



SPARK AND CANNON

TRANSCRIPT OF PROCEEDINGS

Telephone:

Adelaide	(08) 8110 8999
Brisbane	(07) 3211 5599
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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 22/03/2013

Continued from 27/02/13

DAY 47

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. Ms McMillan?

MS McMILLAN: Yes, good morning, Mr Commissioner. I appear as counsel assisting. My name is McMillan, initials K.A, senior counsel.

COMMISSIONER: Thanks, Ms McMillan. Mr Hanger.

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MR HANGER: Hanger, initials R.I, leading with Mr Selfridge for the state of Queensland.

COMMISSIONER: Thank you. Ms Stewart.

MS STEWART: Good morning, Commissioner. My name is Stewart, initial L, for the Aboriginal and Torres Strait Islander Legal Service.

COMMISSIONER: Thank you, Ms Stewart.

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

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COMMISSIONER: Thank you. Ms McMillan.

MS McMILLAN: I apprehended the Crime and Misconduct Commission would be appearing. They're not here yet, but perhaps I think it might be prudent - - -

COMMISSIONER: Must be double-booked.

MS McMILLAN: - - - we start in any case and when they get here we can accommodate them. What I propose to do was ask that each party formally tender the submissions for the parties that they represent. I understand some of them may already be on the web site, but I think it's an appropriate way to proceed.

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COMMISSIONER: Sure. Mr Hanger.

MR HANGER: Yes. I tender the submission of the DATSIMA, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

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COMMISSIONER: I'll give them separate numbers, I think.

MR HANGER: Yes, I think so.

COMMISSIONER: The DATSIMA submission will be exhibit 185.

ADMITTED AND MARKED: "EXHIBIT 185"

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MR HANGER: I tender the submission of the Department of Communities, Child Safety and Disability Services. 1

COMMISSIONER: Child safety report will be exhibit 186.

ADMITTED AND MARKED: "EXHIBIT 186"

MR HANGER: I tender the submission of the Department of Premier and Cabinet.

COMMISSIONER: Premier and Cabinet submission will be 187. 10

ADMITTED AND MARKED: "EXHIBIT 187"

MR HANGER: I tender the submission of the Queensland Police Service.

COMMISSIONER: QPS submission will be 188.

ADMITTED AND MARKED: "EXHIBIT 188"

MR HANGER: I tender the submission of the Department of Justice and Attorney General. 20

COMMISSIONER: JAG submission will be 189.

ADMITTED AND MARKED: "EXHIBIT 189"

MR HANGER: I tender the submission of the Department of Education, Training and Employment.

COMMISSIONER: Department of Education will be 190.

ADMITTED AND MARKED: "EXHIBIT 190"

MR HANGER: I tender the submission of the Department of Health. 30

COMMISSIONER: Health submission will be 191.

ADMITTED AND MARKED: "EXHIBIT 191"

MR HANGER: And I tender the submission of the Department of Housing and Public works.

COMMISSIONER: Housing and Public Works submission will be 192. 40

ADMITTED AND MARKED: "EXHIBIT 192"

MR HANGER: I'll just say, Commissioner, in relation to those submissions, that it was thought appropriate not to put in a whole of government response but a submission from the various departments of government, which are not necessarily consistent with each other because departments have different views. It was thought desirable to give you

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the benefit of those views and it's up to you to choose between them or obviously impose your own views on them. 1

COMMISSIONER: Well, the way I see it, the executive government has appointed the inquiry to conduct a review and then report back with assessment and recommendations, so it's really to that extent looking for advice on policy from the commission. So it probably doesn't really want to take a pre-report view.

MR HANGER: No. It was thought that it would have more benefit by having the views of the various organisations involved. 10

COMMISSIONER: They've got the last say anyway, Mr Hanger.

MR HANGER: Exactly.

COMMISSIONER: All right. While you're on your feet, though, there are some questions I do have that don't relate to policy as such. But what's your position in respect of the legislation itself? The department said it needs to be rewritten essentially. Do those instructing you have a position on that that they've shared with you? 20

MR HANGER: I think not and would prefer to leave it to you. You have at various times raised questions during the course of the hearings which we've looked at and had discussions about, but they relate rather to drafting matters rather than to policy matters, and if you raise those again today we would take the particular questions on notice and give you a written response to them.

COMMISSIONER: Okay, let's do that. Usually what happens in government business as I understand is you have a policy that's formulated then you implement the policy through good legislation, and then the legislation is put in practice by the department of government or the agency. With child protection it seems that really the legislation set the policy in 1999 because it was under development for many, many years, going back to 1993 - it outlived three governments. And the policy is expressed in the principles of the legislation, it seems to me. 30

MR HANGER: Yes.

COMMISSIONER: They don't seem to me to be enforceable, never intended to be enforceable rights as such, but were signposts or guidelines for the chief executive in exercising her functions in giving practical expression to the provisions of the legislation. 40

MR HANGER: Yes.

COMMISSIONER: Are we together so far?

