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TRANSCRIPT OF PROCEEDINGS

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 16/01/2013

Continued from 15/01/2013

..DAY 38

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

THE COMMISSION COMMENCED AT 11.03 AM

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COMMISSIONER: Good morning. Mr Haddrick?

MR HADDRICK: May it please the commission, I continue to appear with Mr Simpson of counsel assisting. I call the first witness today Ms Natalie Lewis.

LEWIS, NATALIE LOUISE affirmed:

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ASSOCIATE: For recording purposes, please state your full name and your occupation?---Natalie Louise Lewis. I'm the chief executive officer of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak.

Please be seated?---Thank you.

COMMISSIONER: Good morning, Ms Lewis?---Good morning

Welcome?---Thank you.

Yes, Mr Haddrick?

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MR HADDRICK: Ms Lewis, I'm Mr Haddrick of counsel assisting. Can you have a look at the document the commission's attendant there is showing you now?---Mm'hm.

Do you recognise that document?---Yes, that's my statement.

And did you sign that statement on 2 January 2013?---Yes, I did.

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

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And the opinions expressed in that statement - are those opinions held by you?---Yes.

I tender that statement, Mr Commissioner.

COMMISSIONER: Ms Lewis's statement will be exhibit 144.

ADMITTED AND MARKED: "EXHIBIT 144"

COMMISSIONER: Is it in publishable form?

MR HADDRICK: Yes.

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COMMISSIONER: All right; and I order that it be published, thank you.

MR HADDRICK: That's the statement and the appendix attached to it.

COMMISSIONER: And the annexure.

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MR HADDRICK: Annexure, sorry.

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Do you have a copy of your statement in front of you there, Ms Lewis?---Yes, I do.

You identified for the commission your name and the organisation you're associated with before. Can I just start by asking you some questions about that organisation? It's the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd?---Yes, that's correct.

And that is a company limited by guarantee?---Yes.

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And you're the chief executive officer of that company? ---Yes, I am.

What is the function of that company?---The primary role is to provide leadership in advocacy and lobbying for its members, to develop policies and practice guidelines that support members, to achieve efficient service delivery for Aboriginal and Torres Strait Islander families and to provide a link between the community-controlled sector and the government so we work quite closely with the Department of Communities in terms of development of policies.

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How long has that organisation been around for?---It commenced operations as an independent organisation in January of 2009.

So it's a relatively new organisation?---Yes, that's correct.

Who founded the organisation?---It was actually through a partnership with our sister Peak, the Queensland aboriginal and Islander Health Council, so it was originally auspiced under the health council and then it became a stand-alone Peak in 2009.

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Who is the membership or the bodies that are affiliated with - it's QATSI CPP for short, isn't it?---Yes, yes.

Who are the members or those bodies that are affiliated with it?---Largely we - all of the services, I think, with the exception of two that are funded to provided - the community-controlled organisations that are funded to provide child protection services across the state so the recognised entity function, the family support function and the foster and kinship function also.

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So that's in the annexure to your statement. That's the organisations identified in that annexure?---Yes.

Are there any other bodies other than the organisations identified in your annexure that are associated or affiliated with your organisation?---Not through membership.

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Okay. What is your relationship with the other parties of the commission? So obviously what is your relationship with ATSILS, the organisation's relationship with ATSILS? ---We work fairly closely with ATSILS. ATSILS' role is limited to legal representation. That's their area of expertise, but clearly, as a party, we need to appear at the commission. They have put forward some suggestions with regard to things like legislation. So we recognise that ATSILS have expertise in the provision of legal advice and legislation and so we work very closely with them because the development of the model we've proposed is dependent on some legislative reforms.

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What is the organisation's relationship with the Commission for Young People and Child Guardian? Is there any relationship there at all?---Yes, we do work with the commission. There have been a number of initiatives; for example, the information sessions that have been rolled out around providing information about blue-card processes. We have actively engaged our membership to participate in those. We also work - we're on that work - I think a working party is what it's referred to - to actually look at some of the barriers to blue cards and to actually try to resolve some of those. So we actively work with the commission in that way. Also out of the child-protection partnership forum I chair the Aboriginal and Torres Strait Islander placements working group and the commission is represented on that group also and have been very active.

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What's your relationship with the Crown or the State of Queensland, the state government?---Our relationship with the state government is we are funded by the Department of Communities. We're funded to provide the services that are listed in my statement. We have a very close working relationship as they're the - they're responsible for, you know, administration of the legislation with regard to child protection in Queensland. We do work very closely with them. They also directly fund all of our member organisations.

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Who do you lobby in government? Is it the department officials, the director-general or the minister and his or her staff?---It's generally through the relationship we have with the executive director and senior management. There is a forum known as the "Child Protection Partnership Forum" and that's probably one of the strongest platforms for us in terms of putting forward ideas about child protection and how it impacts Aboriginal and Torres Strait Islander children.

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So your organisation is a member of that forum. Who else is a member of that forum?---The rest of the Peak bodies, so PeakCare Queensland, Foster Care Queensland and CREATE Foundation. Also there is - a number of the larger organisations are represented there also, for example, Mercy Family Services, Bravehearts - let me see. I don't

want to do a disservice by not listing everybody, but it is the larger - - - 1

Players in the field?---Yes; yes, correct.

Who chairs or convenes that forum?---There's an alternating chair so Brad Swan chairs one meeting - they're held quarterly - and Lindsay Wagner from PeakCare chairs the meetings on the alternative.

Do you consider that that forum is the sort of primary forum for industry players, if I could put it in that sort of way, to get their voice through to government?---It's probably the broadest representation. The stakeholders are across the state and so I would say probably gives the most considered or - let me see - I guess because of the representation there so a number of viewpoints can be put forth in relation to specific issues that are raised on the agenda, so I would say that, yes, it is significant forum. 10

How long have you been attending those meetings for?---I've been attending those meetings since I commenced in the role in February of last year. 20

Can you point to any particular ideas or initiatives that have come out of that forum that government has taken notice of?---Well, the work groups actually undertake - so from the overarching partnership forum there are a number of sub-working groups and we had raised some concerns at the partnership forum with regard to compliance with the child-placement principle and some concerns with the number of young children that were placed into interim placements with non-indigenous carers that then continued on to become longer-term placements. So an initiative that was developed out of that partnership forum was the reconnection program and that was facilitated through the work group that I chair. 30

Obviously you think that's a good initiative?---I think so, yes.

Now, you just mentioned that you expressed through that forum some concerns about the child-placement principle and the commission has heard what that is and we have looked at the sections of the act that outline that?---Mm'hm.

Can you tell us what your organisation's concerns are with the operation or implementation of the child-placement principle?---Okay. I think in terms of legislation it's fundamentally sound and quite clear. I think the problem is the application in practice is largely inconsistent with not just the intent of the legislation but the actual wording of the legislation. 40

How so?---I'd say that's easily identified by the rate of non-compliance that's been widely, you know, discussed at the commission here.

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We find that it's unacceptable that such a high number of Aboriginal and Torres Strait Islander children are being cared for with carers without any connection to their family or back to their community or really without culture being considered as an integral part of the case planning process that's taken with those children.

COMMISSIONER: I've heard evidence that you can actually become a kinship carer by definition even if you've got no blood tie or even if you're not indigenous?---Yes, commissioner, that concerns me.

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Well, it would, because that would distort the figures and it might give you the misleading impression that somebody was in kinship care when the truth is they weren't, except by definition?---Yes.

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Have you had any experience of that, or is that a phenomenon that you've come across before?---Yes. I think it definitely skews the compliance rate and it's more, I guess, with regard to the final step in the hierarchy in terms of significant other. That, I think, has the impact of skewing the outcomes of reviews around compliance.

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If you were to give the intended effect to the placement principle and it was really adopted across Australia-wide because of the strong recommendations of other inquiries, you'd really need to know with certainty who the kinship or the skin or the kins were, wouldn't you?---Yes, absolutely.

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That would be a matter of expertise, almost?---Yes. If I can just illustrate, through the reconnection project we've acknowledged that Aboriginal and Torres Strait Islander professionals are best placed to undertake eco-mapping and identify kin for families. So we've actually been able to in a number of regions re-orient that process to get it right in the first place. So, for example, the recognised entities and foster and kinship workers have taken an active role in, at the very - you know, at the very beginning point, in identifying kin and progressing those as options.

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Well, see, one thing that arose yesterday, and I'd been considering it before that, was because we've got a legislative framework and because the system is - because you're interfering, the state is interfering, with family privacy and autonomy?---Yes.

It can only do that on clear and transparent grounds that the community is willing to permit that's consistent with contemporary social values that are shared and you can only act, if you're the state, in accordance with the law. Now, here the law says that a child is in need of protection if - has been harmed or at unacceptable risk of being harmed to a significant degree in respect of an aspect of their welfare and if they have no parent able and willing. Then the definition of "parent", cutting it all down to the relevant part, includes a parent who by tradition or custom is regarded as a parent. Now, unless you've excluded those people as being willing and able you may not have a child who by definition is in need of protection, because there may be somebody regarded as a parent who is willing and able out there and you haven't excluded them. You therefore are at risk of contravening rather than enforcing the law yourself as the state, unintentionally. So how could we avoid that? How could we be sure as the department that we have checked all parents by custom and tradition and not just by white concepts and that none of them are willing and able before we intervene?---I think that that actually starts by recognising who has that knowledge and who are the people best placed to identify those things. So it is our submission that the recognised entities are well placed in terms of knowledge and

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connectedness within the communities that they work, but I think they could fulfil a function to more exhaustively explore all of those options. I think that you raised during the inquiry the concern that the first question becomes, "Where do we place this child?" instead of, "How can we keep this child safely at home?" So I think that it's absolutely important to look at those extended family members and who may actually fulfil the role of parent traditionally, but it's also important to consider first of all what are the risks of removing this child and the harm that can be caused by virtue of that removal itself. So just looking at trauma then the likelihood of disconnection when we're looking at 50 per cent of children placed outside the child placement principle. So I think that that's an element that has to be balanced in that decision.

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There are two short-term harms that have to be balanced. One is the harm of staying neglected at home and the other is the harm of being removed from loved parents and family?---Yes.

And being placed somewhere, who knows where yet, and how often, in how many different places, over the next two years. You have to balance that against each other and then you have to balance the long-term emotional harm of having been removed from your home for a period of years during childhood. So they're complicated questions, obviously. The other thing that was exercising my mind was that you have the phrase "willing and able". Would you say that there are any cultural aspects to that phrase that might lead to a different conclusion depending on who was making the decision as to whether or not someone was culturally willing, culturally able if you were a state looking for a culturally appropriate and responsive approach to the particular needs of that child rather than children in general?---I would say the term "able" probably has the - is the most impacting or the most difficult one to talk about, because a family being able, largely that's actually viewed in the context of poverty or the ability to provide certain things, and it's widely known that Aboriginal and Torres Strait Islander people face significantly higher rates of disadvantage. So I guess in looking at that, if you were assessing that and not able to view that in context with that knowledge, you may eliminate someone as being able by virtue of those very determinants, you know, poverty. So I think that - and also ability can be achieved by the provision of support services at the correct time.

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Well, I was just going to say, you don't want to exclude the community aspect of ability either, because you're not acting necessarily on your own here but needs to be viewed in the context of your community rather than as a singular person?---Correct.

But 5BJ of the principles seems to suggest that having previously said the preferred way of ensuring safety is through supporting the child's family, it then goes on to say that you can't - or shouldn't place a child in care. Now, obviously they're talking about protective care, and that is state care, really, I suppose, although it's not clear, of a parent or another person who has the capacity, so that's able, and is willing to care for the child; well, that's willing, including a parent or other person with capacity to care for the child with assistance or support. So the legislation itself recognises that you may have an impaired capacity or ability to care for a child, but with support that inadequacy may become sufficient to satisfy the principle?---Yes.

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How often do you think that principle is given practical expression within the indigenous community?---I would suggest rarely.

Would it be a way of reducing over-representation if rather than providing tertiary services like removal that you did something like that beforehand?---Yes, I think it would definitely have an impact.

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All right, the other thing I wanted to ask you was the - no, I'll leave that. Okay, no, I'm happy. Thank you.

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MR HADDRICK: Mr Commissioner.

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Can I just show you a section of the Act, please, Ms Lewis. I'll open to the right page. Can I just get you to have a look at the Child Protection Act and in particular the definition of who is a parent in section 11 there?---Mm'hm.

I'll read it out for the benefit of the commission. It says in subsection (1):

A parent of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.

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And then in subsections (3) and (4) in similar language it goes on to say:

A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

Now, just picking up on the Commissioner's questions there to you about the identification of a parent, can I get you to focus on the words in subsection (1), "Or someone else having or exercising parental responsibility for the child"?---Mm'hm.

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Now, you'd appreciate the way the system works in that currently the Department of Community Services brings an application before the Children's Court to obtain orders, whichever one of the orders in the Act it wished to obtain. As part of that step officers of the department have to be satisfied that there is not someone else having or exercising parental responsibility for the child. How does your organisation or indeed you personally believe that the department should go about deciding whether in their preliminary steps before an application is brought before the court, whether there is someone else who has or is exercising parental responsibility for the child, having regard to subsections (3) and (4), Aboriginal tradition or Island custom?---I think that that's facilitated through the role of the recognised entity and I feel that if a child safety officer is working inclusively and respectfully with a recognised entity they should be in a position to legitimately exhaust all options in terms of who may be considered a parent of this child in terms of looking at it from a collective responsibility framework. So if you have the recognised entity engaged in a meaningful way to assist you in identifying potential people that can fulfil the roles or responsibilities of a parent in accordance - the way that it's described here - then I think the onus should be on the child safety officer to demonstrate that they have exhausted every opportunity.

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Okay. You float two propositions there in your answer. In one part there you say that the recognised entity,

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whichever one it is, that they become involved and they assist the department and in effect advise the department whether there is another person who conforms to that definition, if there's another member of the community who has parental responsibility for the child?---Yes.

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But at the very end of your answer there you said ultimately - my words, not yours - but ultimately it's up to the officer of the department to be satisfied that there is no other person in the community who answers to that description?---Mm'hm.

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Can you appreciate that there is an administrative problem there for the department in deciding whether it has exhausted all avenues that it needs to exhaust in deciding whether there is another member of the community who conforms to the definition of a parent?---Yes, I understand that. But to clarify my point, I was actually referring to within the current system.

Yes?---And so that is - the role of the recognised entity currently is very much limited to the provision of advice and the ultimate responsibility or decision rests with the child safety officer. That is certainly not what I would be suggesting as a way to resolve that going forward, but that is my understanding of the current situation.

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Okay. Having regard to the current situation rather than the couple of different models that are on the table, what is - just to make sure I've got this clear - what are the efforts that are taken that you understand to conform to that requirement in the Act? How often is that requirement complied with? That is, the requirement to try and find out if there's someone else who is exercising parental responsibility?---I think that there's very limited compliance with that in terms of reflecting the intent of section 11 subsection (1).

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So you would say as the situation currently is the department puts very little effort - I think they were your words, I might have got that wrong. Correct me if I'm wrong?---Mm'hm.

Puts very little effort in trying to find if there is another person who answers to the description of parent?---Yes. And I think fundamentally because that is about being - having the focus being primarily on the safety and stability factors and with very little reference to the culture of the child. So I think that it's almost as if culture is a secondary consideration in terms of the approach that's applied now, rather than culture being considered as an integral component of achieving a child's best interests.

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Okay.

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COMMISSIONER: But the Act sees it as integral?---Mm'hm. 1

Because of the definitions of parent?---Yes, it does.

But we were talking about before the child placement principle. What we're talking about now, if you did comply with the precondition of excluding all willing and able parents, that would directly affect the issue of over-representation because there'd be less kids going into the system. But the child placement principle itself has nothing to do with addressing over-representation, does it, because you're already in the system before the principle is triggered?---Yes, yes. 10

So it's about placing kids in care?---Mm'hm.

And the idea is to avoid the situation that that question ever arises?---Yes.

And it's only that if you do have to place a child in care, the principle has to be adhered to?---Mm'hm.

So I think sometimes there's confusion that the principle and adherence to it actually is an over-representation issue. I just wanted to - I don't see it as that. I see the principle being adhere to is a - - -?---Compliance issue. 20

- - - placement issue?---Mm'hm.

And it's well after the event when you're trying to address over-representation. Over-representation is how well you keep the gate to the system and only let children who actually need it by legal definition to get it, and make sure they don't get it any longer than they need it? ---Mm'hm. 30

And make sure that children who don't need protection don't actually get unneeded protection. And that's the gatekeeping role of the department.

MR HADDRICK: Just returning to that definition if I could. I asked you some questions and you answered them about how the system currently is. Let's assume that this commission makes no recommendations whatsoever for the change to the Child Protection Act and the law remains exactly as it is?---Mm. 40

What level should DOCS officers go to, to satisfy themselves that there is no other person who answers to the description of parent who can look after that child in the community?---I'm a little bit confused in terms of, like, what level.

Okay?---So what do they need to actually do, or - - -

How much looking for a parent should the department do? So should they just be talking to the RE - the recognised entity - or should - say for instance we're in the Palm Island community?---Mm'hm. 1

A known group of people?---Yes.

Geographically identifiable?---Mm'hm.

Should the departmental officials be going tapping on every door on that island to try and find someone who says, "Yes, I'm a parent for that child"?---No, they should be tapping on the door of the RE and asking them to explore that for them. 10

Okay?---Mm'hm.

And how far should the RE go?---I would suggest that it would be very, very unlikely that if significant effort is put into identifying an alternative placement, that you would not be able to find one. Aboriginal families are quite large families and although collectively they may not stay within the same areas, I think that if you actually examine that effectively and the REs know how to do that it would be very unlikely that you could not find a family member that would be able to provide for the care of the child. 20

Okay. Do REs cover the entire Aboriginal and Torres Strait Islander population of Queensland?---We do have REs within the regions to cover the state, yes.

Okay. Returning to your statement, I just want to go back a couple of steps and ask a few more questions about your organisation?---Yes. 30

QATSICPP. You tell us in your statement in paragraph 27 that you have five employees. Can you tell the commission what those employees do?---Okay. Well, I'm obviously the chief executive officer. We have two member support officers, one of those being part-time. So the member support role is - it's mainly focused on providing sector development activities, working with the members to actually engage them so that they're in a position to feed up information, identify trends that are happening in different regions, service or practice issues, those type of - the member support position is almost the conduit for that information back to the Peak, to then inform our recommendations or comments that we made to the department. Let me see. We also have obviously an administration position and a policy position as well which is also part-time. 40

Okay. In paragraph 23 you talk about your regional board of directors. Can you tell us something about how your organisation is governed, please?---It's governed by an elected board of regional members so for each - within each of the regions that the department currently define. Member organisations within those regions will nominate somebody to represent their region so the board is made up of representation across the state. Currently right now we do have one vacancy for the position with Wide Bay but we do - other than that area we do have full representation across the state.

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Who's your chairman or chairperson?---Our chairperson is Lizzy Adams. She's also the CEO of Goolburri.

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CEO of?---Of Goolburri.

Okay. How long do your directors stay in office for? ---There's elections every two years.

Okay; and is the membership of that effectively relatively static or do you have regular changeover in that organisation?---It has been quite static. Since I've been there we have had one changeover of membership but that was with the person who was on the board actually leaving their role and work within the sector so that's been filled by somebody else from that organisation.

