



SPARK AND CANNON

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 7/09/2012

Continued from 6/09/2012

..DAY 16

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

THE COMMISSION COMMENCED AT 10.09 AM

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COMMISSIONER: Good morning.

MS McMILLAN: Yes, good morning, Mr Commissioner. I appear this morning and our witness is Mr Moriarty.

MS McMILLAN: Sean Peter Moriarty.

MORIARTY, SEAN PETER affirmed:

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ASSOCIATE: For recording purposes please state your full name, your occupation and your business address?
---Sean Peter Moriarty, consultant social worker,
155 Wickham Terrace, Spring Hill.

COMMISSIONER: Good morning, Mr Moriarty?---Good morning, commissioner.

Good to see you again. Ms McMillan?

MS McMILLAN: Mr Moriarty, you have prepared a statement in relation to the matters before the commission, have you not?---Yes, I have.

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It was affirmed on 24 August?---That's right.

Mr Moriarty, do you recognise that?---Yes.

Is that a copy of your statement?---Yes.

Is that true and correct?---Yes.

And is it correct that from page 6 there is a problem with the numbering and so after paragraph 19 the next paragraph appears as number 1 and then sequentially it should just read from 19 - the next one should be 20 and following, shouldn't it?---That's correct.

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Yes, I tender that statement, Mr Commissioner.

COMMISSIONER: Mr Moriarty's witness statement will be exhibit 56 and be published without amendment.

ADMITTED AND MARKED: "EXHIBIT 56"

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MS McMILLAN: Thank you.

Mr Moriarty, in your statement you indicate that you've been employed as a career social worker for the last 30 years?---Yes.

And that you hold qualifications for social work, University of Queensland, and also a diploma of law from

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the Legal Profession Admission Board of New South Wales. I understand the latter qualification is a recent one, is it?---Yes. 1

All right. You didn't know better, Mr Moriarty?---No.

Even after all your years as an expert witness. Mr Moriarty, can I ask you some questions? Now, you indicate in your statement at page 1 that you have prepared reports both in the child protection arena, if I can call at that, as well as reports for the Family Court. Correct?---That's correct. 10

All right. Now, can I ask you what percentage of your work is made up and has historically been made up of social assessment reports as opposed to family reports?---Roughly I think up until probably two years ago I would say 20 to 25 per cent was child protection reports. I've done less child protection reports over the last two years than previously, but I am still doing them.

Was there any reason for that decrease in the numbers? ---Compared to family reports child protection reports are far more difficult, requires a lot more time, far more stressful and underpaid. 20

Is that far more complex and those other matters that you've reiterated - is that because of the nature of the matters?---Yes, the nature of the matters.

That is, obviously I'm referring to, for instance, the social circumstances of the family. There are often drug and alcohol issues and mental health issues. Correct? ---That's correct.

As opposed to the Family Court, some of those may be present in a report that you do, but would it be the case that invariably in social association reports in the child protection area there are at least a number of those very significant factors present?---That's right, there are a number of issues and also the complexities of the case are usually far more significant and the number of variables to consider in relation to assisting about the question of the children's interests are greater as well. 30

COMMISSIONER: I suppose the other difference is that in the family law setting you generally speaking have at least one viable parent?---Yes, your Honour, usually that's the case in the family law setting. 40

Whereas in the child protection area you may not?---That's correct, commissioner.

MS McMILLAN: Mr Moriarty, would it also be the case too that in the Family Court you have a higher percentage of parents who are legally represented than you would in the

child protection area?---I couldn't say that categorically to be the case. I often don't pay much attention whether they're represented or not, but I think mostly clients in the child protection system do have some Legal Aid representation.

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All right. Now, in the percentage of referrals in the social assessment reports, what percentage of referrals would come from the department directly as opposed to the separate representative?---Almost all of my referrals are through the separate representative. I have done and do some social assessments, but I prefer not to personally.

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What is that?---I would rather work for a separate representative than for the department. I find it clearer and I find that my role is clearer and I think the information that I receive in doing it is usually more comprehensive.

So when you say your role is clearer when you are retained by the separate representative, can you just expand upon that?---A separate representative will give me clear instructions about what they want me to assess, outline what the relevant issues are that they might think I should cover, provide me with comprehensive material and subpoenaed material, whereas in social assessments there is often more than one person to liaise with in the department. There is often information difficult to obtain in the sense that they might be in different locations and I find it difficult dealing with the department in coordinating interviews.

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I see; all right. I'll just come back to a couple of those issues. In the Family Court, again what percentage of referrals from the independent children's lawyer as opposed to court ordered ones?---You mean just within the Family Court?

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Within the Family Court, yes?---I think over the last 12 years that's changed a lot. Probably for the first six to eight of those years 70 to 80 per cent of my work would've been independent children's lawyer's work or separate representatives. That's changed a bit and I think at the moment probably one third of my work is from separate representatives in the Family Court.

Do you understand why there's a differentiation?---I've been getting more private work.

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I see; all right; that is, commissioned by the parties directly?---Yes; yes.

All right, thank you. Now, you spoke about the instructions you receive from the separate representative in child protection matters. Do you find the sort of instructions you get from the independent children's

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lawyers in the Family Court and separate representatives in the Children's Court similar in the nature of your instructions and the quality of them?---Yes, and they're usually the same people. 1

So, in other words, not necessarily in the same dispute, if I can put it that way, the same litigation, but the same, if you like, panel of practitioners. Would that be correct?---No, sorry, what I mean is the separate representative and the children's lawyer - many lawyers do both roles, both the Family Court and the Children's Court. 10

So in concurrent proceedings?---No; no, for example, a children's lawyer who might commission me to do a report in the Family Court may be the same lawyer who might commission me in a different matter in the Children's Court.

Yes, I see, thank you.

COMMISSIONER: Are they in-house legal aid or private practitioners or both?---Mostly they're private practitioners, commissioner, but also in-house too but mostly private. 20

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And the degree of preparation and in fact, if you like, investigative work that a separate representative does say in the child protection arena, do you find that the in-house legal aid as opposed to private practitioners - there's any difference in the type and quality of work that's done?---Generally, yes. I think in-house legal aid practitioners spend a lot more time on matters. I'll give an example. A matter that I've been involved in for seven years in the Federal Magistrates Court, I think the in-house children's representative had an audit done as to how much time she'd spent on that matter and it was in the vicinity of two years of work on that one matter.

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Consistent work?---Well, they did an hourly rate that she - - -

What I mean is - - -?---Yes.

- - - if you did it in a block it would be two years of consistent work?---Yes. It was a seven-year running matter. You would never get that privately. But, I might add that there are many children's lawyers working privately who are extremely diligent and thorough in the way that they conduct their matters.

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COMMISSIONER: That's time well spent though?---Yes, time well spent, Commissioner.

Not being critical - - -?---No.

- - - that they spend too much time?---No, I wouldn't think so.

They're not over-investing their time there?---No, not in my view.

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Doing whatever needs to be done?---Yes.

MS McMILLAN: And you would understand that there are undoubtedly budgetary constraints in terms of - particularly for private practitioners in the amount of work that they can undertake?---Yes, I've heard that.

I'm sorry, Mr Commissioner, I should have indicated that Mr Allen appears for Legal Aid today. That's the only new face at the bar table.

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COMMISSIONER: Yes, I noticed that. Thank you.

MS McMILLAN: Mr Moriarty, you'd be familiar with section 67ZA which places obligations on family consultants and counsellors to report incidents of all reasonable grounds for suspecting that a child had been abused or at risk of being abused. Now, what has your experience been - both for yourself and anecdotally - of family report

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writers utilising that section?---I can't speak for other report writers on that issue. I've made notifications on a number of occasions over the years on extreme cases that are going through the Family or the Federal Magistrates Court. As to how they're dealt with afterwards, I can't recall, but it is utilised.

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COMMISSIONER: Did you get feedback about that? Even though you can't recall now, did the department keep you in the loop as to what had happened to your notification? ---No, I don't think so, Commissioner.

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Would you have liked to have known?---Yes, I would have liked to have known.

What do you report? The reasonable suspicion?---Yes.

Do you find that a useful condition for reporting? I'll tell you why I ask that question. It seems to me it's arguable that asking people from different disciplines and a whole range of areas to either mandatorily or discretionarily report their opinions or conclusions, might not be as helpful to the department in terms of triggering an investigation than if the requirement was to report the facts from which the department itself could make an evaluation as to whether or not there were reasonable grounds for suspecting?---I'd answer that in a number of ways, Commissioner. I think first of all from my point of view in terms of making such a notification, I first have to be satisfied in my mind that I have a clear grounds for doing so, because there's often, as you might appreciate, a wealth of different information contrasting each other and one doesn't want to - well, the weight put upon a family consultant's notification is far greater I think than just a general member of the public. The other thing in relation to reporting is I think that there may be a tendency to over-report things that meet a threshold that most people aren't clear about what that exactly is. For example, emotional abuse or emotional harm. What constitutes emotional harm is a definition that I think most people would find elusive and one which might apply in various ways to many families around us. The circumstances upon which you might report that can be difficult to delineate, save for a professional.

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And you might distinguish between what you expect of a professional - a social worker - compared to what you might expect from a clinical nurse. It might be more observational from her and it might be more opinion from you because you're used to expressing opinions?---Yes.

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And, as you say, it's an opinion based on a lot of experience and it balances competing versions?---Mm.

That's a fetter on over-reporting or premature reporting or needless reporting; but what should be reported? You see,

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at the moment - and I take your point about emotional abuse. Not even abuse is defined in the legislation and nor is neglect. Do you see some advantage for the sake of certainty, predictability and consistency in having a statutory definition even if it has an element of arbitrariness about it?---I think we require definitions at least or some guidelines as to what we're thinking about. I think some aspects of abuse are far more difficult to define than others, of course, and one merges into another in certain circumstances.

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Which leads me to this: if you have a guideline and allow other people to produce it, you lack uniformity, so at least in the statute you'd have a standard definition, wouldn't you?---Yes.

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Would that be helpful?---I think so.

And as to what's reporting, forgetting the facts versus opinion argument, what should be reported? Should it be the fact or opinion of abuse of one kind or another having occurred or likely to occur, or should it be that the resultant harm should be reported regardless of its source? ---I think there is a case for both to be reported, both in terms of the observation at least to the conclusion that what you've observed constitutes abuse; because in terms of departmental officers doing an investigation, I think they need to be aware of the chain of events of one leading to the other. For example, emotional abuse I think can really only be reported when it's placed in a context, so the context is usually not just one incident of, you know, a parent, for example, swearing at a child. It's a pattern of behaviour over time that can be identified that leads you to the conclusion that it probably will occur again rather than a one-off event.

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And we've crossed the threshold from - - -?---Crossed a threshold, yes.

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Okay. Now, your notifications, are they always written? ---No.

Would it be helpful to have a requirement that notifications, whether they're mandatory or discretionary - mandatory notifications be written?---I think it would probably carry more weight and be easier to trace within a system.

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Do you think there would be an advantage if requiring a written notification, that the department comes up with a form that is provided to mandatory reporters for the purposes of notifying, so that we gets things like - you know that you need a context and some others might, too, but others may not?---Yes.

Unless they're asked for it in a form?---I could see a lot

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of value in that sort of arrangement, yes.

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We've been told that the department is understandably concerned about having to spend a lot of time investigating reports or concerns that don't reach either their definition of a notification - that is, something that requires investigation and assessment - or even remotely gets anywhere near the statutory threshold of being in need of protection, largely because of the other agencies having policies that says, "Report all witnessed family violence," for example?

