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TRANSCRIPT OF PROCEEDINGS

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 14/01/2013

Continued from 13/12/2012

..DAY 36

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

THE COMMISSION COMMENCED AT 10.06 AM

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COMMISSIONER: Good morning everyone.

MR SIMPSON: Good morning.

COMMISSIONER: Welcome back. Mr Simpson?

MR SIMPSON: Good morning, Mr Commissioner. For the record my name is Simpson, initials A.P. I'm counsel assisting the inquiry. I will be appearing this week with my learned friend Mr Haddrick, also counsel assisting the inquiry.

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COMMISSIONER: Mr Hanger, note your appearance?

MR HANGER: I continue to appear with Mr Selfridge for the State of Queensland.

COMMISSIONER: Thank you. Ms Stewart?

MS STEWART: Stewart, initial L, counsel for the Aboriginal and Torres Strait Islander Legal Service.

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COMMISSIONER: Thank you. Mr Capper?

MR CAPPER: Capper, initial C, for the Commission for Children, Young People and Child Guardian.

COMMISSIONER: Thanks, Mr Capper.

MR CAPPER: Thank you.

COMMISSIONER: Yes, Mr Simpson?

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MR SIMPSON: Yes, thank you, Mr Commissioner. The hearings this week will focus on the distinct area of Aboriginal and Torres Strait Islander children in the Queensland child protection system. The hearings will go from today until Thursday. You have already heard some background facts, Mr Commissioner, and I will repeat some of them now.

In essence, the over-representation of Aboriginal and Torres Strait Islander children is a concern for child protection systems in all Australian states and territories. As previously heard by you, Aboriginal and Torres Strait Islander children were six times more likely to be the subject of substantiated notifications than non-indigenous children. They are also nine times more likely to be the subject of a protection order or an out-of-home care order in Queensland.

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Although Aboriginal and Torres Strait Islander children make up only 6.4 per cent of children aged zero to 17 in

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2010, they made up 29.1 per cent of children who were the subject of substantiated notifications and 37.5 per cent of children in out-of-home care in the 2010-2011 period. The child-placement principle which governs the placement of Aboriginal and Torres Strait Islander children in out-of-home care and aims to strengthen the connection of these children to their family, community and cultural identity whilst placed in out-of-home care has also had its struggles.

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Currently in Queensland only 52 per cent of Aboriginal and Torres Strait Islander children in the child protection system are placed in accordance with the child-placement principle which means that only half of these children in care are placed with indigenous families while the other half are placed with non-indigenous foster and residential carers and this is below the national average. This fact alone does cause a number of the witnesses this week some significant concern.

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Despite the over-representation of Aboriginal and Torres Strait Islander children or clients with the Department of Communities, only 4.2 per cent of its employees are identified as being indigenous and of this 4 percentage of staff the annual turnover is 3 per cent higher than that of non-indigenous employees sitting at 13.7 per cent. There have been some important initiatives though to try and redress these imbalances.

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The National initiatives included Closing the Gap and the national framework for Protecting Australia's Children. Queensland initiatives have included the Cape York Welfare Reform, the Family Responsibilities Commission which is an initiative of four Cape York communities of Aurukun, Coen, Hope Vale and Mossman Gorge and we have also heard evidence from the Family Responsibilities Commission during your visit to the discrete indigenous community of Aurukun.

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You will hear nine witnesses this week which will give you a broad picture from the point of view of lawyers, individuals who have been through the system, social workers and those who worked with child protection at its peak as to where they may see the system going from her. Today you will hear from Julie Bray. She has 30 years' experience in the child protection system, including experience in residential care, policy and court processes. She will talk about community control and the importance for remote and indigenous communities to have a level of control or input into child protection matters for their community members.

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Allison Glanville is from the Aboriginal and Torres Strait Islander Legal Service in Toowoomba. She will give you some first-hand experience of how her clients have interacted with the system in that region and the struggles they have in dealing with the department and the court

process. She will give some examples of her clients claiming that cultural advice is ignored by the department and that has created even further problems for them.

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Bill Ivinson is the head of the Indigenous Australian Peoples Southbank Institute of Technology. He will talk about his previous experience whilst employed at ATSILS, including his work with the department in creating discussion papers on child protection topics. Tomorrow you will hear from Rosie Loo. She is a Torres Strait Islander elder from Saibai Island who is currently studying a masters of customary in law. She will speak about Torres Strait Islander culture for children being placed in out-of-home care. She will also talk about the cultural adoption issues.

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██████████ is a parent and a grandparent who has had experience with the child protection system. She will talk about her personal experiences with the system. Cathy Pereira is the principal solicitor and coordinator of the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, otherwise known as ATSIWLAS, in North Queensland. She will appear by video-link and she will talk about the use of resources in the child protection system.

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On Wednesday we will hear from Natalie Lewis. She is the CEO of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, otherwise known as QATSICPP. She will talk about her role as the Peak provider for indigenous child protection. She will also give evidence about the proposed reforms highlighted in QATSICPP's submission to this commission.

Shane Duffy is the CEO of ATSILS. That's the Aboriginal and Torres Strait Islander Legal Service. His evidence will come on Wednesday also. ATSILS is the main provider of legal advice for Aboriginal and Torres Strait Islander people. He will talk about ATSILS submission to the commission and the proposed model presented by them in that submission.

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On Thursday you will hear from Rebecca Bassano. She is the principal solicitor for the Queensland Indigenous Family Violence Legal Services or QIFVLS. They cover an area from Central Queensland to the far north. She will give evidence about the proposed reform to address the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

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COMMISSIONER: Mr Simpson, the indigenous child-placement principle was introduced when the 1999 act was passed in its original form and, according to the explanatory notes that accompanied the bill, it was seen by the government at that point which, as you will remember, was an incoming Beattie Labor government and the minister sponsoring the

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bill was Ms Bligh who was then the Minister for Communities and Families saw the placement principle as a panacea for the problem of over-representation of indigenous children in the system back then. That was a long time ago.

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MR SIMPSON: Yes. Perhaps the evidence will show, Mr Commissioner, though that there has not been adherence to that principle though.

COMMISSIONER: Will it show why the practice hasn't reflected the policy principles in the act?

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MR SIMPSON: It will; it will, and some of the things that come out in the evidence will be that there is a lack of indigenous people who are prepared to become carers for various reasons because of their own interaction with the department or not satisfying certain criteria to become carers.

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COMMISSIONER: Does anybody advocate a differential rule for indigenous communities with respect to departmental requirements for kinship carers? 1

MR SIMPSON: Yes, so a lot of the evidence you will hear this week will advocate for the idea that indigenous communities should be at the centre of the decision-making process for their young people and they should be the first stop when a family comes into contact with the department or otherwise about issues surrounding children and families. 10

COMMISSIONER: Does anybody suggest a separate indigenous system?

MR SIMPSON: In a way it's suggested that, in the sense that the department will still be there as the investigating arm at the statutory level, but all the preliminary work, the work with the families, the work with the communities, would take - as part of a separate stream.

COMMISSIONER: Has anybody got a plan for capacity building in those discrete communities that couldn't currently operate a system like the one proposed? 20

MR SIMPSON: I think that will come out in the evidence too.

COMMISSIONER: All right. There's no point having good ideas unless we've got a plan of action to - - -

MR SIMPSON: That's right, and hopefully we can explore those issues this week.

COMMISSIONER: All right, excellent. Now, Mr Hanger, before we start the evidence, on Christmas Eve; it was my Christmas reading, I got a submission from the Director-General of the Department of Communities. 30

MR HANGER: Yes.

COMMISSIONER: Is that intended to be the final submission of the department?

MR HANGER: I would imagine not, as a final submission, but something to go on with. It wouldn't be a final submission, because he hasn't heard all the evidence any more than you have, but certainly he's put a lot of work into it with a view to saying that this is what he would like to see happen. 40

COMMISSIONER: Yes. I found it very helpful in a lot of respects, but it just brought to my attention something we perhaps hadn't really sorted out, and that was how you saw the department's final submissions date. Did you envisage it would be an addendum to this or that you would make oral

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submissions or a bit of both?

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MR HANGER: A bit of both. I suspect there will be an addendum to that because this is a continuing process.

COMMISSIONER: Yes.

MR HANGER: But the submissions will involve submissions from each of the various parts of the Crown for which I act. That is to say, one would not - there won't be a common submission from our side that embraces the attitude of police, education and health as well as the department, because they don't necessarily agree on these things.

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COMMISSIONER: The don't have common interests all the time.

MR HANGER: Yes, so each of them will prepare something that we'll put before you.

COMMISSIONER: All right. Well, the reason I raise it is we're about to launch our discussion paper which is intended to be in the next couple of weeks. It's intended to expose the thinking of the commission and some of the submissions that it's considering and also elicit responses from interested parties who have a different or supportive view of some of the things that are canvassed and raised, and obviously we want to encourage as much public - that is, genuine and informed comment and participation in the debate from as many relevant quarters as possible. I would have also assumed that would include your clients as well, but some of the things that this final - some of the things that the pre-Christmas submission dealt with may be sufficient and might have anticipated some of the issues that the discussion paper will canvass as well.

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MR HANGER: Well, one would hope that might be the case. May I say, with the greatest respect, it would be very useful to have a discussion paper indicating the thinking at this stage of the commission.

COMMISSIONER: Yes.

MR HANGER: Obviously keeping an open mind and being prepared to change it, but I'm sure it would help each of my clients to see what your thinking is and then they can say, "That's a great idea," or, "With the greatest respect, we don't think that's a very good idea."

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COMMISSIONER: Yes. The discussion paper has put a lot of pressure on my staff, more than I anticipated, really. Not many of these inquiries do discussion papers plus a final report.

MR HANGER: No.

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COMMISSIONER: But it seemed to us that it was better not to have a final reveal but to flag options as they emerged and identify what we saw as the important issues, the potential solutions and our sort of tentative view of the world. Okay, excellent. Now, what - - -

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MR HANGER: I'm sure that will get the best possible outcome in the end.

COMMISSIONER: Let's hope. Now, the only other thing I wanted to raise was something that was said in your submission - or in the submission. I'm not sure if the lawyers have run their eye across it, but as I read it the submission suggested that the guiding principle - well, the principles in the legislation, so the policy statements, in section 5 and 5B to D and section 159B and also the functions in section 7 were just policy guides and not legally enforceable against the department. I'm not sure about that. I think that's a question rather than a statement and I would want to hear submissions on that and I wouldn't be just taking somebody's view for it.

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MR HANGER: No.

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COMMISSIONER: Do you know what I mean? So the question is going to be whether if I have a function under a piece of legislation that says I should prefer family support over statutory intervention, then that's what I should do.

MR HANGER: Yes.

COMMISSIONER: And I should have a good reason for not doing it. So I'd like some - - -

MR HANGER: With respect - - -

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COMMISSIONER: I'd just like to flag that so that you can give that some thought.

MR HANGER: Yes, thank you.

COMMISSIONER: Thank you. Right, Mr Simpson?

MR SIMPSON: Yes.

MS STEWART: Excuse me, commissioner?

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COMMISSIONER: Yes, sorry, Ms Stewart?

MS STEWART: Is it possible for the parties with leave to appear to get a copy of that submission that's been provided to you?

COMMISSIONER: Yes, not yet, though. I think they will all go up on the net at some point. Don't they get

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published, all of our submissions? Yes, so it will be made public at some point. 1

MS STEWART: I think it's been the process that only the witnesses who have given evidence on the stand have had their statements or submissions then uploaded onto HQ.

COMMISSIONER: Aren't our submissions on the web?

MS STEWART: Submissions are on the public website from all external parties. 10

COMMISSIONER: Yes.

MS STEWART: Not this particular - will that be the case with this particular submission?

COMMISSIONER: I don't know. I haven't really thought. I'll hear argument on it.

MS STEWART: Yes.

COMMISSIONER: It's the first one of the stakeholders that I've received a submission from. Do you want to think about that, Mr Hanger? 20

MR HANGER: Yes, your Honour.

COMMISSIONER: But they're the key and they're the department - it's the department under the review and it runs the system that we're analysing.

MS STEWART: It's just that we may want to respond in final submissions to things that are raised in there.

COMMISSIONER: You will certainly get it before - - - 30

MS STEWART: Yes.

COMMISSIONER: You know, it will at some point be a target for your submissions, so you need to know what you're aiming at. I understand that. I'm just not sure about the timing. I'm not sure whether publishing it now might be distracting rather than serving any useful purpose at this stage of the process, but obviously everyone with an interest significant enough to have leave to appear will get a copy of everybody else's submission and they will be exchanged so that by the end of the process, at least, everyone has had a chance to see what everyone else is saying and comment on it. 40

MS STEWART: Thank you, commissioner.

COMMISSIONER: Thank you. Right, Mr Simpson, we're finally ready for you.

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MR SIMPSON: Yes, thank you. I call Julie Anne Bray. 1

BRAY, JULIE ANNE affirmed:

ASSOCIATE: For recording purposes please state your full name, your occupation and your business address?---My name is Julie Anne Bray. I'm a social worker and my business address is 183 North Quay.

Please be seated.

COMMISSIONER: Good morning, Ms Bray. Thanks for coming. 10

MR SIMPSON: Could the witness please look at this document.

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

Mr Commissioner, I tender that document.

COMMISSIONER: The statement of Ms Bray will be exhibit 137. 20

ADMITTED AND MARKED: "EXHIBIT 137"

MR SIMPSON: All right. Do you have a copy of your statement with you?---Yes, I do.

All right. So in summary you're a self-employed social work consultant at this moment?---Yes.

You have a background of 35 years in statutory child protection in Queensland?---That's true.

You've worked as a child care officer or residential care officer, a court officer and a family services officer?---I didn't work as a residential care officer, but I did work as a social worker in the residential care section. 30

That's right. Okay. And you've worked for the department and you've also worked with QATSICPP?---Yes, that's correct.

Now, if I go across to paragraph 15 of your statement and would this provide a summary of the final - or a final analysis of the problems you see in the current system for Aboriginal and Torres Strait Islander people; that they don't have a sufficient control of their own services for their people. Would that be a summary of it?---That's part of the picture. 40

Part of the picture?---Yes. They'd also - if that happened, they'd also need adequate funding because it's been depleted to the point and if you handed over the services to them now it wouldn't work.

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All right?---They'd need to be resourced, as it was envisaged. 1

Let's look at some of the issues confronting the Aboriginal and Torres Strait Islander families and their children as you see them now?---Yes.

So let's just - you set out there a number of issues facing indigenous people. They're not just child protection issues, there's a lot of issues out there. Perhaps you could name a couple in general, such as, is there employment opportunities?---Well, the first issue is that they were dispossessed and then there was colonisation, so there's a whole lot of impacts from that. 10

Yes?---Following on from that, there was the impacts of the stolen generation and a lot of the families have been affected by that and long term effects of that and then there is also the higher levels of poverty and disadvantage and racism that Aboriginal and Torres Strait Islander people endure in our society.

Yes, that's right; along with unemployment. So they have a lot of disadvantage in - - -?---Yes. So it's across the board in almost every sphere of life. They have health disadvantages. They have unemployment issues. They have housing and homelessness issues. 20

Literacy issues as well?---Yes.

And all of those things can impact upon how a family might interact with any government department, for example? ---Yes.

All right. Just going to paragraph 17, there's a model that you speak about in your statement which tended to show positive interactions with Aboriginal families?---Yes. 30

That's the Aboriginal and Islander Child Care Agencies? ---Yes.

That model had been running from the 1970's onwards?---Yes.

Perhaps you might give a short summary of what that meant and how that operated?---Yes. Right back from historical?

Perhaps in the more recent times that it was operating - - -?---Yes. Okay. 40

- - - how it was operating in the community?---Just to explain a little bit historically: in the mid 1970's, the AICCA's were developed by Aboriginal people at the grass roots level, usually with very little money.

COMMISSIONER: Sorry. Just tell us what AICCA's would be?---They were called Aboriginal and Islander Child Care

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Agencies, but in our current understanding that would be child protection agencies, but they were - across Australia they got that name AICCA, Aboriginal and Islander Child Care Agencies. 1

Were they federally or state funded?---They weren't funded. They were aunties and uncles, elders in the community, who tried in the very first instance to do something. This was at the tail end of the stolen generation and it was also at the early development or there had also been developed all the other community controlled organisations, so the Black Housing Service, the Aboriginal and Islander Legal Service and the Aboriginal and Islander Community Health Service. They were all in existence at that time and Aboriginal people saw a need to help families as they interfaced with the child protection system. 10

So this was an informal local response for - - - ?
---Initially, yes.

It was essentially a private indigenous child protection agency - - -?---Yes.

- - - that did what?---So they would - if they became aware of a family that was having trouble and this could be either through their knowledge and observation of the family and the child in the community or because they had come up against the Department of Children Services, it would have been at the time. They would offer assistance to the family and be across a whole range of things, just to help them through. It would help them negotiate their contact with the department. It would make sure that they were accessing appropriate services, such as get legal advice through ATSILS or other legal services. They would see the world in a very holistic way so that if a family had health problems - all of the issues that you're talking about - they would also help them be a buffer. They couldn't solve those issues, but they could help that family at that time in crisis and which was impacting on the welfare of children. 20 30

So they were essentially a private support service?---Yes, but very soon after, they started to attract funding so - - -

Yes. They had no power, no statutory power?---No, no.

And there was no statutory framework - - -?---No. 40

- - - for them to operate within?---In Queensland at the time we were working under the Child Services Act of, I think, 1965 and that wasn't changed until 1999. So in the early days when I was working, it was already starting to become a very old act and a lot of the things that we did across the board, the act - it was still under the act, but it wasn't prescribed by the act so we started to - a lot of

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the - say, for example, that's not connected to this issue, a lot of the first foster care services were created, even though there wasn't legislative powers in the Children Services Act to do that and, similarly, with the AICCA's - and I think this happened across Australia - it was almost like a gentleman's agreement that the department would consult with those services and obviously they found that to be helpful because they went on to incorporate that into legislation.

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When were they first formalised and funded, AICCA's?---I think in the - I don't know exactly. I couldn't tell you the date, but I would say by the mid 70's and the late 70's. I remember as a young child care officer - and this is a very rough date - in about 1979 having meetings where the AICCA's came and talked to us as departmental officers. I was in a residential care section.

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So were you there when the discussion paper was published in 1993 for changing the system from the child services to the 1999 act? Do you remember?---Throughout the course of my early career, there were several discussion papers and several attempts to change the legislation. I can't remember the date, but there was a significant - almost like a partnership agreement document. That was called the Child Placement Principle and that was signed between the Aboriginal community and the government and it was sort of what we followed between then and when it became enshrined in legislation.

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Yes, well, the 1999 act was the result of a lot of consultation over many, many years?---Yes. 1

Everyone recognised that the Child Services Act which had been unchanged virtually since it was introduced in 1965 had become outmoded and really unserviceable?---Yes.

What happened was everybody in the child protection business simply - virtually ignored the legislation and went on and established principles that they knew worked? ---Yes. 10

Then in 1999 the new act was supposed to pick up all those principles, give them some formal existence and create a framework around them and the indigenous placement principle was one of them?---Yes. The other reason that it was included in the act is that the Royal Commission into Deaths in Custody asked that all states put into legislation - - -

That was the recommendation?---Yes.

But it was already part of the Queensland scene?---Everyday work, yes, and the Queensland document was actually used by other states in the formulation of - so we were seen as ahead of our time in that way. 20

So I suppose my point to you is this, there's no point me saying, you know, the answer lies in the indigenous child placement principle, because that's what they thought back in 1999 and that didn't turn out to be so, did it?---It is so, but they didn't implement it correctly.

Okay, so the answer isn't just stating the principle, it's giving it practical expression?---Yes, and it's got practical expression by people who understand what they're implementing, not just implementing lines on a page, which I feel that's what it has turned into by the department. 30

But do you think we understand - or do we have a common understanding of what the principle is?---No, and that has been a lot of my recent career working as a policy officer with QATSICPP and it's been very frustrating, because we're actually trying to educate people and to understand it's not just a hierarchy of who you can place a child with, it's how you treat every child in the system so that you ensure that that happens and that you get the best outcome. So if you wait until you've got the child sitting in your office on a Friday afternoon and you haven't provided any services to that child and you haven't funded services that could have helped that family, you will not be able to adhere to the child placement principle. 40

Can you tell me the answer to this question? A white couple, can they be defined as kinship carers?---They can't - I don't think they can be unless one of them is related

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to the child.

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Yes?---But I understand there was a time in which the department was considering that because the child was developing a relationship with them - I can't speak to what is happening in the department at the moment, but I was quite concerned when I heard that was happening, because it would be a way to actually fudge the child placement principle figures.

It would be, and that's what I heard too, Mr Hanger, that there was a period of time where a white, unrelated couple could be - could transfer from being a foster carer to a kinship carer just by classification. That would be concerning if that was a practice, to me, because it would distort the child placement - - -

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MR HANGER: Well, you say it's not really kinship.

COMMISSIONER: No, but what it would do is make the kinship figures look better.

MR HANGER: Yes.

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COMMISSIONER: Which would be perhaps a false impression. So could we check that out as well?

MR HANGER: Yes, we'll find out.

COMMISSIONER: Thanks. Yes?

MR SIMPSON: Mr Commissioner, I think you might have been referring to attachment 1 to Ms Bray's affidavit. That's the research report entitled "Indigenous children on protective orders in Queensland 1995". That really goes through - and you can correct me if I'm wrong, Ms Bray. That goes through the history of indigenous children being dealt with by the department and AICCAs and - - -?---It's a snapshot of what was happening in 1995. I was involved in that research and it was actually part of a bigger research looking at all - the needs of all the children in the system in preparation for a change of legislation. You can see how long it then took to actually get there. I included it in my report because I consider that the involvement of Aboriginal and Torres Strait Islander people in running their own services is crucial, but when you come to find research to back that up there is very little. The two documents that I have included in my report are the explanatory notes to the bill that became the Child Protection Act and that research, which can - you can see by reading between the lines the importance that was placed on that service, that type of service, in the system.