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How does your organisation judge itself or review itself to decide whether it's achieving its goals or not?---We actually invest a significant amount of time and effort in developing the strategic direction of the organisation. We've been very clear in developing our strategic objectives, aligning them with the service-agreement requirements that the department have provided to us and then also everybody's individual work plans link directly back to a service-agreement requirement and the strategic direction of the organisation. So I think we are quite successful in implementing the strategic intent of our organisation - - -

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Okay. When you speak of the service agreement, you're speaking of an agreement that your organisation has with the Department of Communities?---Yes, that's correct.

And they're to perform certain functions?---Mm'hm.

And for that you receive a sum of money from the State of Queensland for the provision of those services?---Mm'hm.

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And that sum of money is currently \$547,394 as of 1 January this year?---Yes, that's correct.

Now, in your statement starting from page 11 and paragraph 47 you say that that a major shift in policy is absolutely needed. Can you, please, tell us in general

terms to start with and then we will go into specifics - why do you think there needs to be a major shift in policy?--Plainly because the level of over-representation continues to escalate under the current policies. We need to actually look at re-orienting the system and having a greater focus on family support and prevention if we're to make a difference going forward. I think that in terms of policy right now the department is very much focused on the tertiary end and I think that if we're able to shift policy towards looking at preventative options, keep families out of - keep children out of the child-protection system, I think that we may see over time, and in not a large amount of time, a reduction in the rate of over-representation.

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Okay. In paragraph 48 you say, "Since the CMC inquiry" - that is, the CMC's 2006 inquiry - "there has been an increasingly risk" - sorry, "an increasingly risk-averse system has evolved. This has resulted in more coercive intervention in Aboriginal and Torres Strait Islander family life." Can you tell us what you means by "more coercive intervention"?--More intervention as a tertiary response is what I mean there. So since the CMC in terms of - and a number of things have happened in terms of the introduction of the SDM tools. A risk-averse system in terms of - although the threshold hasn't changed, it seems the responses to children who are deemed neglected seem to have escalated and children are coming into the system, it seems, quicker and staying for longer periods of time. So the intervention in a family's life has been more governed by statutory response as opposed to the provision of support prior to coming into the system.

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What's fundamentally wrong with that?---I think it then - I think there may be many children that are within the system that could have been adequately protected and supported by resourcing families and communities to respond better.

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But you accept as a general proposition that there does need to be a tertiary system?---Absolutely.

And there is definitely a case for the state, however defined, to intervene into families where those children are in need of protection and care?---Yes, absolutely.

COMMISSIONER: Maybe you can help me with this: on the one hand the state shouldn't interfere with families, any family, to protect children unless it's justified in doing so, having gone through the least intrusive options and you come to the point where the protective responsibility of the state really requires intervention?---Mm'hm.

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And then that might ultimately - when you're talking about too many children, especially indigenous in out-of-home care, it means that they're in out-of-home care because guardianship has been transferred from parents to the department effectively and the department has become the

substitute parent and it's responsible for caring for the child that's removed from his or her home. Now, it seems to me that - and this question relates to the comment that has been made not only by you but by many people that there are too many children going in and staying too long. Now, on the one hand you might argue that the state should only remove children who are going to stay there because it's such a serious step you don't do it if there is any prospect of the child staying safely at home, except in those rare cases where immediate danger is to be averted and that's a very short-term interim placement for safety sake?---Mm'hm.

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The default position should not be remove the child from home just to try to reunite?---Mm'hm.

That's pointless?---Mm'hm.

So in terms of children staying too long that assumes that they should never have gone there in the first place?
---Mm'hm.

Do you agree with that so far?---I think families have the capacity to change and their situations change so when a risk may be presented at - you know, at a certain point in time, if the family is adequately resourced - that child may need to be removed - you know, can't identify anybody else to place them with the family. The child's removed for a short period of time. I think the responsibility or where the response needs to be is to support those families because I do believe that families have an - you know, when resourced, are able to change over time.

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Sometimes their structures change too?---Mm'hm.

The violent spouse leaves after a couple of years?---Mm'hm.

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And therefore the cause of the intervention is removed?
---Mm'hm.

You then have to decide now, given the change in circumstances, is the disruption to the child to return the child justified?---Mm'hm.

That seems to be a question that's asked, but a lot of people would argue that that's a no-brainer. You don't even stop to think about that one, but, on the other hand, once the state becomes the guardian, then it has all the rights and responsibilities of a natural parent?---Mm'hm.

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So in terms of over-representation it's the substitute parent, because they now have the power to make the decision, that is deciding who will go into care and for how long and where. So maybe the answer lies in how often you actually take that drastic step of transferring guardianship from the natural parent to the state because

only the guardian, the legal guardian, can make care-placement decisions, you see?---Mm'hm.

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Now, at the moment the way guardianship is transferred is by the court and the court makes that decision based on a couple of criteria: (1) the child is in need or protection on an ongoing basis or (2) it's best for the emotional stability of the child?---Mm'hm.

What do you say about that second alternative as being a basis for transferring guardianship on a long-term basis? ---The emotional - are you talking about the emotion wellbeing of a child?

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Yes?---You're talking about the emotional being of a child. I think there's a lot of debate around, you know, permanency, but I think that we all agree that permanency is important for a child, but a child's sense of belonging and connection to culture and family informs, you know, their emotional being. So I think that you can't make those decisions in isolation of culture or the potential impact on a child. 1

In the indigenous context could you make that decision without expert help about what the characteristics of stability for an indigenous child actually are over the long term?---So do you mean within the existing - - - 10

System, yes?---The existing system.

At the moment the court is asked to make a long-term guardianship order either because the child needs ongoing protection into the foreseeable future or the emotional stability of the child calls for it. In making that decision, whether the emotional stability of the child calls for it, in the indigenous context, could you do that, as a magistrate in Toowoomba, without expert assistance? ---No, I think you would require expert assistance and advice. 20

How often do magistrates call for or get expert assistance in making decisions, guardianship decisions, in your experience?---It's difficult to say. I think it's certainly not consistent across the state and certainly with regard to the RE role it's been quite contentious in terms of the interpretation of their role, if any, in court and in providing information direct to the court. I think it's very clear in section 6 that they can, but one of the limitations around the service agreement is an RE having to notify - effectively get permission from a child safety officer to attend court and make a submission with regard to those decisions. So that impacts a lot of recognised entities. They may then be less inclined to attend court, but there are some courts where the recognised entities are particularly active and that magistrates actually request them. I recall when Magistrate Dowse was here in Brisbane, she actually asked quite often to hear from the recognised entity at IFACSS. 30

All right, now another question for you. Sorry to put you on the spot. What would you consider to be the major drivers of over-representation?---Well, I think it's around the indicators of social disadvantage, so inequitable access to employment, housing, poorer health outcomes, all of those things that have been widely acknowledged throughout the inquiry as being, you know, impacted or - - - 40

Anything over and above the matters that we've already heard about that you think haven't been identified by

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anybody yet?---I think because self-determination in terms of Aboriginal participation in - and having a say in what happens with our children, I think that that has certainly impacted.

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I'm sorry, Mr Haddrick. I've still got two areas I want to touch on with you while you're there. Unborn children. They're actually - it's an oxymoron. Unborn aren't children, by definition, in this legislation. Children are individuals from zero from 18. Unborn children have no rights under the legislation to protection. The evidence I've heard is that there are many vulnerable non-indigenous communities as well as foetal alcohol syndrome disorder is a particular risk in some places. We have a situation - and there are a lot of legal, moral, maybe even cultural, certainly societal issues here about which there will be no consensus, but the state's powers to protect an unborn child by intervention at the moment until birth, and yet we all talk about early intervention strategies being the best. The earliest that we can intervene is after the harm is already done, in the case of some children, and then the best we can do for them is look after them as best we can for the harm that's already been done that we virtually stood by helpless to do anything about. Is there any way of changing that rather unsatisfactory situation?---I think it actually projects a responsibility back onto our services to provide effective responses for women that are in that position.

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The problem is that when we talk about secondary services what we forget often is that they're voluntary?---Yes.

The purpose of having a tertiary system and the coercive power of the state is to help people help themselves when they don't want to, for one reason or another. Either they can't see that they need it, they lack the insight to see it, or some other reason. That's why we have it?---Yes.

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But it's no good to us in the case of the unborn at the moment, all that power, and all that inability, just sit back and wait and then what we do, so I've heard, on occasion, is that we come in with the sledgehammer then and take the child away from the mother, but the harm is already done, in a way?---Can I suggest that one of the issues that we have with the recognised entity is that they're not able to attend - because of the status of the unborn not being a child, the recognised entity can't voluntarily engage in that process, so they can't go with the CSO - - -

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Yes, that's right, under the act?---Yes.

Unless with consent?---Exactly, and then that actually then becomes left up to discretion. If the person attending the woman, or speaking with her, neglects to ask if they would

like the recognised entity present, or anything like that, that doesn't - you know, that doesn't necessarily occur. 1

The problem is that mother or the father know that the RE is paid for by the department?---Yes.

They would see a conflict there?---Absolutely.

You tell the RE, you may as well tell the department or 4BC?---Mm'hm.

All right. Well, I'm going to ask you to comment on something?---Okay. 10

Because in your submission - and I know others have said the same thing and I'm very interested in the question of the devolution of responsibility for child protection and looking seriously at having a separate chapter that deals with indigenous child protection issues discretely rather than tagging them on to mainstream sections?---Yes.

But I think - do you accept this, that within our 23 discrete remote indigenous communities that there is variable capacity in the child protection field?---In terms of skill or presence? 20

Well, yes, in terms of being able to take responsibility as distinct from control over the protection of children within those communities?---I can acknowledge that there is existing capacity and that it can certainly be built. I think that we could certainly - if resourced, we could absolutely build a capacity of Aboriginal and Torres Strait Islander workers to respond to child protection issues - - -

But there would be some - and it wouldn't just be workers, it would have to be the community wide, wouldn't it?---Yes, absolutely. Yes, absolutely. 30

I mean, there are three tiers to protecting children. There's the families, including the extended families, the local community and the state. Now, the community itself seems to have somehow sort of opted out a little bit. We go straight from children, families, state, and everyone tells me that you need to have a localised response and I accept that. Even if you have a regional system you need a localised response and each local community, particularly indigenous ones, will have different capacities, different needs, different cultures. So the system has to be - insofar as we can in a big state like Queensland, so decentralised, we have to give as good an individuated response as possible, because we're looking after a particular child, again, not children in general. It's only certain children who the state is responsible for - at the secondary or tertiary level, I mean. All right, so - and I've been to Aurukun, I've been to Palm Island and I've 40

been to other discrete communities and I've seen the community in action, if you like. I wasn't there for very long, obviously; it's a snapshot, but I read and I hear.

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Now - and I know there are differing views so I'm looking for you to participate in the debate because I think it's counter-productive to give somebody authority, power, control, if they're not capable of exercising it responsibly, regardless of the best intentions?---Yes.

All right?---Mm'hm.

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It's like giving a child too much responsibility when they're not ready. All right, so this is what - you might have read it yourself, but in the Inquirer, page 15 of the Weekend Australian, 12 January 13, Stephanie Jarrett - she's written a book, it's called Liberating the Aboriginal People from Violence?---Mm'hm. 1

And she wrote a précis of it, an article, a colour piece in the Weekend Australian, and this is what she says. Do you accept that family violence and communal violence - that is violence within the community as a dispute resolution mechanism - is a risk factor for child protection?---Yes. 10

Right. This is what Stephanie Jarrett says, and I'm selectively quoting?---Mm'hm.

The nation needs to understand that to liberate Aboriginal people from violence, deep cultural change is necessary, away from traditional norms and practices of violence. Such fundamental change is unlikely to occur in separate, self-determined communities which are premised on maintaining traditional culture. "Cultural rights" thinking favours Aboriginal perpetrators, so Aboriginal victims need the full force of liberal-democratic law, which disallows the private use of violence. Above all, the safety of Aboriginal women - 20

and I would add, children -

depends on our governments understanding and responding to the reality of the brutal side of Aboriginal traditional culture. It should be self-evident that a program of self-determination is a high-risk enterprise in cases where the traditional culture is inherently unsafe for women - 30

and children:

Serious interpersonal violence in remote Aboriginal communities is catastrophically high, while Aboriginal people commit and suffer less violence in mainstream locations and amidst mainstream cultures and laws?

---Mm'hm. 40

What she's identifying there is that into some Aboriginal communities - some Aboriginal-controlled or exclusive communities - violence is almost a cultural value and she says that you need mainstream law and essentially altering the culture of violence before children and women in those communities will be safe. And she's talking very generally, she has not identified any community in

Queensland or any other state. What you say about that?
---I would say that it's concerning because it suggests
that violence is characteristic or is fundamental to
Aboriginal culture and I think that those sort of
statements become sensationalised and make it very, very
difficult when we're trying to develop responses to local
community issues it makes it very, very difficult.

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Stereotyping?---Absolutely, absolutely. And so one of -
I'm not sure if you've had an opportunity to read a lot of
the staff from the Healing Foundation. You know, the
Healing Foundation, I think offers a very sensible and an
approach that really incorporates an indigenous worldview,
so we are talking about the presentation of violence and
those type of things have been perpetuated because of
historical factors. If we don't actually address those
through a healing approach for people then we can't
actually mobilise people to move beyond that point and
therefore where then limited in the amount of safety or
protection that we are able to provide for children.

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That's taking that point on board I think that's where you
and she would fundamentally disagree: she says that
violence was a pre-European contact tradition in indigenous
communities?---Mm'hm.

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Anyway, that's her view and I just wanted your comment on
it because given that we all accept, I think, that violence
within the family and within the local community,
especially in closed communities, is a potentiater for
child abuse or neglect, especially emotional, long-term,
cumulative. How does the local community - say like
Aurukun or one of these smaller 12, 1500 people, very
close-knit, can't go anywhere, remote, isolated - how do
they deal with the problem that's been with them for many,
many years? Accepting the cause was something over which
they had no control and are not to blame for? At what
point in our history can those sort of communities reduce
violence - the level of violence within families and the
communities, whether it is associated with alcohol use or
not - to the point where children can live safely in their
homes and in their communities?---I think that in terms of
communities we need to advocate and take very strong and
firm positions on the protection of the rights of our most
vulnerable, our women and children. You know, I'm an
Aboriginal person, I understand that there are many -
people's experience of Aboriginality is very different.
There's diversity within our culture. Violence is not a
part of my culture and I can't imagine that anybody that is
in here would put their hand up and say, "Violence is part
of my culture and so I'm allowed to treat my wife or my
child in this way." I don't think that it is certainly an
accepted or excusable aspect in terms of behaviour, but I
think that we have to recognise it does exist, but we need
to put in the correct response to address that. Our

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communities do need to take a firm position around the protection of the rights of children and women. 1

I mean, the same problem exists in non-indigenous communities as well, that's why we have a Family Violence Act and we've got a whole system built around it?---Yes.

But stop signs don't stop cars?---Mm'hm.

Legislation doesn't stop violence, no matter what you call it. So if - you said, okay, violence is one of the reasons for over-representation or it's one of the reasons for children, indigenous and non-indigenous, entering the system. It's a risk factor that we can actually do something about because you can see it?---Yes. 10

You know when it's happening, where it's happening; not exactly when but you know if it's happening. What can the community, what can the courts, what can anybody other than the people involved in the home do about that so that you eliminate or reduce the risk of harm to a child in that home?---I think that those solutions have to be absolutely born of the community that they're talking about, so regardless of whatever that community is, it's about the community identifying and accepting that that's an issue; developing parameters or, you know, stating that it won't be tolerated. But at the same time a purely punitive approach wouldn't work unless you actually put in something to allow people to address that as an issue. 20

Okay, let's come to that?---Mm'hm.

Say we've got a notification of substantiated harm based on witnessing family violence?---Mm'hm.

Okay. Now, what is the system - the one I'm looking at - going to do about that, bearing in mind all the things we've said, all the principles that we have to take into account? First thing is we're going to try to keep that child safe at home?---Mm. 30

Now, by definition the child, according to all our information and conclusions, is not safe at home at the moment. Okay, all right. Let's try to just take the child away from the home for the short-term interim period with family, kin, somebody that's appropriate. We've still got to get that child back home, all right? The child is loved by the parents; the child loves the parents. The best place for that child is safe at home. We've got to get the child back. There is nothing the child can do to make that home environment safe; only his or her parents can do that. So how does the system actually help the parents reduce that violence or eliminate it so that the child is not at unacceptable risk of being harmed by going home, so that it doesn't reoccur, when the system that we've got merely 40

offers a voluntary option and there's no coercive power of the state to actually is make them stop being violent to each other?---I think that there's a number of examples around the state of service providers. Although it is voluntary in nature, the use of - with the interventions with parent agreement we're seeing a much greater rate of engagement of families. So under an IPA families seem more inclined to actually access support services and participate.

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All right, good point. So we know that IPA by definition is already a post-substantiation service?---Yes.

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We've got to bring that forward, don't we?---Yes.

Pre-substantiation?---Mm'hm.

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So that the agreement, the contract between the parent and the state, happens before the state has made any conclusions at all about the - and so the way you do that is you need to encourage the parents to self-refer or to comply with directions so that - the question isn't whether there's harm or not. The question is refusal to comply might be evidence suggestive of risk?---Mm'hm.

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So you eliminate the violence as the risk to the refusal to do anything about it as the risk?---Mm'hm.

So how do you do that?---I think that we haven't really had an opportunity to test in terms of the effectiveness of a secondary system right now because those referrals come through from the department. So I guess it's been - it would be difficult to provide any evidence other than - one of the issues - sorry, one of the initiatives in, I think, south-west, for example - they made the distinction between - you know, it's difficult to do cold calling. Families weren't engaging with these services, that type of thing. They trialed a process which they referred to as "a warm referral" where they would - the family would be notified by the regional intake service that, you know, a concern had been raised and they recommended that they access those services and the rates of engagement actually went up.

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What if we improved on that one more step and made intake outside the tertiary system; make intake itself a gateway to either secondary or tertiary services which wasn't kept, that is, the gateway is not kept by the department that operates the tertiary system?---I can certainly there would be, you know, merit in doing that. It would remove the stigma in terms of any referral that did come from there.

It would encourage self-referrals, wouldn't it?---Yes, yes.

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If you knew the policeman wasn't going to be watching, you might be willing to do something if you thought you needed help?---Mm.

What would the practical difficulties with that be?---I guess that probably the - gosh, I mean, I would say probably that would be around liability right now in terms of the department having a legislative responsibility to make that determination about whether a family comes into the system or not.

But there are a lot of people - mandatory reporters have got the liability of making the decision of whether they have to report or not and a non-departmental intake service could have the same obligations, that is, you have to report?---Yes.

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If it needs a tertiary response, you can't - you're carrying the risk and if you don't report a tertiary need,

then you will be in trouble, but if you properly identify a secondary need and address it responsibly, you might never need to make a tertiary notification?---Mm'hm. 1

Anyway, something to think about?---Yes.

Mr Haddrick, did you want to say anything?

MR HADDRICK: Yes, I have a couple more questions, thanks, Mr Commissioner.