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That shifts the workload from one area to another area, and obviously when workload is shifted so is responsibility for outcome?---Yes. 1

And yet it's really not within the remit of the statutory department. It's useful information and it might be useful to the department in building up an intelligence database or something like that, but as for actually making a call as to whether or not a child is in need of protection or not, not very helpful but takes time and money to do. That's on the one hand, and that's not your mandatory reporting, but it's a mandatory requirement by another agency for reporting that's imposed on them on the one hand; and then other hand you have discretion reporters - public, usually, members of the public, concerned citizens - also over-reporting according to the department. So 60 per cent of their over-reporting source is mandatory reporting, either under the statute or under somebody else's policy, and the other 40 per cent comes from the private sphere?---Mm. 10

How would you suggest we could reduce the demand side of the department's workload equation by having the discretionary reports more focused on the statutory definitions of being in need of protection, not having a parent willing and able? I don't think many members of the public realise that the second limb of the requirement is to have a parent - at least not having one parent who's both willing and able. So there's a lot of reports and concerns expressed on the abuse, suspected abuse, or suspected harm, but very little attention given from the public arena to whether or not the parent is viable or not?---It's a difficult question to answer. 20

That's why it took me so long to ask it?---I think that the department already does a lot of screening of those calls. Sometimes I wonder whether the screening procedures that they use might - if changes were made to that - might be more helpful in terms of cutting down those sorts of demands on the system, because what they really want to be able to do is focus on where the need is. In my first job in child protection was 30 years ago, and it was the same problem then. People were ringing up with malicious complaints about people they didn't like or they were going through a Family Court battle about. My view is that a lot depends on the experience of the worker on the line taking the call. That's the best screening process to have separate to the requirement under the act for the parent willing and able to protect. I think the department really can only screen. I'm not sure that educating the public really is a terribly viable alternative to that. 30 40

Because as you point out, it's not necessarily because they don't know, it's because - - -?---Many of them know.

- - - their motives for reporting are not pure?---Yes, and

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Family Court matters, you know, are littered with notifications of one parent against the other and welfare checks to police, those sorts of things. I mean, in some cases I think perhaps there's a need for a more punitive reaction to inappropriate reporting where the purpose is to expose a child to such a great degree of interviewing that the child becomes saturated. If there was ever any abuse occurring in the past one's never to know: interviewed by the police, interviewed by the department, interviewed by doctors, anyone.

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So there'd be a good argument, would there be, for centralising the reports so that all reports from whatever source and regardless of the mode, comes to one area that's staffed by people with appropriate experience and professional background and judgment?---Yes. I mean, in the old days when Crisis Care was operating, those notifications in Queensland were taken by a central phone line and the assessments were done on the spot and the people taking the assessments or doing the assessments were usually workers with over 10 years' experience. That was central in after-hour terms, operating, I thought, quite well then because there were people working together, they mentor one another, they talk about how they handle some of these cases, and there's experiential learning going on all the time about how to screen things and what cases we should act on. The extreme cases that came in where children were at risk immediately, we would visit immediately, not matter what the time was.

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That, in fact - that's just been reintroduced in New South Wales, the central help line. So you think - that's what they call it down there - do you think that's the way to go?---I think it's a critical service to have.

That was my other question arising from that: for out-of-hours immediate risk, you haven't got a lot of time to assess; probably would be an unacceptable risk to expect anybody to make a call based on a phone call from somebody else saying, "This is happening right now." You've got to react to that and your response time has to be appropriate. I understand that situation. If we leave that one to the side for the moment, what do you say about having a requirement for non-urgent notifications from the public reporters - the non-mandatory and non-professional and non-government area reporters - to actually put it in writing as well and identify themselves for the purpose of, as you said before, if you make a malicious, false, vexatious or frivolous notification, you - and not the rest of the public - will pay the price for that? ---I think in those cases there's a case for that sort of practice yes.

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Because as you say - and I'm not talking about the situation where time is of the essence?---I understand.

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Because we're dealing with a situation where if abuse has already occurred, you can't prevent it?---Yes.

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And what's being reported is future risk or future harm and past damage often. Most of the reports, as I understand it, are based on neglect rather than immediate risk of physical abuse?---Yes.

That would be the - it would be the physical abuse as opposed to, say, a cumulatively acquired emotional abuse response, that would be the one that you'd have to react to immediately on a phone call out of hours, wouldn't it? ---Yes, primarily, I think. Going back to my experience there, it was usually domestic violence that was occurring at night through alcohol and/or drugs and children there. Police get a call or we get a call, we pass it on to police, and if there were children there we would jointly visit with the police, either through the JAB child protection unit or with the normal police service, depending on who was available. But it wasn't just physical abuse, it was things like even allegations of sexual abuse that had just arisen right at the point in time and led to some type of chaos and family breakdown right at that point in time; severe neglect of very young children - babies even - that had just been born; malnutrition. Some of the cases that we would respond to at times would be cases that the regional department had received close to 5 o'clock and they couldn't respond themselves so they'd pass it on to us and we'd respond, and it wouldn't necessarily be physical abuse, it could be a suspected neglect.

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Yes, I mean, I take your point there which is the definitional debate, I guess, but I call most of those examples physical abuse anyway?---Okay, yes. 1

Again, if we look at it from the harm point of view, maybe instead of defining the cause we should say you have to respond to any urgent or emergent harm?---Yes.

As opposed to what's causing it?---That's right.

Yes, okay, that's very helpful, thank you.

MS McMILLAN: I will just then round out that issue about the Crisis Care. When did you work in Crisis Care approximately? 10

COMMISSIONER: The decade will do, Mr Moriarty?---85 until about 88, I think.

MS McMILLAN: As you say, the call would come in to Crisis Care if it was a matter that necessitated the police as well. You would pass it on to the police, would you? ---Crisis Care at that time had two different services operating at the same time. One was that it was the after-hours departmental service. The other was that it was a - it acted like a crisis telephone line as well and sometimes the two would intertwine so taking crisis calls of people in distress, suicidal, and we trained volunteers to take many of those calls, to react to those calls and try to get those people help whilst we focus on the child protection side of things and those - - - 20

Was that successful, in your view, training volunteers?---I thought it was very successful.

And in terms then - this might seem an obvious question, but do issues of child harm, if you like, emergent harm, generally occur within working hours?---No. 30

Why is that? I mean, it's probably an obvious question to ask you?---Yes.

COMMISSIONER: Mum and dad are probably at work?---Mum and dad are at work. They get home, but usually a lot of drinking occurs at night.

MS McMILLAN: And I suppose children are home from school? ---Children are home from school. 40

If they're attending school - - -?---Yes, arguments often start at night. I mean, the police service themselves I think would do most of the domestic calls at night or in the evening.

In your view, was there particular benefit for a member such as yourself attending with a police officer?---Yes, I

thought the way that the police and we worked together was good for both sides. First of all, the Crisis Care section had experienced workers. The child protection unit too had more experienced police officers but they also - they tended to rotate more than we did so they probably stay there for two years, but there were a couple that stayed there longer and their approach obviously to a domestic situation was different than ours, but I think that both sides learnt a lot in that process, particularly where relationships were built up between the police service and the department and there was a lot of mentoring occurring experientially with those visits and also with the Crisis Care section too. So when I started there, I think I was lucky enough - I'd only been working for three years as a social worker or so, but I was lucky enough to be teamed with people who had been working for 10 years and so we were going out at night sometimes just the two of us doing visits to homes, volatile situations, and you learnt how to defuse things and I think that experience was more or less a mentoring program that built up naturally within the service that wasn't available in other departmental areas.

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Did you think it was a fairly cohesive unit?---Fairly?

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Cohesive unit?---Well, we had our arguments - - -

Surely no, Mr Moriarty?--- - - - like any service, you know, about procedures and policies and those sorts of things, but I think in terms of the service that was provided to the public it was very good and I think in terms of building up the experience of the social workers and also the police in those child protection areas, interviewing techniques, for example, speaking to family members, how to defuse conflict, it was very good.

COMMISSIONER: They call that a multidisciplinary team these days?---Yes, I've heard that word; yes.

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Now, that leads me to this question: did you find that you were going to the same families in the family violence context?---On some occasions we would follow through a family after we'd made first contact. The Crisis Care section also operated during the day too. It was a 24-hour section so we would follow through where we made a decision that it was better for the family that once we'd made first contact that we continued that contact.

Would you pass it on to the non-crisis child safety officers' area for follow up, background information, family support?---Yes. Most of the cases we would pass on were cases that they had already been dealing with so we would pass it back to them and we - - -

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Because you were crisis care?---Yes, we were cleaning up their cases at night and passing it back to them, but the new cases that would come up and/or very dire situations we

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would deal with and follow through until we could pass it through safely to another office.

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If I'm on the Crisis Care phone line, do I need to be a social worker to do the filtering adequately from a volunteer?---I actually trained the volunteer program. I was involved in doing that and I think it's difficult to train people easily to filter child protection calls because there's a different set of skills required to the general counselling skills that you're trying to teach people in terms of crisis phone calls, you know, people who are ringing up suicidal and those sorts of things. I think that filtering child protection matters requires a lot of expertise.

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Would the expertise be possessed by current or former child safety support officers who didn't have any tertiary qualification and had no career path as a result but had had a lot of experience as a support officer?---It's hard to say yes or no to that, commissioner. I think a lot depends on the actual person and a case-by-case approach, I suppose. Probably if you were moving in that direction, you would have some program to assess and to train people, of course.

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Sure, but you wouldn't say that, like the child-safety-officer position, not having a tertiary qualification in a relevant discipline would exclude you for that in the sense that you could include yourself if you could show that you are capable of doing it even without a degree?---I probably would err towards more than having the qualification than not really and the experience. I think filtering - whilst it might sound straightforward, it's not, I don't think. I think it requires quite a lot of skill. As we were speaking about before, at times it's the filtering process that can affect the workload of the department dramatically.

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Yes, it could be very cost efficient?---Mm.

And I'm not trying to understate it at all?---Mm.

Would you see then that they would be almost peers; that sometimes the person who went out with the police to deal with the crisis would be rotated as one week on the phones?---Yes, I could see that working. I mean, I think that mentoring within the profession is a very thorough and effective way of learning and keeping people in the profession too. Part of the problem - my view I think I've said in the statement is that the rotation of staff - I mean, I don't know if people are leaving or what the retention rates are. I just know that they're always changing what they're doing.

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So you would see sitting on the phones as - as important as it was, it might be a bit of respite for you than, say,

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going out doing the field work all the time?---Yes. I mean, field work is stressful. 1

Yes?---Extremely stressful.

Okay, thanks.

MS McMILLAN: Perhaps not a respite; it might be just augmenting your experience, mightn't it, because understanding how "concern reports", I think, as they're termed, reach the department and how they're filtered from there out?---Yes, I think passing on the experience is important. I mean, when we were taking notifications at Crisis Care, we would speak to each other about it. You'd go away and you'd talk to whoever was next to you or available and you talk it through and then there was a supervisor you had you could take it too as well, "What do you think about this? Does this mean - should we visit now? Should we leave till tomorrow?" Those sorts of decisions have to be made. 10

Given your evidence, as I understand it, what you would do is, if you like, operate a bit like an accident and emergency centre. You would look after the case, if you like, till it was stabilised, is that right, do what needed to be done before you'd hand it on to another area office or some other part of the department?---In some cases. What I think is important there is that with families who haven't had contact or much contact with the department before the first point of contact is important. So if you're able to establish a rapport with them, you might think that it's better to continue seeing that family if you think that the issue that you're dealing with can be dealt with within a relatively short time frame because it would make no sense to pass it on to a regional office if it could be dealt with within, say, a week or two within your own service. 20 30

I see; all right. If it was incredibly urgent and there was a very high index of risk to the child, then I imagine you would want to stabilise that situation before perhaps it was referred out to a regional area?---Yes.

Now, given you've described it then as a specialist unit and it had specialised hours' staff and they were awarded penalty rates and they had no case management as such, files, do you think they were reasons for that higher staff retention?---Yes. 40

And I take it therefore that is - in your view, one of the issues for child safety officers generally is what's needed to attract them to remain within the department, one of them being financial incentives, one would imagine?---Yes. I mean, I don't know exactly what the financial incentive is personally at the moment, but I think that, separate to finances which is one thing, the issue is what they're

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being paid to do is comparable with the money that they're getting. Departmental work is extremely stressful. You're dealing with people who threaten you and you often feel that your safety is at risk and yet you have to make decisions about children's welfare very quickly. It's certainly no easy work, but the thing is that many new workers coming into the department do so to get the experience and once they get that experience, they probably would be inclined, in my view, to move on to something else less stressful, unless they're receiving training and thinking that they're developing in their profession. Whether that's occurring or not is difficult for me to say, but I do know that the cases that I deal with - one of the frustrations for me is the changing case workers.