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MR HANGER: Yes.

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COMMISSIONER: But if we just have a look at the purpose of the - and the way the commission, I think, ,has approached its task is to look at what public child protection is; what it's expected to be by the community; whether that expectation is realistic or achievable; what public child protection is envisaged to be by the law, that is what does the law say about the private-public relationship; and when is the state - a non-Orwellian state - authorised by law to intervene into family life and interfere with parental autonomy and privacy on welfare grounds?

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Now, that seems to me to be a very high policy question, not easily answered. Hints are found in the legislation by the thresholds that are fixed and what sort of action can be taken. So for example supports a voluntary action, it's a soft intervention, it's not intrusive, but it may not be very effective; that is, people who need the support may not recognise they do, may not have the commitment to get the support they need when they need it.

So in that sense the voluntary services - sometimes called secondary supports - that the government makes available for people may not be accessed by them, and therefore that need may be unmet, not because of any fault of the system or any design fault of the legislation, but because people who need them won't access them. And so the next step is if that happens, if the secondary service system doesn't meet a need and that need develops or deteriorates into a protective need for the children, then the law says the state can step in more coercively, take more active - be more responsive, but only after harm is done.

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So as I read the legislation there's no opportunity for the department to lawfully intervene into a family until there's alleged or reasonably suspected harm. Okay?

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MR HANGER: Doesn't it go to likelihood of harm as well.

COMMISSIONER: Well, harm is defined in terms of unacceptable risk.

MR HANGER: Yes, in terms of - - -

COMMISSIONER: Which creates a problem.

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MR HANGER: - - - practical - it's always going to create a problem where you draw lines.

COMMISSIONER: Well, that's it. See - - -

MR HANGER: But harm doesn't have to actually - real harm as you and I understand the word doesn't have to actually happen, it has to be likely to happen

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COMMISSIONER: It's only got to exist as a likelihood. That is future harm has to exist as a likelihood on the way it's approached at the moment as I understood the evidence, but I want to deal with that in a minute. But it seems to me the purpose of the act at the moment says it's to provide for the protection of children.

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MR HANGER: Yes.

COMMISSIONER: Well, really what it's there for is to provide a system for protecting children.

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MR HANGER: Yes.

COMMISSIONER: You can't really protect children because from the beginning to the end the state can only protect certain children, and that is children who are in need of protection within the definition. It protects children who are not in need of protection or who don't have protection as a primary need through other mechanisms like education, health, universal secondary services.

MR HANGER: Yes.

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COMMISSIONER: If you have a look at 5B, these are the principles that the act is administered by. The first one says, "A child has a right to be protected from harm or risk of harm." Now, what do you say about that? Does that give rise to false expectations telling people by implication that the state is there to protect children from risk of harm?

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MR HANGER: Well, I would suggest not. I mean, I know what you're driving at but children aren't going to be protected by a bit of legislation. There might not be so much wrong with the act as distinct from the implementation of the act. The act's general principles don't seem too bad. They can be tinkered with around the edges.

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COMMISSIONER: If we look at the modern complaint that people with responsibility - and under this act families have the primary responsibility for protecting children, but there is said to be a tendency over time for everybody to shift responsibility towards the state, abdicate their own and shift it towards the state. When you read or understand that a child has a right to be protected by the state against risk of harm, that relieves you of the obligation of looking after them arguably and I just wonder how can a state protect children from risk of harm? There are risks everywhere.

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MR HANGER: They can fall off their bunk.

COMMISSIONER: That's right.

MR HANGER: Yes.

COMMISSIONER: They can fall into a swimming pool that's unfenced.

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MR HANGER: You might say it's an aspirational statement, but look at the next one.

COMMISSIONER: They're not very helpful - - -

MR HANGER: No, they're not.

COMMISSIONER: - - - because they set up bars so high that the state can't reach them and when the state doesn't reach them, everyone blames the state.

MR HANGER: But look at (b) and (c) which immediately follow that the primarily responsibility is with the family.

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COMMISSIONER: What does that mean now in practice, because look at the numbers? We're getting increased children in care. There are obvious explanations like over-reporting, net-widening because of definitions, more

children needing care, more vulnerable families and greater population increases. I understand all that, but one of the reasons might be that families just aren't taking the responsibility that the law says they have got. 1

MR HANGER: That might be right, but I don't see how you can take, say, something like (a) and say a child has got a right to be protected from harm and then say that's just too broad.

COMMISSIONER: I'm not saying that part. That part is fine. It's the next bit, the risk of harm, especially an act that defines "harm" by reference to risk. 10

MR HANGER: Yes.

COMMISSIONER: So how can you be protected against a risk of a risk?

MR HANGER: You can't.

COMMISSIONER: No.

MR HANGER: No, and that's where I say the act in principle doesn't need a lot of work but it needs some tidying up. 20

COMMISSIONER: Let's go to the concept of "risk" for a start.

MR HANGER: Yes.