I'm going to now take you to the details or particulars of different ideas that have been floated in terms of reform, but just before I take you to that I just want to finish off with one aspect that I asked you before, that is, the statement you made in paragraph 47 of your statement. You said, "A major shift in policy is absolutely needed"? ---Mm'hm. 10

I just want to ask you to reflect. Is it your organisation's view that there needs to be a major shift in policy or a major shift in practice, that is, how existing legislation is implemented, or both?---I think both, but I think a policy shift is absolutely the primary driver, I think, in terms of achieving reforms. 20

To differentiate between policy and practice, what are those aspects of the policy, as it is encapsulated in the Child Protection Act, that need to be changed as opposed to how the act is implemented?---In terms of policy I think you'd be looking at the delegations to authorities - to entities other than the department to fulfil some of those functions that impact - then has an impact in practice. So, for example, if a recognised entity is delegated to develop cultural support plans, I'm absolutely confident that we would see a dramatic improvement in the quality of those plans and the ability to meet the cultural needs of children. If it - sorry. 30

Keep going, no, sorry?---I'm just wondering, is that what you were asking?

I'm wanting to make sure the commission is aware or appreciates what you say is the substance of what needs to change so the commission can form a view as to whether that is actually a policy change or whether it is how the policy is implemented. 40

COMMISSIONER: Just to help, the policy of the act is found in the principles in section 5(b) and (d) and section 159(b) and section 7, the functions of the chief executive, and various other sections that set out what the responsibilities of the chief executive are?---Mm'hm.

They're all strewn around the place. So the question really is: is the legislative underpinning, the policy underpinning, what it's trying to achieve? Is it okay, that is, is the stop sign where it should be? Is it clearly visible and it says what it means and just needs to be properly obeyed by those responsible for implementing its policy or does the policy itself need to be changed, the stop sign need to be changed, so that the people in the system who operate it are actually intended and expected to do something differently from what they're currently expected and intended to do by the legislation?---Well, I'd suggest that in principle, for example, like the child-placement principle, is fundamentally sound, but it certainly is a practice issue. So I would suggest that in terms of the child-placement principle there would not need to be a dramatic shift other than perhaps, you know, number 5 of the hierarchy but - - -

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MR HADDRICK: Well, I'll take you to that particular issue in a second?---Yes, okay.

Yes?---But in terms of changes - you know, overarching changes around having a greater focus on, you know, prevention, early intervention and provision of support for families before coming into the system, but the legislation specifically - the recommendations that we have made that are consistent with the recommendations that ATSILS have made is around transferring the delegation for specific - I'm sorry, for specific access but relate primarily to the fulfilment of the cultural needs of Aboriginal and Torres Strait Islander children.

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Okay. Now, I want to go to that very issue now?---Yes.

So we're now sort of sharpening up the area of discussion to be about the tertiary system, that is, statutory intervention into families. Now, I'll just ask the commission's attendant to show you a couple more sections. I just need to lay the groundwork for this particular area of questioning. Can I get you to have a look at section 61 of the Child Protection Act there?---Mm'hm.

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It's on page 95 for those at the bar table.

Section 61 spells out the types of child-protection orders that the Children's Court of Queensland can make. It goes from (a) to (f). The first one is an order directing a parent of a child to do or refrain from doing something; (b) is an order directing a parent not to have contact, direct or indirect, with some other person; (c) is an order requiring the chief executive to supervise the child's protection in relation to the matters stated in the order; (d) is an order granting custody of the child to a particular person; (e) is an order granting short-term guardianship of the child to the chief executive; (f) is an

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order granting long-term guardianship of the child to - and over the page it identifies the people that the order could be made to?---Mm'hm. **1**

Now, can I get you to flip over to section 81 on page 111 or actually more 82 on page 112?---Mm'hm.

Section 82 is titled "Placing Child in Care" and then it spells out what the chief executive, that is, the director-general of the Department of Communities, must do - sorry, may do in the placing of a child in the care of, and it creates options available for the chief executive. So in a second I'm going to ask you about some of your ideas for reform but I just wanted to draw your attention to particular provisions. **10**

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Can I take you back to section 61 there and I'll take you to two of the subsections? "The Children's Court may make any one or more of the following child protection orders that the court considers to be appropriate in the circumstances." We go down to subsection 61(d), "An order granting custody of the child to (i) a suitable person other than a parent of the child who is a member of the child's family or the chief executive," the chief executive being the director-general. Similarly in subsection (e), "An order granting short-term guardianship of the child to the chief executive," and (f), "An order granting long-term guardianship of the child to," and over the page, "a suitable person or another suitable person nominated by the chief executive or the chief executive." So what the court does in deciding what order is appropriate is that it is open to the Children's Court to choose one of those orders in favour of a particular person identified. So it could be a suitable person, a member of the child's family or the chief executive. Once an order is made, if it's to the chief executive section 82 then comes into play. It is then for the chief executive, as a very senior public servant, to decide where that child will be placed, and then it gives the options. Then you will see over the page in section 83 when that child is a child who is an Aboriginal and Torres Strait Islander child that section applies and creates the hierarchy of places. Effectively the child placement principle is encapsulated in subsection (4) of section 83. Now, having mentioned that to you and effectively mentioned it to the commission, what I need to do is get from you what is the hub - or nub, sorry, of your ideas for reform. Now, having regard to your statement, you propose in paragraph 51 what you describe as child and family wellbeing program. Can you tell us what that means?---Okay, so the child and family wellbeing program that we've proposed is a regionalised integrated service delivery model, so essentially bringing together the current existing funded programs and also being able to capitalise on synergies or links within - between other sectors, for example, health and education and housing. So essentially what we're saying is that one of the concerns we have right now is that the service types are very - are distinct and siloed, so mobilisation between those services for families are largely non-existent. The services are not allowed to speak with one another, they can't cross-refer, and that presents issues. Also the fact that those three services exist currently largely - even though one is a secondary service, it's much more closely aligned to a tertiary response. So we feel like the programs that we have currently in terms of, you know, the RE, the foster and kinship care services and the family support service in their current state don't reach families early enough or could benefit from being part of a continuum of support which extends from prevention all the way through to the tertiary interface.

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What is the defining feature that differentiates your idea from the current system?---Because it would be absolutely community controlled, Aboriginal led and then developed. It would also be a wholistic approach. It would offer non-stigmatised entry for families at any point on the continuum when a need is identified and it would also be able to be dynamic enough to respond to changing community needs. So it would largely be developed after a process of identifying what's there. So we would be considering a service array, we're not looking at trying to do service - you know, duplication of services. If, for example, there is a vulnerable families program that is funded through health or another program which is funded through FaHCSIA, we would actually look at that as a service array, identify where the gaps are to meet the identified needs of the communities and the models would be developed region by region as opposed to what we have now with the family support is one model that was developed and then rolled out across the state regardless of the distinctions between localities.

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COMMISSIONER: But the thing about that is you'd have to keep scanning, wouldn't you, because many things that exist now are de-funded?---Yes.

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Then what was a potential duplication becomes a gap?---Yes.

So how would you do that?---I think we need just - it has to be - they have to be set up to be dynamic enough to respond to that. So we are proposing that the review or ongoing evaluation of those services would assist us in identifying where those gaps are emerging.

Do you think an indigenous controlled agency would be better placed than an non-indigenous NGO to provide for children because they had access, or greater access, to federal funding? Because the federal government has got constitutional power in respect of indigenous matter but doesn't in respect of general child protection?---I think the Aboriginal and Torres Strait Islander community controlled organisations are better placed to run those programs for a whole range of reasons.

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Yes, I know, but is access to federal as well as state funding one of them, one of the advantages?---Well, it couldn't hurt, but it's certainly not the - in what we've proposed that wasn't actually a factor that we - - -

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I know, that's why I asked?---Yes, so perhaps.

MR HADDRICK: Just focusing on the tertiary system, that is, where the state intervenes in the family pursuant to the Child Protection Act, and correct me if I'm wrong, I just want to paint a picture and I want to understand if I've got this correct. Your organisation's view is that

where currently the chief executive of the department, the director-general, performs certain functions in respect of that child, that should be performed by somebody more localised in an Aboriginal or Torres Strait Islander organisation?---Yes.

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So you're effectively wanting to break the nexus between what the act permits the court to order insofar as the chief executive is concerned and you organisations. I'll be clear, and I'll just take you to section 61 again, if you could look at it, please?---Yes.

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Particularly subsections (d), (e) and (f). Where those subsections refer to the chief executive you see instead of the court granting - or, sorry, making an order granting either custody, short-term guardianship or long-term guardianship, you see that order being made not in favour of the chief executive as is anticipated in (d), (e) and (f) but in favour of some other person or entity?---No, that's not actually correct.

Okay, explain why that's wrong?---I think that in what we've proposed is that the chief executive would retain guardianship. We're actually talking about specific delegated functions like cultural support planning, eventually, perhaps, case management of those, but with the department retaining guardianship. It's quite similar in terms of the transition of our home care in New South Wales where the Department of Children's Services retains the parental or guardianship of those children but case management of Aboriginal and Torres Strait Islander children in out of home care has been transitioned so that that function is actually performed by a community controlled organisation.

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COMMISSIONER: So what you envisage is the delegation by the guardian of some of the guardian's functions?---Yes.

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Okay, I can understand that, but what about Mr Haddrick's idea of - see, one of the criticisms at the moment is that there are too many guardianship orders in favour of the department and not enough being made in favour of others who would be just as good. Now, the consequence of that seems to me to be this. One is with guardianship comes power. It also brings with it responsibility. When you've got 100 per cent responsibility and are carrying 100 per cent risk, particularly in the scrutinised world we live in today, you will have a tendency to have 100 per cent control, especially if you're a government department. You're not going to trust your delegate - it's going to be hard for you to delegate to someone else because you're as good as they are. If they drop the ball, you're the one who's going to be blamed. So what I have heard is that that's one of the reasons for the risk immersion in the system and also for the department's

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requirement of, say, foster carers to even get permission to take a kid to a swimming pool, public swimming pool, or to go and have a sleepover somewhere else. They micromanage the relationship because they have 100 per cent responsibility and risk. If you were going to have the power and the authority, shouldn't you also carry some of the risk and actually put your hand up and say, "Yes, we'll be the guardian"?---I guess what we're looking at is that in order to shift those delegations we have to be cognisant of the current capacity, you know, of the sector and what we've proposed is that over time the capacity to perform those functions could be built into the sector. Now, I'm not suggesting that, you know, down the track when that's been established that we could consider further, but I just think that handing that over - the frailties of the existing system handed over to a system that is still under development - - -

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Yes, I know what you mean. Sorry, my terms of reference say a road map over 10 years?---Mm'hm.

I'm thinking over 10 years?---Yes.

I'm not thinking over 10 minutes.

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MR HADDRICK: Okay. You answered "no" to my question before in terms of section 61 and what I described as breaking the nexus between the chief executive and the orders. My principal function here today is to understand as best as I can for the purposes of the commission what is the exact nature of the proposals that your organisation advocates for so the commission can consider those and the strengths and weaknesses of that proposal. Now, if you're not advocating in the tertiary sector that someone other than the chief executive is the recipient or the order is made in favour of that person, what precisely are those services or functions that you see should be, in your words, delegated to other bodies?---Well, specifically with regard to the recognised-entity functions the cultural support planning for children in care; also the convening of family group meetings. Transition from care could also be a function that could be fulfilled effectively by the recognised entity or in fact if we looked at transitioning case-management delegation to the foster and kinship care services, then they could actually effectively perform that function as well as part of their ongoing case management.

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Flipping you back to section 82, that is, the placing child in care, I just want to directly ask you: do you see any changes that need to occur there? For instance, do you have any problem with the chief executive and her delegates deciding where the child should be placed in care?---So placement decisions, specifically are you talking about?

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Yes?---I think in terms of the authority that we've been discussing around the recognised entities they need to

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actually be independent from the department and be able to provide independent advice as to placement decisions, you know, whether or not a child should be entering the system. I think right now while the limitations are on the provision of cultural advice it minimises that role significantly.

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Can I get you to have a look at section 83 over the page there and on subsection (2)?---Yes.

Doesn't the recognised entity already get that function under the act or have that function or power to participate in the process of making the decision of where the child will live?---It is within the act in terms of the participation. The participation is very much limited by the relationship of the department and the recognised entity.

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So you're saying that the department fails to observe that section?---In many cases, yes.

Okay, but do you see no problem with the chief executive continuing to be - after a protection order is made under section 61 you see no problem with the chief executive - if the order is made in favour of the chief executive, the chief executive being the ultimate decider of where the child shall live consistent with section 82?---I'm sorry?

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So section 82 starts by saying "The chief executive may place the child in the care of" and then identifies all the options open to the chief executive?---Mm'hm.

You see no problem - this is the question to you: you see no problem with the chief executive continuing to undertake that function, that is, having all the power to decide where the child shall live?---No, I don't agree with that.

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Okay?---I think that the recognised entity should make that determination.

So now we have got a quandary here?---Mm'hm.

I asked you before about section 61 and you didn't have a problem in terms of (d), (e) and (f), the chief executive being the recipient of an order granting custody, short-term guardianship or long-term guardianship, but then having had an order made in favour of the chief executive, that is, the chief executive now has the responsibility for the custody, short-term guardianship or long-term guardianship, when we go over to section 82, as the law currently stands, you do object to the chief executive having the power to decide where the child shall live.

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COMMISSIONER: You mean unregulated power. At the moment she has got unregulated power because of the section, but you're asking whether that section should be circumscribed

in some way by, for example, including a requirement that before you make a placement decision you refer to the RE. 1

MR HADDRICK: Arguably that is section 83 subsection (2), Mr Commissioner. That obligation already falls upon the chief executive.

COMMISSIONER: Right.

MR HADDRICK: Where I'm heading is I want to zero in on whether we have a problem with the law or a problem with how the department implements the law. They are two separate things. 10

COMMISSIONER: One of the options is also placing the child back with a parent with support.

MR HADDRICK: Yes.

COMMISSIONER: See, whether you do that or not is completely up to the chief executive and it's purely administrative, whereas whether the chief executive can remove a child is governed by the statutory system. It's all there. The law says, "This is what you must do." You can't do it unless a child needs protection, whereas with placement decisions there is no legal framework around what you must do before you decide to pick 82(3)(b)?---Mm'hm. 20

That's what you're being asked. Is there something that should be built into those sections that says, "It's not just open slather for you. In order to make a placement decision you need to take into account these culturally relevant factors"?---Mm'hm.

That's what you're being asked. Now is the time to - - -? ---Yes, okay. See, there should be an onus on the chief executive to demonstrate that they have exhausted all options in terms of progressing through the child-placement principle before making a determination about placement and I don't think that they can do that without effectively engaging the recognised entity. 30

MR HADDRICK: Okay. So you would accept that as section 83 subsection (2) stands, that is, "The chief executive must" - not may - "ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live" - you don't have a problem with that section or that principle, do you?---I do because it actually - - - 40

COMMISSIONER: Or do you think it needs to be tightened up?---It is not followed consistently in practice so I do. So it may be legislated but the practice - there's a disparity between the legislation and the practice and I

think that that's what needs to be strengthened and if it is actually mandating a role for the recognised entity to make that decision, that could alleviate that - - - 1

If you're a legal draftsman, you might include after that in that section, "You must consult the RE and must accept their recommendations unless there is a good reason not to and you must say what that reason is and that reason is reviewable"?---Mm'hm.

MR HADDRICK: Do you accept that the chief executive officer should be able to reject the advice of the RE and, if so, isn't that effectively taking away the power of guardianship or custody from the chief executive officer? ---I think that in retaining the right to object to that there should be an onus to explain why - do you know what I mean - or demonstrate that a process - you know, they've gone through an appropriate process to come to that determination. It just can't be a dismissive, "Well, I don't agree. It doesn't suit our position so we're going to proceed this way." 10

COMMISSIONER: See, there's a conceptual problem here that we have to work with because we have got a bit of law here. 20

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We have to realise that once you get guardianship there's no difference between natural parents and substituted parents. Natural parents can make decisions about where a child gets placed, whether it lives with me, lives with dad, lives with Auntie Flo?---Mm'hm.

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No one says you can't do that, no one says you must ask permission. The law - this piece of legislation - does exactly the same thing; once a court transfers guardianship to the chief executive it lets the chief executive make all the decisions that a natural parent can make, in fact sometimes a bit more.

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MR HADDRICK: Subject to review by QCAT.

COMMISSIONER: Subject to review. However, the conceptual question is should that be the way it is done? Should there be a distinction in the law between a substitute state parent and a natural parent so that you can instead of saying holus bolus: here's all the guardianship rights, all over to you now; the law should be more directive about the extent of those powers and authorities that the state has which may not be as complete as the natural parent or as expansive in some respects, like for example placement. I think you're arguing for a narrower view of guardianship when guardianship is given to the state, aren't you? ---Mm'hm.

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A more regulated one?---Mm'hm.

More explicit, less open-ended.

MR HADDRICK: And as the current situation is, the Children's Court makes a protection order of one variety or another?---Mm'hm.

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In the case of a custody, short or long-term guardianship order, the court makes it - or can - and quite often usually does make an order in favour of the chief executive, and then the chief executive decides where the child shall be placed. Now, you'll be aware of the Queensland Civil and Administrative Tribunal and that tribunal has the power to review the decision of the chief executive, so if your organisation or an RE thought that the chief executive failed to consider the views of the RE or wrongly decided - wrongly exercised the power that the chief executive has under section 82 - then that decision can be reviewed in the tribunal and the tribunal can substitute its decision for the chief executive officer. What's wrong with that system being the safeguard for when the chief executive makes a bad decision?---I would say that access to that as an option is very limited and significantly underutilised by the recognised entity, and by virtue of the relationship between the RE and the department - being the funder, being nominated as the

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client in service agreements - would actually damage that relationship or put the organisation in a very difficult position. So I would suggest that that option is not exercised very often, if at all.

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Okay. I want to run two options past you: say for instance this commission recommended and the parliament decided to change section 83 of the act very similar to the way the Commissioner identified before, and that is give the RE a greater say in where the child shall be placed. The first option is what if subsection (2) is redrafted to effectively build in a presumption at law that the advice of the RE will be followed subject to whatever safeguards? Do you think that there could be some value in having a presumption at law - not a locked door but a presumption at law that the RE shall be - the advice that the chief executive - that is, the department - gets from the recognised entity shall be followed?

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COMMISSIONER: You mean a rebuttable presumption?

MR HADDRICK: A rebuttable - yes, rebuttable presumption? ---I guess so, but if there's an even distribution of parallel authority in making that determination then can the court not make that decision?

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Yes, it can under section 61 because 61 sub (b), "An order directing a parent not to have contact, direct or indirect," and also subsection (a), the court can make that order itself. But you would appreciate that the court doesn't want to tie the chief executive or whoever has the guardianship order in their favour - tie their hands behind their back - because the order doesn't have the last just one week, in some cases it has the last 18 years.

COMMISSIONER: And one of the criticisms of the current system is that we assume too much expertise in the case workers and the court and leaving it to them to work out what the best interests of the child is hasn't turned out to be ideal in some cases. We are looking for a system where practice is going to reflect the policy, not override it, once we get the policy right; and where courts are going to make orders on an evidence base rather than on some intuitive, subjective, internal, unreviewable value. So the question is what's your balance between the rules that got to follow and the level of discretion that you give them? How much room have they got to move? The more room you give someone to move in making a decision, the more error risk there is.