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COMMISSIONER: That's a phenomena across the economy though, isn't it, staff retention? It's always been a problem where you have been seen as having a training element to your profession, that is, it's not surprising that people would come and use you, if you like, just to get good quality training. Lawyers, for example, have been doing it for a long time. The government is the one where you have got the good quality work. You don't get paid much, but you quickly acquire experience and then you go out into private practice?---Yes, I understand that, commissioner. I think the point I'm trying to make is that the department has a unique responsibility. Many of the families that they deal with are families that distrust authority. They've had chaotic backgrounds themselves through the department and in their own relationships. What a change in case worker does for them is add further instability to the situation and therefore the capacity for the children to be reunited with them, in my view. How closely that's associated with retention rates is difficult for me to say, but I do know that when I'm doing interviews for a report and I see the case worker, a major frustration is if there's been two or three case workers since the child's been in care and they don't know the history.

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I have got a couple of follow-up questions, sorry. The first one is, given that, how do you retain, say, up to - indenturing - would that be a help? It sounds a little coercive?---I can only speak, commissioner, about what was helpful for me when I was there. What was helpful for me was that having - working with people who were proficient and feeling supported, but also what wasn't helpful is feeling that if you made a mistake, someone was going to come looking for you. I mean, that you're going to be blamed for it and it's very easy to make a mistake in the department because the caseloads are large. The workers lack experience; not all workers lack experience but some workers do and you have to make very important decisions.

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What you're saying is you have got to want to go to work in the morning?---Yes.

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And you won't want to go to work in the morning if your employer is not going to support you when you need it even if you have made a mistake as long as it wasn't negligent? ---Mm.

And in no other sphere do we expect people to do anything other than act reasonably and in good faith and without negligence?---Yes.

All right; and you don't want to overcompensate for the fear of unfair, uninformed criticism or being left hanging out to dry when the media comes looking by being risk averse?---That's correct. The nature of the work requires risks be taken because you can never actually know for certain all the time you're making the right decision.

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And the only risk you shouldn't take is the unacceptable one if you know what that looks like?---Yes.

Which leads me to this question: in some western countries and historically even in common-law based jurisdictions the work that you did in the crisis centre and in the child protection is done by private, non-government agencies funded by government so that - whereas here the non-government do the caring aspect of protection. The government does the intervention aspect. In Canada, for example, you have societies that do the intervention and investigation as well. Bearing in mind what you have said about the important nature of the work and the complex dimensions to it, what do you say about the role for NGOs going out with police? I'm asking this from the point of view of the families feeling a non-threatened, non-stigmatised relationship with the non-welfare employee. Does a departmental employee represent a sort of level of threat to those it's trying to help that would be alleviated without creating needless risk by privatising? ---I would think, commissioner, that it would just be transferred to whatever the new agency was called, whether it was government or not. If it was non-government, the stigma would be transferred across. In relation to the question about whether that should occur, I don't know. I don't know how that operates in other countries or how successful it might be. I mean, I think the question would be one of uniformity across the board and the level of service that could be provided.

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And your quality assurance means you're going to have to keep them accountable which means you're going to have to monitor and supervise?---Yes, and that adds a different dimension to the whole process.

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Yes, okay.

MS McMILLAN: Mr Moriarty, when you were working within the department at both Crisis Care and otherwise, did you

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feel adequately supported within the framework?---Yes, I think I did. 1

What was important to you to give you that feeling you were supported?

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---Colleagues who cared about me. A supervisor who tried to help you with decisions that you had to make, a sense of humour within the work team and some education that was going on, as well. Also overriding that is the sense that you're doing something worthwhile. I think what we were doing there was worthwhile.

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Now, just in terms of page 4 of your statement talking about some issues you've encountered with preparing reports in the child protection area, you say it's often difficult to get departmental workers to attend interviews. Have you noticed any pattern? Are they the less experienced ones or the more experienced ones that you find perhaps are difficult to get to attend appointments for reports?---I probably assume less experienced - part of the problem is that many of them haven't been through the report process before themselves, so perhaps don't understand that I need to interview them as a party to the proceedings, just like the parents. There's also the issue of being seen to be fair. I mean, if I'm expecting the parents to come to the assessment, I place the same expectation on the department. If they don't turn up, the parents are saying, "See, I told you so," and it adds further tension to the whole thing. You know, often the complaint from parents is that the department's decisions are changing. They can't contact their case worker. If a case worker doesn't turn up, then it just adds fuel to the fire. So the problem for me - well, I get the children's lawyer to contact the department to get confirmation that they're attending. They're very busy or they say they'll try to put the time aside, but then often the problem might be that something else comes up and then the amount of time that they're available often can be quite limited when they do attend.

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Is it your experience that in preparing reports, there are numerous applicants involved? That is that the applicant who might have originally started off the proceedings by instituting a temporary assessment order or an assessment order or need from custody - changes over the period of the carriage of the matter, so you've got multiple applicants. Is that your experience?---Well, for an order the department is always the applicant. Is that what you - - -

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Yes, but there are different people who actually fulfil the role of the applicant in that application?---Yes. That often changes, yes.

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And do you think there's some merit in, say, having the applicant being at a team leader level, because is it your experience that if it's a new case worker - I think you mention in your statement that they don't necessarily even read the file or are familiar with it and also aren't the decision-maker - that there would be more advantage of having the team leader occupy that role? You don't change, therefore, the applicant and they are at a decision-making

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level and presumably can articulate the decisions of the department and the rationale behind them?---Well, that would be fantastic.

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The "best of"?---Yes.

And undoubtedly that would improve, would it not, for the parents to have someone there who could explain why the department were taking the action that they were?---Yes.

And was accountable for the decision being made?---Yes.

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Would it, therefore, also lessen the stress on individual perhaps inexperienced child safety officers having to perhaps justify decisions that they don't necessarily understand or are a part of?---Yes. I mean, I think it often puts case workers in a very awkward position when they actually don't understand all the issues behind the application.

I'm not referring, as you can imagine, that they can't cognitively understand?---No, I know what you're saying.

It's just that they haven't had a role in the decision-making process?---They haven't had carriage of the case - - -

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Exactly?--- - - - for long enough to understand the intricacies of the matter and the history. I mean, I have the benefit before I see the department of seeing all the material, but also interviewing the parents extensively, so I would usually know by the time I speak to the worker what I want to ask them what their understanding of the children's development is, the issues, and sometimes there's information - and it's often the case that information comes out through the interviews with the parents. That's relevant to the welfare of the children or the parents' capacity to care in the future, such as drug and alcohol relapses that the department don't know about.

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And therefore I imagine if you're then interviewing the child safety officer or whomever attends from the department, you'd also - I imagine it would be really desirable to have someone who would understand perhaps the importance of that information and be able to factor that into perhaps whether the case plan should be altered, for instance?---Yes.

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Or their instructions change. Could I ask you also in terms of paragraph 15 - and you say that the case worker doesn't know the children very well often. Sometimes they haven't even met the children. Even if they do know the children, they have a limited understanding of the developmental issues of the particular child. Now, a social assessment report is prepared well down the track of, if I can put it, the litigation, isn't it? It's

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prepared coming up before a final hearing, and I mean by that either a two-year order or perhaps a long-term order, correct, most of the time?--Yes. Usually a fair way down the track, yes.

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Is the importance also of a child safety officer understanding, for instance, developmental stages of children, particularly important because they're making decisions about case plans well before you become involved?---Yes. I think there's a tendency for the worker to rely on the foster carers to tell them about how the children are going rather than spending enough time with the children themselves. Although we can talk about developmental levels of children, it's quite clear that all children are different developmentally and have their own peculiarities and needs which are quite different across the board. Sometimes that's important in terms of future decisions about them - - -

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And particularly, I would suggest to you, the developmental stages would also alter because you've got children who presumably have suffered trauma of some sort, if not multiple forms?---That's right. To varying degrees.

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Now, can I just ask you in terms then of the interface, we know that in the Family Law Act the definition in section 4 - and although you recently graduated in law, I won't ask you to recite from memory that section, Mr Moriarty, but abuse we know includes -

an assault, including a sexual assault, of the child and a person involving the child in a sexual activity with the first person in which the child is used, directly or indirectly, as a sexual object by the first person and where there is unequal power in the relationship between the child and the first person.

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It's a wordy definition - or -

causing the child to suffer serious psychological harm, including when that harm is caused by the child being subjected to, or exposed to, family violence.

Then the next one, (d), is "serious neglect of the child." Now, under the Child Protection Act, section 9, harm - and there's obviously a difference, one would think, between abuse and harm.

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Harm to a child is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. It is immaterial how the harm is caused.

Then there are subsets of harm being caused by physical, psychological or emotional abuse or neglect, and

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on it continues. I would imagine you would see that there is a significant difference in the definition between relevantly what the Family Law Act provides and the Child Protection Act, wouldn't you?---Yes. 1

Do you think that's well understood, from your anecdotal experience, by other report writers who are doing social assessments on one hand and family reports on the other? ---Well, like myself, I don't think they'd be able to quote those sections you've just read out.

No?---But I think most report writers like myself adopt a similar approach in terms of determining abuse or harm and that is by taking the history extensively of the family, taking the history of each of the parents respectively and speaking to the children or observing the children depending on their age and development, and allowing some context for everything that comes out of that. 10

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And then one is in a better position to ascertain what the risk factors for a child might be, what harm may have been caused at particular points in time, and whether allegations that have been made - and because usually there are allegations of harm or abuse - whether allegations that have been made are things that a report-writer should place any weight upon in the assessment or not. I hope that answers your question. I'm not sure that it does.

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Yes. In terms then also we understand that there's a difference - one of the differences obviously with the child protection arena is that there's that threshold of a parent not being willing and able?---Yes.

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Whereas the Family Court, the litigants are generally the parents. Perhaps there might be a third party such as a grandparent. But does that in any way alter that there are different end points, if you like, in the way in which you approach your task?---The nature of the different assessments - by that I mean either the Family Court and/or the Childrens Court - allows one to look at a family slightly differently anyway. For example, in the Childrens Court one has subpoenaed information, usually extensive information in relation to past history of abuse, there is quite a number of different people to speak to including the department, the allegations that have been made are usually quite specific, the report-writer has a larger number of variables to consider; within the Family Court arena often my experience is that allegations are more subtle and requires more finesse to attempt to ascertain whether the issues that have been alleged are things that are going to actually affect the welfare or development of the child.

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I take it one of the important differentiations is the referrer, if you like, of the harm in Family Court matters is usually the other parent, so I imagine that's an important context to place matters of allegations of harm into?---It's a point of reference, yes.

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You observe that, "The department does not intervene in the vast majority of cases in the Family Court." I take it you're referring to where there's been a request issued pursuant to section 91B(a) of the Family Law Act, that is where a Family Court has issued an order requested the department intervene?---My knowledge of that is probably more limited than the lawyers acting in those cases, whether that actual section has been utilised. I can only speak of cases that I've been involved in for particularly long periods of time, one currently for seven years, some for five years, some cases where I've had parents in for interviews where they were the children in previous reports. So in quite chronic cases what I'm saying is that there has been a lot of frustration expressed to me by children's lawyers about the departmental involvement because I think what happens is that the department may

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assess one parent as being capable of caring, whereas my assessment might be that they're not. 1

Do you understand or have any feedback as to why it is that you understand the department don't seem to intervene in these vast majority of cases?---I think that it depends on what the abuse is that is being alleged. For example, if you have, for example, a parent who is suffering from a type of psychiatric condition that makes them take the child to a whole range of extensive medical appointments over various types of illnesses and where you might have a Doctor who is to an extent complying with that and child who hardly ever goes to school and has intrusive procedures, it's difficult for the department to assess whether the illnesses are real or not; whereas going through the Family Court or the Federal Magistrates Court where you've got a children's lawyer who has the time - and in-house children's lawyers do have the time - to investigate extensively the nature of these issues, they tend to come up with a different view about those things. 10

So that's obviously a fair degree of - one might think - sophistication, but also an understanding historically how those events have unfolded?---Yes. 20

All right. So are those the ones that typically in your view they're not intervening where they should be?---Yes. In the Family Court in the worst cases often it comes to finding the least worst parent in those cases. In some cases in my view the least worst parent isn't nearly good enough. In my view the department should intervene, but they haven't; whereas the reason that they haven't is not entirely clear to me, nor is it made known to me why they haven't. It may be that their assessment is different. It might be that the section that you're talking about hasn't been utilised by the court. I'm not entirely sure. 30

COMMISSIONER: Is the department liable for costs, theoretically? Yes?

