.

Support for case officers by way of appropriate legal advice at - - - ?---Yes.

- - - an early stage and more rigorous case management by the court of - - - ?---An oversight, yes.

- - - litigation. Any other improvements in court and tribunal processes that come to mind?---For me, the principle with hearing matters is to have them be able to be dealt with quickly, be accessible and be relatively inexpensive because the people that you're dealing with, by and large, are not particularly wealthy. When parents have children removed, it's generally highly traumatic. You know, no matter what their relationship with their child, it's highly traumatic, it's highly stigmatising and they have a need to have it dealt with quickly and to be able to have a voice. That's why I would think anything that we can do to help try and bring the parties together to look at a consensual decision, that has to be grabbed. The cost of conflicted court proceedings is immense.

30

Thank you. Thank you, commissioner.

40

COMMISSIONER: Yes, Ms Ekanayake?

MS EKANAYAKE: Thank you.

Jennifer Ekanayake of the Aboriginal and Torres Strait Islander Legal Service. I just have a couple of questions. At paragraph 80 and 87 of your statement you - - - ?  
---Sorry, 80 and?

50



80 and 87?---Yes.

1

You refer to structured decision-making tools?---Yes.

Could you explain the role of these tools or the resources - the structured decision-making resources?---And I'd certainly say that departmental people certainly who are experienced and would be in a far better position to me, but this came out of a recommendation from the CMC inquiry to address what was perceived as inconsistency in case related decision-making around the state and it was suggested or it was recommended that a tool be looked at to enhance greater consistency and the structured decision-making tool was embraced. I think there are major problems with it. I mentioned there - it's certainly evidence based or the people who own it say that it is evidence based, but the evidence base is entirely from US evidence and I think there's a problem with that. There's a problem in the sense that we have in this country significantly different issues for Aboriginal and Torres Strait Islander peoples compared to first nations people in the US. The US has far greater access to guns and there's greater levels of violent crime. There's higher rates of incarceration as a result of that and there's a quite significantly different drug problem and not just the size of the drug problem, but the nature of the drug problem and the other difference, I should also add, is that the US has had a longstanding system of adoption and, in fact, there's been criticisms about the child protection system becoming a system to provide children to childless couples. Putting all that aside, what it does is departmental officers go to a situation, they investigate the notification, they receive, you know, information through interviews, through school and health and whoever. They then have a series of structured decisions which is a very lenient step, so it's, "You must decide this first and then you decide that and then you decide that." The problem I have with that is that I don't think that mirrors life in the broad community, the real community, and I mean that by this: when you're a parent, we respond to the needs of our children not just with what's the most immediate in front of us, but also what's going to be good for them when they're 15 and when they're 20, et cetera. We make decisions in the contextually appropriate way now with a fairly good idea in the back of our minds about the ways to approach good parenting is it will lead to a good outcome for our children. There are a number of deficiencies with a structure decision-making tool. One of the big ones that I have is there is early on no consideration at all about what the implications are for all the parties, including the children of removal or statutory intervention. So those things just simply don't get structured in. They're not even considered. Interestingly, the trauma that can be associated with placement moves is later on in one of the tools, but that's not figured into what will happen to this child now through removal, which I think is actually quite an essentially consideration about what action you take at this particular point in time.

10

20

30

40

50

Removing a child - the decision-making around removing a child is not purely about the safety or risk issues. There are a number of issues. There are a number of issues that need to be considered, including, you know, what evidence you have, whether it meets the thresholds for the action, how well the parents are working with you and what is to be achieved and what are the consequences or implications of removal.

1

Would you agree that the current SDM tools are biased against Aboriginal and Torres Strait Islander families?---I think they're culturally biased period.

10

So what alternatives would you suggest?---The benefits of these structured decision-making tools is that it gets staff who are inexperienced - it's particularly beneficial for them, because it gives them at least a framework for understanding, "What do I need to consider in making these decisions?" The problem for me is that I think the framework is deficient - not that it's all wrong, but it's deficient. So I wouldn't say throw the baby out with the bath water, I would say that you need to more clearly reference the decision-making back to the legislative requirements and the legislative principles and the UN convention within the legal framework and then have a professional framework such as the SDM that helps people to consider all the things they need.

20

Thank you. You spoke of residential accommodation?---Yes.

Are you of the opinion there should be a minimum age for placements in residential accommodation?---I don't think you can do that, because one of the big and emerging needs is with large sibling groups, and this is particularly the case for Aboriginal and Torres Strait Islanders.