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MR HADDRICK: Can I take you to page 301 of the act, it's Schedule 2, Reviewable Decisions and Aggrieved Persons? ---Mm'hm.

Have you found that?---On 302 or - - - ?

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301?---Mm'hm.

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Okay. That schedule is a schedule to the act which sets out what decisions under the act can be reviewed by QCAT; that is someone can bring an application in QCAT and say that the person who made that decision under the act - usually the chief executive - erred in making that decision for whatever reason. On the left-hand side is the type of decision there and on the right-hand side is the type of party that can bring that application to review the decision. Can I take you down to the third category or type of reviewable decision. It says for the purposes of the transcript, "Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship, section 86 subsection (2)." Then on the right-hand side it says that the aggrieved person - that is the person who can bring an application in QCAT to say. "No, the chief executive got it wrong," is the child's parents or the child?---Mm'hm.

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My suggestion to you - and I think I know the answer but I need to know this completely - is would you expand the categories there of the people who can bring that application in QCAT to include a recognised entity?---Yes.

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Thank you. Just bear with me. Okay, I asked you before to, with as much particularity as possible, identify what those functions are that you think should be effectively devolved and regionalised. Now, you would appreciate that there are other proposals on the table that other organisations have identified as possible areas for ways to reform the system. Specifically ATSILS has put a model on the table which resembles your organisation's suggestion? ---Mm'hm.

With as much detail as possible - off the top of your head, I accept - can you tell us how your proposal as you understand it is differentiated from ATSILS' proposal? ---Okay. I would suggest that there's probably about 95 per cent consistency between what we proposed and what ATSILS have proposed. The primary difference is that we've recommended regional service hubs, but those providers would be different organisations in each one, as opposed to what ATSILS has proposed, is a single service provider to provide all child protection functions under proposed model across the state.

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For all Aboriginal and Torres Strait Islander children? ---Yes.

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Okay. And what are the strengths of your particular model? ---I think in retaining management or control of those services by local Aboriginal and Torres Strait Islander organisations you can more effectively maintain local context. It is, I think - one of the things we need to

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recognise is that Aboriginal and Torres Strait Islander community-controlled organisations have been, from a grass-roots movement, been working towards preserving the rights of Aboriginal and Torres Strait Islander children for a very, very long time, so I think that part of the proposal in maintaining that regional identity with organisations is acknowledging the genesis of those organisations. It's also valuing the profound knowledge that those organisations have of their communities and the fact that they've been able to endure and continue to provide quality services for those communities over a period of time.

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Okay. Keep going, sorry?---No, that's my - so in terms of implementing the model or developing the model what we've proposed is that we actually need to work with the Department of Communities, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and also organisations such as QAIHC to actually be able to go out to every region and conduct an assessment of existing services, looking at the needs of that particular Aboriginal and Torres Strait Islander community and developing a local response in each of those locations. Part of that process is assessing existing organisational capacity, so I acknowledge that absolutely to achieve that range of services that we're proposing capacity needs to be acknowledged and built upon. There is significant work that we need to do in terms of particular aspects of the model proposed that require a sustained endured investment in capacity building for each of the regions.

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Who is the entity delivering each of these aspects of these services? You identified the services before which you say should be devolved and decentralised. Who is delivering those services? What is the entity doing that?---It would be a local service provider, like an existing local service provider or partnership of service providers.

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Describe them, please. What are we talking about? What sort of - are we talking - we're obviously not talking about the local bowls club or something like that?---No.

Who is doing it?---Existing Aboriginal and Torres Strait Islander community controlled organisations that have demonstrated expertise in responding to the needs of the kids and families within their community.

So they could be quite disparate organisations structured quite radically different to each other. Like, some might be a for profit organisation, some might be a not for profit, some might be made up of members that have sort of a democratic control over the organisation, some might be a more closed shop. What I'm trying to get you to illustrate for the commission, what is the shape of these particular entities delivering services? It's one thing to talk about what services need to be delivered and how they need to be delivered, but this commission needs to make recommendations to government?---Yes.

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Government needs to effect recommendations, if they choose to adopt the recommendations. So what is the thing - describe as best as possible the thing that is delivering the services on the ground in these areas?---Okay, it would be a local service provider with strong governance, with demonstrated capacity to deliver services for Aboriginal and Torres Strait Islander children and families. It would be an organisation that has demonstrated or has the capacity to provide an integrated, wholistic service

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response for Aboriginal and Torres Strait Islander families. It would also be an organisation where in assessing the capacity of that organisation to develop over a period of time to a degree that they could effectively deliver all of the services that we've recommended.

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Can I just take you back to your - sorry, before I take you to this part of the statement, picking up on a question the commissioner asked you beforehand, or a proposition he put to you, he in essence said to you things change over time, organisations change, and not only do they sort of grow to cover territory but they also - gaps open up between different organisations. Under your proposed model isn't there a potential that the individual organisations, which are obviously different organisations, slightly different in their composition and their shape and the way they operate, isn't there a potential for some organisations to just forget or not attend to certain functions that are required in that area? What are the potentials for the gaps?---Okay, I think what we're talking about is having one large lead service provider in each region. Now, if there isn't an existing organisation that is able to take on that level of growth in the time required then that may be better achieved through a partnership with another Aboriginal or Torres Strait Islander organisation that has demonstrated proficiency in one or more aspects of that service delivery. I'm a little bit confused, I'm sorry, about your question. I'm not sure if I answered you.

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Well, I'll put it another way. As I understand it, the proposal proposed by ATSILS is to have one entity doing all this across the entire state?---Yes.

I'm correct in that, am I?---Yes, that's correct.

The funding that would be delivered to either their entity or your multiple entities is all government money, isn't it?---Yes.

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The government has a responsibility to make sure that money is spent both wisely and in an accountable fashion?---Yes.

Wouldn't it be easier for government to be able to do that, spend it wisely and accountably, by giving it to one entity where it has a greater control over that relationship than multiple organisations that - you know, one might be going okay but one might be going awry. Wouldn't it be easier from government's perspective just to give all that money and functions to one entity rather than multiple entities? ---I think it would clearly be easier administratively. However, I think what government is saying is they also recognise that over-representation is a massive problem and that they require a sustained investment to address it. I think that it's just - it's more important to actually look at quality outcomes and the best outcomes or strategies to

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address over-representation than it is around administrative efficiency or ease or funding one particular organisation.

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How does your model guarantee us a reduction in over-representation?---We'd be talking - I guess because the models would be conceptually developed by Aboriginal and Torres Strait Islander communities in response to the needs that they have identified for their children and families. Being able to provide a range of services to address the diverse needs of people will certainly - I suggest would certainly reduce the likelihood of children going needlessly into the child protection system in order to receive the services that they need.

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You say a localised planning and localised spending of money on secondary programs and communities will decrease the chances of a child being caught up in the tertiary system which would therefore decrease overall - over-representation in the tertiary system?---Well, I think over-representation is actually - we're talking about a couple of separate things. So what I've just described to you is essentially turning off the tap, reducing, you know, the number of children going into the system. We have a massive number, obviously, of children in the out of home care system currently, but what I'm suggesting is part of our model is a foster - that foster and kinship services, the availability of wraparound support services, the access to safe houses, the access to parental mentoring and support, those type of functions would assist families already within the system to promote reunification and family restoration. So what I'm saying is that we are best placed to actually provide those services in terms of foster and kinship and revisiting cases that have been in the system for a long period of time. I think local organisations will continue to demonstrate their commitment because of their connection to that community to follow up with those families and do everything that they can in terms of providing appropriate services to make sure that reunification is possible. So if you're looking at a reduction in over-representation you see that one would start to really focus on reunification, and I think that the department has - clearly there's a massive investment in the front end and what happens over time is that while those kids stay in the system the review of those cases may happen six monthly, but we're only looking - - -

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Or they transition out earlier?---Yes, so that - essentially that's what I'm saying to you, is that we would be best placed to provide the services that are needed to improve the likelihood of reunification.

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Can I take you to paragraph 55 in your statement? Your opening part of that sentence is - referring to the model that you propose, you say, "Significant efficiencies and service delivery benefits can be achieved through

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regionalisation of services," dot, dot, dot, end quote?
---Yes.

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You use the words "significant efficiencies". Now, I think you've effectively identified for us what you say are the service delivery benefits, but what are the significant efficiencies? It just seems to me that multiple organisations, multiple service agreements, multiple ways that things are done, just sounds expensive. Where are the significant efficiencies?---The efficiencies come in the development of being able to centralise their infrastructure. So rather than having, as we currently have in some regions, three separate service streams funded separately, three separate service agreements, three separate organisations, quite often, so there you've got three sets of finance officers, three sets of managers, three distinct boards. What we're saying is that you actually need to bring those together and it would be one lead agency. So in terms of service provision across that continuum you're actually able to reduce corporate costs by having - not requiring you to have three distinct services. Do you know what I'm saying, sorry?

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I think I do, but I want you to compare that against what ATSIILS is proposing. How is that different to what ATSIILS is proposing?---I think it's probably best to ask Shane Duffy with regard to the specifics of their model, but what I'm saying is that in particular regions or regions across the state we currently have an RE funded, a family support service funded, a foster-and-kinship service funded. What I'm saying in terms of a holistic, seamless, wrap-around support we actually are able to identify one lead agency to provide all of those functions leveraging off the local expertise.

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Can I take you back to paragraph 49 of your statement, please? In a sort of roundabout way I'm sort of returning to where we started or soon after we started?---Mm'hm.

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At 49 you identify that there is an overemphasis on statutory intervention and removal of children?---Mm'hm.

And you put that under the area of need for reform. Can I ask you how you see that being achieved outside the proposal that you have identified for this commission, that is, the decentralisation of resources? Do you see that being achieved in any other fashion?---So specifically talking about - - -

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Well, I'm giving you an opportunity to tell the commission above and beyond the shape of the proposal, the model, that you have outlined, are there other things that you would do to the system to decrease the reliance upon statutory intervention and removal of children?---I think beyond what we've proposed around the recognised entity in terms of their participation or delegation for decision-making I'm not aware of anything else that has been proposed that I think would assist the system in being re-oriented towards the provision of family support.

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I want to make sure I've got this point also clear. At paragraph 62 of your statement you identify your proposed model and you say that it utilises what you describe as a community-development approach and then you go down in the fourth line to say, "We will be able to promote a proficiency and consistency in service delivery"?---Mm'hm.

I'm just struggling to understand how a multitude of organisations who are delivering the services in a variety of areas promotes a proficiency and consistency in service delivery as opposed to a single organisation delivering those services everywhere. How does your model create that proficiency and consistency that wouldn't otherwise be created by a central service provider, if I could use that expression?---Okay. So what we have proposed is that the Peak be able to set and - set statewide standards in terms of service delivery and governance and actually be empowered with the role of assisting organisations to

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achieve compliance with those standards. In terms of
accountability for that I appreciate that we are a
member-based organisation and the level of engagement with
our organisation is voluntary. We have many organisations
that engage with us quite regularly and in a very
productive way so if we are recommending certain shifts in
practice and they're taken on board and we support that
organisation to implement those things, we are definitely
seeing improvements in terms of the quality of service
delivery. What we're seeing - I have also, like, pointed
out in here that although that's a strength, that
membership and their engagement being voluntary - although
that can be seen as a strength, it's also limited us so
going forward what we've suggested is that we need to have
the mandate or the funded function to provide capacity
building and compliance with statewide standards.

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Okay. Now, just going back to the nature of these
organisations delivering of services and playing devil's
advocate here, regrettably over the last sort of 10 years
every now and again there pops up a story in the media
about an Aboriginal and Torres Strait Islander-run
organisation that has the suggestions of impropriety about
the internal mechanics of that organisation, perhaps
allegations of nepotism and all that sort of stuff?---Yes.

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Now, under your model you would have a multitude of
organisations delivering the services region by region or
area by area, however described?---Mm'hm.

What mechanisms should the State of Queensland employ to
make - knowing that these organisations are spending public
money, taxpayers' dollars, what mechanisms should the State
of Queensland employ to ensure that that money is spent
both wisely and in a fashion that would be acceptable to
the community?---Well, the issue regarding accountability -
we would not have a diminished expectation with regard to
accountability and in terms of proficient governance I
would suggest that our membership actually demonstrates
governance that is to the standard of all of the larger
mainstream non-NGO service providers. So I think that it's
important to establish what those benchmarks are, the
expectations, and the organisations can be supported
through a Peak body to actually - to achieve those
standards.

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COMMISSIONER: Above efficiency and governance is which
system of the two or any system actually meets the needs of
children better, isn't it?---Absolutely. I think that most
of the discussions around governance have been focused of
the issue of financial accountability and representation.
I know that it's been raised about whether an organisation
could be truly representative of the community that it
serves and for me in terms of governance one of the most
effective or one of the primary indicators of a successful

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governance structure and organisation is the ability to respond to the needs of its own community. It's a shared community and there should be that accountability first and foremost.

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MR HADDRICK: Okay. My final topic - and I promised you I would come back to this. Can I take you to section 83 of the act, please, on page 113? We talked about the child-placement principle and you indicated that you had some concerns about, you said, the last section or last clause of the hierarchy. Can I take you to subsection (4)?---Mm'hm.

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This is effectively the hierarchy of placement on which the chief executive must place a child. The embodiment of the child-placement principle is the operation of the subsection. Can I let you have a read of that and then can you tell me if you have any problems with the way that that is structured?---Mm'hm.

So subsection (4) and subsection (5) perhaps are the two? ---Yes. I'm sorry, did you ask me if I - - -

Have you read those two subsections?---Yes.

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Do you agree or disagree with the law as it currently stands? Should that change?---I would suggest that subsection (4) is fine.

Yes, what part of subsection (4)?---All of that.

That's fine, yes?---Yes, and then just in terms of - let me see. A concern that I have is around (5)(b) and, I guess, the disparity between, I think, what is the intent of the legislation and what actually occurs in practice.

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So your problem perhaps, if I could put it this way, is not the wording of the law. It's the implementation of the law?---Yes.

And in subsection (5) where it says "proper consideration" you would hold a view that perhaps on occasions proper consideration is not given to those matters enumerated in subsection (5)?---Yes.

Okay. That's all my questions for this witness, Mr Commissioner. It might now be a convenient time.

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COMMISSIONER: All right.

I'm going to adjourn now for lunch. Ms Lewis, are you right to come back this afternoon?---Yes.

How much more of Ms Lewis's time do you think we will take, Mr Hanger?

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MR HANGER: I will be short; probably five minutes.

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COMMISSIONER: Ms Stewart?

MS STEWART: I will be no longer than 20 minutes, commissioner.

COMMISSIONER: Mr Capper?

MR CAPPER: We have no questions at this stage.

COMMISSIONER: Okay. So that gives you a bit of an idea of what your afternoon holds for you?---Mm'hm.

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All right, thank you, quarter past 2.

THE COMMISSION ADJOURNED AT 1.03 PM UNTIL 2.15 PM

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THE COMMISSION RESUMED AT 2.17 PM

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MR HADDRICK: That's the completion of my questions at this stage.

COMMISSIONER: Thank you. Mr Hanger.

MR HANGER: Ms Lewis, just a few questions about section 83, the one that my learned friend dealt with, the child placement principle. You've discussed at some length suggestions about alterations to the section and I think you've stressed a greater involvement with the REs. But I think you've also agreed with my learned friend that the provisions of subsection (4) which deal with placement within family, then in the language group, and so on are the right way to go?---Mm'hm.

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But you say in fact in your submission that:

There is a failure to place children and young people in accordance with the child placement principle.

That's in paragraph 49?---Yes.

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So I have to ask you what are you referring to there? Where is the failure to comply with the child placement principle?

---I guess that's based in the level of non-compliance that's been assessed by the Children's Commissioner in the most recent audits.

So are they being placed with non-Aboriginal people?---Yes, largely.

They are?---Mm'hm.

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Largely. And would the reason for that be a lack of Aboriginal carers?---I realise that that's been put before the commission and there are struggles with the recruitment of kinship carers.

Yes?---I think that there are a number of issues that impact on kinship care and one I think has been difficult in distinguishing between foster and kinship carers in terms of the way that they're recruited. And so what we're suggesting is - I mean, for kinship carer you can't go into the community and say, "Just in case anybody ever messes up, would you put your hand up and can we develop this pool of kinship carers?"

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You can't have a pool of them?---No, absolutely - - -

You've got to approach them at the time?---Correct. It's absolutely targeted.

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Understood?---And so what we're seeing, for example through the reconnection project, is that by giving the responsibility to the recognised entity, or in some cases the foster and kinship - we've brought the foster and kinship services in to play that part where the REs are actually stretched to capacity. But what we're saying is it needs to be a change in the process. So if the recognised entity and foster and kinship services are engaged right at the onset we've demonstrated through the reconnection project that they are more efficient or effective in identifying appropriate family members. That then gives them a range of options in terms of potential kin placements and can then submit more than one name to the department - - -

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That comes back to the point you were making earlier, greater involvement of the REs, by the sound of it?---Yes.

But do you suggest that children are being placed with non-Aboriginal families when in fact there are available and volunteering kinship families?---Yes. I think that the difficulty is they have not been identified - - -

Well, it's different, isn't it?---Mm'hm.

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Are you suggesting that children are being placed with non-indigenous families where there are indigenous families who are putting up their hands to take the child?---I think in some cases where families were putting up their hand but then their income and difficulties in terms of the approval to become a kinship carer.

Okay. And there are various criteria that are taken into account for approval, and of course one of them, I think, is probably holding a blue card is, is it?---Yes, that's correct.

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And that's been a problem, as I understand it?---I would suggest that the process of applying for a blue card can seem onerous and may be difficult.

Yes, we've heard about that?---Yes.

And perhaps that things could be improved by making blue card is easier to get and perhaps not applying such a stringent test?---I wouldn't suggest that it is about the test, I think we need to actually maintain a high level of scrutiny in terms of the criteria that is required for approval. I wouldn't suggest that you reduce or soften the criteria; but it's more actually about the process.

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Right. So you'd be happy with the present criteria for getting the blue card and stick to that?---Yes.

But make the forms easier to fill in at the process easier to complete?---Definitely.

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All right. And again, forgive my ignorance, but I would have thought that in the education process that we've been through here where children regard a whole pile of people as mum and dad as distinct from in our traditional family where we don't regard a whole pile of people as mum and dad, but it's confined to people; that when there are problems in a family such that something has got to be done to protect the child, that all these other mums and dads in the family would be putting up their hands and say, "We'll take it," without any issues or without anyone having to look?---Mm'hm.

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Am I wrong?---You would assume so, but then some people may be reluctant because it's essentially inviting a statutory body or the department into your lives and so that can sometimes cause problems with people because historically they may not want to engage in that way.

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And the extended family, if I could call it that, don't - even without any statutory invention of any kind - say, "Billy, you've got problems raising this child, perhaps it would be better if it went to Auntie Flo?---Mm'hm.

That doesn't happen?---I think that that may happen. I think that one of the challenges is the financial burden that then comes with that responsibility can actually then put that family who put their hand up in a similar position in terms of available resources. So that can sometimes be a bit problematic. And so when they've gone through the process with the department, that support in terms of financial support and then they support of a service provider, comes along with it. So if there was some way of being able to have those informal arrangements and have people meet their obligations within their own kinship structure then perhaps we would see a lot more of that.

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Do you accept that it is difficult for the department to find kinship carers?---To find?