MS McMILLAN: Yes.

COMMISSIONER: Okay. We'll come to that later. Mr Allen will help me on that one, no doubt, or Mr Hanger.

What about - you know how they say bad surgeons bury their patients; what does the department do?---I've never heard that saying, Commissioner. 40

Is there a risk in the department opening up itself in family Law litigation? It might be criticised by one side or another or the court. Is there - - -?---I don't know.

- - - disincentive? All right.

MS McMILLAN: Have you seen on files, Mr Moriarty, where

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there's been a departmental entry to the effect that they don't need to take action because the family Court is involved, effectively - - - ?---Yes. 1

- - - obviating the need to be involved?---Yes.

COMMISSIONER: But really that's a non sequitur, isn't it, because they've got different functions?---Yes.

MS McMILLAN: Yes, but have you seen that entry on a number of occasions?---Yes. 10

That is seen, if you like, as a safety net issue so far as may be the department is concerned because the Family Court is now involved?---I interpret it that they're waiting a Family Court outcome to determine whether they might be involved or not. I might say that there are cases - and I've had cases in the recent past - where they're awaiting the outcome of a matter to determine whether they will be involved or not. So I'm not saying in every case this isn't occurring, I'm just saying that the interplay between the two systems to me seems fairly disjointed. Whether that's because of a legal framework issue or not is not up to me to say. 20

Do you discern any difference in terms of their intervention as between the Federal Magistrates Court and the Family Court?---I don't know.

Okay.

COMMISSIONER: Wasn't there a case in Tasmania recently where the Family Court judge didn't think that either of the least worst parents were any good enough; the department wouldn't intervene; and he made an order that virtually forced the parental responsibility onto the department?---It was overturned by the full court, your Honour. 30

It was overturned by the full court. Which was the more desirable best-interest-based position to take, the one of the trial judge or that one of the full court? All right, I'll rephrase.

MS McMILLAN: Mr Moriarty is now progressing he studied law, I can tell.

COMMISSIONER: What do you do if you're a Family Court judge and your position is that neither of the warring parents are suitable, able or willing to look after a child, and if I make a parenting order in favour of one of them, this child is at an unacceptable risk of harm?---I think, Commissioner, it's clear that having to make such an 40

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order is not in the interest of the child, therefore the system is failing.

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Okay. Do you see the intersection of the Family Court and the department at the stage of family break-up as an important junction, say, for early intervention?---Could you rephrase that? 1

I will ask you this way first: do you know what the figures are of the number of children in long-term protection who come from families that have been through the Family Court?---No, I don't those figures.

Would that be a worthwhile investigation to undertake to see whether or not intervention by the department at family break-up point is a good point of entry, an early intervention point of entry?---I think that early intervention is - and early intervention I think fits with prevention in a sense. I think that's a reasonable proposition in terms of child protection. The question is: how early do you do that, you know, without being overly intrusive? Making those decisions I think are difficult in any arena and in the Family Court particularly because when parties go to the Family Court, one of the problems from a report writer's point of view is trying to place their dysfunction in a context; for example, is the way that their dysfunctioning now likely to continue and has it been that way in the past? So the question about whether you should - how you should intervene is really, I think, reliant upon those points and that's why, in my view, family report writers need to provide the court with a comprehensive history of the family that allows identification of patterns of function or dysfunction so that we can see the whole picture. 10 20

I suppose that's right. Family protection isn't reliant on whether a family is intact or not. Its role is to go in whenever there's a child in need of protection?---Yes. 30

Often it is in what might be termed an intact family, that is, the parents haven't separated, but I wonder if you can help me with this which I'm finding difficulty with: everyone seems to accept as a theoretical proposition that the earlier you intervene, the better because time spent now will save time and money later. The problem that seems to be around that is giving that practical expression. In real life, how do you early intervene in a society that values family privacy, on the one hand, and is intervention resistant without a very good reason?---I think it depends on how you define "early intervention". 40

How do you define it?---I think early intervention - and I'm just thinking on my feet here so I hope I get it right, but I think it is really when we start to think that there is a pattern of events in relation to a child that's out of control and likely to continue to be out of control unless there is some intervention. By that I mean what I was talking about before, that the understanding of the context of the family is critical because it may be - and

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particularly around separation - that people need some time to adjust and certainly children do too. Children are just better when they're parents are coping better and it is also the case around separation that some abuse occurs even in the best families. Some emotional harm occurs to children because emotions run high. So I think in those situations one wouldn't intervene. In my view, one would wait till the dust settles and to see whether some of the concerns that one identified are likely to stay in place, and it's often demonstrated when we do updated reports for the court where you see a family, you know, six months after separation and then see them 18 months after separation and there can be a world of difference between the two without intervention.

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They become a functioning separated family or not?---They can or not, yes.

So in some families parental separation may be an appropriate entry point for early intervention?---Mm.

In others it may be an end point and that intervention much earlier when they were intact might have been called for? ---Yes.

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So what you look for in working out when to intervene, when it's appropriate to intervene, at the earliest useful point is whether there's a chaotic family dynamic that's not going to self-correct before it does harm?---Yes, if there's a pre-existing chaotic family dynamic, you could probably predict it's going to continue irrespective of separation and that separation of itself is just one other point within that continuum.

And if you're going to make a mistake on that call, is it better to make a mistake to intervene on the side of intervening or on the side not intervening?---Well, in hindsight it's easier to answer, I think.

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Which does the least - I suppose you can't - - -?---Both does damage, I think.

You can't predict which will do the most harm?---No, and these are decisions that departmental workers face all the time and this is part of the reason it's so stressful.

All right. You said before that if you have got a healthy workplace culture that's mutually supportive, that will improve retention rates. It makes sense. That would be necessary, but it wouldn't be a sufficient condition for keeping people up to five or 10 years, would it, because you have got ambitions, career paths, expectations, development sort of considerations coming in over the top? ---Mm.

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So what would you say is a reasonable expectation for

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retention? Is it two years, five - in this setting
two years, five years, six years, 10 years?---Well, I know
at Crisis Care some of the workers there stayed for 10 or
15 years and I know workers who have stayed for that length
of time. I would think five years is a good period of time
to be able to - where people start to contribute back to
the workplace. I think that retention though is just one
part of it. I think if we talk about frontline child
protection workers - and by that I mean those people who
are doing the casework and dealing with clients face to
face. If we talk about those people, after a period of
time as they become more experienced I think there's a
tendency for them to be moved away to other areas.
However, if there is a means by which they can stay, not
necessarily all the time but they can stay connected to
other workers who are working in the mores stressful areas,
that would help on both sides of the fence, in my view.

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Can I just dart back while I think of it to the early
intervention? We agreed, I think, before that the earlier
you intervene, the better. The tricky bit is working out
what's the earliest appropriate point of intervention. We
mean intervention in a coercive sense, don't we?---Yes.

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We don't mean it as other people might mean it, as in
family support. That's all done and failed?---Mm.

We're at the point where the state has to intervene at the
earliest possible point to minimise damage to the child or
prevent damage to the child?---Yes.

Is that right?---Yes.

That's what we both mean?---Yes.

Again I accept that in theory, but the question I have for
you is: how do you know? I mean, how do you know when is
the earliest appropriate time? What informs you? What's
your evidence base? If you're a really good caseworker,
child protection officer, what's your evidence base to say,
"Now it's time to intervene"?---It has to be, I think,
based on the facts that are available at that point in
time.

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How do you get them though?---They can come in various
ways, either through the police, a phone call, your visit
to the family, you're observation of the children and the
family and your observation of the parents.

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For example, if there is a pattern of violence and abuse in a family with young children and you become alert to the fact that the children are being left alone, I would think you'd intervene immediately in those sorts of cases. Bruises on child that indicate that they're being physically abused and there's a history of that occurring and your assessment of the parents is that they're covering that abuse up, I would think that you would intervene immediately in that. There is no clear delineation point, though, between exactly when you would intervene and when you wouldn't because some of those boundaries are very blurred and some things you might think intuitively, "There's a problem here but I can't put my finger on it."

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Right. That model is a reactive model in the sense it is based on observation and it's based on identified families?
---Mm.

Other people would argue that what the system needs to be able to do is act pre-emptively; that is instead of it being left to you to identify the family based on observation and information that might trickle in to you, that the system - that is, the department - should be scanning the population somehow, being proactive in its collection of data that might identify a family even well before they would come to your notice in the ordinary course of events. What you say about that as a theoretical proposition and that as a practical reality?---It's hard to imagine exactly how that would work. I mean, I understand the theory you're speaking about but in a way it sounds intrusive.

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A bit like big brother, doesn't it?---If you're intervening before a problem occurs I would think there are difficulties there about rights and the rights of the parents and the child and the propensity to make a mistake before the incident has occurred might be greater than if there is something occurring.

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I suppose they would argue that you've got a trigger in the unacceptable risk aspect, and that is if there's an unacceptable risk of harm. If you could identify the families where there was a risk that was about to become unacceptable and act at that point then you would be acting at the earliest possible time for the benefit of that child; that is, before actual likely future harm?---I think if you were certain - not certain, but if you were relatively sure that an event was going to occur that posed an unacceptable risk to a child then you would intervene.

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Yes. So the question is given that that would be the ideal - the aspirational - is there a way of informing ourselves better than we do now to become aware of such a situation? For example, the police would say their policy of reporting all witnessed family violence to the department would help the department to identify earlier families and risk,

children at risk of harm, and act earlier; but not intrusively, not too prematurely in intruding. But what that would require would be the department being able to interrogate, collate, analyse that information; their risk assessment models being very sensitive; and then having identified the family, keep an eye on them non-obtrusively or coercively and then somehow act?---Commissioner, I just don't see how the department could do that. It's really - I mean, do that plus everything else that has to be done, which would have to be done still anyway.

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So assuming you're right about that, what do people mean when they tell me that you really need to act preventively and intervene and use early intervention policies? What does that mean in this context, apart from what we've already agreed is how you - - -?---If we define intervention, as we already have, in terms of intrusive decisions that maybe perhaps place children elsewhere apart from their parents, then things that occur before that would relate to trying to support the family functioning in various ways. Those resources are available in the community already. The issue of a question, I think, is whether that falls within the department's responsibilities to actively provide that themselves. I would think not, myself. I would think that the department has a sufficient job to acquire the expertise in the areas that they're working in and that support is available for families and the department can use that support that is available pre-emptively for families without the stigma that might be attached to them being involved themselves, because there is stigma.

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So is the best of our current system can do in your view, refer families on that it identifies through is reporting or child concern who don't meet the threshold for intervention by the department - refer them on to an appropriate other area of the Communities down the hallway and leave it to that to make contact with the family, that's one way; the other way is for the family to self-refer to the existing community-based family support programs and policies. Is there any other way?---I think that the actual resources that are available at times struggle to provide adequate resources for people, either because of lack of funding or whatever, and that although it can sound good to refer people on, sometimes what I hear is that the degree of service that they receive is not perhaps what they needed. And sometimes for families going through court where the department has made an application for an order, they've put in place things that the parents need to do, such as attend certain counselling specific to their problem. Many of those parents see that as jumping through hoops rather than really connecting with a service that might be of help to them. That's what I hear. That's my impression from - - -

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So with got a system, then, that is pretty much stuck with

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being fairly reactive?---I think that's the nature of the system, Commissioner.

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And there will be some families and children who will require departmental intervention reactively and intrusively or coercively because they didn't get help at an earlier stage?---Yes.

Either because they didn't self-refer all because the systems weren't there, the services weren't there that were designed and engineered to their needs, so they had unmet needs. But there's nothing much that the current family protection system in Queensland as a civil society based on liberal principles can do about that?---I think there's always improvements that can be made in the way that these things are delivered, but I think the model as a child protection model is a necessary one.

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And is this as good as it gets subject to the improvements? That is, is the model roadworthy enough and fit for purpose?---My view is that the model is fit the purpose, and the things that I referred to in my statement are problems that I've had that over the years. But separate to that, yes.