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COMMISSIONER: If you read the explanatory notes to the bill, if you were someone who had to interpret that act and put it into practice, you would be left in no doubt what

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was expected and you would have seen all the agencies that have been consulted on that bill. It included all the peak agencies. I must say, it would have been one of the first acts that actually had an explanatory note, because they didn't come in until around that time as part of the legislative standards requirements. It's very explanatory and that's your policy document. If you were a practitioner looking for the policy behind the law, there it is?---Yes.

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You would have seen very clearly that family support - this is before the Forde report or the CMC ever mentioned secondary services. They were well aware of the need for secondary and preventative services back in 1999 and the act put them in principles and said, "This is how you should go. The preferred way is support the family." The problem with it is it didn't say what family support was. The other problem, it seemed to me to be, was that you had a statutory system for tertiary intervention, you know, intake, forensics, being caught, but your family support system was completely left to the discretion of the department and it was given - no-one was given the job of coordinating whatever family support was meant to be and it was purely an administrative system. Maybe that was part of the problem with the act, that the act should have realised that if you want policy to be implemented you've actually got to set out a framework for people to follow and give them paths to walk on?---Yes. There were a number of chief executive functions that also spoke to involvement in early intervention services.

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Well, precisely, but I think as you might have heard me say to Mr Hanger, that the impression I got from the department's final submission, or submission before Christmas, was that those functions were just a bit of hint as to what the chief executive might do, but weren't binding on her. Again, if you want to see - if you want to test the validity of that you need to have a look at the explanatory note, I would have thought. All right.

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MR SIMPSON: Mr Commissioner, I might take you to paragraph 34 of Ms Bray's statement.

Ms Bray, can you go to there? We'll cover off some issues there. What we can see there is you've incorporated as part of your affidavit sections from the CMC report which this commissioner has to review as well.

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MR HANGER: Sorry, I don't have a 34 in mine?---Yes, I don't have one. I think there's a typo.

COMMISSIONER: He always like to be - you're a step ahead, Mr Hanger.

MR SIMPSON: All right. Well, it's section - I'll read into the record parts of the section from the CMC report.

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They can be found on pages 229 and 230 of the CMC report. That's a publicly available document?---I think it's section 36 in here. The numbering seems to be incorrect in my submission.

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What is it numbered as?---36, I think.

Right, 36?---"The CMC report clearly maps out the role of AICCAs in the body of the report."

Yes, that's right. Well, that there - and I'm wondering if -the paragraph starts with, "The commission believes that AICCA type organisations clearly provide the only logical mechanism for delivering key aspects of child protection services for indigenous children. There are no other mechanisms available at present that satisfy the two vital criteria of sensitivity to cultural factors and the acceptability to the communities concerned." Do you still think that that would apply today?---Yes.

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Would you be asking the commission to accept that idea? ---Yes, definitely.

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Why do you think, just challenging those two last areas there, it's only AICCA type organisations that can deal with, for example, cultural factors and sensitivity of them and being acceptable to communities? Why can't somebody else do that?--Aboriginal and Torres Strait Islander people should be allowed to conduct their own child protection services and be in control of them. I believe the CMC, when they say AICCA type services - when I refer to AICCA services, I'm referring to a service type which has a board of Aboriginal people who has largely a staff of Aboriginal people and who work with the local elders and Aboriginal community to get the best outcomes for children in that community.

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All right. I'll just stop you there. You've said you believe they should have all those things and that might be so, but my question was to you is there some other person or some other organisation that can provide those things and, if not, why not?--Well, the department has tried that for the last seven years and has largely handed over a lot of the - particularly the funding to the non-indigenous community and I think the data shows for itself that it is not working.

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Is it through a lack of training or Education Department or education of, say, non-indigenous people to - - - ?---It's a lack of understanding of what Aboriginal and Torres Strait Islander people need, what they want, because they're not Aboriginal and Torres Strait Islander, so I just firmly believe it has to be Aboriginal and Torres Strait Islander people who are running these services.

To be blunt, is there any amount of training that could train a non-indigenous case worker to understand the issues of indigenous people?--I'd have to say yes because I am non-indigenous, but I worked for an Aboriginal agency and I was employed by an Aboriginal board and by Aboriginal people and I still had to learn a lot to be able to work in that area. Obviously, you would have to have that, but the driving force behind that system has to be Aboriginal people leading at the top and I can't see any other way - - -

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COMMISSIONER: But how do you resolve the tension between a system that's designed by - or according to western democratic principles - lawmakers that are predominantly of a different culture to the culture that we're talking about who set the standards of family behaviour and regulate the private and public relationship? The fundamental question is: is the relationship within indigenous communities between the family and the state and parents and children the same or different to the rest of Australia of the non-indigenous community?--I don't think you should underestimate the professionalism of the people who would run those services and I think the answer to the first part of your question, the way that that can be handled is by

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handing those lawmakers who have tried to do it in 1999 - handing some of that over to Aboriginal people to - does that answer you?

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I just want to have a work in practice and whether there's capacity now or over time, because my job is to provide a plan of action over the next 10 years, and what you're saying, "I've heard it before. I understand many quarters," and what I keep saying to people is: don't come to me with an idea any more. What I need is a proposal for actually making it work. Where will it work? Where will it not work? Will it work in Aurukun? Will it work in Coen? Will it work in Hope Vale? Will it work in Cherbourg? Where won't it work? What needs to happen for it to be able to work as envisaged over the next 10 years? Do you know what I mean?---Yes.

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That's what I keep looking for and I don't get from any of the representatives of the people who would advocate for the indigenous child protection system?---Yes. So there's probably a couple of answers. The first answer is that it happens a lot more in other states, so AICCA's and those type of services in other states haven't had to endure the type of constraints that have happened in Queensland. Part of the reason that I chose to make a submission is that I believe - so inquiry after inquiry make those recommendations - it seems clearly make those recommendations as you read out. That is not what's implemented and so the Aboriginal people haven't been given the chance to really do that properly and I feel - I heard some of the evidence from the department and that does not give the whole picture so I'm putting myself forward to try and give the other side, what actually happened so that it's often - the whole capacity issue is raised time and time again, but to me it's much more the capacity of the government who's implementing the recommendations to implement them in a culturally appropriate way than it is the Aboriginal and Torres Strait Islander people who could go ahead and do that.

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No, I don't think there's any debate about that?---Yes.

The state builds the capacity - - -?---Yes.

- - - within it's system. It runs a system?---Yes.

So it's got to make that system fit for purpose, which includes fit for indigenous purposes?---Yes.

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I'm not saying that. What I'm saying is why recommendations, or one of the reasons recommendations don't get implemented is the same reason that legislative provisions are ignored or overlooked or subverted because they just state things. They're like stop signs. They don't stop cars. If you want a government to do something, you've got to tell them not only what to do but how to do

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it, you know. There's no point saying, "I recommend that we have the AICCA system." That's not helpful to government. You need to say, "What I mean by this is this, this, this and this," what your goals are, are these. The outcomes you should be looking to achieve are these and you'll know if you've been successful because this will happen"?---Yes, yes. So with the CMC inquiry, the government employed people to create a blueprint for implementation and that also included information about exactly what you're saying, the instruction book on how to do it.

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The how to do it?---That was not followed for Aboriginal and Torres Strait Islander agencies.

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Have we got a copy of that?

MR SIMPSON: I would say we would, sir?---And I do refer to it briefly, but it is worth a very strong look in terms of what then happened because if you then come to the end and say, "Well, it looks like they don't have the capacity because it's just getting worse," it's because every inquiry has seen the way to go and has written down the big picture, but it has not been followed and it's followed in the spirit of it and also in the funding of it. I refer to in my evidence the blueprint saw, I think, about 17 million should be allocated to the AICCA type services at the time. That's how they described it. At the moment the services still get 17 million even though there's four times as many Aboriginal and Torres Strait Islander children in the system and there's a lot of other pressures on them as well.

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But you know how the relationship commission works?---Not really.

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Okay. What would AICCA's role be in the system if you were me and you were designing it? What would it be? What would its role be?---There'd be an agency in the community where people and families could go at any point in their family crisis and be helped through that and that agency would hold as its very most important issue, the safety and wellbeing of children and I am totally convinced that Aboriginal agencies would do that. They care as much for their children as others because I do hear that is put as, you know, they should still have to adhere to the same principles or they have to because it's in the Child Protection Act and the whole of the Child Protection Act is about that. That service may have to help some children be taken and placed with other people, but largely would be able to be a buffer to the families who are living in a great deal of disadvantage and under a great deal of stress and that disadvantage and stress can impact on the children. If you have a buffer for that, you can often keep those children within their family or at least their extended family. The crisis is over and the children can

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continue living as health, happy children within their own family. So you would give effect to the principle that says the best way or the preferred way of protecting a child is at home with support rather than - - -?---Yes, where possible, as long as it's not serious. 1

Okay. Let's deal with funding. We have constitutional arrangements that leaves child protection responsibilities with the states, but since the Second World War the federal government has been the taxing authority and it distributes this money according to its own policies to state governments?---Mm. 10

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When you say "funding", because indigenous affairs is a matter of federal constitutional power, do you see any ability for indigenous as opposed to non-indigenous to attract federal funding for child protection that isn't attracted for non-indigenous?---I think they should be. They've been COAG's - you know, the whole Closing the Gap process - that should be seen as a significant part of it. Around the - some of the early funding that AICCA's got was Commonwealth funding and was particularly in relation to family support and early intervention and they pulled out of the in the - around the similar time to the CMC report. I can't give you the exact dates. So there has been that there and I think that actually was a positive thing because it allowed - one of the most serious issues that Aboriginal child protection agencies face is that they're funded by the agency that they're trying to lobby or advise and it often does not go well when they may not agree with the department so having a Commonwealth funding stream would be a good idea.

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Yes. Just say you had a joint-funding scheme. There are some services that the federal government funds and there are federal agencies like FaHCSIA - - -?---Yes.

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- - - who all have a bit of a child protection role but nobody with a complete umbrella role?---I think it's a challenge for any agency that's funded by the state government in the current environment to then put their hand up for something in the Commonwealth because I think that boundary between state and Commonwealth is very fixed and people say, "Oh, no, you're funded by the state and we don't."

Yes?---So you can often have other - I understand that the Aboriginal and Torres Strait Islander Community would like holistic services so - rather than solo Commonwealth, state as well so it would be good to challenge that so that an agency can get funding, say, for universal - - -

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But for the system to work properly if you have - instead of you having a child-protection system, if you have a system for protection children which is sort of broadly based, holistic, if you like, then in order for that to properly work - and if you're talking about universal services, there has to be a coherent, rational system of services and you have to know who's funding what. You have to avoid the gaps in service delivery and avoid the duplication of services between state and federal and between NGOs. NGOs are going to fill a gap in a market. They're going to be controlled by market forces so they will say, "Well, we'll offer this service and there might be five of them offering that service at Caboolture but no-one offering a different service that Caboolture needs, but there's nobody walking around the place identifying that problem and it's made more difficult because of the fragmentation of our system between state and federal where

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they each have a little bit of a role but nobody has an overarching authority to bring the system into some sort of coherent whole?---Mm. 1

So let me pose this question to you about AICCA's, for example. In fact I can understand that that would work regardless of the culture of the child?---Yes.

You would have an agency that encouraged self-referral at an early point in time and that gave warm referrals, on-referrals to services that were needed as they were needed most?---Yes. 10

I understand that and that shouldn't be restricted to indigenous communities?---No.

But how does it work when you have got a piece of legislation that says things like - there is probably veritable argument between cultures as to what physical harm requires intervention by the state and there are obvious cases when intervention by the state would be accepted by the overwhelming majority of every member of the community, but then there are the most cases. They're the minority of cases according to the figures. The most cases are cases of neglect over time; supervisory neglect included in that, that is, no-one is looking after - "who's looking after the kids?" "I thought you were," right, and the system then says, "Well, how you work out when the state should step in is by reference to the best interests of the child," but then doesn't define that, leaves that to people to work out on a case-by-case basis using an actuarial decision-making aid that's based on previous statistics with the past predicting the future and then most children are in the system because of neglect or emotional harm risks which would be the hardest to identify. Of all the risks that you would have to protect kids against emotional harm would be the hardest to pick and for everybody to have a consensus about when it was emotionally harmful or not. "Harm" is defined as an effect, not as an event so you have got to look at the effect of the event on that particular child to work out if that child has been harmed emotionally or otherwise. So tell me then when you have the marginal case - forget the obvious case, the marginal case where a decision has to be made as to whether or not this event is a notification that requires coercive intervention by the state - how would AICCA's resolve that in a way that was acceptable to the legislation and the department and the rest of the community?---They always used to resolve that through having close relationships with the local departmental officers and working with them on that - whichever case you're talking about and working with the family towards that, speaking fairly honestly to the family about if these things - - - 20 30 40

But what in the case of a disagreement when the department

says, "We think we should be intervening," and AICCA says, "No, culturally you shouldn't be"? How do you resolve that when the department is carrying 100 per cent of the risk? ---The child is carrying 100 per cent of the risk.

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Well, the department is carrying 100 per cent of risk for the child at this point, but that's only if there is a risk?---I'd be surprised if you said culturally that it was a decision about a child's wellbeing - - -

It's not a cultural issue?---That a cultural practice would be harming the child. I'm not sure unless - I don't have experience with remote areas but - - -

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No; no, I'm not saying the cultural practice is harmful? ---Yes.

What I'm saying is there's a difference of opinion between AICCA's who are culturally competent - - -?---Yes, so back in - - -

- - - and the department who isn't?---Yes. Back then - and this would happen too - the department would have the right to intervene, I'd say, and it's up - all of the decisions of the department any - the major ones are decided by the Children's Court so in those case they would just - both those parties would have to present what they thought and - as anyone would to get an order for any sort of intervention.

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So you wouldn't see AICCA's as having a role in deciding state intervention. It would be just again - - -?---I think there's a continuum and I understand in some countries - in America and Canada they may also control the courts, but I would like to see us get onto the continuum, work towards that, and once you got - it's a long journey for the whole system to do that. It's not something that can happen overnight so once it was working well, you could look at that as the next step but you wouldn't take that as the first step and I think it would also be - it's good to quote those other places, but we have to design a system that fits for Queensland so it would be good to take small steps along the continuum as you go. I'd like a few big steps first up but then after allow time for that to develop because the sector has been thwarted so many times that they really need time to develop that capacity to deal with the amount of work that would be involved.

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And the new AICCA's, would it be centralised or localised?
---I have no particular opinion on that. I think it would
be up to the Aboriginal people to work out what best would
work.

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But, see, again each community is going to have a different
view?---Yes.

And each community actually might be right that there
are - - - ?---Yes.

What's going to work in Hopevale isn't going to work in
Aurukun, for example?---Yes.

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So who makes that decision?---It would probably be good to
have a bit of both because, you know, you shouldn't have
someone in Brisbane telling people in the Torres Strait
Islands how to do things where it's going to obviously be a
whole different set of factors.

That would apply whether the person giving the directions
is indigenous or non-indigenous, wouldn't it?---Yes, yes.
But at the same time there's a certain benefit in some sort
of central management so that you're not duplicating
training needs and the overall policy directions and those
sorts of things.

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Do you know if anyone has done any work, implementation
work, beyond the CMC blueprint?---I'm not sure I understand
the question.

Okay. You know that CMC did their blueprint for
implementing their recommendations?---Yes, yes.

Do you know if any academics or anybody else in the
indigenous community has taken it further since 2004?---I
understand - I think it was QATSICPP - it may have been the
previous body which became QATSICPP - did a report to - CMC
did, I think it was two years after - that could be wrong -
some number of years after the CMC inquiry they did a
report on how it had been going and - - -

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Yes?--- - - - as a policy officer I was involved in
reporting on the implementation from the perspective - - -

I think they called it implementation of the blueprint,
didn't they?---Yes.

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Yes?---Maybe I'm not understanding your question.

No, no. That's the CMC again itself?---Yes.

I'm just wondering whether the indigenous community has
said, "Okay. That blueprint is fine," or, "there would be
modifications we would like to see; that we don't agree
with the CMC on that point"?---So I was a policy officer

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through that time and in the absence of a lot of those recommendations being implemented in relation to Aboriginal and Torres Strait Islanders, it was difficult to - as a policy officer and working with the board and the CEO at the time, we would have had points in that that we would want to argue, particularly about the way they were funded and the level of funding and some of the conceptual - but what actually happened was so far behind what even the blueprint said that there was very little point in debating that any longer. It was actually trying to get on the departmental agenda, "Could you please fund some family support? Could you please not destroy our agencies in that way? When you create the recognised entity, can you make it so that Aboriginal people still have some control?" most of it - - -

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Which department were you dealing with, communities or Child Safety that it then became?---That was the Department of Child Safety at that point, but then it was subsumed into community - - -

Yes. On the one hand, the CMC report said, you know, "Secondary intervention is best," and on the other hand it set up a forensic stand alone safety focused department? ---But it was also very careful to say that the one area that needed to be preserved was AICCA's.

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Yes?---The blueprint actually sets out the role of AICCA's across five areas, only one of which was a recognised entity. Placement services, to some extent, were the only two that were actually implemented of the five areas that the blueprint - - -

Yes. The RE became the compromise AICCA. Is that right? ---Yes. At that time the department was so set on getting rid of that model that you weren't allowed to say AICCA at a meeting, it was like swearing if you said the word AICCA. You weren't allowed to say it and there was a lot of that type of paternalistic control in the development of that service which was not appropriate to deal with any agency let alone an Aboriginal and Torres Strait Islander agency.

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What was the objection to AICCA's? Why wasn't it allowed to be mentioned?---I can say what my theory is.

Yes. Well, that's what I'm asking you for?---Okay. I believe that at around - just before the CMC there were one or two AICCA's who had some problems and were defunded and I think the minister received a lot of negative press for that and I believe that it became seen by the department the way to protect the minister was to get rid of those type of agencies that could cause the minister that type of media coverage and I believe, rather unfairly, because they then for the next decade - those services and the services that they turned into have had to have this whole capacity issue thrown at them time and time again and yet I don't

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think that any of them have fallen over since and I'm sure there's been non-indigenous agencies that have, but it's not graded in the same way as any concern.

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So it was the falling over of a couple of AICCA's that was the trigger?---Yes. You can see it's referred to in the CMC report and they actually comment on that and despite that, they're still not persuaded that you shouldn't go ahead with this, instead you should be - I can read from that if you want.

COMMISSIONER: Yes, sure?---"The commissioner is not in a position to reach a conclusions on these issues and does not believe AICCA should be in any way exempted from standard accountability requirements pertaining to the expenditure of public moneys. However, the commission is persuaded that AICCA's have the potential to be crucial to the success of child protection for indigenous children and, therefore, if these organisations need help in complying with accountability requirements, such help would be provided." That's on page 230 of the CMC report. So there was very clear direction that if that was a problem, do something about it and I would expect - - -

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So did they deal with - - - ?--- - - - any agency, if that was identified as a problem, that you don't get rid of all AICCA's and place that sector under the enormous pressure that it was placed. It became a very difficult place for those agencies to work in and yet they continued to work. They still worked under very difficult conditions and to me that says a lot more about their capacity to provide services and a lot more about the capacity of that department to work with Aboriginal and Torres Strait Islander people.

Okay. Thanks.

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MR SIMPSON: Can I go back to the start to summarise what we've just been discussing for the last 15 minutes or so, taking it step by step so everyone has a clear picture? ---Yes.

A teacher or a nurse has a concern about a young indigenous child they come into contact with, under a model or a theory that you think is best that you're espousing here, where do they go to make sure that child is being looked after? Right now they would call the department. Where would they go under this proposal?---This is my perfect world scenario.

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Yes?---They would be working in an environment where they would be aware that Aboriginal people had a buffer agency that could be involved. So at the very early stages that they might have some concerns, they would be able to - well, firstly, the family may be getting help, anyway, but they may also be able to report that - not report as such,

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but to talk to the family about approaching AICCA's or to talk to AICCA's themselves. It wouldn't be that name, but that type of thing. 1

Okay?---If it was serious, so if it was in relation to sexual abuse, if they observed serious bruises, if there was a serious level, they should still be reporting that to whatever the appropriate system is. So if it's - - -

So a department?---Yes. Well, whoever is - along the continuum of handover, so in some countries, that would be an Aboriginal agency department, but in what I'm saying in the next few years it would be the department of - - - 10

Okay. Let's be fair about this?--- - - - the Queensland government department.

So Mr Smith three doors down, he's got concerns about an indigenous family. He hasn't got a clue about AICCA's? ---Yes.

He just does his own business?---Yes, yes. So he - - -

Where does he call?---He would call the number that he'd call for if the child was not indigenous. 20

Okay?---He'd make the same contact as if the child was not indigenous.

All right?---And that - - -

So he calls one central number - - -?---Yes.

- - - which might be a department switchboard sort of thing?---Yes. 30

COMMISSIONER: But isn't that too late? Aren't you already in the tertiary system there?---Yes, I did say before that ideally they may already be getting services.

MR SIMPSON: What if they're not, though? The family is resistant to help and they don't want to get the service? ---Yes, yes. So that happens - - -

So if they're resistant to help from the AICCA, do they then get - on this model- referred straight on to a department?---If it's at the late stage, they would. If it's at the early stage - I did see this when I was working in the area - that family would be referred to a non-indigenous service if that's what the family is saying, they don't want to work with that AICCA or, firstly, they might be referred to a different AICCA from a different area if there's some problem there. 40

Yes?---But if they're saying, "No, I don't want that," then they - and I saw AICCA's do that back then. 1

Going back to this point, though, so the person on the street making the report about the family, or their concern about a family - - -?---Yes, should be able to just go to - - -

Should be able to call a central number?---A central number.