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Kinship carers?---For the department?

Yes?---Yes.

All right. And may I suggest to you that obviously if the kinship carer as defined in section 83, going down through that list, and you reach the end of the list and the child has to be placed with a non-indigenous person?---Yes.

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And I suggest to you that that is what happens, that the department does make an effort always to find the kinship carer in terms of section 83?---May I respond and say just with regard to the identification of kin, however, if that has not occurred right at the beginning of the process one of the concerns that we have is that a child could be placed in an interim placement. Now, unfortunately what we see happening is that interim placement becomes a longer

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term and longer term process, so unless there is actually a
checks and balances or a process where there is a
requirement to continually engaged and invest searching or
trying to identify kin then I don't think that it is
satisfactory just to assume that because the child is safe
and stable within a non-indigenous placement, that we just
then disregard the requirement around connecting them to
their family and community.

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And at the risk of getting into a controversial area, it
might depend then on the length of time the child has been
with the non-kinship family, mightn't it?---Yes.

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Because there comes a point where a child has bonded with
the non-kinship family?

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---I think one of my concerns around that, I know that attachment is actually raised as an argument to sustain those placements, but I would suggest that if attachment to the child's family and community was a higher consideration at the point where a decision is made to remove the child then perhaps that may be a more balanced way of applying that - - -

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Of course. It's a balancing act, isn't it?---Mm'hm.

It's a balancing act, but you've got to find the family member who is prepared to take the child instead?---Yes.

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Yes, thank you, that's all I have.

COMMISSIONER: Thank you. Yes, Ms Stewart?

MS STEWART: Ms Lewis, Lisa from the Aboriginal and Torres Strait Islander Legal Service. I've just got a couple of questions. Firstly, following on from a conversation that you had with the commissioner when he put to you a comment made by - or an editorial made by Stephanie Garrett and cultural violence, I notice from your statement that you've had some experience in the Orange County, California? ---Yes.

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So you would be familiar with the concept of justice reinvestment and its potential both economically and social. I also understand that you've been following the inquiry and are aware of the evidence that the Queensland Police Service have provided about the entrenched violence in the communities?---Yes.

Given those levels of violence would you agree that a targeted restorative justice approach could be supported and resourced and a transferable concept for child protection matters?---Yes.

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Based on your quite extensive experience in the States, is that a program that you could design and implement if you were properly sourced and funded?---Yes.

And implement, perhaps, through the intense family support services?---Yes, absolutely.

In paragraph 99 and 100 of your statement you recommend that an investment proportionate to the rates of over-representation should occur and the resources should be diverted from the Child Safety Service centres and mainstream services. Just to clarify, is that something that you're looking for the inquiry to make a determination about or something that government should be left to decide where that comes from?---I think the challenge for us in - while I understand that the commission would like for us to be probably a little more prescriptive in exactly what level of resourcing would be required, I think that it

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would be a disservice to prescribe a model cost set and then present that to the inquiry. I think that what we have highlighted in our submission is that what's needed is to actually go to each of the communities, identify what the needs are and then assign the level of resourcing required based on those gaps in service delivery. So it's difficult at this point to anticipate what that investment would be.

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I suppose my question was where do you want that to lie, a recommendation from this process or left to government once that profiling has been done?---If that was within the scope of the commission, absolutely.

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Paragraph 59 of your statement - and there's been a lot of discussion and I won't go into the details that have already been canvassed. We're aware that there's a lot of common ground with the ATSILS proposal and the QATSICPP proposal. Our preference is for a state wide delivery and QATSICPP propose a different model. Under the model that you propose what do you envision the membership to be? Would it be voluntary or mandatory?---I think in terms of maintaining our peak functions that we need to maintain a membership base which is voluntary. In terms of ensuring accountability and a role for QATSICPP in setting and implementing state wide standards, we see that that could be facilitated through a requirement under the service agreement or the funding agreement. So we're acknowledging definitely, yes, that there's capacity that needs to be built. QATSICPP are saying that we are best placed to be able to deliver that function and I don't think that engagement which is targeted towards adherence to state wide standards - I don't think that that - that would be a challenge if it was actually a function prescribed in the service agreements.

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Paragraph 90 and 91 - no, I withdraw that, sorry. 67 to 71, you propose a subsidiary company. That looks like it's just creating another layer of bureaucracy. Why do we need a separate company? Can that not sit within the peak?---I think earlier in the hearings, I think it was during Will Hayward's evidence, there was an issue raised, or a concern raised, with regard to a perceived conflict of interest if the peak were to take on a role as the funds holder and then making decisions about funding particular models within our membership. So the subsidiary company was put forward as a way to remove that perceived conflict. The subsidiary company would be chaired by an independent board. It would be governed by an independent board with no vested interest in the outcomes of funding decisions and it would also reduce the administrative burden of the department by taking on a function of contract management, allowing the peak to fulfil its functions of setting state wide standards and working with those organisations to achieve those.

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I just want to give you an opportunity to clarify - because you've also touched on this in your evidence. At paragraph 92, if I understand the evidence that you've given earlier, you've said that there would be a need to build capacity within the sector?---Yes.

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So with paragraph 92 do you envision this would include a blend of non-indigenous as well as indigenous staff?---I think what we need to focus on is that our families present with a broad range of complex issues and our families are entitled to the best service available. I do recognise that right now there is a shortage in terms of potential for applicants with social work or psychology qualifications, but I think that as a sector we need to invest in developing that pool of talent so that Aboriginal and Torres Strait Islander people can move into those type of professional roles within the sector. But I guess in terms of the establishment of the model and implementation of that, I think it has to be a merit based process. A non-indigenous person is - you know, if they had applied say for a position to - intake and assessment, for example, requiring a qualification, that decision should be made on merit and that person's capacity to work in culturally safe ways within the context of that organisation.

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Just two final things. I just wanted to give you the opportunity as CEO of QATSICPP to describe the concept of community controlled child protection, just so we're not comparing apples and oranges and that we are all talking about the one thing when we use that phrase?---Okay. The community controlled organisation needs to be represented by or governed by a board of Aboriginal and Torres Strait Islander people and, where appropriate, skills based directors that have particular expertise, and if that doesn't happen to be an Aboriginal or Torres Strait Islander person I don't think that that impacts in terms of its qualification as a community controlled organisation, but I think that what we're talking about is self-determination being a practice issue, a service delivery issue, as much as a political issue. So it's very important that the direction or the development of services and the way that they're delivered to Aboriginal and Torres Strait Islander people is probably best done by Aboriginal and Torres Strait Islander people.

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Now, I think we share a common view here, but if you can clarify that if you feel you need to. If the amendments are made to the legislation that we call for in our submissions, how long do you think it would take to implement a model that had enhanced Aboriginal and Torres Strait Islander case management within our service delivery frameworks?---I think that could be achieved here in a two-year period.

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And what - I mean, I know this, but for the benefit of the

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commission, you're basing that on your previous experience with the department in implementing services?---That's based on my assessment of the level of capacity within the existing child protection sector. I think we have very highly skilled, passionate community people that have the ability to deliver services, quality services, to our people, but I think we're acknowledging that those capacities need to be built upon to perform specific functions that we've identified, and I'm basing that on - like I said, it's my assessment of the level of capacity within the sector right now. Also, as you mentioned in my statement, I do have extensive experience in working in gang prevention in the United States and that actually represented a dramatic shift in policy where Orange County had quite a punitive approach towards gang - towards managing a gang problem and had very much focused their majority of their resources on suppression. So most of the people that were working within that field had skills and qualifications oriented towards that end, towards the more tertiary response. So we were able to actually implement a dramatic shift towards prevention initiatives within a space of about nine months actually.

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I might have one final question. I will just confer. I have nothing further, commissioner. 1

COMMISSIONER: Thank you. Mr Capper?

MR CAPPER: We have no questions, thank you.

MR HADDRICK: Just a few matters via re-examination, please, commissioner.

Ms Lewis, just before lunch you came up and spoke to me and you reminded me or wanted to clarify a particular aspect of your evidence. For the life of me I have forgotten the topic of it but I remember that I had to ask you to clarify some point so here's your opportunity to clarify an answer that you gave earlier?---Okay. I believe it was in regard to the model that's proposed. I think that perhaps I'd confused you. We're not talking - let me see. The department essentially wouldn't be funding directly - under our proposal wouldn't be funding directly, you know, multiple organisations. They would actually be providing that funding to the subsidiary company to manage that process of allocation of funding. So I'm not quite sure that I made that clear in my earlier evidence. 10
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Well, you have now?---Thank you.

We have heard today and we see in the documents before the commission that there are two competing models of sort of decoupling services from the state. One model is your regionalised model and one model is ATSILS more centralised model. The two of them have lots of features in common but there are some marked differences. I asked you before lunch what were the strengths of your model. Out of fairness to you and also out of fairness to ATSILS I should also ask you what your organisation believes are the inherent weaknesses of the opposing model, that is, ATSILS' model. What does your organisation say are the weaknesses or ATSILS' model?---I'm struggling a little bit in terms of the - - - 30

I appreciate that as a Peak representative organisation you may not wish to effectively criticise another model out there, but the commissioner needs to either choose one or the other or choose neither and so he needs to know what are the strengths and weaknesses of both sides.

COMMISSIONER: They will get the right of reply. They will get a shot at yours as well?---Yes, I imagine so. Can I just say that I think the importance is those things that are consistent and that is the reason for the changes, the reasons that the reforms are required, and ultimately both models are presented because we believe that that can promote better outcomes for children and families. With regard to the rest I think that having your regional - having individual regional service providers, your 40

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decision-making is close to service delivery and having a governance structure to control the strategic direction of that organisation. That allows them to be a little bit more responsive. When it's a single service provider that's actually detached further away from actual service delivery, it limits the capacity for innovation or responsibility to the ability of that organisation from a central perspective.

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MR HADDRICK: Which one of the two models is likely to decrease the representation of indigenous children in particularly the tertiary sector and why?---Okay. I think that the model that we have presented could more effectively achieve that and I think that because we've focused very heavily on those - the out-of-home care coordination function within our model, that is what is going to reduce the numbers from what it is right now. By having the foster and kinship services make decisions or case manager long-term guardianship orders, they're optimising their opportunity for reunification. So I think that that component is a strength and I think just - like I mentioned previously around having a regional structure, a regional governance structure, that is representative of that community, it just allows flexibility if the trends change or if the issues change for members of the community.

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Okay. I want to take you to a more broad issue that's come up throughout the hearing. We have heard from at least three different witnesses over the course of this inquiry that there are some young people - I'm not just talking about indigenous youth. There are some young people who kinship care or residential care is not a suitable option. I'm particularly thinking of evidence we received in the Beenleigh hearings where a police officer responsible for the child protection investigation unit proffered the view that, as a result of discipline problems, there are some young people who need to be provided what he called - housed in what might be called a containment model. I'll use the expression "secure care". Are you aware of the evidence that I'm referring to?---I am aware, yes.

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Does your organisation have a view as to whether as part of - as one feature or one tool that should be available to the chief executive there should be an option whereby the child in question can be housed in some other housing other than residential care or kinship care whereby restrictive practices, that is, the child doesn't have a choice to stay or go, should be employed?---I think there's benefit in therapeutic-care models for residential. I would not be in favour of an actual containment or secure-care model. I think that in that space you actually need to look at why children are acting out so much against the placement that they're in. Why is their behaviour so difficult to contain? I don't think that - unless, you know, the mental health services or any other type of wrap-around support

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has been given to that child - I don't think secure care is the answer. 1

You just described there needs to be some other form of therapeutic care. I need to sort of push you on this point?---Yes.

Do you accept that there are some young people who have discipline problems that mean that they cannot be housed in residential or kinship care?---I don't think that we have seen evidence of therapeutic-care models working efficiently so I don't think we can actually judge it on what we have right now. 10

If the two are blended together - if by "secure care" I meant a facility or facilities or types of facilities whereby both therapeutic services as well as some restrictive practices were applied, would that fill a need in terms of the care options out there for indigenous children and, indeed, non-indigenous children?---Right. Yes, I just don't think that we need to jump to that level of intervention until we've been able to provide appropriate responses to those children's needs. I think one concern is that, you know, the rate of absconding from residentials and the acting-out behaviour and the number of call outs and that type of thing - I think that they are absolutely indicative of behaviour of children that is borne of the trauma that they've experienced in removal from their families and I think that we need to have trauma-informed responses to those children. I mean, largely - - - 20

The trauma might be the cause of the behaviour?---Yes.

What is the solution or at least the management technique that government or providers should utilise to manage that trauma?---I'm just not quite sure what you mean, but I don't think that locking a child up or a punitive response to a child's behaviour when they're acting out or in trauma or because of their experience in care or because of their, you know, frustration of being disconnected from family. I don't think that we should penalise children by securing or containing them within a residential care facility; I think we actually have to acknowledge the reasons and to treat the reasons for why they're acting out in the first place. 30

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But in addition to treating the reasons do you accept that we occasionally fail with the treatment of reasons and therefore we need to apply another solution to the problem?--Well, I don't think that we can definitively say that we have any therapeutic models that effectively address those needs for a child. So I don't think what we have right now in an escalation to containment - I don't think we can definitively say that the therapeutic services we have right now are the type of therapeutic services that I'm talking about.

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So you would say - correct me if I'm wrong, I'm not trying to say this rudely - but you would say that if a child showed such lack of discipline in whatever care facility we placed them in, that was always the fault of the system, not the fault of the child?--I'm not advocating the child has no accountability for their behaviour, but I think it's very important to understand the reasons for that behaviour and that a punitive response does not change or improve that behaviour.

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But we have to go one step further than understanding the reasons that behaviour; we have to respond to that behaviour?--Yes.

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How do we respond to that behaviour?--By facilitating access for the children to appropriate mental health services.

Okay. I just wanted to revisit a matter that Mr Hanger asked you about, the blue card arrangements?--Yes.

Does your organisation believe that the current arrangements insofar as blue cards are required pose any problems for foster care in indigenous communities?--Other than the administrative process or the process of applying for a blue card, I don't see that it inhibits to the degree, I think, that's been presented to the commission. I think one issue that hasn't been raised - not that I've seen, anyway - is that there is an additional screening process that occurs quite often before it goes to the blue card. So if a kinship option is presented to the department through the central screening unit and that carer has any criminal history or they have a child protection history themselves, by virtue of that they may be excluded from even proceeding further into the process.

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Do you see a problem with that?--Yes, I do.

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Why?--I think that it's important that no feedback has been - if I can correct that. Rarely is feedback provided from the central screening unit to foster and kinship workers with regard to the suitability or the reasons for why the department has determined that they are not appropriate to be carers. I think that it is very important to discuss those things with those foster and

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kinship workers or whether has submitted the application because particularly with regard to a child protection history, that needs to be viewed in context. Because a person was a child in care themselves should not necessarily preclude them from being a carer for a family member. I think that that's concerning. So I think that is very important to actually look at that in context and I don't think you can achieve that context unless you've consulted with the foster and kinship service.

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Okay. Can I get you to have look at - - -

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COMMISSIONER: I'm sorry, are you going on to something else? Okay.

MR HADDRICK: So, are you - - -

COMMISSIONER: No, you go on.

MR HADDRICK: Can I get you to have a look at some legislation for me which of just handed my officers to produce up. I'll have copies for everyone else at the bar table and the bench. It is some sections from the Crime and Misconduct Act?---Mm'hm.

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I'll just wait for everyone to get a copy. Can we have a copy to the bench, please.

I just want to pick up on a topic that you raised earlier and this is relevant both to yourself, your organisation and also the ATSILS, or indeed any other model that's placed on the table?---Mm'hm.

You use the expression before "community controlled organisation"?---Yes stop

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And the essence of the model that you're proposing is greater autonomy?---Mm'hm.

One might also say power, and also financial management to be handed to these particular entities?---Mm'hm.

Is that correct?---Yes.

And the money being used by these entities is taxpayers' money, isn't it?---Yes.

Yes. And it's going to be quite a large sum of money, depending upon the size of the agreements that the state enters into with the relevant service providers, whether it's your 11 or so service providers or whether it's ATSILS' one large entity. That's correct, isn't it?---Yes.

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Okay. Now, I ask you about accountability and governance procedures beforehand and I just want to flag - and quite rightly you indicated that you recognise that there needed

to be a great degree of accountability for the expenditure of that public money, but I just want to tease out how that manifests itself. In front of you I've placed a few sections from the Crime and Misconduct Act and they're the key sections which define official misconduct. Section 15 defines"

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Official misconduct is conduct that could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services if the person is or was a holder of an appointment.

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So we need to look at what the holder of an appointment is to see what official misconduct is. A holder of an appointment is defined in the dictionary, which is the back pages - sorry, section 21 - have you found section 21 there?---Yes.

A holder of an appointment is:

A person holds an appointment in a unit of public administration if the person holds any office, place or position in the where the appointment is by way of election or selection?

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---Mm'hm.

And then we have to look at what is a unit of public administration. It's rather circular, we have to go all round the act to find the relevant bit. So we go to the dictionary?---Mm'hm.

The dictionary says Unit of Public Administration on the second-last page and it says, "See section 20," so we flip back to section 20, follow the merry-go-round, and then we see the meaning of a unit of public administration. Now, I will take it from your answer before that you believe that persons who are administering this sum of money and performing these statutory and contractual obligations should be held to account as if they were persons in the public services, in essence?---Yes.

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Okay. Now, in the definition of a unit of public administration the type of organisation that you've described before is not identified as a unit of public administration, is it? Particularly you might like to look at subsections 20(e) and (f). Because they're not established by an act or established or maintained under an act - if these were just corporations or - arguably corporations are established under an act - or if they were associations then they would not be able to be held to account. You'll see there in 20(h) another entity prescribed under regulation, you would support, wouldn't you, the inclusion of these entities that you're proposing to establish as a body that the CMC could examine if an

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issue arose from time to time?---Yes.

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Okay, thank you. Now, the final issue I want to touch upon was you were asked about the staffing of these organisations and you were asked about the employment of staff there. I might be the only one in the room, I was a bit confused about where you stood in terms of the staff selected to perform the services?---Mm'hm.

As I understand, the essence of your model is that:

Through self-determination and indigenous organisation we are able to better deliver these services to the indigenous community?

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---Yes.

Inherent in that, I would have thought, would be some, if not all of the staff would be Aboriginal and Torres Strait Islander Australians?---Yes.

But you at the end of your answer said that selection should be based on merit?---Mm'hm.

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Now, merit can mean a number of things?---Mm'hm.

What do you mean by merit?---I was talking with regard to specific functions such as intake and assessment, which under our model we've recommended would need to be performed by a person with either a social work or a psychology degree. And so in recognition that there isn't currently a massive pool of Aboriginal and Torres Strait Islander people that have that qualification and experience in terms of service delivery, I'm describing that that may be a process that we could undertake, because that function is crucial.

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While we would certainly have a preference that that be filled by an Aboriginal or Torres Strait Islander person, in recognition that they may not be available, we may not have that pool of talent readily available - - -

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I just want to stop you there. I want to focus on one part of the answer you just said?---Yes.

Whilst you would have a preference that the position would be filled by an ATSI person. I'm not saying that's right or wrong, we just need to know what your position is? ---Yes.

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So you think that the people employed by these organisations should be, where possible, ATSI people? ---They should be the people that are best placed to deliver the types of services that we are talking about.