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So you say it needs some modification and some servicing but not a complete remodelling?---Yes.

All right. I'm going to come back to frontline. You use this term "frontline" in your statement and in your evidence. That's been used before. A union leader yesterday suggested that it was a word that was invented by government to hoodwink the public into thinking that there are a lot of people actually in the trenches face-to-face rather than shuffling paper. Is the "frontline" a technical term within the child protection system or well understood within the industry?

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---I think if you said to most child protection workers that word, they would understand what it meant for them. I think if you have child protection workers who are carrying case loads, where they're dealing with parents and children and members of the public, that they're working on the front line, I think it's a fairly simple sort of definition.

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And do you decide who's a front liner by the percentage of client contact time they have?---Well, I don't know why you would need to unless you are trying to delineate funding for them. I think client contact varies according to circumstances, clients and the fact that you can't always leave people working in those stressful areas indefinitely. People need to be shuffled around a bit, anyway.

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Well, maybe the front line is not as thin as we think?
---Isn't?

Isn't, yes. Maybe it's wider than - - -?---Like anything, it's a definition which - - -

Yes. One witness said that the department used to claim up to 80 per cent of employees, or 2000 employees were front liners, and she thought that was - and when she drilled down she found out that half of them were not by her definition, anyway, front liners. Her definition was 40, 50 per cent client contact time?---Yes.

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That's just another person's view?---Yes.

Is that how you'd deal with that?---Yes.

Okay. Family ground meeting convenors. At the moment there are people employed by the department in that role?
---Yes.

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That's what they're called. The Act provides for the chief executive to appoint private convenors who have suitable skills and qualifications, but it seems that the approach is to employ people within the department - that is the same department that their case worker works in - to fulfil that role, and there are concerns being expressed by the families that one may have immunity against criminal prosecution for anything they say in those meetings, but not for child protection consequences, and that's an impediment to full and frank disclosure. Can you - - -?
---Commissioner, I don't attend family group meetings, so any information I have is mainly through solicitors really.

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Right. Okay. What do you think about the idea of having it done by private people rather than departmental people? The convening, I mean?---I think that if there's a perception of bias in any meeting by any party, that would be cause for attention to that process.

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It wouldn't be best practice?---These issues - I mean, we're talking about families who often perceive bias, anyway, when there isn't any. If there is potential for bias to be perceived, it's best to have it removed.

Because it will be a barrier to resolution?---Yes.

All right. The last question from me is at what point - or if there is no arbitrary point, how can you tell when repeated attempts at reunification between a family and a removed child is going to be counterproductive or contrary to that child's overall long-term best interests?---I think the answer to that is complex, but first of all a great deal is reliant upon the capacity of the parent, so by that I mean their capacity to care for that child; their emotional and physical health; psychological health; the pattern of dysfunction that has been occurring and the risks for the child if the child were to be returned to their care. The normal process I observe is that the department will apply for a 12-month order, then a two-year order and then a long-term order. Sometimes they'll apply for two two-year orders, one after the other. The way that I think to determine these issues, firstly is if sufficient time has passed and there has been no change and perhaps even a deterioration in the parent's capacity, it's probably best to give the child some certainty about placement. It doesn't mean they can't see their parent, but they need certainty about their future. One of the problems I have with that system relates to the fact that sometimes - for example, a child might come into care on a 12-month order and stay there for two or three years on different orders. The parent will then have other children and those children will be taken into care, too, so we've got children of different ages on different orders, sometimes in different placements for short periods of time, and the department then might apply for a long-term order on the older child and a short-term order on the younger child which, to me, makes no sense whatsoever. So the parent then somehow will begin to think that they've got a chance of getting the younger child back into their care, but everyone knows that even if they do what the department asks them to do, that's not going to happen because the dysfunction is so chronic. They might be living on the streets, but they might have short periods of time they get accommodation; it's been going on for years. I think there's a lack of coordination within case plans - some of these case plans, that provides the parents with the respect that they deserve; of a singular message about what the intention of the department might be, what the department perceives the problems being and that the order for the children that they might be applying for needs to be consistent across the board for all the children.

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So no mixed messages to the parent?---No mixed messages.

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And even though the children might be different, the parent is the same?---Yes.

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Hasn't changed?---Yes.

And is not going to, probably. So far as you're - - -?
---In these particular cases, no. Not all cases, but the worst ones.

So there is a point?---There has to be, I think, to give the parents - without giving the parents - because a mixed message for parents such as these is extremely torturous. I mean, often the dysfunction we're talking about is because they've been chronically abused themselves as children.

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So once you've reached the point, you've made the judgment on the best - an evidence based judgment that reunification attempts are going to be counterproductive and contrary to best interests, you'll make the call to have a long-term order and put the child in care until they're 18, but what you do then is make sure that they have the most meaningful relationship with their parents and siblings and community that that child can have?---Yes.

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Thank you. Anything arising from that, Ms McMillan?

MS McMILLAN: Certainly for the children it's going to be better, isn't it? If there's really no realistic prospect of that child being able to return home to their parents developmentally and for all sorts of other reasons, it's better to make that decision sooner rather than later?---Of course. If the decision can be made with certainty, then I think it should be made to provide certainty.

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And obviously again that's going to require a great degree of experience on the part of the child safety officer, no doubt with some assistance of a supervisor, to come to that sort of decision, isn't it?---Yes. I mean, usually the cases we're talking about are not short-term cases. These are long-term cases where numerous attempts have been already made, but the parents haven't been able, for various reasons, to come to the fore with their capacity. So, yes, the decisions can be made, I think, with some certainty in those cases and also with help from team leaders and other people to provide one singular message to the - - -

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COMMISSIONER: When you use the term "certainty", it's like truth; it's an approximate. It's not absolute?---Yes.

And it's certainty to a particular standard of persuasion based on the best evidence that's available?---Yes.

And it won't be conclusive?---No.

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MS McMILLAN: Mr Moriarty, some questions out of what the Commissioner asked you. Is it just as important about when to intervene is what to do if you are going to intervene? I mean by that what sort of order are you going to seek? Is it just going to be perhaps an intervention with parental agreement? Maybe a short-term order? That's also just as important, isn't it, as at the time that you intervene in a family?---Yes.

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The other aspect is we've heard some evidence - clearly if you're going to look at the intrusive nature of the departmental intervention, do you agree that there's good scope for community based intervention in the sense of assisting families before they perhaps get to that threshold, but if a family's heading in that way, identify it? I mean by that we've heard evidence about community nurses, for instance, clinics, where young children and parents can receive assistance, but clearly if there are issues emerging there that might take them down that path of child protection authorities needing to be involved, look at it from that direction, if you like?---Yes. I mean, I would think that's already occurring in the community. Services are available for families who are having those sorts of problems. Often there's a lot of resistance to accessing those resources for various reasons within some of those families and the department may be of some assistance in providing some scope for those services to be of greater help.

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Can I ask you ask you: at page 9 you mention large caseloads for child safety officers. From your experience, do you have any view about what's an approximate and appropriate caseload for a CSO or do you think that's just too difficult really to set - - -?---It's difficult for me to say. I don't work in the department now and it's not just a number. It's the type of cases that the caseload is comprised of, but I think it should be assessed - obviously it probably is assessed by a team leader and reassessed continually and also, of course, the worker's stress in dealing with some of these cases.

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I'm sorry?---The worker's stress in terms of dealing with these cases.

Yes, all right. Now, you note in your statement that children should be viewed at home as it would greatly assist in the investigation and assessment process. We understand the department's child practice manual states that before an IA, as it's known, can be finalised a child must be viewed. Is it your view that the child should not only be sighted but also sighted at home before the investigation should be completed even if the notified concern is not neglect?---Can you direct me to that paragraph?

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Yes, thank you, paragraph 8, page 7?---That refers to the general assessment of the functioning of the child and the family in relation to notifications, yes.

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Yes, but in terms of if the manual indicates that a child must be viewed, do you think it's an appropriate practice for the department to have to view them at home in situ even if it's not a notification about neglect, for instance?---Yes, I think it's appropriate practice to observe them at home; yes.

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Now, at page 9 you also make comment of the need for frontline child protection workers to be trained in interviewing children as critical. Apparently there is now a system or training program known as "I Care" which is interviewing children and recording evidence to the nationally developed accredited five-day program. Apparently it's been in place, I'm instructed, since about 2000. Now, you've obviously, I take it, over many years viewed interviews undertaken by both police, on one hand, and also child protection staff, correct, of children?
---Yes.

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What's your view? Have you seen since 2000 a marked improvement or change in the way children are interviewed?
---No.

January 2003, I'm instructed. Whilst there might be an accreditation program, what do you say about that in terms of the skills necessary to properly interview children?
---An accreditation program I think would teach one the techniques of questioning children, the right questions to ask, how to ask them, those sorts of issues, and I think that's important. The issues that I have with the interviews that I see is that the interviewer often fails to address questions to the child's developmental level so - by that I mean asking questions which use or contain words that are often incomprehensible to a child of that age leading to frustrations both with the child and anxiety on the part of the interviewer. My view is that these techniques can be taught, but the other element of interviewing children is the way in which one engages with the child initially and throughout the process both to provide them with a secure environment but also to communicate with them in a way that they're comfortable with. I'm not talking here about the questions that are being asked but how the questions are asked and the interviewer's understanding of that child. My view is that these things are learned through experience interviewing children either - usually with someone else present. It's the way departmental workers do it normally, I think, police officers too, but the problems that I have with some interviewing techniques is that children are extremely alert to non-verbal cues with the interviewer. If one makes a mistake with a non-verbal cue at the start of the interview, it's very difficult to recover from that with a child. The other thing is that children will often - if a question about an allegation is made to a child and there's some response in the affirmative and the questions after that are asked in the wrong way, children can become invested in their answers and then build upon what they say or extrapolate to please the interviewer. Sometimes I am concerned about whether the interviewer is really alert to those sorts of dynamics within the interview process; you know, a recent case that I've had where a child just kept

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on extrapolating and extrapolating until it became
ridiculous in terms of what he was saying or cases I've had
where I've interviewed children together who've made
allegations about a parent and when I've interviewed them
myself, they continued to extrapolate until it was just so
ridiculous that it couldn't have occurred and then the
children themselves gave different stories about what
occurred, but this had been built upon from previous
interviews with other people and that's the other issue
that often - not often but problematically if children are
interviewed two or three times by different professionals,
they become saturated and it's very difficult for, I think,
the courts and for others to ascertain what truth might lie
behind what they say. So the first point of contact and a
consistent point of contact after that is critical, in my
view, in terms of working out what weight to be placed upon
children's verbal comments and the other thing is the
context within which those comments are made. For example,
if a child alleges sexual abuse against a parent wherein
they haven't seen that parent for three years and they were
only six at the time they make the allegation, the context
of that is - you know, you'd have to wonder how they
remembered that after such a long period of time and why
they would say that at the point of a Family Court
interview. So the context is important and the way the
interviewer understands the context is relevant to how they
conduct the interview.

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COMMISSIONER: You know when you said before that you had that experience where the child extrapolated to the point that it was improbable, that can be a good questioning technique, though, can't it, because if the story discredits itself then it probably didn't happen, unless you're talking about a situation where it really did happen but it was the questioning technique that made the truth incredible?---It could be one or the other, you see, and it leaves questions about which it is. Something may have occurred, but if you have a particular child with a particular personality who wants to please an interviewer and the interviewer asks them questions which imply that there were other things occurring, the child, if they're invested in the first comment that they've made, will pop onto the next one and continue on.

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And so the truth in fact - - - ?---The truth becomes - - -

- - - that may have occurred becomes obscured and unreliable. What do you mean by a non-verbal cue?---For example, when I'm interviewing children, how you sit in the chair, where you place your hands, whether you look at them or not, the first thing you - - -

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MS McMILLAN: Whether you smile in response to something? ---Whether you smile, the first thing you say to them, how relaxed you are; in my view, extremely important. That's just from my experience with children. If I'm tense and if the child is anxious - and children mostly are anxious when they have an interview - if we start off that way then the process becomes a stressful one. It's going to be stressful anyway but I think interviewers need to learn to be alert to the cues of children at their particular development levels and the personality of the child, and they can be helped through that by working with other people who work with children a lot. That's - part of the process, I think, was operating when I was talking about crisis care before, that workers worked with police and police learned through crisis care workers about how to interview, how to speak to people, how to diffuse situations. And the workers learned from the police too about some of their techniques as well. So there's a cross-referencing of skills.