If they're an indigenous family then that central switchboard refers them on to an AICCA?---That could work that way, yes. 10

Yes, or they can go the other way to a non-indigenous support group?---Mm'hm.

So there's secondary services at this point. Who makes the call about whether it's serious enough to go on to investigation straightaway on this theory, because before you said if there's sexual abuse or bruising they go straight to the department, they go straight to investigation?---In any system the workers who are working your intake service need to have a high professional skill to be able to do that, and that's how it should be now and should be in any child protection system. They need to be able to work with the information they've got to make the best decision. Now, that's not always easy. Sometimes the information you're given isn't what it actually is, but you address the issue that you're talking about by not putting your junior people on that role. That has to be people with a lot of experience. 20

COMMISSIONER: But in the context of this conversation it's more than that. It's not just experience, it's cultural competence as well, isn't it? For your intake system to work properly doesn't it have to be able to discriminate in that proper sense of the word between the indigenous child who needs protection and the indigenous child who doesn't as much as the indigenous child who does and the non-indigenous child who does? Do you know what I mean? Doesn't the - and if you're having intake being run by the tertiary system, isn't it really - isn't that less desirable? Shouldn't you have your intake system run by your secondary system and then it refers up to tertiary if required or out to supports if better?---I've given a number of parameters, so possibly that intake system can be at the secondary level. It's just a number that the community knows to ring. 30 40

Right?---So you need to - - -

MR SIMPSON: Yes?---I acknowledge you need to make that simple. The average person in the street is not - you can't really deal with that, so it's just a number like

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you'd see on a number - - -

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COMMISSIONER: So if we have the current structure, who would run the intake best now would be the Department of Communities arm rather than the Child Safety Services arm of the department, wouldn't it?---I can't really comment on those departments at the moment. I suppose it's probably more about who runs it and - - -

Well, Child Safety Services - - -?--- - - - if there's less danger in putting it with the communities one, because that may have a more wholistic view. I can acknowledge that, but I don't really know those departments.

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MR SIMPSON: We've heard evidence in the hearings at Beenleigh if you make a call to the intake centre they start taking down questions and answers straightaway to get a picture of where that family sits. So that might be seen as an investigation that starts straightaway. Would that be an ideal model for an indigenous family, if someone maybe doesn't have cultural competency starts an investigation effectively straightaway to work out where the family goes?---The only question that you'd really need to be clear on is whether they were Aboriginal and Torres Strait Islander and then that would be handed over to the agency that would have the competency to do it, in this ideal system.

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So in the ideal system they ask the first question, "Is this family indigenous"?---I think if you've got someone - a member of the public ringing in, you would need to get some information. It's not really my area of expertise, running intake services.

No, but I guess the point that the commissioner is making is that all these ideas are great - unless they're put in - the nuts and bolts together to work out how this will sit in a big system. So the theory that AICCAs are the best model is one thing, but to actually put it into practical ways of expressing - - -?---I suppose the way I see it, as I said before, there's a continuum to take Aboriginal and Torres Strait Islander child protection services from where they are to - at the other end is total management, and along that road I'd be building up other things first rather than the intake. You would be using the current level, and as time went on you would be developing that with a whole lot of factors that will arise along that journey that I probably can't speak to now.

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Right?---But I could see that it could easily work. It's not really different to - at the moment there's a central intake and then they have to work out where those things go. You would hope that the people would be trained to be culturally competent in the intake team and that there would be regular contact between the Aboriginal child protection system and how that intake service is running,

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even at the early stages.

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All right. Let's go forward to say when it appears that the child may need to be taken into care?---Yes.

Currently we have recognised entities that should be consulted about the best placement for that child and you give some criticism about that, about whether that is happening or not?---Yes.

In the ideal model where does the indigenous support group or community sit in giving advice to the department about whether the child should be removed from their family and taken into care? What do you propose?---I'm not in a position of proposing new services, but I can talk about that AICCAs used to do that. So they would be helping and supporting a family, but they would at some point professionally come to the point where they would know that this isn't going to work so the factors mean the child has to be taken out of that situation, or there needs to be an order to protect the child in a different - like, in a kinship care placement. That can be done within the policy guidelines and how an agency can be connected. So if you're talking about this wholistic type service, a lot of work would have to be done about that interface between those different - you know, the more universal intervention, early intervention and then getting into when you have to actually take statutory intervention. Those areas - all agencies in that system would have to understand how to negotiate their clients through those systems.

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Would the final call, though, to seek a court order, would that still be left with the department. Is that the ideal model?---Again, it would be up to the legislative requirements. At the moment obviously the department is the only one that can do that. Maybe police - - -

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Okay, well, let's just think in the abstract?---But if you - so you could - it may be useful, agencies may even want it, that the department is still the agency that does that statutory role, it's a government department that does that statutory role. That works, and there may also be another one, especially if you had an Aboriginal and Torres Strait Islander court system, that there could be agencies that bring it to that court. So again, it's a continuum, and I think there's examples across the board working in different ways all the way along.

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All right. Well, let's just dive into one last idea then. Do you see a model whereby there is a separate piece of legislation or chapter within the Child Protection Act which deals exclusively with indigenous children and a system that's sort of exclusive to them, as separate from non-indigenous children?---Well, there's already components of the Child Protection Act that are referring to

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indigenous children, so they already - - -

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That's all over the place?---I'm not in a position to comment on the framing of legislative sections of the act. Are you meaning - - -

Well, you're proposing - - -?--- - - - a system for Aboriginal and Torres Strait Islander child protection be totally separate from - - -

Yes, that's the theory?---Yes.

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You're sort of striking at the idea that there's a separate system aside from - - -?---No, I'm not striking at that.

No?---I'm not. I'm silent on that.

Well, let's hear - but do you have an idea about it, a personal idea to you about it?---It's my same comment, that I'm saying there's a continuum, and I don't think that could happen in the next five to 10 years. I think it should - it could well be an aspiration. I'm not - I'd have to look at it a lot more to work out whether it should be, and it's not my decision. It should be the Aboriginal and Torres Strait Islander agencies that are leading that reform.

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All right. I have no further questions, thank you, Mr Commissioner.

COMMISSIONER: Thank you. Mr Hanger?

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MR HANGER: Just a few.

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Just testing out this AICCA idea or concept a little bit further, it troubles me a little bit insofar as you appear to be advocating almost two systems in parallel, one for the Aboriginal and Torres Strait Islander people and another one for the rest of the western community?---No, I'm not. I just said that I wasn't sort of suggesting two systems. I am suggesting that Aboriginal and Torres Strait Islander people should be able to access services that are (indistinct) Torres Strait Islander people. As a non-indigenous white person if I needed help, I could go to someone of my own culture and get help and I think you have - we have to be very careful to acknowledge the impacts of the stolen generation and that there needs to be extreme sensitivity to the involvement of non-indigenous people in removal of children in the current day and I think there's cultural reasons why you need those services but there's all those historical reasons that are extremely important.

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Following up on the idea of AICCA dealing with Aboriginal and Torres Strait Islander and indigenous people, is there a possible problem there insofar as there must be significant cultural differences, I imagine, between the Aboriginal people and the Torres Strait Islander people? ---I think there's - and again I'm straying to an area that I'm not really - but there are many different cultural groups within the Aboriginal population as well as the Torres Strait Islander. I think you would also find that there are many people who are Aboriginal and Torres Strait Islander.

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Sure?---I take my thinking from the fact that Aboriginal and Torres Strait Islander people have chosen that they will work together in relation to child protection and so I think at the big level they're happy to work together and at the grass-roots interface there should be much greater acknowledgment of the tribal and language group backgrounds of the people so that then takes it from just being Aboriginal. It takes what's - where's your country, who are your people and what happens in that environment? What do your elders say? What is your extended family saying about what should happen?

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Isn't there then going to be a problem in relation to the culture of each particular group that we're talking about? I mentioned Torres Strait Islander and Aboriginal because I suspect they're very different, but won't there be cultural differences between the various Aboriginal people?---Yes. That's why you should have an Aboriginal and Torres Strait Islander child protection system so that people really understand that.

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Okay, but the complaint will be five years down the track that the people running AICCA don't understand the culture of the XYZ group?---I should imagine that this whole

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process will not be easy, but it would be better to have - and those are the issues that will have to be faced at the local level, but it's better to have that than have the entire Aboriginal and Torres Strait Islander population not considered in that process and having to receive services from non-indigenous agencies.

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Thank you.

COMMISSIONER: Ms Stewart?

MS STEWART: Thank you, commissioner.

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Ms Bray, could I just take you to paragraphs 9 and 10 of your statement? You observe that you identify there has been a marked deterioration in quality outcomes for the Aboriginal and Torres Strait Islander children. We're particularly interested in the observation that this has occurred since about 2006. Based on your professional experience, what do you identify as some of the possible causes for the deterioration in outcomes?---It's always very complex looking at over-representation because, as we've already acknowledged, the pressures on the Aboriginal community in relation to disadvantage are one of the main reasons that there are more Aboriginal and Torres Strait Islander children in care. During the course of my career I was actually working as a policy officer for QATSICPP at the time so I undertook to do a statistical analysis in graphs and you do find if you look at those graphs, at 2006 the rate of increase just shoots right up. You can actually see it on the graph very markedly. I then tried to analyse why that would be and I couldn't find any one of those factors of disadvantage that changed and continued to apply that sort of pressure to the Aboriginal and Torres Strait Islander community and the only thing that I could see that changed was the departmental approach to service delivery to Aboriginal and Torres Strait Islander people and that was - 2006 was about the time that any impacts of the CMC inquiry implementation would have been seen and so I can clearly see that it was - in my assessment that it was a - it was the tampering with that service sector that is like a buffer for Aboriginal and Torres Strait Islander people. So if they - a child protection agency won't be able to address those big issues and those big issues need to be addressed and urgently addressed in Closing the Gap and these other campaigns in relation to that, but what it can do is provide services that can buffer and help families who are facing those stresses so that they're better able to look after their children and to keep their families together and if they're not able to look after their children, their extended family can. So those services - that service system started to be eroded through that and I have serious concerns because it has continued in a straight line since then, accelerating deterioration.

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Can I just take you to paragraph 12 and the factors that

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you say contribute to and how that's remained constant? I think you've just alluded to it in the evidence that you have just given then as well. What are the factors that you identify as being largely beyond the control of the child protection authority and what do you base that on? ---I base it on the fact that I've worked in the sector for a long time and I've been on a number of different projects to address over-representation and learnt the hard way that it's actually very difficult to impact in the general way if you can't control homelessness, unemployment, health, overcrowding and a whole lot of other issues. So there is a core level of over-representation that needs to be addressed through addressing general disadvantage. Because of that, we're looking at issues like poverty, homelessness, education levels, all those sorts of things.

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COMMISSIONER: What protective issues does that general social disadvantage give rise to?---So a family in stress because they have got health problems and they have just lost their job and there's overcrowding will - Aboriginal and Torres Strait Islander people may be judged as neglecting their children because there's overcrowding and all those sorts of things so there is - the main reason that children will come to the attention of the department is neglect and that is often to do with health or housing, those type of issues.

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Now, this might help you answer or understand the question I asked a bit better and give me a stronger answer: would AICCA's see overcrowding as an event issue?---It depends on the extreme - how is it - - -

No. Okay, of course it would depend on degree. What I'm saying - - -?---Yes, so they would have a greater understanding that a family who's living in a level of overcrowding not acceptable in some non-indigenous families but acceptable within that, that they would be looking at how that child's faring in that situation and possibly see past it and is that child still safe and at risk or at risk - - -

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Right?--- - - - and if they saw that it was at risk, they would work with the Black Housing Service to see, "Well, let's do something about it," rather than, "This family doesn't have the capacity to look after their kids," and take them.

No, I understand now?---Yes.

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This is getting closer to the tension between the indigenous and non-indigenous differential, if you like, that I was talking about before. How do you resolve that? How does the system which has got AICCA's work out whether you focus on the context, that is, overcrowding, or the effect on the child? How would AICCA's help the department in resolving this question? This is the department's

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question: is this child being harmed in a relevant way by this overcrowding? That's its question, because if the answer is, "Yes," it must act? ---Yes. 1

How it acts is a different question?---Yes.

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How would AICCA's help answer that question?---I think they could work with the department to help them work out how they act so that if there's anything at all possible that can be added to that family to keep that family together in terms of accommodation, so if you're talking about - the child is actually suffering because there's 15 people to a room or whatever. It's hard to talk about this theoretical concept. If it was something that everyone would say, "This child is seriously at risk," the AICCA's would probably be the first ones to say, "This child is seriously at risk." If it's that you've got, say, three bunk beds in there and there's six kids in that room where people might say, "There should only be two," the AICCA's may help the department understand in the first case, but also provide ongoing support to that family to ensure that the impacts of that are not being felt by the child.

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All right. Let's look at it another way, not as a cultural or a differential issue. Let's look at reposing the question and the answer, but let's look at the question? ---Yes.

"Is the child being harmed?" That's the question?---Yes, yes.

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Right? Harm includes unacceptable risk of harm?---Yes.

So is the child - and the cause doesn't matter so much under the act. So in order to answer the question, "Is the child being harmed?" don't you need to look at the child and the child's needs?---Yes, yes.

Including asking the child whether the overcrowding is impacting adversely on one of their wellbeing needs?---Yes.

That's what you would be focusing on and anyone could do that, couldn't they - - - ?---Yes.

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- - - if they knew what they were doing, whether they were indigenous or non-indigenous?---If there hadn't been a history of the stolen generation so that the family would be feeling more comfortable to talk to you, yes, possibly. That's a major factor. I think also there are different cultural issues that need to come into play. Yes, non-indigenous people could do that, but not as well as if they had Aboriginal people working with them to do that.

Right. So AICCA's role, getting back to my original question, would be to help the department in answering that question by explaining to the department why a child would or would not - why that particular child is or is not being harmed by that overcrowding because of things that AICCA knows - - -?---Yes.

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- - - that the department is never going to be told?---No; and so that it could be overcrowding because there's a

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funeral and everyone is down from somewhere and it's - - - 1

It's temporary?--- - - - temporary and it's going to be fine and that's - - -

Or overcrowding is just a fact of life and it actually doesn't do much harm to anybody?---Yes.

Even though we might think in our suburbs that it does? ---Yes.

And our view of overcrowding is too many people left over on Boxing Day. Okay. Yes, Ms Stewart, sorry? 10

MS STEWART: Ms Bray, if I can just take you to paragraphs 13 and 14 of your statement. You've highlighted if there were improvements in the Aboriginal and Torres Strait Islander sector, including quality outcomes in the two indicators that you've mentioned, that this would have the impact of relieving pressure on the entire system. What's the rationale behind that opinion?---When I started my policy work in the department in the early 90's, Aboriginal people were over-represented, around 25 per cent, and it would always be a significant issue that we take into consideration. We're now looking at figures like 50 per cent. So it's almost to the point most of the work of the department is dealing with Aboriginal and Torres Strait Islander people. For example, if you look at the child placement principle, I haven't got the figures here, but there's over 1000 children who are currently not placed and it's something like 1200 or 1400, I can't remember the exact number, it's in my evidence, they're currently placed on non-indigenous foster care. Imagine if we had been able to place those children with their families or in Aboriginal placements, you would have 1200 white foster placements that could be used in the rest of the system. You wouldn't have to be expending the money and the huge recruitment campaigns that they are still doing because you're using those resources in a way that is not suitable for the people in it or the people who are not in it as well. 20 30

Okay. You've spoken quite a bit about the AICCA model and how that evolved at the grassroots level and it appeared from your evidence that there was really that connection to the community. When you're looking at placing child in kin, there can only be a benefit to that connection to the community. Would you agree?---Yes, especially in relation to - as I keep saying, from the stolen generation and it is probably not easy for non-indigenous people to imagine what it must be like for Aboriginal people whose grandparents and great-grandparents have been treated in that way to have to deal with a child protection service for themselves. 40

Yes. At paragraph 15 you've highlighted that Aboriginal

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and Torres Strait Islander agencies with authority to deliver services has been a proven and successful model, not just in Queensland but interstate and overseas. Can you just elaborate on the example that you've given there, which I think is the health - - - ?---Again, in my work I've come up against the concept that you don't fund, you don't work with Aboriginal agencies because of the capacity issue and my first employer was the Queensland Aboriginal and Health Council, who took it upon themselves at the point of the CMC inquiry - the previous peak body was non-operational so there was no voice. The Health Council, which was quite a strong peak body, took it on itself to work with the child protection agencies to develop a peak body and that's why employment changes. I didn't actually change jobs, but I was initially there until QATSICPP became incorporated and then they became my employer. I would often go to meetings with government with the CEO and the board members who were all treated by those people as if they had no capacity and yet they were women and men who were running multi million dollar health services and the Health Council runs 20 or more services across Queensland. So it's very difficult for anyone to say that Aboriginal and Torres Strait Islander people don't have a capacity to run this service. If you just look at - you know, it was hard to be there in child protection and hear that and hear people spoken to in the way they often were when they were in fact demonstrating clear capacity. Again, I'd be putting the capacity issue back on to the department. It's the capacity to work with those people rather than the capacity of the people.

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Ms Bray, if you were to hear evidence that's come before the inquiry that we now have the recognised entity in Family Support Services and kinship carers within the community controlled sector, but the rates are there, over-representation are still increasing, do you have a view about the effectiveness of how these services have been designed and implemented and delivered?---Yes. That was one of the reasons that brought me to make a submission because people could say, "Well, there is a community controlled child protection centre there so why aren't they doing it? The department has funded it." Firstly, they're not designed by Aboriginal people. They were designed by the department who in a very paternalistic way molded those services from what they were to the RE service. Those agencies had no control or say over that and if they strayed from their funding agreements, they would lose money and that is one of the issues I think the inquiry should consider is who should fund these agencies because I saw many an example of the department saying back to agencies who were trying to lobby, "Don't say that. We fund you. If you do that or say that, you will lose your funding." So it does not create a strong system if that happens. I suppose also just as evidence, those changes didn't close the gap for Aboriginal and Torres Strait Islander people and we've heard a lot about how the

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over-representation and those factors all increased, but at the same time the factors for non-indigenous children improved. 1

So it had the actual opposite effect. Instead of closing the gap, it actually widened the gap, and so now in comparison to their non-indigenous peers in the system, Aboriginal and Torres Strait Islander children are now much worse off than before the CMC inquiry. They were already worse off. Now they're, in comparison, much worse off. That gap has widened considerably. 10

Do you have a view - and if you don't want to comment, that's fine. You've already drawn our attention to the explanatory memorandum that really gave rise to section 6 of the act. You've also given evidence that AICCAs were widely consulted?---Yes. 20

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In your opinion, does section 6 give effect to the intention? Do you want to have a look at section 6?
---While I'm waiting for that, I suppose the way that I read the explanatory notes is that the concepts around Aboriginal and Torres Strait Islander people were to be seen throughout the act, not just isolated in those sections. So you will find chief executive functions and the spirit of what was there was meant to be considered throughout the act not just in - - -

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COMMISSIONER: I think that point was made in the explanatory memorandum itself?---Yes.

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MS STEWART: In your explanation of the AICCA model, though, I certainly got the impression that the community can - to respond to the needs of the family, you know, respond to what it is that they need at that given time?
---Yes.

So we would probably term that as provide casework now, I suppose?---Yes.

Do you, when you read section 6, believe that's captured the core capabilities of what the previous AICCAs used to do?---No. I think it's marginalised and really just sort of taken it down to a very minor level. If you look at the blueprint it listed five core areas. I'd probably see even more, but say if we stick with those five, well, this is only one of them. If services went from being a service for Aboriginal people by Aboriginal people to being a service for the department that was driven - sort of stipulated by the department - and the other problem was that we also saw very major regional variations. So in some areas I have - this is just - people told me that they would have - they would only be allowed to talk to a family - they would be told on the day that the child was to be taken. They wouldn't be involved in that decision. They would be allowed to go out with the department to that family as the horrible removal would be happening and they would be allowed to stay with the family and explain what just happened and would then not be allowed to go and help that family again. So you would be better not to have an Aboriginal service involved in that and if you could think of what that must have meant for those staff of that agency, the Aboriginal and Torres Strait Islander staff, who had to become involved in that system - and if they didn't do that they would lose their funding. So that the Aboriginal people had a choice of either doing it or not getting any service and not having anyone there for them.

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You just spoke about the five areas. You've mentioned them in this statement. What do you highlight as those five core areas?---37, I talk about the blueprint. Family restoration and support, primary prevention, family support and early intervention is the first one, intensive family support is the second, placement services is the third,

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carer support is the fourth, child advocacy and statutory advice program is the fifth, and the RE service is really statutory advice. So the department turned it from the service that was for Aboriginal and Torres Strait Islander people to a service that was for them and advice for them. Now, it's an important component, I'm not denying that, but you virtually had five and a half components that fell off.

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Are you aware of what level of funding each of these programs received following the CMC?---I have a global understanding. I couldn't give you exact data, but I sort of am aware - I'm aware that family restoration support, intensive family support - I'm not aware that they received a lot of funding, particularly initially, and then placement services and carer support there was some funding. The funding that the blueprint recommended go to this service model only went to the RE component. I can understand the department's issue at the time, because when the - and I don't endorse it, but when the legislation came in, in 2000 there was never any budgetary allowance for what it would take to provide a recognised entity service in reality, how you could provide that advice for every decision made for every Aboriginal person in the system. So to solve that problem I think the money was used for that and then all of the things that would have kept the kids out of the system were gone. So that it actually didn't solve the problem, because then they suddenly had four times as many kids in the system because they had taken the buffer out, so that it was not a very positive approach to take and it actually caused more problems.