Yes, but being best placed, quite frankly, does the colour of your skin affect whether you're best placed?---No, but when I'm talking about being best placed, I mean, it is recognised that Aboriginal and Torres Strait Islander people are more successful in engaging our own people and in working with them to identify what are the issues, supporting them through accessing services to respond to those issues, but what I'm saying specific to the role of an intake and assessment type position is that the qualification is what is important, is of primary importance. The other issue that we have is that I think there's a distinction between having a non-indigenous organisation provide services and a non-indigenous person providing services within the context of an Aboriginal community controlled organisation. It's almost like cultural immersion. The strategic direction or objectives of that organisation permeate throughout the whole organisation, and that set of values impacts the ability for a non-indigenous person to deliver services in a culturally safe way. So I'm not opposed to a blended staffing group based on the qualifications that are required to deliver the best services to our children.

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COMMISSIONER: You say it's not colour, it's cultural capacity?---Yes.

MR HADDRICK: No further questions, Mr Commissioner.

COMMISSIONER: All right. I've got a few. Just going back to the regulation of the entities that would provide services under your model and accountability of them, would you see a case being made for the secondary service sector, which would include your model, being just as regulated by the Child Protection Act as the statutory system currently is?---Could you clarify that for me? I'm not quite sure - - -

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All right. We call that statutory child protection?---Yes.

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What that means is it's statute based and it's regulated all the way along the line by different provisions and chapters in the Child Protection Act. That's why they call it the statutory - - -?---Yes. 1

We also call it the tertiary system. It includes protection and care, right. That's the statutory system - and the courts and anything that's a protective service, and protective services cut in after substantiation, essentially. Now, what the current legislation does is say, "Okay, that's your tertiary level service and we'll tell you how you get in, how you qualify, how you get out, what the directors have got to do, what the courts have to do." So it's highly regulated. What we would now call the secondary service but what in the act is called family support is left completely unregulated except by the chief executive. So on the one hand you've got a statutory system and on the other hand the secondary system is purely administrative, right. The reason that the tertiary system is so highly regulated by law is because we're interfering with people's rights. The reason that the law - the Child Protection Act left the secondary system unregulated was because it was assumed to be purely voluntary and you don't have to regulate by law people's voluntary choices?---Yes. 10 20

You might if you want to make it a little less voluntary but short of tertiary, which is something we're thinking about. Sometimes you have to guide people to the right - - -?---Push - - -

Yes, and we see if there's a role for that. So that's really my question, so that what you - instead of the service agreements with the department or the delegations being the only accountability mechanism, the Child Protection Act would actually build a secondary framework that would make it clear who does what, what your roles and responsibilities are, where they start and where they finish, how you - what services you're expected to provide. See, at the moment we allow market forces to decide what services should be provided and that's why we've always got to look around for gaps and overlaps and people still fall through the cracks. So there's nobody out there, you know, boundary riding all the time looking at this system from above and saying, "That's" - this system is like the weather. It's totally - it's very unstable, very adaptive, but it's no-one's job to have a look at the system as a whole. All the components fulfil their function but they don't always talk to each other. So that's what I'm saying to you. Put it in a piece of legislation, make it clear, rather than just say, well, it's up to market forces to determine what services are needed, how they will be provided, by whom and under what terms?---I think one of - just in response to that, one of the important features of the model that's been presented is that ability to be dynamic and respond to needs and without actually trying to structure, you know, this is a preventative service and 30 40

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this is a secondary service. We need to actually encourage mobility between service types. For people - a family that may present and need a response that's considered a second response part of the work that you might be doing is actually to normalise access to a universal response. So the family needs to be able to move up and down that continuum in response to the need that they're presenting with.

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Yes, look, I can understand the flexibility argument. The problem is when you design a system you don't want to design it so flexibly, so undefined, that nobody knows what a secondary service looks like or how you can tell whether that's what you've got or whether it's working, whether it's doing what - you've got to be able to say, "This is what it's supposed to do. This is what it does. Yes, it's doing - what it does is what it's supposed to do, it's what we expected it to do," so that if it's not you can step in and say, "Okay, there's - makes it clear what I'm doing with this system." You've got to be able to do that. You can't just leave it and say, "Well, do whatever you think is appropriate, whatever is in the best interests of the kids"?---But I think in the initial process if the department were, for example, to fund, you know, the subsidiary company that we've proposed, or whatever model it is that they go with, the department would actually define what those outcomes they're purchasing are.

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Yes, well, that's what it does now?---And that accountability back to their - - -

But that's what it does now?---I would actually suggest that the outcomes aren't exactly clearly defined and that they don't particularly measure outcomes. The measurement is actually outputs.

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That's right, and that's my point. Should the law say to it, "Listen, you can't decide just to measure outputs because that's meaningless"?---Yes.

"We want you to measure outcomes, and these are the outcomes, these are the benchmarks. We'll tell you what we want to hear back from you, not leave it to you who is the person under scrutiny to tell me what the evaluation criteria is." Do you see what I mean?---Yes.

Yes, that's what's regulation?---Mm'hm.

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Regulation is the client telling the - or the consumer telling the retailer what they actually want to buy and not just being limited to what the retailer has got on the shelf. All right?---Yes.

Now, the other thing that I wanted to deal with you is in paragraph 49 of your statement you talk about lack of prevention and early intervention services. Now, I'd like

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to see if we can nail that down a little bit?---Okay. 1

Because definitions are important. Now, prevention - well, early intervention, you know what intervention means in this system?---Yes.

It's the action that the chief executive takes, and it's either to prevent a risk - it's either to reduce a risk or it's to protect a child in need of protection.

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They're two interventions?---Mm'hm.

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Doing something about the risk, reducing the risk, is a voluntary intervention?---Mm'hm.

It's not a tertiary one?---Mm'hm.

Giving protective services, including an IPA is?---Mm'hm.

So what's an early intervention in your language?---I think that's targeted at families that have a degree of vulnerability. So we're talking about prevention. In the context of the model we've presented prevention is around, you know, community awareness, education campaigns, that type of thing. Early intervention is about providing access to - services to families that may not be at risk of entering the tertiary system right then, but they have defined some need. There's some need for support.

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This is the CMC's definition of - they break up prevention into three categories, primary, secondary and tertiary prevention?---Mm'hm.

Their secondary prevention is the services that are provided to populations with one or more risk factors associated with child maltreatment such as poverty, parental substance abuse, young parental age, short gaps between pregnancies, parental mental health, child disabilities, that sort of stuff?---Mm'hm.

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Do you agree with that?---Yes.

Is that your early intervention?---Mm'hm.

So early intervention is a preventative on the public-health model?---Yes.

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It's not responsive?---No.

It's not reactive. It's proactive?---Mm'hm.

What they say is the early-intervention services that they're - well, you tell me. What are your earlier-intervention services?---That would be services that provide support like parent groups - let me see - parent groups; some interventions that are targeted around preventative health, for example, similar to the work that's being done in vulnerable families through the health sector, that type of thing.

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Would it include home visits?---No.

Supervision within the home?---No.

Would it include respite care?---No.

So your idea is more universal or primary?---Yes. 1

Between that and tertiary, do you have another graduated response?---Yes, which would be around targeted - - -

Which is that?---That is more targeted to specific vulnerability. So if we're looking at, you know, that there are substance-abuse issues, family violence, that type of thing so - but services that are accessible by families without having to be referred by the tertiary system into those services so very similar to the family support services that we have now. Right now the family support services are constrained by the referral source and that is actually through the department. 10

Is that the Aboriginal and Torres Strait Islander family support services?---Yes.

And their funding started in 2010?---Yes, that's correct.

This is what the department tells me they are. Aboriginal and Torres Strait Islander family support services provide intensive support to families to prevent the need for ongoing statutory intervention?---Yes. 20

Ongoing statutory intervention is we have already intervened?
---Mm'hm.

What we want to do is not have to do it all the time, whereas my idea of secondary intervention services is preventing the need for intervention in the first place?
---Yes.

Is that yours?---Yes, and I guess that's one of - our problems with the family support service is that we've advocated for a long period of time for families to be able to self-refer, for other non-government organisations to make those referrals when they identify there's a potential need for the family, but the referral source for our Aboriginal and Torres Strait Islander family support services is actually through the department, through education or health and health and education - we've seen very, very few referrals that are direct referrals. They tend to make the referral to the department and the department then makes the call. 30

So let's see if we can convert it to a common language?
---Mm'hm. 40

You and I would see anything short of tertiary intervention, whatever we call it, aimed at reducing risk and avoiding harm, not minimising harm?---Correct.

So we stop harm happening, not just relieve the past harm?
---Yes.

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And we prevent future harm because we will eliminate the risk factors?---Mm'hm. 1

Right. Now, risk factors really are - that's what we call them, but really in the family context the risk factors that exist are inherent in the child or the parent or another family member, aren't they?---The risk factors are typically that - from the department's information the most prominent risk factors for Aboriginal and Torres Strait Islander families entering the system are, first of all, the existence of multiple factors but primarily it's around substance abuse, domestic violence, a child-protection history of their own and mental health issues. 10

According to the Australian Institute of Family Services 2012 - family studies on their report on child protection and Aboriginal and Torres Strait Islander children last year they identified alcohol and drug abuse, family violence and overcrowding as the main individual family and community problems?---Mm'hm.

So they split it up in family, community and individual problems?---Yes. 20

Would you agree with that, breaking it up like that?---Yes, I think that that's a more realistic picture.

Which means you have to have a three-pronged attack, doesn't it?---Yes.

Now, because one of the risk factors to children is violence not only within the family but within the community, you have got to do something about the violence in the community before you're going to reduce overall risk to children, aren't you?---Yes. 30

How do you do that? What secondary service do you give to a community to make it less violent?---I think it's around - first of all, it's around community engagement and actually getting community to buy into a standard position that violence is not tolerable and then I think the Healing Foundation - I'm happy to provide you with some information from the Healing Foundation, but they've got some solid evidence that's been gleaned from practice initiatives that they've been running and it really is around focusing on healing and in recognition of intergenerational trauma.

Okay. Is that based on the theory that today's violence is because of yesterday's wrongs?---Yes. 40

No other cause?---I would suggest that that's the primary cause.

If you do something about that, violence will look after itself and diminish correspondingly?---Well, facilitate being able to reinstate cultural norms, you know, and

actually resetting within the community what are the accepted standards.

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That's exactly what the four communities in the cape have been trying to do under the Cape York Welfare Reform trials?---Yes.

That's been going since 2008?---Yes.

Do you know how successful they have been?---I think that the results have been varied but I don't have specific information, but what I would suggest is that you can't necessarily isolate - attack it with a punitive response without making sure that there are other services within those communities or the resources to address the underlying causes of that.

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If I make lots of recommendations about how you protect children and somebody who reads it says to me, "Look, you know, you accept on the one hand that one of the risk factors to children is community violence as well as family violence. You haven't made any meaningful recommendation about reducing community violence. What's the point of trying to protect children against community violence if you don't attack the root cause of that violence?" that's a fair question, isn't it?---It is a fair question, but I think that you actually need to look at where that has become - where the violence is prevalent. I wouldn't suggest that in the majority of aboriginal communities that - that community violence is such an overwhelming influence that it directly impacts, you know, safety and wellbeing of children. Do you know what I mean? I think that it's - I guess if you're looking at community by community - if you want to isolate a community and say that this is an issue here, then you need to target a response for that community to respond to that problem in their local context.

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There is a lot of literature out there that says the exact opposite. They say that violence in some remote indigenous communities is institutionalised. It's almost a cultural norm?---Mm'hm.

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Do you disagree with that?---No, I don't agree that violence is a cultural norm. I agree that it has become a feature of certain communities. I struggle the link between that and culture, is what I'm saying.

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Okay. Let's not look at it as - you probably shouldn't look at it as a cultural thing?---Mm.

But it's a feature?---Yes.

And it is a stubborn feature and you have to get it out if you're going to have any chance of protecting children? ---Mm'hm.

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You know, any realistic, viable, sustainable charts, don't you?---Yes.

So you need to help the parents, whatever problem they've got; you've got to help children to deal with the effects of whatever problem that parents have got and anything they were born with or anything they've inherited?---Yes.

But you also need to do something with the local community they live in, especially when they are virtually an extended family of 12, 1500 people and only people fly in and fly out, they're the only people they see?---Mm'hm.

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Right, so you've really got a big family, haven't you? ---Yes.

Okay. So violence within that community may as well be called family violence. So what you do about it?---I don't think that we can approach it with a one size it's all thing.

All right?---And I think that we need to look with individual communities: what is the current position in terms of how to respond to those.

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But who takes a leadership role, is what I'm asking you. Is it the peak bodies; for example, yours? Do you take the leadership role? Does the Family Responsibilities Commission take the lead role? Does FaHCSIA? Does the government? Who? Who does it?---I think that those types of issues require that whole of government response and I think that in terms of DATSIMA, the work that they're doing, I think that that currently - I guess that some of the work that DATSIMA is doing in terms of community safety sort of aligned with what you're saying.

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All right. I don't mean to delegate to you the responsibility of finding new solutions, but I do find your answers helpful and it is important - really important - to just not make general statements about, you know, social and economic disadvantage, we have to talk frankly about what that actually means and how you do something about

it?---Mm'hm.

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Like example when the department talks about family support services we have to be able to list what they are?---Yes.

Otherwise it's meaningless to anybody?---Mm'hm.

And likewise if you were going to say: well, we can over time be self-determining, we need to have a plan of action. That's what the government has asked me for?---Mm'hm.

If I'm going to make recommendations I've got to be financially responsible; they have to be deliverable; and they have to actually be backed by a roadmap, which is just a guide to getting somewhere?---Mm'hm.

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And over 10 years?---Mm'hm.

So if you have got any proposals for doing something about some of these risk factors other than just saying: well, let's do some delegation from the department, that would be good. And I'd also be grateful for that healing material as well?---Yes, absolutely. And I'm not sure if it's been provided to you yet, but they transition to out-of-home care material, the implementation framework that has occurred - that's been covered in New South Wales, I have some of that material to - - -

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Yes, that would be good?--- - - - which actually steps out and actually gives us a framework to look at in terms of defining what are the outcomes, what other steps to get there, and we have commenced doing some work - - -

I don't know if you've got any research-based information on this, but the last time the department did anything about profiling parents in the child protection system was in 2008, that's five is ago?---Mm'hm.

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And they were looking for parental risk factors in indigenous communities as compared to the general population?---Mm'hm.

Have you got anything more recent than that?---I'd have to have a look, we have - yes.

All right. It's interesting, in terms of drug and alcohol problem, 64 per cent on their figures of parents in indigenous households as compared with 47 of all our households?---Mm'hm.

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That's still an over-representation, but that still doesn't account for the level of over-representation at all points in the system?---Mm'hm.

You've got 40 per cent of children in out-of-home care as at June last year are indigenous and you've got the number

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of notifications tripling from 2000 to nearly 6000 as at the same date?---Yes.

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And in the general population notifications were falling away. 45 per cent of indigenous households experienced domestic violence within 2007, 2008 as compared with 35 per cent of all households, so the 10 per cent difference looks worse, obviously, when you look at the actual numbers of indigenous compared with the actual numbers of non-indigenous?---Yes.

But on the upside - well, I don't know if - criminal histories were higher. Basically across all the risk factors it was at least 10 per cent higher in indigenous households compared with the general population?---Right. And I think there was also higher prevalence of multiple risk factors as well. It was one of the other things they pointed out in there.

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Actually, I think that was one of the deficiencies in it, it didn't do that; didn't have a look at multiple, complex, concurrent ones. I think that's what the CMC criticised for?---Okay. Well, the most recent report that I have from the department - and I think it may be 2010 - actually breaks down the parent risk factors.

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Okay. All right, well, I don't know why they didn't refer to that one. Maybe we'll get a copy of that. Mr Hanger, can I get a copy of that from you?

MR HANGER: Yes.

COMMISSIONER: But interestingly, diagnosed mental illness in indigenous households was 5 per cent less than all households according to - 14 compared to 19 per cent? ---That might be about whether or not there's been access for diagnosis to the services.

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Yes. I was reading the other day that there's a study being conducted in Western Australia at the moment and it is driven by two indigenous women over there into the prevalence of foetal alcohol syndrome disorder?---Mm'hm.

They haven't published their results yet but the expectation is that they're going to find that it exists in one third of indigenous births. Do you have any figures for Queensland?---No, I don't. I could try and get some for you.

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Okay, thank you. Anything arising out of that?

MR HADDRICK: No, Mr Commissioner. Might the witness be excused?

COMMISSIONER: Yes. Thanks very much for spending such a marathon period of time in the witness box?---Thank

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you very much.

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It is really appreciated. Thank you very much?---You're welcome.

WITNESS WITHDREW

MR HADDRICK: The next witness would be Mr Shane Duffy from ATSILS. The way I propose the witness be examined will be obviously placed in the box; I'll get him to identify a couple of documents and then Ms Stewart from ATSILS will then commence her examination in chief; coming back to me after that.

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COMMISSIONER: Is that okay with you, Ms Stewart? Mr Hanger? Ms Stewart?

MR HADDRICK: I call Mr Shane Duffy.

DUFFY, SHANE ANDREW affirmed:

ASSOCIATE: For recording purposes please state your full name and your occupation?---My name is Shane Andrew Duffy, I'm the chief executive officer of the Aboriginal and Torres Strait Islander Legal Service in Queensland.

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COMMISSIONER: Good afternoon Ms Duffy. Welcome? ---Good afternoon, Commissioner.

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MR HADDRICK: Mr Duffy, can I get you to have a look at a couple of documents before I hand you over to Ms Stewart who will ask you the first lot of questions?---Thank you. 1

I'll get you to look at this document first - well, I may as well give you the lot. The first document which is on your corporate letterhead is a letter to Ms McMillan of senior counsel dated 21 December 2012. It's a letter under the hand of your officer Mister - whose surname is Shadbolt - no, sorry, it's under your hand?---Correct.

Sorry, I should ask do you recognise that document?---Yes, I do. 10

Is that a letter from you to the commission dated 21 December?---Yes, it is.

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

The opinions expressed in that letter are your opinions held by you?---Held by myself and the organisation.

I tender that item, Mr Commissioner. 20

COMMISSIONER: The letter dated 21 December 2012 from the Aboriginal and Torres Strait Islander Legal Service will be exhibited 145.

ADMITTED AND MARKED: "EXHIBIT 145"

MR HADDRICK: Can I show you another bundle of material I've provided the commission's officer, starting with a document that looks like that?---Yes, sure.

Do you recognise the document in your left hand?---Yes, I do. 30

What is that document?---That's our original submission to the commission of inquiry.

That's dated November 2012?---Correct.

The other bundle of material that will be handed to you now, what is that bundle of material?---They're all the attachments to the original submission, yes.

Okay, so those two bundles go together?---Correct. 40

The contents of the submission, are the contents true and correct?---Correct.

To the best of your knowledge, and any opinions expressed in that submission, are they your opinions or the organisation's opinions or whose opinions?---They're the organisation's opinion on behalf of myself as the chief executive.

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I tender those items as well, Mr Commissioner, as one item. 1

COMMISSIONER: The ATSILS November 2012 submission to the inquiry will be exhibit 146.

ADMITTED AND MARKED: "EXHIBIT 146"

MR HADDRICK: At this stage that's the evidence of this witness. I'll hand over to Ms Stewart, with your permission, Mr Commissioner.