COMMISSIONER: "Harm" is defined as an unacceptable risk of future harm. As I understand it, the department interprets that to mean a probable risk of future harm, likely future harm. Is that right? 30

MR HANGER: Yes.

COMMISSIONER: Why wouldn't "unacceptable" be a deliberately chosen term to be a sliding scale? Rather than a probability, why wouldn't it in some circumstances "possibility" be enough to be unacceptable? For example, if there was a possibility of child sexual abuse, wouldn't that be enough to make the risk unacceptable, as it is in the Family Law Court, for example? Why do we define "unacceptability" which is a broad term reinterpreted to well understood legal standards like probability and possibility? Why isn't just unacceptable? 40

MR HANGER: Perhaps that's why, because it's a legal term and people understand legal terms.

COMMISSIONER: But they have distorted the intended meaning of it and its scope.

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MR HANGER: You see, in using the term "possibility" - and I don't really have a problem with it, but that also is a very subjective thing. There is a possibility that any person will sexually assault another person. It's just unlikely. 1

COMMISSIONER: Fine; so why does the department's manual reinterpret "unacceptable" to be "probable" and apply that across the board? That's a question. I don't expect an answer, but I would like to get one one day because it seems to me that that rather defeats the whole point of using a flexible term like "unacceptable" because it will change according to context. "Probability" doesn't, except it's affected by the levels of proof to get to that standard but the concept remains the same. 10
"Unacceptability" will depend on the circumstances and I would have thought that's what was intended, but let's go - - -

MR HANGER: Anyway, we will take that on notice and respond to it.

COMMISSIONER: All right. Now, can you answer this for me: see how 5B(b) says, "A child's family has the primary responsibility"? 20

MR HANGER: Yes.

COMMISSIONER: It seems fair enough. That seems to be a self-evident proposition, but then if we go to the definition of "child in need of protection" in section 10, the child in need of protection is defined as "a child who has suffered harm" - which we know is defined as an impact or detriment on one of the welfares, including emotion; we will come back to that - "does not have a parent able and willing" and then "parent" is defined in section 11. Now, the definition of "parent" excludes family members like grandparents. 30

MR HANGER: Yes.

COMMISSIONER: If you go back to 5B(b), if it is the family that has the primary responsibility as distinct from the parents, why then do we define a child in need of protection by reference to parents rather than the family?

MR HANGER: That's a good question, yes. 40

COMMISSIONER: So why wouldn't we include in 11 "any appropriate adult family member"?

MR HANGER: Yes, or words to that effect.

COMMISSIONER: Instead we create this whole system of kinship. You have got kinship right there. So that's a

question. Now, first of all, that Child Protection International Measures Act in 6A - slight problem, it seems to me, that piece of legislation. That's the one that says, "All signatory states will use the best interests test in child protection measures." 1

MR HANGER: Yes.

COMMISSIONER: Now, that would be handy if it had any practical meaning, but because we are signed up to it, we use the language. 10

MR HANGER: Yes.

COMMISSIONER: Not to mean anything but just to comply with some convention we have signed up to because best interests is an outcome here in child protection, whereas best interests in, say, the private law area of family law is a test.

MR HANGER: And best interests will depend on the economy of the country you're talking about too.

COMMISSIONER: Yes, but it's not used as a test of anything here. 20

MR HANGER: No, it's an outcome.

COMMISSIONER: It's used as what's in the best interests of the child. I have had at look this and I counted up 85 sections where "best interest" is used. It's used though in section 5 as the overriding principle for administering the act so if it's the overriding principle in section 5A, why does it only appear 85 times in the rest of the act? Why don't you just say read every section as this applying? 30

MR HANGER: Yes.

COMMISSIONER: So it contradicts itself in that respect. "Harm" - I'm interested in the concept of "harm" and the concept of "child". "Child" at the moment is an individual under 18. Even the word "individual" in the Acts Interpretation Act doesn't necessarily mean "person" but we can safely take it that "child" is just a person, not a corporate entity or anything like that. Query on the evidence that we have about the inability of the system to protect unborn children at their most vulnerable while they're still unborn: to call them unborn children is a contradiction really. They're not children; they are just unborn because they are outside the definition of "children". 40

MR HANGER: Yes.

COMMISSIONER: Public expectation might be children being at risk of violence while their mother's pregnant or foetal alcohol syndrome developing because of alcohol consumed during pregnancy; might expect that we would have had laws, mechanisms and strategies for protecting that child. We don't.

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MR HANGER: No.

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COMMISSIONER: In order for us to protect unborn children we would have to adopt the practice recommended by the Queensland Police Union of somehow confining the mother during pregnancy for the protection of the child or her own protection if she has a violent partner who is a threat to the child. Now, that's a very high policy issue. That would involve a lot of competing public interest considerations.

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MR HANGER: Yes.

COMMISSIONER: It seems to me that it's one of those really hard questions that someone is going to have to confront, should an unborn child be treated as a child for the purposes of protection? Most people, I think, would say yes, but very few would think it through to say, well, how, without overriding parental rights and without becoming a highly intrusive state.