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Ms Bray, have you had an opportunity to read the ATSILS submission, the public submission to the inquiry?---Yes.

Particularly recommendations 22 and 24?---I have.

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You have. I can provide a copy to the parties at the bar table and to the commissioner. It would probably be more properly tendered through Mr Duffy's evidence, though, on Wednesday.

COMMISSIONER: Yes, that's okay, but you can still refer - I can mark it for identification now or we can skip that step and just refer to it and when it gets to the exhibit number we'll be able to work backwards. Ms Stewart, how much more time do you think you will be? It's just I'm thinking of having a break and whether now would be a good time or not?

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MS STEWART: Last question, commissioner. We're on the last question.

COMMISSIONER: Excellent. Thank you.

MS STEWART: With that recommendation you can see how we've proposed that there be more enhanced responsibility

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for the recognised entity role so it can do more meaningful case management?---Yes. 1

In hearing your evidence, it appears that this reflects what would have been the intention of the act back in the changes in 1999. Would you say that would be true?---Yes. They were much more closely aligned with the initial intentions.

Have you ever had an opportunity of reading QATSICPP's submissions to the inquiry?---Yes, I have. 10

You know that they've proposed a similar model, health and wellbeing?---Yes.

Would you say that also - - -?---Yes, that is also much more aligned to the initial - my understanding of the initial intentions.

I have nothing further, commissioner.

COMMISSIONER: Thanks, Ms Stewart. Mr Capper, what about you? Do you want to go before or after we have a break? 20

MR CAPPER: We have no questions, thank you.

COMMISSIONER: Sorry?

MR CAPPER: We have no questions, thank you.

COMMISSIONER: Thank you. Mr Simpson?

MR SIMPSON: I have no re-examination. Can the witness be excused?

COMMISSIONER: Yes. Ms Bray, thank you very much for coming and sharing your views with the commission. The commission is grateful for you taking the time to make a submission in the first place, and then your willingness to attend and give evidence publicly?---Thank you. 30

We appreciate it. Thank you.

WITNESS WITHDREW

COMMISSIONER: Now, I think I'm going to have a break. Anyone against that proposal? All right, we'll resume in 15 minutes. 40

THE COMMISSION ADJOURNED AT 11.55 AM UNTIL 12.10 PM

COMMISSIONER: Mr Simpson?

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MR SIMPSON: Commission, the next witness I call is Allison Marie Glanville.

GLANVILLE, ALLISON MARIE sworn:

ASSOCIATE: For recording purposes, please state your full name, your occupation and your business address?
---Allison Marie Glanville, solicitor with the Aboriginal and Torres Strait Islander Legal Service based at 8 Union Street, Toowoomba.

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Please be seated.

COMMISSIONER: Good morning, Ms Glanville, thanks for coming?---You're welcome. Thank you.

MR SIMPSON: Could the witness see this document?---Yes.

Is that your statement for the commission?---Yes, it is.

Are there any changes or alterations you wish to make to that statement?---No.

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Mr Commissioner, I tender that statement.

COMMISSIONER: All right. Ms Glanville's statement will be exhibit 138 and both exhibits 137 and 138 will be published.

ADMITTED AND MARKED: "EXHIBIT 138"

MR SIMPSON: Now, you practise in the Darling Downs area of Queensland, southern Queensland?---Yes.

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And your areas of practice as a solicitor are civil law, child protection and criminal law?---Correct.

Your main focus with ATSil is in child protection and family law and domestic violence. Is that a fair assumption?---Yes, it is.

All right. You point to in your statement a number of difficulties that your clients have had interacting with the system in general with child protection matters?---Yes.

I want to take you to the first one of those at paragraph 12. There you say that a number of your clients have experienced difficulty in receiving information in court documents from the department following intervention for a child protection order. Is that right?---That is correct.

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All right. Now, from your experience do you think that is something that is particular to the indigenous community

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you represent or to clients generally?---It's certainly my experience - I suspect in my opinion that it may be because I represent indigenous children with ATSIL. I have represented, prior to working for ATSIL non-indigenous parents and the like in child protection and I didn't have any issues with my clients in that instance receiving documentation from the Department of Child Safety. That is not to say that I think it's specific to indigenous children or parents, but certainly it has been my experience since working for ATSIL - that has been my experience.

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Why do you think that is?---I suspect the cause - certainly indigenous or Aboriginal children and parents move around a lot and don't necessarily advise when they're going to move or change their mobile phone number a lot, therefore, the department certainly don't have the resources to potentially chase clients and serve clients. That's why I try to contact the department when a client comes to my office and say, "I'm representing," so that they know - well, hopefully - they can serve documentation to myself.

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Would it be fair to say that the majority of the clients you assist come from a situation where their financial needs are very high and their income is very low?---Correct. Significant portions of clients I represent, poverty is a significant issue; homeless is a significant issue.

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One of the challenges you outline here is that, for example, if a child is taken away from an indigenous family then the parents may lose their benefits and that then forces them into a different form of accommodation?---Correct. Although I'm not an expert on the child payments payable, it's my understanding that certainly there is a tax benefit associated with the numbers of children that parents have. If one of the children is removed from the household then that income stream is reduced, therefore, even though you may still have three children to feed, that makes a difference when your income is low in the first instance to how you continue to accommodate the family and feed the family.

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All right. You go on at paragraph 15 to talk about the distress and anxiety that a number of these families then suffer after a removal of a child. What I want to go to from there is the clients you're dealing with, are they getting - apart from the legal services that you provide, are they getting any other help in the community to help them deal with this stressful situation?---Certainly, clients that come to my office, I certainly suggest strongly and refer that the clients should - if they have a drug and alcohol issue or are deemed to - misuse alcohol issue, refer to ATODS or I refer clients and say, "Go to your general practitioner to get assistance with any psychological or mental health issues." As far as

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referring to agencies such as Centrelink, if they require additional payments because they are unable to afford food for the week, I certainly will refer them to those agencies as well; give them telephone numbers, even assist in making a phone call to assist the clients in order to get the best possible information.

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What's your anecdotal experience of the uptake of those services? You refer them on so they may assist themselves. What's the uptake like?---A good question. When they leave my office, I don't know whether they've gone over to a department. I don't know. I'm unable until I have the next contact with the client to know whether they've actually gone to that service. I can't force a client to go to that service. I can just suggest. I'm a solicitor and I provide legal advice and there is actually a crossover with social work, but I can't force a client to seek that assistance.

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No. But you would notice when they returned to you and when you're seeking, say, a review of an order for a child - you would know at that point whether in fact they've done something for themselves and taken up that advice?

---Indeed. When clients come back, I try and make another appointment or certainly try and contact the client and say, "Okay. Did you go to Relationships Australia and how did you go?" or completed a triple P parenting course. They will say, "Yes, I did and here's a letter," et cetera, although obviously I'm not allowed, you know, certain details of what was discussed in those meetings, I will certainly request that any document or a person I can speak to so that in future court proceedings I can advise the department, even prior to a court proceedings, and the court that my client has potentially addressed some of the issues in affidavit material around maybe drug issues or relationship issues or domestic violence issues through Relationships Australia.

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All the things you've spoken about, they apply across the community to any person. Now, what I'm interested in is what are the services your clients are getting at a secondary level from other Aboriginal communities that are there to help them because in dealing with the child protection system and helping them to get their family back on track so the children can come home? What services are available in your community for that?---There is an indigenous mental health unit at the Toowoomba Base Hospital and certainly there's a medical centre called Carbal Medical Centre, although they also have non-indigenous clients. I refer clients on to those services so they are two services available to clients, but as far as Relationships Australia, they don't necessarily deal - when talking about domestic violence issues whether around indigenous or specific cultural issues associated with domestic violence. So there is no specific service that I'm aware of in Toowoomba and the Darling Downs,

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because I also work around the St George, Goondiwindi,
Warwick and Dalby area that are specific to indigenous
health issues. 1

If I said there wasn't a holistic service for the
Aboriginal community to deal with child protection issues
in Toowoomba and Darling Downs, would that be fair to say?
---That would be correct. You must go to various
individual service providers to deal with the harm issues
but not specifically to child protection. You are correct.

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All right. Now, having worked with indigenous and non-indigenous families, do you think there are different issues that apply between those two types of families? ---Certainly working with indigenous parents and children there does seem to be a lot of homelessness and transients moving around a lot and that can be for various reasons; to run away from domestic violence situations; culturally is just - would like to move to St George because their family is in St George and then they'd like to move back to Toowoomba because there's other family members. So primarily I suspect that the issues with Aboriginal and Torres Strait Islander people is the transience issue as opposed to non-indigenous.

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All right; and do you see how that affects the way the department then deals with your clients?---Certainly having contact with clients is a big problem in terms of the department contact me in order to try and find a client; to find out exactly if they are attending the family group meeting; whether they will or won't attend drug and alcohol counselling. All of those follow-up issues which the department like to know is occurring is very difficult to keep a track of and certainly the department have indicated to me - and I've had discussions on, "I can't find this person. Can you help track this person down for me?" so - and that can be frustrating as well because certainly with any case planning it's an issue when they're trying to find a client. If they don't answer the phone call, it's deemed to be potentially non-compliance issue and that is a detriment to the client even though they may be - have changed their phone number and have moved again.

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Now, you do address that in your affidavit. You talk about how the department applies a certain standard whereby they might phone a client, say, three times and they can't get through to them, therefore they say, "Well, they haven't complied with interacting with the department." Whose fault is that? Is that a misunderstanding by the department is your client not being proactive enough in dealing with the department?---I say it's both sides. As I say, the department need to know obviously that - when a child is in care, they need to know what the movements by the parent is, but the parent feels, "Why do I have to tell them my movements?" They feel that it's an intrusion on their life so they also - based on the system which is current at the moment they don't want to engage with the department, so why should they tell them where they are? It's a twofold issue. I've explained to my clients, "It's really important that I keep in contact with you. I need your instructions. I can only do what you, you know, instruct me to do." So there has to be some way where clients understand obviously that they should keep in contact with me and the department, but that if they don't, ultimately this is about the best interests of their child and the department need to constantly assess and reassess, you know, how a parent is going with all of their programs

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and things like that. So I say it's two parties. Both parties need to potentially address those issues. 1

All right. So do your clients express to the idea that they mistrust the department?---Indeed. Obviously the department need to contact a client but if a parent - a child is under a protection order, the methodology of removing the child in some instances can be harsh and when the child is removed, a client significantly distrusts the government department the child safety officer who's come in because they feel like they were not consulted and so they shut down. They just completely shut themselves down. 10

Now, is that view one which is germane only to indigenous or non-indigenous?---I've never - when I was working with non-indigenous clients, I have not come across a situation - but only based on obviously one year's experience, but when I have been dealing with Aboriginal and Torres Strait Islander parents and children in the last 10 or 11 months, there is a theme of the removal without consultation.

Have your clients expressed to you any view about the cultural understanding of the department?---Certainly. I do have clients in my office who are frustrated that - potentially they're white female child safety officers. They don't have any consideration of family, of the way they're spoken to. In some instances I'm instructed it's quite rude, only what I'm instructed, so they get frustrated that there doesn't appear to be a consultative process, that it just has occurred and it was news to them that there were issues so it's a communication thing as well. 20

Now, have you had to as part of your advice deal with the recognised entity that might be working with the family or working with the department?---Yes, I have. 30

How do you monitor or assess that situation between the recognised entity and the department?---My involvement with the recognised entity is normally I've dealt with in the court system or at a family group meeting, not at the initial intervention or investigation stage. So any dealings that I have with the recognised entity is normally after the event, that is, normally after a child is removed and a court order is being sought in the court, so my discussions really are limited with a recognised entity only during a family group meeting which can be months - potentially months after a child is removed. 40

Do you think that that process from what you have observed of having recognised entities and the corporations that we currently have in place works for indigenous clients?---In my opinion, no.

Does it work for any client indigenous or otherwise?---I think that because the recognised entity - and this is my

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understanding - is funded through the department, they have a propensity or a perception that they will always side with the department. That may be completely incorrect, but it is a perception that certainly because of the funding model that the recognised entity is funded through the department or through the statutory area, they will side more with the department than actually consult with Aboriginal parents and children. 1

Now, just going onto the family group meetings, you have said in your evidence that they can take some time to be organised and you have also given evidence that it can be difficult to get parents to those meetings. What solutions could we come up with to facilitate proper family group meetings that suit both the department and the parent? 10

---Certainly I think that the current system as it is with the family group meeting - it relies on the Department of Child Safety stipulating when the meeting will occur so if - at the intervention stage if Aboriginal elders, Aboriginal community, were aware that parents were in trouble, children were in trouble and needed help, then there wouldn't be this race to try and group everybody together in, you know, three or four months' time to sit around a table. If the Aboriginal people and the communities were part of the process at the beginning, at the investigation and assessment stage - because an FGM or a family group meeting at this moment in time is normally held three or four months after an application is lodged and the children have been removed. How we get around that is making sure that the Aboriginal community and families are more involved and have knowledge and then can assist in an holistic approach to ensure that they attend a meeting. I'm not sure that the family-group-meeting model works at this moment in time on the basis that there will be difficulties in trying to group and regroup parents for a family group meeting in a department office. They will always feel an absolute pull to go there because of the whole mistrust issue. They just may filter calls. They will do potentially whatever's necessary not to have contact with the department because they may feel distrust. 20 30

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What's your experience in a cultural case plan being formulated for the children?---My experience has purely been putting forward ideas which my clients have suggested to me are important to them and their children and their whole family group, that is, I'm obviously not Aboriginal and I'm reliant on taking information from Will Hayward and the Aboriginal Legal Service on case planning and cultural issues and cultural case planning. So I try to put those matters forward to the Department of Child Safety. No one person can be an expert on cultural case planning. To get as much information from as many indigenous and Aboriginal people is really, really important.

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In your experience, what's the uptake? You put up these suggestions to your client and to the department. What's the uptake of those things by the department?---I have had a few meetings, a few family group meetings, whereby I have tried to put forward these issues around potentially art or indigenous groups, et cetera, when discussing a contact regime and I remember one instance it was completely rejected. It was like, "No, sorry, but the client has to decide between - whether having contact at the contact centre or at the department or being with the child at a cultural day." I tried to explain that it was very important to my client, the whole cultural case planning, but I was told no, "No, not this time."

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So do you think the inflexibility there is motivated by a lack of manpower in the department to change things, or is it motivated by a misunderstanding of what is needed for that young child in some cultural exposure?---I believe it's both. You can potentially never give the department enough money. In my experience they're incredibly under-resourced. There can be no doubt about that. The number of intake requests - exit - they are very under-resourced, but I'm not sure also whether in their training or their modules there is a significant amount of training in cultural case plans. So it's a combination. Even if they are under-resourced, it doesn't take hours to do a cultural case plan. It is a significant issue to clients and the Department of Child Safety potentially could really make it an important issue and make it part of the family group meeting and ensure that there is a case plan. That's all about training and education within the department.

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So do you get to deal with any indigenous case officers in the department?---I have met two - or one, my apologies, but we have not liaised directly.

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So you couldn't say whether an indigenous case officer tends to work better with your clients than say a non-indigenous case worker?---I'm unable to say.

Can you give any evidence about your observations of the child placement principle and how that it's applied in your

region?---Certainly. I deal primarily with parents whose children have been removed from their care and are in the placement of kin, or kinship care, or potentially foster care or non-indigenous carers. The principles, certainly in section 5B(b), the family are supposed to be the primary person who is potentially supposed to provide the upbringing and protection of a child, but it has been my experience that the parents are being blocked from having that involvement. In each stage if a child is removed and is under an order, even in the initial temporary order which is before the court, it can be months before they have any form of significant involvement. They are only granted two to three to four hours' contact a week with their child. So there doesn't seem to be in the first instance where children are under the care of a protection - or a directive from the department where a child stays with the home and they work with them, but there seems to be a significant issue where an order is sought more than any other non-intrusive orders, as I call them. There seems to be a default position of, "Let's just remove the child, then we've dealt with the risk, then we'll deal with the parents," more than working with a parent and child to work with the issues.

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COMMISSIONER: Can you just walk me through a typical situation and I'll pose some questions along the way? To what extent - or when are custody orders made as opposed to short-term guardianship orders?---Certainly in the first case when a child is removed from a home a temporary order is sought, and that is normally for 72 hours.

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All right, so that's the assessment order or a custody order?---That is a temporary order where the child executive is allowed to - or a court, a magistrate, states that a child can be taken for assessment purposes.

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Yes, okay, so that's - right, okay, I'm with you there. Now, what about custody itself where the chief executive actually gets some parental power?---It's normally really in the first instance, because although they don't have guardianship - - -

No?--- - - - when a child or a baby is under an order, if it's a temporary or for a court assessment order, the chief executive has that authority to do whatever investigations are necessary and the child does not have contact with the parents, or has only very limited access.

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Okay, but you get custody - the custody and guardianship orders are the only ones that actually transfer parental responsibility and power to the chief executive? ---Certainly parental - that's correct.

Now, when does the chief executive, in your experience, want that transfer of power? When does she look for that? ---Well, it's always granted in the first instance when an

investigation and assessment is going to be completed. I always argue it can be done without removal of a child, but - - - 1

Yes, but how often does that get up, that argument?---Well, it depends on the magistrate, but not very often, because of the - obviously any harm to any child. It is essential that obviously children are not harmed and are protected from harm.

Sure?---So a magistrate will always be very, very cautious. 10

All right, well, harm is defined by its effect on a child's wellbeing?---Indeed.

In your experience, what harm is identified by the department in their affidavits more than most, or more often?---I say - - -

Most often?---Domestic violence, in terms of with parents, that a child may witness domestic violence.

May?---May. Drug and alcohol misuse and neglect. I'd group them - - - 20

Now, they're risk factors, obviously. They actually aren't harm themselves. They have the potential for harm? ---Indeed.

Is that the way it's presented to the court?---It's presented to the court that it may be an unacceptable risk. So I believe that's the second limb of section 10.

Yes?---So there is potential, not that material before the court has proven harm but there is potential for that harm, or likelihood of harm. 30

How does the court work this through? Risk - it's an odd way it's done, but it's been done for a long time this way, but the act presents itself as being harm based, but in fact most child protection action is based on risk, not proven harm. But by definition an unacceptable risk is harm, so somehow people have to work out when an unacceptable risk is actually harmful?---Yes.

Do the magistrates do that process of reasoning?---Some do. Magistrates' workload is unbelievable and I always try to set matters down for an interim hearing in order to go through the process of trying to go through the affidavit material and say, "Hang on, is this justified?" 40

Okay, so the way we do that, they either have proven harm, which will be past harm, nothing you can do about that? ---Yes.

So past harm is evidence of future risk, presumably?---Yes. 1

So in practice, under the practice framework, the case worker will have assessed, using the SDM - will have come out with - inputted all the information and the SDM has spat out unacceptable risk?---Yes.

The affidavits, what, do they say, "The thing spat out unacceptable risk, your Honour, therefore, you would conclude that there is one." Is that right?---Ultimately, yes.

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Right?---The magistrates do not have time to read the voluminous material, but ultimately it is past behaviour will influence future behaviour, therefore it is a risk - - -

Sometimes?---That's the argument.

All right. It's like forecasting the weather. You get that wrong 60 per cent of the time. What about when the department comes along and says, "We think you should make an order which is called custody or guardianship that has the effect of transferring to the chief executive parental responsibility." That's a big step because what that does is at that point replaces the parents by the chief executive?---Yes.

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Once you've got parental power you can do anything, and sometimes even more than the natural parents can do under the law. What criteria do the magistrates use to work out whether transfer of parental responsibility is justified and what is the usual justifier?---The usual justifier is relying on the affidavit material filed by the Child Safety Services or the officer and if, obviously, there is a domestic violence order in place and there has been a breach, obviously they would rely on that evidence, but it is very, very subjective in my opinion and the magistrates hear from me. They hear from the department and just weigh it up and say - - -

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But weigh what up?---They weigh up the information provided by the child safety officers that they were observed doing something. I always put in, you know, "You weren't there. What happened? Did you witness it?" et cetera, but magistrates are cautious.

Okay. In most cases it's a risk of emotional harm. Is that a fair assessment?---Yes. 40

It's emotional harm?---It's emotional harm and, to be frank, our clients will never get over that issue of emotional or neglect because they live in poverty.

Is there any evidence presented to the magistrate in order to balance competing emotional harms, potential emotional

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harms, that is to remove or not to remove, "Do I do more emotional harm by removing than not?" That's the question, presumably, they ask themselves, but that has to be an evidence based answer, doesn't it?---Yes, it does.

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So what evidence is produced to show that what the department is offering as a substitute parent is going to be better for this child emotionally over the long term than being neglected at home?---A good question. Once again, the only information that a magistrate has is the affidavit material. I have very much argued on a Friday afternoon in Toowoomba Magistrate's Court when there has been the removal of a baby, "Wouldn't it be more harmful to remove a baby from a mother, a newborn baby, if they're bonding? Wouldn't that be more harmful?"

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You're posing the question to a magistrate who's helped by a departmental officer and no-one in the room would really have any idea about the answer to that question, would they?---Exactly.

Not on evidence based, unless there's a child developmental expert?---That's exactly right. I obviously am not such an expert, but I can certainly argue that, you know, the bonding of a child and removing a baby from the mother certainly - would that not cause more harm, but obviously - and I have also heard magistrates - well, magistrates have said to me, "I'm not bound by the Rules of Evidence, Ms Glanville."