COMMISSIONER: Thank you. Yes, Ms Stewart? 10

MS STEWART: Mr Duffy, would you like to make your acknowledgments?---If I may, yes. I acknowledge the traditional owners of the land on which we're gathered, the Yuggera and Turrbal people, and I do that on behalf on my family (indistinct) and Kalkadoon and (indistinct) nations.

Now, there's been two documents just tendered. I don't propose to take you through them. I propose to direct some questioning just around the ATSILS governance model?---Yes.

But firstly would you for the benefit of the inquiry just like to describe your role as the chief executive officer of ATSILS and what that entails?---Okay, if I may give a bit of historical. Worked with disadvantaged youth in a Aboriginal and Torres Strait Islander youth shelter. I'm actually a fitter and turner by trade, many moons ago. I'll put it my way: jack of all trades, master of none. Worked in the public sector for 10 years within youth justice and child protection in their corporate capability and business development division. I've managed the youth and family support service within the Department of Communities and currently I'm the chairperson of the National Aboriginal and Torres Strait Islander Legal Service. I'm the current chairperson of the Australian Legal Assistance Forum and a former member of the Queensland government taskforce to deal with Aboriginal and Torres Strait Islander challenges in Queensland. 20

And currently the CEO of ATSILS. How long have you held that position?---I've been there for eight and a half years. 30

Do you want to describe for the benefit of the inquiry what the capability is within ATSILS that allows us to provide meaningful comment on the wellbeing and care of Aboriginal and Torres Strait Islander children in the child protection system?---Okay, well, to do that I'll have to go back to 1972 when the Aboriginal and Torres Strait Islander Legal Service was first established and grew out of a need for the challenges that our people faced on the streets here in Brisbane. So since 1972 up until eight and a half years ago we were an organisation that was predominantly - just criminal law services not only in Brisbane but we also 40

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expanded to Maroochydore and Beenleigh. Within that period of time there was a whole lot of adjustments. Our funding comes entirely from the federal attorney-general's department in Canberra and we were put out through AusTender, through mainstream tender, to tender for our own services that we had been delivering for over 30 years. So when that tender took place eight and a half years ago we picked up the civil and family law service. So the civil and family law services are relatively new to an organisation that started out in the early seventies. The organisation has a board of directors and the board of directors are Aboriginal and Torres Strait Islanders. We also have a specialist director position on the board. The specialist director was appointed to bolster the governance and decision-making process within the organisation and hence we have a chartered accountant from (indistinct) that sits as a specialist director. That's appointed by the board and not by the membership to provide extra advice to the board on any strategic decision-making processes. The gender balance within the organisation is around the governance model. At this stage it is slightly leaning towards male directors but there's been a strategy in place to engage more Aboriginal and/or Torres Strait Islander women to become members of the organisation and potentially becoming directors of the company.

Now, you've been taken to the document that is our public submission to the inquiry dated November 2012. We've made a number of recommendations for proposed reform. In particular, we propose a state wide model of delivery. You've just touched on this, but it's our understanding that ATSILS has emerged from once being a provision of services that were in many regions throughout the state and then changed to become the one state provider. Can you just give an outline to the inquiry about that process and how important it was at that point to develop a modern corporate governance structure?---Look, on reflection at the time, some eight and a half years ago, there were 11 mainland Aboriginal and Torres Strait Islander legal services and a separate service for the Torres Strait. At that time, as the CEO of an organisation with 30 or so staff and a \$3 million annual budget we weren't really happy with the Commonwealth government putting us out to mainstream tender to test the market. We knew right from the start that no-one would do the work we do for money because there's no money to be made as you would in a private law firm and delivering services to other people. So basically through that tender process, over a period of four and a half years we reduced 11 mainland legal services down to one service, hence the 26 offices that we have based in mainland Queensland. So that took place over a period, as I said before, of four and a half years. In September - I'm trying to think - in July 2005 we expanded into North Queensland, so that was Mackay, Rockhampton, Townsville, Mount Isa, the Cape and up into the Gulf and obviously up in towards the Cape excluding the Northern

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Peninsula Area, or the NPA, right at the very tip. Then in October 2011 we secured the further contract for the NPA of Queensland and also the Torres Strait to provide criminal, civil and family law services. So the organisation has grown over a long period of time. To take us back to the journey that I just started, it was more about how we worked with our sister organisations and the relevant committee members, directors, board members, because they were incorporated under different structures, but to talk to them and say that the former QEA or the Aboriginal and Torres Strait Islander Legal Service here in Brisbane won't take the lead in relation to the tender process and offered an olive branch to themselves, because we believed that we were the best functioning and the best operational legal service within the state. That wasn't taken up by anyone except for one organisation in Townsville, Townsville and surrounding district. So they joined with us in the tender application and we secured the contract. What we have learnt over the eight and a half years is what we were so resistant to with the initial change of being, I suppose, tendered out and being competitive within a market was that we felt as though we were losing our own self-determination and our decision-making processes. In fact it's been quite the opposite, where by having a larger organisation we've been able to plan not only from a budgetary mechanism but also at a human resource and community level to better meet the needs of community out in those locations, whether it be in regional, rural or remote areas.

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If I can just get you to talk about the practical effect of that, how - well, what do you see as the benefits of the amalgamation process as far as strategic direction, governance, leadership and frontline service delivery? ---Commissioner, you will notice I'm just writing these down so I don't - I get governance strategy. What was it then? 1

Leadership?---Leadership, right.

Frontline service delivery?---Right. The first one is the most - one of the most critical points is governance and the governance structure had to be a structure that took into account regional variances and it made mention before around urban, rural or remote communities or in our case very remote communities. So a governance structure that needed to be developed to take into account the historical 11 mainland legal services to come into one. So we had a look at what was our best governance model. We looked at the office for the RAC, the office for the Register of Aboriginal Corporations or ORAC, as it was known back then, now ORIC, the Office for the Register of Indigenous Corporations, and we really found that to establish a constitution underneath that piece of legislation allowed for nepotism and a lot of take over and control and black politics to become involved in the organisation as a group. We looked at the state affiliation through the Office of Fair Trading at that stage and thought that we set ourselves up as a - to set ourselves up as an incorporation or association under that where we would still develop our own constitution to determine how we ran our core business, but we didn't actually think that that was the best model as well. What we ended up settling on was the Australian Securities and Investments Commission and the Corporations Act. Challenging - even though we thought it was quite challenging at the time, it has become very simple to be able to manage and be legally compatible and meet the requirements of ASIC under the Corporations Act in the way we manage our business. So we incorporated as a company limited by guarantee, \$10 to the membership, and we set up a new entity. We moved all the assets under the old incorporation, the former - I'm trying to think what it was called now. Let's just say the Aboriginal and Torres Strait Islander Legal Service, the QEA under the old Aboriginal and Torres Strait Islander Commission boundaries, and we established - we moved all the assets under the fiduciary responsibility of the directors to the new entity so we could continue once the contracts came into place to deliver services out on the ground and community. So the governance was quite strategic and that was the first point of call that we needed to sort out. We had to really realign our constitution to be in line with our core business given as though we moved from being - providing a criminal law service to pick up not only on family and civil law but also to take account of our death-in-custody monitoring unit, our community legal 10
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education our law reform and policy unit and our - well, to 1
sue the current jargon, our prison through-care or social
workers that we've got positioned around the state as well.
So the constitution actually had to determine and dictate
our core business. Along with that it was about also
trying to attract membership to the organisation so the
view of the directors of our organisation are that people
do not become members of our organisation just because
you're Aboriginal and/or a Torres Strait Islander. To
become a member you have to add value to the membership
with the possibility of becoming a director of the company. 10
I can tell you now from a governance perspective I don't
have any problem with people from community. People are
just content if they're getting services on the ground.
There's no black politics and race associated with that,
and I'll be up front, commissioner, if I may, in talking
about that as being a major issue for us in trying to
govern an organisation is the politics that sit on the
peripheral and impact on how you try and run your
day-to-day operations. So the governances which worked
strategically well was making sure that our directors - and
it's in the constitution. We developed a delegation
document for financial and - finance audit and risk
management. We've also developed a governance document 20
which clearly provides the directors a mechanism to
understand their roles or responsibilities and how to make
decisions in managing public funds for the betterment of
not only the funding body but more importantly, or just as
importantly, for the betterment of the people that we're
aiming to serve on the ground, our own people. So then we
move onto strategy and obviously what was noted and we
picked up once we did audits and reviews of those former
offices - and it did exist in ours as well in Brisbane back
in those days. We had to look at our current business. We
had to look at our own internal and how we manage to do
what we need to do. So rather than, I think, the vast 30
majority of people - when they talked about strategy,
they'd get a fantastic outcome. They'd get from point A to
point B. They'd get to point B and they'd turn around and
say, "We had a fantastic outcome, but how did we achieve
it?" So the idea around the strategy was removing the
chance and creating choice and that was about planning to
be a success. So it was about applying a risk-assessment
framework in relation to the strategy; not only in relation
to governance but also around development policies and
appropriate procedures and case-management standards within
the organisation, employing the right people with the right 40
qualifications, so on and so forth. So the organisation
has developed a strategic-thinking report from about
10 years ago because I was formerly a board member of the
old ATSIC many moons ago and the strategic-thinking report
really formed the foundation for the development of our
strategic plan as it sits today, but I can say that that
strategic plan has been modified in line with changing
trends and changing conditions and changing communities and
needs and particularly changing legislation where we really

struggle to try and influence the Queensland government and how they create laws that disproportionately or adversely impact upon our people. So the strategy is in place and what sits underneath the strategy, what was developed, was an annual action plan, so a review process where we could determine what we did on an annual basis and come back and review how we do our business to make sure that we kept up to date, as I said before, with changing trends and, more importantly, to make sure it was current for the time and age we were working in. So the next one was the learnings and when we govern, we learn. What we do is we focus on engaging with community on the ground. So more often than not it starts with when we come - either face-to-face contact in a court or a referral over the phone or - an individual referral or referral from a third party across to our organisation where people are identified to have a legal need. So the learnings within the organisation and how to develop them over the years is to be able to critically analyse and review every step of the operations of the organisation; not only from finances and, as I said before, the establishment of a finance audit mismanagement committee, not only from our recruitment processes and a robust human resource system, not only physically but also electronically to meet the needs of the organisation which would then ensure that we aim to employ the people who are appropriately qualified and/or suited to the positions, but also how the organisation learns to change its mode to meet the changing face of community. The last question is in relation to frontline services.

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Yes?---How do we govern the frontline services? We'll never have enough money to be able to deliver the services that we need. Predominantly our services are criminal and for the exhibits that have been tendered you can see for the commissioner it's been broken down, the type of - the make up of our human - our talent, our staff within the organisation. So it's been predominantly focused on criminal law and that's been made quite clear to us by the Commonwealth that "Your focus is crime", but we then had to try and adjust from a frontline service with minimal resources to try and meet the civil family law and, more importantly, child protection needed people in community with very, very minimal funds. So to be able to adjust and understand why you do what you do, how you measure your outcomes, how you take into account and apply your assumptions for change as part of the risk-management process, change management and applying it on a day-to-day basis to try and meet the needs not only of our staff in the organisation but, more importantly, our clients out on the ground.

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Can you just talk to the benefits of having the Peak secretariat when we're looking at a statewide delivery model, particularly because our - it's been explained that we have the CEO, we have a principal legal officer and we have a separate finance officer?---Mm.

Can you just talk to the benefits of that?---I'll just
correct you. I don't see it - we're not a Peak
secretariat. We're a Peak service provider across the
state. The benefits of that have been able to - let me go
back one step and I'll come to the benefits of having a
statewide model. I've given the historical as in the
reason why we were a bit up in arms about the proposed
change in the tender process.

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But what we have noticed since that point in the is if you - people like finance, I'll give you an example: if I've got 20 offices across the state - and this is a financial benefit, I'm just looking at one position alone - and I've got a basic bookkeeper in an organisation on 50,000K or 50,000 salary per annum, I multiply that by 20, there's \$1 million that's being expended just on people moving finances through the 20 offices if we were a separate organisation. What I've been able to do is pay people what they're actually worth; to get a chartered accountant into the organisation, to get a finance and administrative team around the accountant to be able to enable them to manage the physical environment of the organisation. So if I can come with \$1 million to one position and say I paid a salary of \$250,000 annually, I've already made a saving of \$750,000. That's not saying that being tight and getting blood out of a stone is a good thing, but you have to and you have to look at and you have to rationalise where you can get some leveraged out of the financial dollars or the dollars that have been allocated to you. So financially I thought I could get a practical example of where you could be saving is just for an accountant. And more often than not in the organisations that we've had their weakness is around managing finances. I don't say it's around misappropriation, I'm talking around mismanagement and not having the right people in there with the right qualifications and skills or the attributes to be able to manage the organisation's budget; and more importantly be directed by the board of directors, management committee, or whatever title they have, to be able to give strategic direction and advice to the CEO to enable me to (indistinct) the chartered accountant allotment principal legal officer to look at how we can get more leveraged out of the dollars. So the major benefit for me initially was around looking at dollars. It also gave us an opportunity to go out and do a bit of an audit of the - and I talk about talent - of the current talent that's sat in all of these offices across the state. And I must say, we had a lot of passionate and beautiful people, but a lot of those people didn't have what we needed to deliver the services on the ground. What we found was there was a lot of fat in a lot of the offices that existed around staffing allocation and salaries, so we set our salary bans in place and we interviewed every single person in every organisation; we targeted based on the budget that we were supplied by the federal attorney; we spoke to staff, we spoke to community people, we met with those board members or committee members that were formerly the head of those organisations and talked to them about what their passions and their vision worth of their community; and then we made a fiscal decision based on the dollars we've got. So it was a bit of a suck it and see approach in the first year about how much dollars we allocated into an office in initial instance, which was always hard, and then reflected and adjusted over a period of time to either downgrade what we originally thought what was right for that office or to

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upgrade. What we did do, we removed the Aboriginal management - and even my own mother got into me about this - I removed - our board, not I, I was the one that had to carry the tomahawk, I suppose, but I had to go into the communities, and what we thought was: why would I spend \$75,000 or \$80,000 on an Aboriginal manager when under a new structure it was still Aboriginal community-controlled; was still Aboriginal-community managed; and what we did with that \$80,000, we thought: what's our core business? It's providing legal services. So we put our regional managers in as lawyers. Now, you get some good lawyers; there were good lawyers and can't manage, or you might get some lawyers that are - I won't say great lawyers, but fantastic managers. We've put in professional development and regional managers resourced to be able to support our regional managers to be able to carry on and do the job. So we actually - - -

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MR HANGER: I hesitate to interrupt, Mr Commissioner, but with the greatest respect to Mr Duffy, while it's interesting, it's not relevant to the terms of reference.

MS STEWART: Okay. I wanted to give an overview of the organisation, Commissioner. I understand that's the purpose of Mr Duffy being summoned to some respect.

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COMMISSIONER: Yes.

MR HANGER: It would be my - - -

MS STEWART: But we're happy to leave that there and hand over to counsel assisting.

MR HADDRICK: It would be our view that it is relevant. The way ATSILS is set up and structured and resourced is relevant insofar as the content of the submission is to - I haven't yet heard, and one my questions will be the body that ATSILS wishes to create that delivers the services that our previous witness discussed, is it the same body as ATSILS? Is it a similar body? Is there interlinkages between the two bodies? So the nature of ATSILS is relevant as to the other players in the sector. So I would respectfully disagree with Mr Hanger that the structure of ATSILS is relevant for the make-up of the child protection system and the entities that deliver services within the child protection system.

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COMMISSIONER: But we're not going to change ATSILS, are we?

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MR HADDRICK: Well, as I said, one question hasn't been asked yet, which if Ms Stewart doesn't ask it, I certainly will be, is what is the relationship between ATSILS and this other body that they're proposing to establish? I've looked in the submission and I can't quite answer that looking at the submission.

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COMMISSIONER: I think you can - - - 1

MR HADDRICK: So it becomes relevant - - -

COMMISSIONER: - - - consider the question asked,
Mr Haddrick.

MR HADDRICK: I certainly do.

COMMISSIONER: Are you happy to change back?

MS STEWART: Yes, Commissioner. 10

COMMISSIONER: Okay, Mr Haddrick (indistinct) would you
mind answering the question (indistinct) Mr Duffy.

MR HADDRICK: Just having a look at your submission on
particularly page 3, the submission of November 2012, and
cutting straight to the chase, what is the relationship
between ATSILS - or the proposed relationship - between
ATSILS and this other entity yet to be named that would
deliver services for the whole state that are child
protection services?---No relationship whatsoever. What we
tried to demonstrate through our submission is that we
believe we have an effective governance model that
irrespective of whether it's child protection or any other
entity, a governance model that if put into place can
support better outcomes for our children on child
protection orders. 20

Okay. That leads us to the obvious question: you've twice
said that your primary purpose is legal services?---Yes.

Why on earth are you advocating in this space?---We've sat
around for many years and were quite alarmed by the
increasing rate of our people becoming - children coming
into the child protection system; not only just being
touched, but being drawn right into the system. So our
interest was saying "enough is enough" the commission has
provided an opportunity for the Aboriginal and Torres
Strait Islander Legal Service to provide, I believe,
comprehensive comment about a proposed governance model
which will best meet the needs of our children on child
protection orders. 30

So you accept that the current system is broken?---I don't
agree that the current system is the right system to meet
the needs of our children. 40

In what way is it deficient?---I just believe it's
deficient in relation to the way the governance structures
are in place.

In what respect?---I've had discussions with Natalie, as
the CEO for the Peak. I've had a couple of discussions and
one of my staff, Will, has had many, not only with Natalie,

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but board members. And originally when we sat down and talked about the position that the Aboriginal and Torres Strait Islander Legal Service wanted to take we wanted to work with the Peak to try and get a - I suppose feel out where they were coming from in relation to this opportunity the commission created. It became apparent over a period of time that we were on different pages and that their governance structure was different to us.

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So when you say you're on different pages and you say governance structure, is that the only thing you're on different pages about?---Yes.

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Okay. Perhaps we should start right from the start?---Mm.

What do you see as - I won't put it as high as the panacea - but what do you see as the solution to improving the existing child protection system insofar as Aboriginal and Torres Strait Islander children are concerned is?---If I may I'll park the child protection system and I'll talk about Western business practices and principles.

Okay. Tell me how that's relevant to start with?---Well, Western business practices and principles are based on a whole lot of strategy areas. So if I - what I'd like to do, if I may, and I'll talk about the Aboriginal and Torres Strait Islander Legal Service and then we can talk - we can, I suppose, make that connection across to the correlation if you're happy in that way.

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COMMISSIONER: So what you're talking about is a whole conceptual structural framework that the - the foundations on which a new system should be built - - - ?---Yes.

- - - which is conceptually different to Western business practices and procedures?---No, not different. What we're talking about is tried and proven methods around Western business practices and principles, what we talk about, I suppose, is that layer underneath and putting a cultural context to it; not using black as an excuse but applying cultural competency or self-determination into a business model.

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And you're using ATSILS as an example of the model?
---Correct, Commissioner.

Good, okay.

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MR HADDRICK: Tell us what you would change of the system?
---Mm'hm.

We of course have your submissions, but some of this stuff needs to be canvassed orally. What would you change of the system that would improve child protection services for ATSI kids.