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MR HANGER: Yes, that really would be a nanny state. May I draw your attention to the fact that I think the medical evidence is that the damage, the foetal alcohol damage, is caused in the first trimester by young ladies going out on the booze and having sex and that it's a, you know, well to do, middle-class problem. So I'm not sure that we're going to - as much as we'd like to think whether we can do anything about it - - -

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COMMISSIONER: Well, you know, like, I think that's a real question for government rather than - I'm looking at the system, but it's the government, it's for the government to tell me what the system is, okay, so I don't stray outside the boundaries of the system and into some other system.

MR HANGER: So are you asking me what is the attitude to dealing with - - -

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COMMISSIONER: What should - in the context of the evidence we've heard - - -

MR HANGER: What should be - - -

COMMISSIONER: - - - how should "child" be defined? Conversely, does a person who is Gillick competent at 15 or 17 cease to be a child in need of protection; that is, is the concept of child and childhood a sliding scale of competence beginning at before birth, arguably, certainly at birth, and continuing to a point where some children remain children chronologically and arguably developmentally but for one reason or another are no longer within the contemplation of children for the purposes of child protection? Maybe they've graduated to another system and maybe it's not them needing protection from anybody else but somebody else needing protection from them, and if that's the case this is not the system for them.

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MR HANGER: The problem there is that the Gillick competence, apart from being a sliding scale, it would be a sliding scale in respect of various aspects of life. For example, you might be competent to consent to an operation but not be competent to look after yourself in terms of the area that we've been dealing with, child protection.

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COMMISSIONER: Quite right, which suggests that the obligation of the state is to make you competent by the time you're 18 when you leave its protection, and one of the questions that we have to look at is how well is it doing that?

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MR HANGER: Yes, but also, don't forget, medical evidence is that you're not mature until you're 25. There's no doubt about - - -

COMMISSIONER: That's women, Mr Hanger. I think men as well - - -

MR HANGER: Take a lot longer, but there's really - there's no doubt about that proposition now so, I mean, that's one of the matters that you - - -

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COMMISSIONER: Well, they're not children, 25-year-olds, so again - - -

MR HANGER: No - - -

COMMISSIONER: - - - I'm open to hearing what a child is for the purpose of this legislation. I'm also interested in hearing about the idea of relinquishment of children with a disability or behavioural problem by parents who on the evidence are willing but not able - to cope, they mean - and whether relinquishment really is within the contemplation of this piece of legislation, and whether a parent is able and willing even though they're doing it really tough to look after a child with high, complex needs or disabilities and whether it was ever intended that a child with a disability could be relinquished to the child protection system, not because they needed protection but because they needed some other service that child protection could offer them but that disability services couldn't.

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MR HANGER: Yes.

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COMMISSIONER: That seems to be happening.

MR HANGER: That's very much a policy matter.

COMMISSIONER: It's also, though - the act is here not to be circumvented. Even though it might be good for a particular child and that child needs help by government, by the system, some system, somewhere, the question,

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though, for me, is it the child protection system that should be providing that service to that child or some other system? 1

MR HANGER: You see, one of the sort of philosophical problems you've got to grapple with is you may have parents able but not willing to look after the child because of the disability in the child and you may have parents who are willing but not able to.

COMMISSIONER: Which brings me to the question of what's willing? Can you make yourself unwilling or is unwilling - - - 10

MR HANGER: No, you can't make yourself unwilling.

COMMISSIONER: Well, can you say, "I'm unwilling therefore."

MR HANGER: You can be unwilling, yes.

COMMISSIONER: Yes, well, we might have a look at that.

MR HANGER: Yes. I mean, that's the normal meaning of the word. 20

COMMISSIONER: One of the things I look at is whether or not willing means the practice of relinquishment.

MR HANGER: But you also have to consider, and I just say consider, because I'm not instructed to make submissions on this, but you also have to consider what will happen to a child if we don't take them into the system that will protect them? They will be on the street.

COMMISSIONER: Well, I don't know. See, government provides many services from different portfolios and the answer is you go to the right system to get the right service when you need it. If there's a deficiency in the delivery of the right service then you fix that, you don't just swap systems. 30

MR HANGER: But we're talking here about child protection.

COMMISSIONER: Yes, exactly, and that means that the child you're protecting is the one who falls within the definition of section 10 and who has a primary need of protection, not some other primary need. 40

MR HANGER: Yes.

COMMISSIONER: Now, harm, do you want to say anything about the definition or are you content that that's a pretty good one, harm being any detrimental effect of a significant nature, so a significant detrimental effect, on physical, psychological or emotional wellbeing?

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MR HANGER: No, we don't make any submissions that that should be changed. 1

COMMISSIONER: Well, it seems to me that the evidence I've heard about harm when it's defined to include not only - when it's defined as an effect it must mean an effect on the particular child, not on children in general, mustn't it?