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No. Evidence is still pretty handy when you're making decisions about guardianship, which is just a word but its effect is more dramatic than a Family Court judge making a residence order probably?---Indeed.

All right. Can you tell me this: under section 61 - this is the types of child protection orders that you make - it sets out what the options are and then section 59 says - which is a bit odd, but it says what you have got to look at, what you have got to be satisfied about before you make one of those child protection orders?---Yes.

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In the first section it says - they're all cumulative. They're all conjunctive not disjunctive. So you have got to prove all of them, (a) to (e), and one of them, the first one, is that the child needs protection. Okay? It makes sense. It's a child protection system. If you then go to 59(6) in addition to those in paragraph 1, "Before making a child protection order granting long term guardianship," that is transferring until 18 all the guardianship rights of a natural parent, "the court has got to be satisfied that there's no parent willing and able in the foreseeable future" - so, fine. Can you tell me what evidence is produced on that point?---I have attended one hearing where a grandmother was seeking to have her grandchildren, the children had been removed from the

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parents, and it's very difficult to put forward a grandparent under the act - I say section 113, you know, you can only be a party potentially to hear not necessarily be part of the proceedings and the grandmother obviously had to obtain all the necessary documentation around, a blue card, et cetera, in order to then be a kinship carer in order to try and be a guardian.

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Presumably because without a blue card you're not able. Is that right?---That is my understanding. Potentially, you can go to the Family Court system under the Family Law Act and try and have custody of a child. It's potentially easier, but if there is a child protection order in place - - -

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That's because the definitions are different?---Indeed.

Grandparents are included in the definition of parent? ---Indeed.

Let's go to the next thing, and this is the first disjunctive. It's either no parent in the foreseeable, so we have got a child in need of protection with no viable parent into the foreseeable future or the child's need for emotional security, which is assumed, will be best met in the long term by making the guardianship order?---Yes.

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How often is that limb of subsection (6) of section 59 used to justify a guardianship order?---My experience on that issue is limited, so to be frank, I'm unable to say.

Can you say in what circumstances it is used or is intended to fall?---Well, certainly when the Department of Child Safety are seeking a long term order then they would be pushing, in my opinion, for a long term guardianship to the chief executive other than a grandmother, because she's an unknown factor potentially, "Wouldn't it be safer to be - - -"

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But that's not the question. The question is: does the child need protection. Is there a parent able and willing into the foreseeable future or would it be better for the emotional security of the child. They're the questions. They're the only questions?---Yes. Well, certainly there - - -

And safety is a part of that question?---Indeed.

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But it's not the only thing. All right. Is there ever any evidence in your experience put up to show - say the grandmother. We've got a grandmother without a blue card, but, you know, she can put in police records, I think you can get them off the Internet yourself now, to show nothing is known about her or that she's been a grandmother with a safe pair of hands for 30 years, on the one hand; or the department can say, "No. Give us guardianship. We'll take

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the child and we will place that child with a person or persons unknown." That's the option, isn't it?---Indeed.

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So how does a magistrate work out that option B with a person or persons unknown is better than option A, grandmother without a blue card?---That's a good question, and obviously the grandmother bears the burden of proving that she is more suitable; you know, like I said, it very much comes back to history. You don't want a child to be placed in a worse position. I suspect in this instance the Department of Child Safety have done an investigation with the child who is currently in care. So they've done a lot of investigations and the child in care has been with that carer for a long period of time and so therefore because the child has been with a carer for a long period of time, why should - you know, it might be two years we're looking at here. What would be the effect on a child going to the grandmother even though the grandmother is related? So it's all about stability - - -

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The effect is that you would disrupt the child's stability in the short term?---Exactly.

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But the real question is: would you be meeting the best interests of that child's welfare in the long term by that short-term disruption or not? That's a pretty hard question to be answered on a Friday afternoon in a Magistrates Court at Toowoomba?---Yes. Guardianship matters are certainly not necessarily heard on a Friday afternoon, but certainly guardianship questions go to a hearing.

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All right. One of the things it seems to me - and this is really for you, Mr Hanger - is that the options you can have are what you have got at the moment. You have got a system that's controlled by best interests that everybody has got a different view about and you can base it on emotional harm which again about which there is no consensus and you can leave it to magistrates and social workers to work out those subjective things, putting aside their own prejudices, middle-class welfare biases, cultural shortcomings and things like that. That's what we have got at the moment. All that you can do is you can say, "Okay. We've got a system that's run effectively by social workers and magistrates," and magistrates may not have a lot of experience in best interests jurisdictions, but they are good at finding facts. That's what they're trained for.

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That's what they do. So what we will do is if the department is arguing for a transfer of parental responsibility to it or another, it has got the onus of proof that that's in the best interests of the child and that it has done everything it can short of removal to keep the child safely at home but for one reason or another that has failed and unless it can do both prove the harm, including that the risk is likely - let's change it from unacceptable risk to likely risk because we understand that word a bit more and let's realise that "unacceptable risk" in family law means possibility, whereas in child welfare law means probability according to the actuarial tool.

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All right. You prove that you're going to do more good for this child by removal than harm by non-removal and leave it to the department to prove that according to the standard that we call Briginshaw which is according to the seriousness of what you're about to do which removing parental responsibility from a natural parent is pretty drastic. So you think you would be right up at the top end of Briginshaw ordinarily. What do you think about that?

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---Absolutely. A lot of the evidence and the decision-making is based on risk to child as far as, "We'd better do this. We'd better remove the child because if we keep the child in that position, we're liable."

Yes?---That's sort of risk averse and, of course, I once again say all children should be safe and should not be exposed to harm but it's - you've got to get to the facts and nobody knows what happens in a private home.

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Investigative and assessment must be funded very, very well in order to ensure that any harm allegations are investigated very well and as a last resort removal. 1

See, the problem is, it seems to me, partly with the structure of the act that once the guardianship order is made, it then becomes - everything else after that becomes an administrative decision which is reviewable in QCAT but not by the court and the extent to which you try to reunify and/or ask for the revocation of a long-term guardianship order which is now no longer necessary is left entirely to the chief executive?---Yes. 10

The administrative decision not to do any of those things is not reviewable, but positive action is?---Yes.

So it seems then that the decision to place the child where and when and with whom and how often is again an unreviewable decision by the chief executive without any court superannuation so if you're going to have that system, surely one of the factors that has to be decided by the magistrate is: who are you going to put this child with and how long is that going to last as opposed to here's the child, "Here's the bundle of guardianship rights. Now you decide where you're going to place the child, how good that's going to be, whether that's going to break down four, five, six or 35 times over the child's life and we'll see the child when they're 18"?---Mm. 20

So it seems that one way of actually protecting children from the emotional damage of wrongful removal, as opposed to not protecting them from non-removal, is for the alleging party to actually prove preliminary or pre-conditional facts to the holy grail of guardianship and, as opposed to it being based on the risk of future harm, it's based on proven past harm and likely risk of repetition of that or some other relevant harm?---Yes. 30

Okay.

MR SIMPSON: I might ask this question. The question just touched on the idea of where you place the children so you put them in care. What is your experience of your client's family members putting themselves forward as potential kinship carers?---I have attended quite a few family group meetings where an auntie will put herself forward, but she's reluctant or is unable to fill our necessary paperwork due to literacy problems so - although it's interesting in the last month the department have been incredibly proactive in assisting certainly an auntie who attended a family group meeting to put her name forward to be a kinship carer. Past that was not the case but there seems to be some sort of shift now to doing whatever is necessary to try and encourage family members in assisting for kinship carers' applications in order to have a child in their care. 40

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Right. That's a positive thing. The department is now working to get kinship carers?--Well, all I can say is most recently I had a meeting where there seemed to be a shift of attitude.

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All right, but all those clients have had their children taken from them - of those in total, what would you say the rough percentage would be where a member of their family has come forward to be a kinship carer and have been accepted as one?--And has been accepted?

Yes?--20 per cent.

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What are the barriers to that person being accepted as a kinship carer?--Well, one of the key areas is the paperwork involved. Just because a family member comes forward and says, "I would like to care for my grandson," or, you know, a niece or nephew, there are still steps that must be undertaken, blue-card paperwork, et cetera.

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My clients and certainly, you know, their aunties and uncles, don't want to hang around the department office. They want to go. They don't want to be there. So in order to fill out the paperwork and assist with paperwork they need to obviously either come to my office and I assist, but they don't feel that they can go anywhere else in order to fill out the relevant paperwork in order to be, as I say, compliant and to be a nominated kinship carer.

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How much paperwork are we talking about here?---If you ask me there would be - it would take me 20 to 30 minutes, but for a client who may have left school when they were 10, who can barely read and - sorry, not a client, an aunt or an uncle, who left school when they were 10, it is extremely daunting. It's extremely - it's a block. It's like, "No, this is too difficult. I just can't do this."

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All right. Now, that idea of literacy and the problem with that, does that apply equally to your clients, as a general rule, that there's poor literacy and therefore poor understanding of the orders that are coming their way? ---Absolutely. I've had clients in my office and I've literally spent several hours reading an affidavit and reading an order. They just do not understand the process and don't understand what they're - well, they say what they're being accused of. So it's a big problem.

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Then coupled with that is there any problem with how often or how - sorry, how far out from a hearing you might get the paperwork to take instructions and to help your client understand what they're facing?---Certainly. I mean, I have been served documents via email hours before court. Clients have not been able to be served, or say they may have been served but cannot understand, and literally days beforehand, up to hours before the first mention. So I can't possibly go before court and say, "My client instructs that she or he are contesting," without reading material. So therefore the process is delayed. I have to seek an adjournment, then I have to get instructions, then I have to get further information from the department. So in the meantime there may be a temporary order over a child until I'm able to get the relevant information and instructions from my client.

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Now, do you think there's a - say the commissioner recommended a change to the court rules whereby you had to have your material in by a certain date, would that fix the problem?---It would assist, because I can only do what my client instructs and I need to get the information. I need to know what the department's case is. Getting that information a lot sooner than the day before would certainly be very, very helpful, and it would certainly then allow me to ask questions of the department based on the affidavit material, "What do you mean this? Where is this evidence? You haven't given me a drug and alcohol test. Why are you relying on this information?" So it

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allows me to go through the voluminous material in order to ask further questions. 1

COMMISSIONER: I've heard that there's no adjournment of a child protection matter without a purpose. Is that your experience?---No. I've had to - I seek adjournments - well, I say for client instructions, if that's a purpose.

What about from the department? What's your experience with adjournments? I mean, you look at the adjournment figures - you can't find them, actually, but if you look at the annual report figures for the Children's Court you will see what they call interim orders which include adjournments?---Yes. 10

Interim suggests that there is a purpose in making the order, whereas an adjournment suggests, to me, anyway, often - not always, but often that someone is not ready, the material is not ready. It's putting it off to another day or another magistrate, hopefully. What's your experience? Which of those is the most usual explanation for an adjournment?---Even if either party asks for an adjournment there's still a temporary order to - interim order to the chief executive. That just seems to be a default thing. I'll argue why? Why, how can you warrant it, but that just seems to be a default position of, "Even though we're seeking an adjournment and even though nobody has read anything, let's just put in an order." 20

Well, talking about default positions, once there's a guardianship order made one of the next steps that the department can take and arguably should take is to reunite the child with the family as soon as possible. The counter-argument to that is what's point of taking a child if you're going to try to reunite them? Why take them in the first place? Maybe you should only take children you're going to keep because they need to be kept for their own protection. What experience do you have acting for clients where there are attempts made at reuniting them with a child who has been removed?---In the first instance when a child is under a custody order, as I'll call it, the contact between a parent and the child is very limited, so I need to constantly argue that in order for reunification to occur contact has to increase, because you're entitled to contact, although it's not written anywhere on how much contact you're supposed to have. 30

Under the principles it's supposed to be appropriate?---I'm unable to find any case law. I tried with Garry Scott of our Murgon office and Yolanda of our Bundaberg office of ATSILS on Friday to try and find what is an appropriate contact time for parents whose children are under an agreement. It's very - we're still searching. So the whole subjective element around contact, et cetera - but coming back to your question on reunification, it's a really difficult stage to get to. It's like pulling teeth, 40

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to be frank.

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By this stage is the usual order a long-term guardianship order in favour of the chief executive, or a short-term guardianship order, or could it be either?---Either. A one-year or two-year custody order.

Would there be any advantage in moving the short term from two years to three years, the duration of a short-term order, do you think?---So increase the order?

Increase the period of time before you make a long-term order?---You could give it any number, but ultimately I say that it's never too late to address the harm issues. If you're saying, "We'll give you three years," and not address the harm issues, what's the point?

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Well, the other question is what's the point in reunifying, or trying to reunify, with parents who have got problems that nobody has helped them deal with?---Indeed. It's never too late, and that's why during, in my opinion, the investigation and assessment stage immediately the parents should have intensive, holistic approach of addressing the issues, because at this moment in time there is - - -

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Nothing?---Nothing. They're on their own to - - -

How long would you give them to show that in the foreseeable future they might be safe and willing and able?---Look, obviously I'm not an expert, but I think you're - I really think that in three to six months if they have intensive assistance from lots of different areas in a holistic approach involving community, that then the order or the application for an order is assessed - - -

After that?---After that.

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Not before that?---Not before it.

And not without that?---Well, you need that. What is the point of the act - - -

But you don't have it now?---They do not have it now.

See, that seems to me to be one of the preconditions that you could impose before you make a long-term order. You've got to prove that you've done everything to help the parents become willing and able?---Indeed, and if a client who has no money has to go to four different therapists in four different parts of town and they're barely eating because they have to go to the assessments because they have no assistance, their stress levels go higher and higher and higher and not addressing it.

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That's a different thing. Requiring you to prove that you've done everything that you can, you being the system,

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is different to saying the parents have to go to these programs at Townsville when they live at Murgon, or something like that. 1

MR SIMPSON: Might that be a convenient time?

COMMISSIONER: It probably is. All right. What time are we - it's 10 past 1. It's more than convenient. Well, we'd better make it half past 2 today then.

THE COMMISSION ADJOURNED AT 1.10 PM UNTIL 2.30 PM 10

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COMMISSIONER: Thank you, Mr Simpson. 1

MR SIMPSON: I might just ask a few questions of clarification.

Before lunch you gave some evidence about short term guardianship orders and how they were used in Toowoomba. What are the length of these orders are you speaking about? ---Perhaps the word guardianship is incorrect. Normally, guardianship are long term orders, as I call them.

Yes?---So as far as custody orders, they are normally between one and two years. 10

They're the ones that you say are often used in Toowoomba? ---Indeed.

I may have misheard you. I thought you said short term guardianship?---I may have actually used the word guardianship.

Yes, yes.

COMMISSIONER: What are they used for? 20

MR SIMPSON: Well, there's long term guardianship orders and then there's short term orders.

COMMISSIONER: Yes.

MR SIMPSON: They're different. They're different animals?---They are.

I think they're just made in a - - -

COMMISSIONER: Don't they have short term guardianship as well as custody?---No. 30

MR SIMPSON: Mr Selfridge might assist you in that.

MR SELFRIDGE: I was going to ask a series of questions on that particular issue - - -

COMMISSIONER: Okay.

MR SELFRIDGE: - - - just to clarify those few points.

COMMISSIONER: Right, sure. Thanks. 40

MR SIMPSON: Yes, all right. No, I have no further questions. Thank you.

COMMISSIONER: Thank you. Mr Selfridge, you're up.

MR SELFRIDGE: Yes, thank you, Mr Commissioner.

Ms Glanville, the only questions I have for you on that particular point are those points in terms of how the act is interpreted and how it's administered. Both Mr Simpson and the commissioner has asked you several questions in relation to your experience in Toowoomba and the Darling Downs area of how the legislation is interpreted by the court, administered by the court?---Yes.

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But you would agree first of all that by definition there's no provision for long term custody as such, so it's long term guardianship?---Indeed.

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Section 61 defines the types of orders and section 62 the duration of the orders, those two in conjunction. We don't have any long term custody, but what we do have is a provision for short term guardianship, as such?---Yes.

In your experience, has this ever been applied - by saying has it ever been applied, I mean have there ever been orders sought in your experience seeking short term guardianship of a child?---Not in my experience.

No?---No.

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It's something I would suggest to you that's used very liberally?---I'm unable to say, Mr Selfridge. I could only give you my experience.

Okay.

COMMISSIONER: I thought that was the case that they used short term guardianship orders and sometimes they roll them over.

MR SELFRIDGE: Can I put this - I may be able to put through the witness, your Honour, that perhaps the most applicable or the kind that would be most applicable, wouldn't you agree, Ms Glanville, could be if parents were non-compliant for whatever reason, but there were some serious medical issues in relation to the child that there might be an order sought in those types of circumstances? ---There may be.

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Yes. You know, where there's an impending need for a surgical involvement or a medical procedure or whatever it might be?---Indeed.

Yes?---That is the purpose.

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Okay.

COMMISSIONER: Sorry, what's that? So they use the guardianship order, what, if there's some medical intervention required?

MR SELFRIDGE: I'm just giving the example of it

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occurring, Mr Commissioner. What I'm saying, in effect, is this: short term custody of itself is generally enough to secure the child's safety and wellbeing. 1

COMMISSIONER: Yes.

MR SELFRIDGE: Situations, although they're used very sparingly, where short term guardianship might be applicable or necessary, where parents are non-compliant when the child is in urgent need of medical attention, et cetera. There might be a situation where an order is sought for short term guardianship - - - 10

COMMISSIONER: Guardianship.

MR SELFRIDGE: - - - as opposed to short term custody.

COMMISSIONER: Custody.

MR SELFRIDGE: Yes.

COMMISSIONER: Right. But custody by definition is short term. 20

MR SELFRIDGE: Yes, by definition and that's the point I made initially.

COMMISSIONER: Yes. Custody only gives you day-to-day parental rights.

MR SELFRIDGE: That's correct.

COMMISSIONER: It doesn't give you long term parental rights.

MR SELFRIDGE: That's correct. 30

COMMISSIONER: Right.

MR SELFRIDGE: Under sections 12 and 13.

COMMISSIONER: Yes. Then you have got the short and long term guardianship. The short term guardianship lasts up to two years at the moment.

MR SELFRIDGE: That's correct. Yes.

COMMISSIONER: And long term guardianship lasts to the eve of your 18th birthday. 40

MR SELFRIDGE: Yes; which would be, in effect, your 18th birthday because there's 2359 going on, yes.

COMMISSIONER: Yes. There would only be seconds in it.

MR SELFRIDGE: Yes, there's only seconds in.

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COMMISSIONER: Yes, okay. I understand all that, but what I was sort of interested in finding out was really whether the custody order - I'm looking to see whether we still need custody and guardianship orders or whether there is some other mechanism other than actually transferring holistic parental rights to the chief executive or someone else where you can give them the responsibility of care without everything else that goes with it of being a parent necessarily. 1

MR SELFRIDGE: Yes. 10

COMMISSIONER: You see, at the moment - - -

MR SELFRIDGE: The short term directive, as such, in terms of those issues which guardianship is sought for in the short term, medical procedures, et cetera, may be something that you might consider.

COMMISSIONER: Yes. See, there's an argument that guardianship to the state gives the state more power than natural parents actually have.

MR SELFRIDGE: I understand that. Yes. 20

COMMISSIONER: Yes. And whether it's the parens patriae or child protection guardianship - let's leave that in abeyance for the moment.

MR SELFRIDGE: I understand.

COMMISSIONER: My concern this morning was that it seems that it's really - you have got this tightly regulated system which we call the statutory system. Then you have got what we call the secondary system, which is totally unregulated, and it's an administrative system run by, to a greater or lesser extent, the chief executive. 30

MR SELFRIDGE: Yes.

COMMISSIONER: The evidence I have heard, the criticisms I have heard is that the secondary system is underdeveloped and the tertiary system is overdeveloped, overutilised, overaccessed. The mechanism for accessing the tertiary system - what we might call the tertiary care system - is the transfer of parental rights under a guardianship order.

MR SELFRIDGE: Yes. 40

COMMISSIONER: That's the only mechanism. So then you go from this tightly regulated transparent court supervised statutory system to a completely unregulated discretionary administrative care system.

MR SELFRIDGE: I don't know if it's completely unregulated as such, Mr Commissioner, because, in essence, that answer

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will another forum, as such, under QCAT - - - 1

COMMISSIONER: Yes, okay. To the extent to which - that's one of my terms of reference to work out actually how accountable the system is under QCAT.

MR SELFRIDGE: Yes.

COMMISSIONER: But it moves out of the court to an administrative tribunal.

MR SELFRIDGE: It does, sir. 10

COMMISSIONER: It's regulated only to the extent that someone complains and seeks a review. You have got other oversight mechanisms. I understand that, but what I'm saying is you have gone from this tightly controlled court supervised statutory system to a much less regulated system where the court has no - apart from the chief executive deciding whether to make a revocation order or a variation order or something like, or something else. The court only flicks in and out again as required.

MR SELFRIDGE: Under section 65 as required. Yes. 20

COMMISSIONER: That's right. Whereas, arguably, the court should maintain a supervisory role during that long period of time for some children between three and 18.

MR SELFRIDGE: Didn't you touch on that in one of the previous sittings where you said - - -

COMMISSIONER: Probably.

MR SELFRIDGE: - - - in effect, "Could it should it not be reviewable and that was something you suggested before?" 30

COMMISSIONER: Yes, yes. That's another option, but there are probably a range of intermediate options as well so that the question is in 2013 should the guardianship order, the old *parens patriae* method - is it still fit for purpose or has it outlived its usefulness and is there some other mechanism that the state can use to give it the level of control, if you like, over a child to give the child the care the state wants to provide it, whatever that is?

MR SELFRIDGE: I think there's some diluted process issue. 40

COMMISSIONER: Yes.