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So if you draw that effectively part - skeins of your evidence this morning, it's very important for child safety officers to receive experience from a number of areas to equip them obviously to make judgments about whether intervention, for instance is necessary; that first point of contact is critical, not only to assess what the proper mode of intervention is, but also questioning children, because from there if it's not done well all sorts of difficulties can arise, both for courts later, but indeed planning appropriate placements, for instance, or interventions for a child. Correct?---Yes.

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And that therefore understanding things such as developmental stages are also critically important for a child safety officer?---Yes.

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And that the best sense is where they receive mentoring and close supervision from others who've worked in frontline positions themselves?---Yes.

And that there be proper, if you like, career paths for them to remain within that sphere to then mentor, of course, other more junior practitioners as they come through?---Yes.

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And that the best of all is to have consistency and not an ever-changing case officer involved with the family, which as you say, causes all sorts of difficulties within the family if they're trying to work with them, and indeed work with the children?---Yes.

Correct?---Yes.

All right. Yes, thank you, I've got nothing further.

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COMMISSIONER: Yes, thanks, Ms McMillan. Mr Hanger? Mr Selfridge.

MR SELFRIDGE: Yes, thank you, Mr Commissioner.

Mr Moriarty, I'll attempt not to traverse or revisit all those points put to you by both Mr Commissioner and my learned friend Ms McMillan, but I have to touch on certain things, perhaps, and flesh out a couple of issues. The first one is this: in terms of your own experience of crisis care as it was then, as I understood your evidence you suggested that in approximately 1995 to 98, that you were involved with crisis care, is it?---80 - - -

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85?---85.

My apologies, okay. I hear what you said in evidence you've given thus far, but there have been a number of witnesses that have appeared before the commission that have touched on this very subject about this 24-7 response and how that should be brought back into existence and how the department should be responsive and reactive 24-7 literally?---Mm.

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In terms of the model which was formerly in existence - we're talking about obviously one of the commission's jobs is to create a pathway for child protection in the next 10 years, as such?---Mm.

Queensland is a big area. It's an expansive area. What kind of model was in existence then when you were involved with crisis care? What I mean is in terms of numbers,

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placements, et cetera?---I can't quote numbers, for instance, to you.

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Fair enough?---I think the model of practise was probably fairly similar to what it is now. The crisis care, I suppose, is a different facet of that. Obviously the number of cases now is far greater than it used to be due to population growth. It's difficult for me to draw exact comparisons.

Do you know if it was just an urban response?---Sorry?

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Do you know if it was just an urban response, as in it was the city of Brisbane or the greater - - - ?---The crisis care?

Yes?---It was all of Queensland. There was a 1300 number so people could ring in from other areas. If there was a problem in an outlying area then often the police would be contacted if it was something that needed an emergent treatment. And there's also, as I said, the crisis counselling part of things, which was sometimes responding to suicide calls and sometimes we make phone calls about that to services.

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That 1300 number, was that made up predominantly of volunteers? Did you mention volunteers earlier?---The counselling part of the phone line was made up of volunteers, so they - it was much like a Lifeline crisis phone line, I think it still operates.

Yes?---So they dealt with that but they didn't deal with the child protection aspect.

So when the call came in an immediate determination or an assessment would be made as to who's got to deal with it, whether it be child protection, whether it be - - - ?---I think they were different phone lines. I can't quite remember.

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Okay. But the physical after-hours service, to the best of your knowledge and your experience, even - was it Brisbane that you were located?---Yes, it was here in the city.

What are we talking about in terms of numbers? Do you recall that?---Yes. I think there was a rotating roster. I think there was about - it was about 15 staff, I think. They were, most of them, permanent staff. There was a supervisor and a coordinator. And we would run intake session for counsellors every six months. In fact, that's how I met my wife. She was a counsellor.

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And in outlying areas, rural or regional areas of the state?---Both. They were all areas.

Okay. So you're saying that there was a physical response, depending on the geography, obviously?---Yes. 1

But a physical response in all areas?---Well, if there was a notification made to an outlying area - a child protection one - then we'd contact the departmental office the next day. If it was something that required urgent response then the police in that area would be contacted.

Okay. Save for a physical reactive response here within perhaps Brisbane or some of the other major urban areas, and it's pretty much a similar system to that which is here now in terms of the telephone service, wherein - well, as the case is now, they are unable to meet that physically - a physical response - they contact the police or whoever it may be. So that was still in existence then?---Yes - - - 10

Do you understand where I'm coming from?--- - - - yes, it was still in existence then. I think I understand what you're saying, yes.

Okay. Turning our attention to this aspect of interplay between the two systems, the Family Court and the Federal Magistrates Court in the child protection arena?---Yes. 20

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It might be unfair, given your response to Ms McMillan's questions earlier, but it might be something that's more for a matter of statement or submission because you mentioned earlier you don't know whether that disjointed - whether disjoint comes from - whether it's part of the law as such. Are you familiar with the provisions of interface between the two jurisdictions?---I can't quote the sections of the act, but I'm vaguely familiar.

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At paragraph 13 on page 4 of your statement you make mention of - you say, "I do believe it is unacceptable that intervention doesn't occur in cases where it's clear that it should"?---Mm.

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Would you be aware or can you comment in relation to perhaps sometimes the department by virtue of the legislation as such is not in a position to intervene? ---That may be the case. I can only comment on the social science aspect of the cases.

So what you're saying is whatever the law might be and its kind of format, there are cases where genuinely believe the department should have a bigger role?---Yes, and not just me. In these cases it would be the children's lawyer as well.

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These cases that you speak of at paragraph 18, page 5 where you say unfortunately in some cases, given the family history and dynamic being so chronic, there's no potential for ever reuniting the children back to the parents as such?---Mm.

Again Ms McMillan asked you some questions on that. In fact Mr commissioner asked you, "At what point when you've got repeated attempts at reunification does it become counterproductive?" and you said, "When sufficient time has passed and there's been no improvement or in fact a deterioration in the situation." That's a singular message that you say the department should be sending out in relation to children, no false hopes, et cetera. The current legislation under section 59 subsection (6) (a) says "foreseeable future". Are you able to comment? Do you feel you're in a position as to what interpretation - I know it's a case-by-case basis. What could potentially be foreseeable future in terms of seeking longer term orders? ---I think that the initial temporary order for 12 months and then a two-year order is usually fairly appropriate in most cases. I think though that seeking other two-year orders after that when the history, not just up until when the department intervened but even prior to when the department intervened, remains chronic and may have even deteriorate requires a re-evaluation of whether further temporary orders are necessary, and the cases I'm talking about - we're talking extremely chronic cases without me going into details about them, but these are cases where it would require seemingly almost a miracle for the parents to

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be able to care for the child or the children.

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Do you - sorry, I don't want to interrupt you?---So my view would be that sort of thing would constitute foreseeable future.

Do you see cases where it might be that the department are obligated or should be seeking longer term orders in relation to children before they've even sought any short-term orders as such? I'm talking about that situation that you spoke of where siblings are in care. There are long-term orders been sought in relation to siblings and there's a relatively new additional challenge to the family?---Yes, I mean, I think in cases where they're seeking a long-term order on an older child and a short-term order on a younger child my view would be that long-term order is what's required on all the children. Assuming that the facts of the case are that the children - if the child's old enough, in these particular cases there's no possibility of them returning to the parents. Newborn babies have less of a possibility of returning to parents who are chronic and dysfunctional and perhaps violent and my view would be that a long-term order in those cases is more necessary.

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Those cases as well - you're talking about newborn babies or relatively - infants as such perhaps are not in a position to act protectively themselves?---Yes.

At page 8 of your statement, Mr Moriarty, at paragraph 14 you talk about child protection workers and about the inexperience of those coming into the frontline. That's when you use that terminology "frontline". How would the department actively engage an employee new, fresh graduates, coming into the child protection arena? In your view, how could they be gainfully employed?---How can they be gainfully employed?

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Yes. Are you saying that they should not have that responsibility immediately thrust upon them of having a caseload and all that flows from that?---Yes, of course.

How can they be gainfully employed? How do you see that role being developed?---What I perceive from the caseworkers that I speak to is that - and I'm not saying this across the board but I'm talking about new graduates who seem out of their depth with both the magnitude of the work and the nature of the case that we might be dealing with and struggle to explain the intricacies of the case plan because they haven't had enough time to acquaint themselves with the case. My view is that is being thrown in the deep end. I think that new graduates should have greater mentorship with other workers who have more experience. If that's already occurring, then that's good. I'm not sure to what extent it might be, but I don't have the impression that the ones that I deal with - and these

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are chronic cases that we're talking about - are completely confident with what they're doing. 1

So are we talking about they could be carrying caseload, whatever caseload that might be, in terms of numbers and complexity?---Mm.

Hopefully less complex?---Yes.

But they should have greater mentorship?---I think so, yes.

Excuse me. That mentorship - that's one of the functions of the team leaders as such, isn't it?---Yes and no. I think the way that I learnt was working alongside people who had experience. Team leaders provide a supportive role and I think to an extent that they do provide that, but there are many experienced workers on the frontline, as we're calling it now, who can pass on their experience to other workers quite effectively and very practically who are working day to day with difficult clients and they can help a new worker acquire skills that they can use on the ground, you know. 10

Are you suggesting perhaps that new graduates coming into the child protection workforce could be doubled up with someone, a more experienced colleague?---Yes. 20

And learn in that fashion?---Yes.

If it's not already in existence?---If it's not already in existence, I think I would have found that very helpful.

Yes. I've touched on team leaders as such. You were asked some questions about applications before the child protection - sorry, before the Children's Court for child protection orders and about the numerous applicants. What I mean is obviously the chief executive is the applicant and the chief executive's delegate is changed from time to time and you have a whole series of different applicants that are named on the application as such and it's put to you perhaps at team-leader level it might be more appropriate that that person undertakes that responsibility as such?---Mm. 30

I just want to discuss - I have no suggestion for it or against it?---Sure.

I just want to discuss some of the practicalities of that occurring. The first one is this: we obviously have a limited number of team leaders as such?---Mm. 40

The second by the very role or definition as applicant they need to have a comprehensive knowledge of that case. They have to know each case in depth prior to coming to court.

In fact what I suggested to you just now, they might have an overview of the cases by virtue of their role as team leader. The other this is as part of the court process - and this is something that has been before the commission on a number of occasions - in its current format, the court process, it's pretty onerous or demanding on workers in terms of information they put before the court. The last thing I would say is, is there not a real danger of a team leader role as the applicants as such - that we could have as many chiefs as Indians? You know, because we would have to create some more roles as team leaders, I would suggest, arguably?--Well, in relation to the problems that I identified before in terms of doing the assessments and having workers who aren't familiar with the case, I think team leaders could be familiar with the case and decisions in the case being without necessarily having to stay with the applicant. If an applicant changes over the course of the case, it doesn't matter much to my job. I mean, I just get the material of the application or the affidavit of who has made it and I can consider what the department is saying. My frustration is the understanding of the family, the understanding of the case plan, where the department wants to be heading with it, how they've engaged with the family. I think a team leader would probably have a better understanding of that just by virtue of their position, whether or not they've done all the work themselves or whether or not they're the applicant in the case.

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What about this, just going back to the last question I put to you: if it was an experienced worker, however that may be defined? You know, you suggested that mentoring program where an experienced worker gets put with a new graduate and he sort of looks after them to some degree. If it were an experienced worker that had to be - an applicant, per se, had to be an experienced worker or someone with over three years' experience, just to put it out there, is that someone who would be able to - in your view that's somebody that could address this issue of lack of experience and knowledge in terms of - - -?---I think so. I mean, I think in a way we're talking about cohesiveness really.

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Yes, we are?---For the family and for the process that's going on, so, yes. I wouldn't be opposed to that suggestion.

The last thing. No, it's a legal point in relation to something that was raised in the - and it's better by way of submission. Thank you, Mr Moriarty. I have nothing further.

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COMMISSIONER: Thanks, Mr Selfridge.

MR SELFRIDGE: Thank you.