MR HANGER: Yes.

COMMISSIONER: Because what affects me adversely may not affect you at all. So I have to look at the effect on a particular child of the particular event and on the emotional wellbeing of a particular child, for example. Now, the evidence I've heard is that emotional wellbeing is a difficult concept to define. Emotional or detriments to emotional wellbeing, significant or otherwise, are difficult to diagnose even by experts. Detrimental effects to the emotional wellbeing of a child isn't a single point in time event. 10

MR HANGER: No.

COMMISSIONER: It must occur over time, not overnight. 20

MR HANGER: Normally.

COMMISSIONER: So if we accept those propositions, and then we know from the figures that between them neglect and emotional harm represent 77 per cent of substantiated harms last year, means most children - the state intervenes in the lives of most families on the basis of emotional harm. 25 per cent physical harm, 5 per cent for sexual abuse and the balance are for emotional or neglect, the two hardest categories to diagnose properly. 30

MR HANGER: Yes.

COMMISSIONER: What does that tell us?

MR HANGER: It doesn't tell us anything?

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COMMISSIONER: Does it tell us that we're overdiagnosing emotional harm? 1

MR HANGER: No, because there may be another 10,000 where they said there's not emotional harm or whatever it is. These are the ones where they're satisfied there is emotional harm. One would think because it's so hard that the barrier was really quite high.

COMMISSIONER: Well, how can we be sure of that? Should we set a barrier? That is, should emotional harm be defined by its symptoms rather than by a concept? 10

MR HANGER: First of all, yes, you can have a go at it, but I wonder if would take us any further down the track, because you're going to use somewhat vague terms of defining it.

COMMISSIONER: Should it be that emotional harm is a subject of expertise and unless you've got an expert who says that's what you've got, you haven't got it?

MR HANGER: Possibly, but I imagine that people at the present time who us saying that you're suffering from emotional harm would claim to have the requisite expertise. The social workers on the street say that they have the expertise. 20

COMMISSIONER: You heard the child psychologists and medical practitioners are saying they couldn't agree about what was.

MR HANGER: But that will be - - -

COMMISSIONER: How I social workers going to agree? 30

MR HANGER: That will be the cut-off-line. I imagine if you asked the social workers they'd say, "This is a clear case. This is a clear case."

COMMISSIONER: All right.

MR HANGER: They're not down near the line where the experts might disagree.

COMMISSIONER: Righto. The other thing the experts say about emotional harm is that if you don't get it before three and remove the child permanently, the child will suffer lifelong damage. 40

MR HANGER: Yes.

COMMISSIONER: So if we look at the number of children who are taken before three for emotional harm or emotional abuse and compare it with those who were taken after three,

we should, if we're getting it right, shouldn't we -
logically, according to the experts - be picking up more
children before three and after three, because that's when
they're at most risk?

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MR HANGER: If you're getting it right. Well, that's when
they're at most - that's when the damage is the greatest,
rather than the most risk.

COMMISSIONER: Yes, all right. If they're under three
they're at high risk and not only are they at high risk of
being emotionally harmed, but they're at high risk of
having lifelong damage.

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MR HANGER: That's right, yes. That's correct.

COMMISSIONER: If we don't interfere.

MR HANGER: Yes.

COMMISSIONER: So on the one hand the risk is you have
over-inclusion of children on the basis of emotional harm
who don't actually have it or who don't have it to the
degree that needs their removal from their home and their
retention by the state; and on the other hand you have
children who really do have emotional harm who really do
need some help, who are under three, who need to be removed
permanently from their homes into another substitute.

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MR HANGER: Well, not necessarily permanently. The
parents need to be worked on and salvaged if possible.

COMMISSIONER: All right. Anyway, they're questions that
I'm pondering on and I would like assistance on, and the
last thing I want to ask you - - -

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MR HANGER: May interrupt you there?

COMMISSIONER: Yes.

MR HANGER: The instructions that have just come forward
to me are that child safety would like "harm" redefined as
"significant harm".

COMMISSIONER: Rather than a significant detriment.

MR HANGER: Yes.

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COMMISSIONER: That's what it is in New South Wales and
they did it there to define children out of the system so
that you couldn't get in by just having harm, you had to
have significant harm.

MR HANGER: Yes.

COMMISSIONER: I'm not sure if that will add anything because the detriment already has to be significant. 1

MR HANGER: Anyway, we'll take that on notice.

COMMISSIONER: Okay.

MR HANGER: Those are the instructions that were just passed forward to me.

COMMISSIONER: Righto. The other thing is unacceptable risk. You say that they would only find emotional harm as a ground of intervention, especially intrusive intervention or coercive intervention, in a clear case. The problem with that is that harm is not only defined on the basis of emotion, which could have a net widening effect; it's also defined as a risk. 10

MR HANGER: Yes.

COMMISSIONER: An unacceptable risk. So as I understand it - you tell me if I'm wrong - the way that risk is assessed in child protection contexts, unlike insurance, is by the use of a predictive tool which is based on - is statistically based, it's actuarial. 20

MR HANGER: Yes.