MR SELFRIDGE: I'm sure you're very much aware, Mr Commissioner, in the Family Court and under their processes, as it currently stands, those guardianship aspects, long term welfare aspects, if you like, are diluted at certain times depending on the necessity and the application of each individual case.

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COMMISSIONER: That's right. That may be a better less dramatic, less permanent - see, because the thing about childhood, you have to take it seriously because it's not permanent.

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MR SELFRIDGE: Yes.

COMMISSIONER: For every year that we take mucking around with a child's life it's an 18th of that child's period of childhood gone.

MR SELFRIDGE: I suppose the only point I was trying to make there - and I'm sure again you're very much aware of it - is there is an application in this regard, short-term guardianship, but only in certain circumstances where it's really necessary to have that application.

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COMMISSIONER: Yes, you see, I'm not sure about the - - - 1

MR SELFRIDGE: That's my understanding of it.

COMMISSIONER: Yes, I'm not sure what continued usefulness short-term guardianship as such has, because again what do you want it for? What do you want somebody's parental rights in a short term for? What are you going to do with them?

MR SELFRIDGE: It's probably too broad an umbrella as such. 10

COMMISSIONER: Yes.

MR SELFRIDGE: I don't really know whether there's a need to take instructions in relation to that.

COMMISSIONER: Yes. I want to hear about custody and guardianship in the modern concept and in modern child-protection regimes what continued role they should play, whether there are alternative ways of achieving the same objectives through less - given that the whole act is allegedly premised on the least intrusive, it seems to me that you have jumped very quickly into the most intrusive possible without any sort of slowing down of the process and having a look and then you have got a two-year order which seems to me, at least until I'm better informed about it, an encouragement to take a child and then try to reunite the child which seems rather counterproductive to me, whereas you should know before you even remove a child whether you have got somewhere for that child that suits and how long you're going to need to keep the child and simply having to prove that there's no parent willing and able in the foreseeable future - what is that? How long is that, the foreseeable future? 20 30

MR SELFRIDGE: Isn't it by definition two years?

COMMISSIONER: Is it?

MR SELFRIDGE: Arguably.

COMMISSIONER: Why not say two years?

MR SELFRIDGE: I have had this argument, I can assure you, on a multitude of occasions. 40

COMMISSIONER: Yes, well, what's the answer?

MR SELFRIDGE: It depends on who's listening.

COMMISSIONER: Okay. Anyway, you understand my point. You see where I'm going.

MR SELFRIDGE: Yes, I do.

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COMMISSIONER: Often I ask questions of witnesses simply to flag to everybody else what I'm thinking or where I might be thinking so that you have got something to aim at. I might even know the answer sometimes.

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MR SELFRIDGE: To take something from that, interpreting what you have just said, Mr Commissioner, are you thinking that there should be some submissions made in relation to less intrusive guardianship-type applications but only when necessary?

COMMISSIONER: Yes.

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MR SELFRIDGE: Secondly, this is rather restrictive, two years and 18 years, and everything fits within those boxes they're in. There could be something else.

COMMISSIONER: Especially if your system or part of - if you're going to have a system not for child protection but for protecting children which might be a much broader concept, then if one of your ways of protecting children is to reduce risks by helping the parents who have problems - if that is one of your ways of protecting children, it might be worthwhile having - and given the uneven nature of addiction that you're going to have - it's not a linear arrangement. You're going to have ups and downs over a period of time. It's not going to be solved in a fortnight of rehab. It might be that you might actually have an aim and say, "Look, in two years' time or three years' time we're going to work together and we're going to get you into a fit state to get your children back," subject to not taking so long that the argument is that, "You don't want to disrupt the children now. They're settled where they are."

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MR SELFRIDGE: Yes, and I go back to the point you raised this morning though in relation to what's the least harm or the least detriment.

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COMMISSIONER: It seems to me you need expert evidence about all that stuff.

MR SELFRIDGE: Yes, there would have to be expert evidence to be determinative as opposed to mere submission on numbers.

COMMISSIONER: The other option I may as well raise now it seems to me is you might have an actual hearing about the termination of parental rights, not a guardianship-focused question which in the act simply puts out child in need into the foreseeable future and/or emotional stability. If you tick all those boxes, you have got a guardianship order which means by definition a transfer of parental rights and if you get my parental rights, it means you get something and I lose something and the question is: if I'm going to lose such a really important right or authority or

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responsibility, whatever you call it, I'm entitled to a full hearing about that. 1

The question is whether that's a best-interests-type question or not or it involves some other test to determine those sort of things and what are the consequences of terminating your rights as a parent or your responsibilities as a parent and transferring them to the state. It just seems to me that the long-term guardianship order has the potential to mask the serious effect on the natural parents because it's child focused, as it should be, but it's easy to make a guardianship order and forget that in doing that you're terminating parental rights. 10

MR SELFRIDGE: Isn't it the converse of how the law is applied in the Commonwealth in relation to parental rights, long-term-type welfare issues, where that's the first consideration? I don't know. I'm not suggesting one is right or one is wrong because they're different jurisdictions and different tests apply, but in that jurisdiction certainly the long-term issues, the so-called guardianship issues, are the first consideration legislatively before the rest falls, whereas it seems to be back to front here where it will naturally follow - in the child-protection arena it will naturally follow that if there's a long-term order made, guardianship follows. 20

COMMISSIONER: It seems to me if you invert the question, you would get a better result or get a better answer, that is, is there a way I can protect this child without terminating the natural parents' responsibility and read for that relationship?

MR SELFRIDGE: Or a dilution of that in order to protect the child. 30

COMMISSIONER: Yes. I would like to know what the act means by "family support". It doesn't define it. It's not self-defining and the administrative system certainly hasn't defined it, but it might include such things as helping the parents with drug addiction or alcoholism or family violence.

MR SELFRIDGE: Isn't there a danger in overprescribing the definitions in relation to them too?

COMMISSIONER: There is, absolutely, but I think there's a bigger danger in under-prescribing. I mean, you have got the rule discretion argument. You will always have that in a welfare jurisdiction. 40

MR SELFRIDGE: Yes.

COMMISSIONER: Sometimes you make a system overly flexible at the expense of clarity and accountability. You have got to be able to measure - you have got to be able to know

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what the system is doing to see if it's doing what was intended and to know that you have got to know what the goal was. What were the policy goals that we set out to achieve there in the legislation? What's the system actually doing? Is it reflecting those aims or is overriding them? You can't tell that until you have one of these things if nobody knows what the goals are or the tests are so broad that you can virtually define your own. It's whoever is asking the question can supply the answer and neither be right nor wrong nor reviewable.

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MR SELFRIDGE: And who is doing the listening too.

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COMMISSIONER: Yes, and you can't really be reviewable. You certainly can't be reviewable under the house principles, for example. I have never seen an appeal based on an unreasonable exercise of discretion in this system and yet I would have thought this system would be the most vulnerable to that sort of application saying that you have taken into account an extraneous fact or misunderstood the facts or whatever or for some reason I don't know, I can't actually identify, but you went astray. Until you get a system like that you haven't really got an accountable one, it seems to me, and all you have got here is a review of a discrete issue. It's not a systems' review. There should be, and sometimes you can have belts and braces and still lose your pants.

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MR SELFRIDGE: Isn't that accountability to some degree at least intensified or bettered by the legislative amendments that were brought into operation in October 2011, ie, the principles 5A and 5B? So it's an application of those principles in interpreting the legislation in section 59 in that threshold criteria.

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COMMISSIONER: Well, again, but if your client doesn't think that those principles are enforceable, that they're just rough guidelines, what's the point of them?

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MR SELFRIDGE: That's another - whole different line of argument, I suppose.

COMMISSIONER: Yes.

MR SELFRIDGE: I've probably addressed most of the questions that I was going to put to this witness, because I just wanted to test those particular - - -

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COMMISSIONER: Do you want to add anything to that?---No. It's an interesting concept, commissioner, with your experience and knowledge, understanding the difference between a guardianship and a custody order. Try explaining that to a client, because just having a child removed, they think they have no rights, full stop. So it's an interesting exercise in discussing the difference between a guardianship and an order.

MR SELFRIDGE: Can I just touch on other thing with you in relation to - falling from that which we've discussed, and it's this, earlier in the piece, as I understood your evidence, you suggested that there is a great deal of subjectivity in interpretation of evidence that's placed before the Children's Court and the Magistrates Court sitting as a Children's Court. Has it been your experience that the subsections of section 5B, the principles, the guiding principles of the act, are adhered to by those making the decisions, the judicial decision-makers? Because they should, in accordance with the legislation? ---I understand the question. The decision-maker is normally a magistrate and putting the upbringing and protection back onto the family is not considered, in my opinion, in the court system. When a magistrate seeks submissions from myself, et cetera, or in the decision-making process, those questions are not asked. I do at times put that to a magistrate, but as far as a decision being made, a magistrate would not necessarily advise how he has come to a decision, therefore I don't know whether those principles are applied.

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Reasons - you're talking about adequate reasons, as such - - -

COMMISSIONER: Are there any reasons?---Are there any reasons?

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MR SELFRIDGE: Yes?---There are reasons given that a magistrate may state, that weighing up a risk it would be potentially in the best interests of - well, they do not use the words "best interests", but to err on the side of caution a child should be under an order.

We're talking about interim orders here, because
what - - -?---Temporary and - sorry.

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Yes, because even if there were to interim or final orders,
each would be appealable in its own right were adequate
reasons not given in the judicial decision-making process,
surely?---Indeed, and you bring up a very interesting issue
of resources. I am but one lawyer in the Darling Downs
region and cover Goondiwindi, Warwick, Stanthorpe, Dalby,
St George. Exactly, those decisions are appealable, and
it's what capacity do I have in order to do it? I
understand that these decisions are reviewable, but it
comes down to - - -

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Resources?---Resources, very much so.

Can I just touch on something just there, please, because
you raised the point. For all here and supposedly looking
to assist the commission and assist the commission in
getting a better template moving into the future of child
protection in Queensland, just touching on that very point,
when interim decisions are appealed have you any experience
of this, that they're often superseded, or are appeals
often superseded, by subsequent decisions, therefore any
appeal is rendered nugatory, as such? Have you any
experience of that?---I do not and don't have the capacity
to appeal interim decisions.

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COMMISSIONER: One thing we do know is there's not
jurisprudence in child protection compared with say family
law on the same concepts, or appeals based on a lack of
transparent reasoning or a line of logic, which you often
see in family jurisdictions. No doubt that's because it's
a private action that people involved fund themselves as
compared to this, and it seems to me the lack of -
especially when you've got such vague and indeterminate
terms as, you know, "best interests", "unacceptable risk",
"emotional wellbeing", "significant harm", "risk", these
sort of things, and you don't have a jurisprudence around
them.

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MR SELFRIDGE: The one thing that I'll say in relation to
that, and again, I'm sure you're aware of it, the Child
Practitioners Association in Queensland, which has
relatively recently been formed, have been gearing towards
that and trying to build up on the Supreme Court database
some form of jurisprudence in relation to child protection
issues so that we do have some lead, as such, on a whole
series of those issues, interpretations.

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COMMISSIONER: Because I think it would help the
decision-makers. I mean, that's the whole - I always
thought that was the defining and distinguishing feature of
a judicial system, certainty, predictability. Know what
your rights are, know when they're going to be lost or
impinged upon, so that you can decide whether to take the

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course of action you had in mind.

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MR SELFRIDGE: That's right.

COMMISSIONER: Yes.

MR SELFRIDGE: Thank you. I have no further questions for Ms Glanville, thank you?---Thank you.

COMMISSIONER: Ms Stewart?

MS STEWART: Ms Glanville, can I just clarify, from your experience of working with ATSILS up in Toowoomba and the surrounding areas, of the clients that present to you for advice, normally at what stage of the child protection I suppose continuum are they generally at?---They have had a child taken. So my experience has been where the Department of Child Safety have attended upon their house and removed a child and then they tell me that then the department are pursuing an application, potentially, so then I contact the department, but primarily it is when the child has been removed.

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Can you recall any incident where you have been contacted for advice at an earlier stage, like say the investigation and assessment stage?---Certainly with an unborn baby incident. I had a client who was pregnant and said that she had been contacted by the department and asked a few questions. I said, "Is there a further meeting?" and I contacted the department, what issues were there, and I did not receive any further information.

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Based on your experience, do you see any benefit in a referral being made to a legal practitioner at an earlier stage to be in a better position to advocate, you know, to support services, to identifying possible kinship carers, prior to the order being made?---Absolutely. During an assessment or investigation or notification stage I think it's really important that a legal practitioner or a solicitor is notified at that stage so that the process can be explained to a client on where to from here, what sort of order may be sought, what harm issues may have been discussed. I've highlighted before about, you know, literacy and numeracy being a big, big problem for clients, and intimidation, that a statutory authority can make a decision about your child, is incredibly distressing for certainly the clients I've represented. So in order to have a - potentially an advocate is very, very important. It's a very distressing situation to go through.

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Would you say that clients that present to you have an understanding of the child protection concerns, how they're communicated to them by the department?---When a client presents to me they're in a distressed state. They do not understand (a) why a child has been removed, or even what harm means, and that doesn't mean that the clients are

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stupid, it has just not been flagged, but also in their distress they have not listened because of the whole procedure around it. They do not - they are distressed and they do not absorb what or why a child is being removed and what harm is. I explain to them it can be lots of different scenarios. So I need to talk to them about that in a calm and sort of calculated way and explain to them what harm is or can be.

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I think you gave evidence earlier about the main child protection concerns that you see up in the Toowoomba area, and correct me if I'm wrong, but they relate to exposure to domestic violence, parental substance and drug misuse and neglect?---Indeed.

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You also identified that you didn't know of any support services in that local area that can assist clients with those child protection concerns?---I believe I stated that there were support services, but not one organisation specific to deal with all of those harm and risk factors under one umbrella, so that's your difference, as in there's no one Aboriginal or indigenous service that caters for all of those harm issues in one shop or one stop, as I call it.

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I take from that that you see that our clients have a problem with negotiating with different service providers. Would I be - - - ?---It's difficult because it also affects their income and their budget for the week.

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Yes?---They don't necessarily have or are assisted with funding for buses or taxis to attend Relationships Australia and then ATODS and then a domestic violence counsellor three times a week. They just do not have the funds to do that. That's a significant issue, as poverty is a significant issue for our clients.

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You've been consulted on the ATSIL submission that's been made public to the inquiry and you're aware of the recommendations that have been made around the proposal to enhance the capacity of the existing indigenous Family Support Services to take on that more meaningful role and to deliver services to our clients across all those significant harm factors?---Yes.

I take it that you wouldn't disagree that that would be a significant benefit to the clients, especially in your area and the surrounding outer region?---In my opinion, it would have a significant impact upon clients if in the investigation and assessment phase that there was a family intervention service - my words - run by Aboriginal and Torres Strait Islander people who could just enhance and help in a holistic approach and help deal with the risk and harm factors.

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You also identified in your evidence earlier that some barriers that our clients experience engaging in the department - did you want to elaborate on that any further? ---Barriers as far as communication?

Yes?---Certainly because a statutory authority has come to a client's home or a government department, the stolen generation is still very raw, very out there still in the community - a statutory coming to a home and removing children has a profound effect on my clients so, therefore, they don't feel that they can trust or consult or approach the department to ask what it is that they need to do to assess the issue.

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Just taking that one step further, you, of course, have the local recognised entity in your area and, of course, you've been consulted on the ATSIL submission as it relates to increasing or enhancing the role of the recognised entity to take on case management responsibility. Do you see a proposal of that kind could go some way to meeting the challenges that you've identified?---Oh, definitely because fundamentally if you have either a recognised entity or another known entity run by Aboriginal people, the client will be willing to engage. What happens is if a statutory authority comes into the home, they don't want to address, they want to run. It is so important to trust community

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and family and support services. If you don't have that, all that happens is the children are taken and the issues are not addressed.

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What's your experience with the family group meeting process as it relates to - like, generally, with all the stakeholders there? Is it your experience that - I suppose like most other practitioners - they've normally been departmental workers?---The family group meetings are conducted at the Department of Child Safety or another venue which is decided by the Department of Child Safety. The agenda is written by the Department of Child Safety. How and when the issues are discussed are dictated by the Department of Child Safety and although I have at time suggested potentially maybe Relationships Australia or Lifeline or another support person, although it has not been outright rejected, I have to push for it. Often a family group meeting is conducted with a client and there is myself and the client on one side of the table and the department and others on the other side, a significant power imbalance. A client doesn't feel compelled to discuss the issues and address the issues when the power imbalance is quite clearly just around the table.

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When you say "a number of others" what's your experience of numbers? I mean, as you said, there's you, your client - - -?---That's right. There's normally a child safety officer and a team leader and often, or at times, the recognised entity as well who, fortunately or unfortunately, sit on normally the side of the department.

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Okay. Would you see the benefit of Aboriginal and Torres Strait Islander agencies having capacity to convene family group meetings?---It would make a significant difference because a client would feel that the issues are very, very serious. They would address the issues. That is not to say that they wouldn't, by talking to the department - that they would trust and listen when they had an Aboriginal community member sitting on their side of the table.

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Can I just draw your attention to paragraph 38 of your statement and the reasons given by the department for not increasing contact until they cooperate with the department. Contact is a provision outlined in the act that's in the best interests of the child. Are you aware of any provision in the act that contact should be used as a punitive measure?---I'm not aware of a specific part of the act. My only observation of the contact is that it is restrictive in terms of it is based on the department's resources.

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Okay?---It is difficult, very difficult, to increase contact time on the basis that the department don't have the resources. I always say that it is not my client's problem and that any contact time also can be reviewable to QCAT.

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Yes. I have nothing further, commissioner.

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COMMISSIONER: Thanks, Ms Stewart. Mr Capper?

MR CAPPER: No questions. I know.

COMMISSIONER: Mr Simpson?

MR SIMPSON: No re-examination. May the witness be excused?

COMMISSIONER: Yes, thank you.

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Thanks very much for coming. I really appreciate the time that you have given up to come and help us with our job. Thank you?---Thank you.

You're formally excused from your summons?---Thank you.

WITNESS WITHDREW

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MR SIMPSON: Mr Commissioner, the next and last witness for today is William Ivinson and I call him. 1

IVINSON, WILLIAM GREGORY affirmed:

ASSOCIATE: For recording purposes please state your full name, your occupation and the business address?---My name is William Gregory Ivinson. I live at (address suppressed) my occupation is, at the moment - it's changed from what was on the original one to project officer. I work with the Southbank Institute of Technology. 10

Please be seated?---Thank you.

MR SIMPSON: I apologise. I didn't pronounce your name correctly. It's Ivinson?---Ivinson.

Yes. Mr Ivinson, please look at this document?---Thank you.

Is that your statement to the commission and attachments? ---Yes, it is.

Are there any amendments or changes you wish to make to that statement or attachment?---No, there's no need for that. 20

Mr Commissioner, I tender that statement and attachments.

COMMISSIONER: Thank you. Mr Ivinson's statement will be exhibit 139.

ADMITTED AND MARKED: "EXHIBIT 139"

MR SIMPSON: They may be published. 30

COMMISSIONER: And it may be published.

MR SIMPSON: All right.

At the time of swearing your statement, you were the head of school of Indigenous Australian Peoples at Southbank Institute of Technology?---That's correct. 40

You're still there but in a different role. Is that right? 1
---In a different role. My previous role ended on
31 December.

Prior to that you were the law and justice advocacy
developmental officer with the Aboriginal and Torres Strait
Islander Legal Service?---That's correct.

And you have prepared with others an audit report on behalf
of government in relation to the provision of indigenous
child placement audit report. Is that right?---That's not
quite correct. I didn't prepare the audit report. The 10
audit report was prepared by the Children's Commission.

Yes, you prepared a response to that?---A response to that.

Yes, a response to that, I should say, with others?---With
others.

Yes, all right. So let's just go straight to that. There
was an audit report about the child-placement principle and
you may have heard that there has been evidence about that.
The evidence in the commission thus far - and I want your
comment on this - is that the child-placement principle was 20
placed in the 1999 act as a way of redressing the
over-representation of indigenous children in care?---
Mm'hm.

And there was some work on looking at whether in fact that
was adhered to. Now, I want you to take the commissioner
through what was found in the audit report and what
responses that you looked at in terms of this
child-placement principle. First of all, what was found in
the audit report in summary?---Okay. The audit report
quite simply covered a whole conglomeration of issues. I 30
didn't have total response to all of those issues. Some of
them were particularly heavily around data collection, that
kind of area which is not in my expertise. The area of
expertise within the audit report that I was confined to
basically was around the child-placement principle itself
and its delivery. I don't really profess to have delivered
to any other particular area of - - -

No, that's all I'm concerned about. All I asked you about
was the child-placement principle?---Yes.

So at paragraph 8 you say that the audit claimed that 82 of
101 placement decisions which were looked at were made 40
after the enactment of section 83 of the Child Protection
Act?
---That is correct.

And section 83 deals with - and you have that annexed to
your statement. It's entitled "Additional Provision for
Placing Aboriginal and Torres Strait Islander Children in
Care". That's the child-placement principle as such?
---That's right.

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Now, you have summarised the audit findings in paragraph 10. Perhaps you can just talk the commissioner through those summaries. Do you have a copy of your statement with you?---No, I don't actually. 1

All right. I will get a copy given to you?---I do have a copy of my own notes but not the last one I signed.

Right. We can see from paragraph 10 the summary. At paragraph 11 you have your evaluation of those?---That's correct. 10

Now I will just again then. Perhaps you could talk us through why those four points are picked out in your summary there and what they mean in a practical sense for the child-placement principle?---The audit findings summary included in paragraph 10 were taken directly from the audit report itself so weren't my words.