COMMISSIONER: Ms Ekanayake? Sorry, Mr Allen. I beg your

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pardon.

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MR ALLEN: Thank you, Commissioner.

Mr Moriarty, could I just take up the aspect which was most recently touched upon and was also addressed by Ms McMillan, and that's really who in the context of child protection proceedings should be the person representing the department. You were asked to talk about the situation of having a team leader perhaps bringing that greater experience and also hopefully some type of continuity in the proceedings. Is there another aspect - and I wonder if you see it of significance - that there be a difference between the person who represents the department in the litigation, in that quasi prosecutorial role as the family might see it, with a case worker who's actually engaging with the family concurrently in a therapeutic process of assisting them with a case plan? Would there be some benefit in having those persons, both departmental officers, being different persons?---Yes. I could see a benefit. I mean, as I said before, I can only identify what the problem is for me, which is the lack of cohesiveness that I experience, as I said before. Whether it's as Mr Selfridge was suggesting, or the case worker or whoever, there's a lack of continuity in understanding of the case plan and for the families, as well. I can understand there's a problem for resources with the department in case workers getting over-involved in every case and therefore, you know, what else can they do with their time, and the problem may be addressed in a number of different ways, such as you're suggesting, too, but I think it's a problem that requires some address.

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Could I suggest that it's not just a problem of a lack of continuity, but because of those characteristics of the proceedings you've identified where there may be a mistrust of authority on the part of parents, for example, that there's an inherent problem with the parents at some points in the proceedings in court dealing with a case officer who's really conducting those proceedings and then also having to deal with that same person in the therapeutic process of implementing case plans, addressing the problems within the family unit?---Yes, that's a problem.

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So for that reason there would be a benefit in having a distinction between the departmental officer who really prosecutes the child protection proceedings and the departmental officer who has the therapeutic role of seeking to assist the family?---Yes.

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At page 2 of your report, from paragraph 8 on, there are some paragraphs under a heading Family Law Court Assessments and you talk about the process?---Yes.

Now, it seems that under that heading you're talking about two of the processes in your roles. That is, doing family

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reports for the Family Court and for the Federal Magistrates Court and, on the other hand, doing social assessment reports for the Children's Court. Is that correct?---Yes.

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In paragraph 9 of your statement you're dealing with the Family Court and Federal Magistrates Court, are you, when you're talking about those assessments in that context? ---That's a general overview of all types of assessment. I think it's inclusive of the child protection assessment, as well, except in the Family Court assessment foster carers of the department obviously aren't a party to the proceedings, but in a child protection assessment, they are. That just goes through the process of gathering the information.

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So at the top of page 3 where you say, "Other parties with an involvement in the matter may also be interviewed," and you give examples of grandparents, foster carers or the department - - -?---Mm.

If we simply look at the Family Court and Federal Magistrates Court proceedings and your preparation of a report, would they on occasions involve interviewing persons from the department?---No, that's misleading, I think, in that paragraph. If I'm doing a Family Court assessment, foster carers of the department wouldn't be involved. I might interview grandparents if they're significant to the matter. Those foster carers of the department are only involved in the child protection matters.

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But would you be informed in preparing the Family Court by material obtained from the department?---In a matter for the Family Court where there's a children's lawyer, they would often provide me with subpoenaed information which might include departmental information. In other matters, in private matters, sometimes that's the case, but invariably not the case that there's any such material.

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So there would be instances where you would prepare a family report where the department has been involved, but you wouldn't have access to that information?---If the department had been involved, that information would invariably be subpoenaed. There would be a children's lawyer been appointed - normally that would be the case - and they would make that information available.

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COMMISSIONER: Mr Allen, before when you suggested that the applicant be different from the case worker who does the therapy, do you mean that you should have a different discrete position as applicant who is never a case worker or do you mean that they should swap roles - the case worker should swap roles from time to time? If I'm the case worker doing the therapy, a different case worker can be the applicant?

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MR ALLEN: Perhaps the picture is one where the caseworker who makes the initial assessment which leads to the application then assumes a role only in relation to litigation and another caseworker is involved in the therapeutic intervention. That was hopefully what I was suggesting as a proposition, and I understand that you agreed that that - - -?---That's what I understood you to be saying.

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And there would be benefits in that?---Separating the roles, I think, would be important for the family to engage therapeutically with someone, they don't want to be prosecuted by the same person.

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Yes, thanks. Paragraph 10, when you're talking about cases where the department is involved, that's necessarily then, is it, child protection proceedings?---Yes.

Okay. At paragraph 11, likewise that's in relation to child protection proceedings because you're being commissioned by the children's lawyer to do an assessment which will include an assessment of the department's case? ---Yes.

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And you were asked about the different legislative tests in the context of family law with best interests of the child and child protection with the intervention being one based upon the risk of harm, is it the case, though, that your evidence is that whether you're preparing a social assessment report for the purpose of child protection proceedings, or a family report for the purposes of family law, that there isn't really a difference in approach or content of your report, because really the subject matter is going to be much the same in both and there's no real need on your part as an author of a report, as compared to a court, to really give too much attention to those different legislative tests?---Yes, that's correct.

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At page 5 of your report, paragraph 17, you say that, "A parent has to understand the court system, they have to understand the case plan and be able to comprehend what the department will say and what that means." This is obviously in the context of child protection proceedings? ---Yes.

Do you say that because as noted in the previous paragraph, "Comprehension or understanding of the system can be difficult for most people"?---Yes, it can be daunting for them.

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Do you make that comment in paragraph 17 because you see that currently there is often a lack of that understanding which is necessary?---I think that it's always going to be daunting for parents to go through this process and one can't eliminate that completely, but I think that clearer language and clearer understanding about what the

department is seeking through their case plan and what they identify the issues as really being unique to that family, because every family has unique problems and assets as well. I think that that's important for parents, really, to be clearer about the process. 1

And where should that information to facilitate better understanding be coming from? Should it be from the department or the court or a legal representative if there is one involved?---I think it can come from all of those but I think the problem for many parents going through the system is that they come from a place where they have difficulty identifying with social institutions, with authority to others - people in authority over them, personal relationships and trust; these all inhibit their ability to engage with the justice system in any case. I think this is well known. The problem that I'm identifying here is that unless the message to the parents can be given clearly and consistently through some process by the department, such as consistent case workers, consistent information, someone who could engage with them as much is possible within the confines of what the problems are, I think would be of greater help and their ability to respond would be bolstered as well in my view. 10 20

So you there concentrated on the first of those three sources of information I've posited out of the department, the court or a legal representative; the department. I suppose that makes sense because the court is not going to be involved or in a position to assist in that regard except during hearings, which is a very limited opportunity?---Mm.

The department has that more constant involvement, but there is a problem, isn't there, with the department explaining that process adequately if the face of the department is the quasi-prosecutor? There's going to be something of a lack of trust, isn't there, as to - - -? ---Yes, I mean - - - 30

- - - from the parents being told by the quasi-prosecutor, "This is how the system works and this is how you should approach it"?---What's important for parents in the child protection system to have is someone who can relate to them and speak to them in their own language about what's going on and be direct with them. I think many parents that I find get frustrated about language which is obtuse, which doesn't address things to them directly, and they don't feel is being straight and honest with them. I don't think that's done necessarily intentionally but I think that part of the problem with the process is that they have information coming from all different directions and they can't process it. 40

I hesitate to suggest the solution to obtuse language is lawyers' involvement, but if we leave aside court as the

source of the information; the departmental officer,
because of those problems; there really is a big role for a
legal representative, isn't there - - - ?---For the
parents?

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- - - in those proceedings to try and translate - someone
acting for the parents trying to translate to the benefit
of the parents what it all means?---Yes. I mean, most
children's lawyers that I work for a very good at that but
they're usually only involved at certain defined periods
and so they don't have consistent contact with the parents
and it's not always wise for them to have a lot of contact
with parents. They can explain things at group meetings or
at court and things like that but it's not their role to be
intimately involved with the parents to engage with them.
I think that role is really one for the department. And
workers are trained to engage with people who don't trust
authority very well, so I think the information and the
message has to come through that avenue.

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If it is going to come from a departmental officer, however
unsatisfactory that might be, you're going to need a
departmental officer with the skills to communicate, I
think you've alluded to, being able to talk to them in
their language?---Yes.

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But you're also going to need someone who actually has a
reliable, accurate understanding of the process?---Yes, the
process and the family themselves.

Okay, so someone who has an understanding of the factual
matrix, being the family; the communication skills; but
also, I'd suggest, someone who has enough knowledge of the
legal process to be able to communicate what is to be
expected in that process?---Yes.

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Have you got any thoughts from your own experience whether
departmental officers involved in the child protection
litigation process have enough support by way of legal
advice at an early stage in proceedings to properly prepare
and conduct those proceedings?

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---I don't know that aspect of things really.

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Okay. Page 9 of your statement, at paragraph 17 you say the first contact by a child protection worker either from Child Safety or from the police is critical in any subsequent interview process and you've spoken in your evidence about the problems that can flow from multiple interviews and unskilled interviews which affect the reliability and in fact credibility of evidence from children. That's so?---Yes.

Given the critical nature of that process, is there in your view some need for requirements as to documentation of that initial interview process?---I think departmental workers usually interview in pairs and they take notes whilst they do so. The police have interviews - sorry, videos, many of which I've observed so many of those interviews are documented. The ones that aren't documented are the ones that occur either through medical practitioners, schools and other areas before they even get to see the police or the department.

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Are there pros and cons with respect to any requirement that interviews between child protection workers and children be video-recorded in the same way that police interviews are?---Yes, I think there are pros and cons to that.

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What are the disadvantages?---Some children are very nervous and anxious about being filmed, I would expect. It depends how inadvertent it is. I mean, I don't film during my interviews with children. The advantage of it, I guess, is that you've got a clear record of the interview with the child and if it's a particularly critical interview in relation to an allegation, then that's important. I think that the videotape process in terms of the effect upon the child can be skirted in terms of alleviating the stress upon children and some police officers do that quite well.

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Yes?---Others not so well.

And perhaps that leads me to paragraph 18. You say that police need to be able to call upon someone trained specifically in the area of interviewing children - - -?
---Yes.

- - - in order to be able to separate the concept of protection with that of engagement?---Mm.

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Could you just explain what you mean by that, the concepts of protection and engagement?---Sometimes a parent will take a child to a police station and have them interviewed off the cuff about something, some allegation, and some police will comply with that and do that then and there. I think there is a role for the police to intervene in situations and to interview in certain other situations,

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but the separate role of the department is also a time to both interview children and to engage with them so that, for example, if they need to speak to them again, and often they do over various other issues that might arise, they've already engaged with them and they can return to speak to them without causing undue anxiety to the child. Often a police interview is a one-off thing that occurs and after that occurs children can be very tenuous about any interview process. It's too stressful for them.

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So in paragraph 18, are you talking about a situation where there may be some further engagement between the police and the child?---I think that the problem that I see is that police sometimes aren't properly equipped to do an adequate interview of a child and they should have some assistance with that with people who are more experienced in doing so. If they aren't up to the job of interviewing, then that should be dealt with, with more expertise.

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Are you talking about getting more expert police or actually getting the assistance of someone outside the police service such as from the department to assist?---I think the people should be identified either in the police service or the department who have the appropriate expertise to do it properly.

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I see, thank you. Thank you, commissioner.

COMMISSIONER: Thank you. Ms Ekanayake?

MS EKANAYAKE: Jennifer Ekanayake from the Aboriginal and Torres Strait Islander Legal Service. Can I take you, Mr Moriarty, to page 7 of your statement headed "Identified Indigenous Issues"?---Which paragraph is that?

I'm just taking you to that page. Are you familiar with the child placement principal that's set out at section 83 of the Child Protection Act? I have got a copy of the act. I can show it to you?---Yes, you might have to read it to me.

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COMMISSIONER: Are we on paragraph 7, page 7?

MS EKANAYAKE: Yes, section 83, subsection (4)?---Yes.

Thank you. The evidence provided to the commission is that adherence to that principal is around 54 per cent. Your statement at paragraph - sorry, at paragraph 10 or your statement on page 8 you make reference to a child whose second language is English who is placed away from family and language group and loses that skill?---Yes.