MR HADDRICK: Tell us what you would change of the system. We of course have your submissions, but some of this stuff needs to be canvassed orally. What would you change of the system that would improve child protection services for ATSI kids?---Well, through our submission we've recommended to the commission that a new governance structure needs to be put into place which will give better outcomes and not only look at fiscal savings - and as I said before, I'm not saying that saving money should leave us with no money. There needs to be an injection dollars, but we've talked about a governance model which we've run now for over eight years where we've had success in not only the direct delivery of services but in engagement with our community, not only the ones that are accessing the courts but particularly engaging with the community on the ground in identifying what their needs are. So looking - - -

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Okay, just hold on there. I need to get absolutely clear, at least in my head, governance of what?---The governance of an organisation.

What is that organisation doing?---That organisation, for the example that you posed, is delivering child protection services.

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What are those services?---At the moment I think there's 32 services all up that the peak work with, out of home care services, prevention, early intervention, et cetera. What we're about doing is consolidating those services under one umbrella, under one directorship or company or whatever the - our recommendation is a focus group to talk about this with industry experts in child protection, but a governance structure in place which if managed and having appropriate input from relevant expert people - we've made a broad range of recommendations as to who should be involved in that focus group - the Cape York Institute, the Child Protection Peak, as well as relevant Aboriginal and Torres Strait Islander and mainstream people from university, et cetera, to mould together a governance structure and model which will best meet the needs of our children on child protection orders.

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I just want to hold you there. You will of course be familiar with the Child Protection Act?---To a degree.

It's the principal piece of legislation in this field. Am I to understand you correctly that what you suggest is not - you don't have a problem with the act, so your principal proposal for reform is not amendment of the act, it's the delivery of the services that the act either anticipates or wrap around the act?---Well, the organisational focus is what I'm aiming to explain at this stage. Obviously there's recommendations within the submission where we feel as though there needs to be a certain amount of law reform which will lend its way to address some of the challenges that the current legislation has in place. So the first

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focus is organisational and how the organisation runs its business and delivers its services and makes its decisions and reviews its decisions and allocates resources, et cetera. The legislation is a separate issue to the organisational structure.

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Okay, but what - I'm just trying to focus as closely as possible as I can upon what is the substance of what you say should be reformed. As I'm to understand it so far, the substance is the delivery of services, it's not the legislative framework, in which particularly tertiary decisions, that is, child protection orders, are made in respect of children. Am I correct in that assumption?--- What I'm aiming - what we're aiming to achieve is to put up an alternative model which is different to the current, and the alternative model is based on a robust business framework.

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But how is it different to the current?---Well, it's different to the current, and where it differs is it stops - I'm just using an example here. If there's 32 services and there's 32 boards or 32 management committees, what it does under the current structure, it doesn't allow for consistency and business modelled approach across the state. So allowing to deal with things in a consistent manner, whether that be through strategy, whether that be through policies and procedures or case management stands, et cetera. What it actually does is - as I see it at the moment, Peak sits there as a policy and best practice body. How do they then influence the organisations who have their own committees to make sure that those policies and those best practice principles or processes are actually implemented on a day-to-day basis?

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You see that this entity, however described, entity, for argument's sake, will be similarly structured or arranged so it sort of mirrors ATSILS. It has the same broad principles in terms of how it's set up, how it's governed, how its funding arrangements are achieved. So you see it as mirroring ATSILS, do you?---I do.

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But you don't see any formal linkages between ATSILS and body X?---No, there's no linkage whatsoever. We provide the legal representation for the family. Our only vested interest is the interests of our children who are on child protection orders.

Okay, well, coming exactly to that, can you just tell the commission what is the composition of the break up of your professional practice provided by ATSILS in terms of between crime, family, civil and child protection? How much of your time of your staff is, in round terms, spent on criminal matters, how much of it is spent on civil, how much is spent on family, and of that how much is spent on representing parties in child protection applications in the Children's Court?---So on that focus - from a legal

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perspective I'll focus on the lawyers first and if you would like me to draw out with the court's (indistinct) I may.

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If you could, please, yes?---Yes, so we've got 80 lawyers within the organisation across 27 locations as we speak. We have 58.5 criminal lawyers across the state, which includes the regional managers, as I highlighted before.

Yes?---We have four civil lawyers across the state. We have five and a half family law, which includes one and a half exclusively for child protection, and we have got 12 civil and family law combined. So they actually practise in both areas of law.

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Let's just focus then for a moment upon the exclusively - or those lawyers who practise in child protection, given it's the pith and substance of this inquiry. So you say there on page 8 of your letter to the commission that you have 1.5 lawyers, I understand from that, dedicated to child protection activity?---Yes.

Where are that one or one and a half, or two people, effectively, where are they located?---Cairns.

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Both in Cairns?---One in Cairns, and to be honest I can't recall where the other one is placed.

Okay?---You will have to forgive me for that.

Now, you have - over on the right-hand column you say there are 5.5 staff who practise in - legal practitioners who practise in family law?---Yes.

How many of the balance of those, that is, the other four people, 5.5 minus 1.5, practise in child protection?---They focus specifically on civil and family law.

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So that is where child protection matters come up in the course of representing clients in other family law aspects? ---Correct.

How often do ATSILS staff appear on behalf of clients in child protection applications?---It's really hard to extrapolate the data. The submission makes it clear, we don't actually capture that data within itself. Our data system and the way we played out our data has been determined to us by the federal government.

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We know that there are literally thousands of child protection applications going on around the state in any one year. We've had facts and figures presented to the commission at a much earlier stage. Would you say that your officers, your legal officers, are in court daily, weekly or monthly in respect of child protection matters? ---Look, I'd suspect that court is a regular part of their

day-to-day activity. I can't - originally when the
commission contacted me in relation to coming,
commissioner, I raised some challenges. If we were going
to talk - my role in the organisation is business and
administrative and the bigger picture. The finer detail, I
must say, I may not be too au fait on. That's why I
recommended to commissioner's staff that if there was to be
any cross-examination then the principal legal officer
and/or - I know William who has appeared before you before,
commissioner, would be the right person to go into that.

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Well, the questions you can't answer the commission might
be disposed to do a summons for information or have another
witness, so that's fine?---Thank you.

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Now, I just wanted to sort of go back a couple of steps.
You just said to the commission that your job is the
finance administration, in your words, the bigger picture
of where ATSILS is coming from and going to. Now, the
obvious administrative question that the commission has to
grapple with is in the proposal presented by ATSILS, or
indeed the proposal by QATSICPP, to effectively outsource a
number of child protection services from state government
agencies to a new entity, and that new entity is controlled
or administered by the indigenous community, a choice is
being made in that process. The choice is being made that
in some way the delivery of the services is better than the
services being delivered by the state. Either it's cost
effective, it's more culturally appropriate, it's more
accountable, or indeed all those things.

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Can you tell us why your model is better than DOCS continuing to provide those services or agencies that DOCS commissioned to provide those services?---I think the basis of that, to try to answer it in very few words, it's about community control. It's about Aboriginal and Torres Strait Islander people self-determining their own future, taking responsibility at the local level to be able to come up with solutions to the challenges that our communities are facing. And I suppose in this example it's around child protection.

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I mean, the question might answer itself but I have to ask you, nonetheless: why is that better?---Why is it better? Well, look, I believe that Aboriginal and Torres Strait Islander are best positioned - people are best positioned to deliver service to their own mob. It's those cultural nuances which are significant in trying to engage with Aboriginal and Torres Strait Islander people. I've sat in the commission last year, and I suppose to use an example that came up there, when we had - what's his name, one of the directors from the Department of Communities.

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COMMISSIONER: Mr Swan?---Mr Swan - where he made reference to mainstream child protection services meeting data requirements and Aboriginal and Torres Strait Islander child protection services really struggling. From my theoretical approach in my mind I couldn't help but disagree. Whitefellas - and I'll talk that way because that's my world - whitefellas might be getting the job done and meeting the data, but what is the quality from a cultural component and a culturally competent way of the services that are being delivered to our children and also to their family, extended family - kin, family, whatever it may be? What we do from an Aboriginal and Torres Strait Islander perspective is, yes, it does seem to be that we take longer, but what we're doing is working our way through a minefield of understanding Aboriginal protocol and Torres Strait Islander protocol, and I know Rose yesterday talked about protocol - is we're best positioned to understand the community dynamics.

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And you don't accept that DOCS is?---No.

Okay. What makes DOCS inherently unable to do that function?

---Well, they struggle around the cultural competency, and there are good examples around the cultural support plans.

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Explain that, please?---Well, there's no content within the cultural support plans. What we find is a tick and flick where any audit of the cultural support plans within the child protection files.

And how do you say organisation X would do that better than DOCS?---Well, purely because they're Aboriginal and Torres Strait Islander people. They understand the family

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background, not only to the child, but also to the family, the extended family, it understands their connection to culture and law and language and kinship and skin. And this is all something which is - - - 1

Sorry, what was the last one?

COMMISSIONER: Skin?---Skin. You're Yuri, you're Tota, what's your skin? So there are a whole range of things which for Aboriginal and Torres Strait Islander people, it's innate, it's in us. And when people try and ask blackfellas to explain that sort of stuff it's really hard because for us it just is. 10

MR HADDRICK: Okay. So in essence you think that organisation X - and obviously my name I'm using for it right now - is more able to do the function because it's more culturally competent?---Absolutely.

Okay. Now, do you accept that there is a tension or spectrum here? There is a desired objective to be culturally competent and to deliver the services in a culturally sensitive fashion?---Mm'hm. 20

But on the other hand, as no doubt the state would remind us, there's also a cost imperative here?---Mm'hm.

And you started off in your evidence talking about how you had improved the efficiencies and improved service delivery in ATSILS and was able to better spend ATSILS' money, and you identified a scenario where you effectively got rid of a regional manager and replaced that with a legal officer who could effectively do the two jobs in one?---Mm.

Do you accept that there comes a point in time when the unit cost of delivering the services outweighs the cultural value that you get from the services - from the deliverer of the services?---Can I change the question if I may and go back to the legislation - - - 30

We'll see. Okay?---We'll go back to the legislation, which doesn't meet the needs of the service providers in meeting the needs of the children.

Okay, why?---Why? Because the legislation is flawed and our submission covers off recommendations. The legislation - and our example is the statutory authority being put across to the recognised entities within our submissions. It allows Aboriginal and Torres Strait Islander people to be able to govern and make their own decisions without - from a legal perspective with a legislative base - without the department standing over the top and controlling and monitoring and manoeuvring against the work we're trying to achieve. 40

What is fundamentally wrong with the department of state

controlled by ministers of the crown who are accountable to an elected parliament - what is wrong with that being the body that can look at how your organisation - or more importantly, organisation X - spends taxpayers' money?---I fully agree that if taxpayers - of which we all are in this room - we're quite entitled to know how our dollars are being spent. What I'm about, I suppose, is looking at the governance across Australia - state and territory governments - moving away from being direct service deliverers because of the costs associated with delivering that service, to a purchase provider model which I know Premier Newman only highlighted yesterday in a release that they're going to be decreasing the number of small organisations and moving them into larger NGOs. 1 10

So am I to take it from your evidence that not only do you think organisation X would be more culturally competent at delivering the services, but - yes or no?---Yes.

But it would also deliver cost efficiencies for the state because it's consistent with the overall philosophy effectively outsourcing state functions?---Absolutely. The cost - and I think the child protection system in a state of disarray, because I know that governments have to balance budgets. There are a whole lot of competing priorities and needs; there's road and infrastructure and health system, et cetera. But if the investment was put into the child protection system right here, right now, because we are pretty much past the pinnacle, fall off the edge; using the American analogy, falling off the edge. Our children - Aboriginal and Torres Strait Islander children - I think we're moving towards 50, 60 per cent in the next few years on child protection orders. What we're really about is making sure that we run our business. There's a contract, so a purchase provider contract in place where we do our own self-audits and internal audits and audits are also done on a regular basis from the funding body. If I can use the Aboriginal and Torres Strait Islander Legal Service as an example, I'd hate to think how many audits we've been through, because just because you're a black organisation you must be doing the wrong thing. I've had audits from Deloittes, everything; you name it, I've had it through. We've had reports, we've had every Tom, Dick and Harry come in and look at us, and the office of evaluation audit through the Department of Finance and Treasury in Canberra. They've all been through us and (indistinct) they come back and say, "You're doing an amazing job with next to nothing." We shouldn't have to operate off the bare bones of our bottom to get outcomes. If there needs to be an investment to keep our kids out of the child-protection system, then so should the dollars that come forward, but with that must come responsibility. 20 30 40

Okay, sir. Now, earlier on you twice used the expression "black politics"?---Yes. 1

Your expression, not mine?---Yes, not a problem with that; yes.

Now, let's deal with the elephant in the room. How does your model deal with or avoid potential suggestion of being immersed into what you describe as "black politics"?---Yes.

You might like to define for us in that answer what you mean by black politics?---Okay. So there's two levels of black politics and I'm glad that I have an opportunity to talk about this. So within black politics - and the first one would be the organisation. The next one would be looking at community. So organisationally, as I said before, the Aboriginal and Torres Strait Islander Legal Service in Queensland has under 20 members. Prior to us going to tender we had 380 members. When we changed, we wrote to 380 members and said, "We're setting ourselves up as a company limited by guarantee. What we need you to do is apply for membership to the new entity." We had one application from 380 members. What I talk about black politics is black fellas want to be involved in a service - and this isn't a broad-sweep brush for everybody, but certain people want to become involved in organisations because of the sense or the perception of power and feeling good about oneself or feeling deadly, as we would put it. 10 20

You can accept how that can irritate the mainstream community?---Absolutely; absolutely, and there is no room within my organisation for politics. As I highlighted before, when you become a member, we give - what we do with the membership application is it has to be sighted by a justice of the peace. We want people to apply to be members that add value to the membership with a potential of becoming a director on a company limited by a guarantee. We want to make sure that our membership has a broad range of not only life experience but professional experience and qualifications with the potential to becoming a director. So we're looking at balancing the membership out and then obviously that would then balance the directorship out of the organisation. So the black politics and the example of people not wanting to become members - because, you know what, there's nothing to gain. You can't get in any more. I mean it's ORIC. If you're an Aboriginal or Torres Strait Islander person and you live within our service-delivery boundary, let's say Queensland, I could get two or three hundred applications for membership turn up a month before an AGM and they do a takeover of the organisation because it's about family politics. It's about black politics. It's not about the service delivery on the ground and that has been what has bugged black fellas up for a long time. It happens in white services as well. 30 40

Of course. How do stop that happening in organisation X or any other organisation that performs these functions? ---Well, one, you don't become incorporated under the Office of the Register of Indigenous Corporations. I suggest, even though it's more - - - 1

Cumbersome?--- - - - cumbersome, as long as you've got a structure within the organisation particularly around the executive management and those key people at a higher level. It's not so cumbersome once you get into a process of doing it after the first year. It's managing your calendar. It's making sure you meet your deadlines. Any change of directors' addresses, et cetera, or if someone stands down. It's just keeping up with the legislation. It's knowing the legislation under the Corporations Act. 10

If it was a company limited by guarantee, should the directors and the senior staff have to disclose how much they earn, for argument sake?---Well, it all depends how this - are you talking about the legal service or this proposed X?

Well, X?---Well, that would be up to the people that decide to come together, and I don't know what the commission's intent is, but if there was a tender that went out and called for tenders, it would be up to those key individuals to sit down and talk about the perimeters around their governance structure, their constitution. I know from my organisation it's in the constitution that governance training has to take place within the calendar year for new directors. 20

With respect, it's not just up to that organisation. It's perhaps up to the state that enters into a service agreement with an organisation?---Absolutely; absolutely. 30

In that service agreement, should the service agreement require disclosure of all those things like director remuneration and senior officer remuneration?---Well, we do that under contract with the Commonwealth so it's up to their - not the probity. It's up to, I suppose, whatever the boundaries of the - if there is a proposed tender that's going to be on the table at a later stage, it's up to the government to put in the boundaries they want. After all, if I'm spending millions and millions of dollars, I want to make sure that every brass razoo is spent on what it's intended for. 40

You've spoken about black politics in respect of the organisational machinery?---Mm'hm.

Let's talk about black politics in terms of on the ground in communities where decisions have to be take about what services and who should be listened to and all that sort of stuff?---Mm'hm.

Tell us how black politics manifests itself there?---Well, community isn't just people so there are structures within community. There's hierarchy and if we go through a cultural perspective, we have elders and/or respected people. I know in south-east Queensland they talk about being an elder when you're 50. Traditionally there's no age attached to being an elder but this is a contemporary - I suppose as culture it's moved along in time for people to say, "I'm 50 and I become an elder." We have our community justice groups that are established within community and they're legislated under the Penalties and Sentences Act, the Murray Courts, to be able to give advice, et cetera, even though the Murray Courts have been defunded. Well, they've had their resources taken away. We've also got the local shire councils. So the Queensland government under the former premier Anna Bligh moved all of the 16 discrete Aboriginal and Torres Strait Islander communities or Deeds of Grant in Trust communities away from government responsibility and then moved them in under local government authority so they're now local government authorities under the act. So you have your councils. You have your community justice groups. You have your key lawmen and lawwomen in remote and very remote communities. I'd suggest in Mount Isa where I come from there's still law people that traverse between regional community and remote and very remote communities and then you've got black fellas that live in a metropolitan environment who may still from time to time traverse.

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Let me paint a particular scenario. Say, for instance, the new entity X gets paid a certain amount of money to deliver services. One of the services it provides is to on the ground provide advice to DOCS about how to best place a child and who might be the appropriate parent?---Yes.

Who could be the parent who cares for that child if that child is subject to a protection order?---Mm.

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How do we stop black politics infusing itself into the process whereby one or two people are consulted with about where a child should live in an aboriginal community? ---Well, it comes back to having the right personnel working for the organisation that understand not only legal requirements, legal requirements to the legislation, particularly around confidentiality and what - we're talking about informed decision. What we find within the department is a decision is made but there's a lack of substance within the case plans. What we need to do as aboriginal people is still be able to make those decisions but document the reasons why those decisions were made relevant and ensuring that the child's welfare is paramount in all the decisions.

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COMMISSIONER: Sorry to interrupt. Mr Duffy, can you come back tomorrow?---Yes, I may.

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I propose to finish at 4.30 because if I don't, the system gets confused.

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MR HADDRICK: I anticipate I have a fair way to go.

COMMISSIONER: Okay.

MR HADDRICK: Might we just end today, early mark, Mr Commissioner?

COMMISSIONER: You want to finish now?

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MR HADDRICK: No; no; no, might we finish today now and for me to come back and continue tomorrow?

COMMISSIONER: Yes.

MR HADDRICK: Yes.

COMMISSIONER: I think I understand. You want me to adjourn right now?

MR HADDRICK: Basically that's my request.

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COMMISSIONER: All right. That's what I thought you said. That's what happens when you interrupt. All right. No-one is unhappy with that result, are they? It has been a long day certainly for the witnesses, I note.

MR HADDRICK: 10 o'clock tomorrow morning?

COMMISSIONER: Is 10 o'clock tomorrow morning suitable for everyone? Thanks very much.

WITNESS WITHDREW

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THE COMMISSION ADJOURNED AT 4.23 PM UNTIL THURSDAY, 17 JANUARY 2013

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16/1/13

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