Okay?---So that was a direct copy from the audit report as to the summary of it. So you can see that we concentrated on those four points:

None of the Department of Child Safety placement decisions that were audited contained records that evidenced full compliance with all required steps of section 83 of the Child Protection Act and then based on the audit sample there's been no evident improvement in the extent of the Department of Child Safety's compliance with section 83 of the Child Protection Act 1999 since the Crime and Misconduct Commission Inquiry into abuse in foster care identified lack of compliance with the child-placement principle as a significant issue and that the Department of Child Safety's public reporting about section 83 of the Child Protection Act 1999 suggests that it was achieving a significantly higher level of compliance that was evident in the audit sample. However, this is based on a different county in the methodology. The Department of Child Safety's current policies, procedures and information management systems do not provide sufficient guidance and support for the day-to-day decision of frontline staff about the child-placement principle. 20 30

Just stopping you there then, in this 2008 audit report it is found that the compliance with the child-placement principle had not improved since the time that the CMC had done their review?---That's correct. 40

Yes, that, depending on the way in which you look at the figures, the Department of Child Safety's reporting was different from the audit sample in terms of compliance? ---Yes.

Yes, and there appeared to be some structural problems within the department which then have led to non-compliance on a day-to-day basis; in other words, sufficient guidance and support for staff?---Absolutely.

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All right. Now, you did some evaluation of that as part of your looking at a response?---Yes.

Perhaps you could take the commissioner through what your evaluation was?---As I've written?

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Yes - well, perhaps you may wish to expand upon what you have written there or explain it?---Okay.

We can all read what you have written?---Yes, okay. The first point is the significant procedural and definitional gaps existing in the Child Protection Act 1999 and the Child Safety Practice manual. Probably a good example of the definitional gaps that existed was the definition of "near" so when a person was actually looking at placing a child in a situation where they were near to their people or near to their family group, "near" was never really defined in any real particular way, therefore there was no guidance given to staff on how to proceed with that particular definition.

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Did you look at how wide that expression of "near" went? Was it some staff may have thought it would be 10 kilometres or 20 kilometres or more?---Most staff really were very confused about the whole process.

COMMISSIONER: It wouldn't be any point saying "near as possible" because you could still be hundreds of kilometres away. You would still be as near as possible, wouldn't you?---Absolutely. I can expand on that. With the Aboriginal and Torres Strait Islander community particularly in Queensland with the situation of removals over the years it has been to the extent where you might have direct family from the removal point, say, for instance - and I'll pick on a community just off the top of my head, say, for instance, it could be Woorabinda and it could be that the original family group were moved into Woorabinda but in fact they were actually from up at, say, Lawn Hill or somewhere from around that area, so the nearest point of, I suppose, a kinship system existing to them might be in their consideration their own regional office area. So they're not going to really, I suppose, look outside of that area to a definite area of wherever that particular family comes from.

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That's a problem with a lot of the communities, isn't it? Many of them were removed there during the war? ---Absolutely, and before the war, of course.

And before and stayed?---Yes.

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And not all of them stayed; not all of them went there in the first place like Aurukun, for example?---In my own family group we have members of my own family group or my wife's family group that were removed all the way from up near Cairns near Lawn Hill all the way down to Cherbourg. 1

Yes?---So along the way there were several missions or community organised efforts by the government that we used to call missions in them days or whatever and, you know, for want of a better reason the lady was moved all the way down to the south of Queensland. 10

Yes?---So it's very hard to actually look at that definition in any real terms.

MR SIMPSON: What other gaps did you identify between the Child Protection Act and the Child Safety Practice manual with respect to child-placement principle?---The gaps were very significant because - it stood out mostly probably around the kinship system and the understanding and the direction, I suppose, on kinship and what kinship really meant, you know, the particular community knowledge of kinship. Kinship seemed to have missed the point entirely with the department. 20

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The department placed kinship, I suppose, on a nuclear family basis rather than on a customary law basis. 1

Perhaps for the assistance of the commissioner, what were you looking at in terms of kinship? How far does kinship go?---Kinship is defined by customary law, and customary law is unique to the particular area and the language group of the people in those particular areas.

So a community in north western Queensland might have a different view of kinship to say community in south western Queensland?---To a variance, but not exactly to a total difference. 10

How much of a variance are we talking about?---Not really a lot. It's a bit hard to define in a situation like this, because as I say, it really depends on the customary law practice of that particular area.

COMMISSIONER: And the kinship rules vary?---It also varies due to the devastation of a particular community, as to what's happened to them after the last couple of hundred years. You've got - - - 20

So there might not be any system of kinship?---In some areas it may well be just a want rather than an actual practice.

MR SIMPSON: How does one get the child safety officer on the ground to understand that?---By training them.

I guess - this is a question I've posed to another witness this morning. Is there any level of training that you can give to child safety officer to make them culturally competent?---Yes, there's plenty of training that can be developed to actually introduce any of the people that work in any department to the way customary law works within community and how the kinship system has panned out in that community. It needs to be actually exercised with, I suppose, a degree of caution, because it needs to involve the particular community that that language group belongs to, or belongs to that language group, involved to a point where they can actually assess it and work with those people. 30

Just going then one step further, if you have a western child safety officer who has been appropriate trained, in your view, about kinship, for example, and the child placement principle, can they work as effective in the community as an indigenous child safety officer or a person from a local community support group supporting a family?---I think it's something really that needs to be examined on a one to one basis. I mean, each person is different. I know personally of people that have got degrees in anthropology who have never had to work in a community without somebody actually holding them by the hand, so to 40

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speak, throughout their entire time in a community. I know other people that would fit into a community that are not Aboriginal that would probably be better than some of the Aboriginal people I know working in that community. So it really needs to be examined on a knowledge by knowledge basis. Their ability to work with that community comes into a lot of different variances as well.

Yes, so a one size fits all argument that you need to have the indigenous community looking after the indigenous community doesn't always apply?---It does, because the community are the ones that actually understand the customary law. It gets down to that very basis.

Although what I was getting at before was that you could still have within that system non-indigenous workers working with the community?---Absolutely.

Yes, all right.

COMMISSIONER: The REs, are they helpful in that process or are some of them as unfamiliar with local customary laws as child safety officers in the department in Brisbane?---I probably need to answer that question with the proviso that I have not been involved for a little while so I can't speak openly about everyone that's involved in REs. My experience at the time that I worked for the Department of Child Safety was that there were many REs that fitted the bill to a point where I would probably say that they were some of the best workers I've ever seen in my life. There were other REs that were restricted by the department's, I suppose, management processes, that didn't allow them to actually mix with the community, to a certain point. There were some REs that were appointed outside of their country or the area that they would have expertise in. That was the difficult part, because if they weren't knowledgeable about the different family groups and the structures within those areas, then there would not be able to actually define who would be the right people that would be able to take care of a child in a hurry, so to speak.

Did you see any conflict between the REs' function and intended purpose and the fact that they're funded by the department?---Absolutely. It was one of the very first things that I was, I suppose, astounded by when I first started working there, was that we had a function there that was legislated. It came from a point, I suppose, that - if I can take it back a little bit further, my knowledge of the child placement principle was that it was originally brought into Australia from overseas to use in the Aboriginal and Torres Strait Islander communities by the old Aboriginal and Torres Strait Islander Health Services. They were an wholistic approach to welfare needs. They looked after the family from whether it was somebody that was suffering a cold or in need of welfare assistance or referral to the legal aid service. In that respect the

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government had no real problem in dealing with the issues, because the wholistic approach to it was exactly what was needed. So the child placement principle introduction was brought in on that basis, that the wholistic approach would actually carry the child placement principle through and it being put into legislation would be the next step of actually enforcing the process. So that was my understanding in the beginning. The REs were then added to that particular piece of legislation as something that could be seen as an entity that would be then assisting the process to allow it to work better. The problem I saw through the way I viewed it was that people who didn't know that process introduced them as part of the department's - in working for the department for the department's needs rather than for the community's needs.

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MR SIMPSON: Can I take you to this point? It's about five points down, paragraph 11. I take it this is one of your recommendations, that an immediate establishment of a policy occur to set a compulsory requirement for all departmental first contact personnel to methodically inquire as to the preferred cultural identity of clients. Why? Why is that important?---Sorry, I've lost that one.

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"That an immediate establishment," you don't have that on yours?---Sorry?

Do you have a paragraph, "That an immediate establishment of policy - - -"?---Yes. Yes, I've got it, sorry.

Yes, why is that important that the first contact in the department find out the cultural identity of a client? It might sound obvious, but I just want you to articulate why that's important?---As to the preferred cultural identity of clients. The first contact with a person is probably the most important, is to establish whereabouts that particular person belongs to. So if you're approaching an Aboriginal and Torres Strait Islander client - we do it ourselves without having any sort of issue to actually run across. If I run into an Aboriginal person in the course of my duties or my day's work or just walking around the street and I for some reason have to interact with that person, we always establish a protocol with other Aboriginal people by asking them where their country is, who they belong to, where was their family. That's a normal process. To take that step one further, when you're in a degree of conflict with a situation or you need to actually enforce a situation then your immediate step is to actually identify number one what the language group is of that particular person and your responsibilities to that person. I'm talking for Aboriginal and Torres Strait Islander people. In that respect you then know to a certain point, if you know that particular language group area, who that person belongs to, what their responsibilities are and whatever. Customary law actually teaches us how all that particular type of thing works. So

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to actually find out where a person actually comes from - say, for instance, you might be actually out of Cherbourg for the day and you find out that a particular person comes from Woorabinda, well, then you start to actually patch out where that person belongs to, the family group, the structure, who that person could be reported to, what assistance could be provided to a person through different people in different areas.

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So that really goes to the heart of getting back to helping the family in that particular community?---Absolutely.

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Then would you say that that would then dovetail into making sure that the child placement principle is successful?---Yes, accessibility of it. If you look at the report I did, I think you'll find that there's a page on there which reverts to my particular community up in the Northern Territory which outlays all of the different family group situations and in that particular sense I can honestly say that if I was in the Northern Territory and the situation occurred was somebody said to me, "This particular child belongs to a particular family group, where should we place it?" then I could find probably a placement for that child within an hour or two.

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This might be simplistic, but if you don't find that out and say the family are in Brisbane for the period of time that the incident report becomes a notification to the department, if someone from the department doesn't find that out where they're actually from and their kinship groups, that's going to be a stumbling block from the start in placing that child in appropriate kinship care?

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---Absolutely. There have been occasions where grandmothers have been, say for instance in Mount Isa, and a child was removed from, say, Thursday Island, was taken to Cairns and where there was full knowledge that there was further family over in Mount Isa but the department had no record of it, but people that were in the department knew about it and the REs knew about it, but grandmother couldn't actually do anything about it and then probably within anything up to two or three years after that before anything could finally be done about the grandmother actually being put into a situation where she could take that child on and care for it.

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All right. This is what we need to do. It gives you one idea on what you need to do. How does the department enact a process whereby it does these things and is able to achieve that knowledge of different kinship groups? How does it happen in a practical sense?---Well, you need to do a bit of research, for a start. You need to get a lot of people together who have got the right knowledge in those areas and there are a lot of people around. Most of this information is already recorded in a lot of senses. We have the native title situation that's going on in Queensland at the moment where just about every family group in Queensland has actually been recorded and the different language groups are tied up in particular different areas and that sort of things. It's not insurmountable to say that a special project couldn't be put together to achieve finding out exactly where different family groups actually sit, where they actually come from. I suppose an amalgamation of different organisations and different department's information and that kind of thing, if it contributed to a database of that kind it wouldn't be hard.

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One way of doing it - - - ?---The information is there is basically what I'm saying. It's just never been pulled together by any one area for this - - -

Would another way of doing it be that upon that first contact the family is referred back to an indigenous organisation in their local area, a community group on the ground and they then pull together the information for the placing of that child in the appropriate kinship community? Would that be another way of doing it?---That is another way of doing it; definitely another way of doing it. I think you'll find that most organisations know most of their people in their particular areas unless, of course, they haven't been to them.

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Would you say that the current model of the recognised entity fulfils that purpose?---No. 1

Why doesn't it?---Basically because the department doesn't allow it to proceed in that direction.

The act says it's got to consult with the recognised entity, so are you saying that there's a differential between what the act says and what the department does? ---Most of the REs that I've talked to over the last few years have indicated they don't have the funds to go that far. The research that's involved in putting family trees together and the information, they need to actually tap from one family to another is very insurmountable to them. 10

Again this might sound very simplistic, but why not just ask the parents who their extended kin are? Would they not know?---Absolutely. Most of them do.

Yes?---There are occasions, of course, when parents don't wish to have their family involved.

How often is that? In what you can see from the data you looked at, how often was that the case?---It was quite the case a lot of times from the immediate family because a lot of the times when children are being removed, it was a domestic violence situation or something of that regard. 20

So if their immediate family is not to be notified about a child safety incident, where else would the child be looking at to go because the kinship arrangement might be cut off at that point?---Yes. Unfortunately, one of the problems that we're facing throughout the communities all through Queensland is that most of our organisations have been cut and dried, so to speak - that's my own terminology - where a lot of the organisations that existed over the years have now been defunded. We're facing quite a large crisis out in the community with a lot of the organisations and the expertise that's there. A lot of the expertise that's needed is on an elders' basis as well, so they're not supported in a lot of instances. There's a whole meshing of different variants, you might say, that need to be taken into account to get a structure like that up and running. We had that back in the 70's, but unfortunately it's disappeared. 30

COMMISSIONER: Was that with the AICCA's?---With the AICCA's and other organisations working closely with them. 40

Would you like to see a model similar to that or an improved version of it reintroduced?---I think we're moving back towards that again with most of the peak bodies actually starting to talk to each other these days and starting to work together very closely and I think from that we'll start to actually devolve our own ways, I suppose, of disseminating that kind of information and

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recording, but I think that will take time and a lot of strength and effort. 1

MR SIMPSON: I'll take you to paragraph 12 actually over on page 4 on the top line. There you look at some of the factors that inhibit the smooth implementation of section 83. Actually, I might go back there. The first point there: knowledge of skin relationships. What do you mean by that?---Just to explain it in as simple terms as I can, when we look at the customary law requirements of relationships within Aboriginal and Torres Strait Islander communities, we look at basically a moiety system and that's where our whole communities are divided basically into two groups and the two groups actually then become the make up of the particular community. That moiety or skin relationship then decides where we actually are placed in community and where we're placed within our customary law situation. With that particular area it also defines customary law situations like who we can marry, what bloodlines we can follow and who in fact can actually look after children and who can't. It's much more than that. It involves nature. It involves the very essence of our being, where we actually get our names from. It involves the laws that we need to follow, how we need to actually maintain our position in life, whether that be through a ceremonial basis or whether it be through a leadership basis or whatever. That whole knowledge of moiety and skin relationship is imperative to actually put together a complete structure that we'd look after naming a person in a - - - 10 20

It sounds like a very complex area?---It's not really if you live in it.

Right. What training do you know is given to departmental officers about that?---None. I can actually say that I've attended the training and spent two days out at Wirilda and I dare say that that is a couple of years ago, but the knowledge that's been given to me is that it hasn't changed since. I didn't mind it as an introduction to Aboriginal society, but I saw it by no means being adequate training to enable people to identify family group situations or relationships. 30

All right. Who's the best person? Say you can't train an officer to do that because it might take some time, who's the best person to impart that knowledge to a person from the department to assist them in making their decisions? ---Obviously people from that particular language group or family group. 40

How does the department know which person to go to?---It's when they work with each particular community to actually establish those facts. So in a place like Cairns or somewhere like that it might be that they need to work across quite a few different organisations to establish that methodology of how they achieve that. In a small place like Kowanyama where there's only three language groups it might be very achievable very quickly to actually have three representatives from those particular language groups that will assist the department.

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Have you turned to mind how you convert that idea into legislation? The legislation requires obviously a set of guidelines and bullet points, if you want to call it that, tick-a-box arrangement. How does one convert that idea if you need to consult broadly and widely and touch and feel and work out where you need to go in your piece of legislation?---I'm afraid that's something I leave for somebody else to actually work with me on because I don't think I have the capability of actually answering that question at this point in time. I have certainly actually toyed with it in my own mind over the years but never came up with an answer for that.

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I guess that's my point. Isn't it the fact that this is a difficult area to legislate on and requires a lot more sort of nuance in the way it's carried out?---I suppose the thing I've always looked at is not so much in the legislation but in answerability and how that would be achieved. So to actually get a system like this working and then for people to actually answer to that system is the next question for me.

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I guess this leads me on to the point I wanted to take you to before at the top of page 4, "An absence of culturally appropriate training within this area of expertise." To address some of the factors that you saw were found wanting, what sort of training would you suggest needs to be given to departmental officers working with Aboriginal people in placing children in care or kinship care in particular?---I think it all starts with the knowledge of the community. We've talked about the language group and the customary law situation. You need to pull all of that together into an individual community concept, I suppose. People that are working in particular areas should be working very closely with each particular community that they're involved with to know the background of those particular family groups and what they're experiencing and what they should be concerned about and things like that. I'm not too sure where you're going with that one. I would think that in number 13 there I've mentioned about the community brokers to facilitate gaining knowledge of family knowledge and that sort of thing. The community brokers are individuals or organisations that would actually assist the department to actually find out all of that information and then transfer it on a local basis. So while you have a

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cultural training capacity within the department, you might say, developed to a certain point, there will be finite areas that would need to be done on a local basis. So to me it's about defining what are the needs in that particular area with the community and then to train people in that respect. So it mightn't be that everyone gets the same training. It might be that CSOs, for instance, who are the ones that really need to understand this thoroughly would probably get a lot more than particularly their managers and their managers have a broader sense of training to understand the fullness of it all but not necessarily the individual components of that particular family group.

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Right?--Does that make sense?

Yes; yes. Now, you did all this work which you're telling us about today and a report was prepared, but it seemed to go nowhere. Perhaps just talk the commissioner through that process. What happened with the end of your work? ---Well, the end of the work was quite simple really. We spent, I suppose, the two years because the initial report that was lodged by the commission was in 2007 and that had arrived just after I started there in late 2007. That report was returned to the commission and then the 2008 report arrived in its formality, you might say. The 2008 report basically gave us, I suppose, the 47 questions that we put into a paper to circulate throughout the department and any other interested or connected bodies to look at how we would actually improve the child-placement principle delivery. So it took a long time to collect all of the information and work with people and meet with people. It was approximately 18 months, I suppose, and then the full two years by the time we wrote up the report. By that time things had changed within government and the Bligh government at that time decided to amalgamate departments so it was of no fault by the DG that she wasn't able to receive the report. It was just unfortunate that she picked the day to receive it off me as the same day that she was removed from her office. So it was a simple affair that was never picked up on after that. My director had changed from one director to another as well. So both directors were very - I always say supportive of what we were doing and certainly fought the department at higher areas for the right to take the job on, but unfortunately it was circumstances of higher government that caused the whole report not to be received fully. I hung onto the report basically because I thought it was too important a work because everything that we'd arrived to was agreed to by the communities throughout Queensland. So we had support agencies. We had Peak bodies. We had everyone else supporting the whole process of moving forward and it was just left to die a natural death through a change in government.

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I guess this might seem surprising to some. So there were

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two departments back in. Communities and Child Safety they amalgamate into one?---That's right. 1

Because of the amalgamation to one department as part of the change to department structures after Premier Bligh won her second term, the report wasn't received at all as such?---No, it wasn't.

You couldn't present it to anybody?---I couldn't present it to anybody.

Because of some - - -?---I asked questions about what I do with it, "Where do I put it? Do I put it on a shelf somewhere? Do I give it to somebody?" Nobody could answer me any of those questions. It was in such a disarray at the time that people's positions were changing very quickly and nobody had the answers. 10

Right?---So rather than let it just - I suppose throw it out in the garbage bin I kept copies of it in case we ever could present it again.

COMMISSIONER: Have we got that now? 20

MR SIMPSON: We do have it. It's part of this exhibit.

COMMISSIONER: So it's seen the light of day again. You have finally got someone to give it to?---Yes.

MR SIMPSON: To be bold about this, do you think - if government back then had take on your recommendations, how quickly would you think there would have been changes to the way in which the child-placement principle would have been acted upon?---I honestly believe that if we'd have been allowed to continue and we had have continued, we would have formed, I suppose, a lot of knowledge that would have been transferred to people on the frontline. That transfer of knowledge would have empowered them and communities to actually work together on a more thorough basis to be able to, I suppose, achieve placements of children in a much more defined way. It would have been a much heavily informed way that would've, I suppose, saved quite a few children's lives. When I say, you know, saving children's lives, I mean there's a lot of Aboriginal children been destroyed by the processes over the years by simply being removed and never been returned to their families. 30

Is that compounded by the idea of being removed from their indigenous community and placed in a non-indigenous community?---It's even in regards to being placed with the wrong Aboriginal family as well. I mean, you'll notice in section 83(4) of the Child Protection Act that where the - like a criteria to move forward with. Most of the time in my experience it was always moving straight to (d) rather than go to (a), (b), (c) and (e). You know, I mean, if we 40

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were to go straight to the end of that section every time for pure convenience, I mean it always get somebody a place with a roof over their head and maybe protection in the eyes of some, but it certainly doesn't place them in a place where they'd be totally happy with. I mean, the amount of children that have been placed in those type of areas over the years that have then been abused or not looked after in the second, the third and the fourth instance is something that really is very heartbreaking. I can give an instance where I attended a Magistrate's Court out at Ridgeland only about 12 months ago where one of those victims appeared on charges and the young girl was, I suppose, left in the courtroom where she was, I suppose, the person being blamed by all and sundry for what had occurred and certainly she was probably guilty of those offences, they were mainly property offences and probably acting without due care to herself, but the plain facts of the matter was that she'd been placed into about six different families over a period of about five years and they were all Aboriginal and Torres Strait Islander families, but none of them were her family or related to her in any way.