COMMISSIONER: You could only predict the future within the limits of that tool.

MR HANGER: Yes.

COMMISSIONER: It's not calibrated to - you know, like, it doesn't come up - you don't need information in and then it doesn't come up acceptable or unacceptable, it doesn't do that. 30

MR HANGER: No.

COMMISSIONER: So the state can intervene on the basis of a human assessment; professional, experienced, but nonetheless a human assessment, maybe assisted by an actuarial tool to predict the future, developed in North America, and come up with a conclusion that a child - the state needs to intervene, perhaps to remove a child on the basis of an unacceptable risk of emotional harm. 40

MR HANGER: Yes.

COMMISSIONER: How certain do you think you could get that?

MR HANGER: That's a hard one. That's a hard one. And I'm not sure that we have material before us, do we, of how

often children are removed on the basis of an unacceptable risk of emotional harm as distinct from the fact that emotional harm is occurring. It's very hard to imagine practically - I'm talking practically - of a case where you say there's an unacceptable risk of emotional harm unless you have evidence that emotional harm is occurring. 1

COMMISSIONER: Well, see, the problem is as I understand it, again, the protective tool only predicts future, it doesn't do anything else.

MR HANGER: That's right. 10

COMMISSIONER: So it can only be assessing risk. It's a risk assessment tool not a harm assessment tool.

MR HANGER: Yes, but it must be a risk assessment tool based on a lot of data input which are existing facts.

COMMISSIONER: Proven to what standard?

MR HANGER: No idea.

COMMISSIONER: Exactly. 20

MR HANGER: No idea. That's the - - -

COMMISSIONER: So a possibility could lead to a probability conclusion, or a number of possibilities could combine to lead to a probability conclusion.

MR HANGER: Well, that's probably correct. Although I haven't seen the SDM, you may have. But, yes, that's live. If there are many possibilities then in the end we conclude that something is a probability. If for example - - - 30

COMMISSIONER: Do three possibilities make a probability?

MR HANGER: Do 25 different people saying, "This man abused me," which is a possibility, lead to a probability that the man has abused the person?

COMMISSIONER: No, it doesn't. It could never do that, but what it might do is lead to an unacceptable risk that I'm not prepared to take that he might do it again. It might work like that.

MR HANGER: Yes. I can't comment on the SDM tool because I haven't seen it. But what you've got is the SDM used with clinical acumen - or one hopes used with clinical acumen - of people in the field; and the SDM tool, as I recall, as I read about it, was something that's been worked out over a period of years by American programmers. And doubtless that there is data put into that to predict the future. 40

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COMMISSIONER: We've only been using it since 2004. 1

MR HANGER: That's right. That doesn't - - -

COMMISSIONER: The Weather Bureau uses a similar device.

MR HANGER: Yes. I won't comment on that.

COMMISSIONER: Okay. Anyway, they're hard questions but - - -

MR HANGER: They are hard questions. 10

COMMISSIONER: And I don't have all the answers.

MR HANGER: But can I make a general comment there, that we won't fix the system by over-defining things. In fact, we might make it worse by over-defining things. We've got to leave things to what I called clinical acumen and experience at the time. You know, these definitions of harm - okay, "significant" adds to that, but once you try to and define significant, for example, I think you - - -

COMMISSIONER: It's just another adjective. 20

MR HANGER: That's right. And you're going to end up with an act as thick as the Tax Act, and it won't protect children any better. I think we are at danger of over-defining.

COMMISSIONER: Well then let's forget the definitions. Let's have a look at what we're trying to achieve.

MR HANGER: Yes.

COMMISSIONER: Maybe that's a better way of describing what we do and when we do it and how much we do it and for how long. What are we trying to achieve here? Surely we must be trying to achieve a better net outcome for the child we remove than if we did nothing at all. 30

MR HANGER: Yes.

COMMISSIONER: Would that be our - - -

MR HANGER: That's a fair - - -

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COMMISSIONER: If we can't be sure that we're going to do that, we should leave well enough along, shouldn't we? 1

MR HANGER: I'm not sure about the "sure" bit.

COMMISSIONER: See, that's it. You have a look at this piece of legislation. Do you know how many times it uses the word "ensure" in there?

MR HANGER: Yes.

COMMISSIONER: Do you know what "ensure" means - guarantee. 10

MR HANGER: Guarantee, yes.

COMMISSIONER: So when a child gets hurt, the state has failed to do what the act required them to do and guarantee safety. It could never have guaranteed safety.

MR HANGER: No; no, when the child falls off its bike, technically the state is in breach.

COMMISSIONER: So we should be clear about what the state's level of responsibility is, shouldn't we? 20

MR HANGER: Yes.

COMMISSIONER: We have to do that by definition.

MR HANGER: Yes.