30

Yes?---So, you know, you might have children from the age of, you know, 14, 15, in a family right through to 18 months, and if you set rules like that for residential then you may well be making a rule that ends up breaking the family, you know, has the children in lots of different placements, which I don't think is a good thing generally. I think those are the sorts of things where you need guidelines. The reality is if you've taken four - or even just three, three children into care from the one family and you're trying to find a placement, not all that many foster parents, for example, can easily, you know, find space for three children or four children. That's some of the logistics, the reality that you've got to try and deal with in the department.

40

Thank you, professor.

COMMISSIONER: What is Alberta doing about its over-representation of its Aboriginal children?---They are - they're specifically developing now a range of strategies to deal with indigenising their system.

50

Right?---There's a lot of work being done there. Alberta has done, and the Department of Human Services has done, a lot of work in developing an integrated system, in particular with housing, because quite often housing, drug and alcohol, mental health and domestic violence and disability - they're the big ones, and people will often have three, four or five problems. So there's been a lot of horizontal policy and structural work to get a better integrated system so that the assessment early on about what does this family need leads to a fairly comprehensive case plan that addresses all of the big need areas.

1

Have they got materials available in public sources?---I can - there's a website through - yes, I can give you some websites.

10

That would be helpful too. As I understand it, in American they're tending towards modern day orphanages for unadoptable children, so that the first - the preferred way is to adopt out and if you can't you have to put them in an orphanage-like arrangement?---For me, that sort of institutional care has a pretty dark history.

Yes?---So, for example, in Canada the residential schools for first nations people were associated with what's called the sixties scoop, where Aboriginal children were scooped up and put into residential and then led to - similar to here.

20

But is that what your experience and your researches show, that America does tend towards adopting out if possible and then doing something else with the unadoptable?---I've not actually looked at that area so I couldn't offer a comment specifically.

Okay, thanks. Sorry, Mr Capper? Ms McMillan?

30

MS McMILLAN: Yes.

COMMISSIONER: You jumped the gun there.

MS McMILLAN: I did.

MR CAPPER: Sorry, I only have one further issue for you. Just in relation to paragraph 81 of your statement, you talk about the QCAT role and that it's uncomfortable and burdensome on the department, that you remain unconvinced that the Children's Court or for that matter the Commission for Children and Young People have demonstrated a consistent and beneficial role in scrutinising departmental case related decision-making or operations. Is that correct?---Yes.

40

Now, in relation to that, are you aware of the commission's 2010 and 2011 annual report and the figures contained therein?---No.

Okay, so if I suggested to you that in that annual report

50

it indicates that in the 2010, 2011 period the commissioner's community visitors through their complaints processes and their interactions with children raised 13,661 matters with the department about internal decisions that they've made on behalf of children, you wouldn't be aware of that?---Well, no, I'm not.

1

Okay?---Yes, because I haven't read that report.

Okay, so certainly when you've suggested there that the Commissioner for Children and Guardian haven't turned a system of - haven't demonstrated a consistent and beneficial role to scrutinising those, you weren't aware of the amount of advocacy done on behalf of children with the department?---Well, I haven't read that report, that's right.

10

Thank you.

COMMISSIONER: Yes, now, Ms McMillan?

MS McMILLAN: Yes, thank you.

If we could get permission from the department in Victoria, would you have no difficulty with consenting for that report to be released to us?---I would have no problem whatever.

20

All right. Yes, thank you. Just to make sure that the record is clear, under the QCAT act a magistrate is an ordinary member for minor and civil matters, but can be appointed pursuant to section 192 to other roles, but it needs to be done in writing.

COMMISSIONER: Right, and has it been done in respect of any region, do we know?

30

MS McMILLAN: I don't know that.

COMMISSIONER: But we can find that out.

MS McMILLAN: And I don't - but we can follow that up, just so that clarifies that issue.

COMMISSIONER: Yes, sure, thanks. Okay, now, professor, thanks very much for your time and your evidence. We appreciate that it's a big impost to make a statement and then come and give evidence and have lawyers ask you lots of probing questions, but we really do appreciate you taking the time and hopefully you've contributed to an improvement in where it's - - ?---I don't envy your role.

40

Thank you.

MS McMILLAN: Commissioner, tomorrow we'll have Ms Healy, followed by Mr Hayward from ATSILS.

COMMISSIONER: Right. Excellent, thank you. See you

50

28082012 38/RMO(BRIS) (Carmody CMR)

tomorrow morning. Thanks, professor.

1

WITNESS WITHDREW

THE COMMISSION ADJOURNED AT 5.32 PM  
UNTIL WEDNESDAY, 29 AUGUST 2012

10

20

30

40

50