If I say this: being placed with an Aboriginal which is not part of your kin, not part of your extended group or clan, just any Aboriginal family, would be as bad as being placed with a non-indigenous family? Is that an exaggeration?---No, it's not an exaggeration. I mean, there's variance to that, but in a lot of occasions there are many Aboriginal and Torres Strait Islander carers out there who are professionals in their own right and do a really good job. There are a lot of people out there who just simply take it on because they've been convinced that they should. There's a lot of guilt tripping going on with departments, too, to try and pull people into being carers all the time. I'm constantly asked why I'm not a carer. I'm 61 this year, you know. I'm a grandfather and then a great-grandfather. I'm probably in an ideal situation. I think my integrity is strong enough to carry you through. I've got a blue card, but I won't care for other people's country kids because it's too much responsibility on me and the responsibility I would face as an elder in doing that particular operation would mean that I'd have to ensure that that child was made available through all of their growing up as an Aboriginal and Torres Strait Islander person under the customary law for that particular area and language group. Plenty of our people don't know how to do that. That's why they keep away from being carers.

COMMISSIONER: That seems to be the problem with the system. I mean, apart from anything else, one of the things we need to look at is just how realistic how expectations of the system are and whether if you can't have the ideal, you have the least worst as opposed to the worst option, so what's worse. You might tell me they're just equally as bad, I don't know, but having someone from - an indigenous carer who's outside country or being cared for in an urban white household. Would they be just as bad, do you think?---I think it gets down to individual circumstances most of the time.

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But say someone like you, and I wouldn't impose the duty on anybody or shame them into it or anything like that, just being available so that on a case-by-case basis you could agree to care for someone, even if they weren't from the same country, would that be something that you would encourage?---I think you can go down that track, but you need to involve community very heavily in that approach. See, one of the problems I would face - now I live out near the Inala community. I live there because my wife's people have traditionally - I shouldn't say traditionally, but I suppose over many generations have gathered in that particular area in the Brisbane concept of things, so we tend to live where other relatives are, say in a pocket or an area where we could readily, I suppose, interact with other family groups, even though her family group is from the South Bernard area. In that respect, we can actually generate help to any of our family very quickly. We tend to take care of our own areas, but if I were to start taking in kids that, say, for instance, were placed in care but came from Palm Island or somewhere like that, then I'd have to be very careful about who that family group is because I'm actually putting my family in a situation where there could be payback situations. There could be all sorts of ramifications that occur against my family. It could be on a football field where my son might play, you know, a game of football and he'll get tackled by three people and the next thing you know he's in hospital as a form of getting back, you know, just because we had a child that was sort of placed into our care that came from their family.

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Fair enough. Just looking at that, that's the sort of risk that you wouldn't want to carry?---It's just one of the typical sort of out of the way kind of things that could happen.

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Yes. No, no fair enough?---Each family has a sort of variant, I suppose, as to why they don't do that. It's not that they don't like kids.

Yes?---I mean, you know, our communities love children, but it's about how do we do that - how do we do that more efficiently. Who supports us when we do that? It's only the department utilising us, whereas, as I said earlier,

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the holistic approach we had years ago involved our community organisation - - - 1

That's what I was going to say. Couldn't you have an honest broker, like a peak body or a peak, peak body that negotiated these sort of things when the alternative is even less attractive. If you're ready, willing and able to put up your hand then surely the community, the wider community, indigenous community, could say, "Look, he's willing to do this, but obviously he's not going to carry a lot of risk in doing it. Why should he? You're the family involved. We want" - just negotiate?---You're right. The interaction between different community structures could actually make that work very easily. It wouldn't be too hard to do, providing, of course, you could get the structures up and keep them up. 10

Yes. That's the trick, isn't it?---That's always been the problem over the years is that as soon as we get some expertise starting to work in the community on any particular angle, we seem to get a funding cut for some reason or other.

Yes, yes?---How you get over that problem is probably the next thing that's more important. 20

I'll give that some thought. In the act would the words "family group" be better than kinship?---It depends on which way or what you're determining with that word, I suppose.

What does it mean to you?---Well, kinship is where I belong within my language group and my moiety structure, so kinship is my family.

Right?---When I say my kinship, it also takes into account that, say, for instance - I might, say for instance, have a moiety structure that includes other language groups in different areas. Where I come from in the Northern Territory, my mother's language group actually extends over into Western Australia in to the Kununurra region and down towards the Pilbara. So there's a lot of the different groups down there that I would actually extend my kinship relations to. Even though I probably would never meet them in my whole lifetime, I would have certain obligations to those people. They may not include handing over my children to them, but there would be a lot of other areas that we would have to consider. If that information was taken the wrong way and utilised incorrectly then it could be construed that we would have to actually then hand over the children to them rather than not do that. Does that make sense? 30 40

Yes. So the definition of kinship carer in the act is a kinship carer is a person related to the child or a member of a child's community and considered family or a close friend approved by the department to provide out of home care placement for the child. Well, your concept of kinship wouldn't include a close friend approved by the department, would it?--No, most definitely not.

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So how did that get in there?--Well, I didn't put it in there.

All right?--It's before my time.

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MR SIMPSON: Should it come out? On what you've seen, should it come out?--It should have done, but I suppose if I put another one into consideration here is the point that when a lot of these things were actually being put together you must remember too that a lot of our people that were involved in those processes weren't necessarily, I suppose, up to date with the general concepts of how community structures work or how family language groups actually fit families and how lawyer systems and kinship systems actually are laid out. So the general knowledge of the people putting legislation together mightn't have been as good as it should have been as far as customary law knowledge.

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COMMISSIONER: So really what kinship is, is the group that's considered your family according to your customary law?--Yes, that's correct.

MR SIMPSON: I have no further questions, Mr Commissioner.

COMMISSIONER: Mr Hanger? Mr Selfridge?

MR SELFRIDGE: Yes, thank you. Mr Ivinson, on the question of (indistinct) harm in relation to paragraph 12 which has already been touched upon my friend Mr Simpson, and again at paragraph 17, the importance of cultural competence, as such, there was a whole series of questions put to you about how is this converted to legislation and policy. You remember Mr Simpson asking you those questions?--Mm'hm.

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At the risk of sounding overly simplistic, and I certainly don't think it's simplistic at all; in fact, it's extremely complex, I want to put something to you and you tell me if I'm along the right track or not. We know - well, arguably we know what cultural competence is because we have a definition, or an accepted definition, at least, for the time being. It's how it's applied. Therein lies the complexities given that there's a whole series of differing needs or complexities in customary law and particularly the areas of a particular community, et cetera. Is that a fair analysis?--Yes, that's a fair analysis.

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You also suggested to Mr Simpson that it was a - when he asked you how then do we get to have an appreciation or an understanding, you said, "With the body of research that's already been conducted," or, "Bodies of research that have already been conducted." In terms of those bodies of research is there anything you can point to that would be able to assist the commission in quantifying or qualifying - well, let's take one step back (indistinct) for the time being at least cultural competence is a static, so we have a definition in that?---Mm'hm.

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Then the concept (indistinct) depending on how that's applied to the (indistinct) depending on each particular region or area or particular community. Within those communities is there a static in relation to how we would define cultural competence in each individual community? ---Yes.

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There is?---Yes.

So it could be quantified as such?---It could be. Many communities are very similar and have variants. Others are completely different altogether.

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Okay?---So it really gets down to a point, I suppose, where you define each community, and I think you will find that, you know, the QPS started down that path a few years ago.

The QPS?---Queensland Police Service.

Yes?---They started down that path where they started working with their recruits then started looking at how they could actually extend their cultural training into their delivery, then they started looking at how they could actually have community based training. They haven't gotten there fully yet but it's still, as far as I know, heading down that pathway.

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So the reality might be, and this could be quantified, it could be recorded, it could be made be reference to the future in terms of definitive communities, particular communities, et cetera?---Yes, absolutely. The department itself has got an amazing tool to its advantage any time it wants to utilise it, but it seems to just skip over it all the time.

What's that?---That's the community and personal history section which has been examining government records since 1994 when they actually started to archive all of the old government records that were kept on each Aboriginal person that was under the act. Those particular records have helped each family group that's applied to actually establish their identities and their family groups and the areas that they particularly belong to.

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Okay?---So that's a good step and a good start in the right

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direction and the archival information that's available in that respect is tremendous. I've established a lot of families back to their original place of being, you might say, you know, through that process. 1

So in terms of cultural competence and how it's applied within each individual community, as such, that could be quantified, and you say the Queensland Police Service and/or the department in varying degrees - - -?---Yes, only in varying degrees. They haven't gone into it fully because they have probably a different way of looking at things and they have to actually enforce the law when they're in the community, so they can't really sit down with most of their offenders to a certain degree and go to that point, but I argue the point that they could go a little bit further but their own, I suppose, operational type of actions actually hinder them from doing that process more thoroughly. When it comes to other departments community is always willing to sit down with departments and explain to them just exactly how the particular community is broken up. For instance, if you wanted to go to Cherbourg, for instance, you've got about 47 different language groups out there, so the people in the community from the local council can tell you just how many of those particular people are in the community and who are the right people to actually talk to and who are the right people to actually sit down and work around the family situations. They can even tell you who are the offenders in those particular areas, if you really want to know, when it comes to a whole range of different things. 10 20

Just focusing, though, on that or any body of research that has already been conducted, you say that (indistinct) QPS and other departments in terms of the community history and personal history records. Is there anything else you can point to that - - -?---Well, there's the Queensland National - Native Title Service. 30

Of course, yes?---They're the ones that have spent, you know, numerous laborious hours compiling information for their own purpose. Whether or not they would be able to release that information would be probably a matter of, I suppose, talking to them and finding out which step you need to take to go further.

Thank you, Mr Ivinson. No further questions.

COMMISSIONER: Thank you. Ms Stewart? 40

MS STEWART: Thank you. Mr Ivinson, would you like an opportunity to pay your respects and acknowledgments to country and people?---Yes, I would take that opportunity to pay my respects to the traditional owners, the Turrbal people, on which this country sits, or this particular building. I'd also like to pay my respects to all elders that are in this room, whether they be non-Aboriginal or

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not, and I'd also like to pay my respects to this investigation and the officers included.

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You've spoken - - -

COMMISSIONER: Sorry, Ms Stewart, can I interrupt you? How long do you think - we've got to notify security if we're going beyond 4.30, apparently, so should I notify security or should - - -

MS STEWART: I don't believe we'll go beyond 4.30, commissioner.

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COMMISSIONER: Okay. No, all right. We won't notify them then.

MS STEWART: Thank you. I understand - you've spoken to the role that you had when you were drafting this response to the audit report and that you've previously worked at the Aboriginal and Torres Strait Islander Legal Service and the Institute of TAFE. Can you just outline to the commission your experience before that, because from my understanding you've had a bit of experience at the Queensland Police Service?---My experience with the Queensland Police Service?

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And prior - yes?---Okay. Very briefly, because we've got to be out of here, apparently, I joined - - -

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The important bits then?---I suppose it goes back quite a way. I won a job with the Queensland Police Service back in 1999 due to my involvement mainly around the Royal Commission into Aboriginal Deaths in Custody. I was a previous signatory to a petition that went to the attorney-general back in - I think it was - 1986 was the official one. 1985 was the first one. That was because I was the administrator of the Northern Australian Aboriginal Legal Aid Service in the Northern Territory and in that capacity and the experience I had assisting the commission in Queensland to investigate some of the cases that were present I was asked to take on the job as obviously liaison officer and adviser to the commissioner at the time, Mr Sullivan and then Mr Atkinson. I primarily went into the job to look at establishing or implementing the recommendations. I think there were 154 of those that affected the Queensland Police Service.

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I want to ask you a few questions around this report that you've done at the time you were in the department that was in response to the audit report?---Mm'hm.

If you could talk to just a couple of the process issues, firstly, you have given evidence that that kind of occurred over an 18-month period. What was the level of consultation and who were the interested stakeholders?
---The level of consultation?

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Consultation?---It was varied, of course, throughout the state, but if I could sum it up very quickly, I would say that the highest point of consultation occurred with the community, REs particularly and the support agencies.

Okay?---The lowest, I suppose, degree of involvement was from frontline staff who felt mostly that it was an imposition upon them.

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Can you just talk to that a bit further? So that was a challenge?---It was a challenge.

How did you respond to that challenge?---Basically be meeting it head on.

Yes?---I was in a constant, I suppose, stage of reminding people that this was something that was in response to the commission and that whatever we did the commission would be looking down on the department very strongly with and that it was not only that, it was the duty of every person that was in the department to actually pick up and work with. I used any means of persuasion, you might say, that was available to me at the time to get them in the door; an incidence in Cairns where we had a very favourable management situation where the local regional manager ordered his staff to attend. So we had those sort of incidences rather than just people turning up wanting to be involved and to actually, you know, get the cab rolling, so

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to speak, whereas we had other areas where we were warned off going to by community and we had nothing but total success with community. I'd say one of those areas was Rockhampton where we were told we would experience probably a large walk out by community and it was just the opposite.

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Okay?---So it was very - yes.

Can you just talk as to what the - who do the draft reports go to at the levels of government? What's that decision of level of - - -?---My understanding for this particular report was that it needed to go through my director first. The director signs off on it, agrees that it's suitable to be presented to the director-general and the director-general would then sign it off and would then present it to the minister and the minister would then table it in parliament.

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Okay?---I might note that there was some expectation that the report would also be presented back to the Commissioner for Children but it was not a required report back because this was basically a derivative of the report back on the audit report.

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To serve what purpose?---Information.

So why does it go back?---Because it was flagged in the audit report that the compliance to the child-placement principle wasn't adhered to, so our findings would've been then presented back to the Children's Commission for their benefit and probably to probably say to the commissioner that "We're on to this and we're doing something about it".

Can I just take some instructions?

I will just clarify there. I may have confused you a bit. In that role where you coordinated the internal response to the Commission for Children, Young People and Child Guardian we had that provisional indigenous child-placement principle audit of 2008?---Mm'hm.

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It's our understanding that that initial draft - and I'll just use an acronym of PICPA - was provided to the child safety director-general?---Mm'hm.

Did you review that draft report in 2007? Have you seen that one?---I did see the copy of that one, yes. I did in my own fashion review it.

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So, in your opinion, why was a draft report provided to the very body being audited?---I've got no idea. That particular issue came up at the time and I was new to the department and didn't know how things really worked to the full degree, you might say, on procedures and I did question that and told it was normal practice that they would get to have a look at the draft beforehand. What

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really compounded my thoughts was that they actually had, I suppose, an input back to the commission to actually have some things changed within the next report. 1

So you believe that the department provided feedback on the draft report?---On which one?

2007?---The 2007, yes, I do know that they did provide feedback to them.

Do you believe they exerted any influence on the final audit report?---I couldn't say that. I would expect that it would have had a lot of influence on it. I find this one a very hard one to answer because my understanding was that a lot of the information based on their right to not accept the first draft was based on data collection which is not my forte and I could barely understand the methodology they were using at the time, let alone the reasons as to why they were arguing per point. 10

Based on that experience, do you believe that the departmental influence - do you believe that could minimise the accuracy and strength of the report?---I do say, yes. My personal belief is, yes. 20

Do you have a view about whether it would be beneficial if the Commission for Children, Young People and Child Guardian had more powers to protect the process that we have just been speaking about?---Absolutely; I'm always of the opinion that any person that would be able to influence an investigative procedure is doing a wrongful thing and any procedure of that nature should be clamped down on.

I have got a few questions that have been covered off so I will just take a minute. You have spoken a bit about the cultural competency and leadership and training. In your observation, was Child Safety's leadership from director level to director-general level well equipped with the cultural knowledge to respond effectively to the complexities of the Aboriginal and Torres Strait Islander child-protection issues?---I can answer it this way: I believe a lot of people at high levels there thought that they knew about us. And that was the limit to their knowledge, particular knowledge about customary law and how customary law works within kinship systems and moieties was explained to them. It was given to them in as much detail as we could and in the same light they elected to go with the nuclear family type involvement or, you know, development of family structures and I believe that's still the case. 30 40

Is it your belief that that management stream or leadership stream within the department are still the same people?
---Many of them are still there, but I don't know about all of them because I haven't had a lot of contact with the department itself in the last couple of years.

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Up to the point that you still had some level of involvement, who would you say demonstrated the most evident commitment to the consultation process?---Sorry, can you repeat that one?

Who would you say was the most committed to the consultation process of the audit report?---Oh, definitely community structure and that would entail REs and supportive agencies. They were really keen on having the structure change so that the child placement principle could in fact work.

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You've been speaking about some changes in the legislation. Do you have an opinion on if we made some enhancements to the legislation to allow greater case management authority and responsibility to rest with Aboriginal and Torres Strait Islander agencies? Do you think this would go some way in ensuring we have some better outcomes for children and adherence to the child placement principle?---Yes, I think it's definitely the way to go. The first thing that comes into my mind, I suppose, the scare that I have is as a trainer, I suppose, I'm a bit worried about people getting into that particular area of expertise without being trained adequately and I think if you're going to move that into an area then you need to actually start looking at that. Our people haven't been given the advantage, I suppose, of becoming those expertise-related persons. That's probably something that needs to go hand in hand with it to establish that process. I don't believe we have enough, if I can call it, nationally qualified type training around that would actually cover the cultural competency side of staff as well as, say for instance, the recognised prior learning that would be involved in community organisations and such, as well, to actually take it to a fully qualified situation without redeveloping our current training that we have available.

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All right?---But I think it's very achievable.

Probably just one final question, but have you read the ATSILS public submission to the inquiry?---I very briefly did, yes.

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There's a number of recommendations found, particularly numbers 24, 25 and 26. Would you like an opportunity to have a look at that because I don't think - - - ?---Yes. I did actually - - -

- - - you could probably recall it from memory?---Yes. Yes, that's the one.

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Do you believe that if we implement those type of recommendations that it would fill the necessary capability in the act to a system of quality outcomes with adherence to the child placement principle?---Yes, I did have a look at these and made a couple of notes. On 24, basically, I looked at it and it said - recommendation 24. The way I thought about that one was that the current act, I thought initially, was adequate to ensure appropriate enactment of the child placement principle, but I put a "however" with that one, is that with the failure of the department to provide adequate resources. New measures now appear to be necessary and unfortunately it seems to be that because the system has failed. It now needs to take another step. I think it's probably a way forward or step back and make some amendments to the mistakes that have been made so it's an either/or, but I would say probably the legislation - I'm not particularly one that likes to see legislation placed on legislation. I think it's really got what it needs. It's just got to be managed a little bit better.

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Would you recommend any particular changes to section 83? I'm asking this in the context of your long history?---At this point in time, I couldn't answer that not very adequately.

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No. I have nothing further, commissioner.

COMMISSIONER: Thanks, Ms Stewart. Mr Capper?

MR CAPPER: Thank you. I'll be very short.

Mr Ivinson, you were asked some questions in relation to the preliminary report or provisional report, as you referred to it, and the fact that that was published to the director-general and there was some sort of implication that perhaps some influence had been exerted to amend that document. Do you recall those questions?---Yes, I do.

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You're aware of the process of natural justice, which is we have to provide an opportunity for people to comment, if they make a comment adverse to their interest. You're aware of that principle?---Yes.

In relation to the report, you indicate that you had read the report and you read the final draft of the report? ---Yes.

In that report at page 12 it says specifically, "Section 31(h)(2) and (3) of the Commission for Children and Young People Child Guardian Act establishes a process that the commission must follow before publishing a report." It requires, "Before making the recommendation, the commission must give the service provider a written copy of the proposed recommendations and a reasonable opportunity to comment on them. They must give a copy of the recommendation to the minister responsible and following

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completion of the order, drafts were provided to the director-general and the minister for child safety." It goes on to say, "Feedback on these drafts inform the development of the final report and this did not impact on the 28 recommendations." Do you agree with that that even though feedback was sought, it didn't change the 28 recommendations of the original indigenous child placement principle report?---Yes, look, I agree with that, but I also would like to add that this is the first time I've heard that.

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Okay. But this isn't - - -?---Every time I asked, that information wasn't given to me.

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Certainly this is in the published report that I've taken from the web site this morning for the indigenous child placement principle audit report 2008. This is the document that you're referring to as the final report that came out after the provisional one?---Yes. I was referring to the questions I asked when the original 2007 report came out.

Certainly in relation to those - - -?---It certainly clarified it in the 2008 report.

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Okay. So does that alleviate that concern that we certainly have to give an opportunity for the - - -?---Oh, yes. It had been alleviated in the 2008 report, but I was referring to the actual standard that was in the department on how it was presented at that time.

Certainly that's reflected in the current section 85 of the Commissions Act which still requires us to publish a report to the agency responsible for comment before publishing a final report?---Yes.

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Thank you.

COMMISSIONER: Anything else?

MR CAPPER: That's it. Thank you.

COMMISSIONER: Thank you.

MR SIMPSON: No re-examination. May the witness be excused?

COMMISSIONER: Yes.

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Mr Ivinson, thank you very much for taking the time to provide your statement and give your oral evidence. It's much appreciated?---Thank you.

WITNESS WITHDREW

COMMISSIONER: Tomorrow's arrangements.

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MR SIMPSON: Yes. We have three witnesses tomorrow. 1

COMMISSIONER: All right. Okay. Any other business today?

MR SIMPSON: Not from me, commissioner.

COMMISSIONER: All right. In that case we'll adjourn until 10 am tomorrow morning.

THE COMMISSION ADJOURNED AT 4.33 PM UNTIL 10
TUESDAY, 15 JANUARY 2013

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