COMMISSIONER: Otherwise the community will be rightly expecting it to reach a certain level even if the level is unachievable for the state. If you want to live in a liberal democracy that respects your autonomy and your privacy, you have to accept your responsibility at the point of responsibility to the level of your responsibility and not push it onto somebody else. 30

MR HANGER: Yes, that's all true, but then we are trying to catch the people who don't accept that level of responsibility and to help the people who fall through the cracks of the defective parent.

COMMISSIONER: The argument is the best way of getting people to accept their responsibility is to support them to fulfil it. 40

MR HANGER: Indeed, that's what all the evidence has been.

COMMISSIONER: Right.

MR HANGER: Concentrate on the secondary rather than the tertiary system.

COMMISSIONER: The problem with the so-called secondary system is that it's purely voluntary, that is, what you're saying is - see, parents who need help short of coercive intervention can opt in or out at the moment and they are the very people who may not have the insight or the commitment to know what they need and what sort of help they need and for how long.

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MR HANGER: Yes, and one may make the same comment about the teenagers in the system that we have heard from and heard of their running away from home.

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COMMISSIONER: In New South Wales they have got a court order called "Compulsory Assistance" where the court orders a person who has got a vulnerability to go and get rehabilitation and if you don't do it, there's a consequence. We have got directive powers here. We don't seem to use it very often and maybe that's an option that's already existing and we just need to activate. Similarly, the options available, according to the department, under section 14 are quite limited once they substantiate harm. The least intrusive intervention is with parental agreement on the first submission. It may be that other appropriate action in 14(1)(b) might be actually wider than that.

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MR HANGER: It's enormously wider than that.

COMMISSIONER: Yes, I think it is. For example, why isn't one of the options where you have got domestic violence - and we all accept that that can be emotionally damaging for a child. That doesn't mean the answer is removing the child because that can be emotionally damaging too.

MR HANGER: Yes.

COMMISSIONER: So the act requires the state to take the least intrusive intervention warranted in the circumstances, as I read it. So why wouldn't the option be for the department to take a domestic violence order over the child so that the child is within the protected category and there are consequences for that? Why isn't a domestic violence order over the perpetrator a viable option that may be able to keep the child safe at home, support the family and achieve the protection of the child in a very supportive, unintrusive way?

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MR HANGER: The power is there in 14(1)(b). I can't say why it is or isn't exercised.

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COMMISSIONER: All right; all food for thought. Thanks, Mr Hanger. Ms Stewart?

MS STEWART: I tender the Aboriginal and Torres Strait Islander Legal Service's final submission dated 15 March 2013.

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COMMISSIONER: That will be exhibit 193, Ms Stewart. Your two hours start now. 1

ADMITTED AND MARKED: "EXHIBIT 193"

MS STEWART: Thank you, commissioner. Firstly, I would like to acknowledge we appreciate being granted leave to appear to such an exceptionally significant Commission of Inquiry made all the more important from our organisation's perspective given the high rates of Aboriginal and Torres Strait Islander children in out-of-home care. We would like to refer to our previous submission that has been put in evidence in November 2012 which for the main part are made in support of a proposal for delegated statutory responsibility to community controlled Aboriginal and Torres Strait Islander organisations. 10

Our recently submitted final submission highlights two recommendations that we consider are key to (1) reducing overrepresentation and (2) improving outcomes for children and young people already in out-of-home care. Our first recommendation relates to the establishment of the single state wild child protection wellbeing agency that has the delegated statutory responsibility to deliver universal, secondary and statutory services. 20

I think it's fair to say that this inquiry has heard much evidence that demonstrates that there are complex cultural needs of Aboriginal and Torres Strait Islander children, in particular how to preserve and develop their cultural identity, and this enhanced through their connection with their families, their extended kin, their cultural groupings and their community. A culturally competent service is best placed to meet these complex needs. Additionally, given the evidence we have heard regarding children on child protection and Youth Justice orders, it also is a sound economic and social investment in the future generation. 30

We have also heard a lot of evidence about the need for and the benefits of universal prevention strategies and early interventions. The proposed organisation's framework will reflect Aboriginal and Torres Strait Islander values, their beliefs, principles and practice frameworks and will have the capacity to provide a range of non-stigmatised assistance to vulnerable families. The practice benefits are that through community based solutions and connections vulnerable children and families can be identified, assessed and be able to access differential or non-statutory assistance. 40

An example of this type of assistance is through connecting through the broader Closer the Gap initiatives that can be facilitated across areas of health and disability, education, housing and employment, providing child protection awareness and education to the community and

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facilitating access to local community networks and support such as the local neighbourhood centres and local parenting groups. 1

COMMISSIONER: Will universal services play an identification role of children at risk at various points of the continuum?