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Also, you say at paragraph 22 on page 10 of your statement - if I can take you to the second sentence, you say, "Often the department might place children temporarily and then look for longer placement." Is it your experience that

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children tend to remain in that initial placement almost by default due to, for instance, as you say at paragraph 19 of your statement, frequent turnover of caseworkers or other demands on their time?---Do you mean are children left within a placement merely because a change is in the workers? We're talking about Aboriginal children here? 1

Certainly, yes?---I can't say that I can associate the two directly because of changes in workers rather than problems with foster carers having a certain number of children being able to find a foster carer with Aboriginal background who is sensitive to the needs of the children who can take all of them, particularly if it's a large family. I think I've found that the department wants to place them together but may have difficulties doing that with a family member for various reasons and then a foster carer for other reasons too. 10

In your opinion, the fact that the child placement principal is not adhered to as much as it should, how can this be addressed given the long-term effects on children who are placed in non-indigenous placements where cultural disconnection and identity erosion might have long-term effects in later life on those children?---That's a difficult question for me to answer. I mean, I can only think that more work needs to be done with the availability of those placements for those children. 20

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In some cases I think more support for the foster carers who are already there, which is often a complaint that I receive not just from within Aboriginal placements, but other placements, too, that they feel over-burdened. They might be providing some respite care, as well, and the foster carers themselves tend to take on too much and become burnt out, so this creates a difficulty with not only getting new placements, but retaining the ones that they've got.

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Thank you. You referred in your statement to interviewing children and you spoke of how children are interviewed?
---Mm.

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And the initial effect that might have; the non-verbal communication?---Mm.

What are your thoughts about the support person attending an interview with a Aboriginal or Torres Strait Islander child?

---Generally speaking I find other people, unless it's someone that I know and have worked with, such as a children's lawyer attending an interview, to be difficult to juggle with the need to engage with the child. I find it difficult to know how to incorporate someone like that into an interview. Personally, for me, if it was someone that I knew and I had some association with and had some trust in, I wouldn't have a problem with it. With Aboriginal children themselves in terms of the interview process, like other children, to varying degrees they find it difficult. I think the children I've interviewed who English is a second language, probably find it far more difficult than other children. I think there are difficulties inherent in that process really.

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What is your definition of cultural competency?---Of what, sorry?

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Or what is your understanding of cultural competency?---Of what?

Cultural competence?---Cultural?

COMMISSIONER: Competence?---Components?

MS EKANAYAKE: Competence?---I don't know what you mean by that. Is it in the Act?

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If you're dealing with a person say of Aboriginal or Torres Strait Islander heritage, how would you deal with that person?---How do I deal with that? For me in terms of understanding the family background, I will go back over their association with their tribe; where they're from; the language, if they have a native language that they're using; how often they go back there; what their practices are; what the child's knowledge of that is; how associated

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the child might be with the culture. Those sorts of issues surrounding that. Usually both parents will come from some different background in relation to that, so it requires separate interviews about that with each other.

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Are you aware if family report writers or social assessment report writers are provided with training in that respect? ---I don't think that there is any specific training in that respect. I think the writers that do reports for children's lawyers are usually chosen according to whether they've had experience in that area. I can't tell you how many they might be, but children's lawyers - we usually use people who they think can canvas all the cultural issues incorporated within the assessment.

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Would it not be of assistance to have somebody from the community or an elder or somebody of that nature assisting with the interviews?---Usually elders are included in some way or another. I mean, I have a matter at the moment where elders are being incorporated, too, and where we might contact elders in Alice Springs, for example, and talk to them; so they are incorporated.

But you are talking in terms of areas like Alice Springs or Katherine?---Yes, if they're not available locally, I mean.

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For instance, say in Brisbane or - - -?---Yes, here, too.

In urban or regional areas?---To some extent. If they've been identified by the parent as important, then usually the children's lawyer would ask for them to be involved in some way.

What are your thoughts on cultural reports? A separate cultural report being provided in addition to the social assessment or family report?---I think any report where there are unique cultural issues has to incorporate that. The question is how you incorporate that and also provide the assessments required about the child. I don't think you can do one or the other. You have to blend the two in together and make sure that enough attendance is being given to both. If you have someone who's proficient in the particular culture, then as long as they can do the social side of the assessment and the other areas that need to be done, I think that's a good thing.

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Can I ask you, when you started out - and you mention here in your statement that you worked in Katherine and Alice Springs?---Yes.

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Were you given any training?---We had a worker from the Aboriginal community who was employed at the Darwin Family Court and he was very helpful in introducing us to people in the area, and also he had a network of other people in the community that we often had some communication with; so, yes, in that sense we worked closely with him and it

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was of great help.

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You mentioned interviewing a child whose first language was not English. Did you have the assistance of an interpreter?---The child spoke English by that time.

And that was sufficient?---Was proficient, yes.

The child's language?---Mm.

Have you had to interview families or children where they were unable to communicate?---In Darwin, yes.

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Were the services of interpreters available?
---Interpreters, yes.

What about in Queensland?---Not in Queensland, no.

Have you requested such assistance or have you not had that opportunity?---I have not had the need. I've had parents who English was their second language, but their English was proficient. The same with children, too. There was no need for an interpreter. I think it might have been quite difficult to find an interpreter in any case.

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And you had no concern that whatever was being said could be mis-communicated - - -?---No, I didn't.

Thank you. Can I take you to paragraph 10 of your statement?---Yes.

My apologies. It's actually page 8 and paragraphs 12 and 13. You say at the start of paragraph 12, "The best model of servicing child protection needs in remote communities is through a collective approach," and you go on to speak of that. Could you explain that further?---I think in outlying community groups and particularly in remote areas, it's important that whoever is providing the service is recognised within the community. Not just in terms of the model we're talking about in terms of a reactive model of intervention, but also able to identify social problems and seek assistance and perhaps some resources to help with that in those areas. I think people who are flown into an area and then flown out, are probably viewed as a threat within small communities.

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Would you say this kind of model is transferable to areas outside remote communities perhaps with some changes in them?---Such as?

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What is your opinion whether this can be transferred, this type of model?---It's hard to be specific but I think in terms of remote areas throughout Queensland would be what we're talking about. I haven't really thought about what size areas that it might fit, but I think as a general approach I would prefer that model.

Thank you. In your work, have you ever had contact with recognised entities or staff of recognised entities?---Yes.

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What in your opinion can they contribute towards the casework system or - - -?---Usually they're of help identifying the particular cultural background of the family and also help in engaging with them in the process. I think many families - one of the difficulties is trusting the process and it's not an easy process to trust so they're of help in those ways.

Thank you, Mr Moriarty?---Thank you.

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COMMISSIONER: Thank you, Ms Ekanayake. Yes, Mr Caughlin?

MR CAUGHLIN: Thank you.

Mr Moriarty, I have just got very brief areas to raise with you on questions which Ms McMillan and Mr Allen particularly asked you about. You identified that one of the issues for families is in terms of trust of the agency and that there's particularly an issue where there's a degree of identity between the caseworker who prepares the report which ultimately is the basis for the application to court and the person who's also meant to engage with them and that that can be difficult. It's fair to say, isn't it, that in order to get an effective history from the family and to effectively engage with them that there needs to be a degree of trust so that they can feel comfortable in providing information and seeking assistance as appropriate?---Well, yes and no. I mean, in terms of obtaining a history - I mean, in the report process that I conduct with parents I wouldn't necessarily say that they trust me, to be honest. I think that usually their experience of the process is one in which they would be suspicious of the outcome and they have a right to be really because in the end I'm only interested in the best interests of the child and that may well weigh against what they think should occur. There is a certain degree where I think even though you're doing that, you need to treat people with respect and to understand that, you know, they deserve straight answers and they often ask for straight answers about things. There's no point giving them obtuse information because it just makes it worse for them and I think they deserve some certainty about what to expect in

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the end; maybe not through the assessment process but at some point. 1

By the time a matter gets to you, by the time you're involved in it, it's well and truly progressed down that statutory intervention path that's the department's remit? ---Yes.

You mentioned before that in some circumstances families may be reluctant to seek assistance and seek some of those services which might assist them in terms of an early intervention. In your experience, do you perceive that there's a particular mistrust by families in seeking assistance from the same department in an institutional sense that's also the department that's seeking to intervene down the track?---Yes, of course. 10

And to that degree there'd be some tension in terms of seeking services for fear that that information might be reported down the line and might ultimately lead to some intervention if - - -?---Yes, of course they know. I mean, they know that you're recording or you - and when I interview people, I take notes and I'm telling them that I'm taking notes because I'm writing an assessment. They know that, but that doesn't mean that they can be completely disengaged from the process and people pretty quickly pick up whether you care about their responses or not. 20

You mentioned before, I think, that there can be a perception amongst some families in terms of seeking their services at an early-intervention stage that it can be for the sake of jumping through hoops or doing what the department perceives as being require?---Yes.

Do you see some benefit in that regard in some services being - some early intervention services in particular being provided by agencies external to the intervention body, if I can use that term?---Yes, I think there are a lot of good services that are available for people to attend. What I referred to by jumping through hoops is that sometimes the requirements within the case plan is that parents attend certain services which they may or may not do. Then in some cases even when they do attend that, they feel frustrated because nothing changes and the frustration then can escalate and lead to, you know, problems that further complicate their matter. It's because I think in a way at the start them attending that particular service may not have changed anything in any case because the departmental worker knew that there were more problems than just that. 30 40

Thank you.

COMMISSIONER: Thanks, Mr Caughlin. Yes, Mr Capper?

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MR CAPPER: We have nothing, thank you.

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MS McMILLAN: You mentioned earlier in your evidence, Mr Moriarty, that social assessment reports are obviously paid less than reports for the Family Court?---Yes - well, sorry, that's not exactly true. They're actually paid \$100 more, I think, but the amount of work required is far, far in excess of what you would otherwise do. For a social assessment report or a child protection report it might take a full day of interviewing, at least a day and a half to write the report and you'd probably need five hours to go through all the material and you get paid, I think, \$1500.

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All right. I have nothing further. Might this witness be excused?

COMMISSIONER: Yes.

I have just got one question before I excuse you, Mr Moriarty. In paragraph 7 on page 7 of your statement - and I think we have spoken around this before - you say:

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Experience has shown in relation to the abuse of some children that the indicators are often already there and it's only if you are involved in the family at a relatively early stage that you can assess the risks and make decisions about how to manage them.

When you say "indicators", do you mean the indicators of a risk of harm already there?---Yes.

And you say "it's only if you're involved in the family at a relatively early stage that you can assess the risks". In the system that we have got at the moment, how do you become - how does the right person become involved in the family in a practical sense to do that risk assessment?---I think it is difficult for the department to be involved in that sense, but I think that there are family intervention programs within the community that can assist and can indentify risk that might already be present for children.

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The management of that risk is aimed at preventing the situation where either the child suffers significant harm or is at unacceptable risk of doing so and also tries to prevent the parents from becoming unwilling and/or unable. So you aim at both of those limbs so that what we call statutory intervention or tertiary intervention or removal for investigative or custody purposes is not necessary? ---Yes, commissioner, one example might be a parent who has a developing psychiatric illness and so often identification of that can take place fairly simply and alongside that treatment of many psychiatric illnesses can be very effective. That would be something that could easily be dealt with pre-emptively, I would have thought.

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It's as much to do with the graduated intensity of the intervention as it is with the point of intervention, I guess, because what you want to do if you do have to intervene as a department in discharging your functions, you want to intervene at a point that might be early enough to prevent removal or early enough to prevent a temporary assessment order having been made, that is, early enough to make an assessment about protection while the child is still at home?---Yes.

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And the longer you leave it, the harder it is to achieve that?---Yes.

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So that's what early intervention means in the context of the system that we have got, the statutory system that we have currently got?---Yes.

I see, thank you. Anything arising out of that?

Mr Moriarty, thank you very much for your attendance and the evidence that you have given. It has been very helpful?---Thank you very much.

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WITNESS WITHDREW

MS McMILLAN: Thank you. That's the only witness today.

COMMISSIONER: Adjourned to Cairns at 10 am Tuesday morning.

THE COMMISSION ADJOURNED AT 1.09 PM
UNTIL TUESDAY, 11 SEPTEMBER 2012

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