MS STEWART: At all stages of the continuum if it has capacity to deliver across those three spectrums and also provide links to the local cultural and elder groups which also go to, I suppose, building more comprehensive understanding of key plan and kinship structures. The organisation will also have capacity to facilitate access to and deliver secondary services across harm and risk indicators and examples which we have heard a lot of evidence of: domestic and family violence services, drug and alcohol counselling services, providing intensive family support services and restoration services, but also providing therapeutic trauma based response services through relationships with allied health practitioners, be able to respond to the intergenerational child protection cycles and deliver programs and services that go to enhancing parenting and attachment capacity. 10 20

COMMISSIONER: Can I just ask you in a practical way: how do you break the intergenerational cycle?

MS STEWART: I think only through the delivery of universal services, commissioner, because it's been a theme throughout the inquiry how children that have been removed go on and have their own children removed - - -

COMMISSIONER: It's a risk factor.

MS STEWART: - - - but we don't seem to particularly address that under case plans, under strengths of the parents or the weakness of the parents. We don't go to those specific - - - 30

COMMISSIONER: The exit strategy then must have been faulty. If a child in care is prepared for responsible adulthood and independence properly, whether it's by the state or family, then they have a much better chance of being a more responsible adult and potential parent than if they're prepared inadequately, haven't they?

MS STEWART: Yes. 40

COMMISSIONER: So transition to independence must be a critical point, a critical tertiary point, for breaking the cycle, the intergenerational cycle, mustn't it be? It must be the most critical.

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MS STEWART: Yes, but I see it as more working with the parents in that capacity.

COMMISSIONER: Yes, I see what you mean. You say if you work it through these are - you're going to have - you're not going to have to transition children to independence because they're still going to be at home.

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MS STEWART: Yes, your Honour.

COMMISSIONER: Yes, right, okay.

MS STEWART: Sorry, commissioner.

COMMISSIONER: But there's still two cohorts there. I mean, some aren't.

MS STEWART: Yes.

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COMMISSIONER: Those at home you'd like to think have a better shot at being prepared for responsible adulthood and parenthood.

MS STEWART: With support.

COMMISSIONER: That brings me to this question, should transitioning be something the department does or should it be something a specialist non-government agency does?

MS STEWART: I was actually going to address that in my oral submission.

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COMMISSIONER: Well, I'll wait, sorry.

MS STEWART: Right about now, yes, particularly - - -

COMMISSIONER: No, in your time. Don't let me - - -

MS STEWART: Yes. I particularly draw your attention to our proposed legislative reforms to section 6, which is the provision that relates to recognised entities and decisions affecting Aboriginal and Torres Strait Islander children and to section 82, placing a child in care. It's our proposal that amendments to section 6 should occur to firstly make it a mandatory requirement that the recognised entity is to be consulted in relation to Aboriginal and Torres Strait Islander children who are subject to intake and investigation and assessment, that we amend section 6(4) to provide that when the Children's Court receives the evidence of the recognised entity's views about the child

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and Aboriginal tradition and Island custom that they will receive that by way of a written report to the court, and just what the commissioner has just touched on, amending so that the chief executive or the authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the recognised entity to deliver case work and case management responsibilities for (1) the purpose of transitioning a child to adulthood commencing at 15, be responsible for the development, the implementation and review of the children and young people's cultural support plans and be able to deliver case work and case responsibility for child and family contact.

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COMMISSIONER: Can I ask you two questions? One is there's a strong argument, it seems to me, and it's theoretical as much as it is practical, that the protective need status of children should be reviewed periodically because they change over time. The problem is the longer it takes - well, the older children get the more self-protective they get, the more need they have for emotional stability and security and not be moved from place to place.

So you've got that tension between, well, if they're not in need of protection anymore shouldn't they go home, and that's why you've got in 59(6)(ii) that alternative of making the best decision for their emotional stability. So that might be used to keep somebody in care even though they're actually not in need of protection anymore. That's one thing. How would you deal with that under your proposal? How would you resolve that tension?

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MS STEWART: I'm not sure how to go about answering that, but I think there would be some difficulty in assessing a young person's - the risk of their emotional stability if they were to return home and stay in care. How would you go about making that determination before - and who makes that - - -

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COMMISSIONER: Which begs the question why is the provision in the act? How do they go about it now in saying, well, option A is going to be more emotionally stable for the child than option B.

MS STEWART: And how do you balance what's more emotionally damaging, removing the child in the first place or placing the child in care, the assessment of that risk.

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COMMISSIONER: Well, that's good questions. That's why I said before, unless your system can be pretty sure it can give a better net result to the child by removing, then there would be a strong argument for not removing. If your child is going to be worse off for intervention why would you do that?

MS STEWART: Sorry, commissioner, I think I just raised more questions rather than providing an answer. 1

COMMISSIONER: That's okay. That's the nature of this system. Every answer leads to another question, but nonetheless that's what I'd like to hear back from - Mr Hanger, I forgot that one when I was talking to you, 59(6)(ii).

MR HANGER: All right.

COMMISSIONER: Why is that there? See, all the other sections for the court orders are based on need of protection until you come to a long-term guardianship order. There's a slight tweak and it says, yes, in need of protection is a precondition. No parent in the foreseeable future is another precondition, and then there's an alternative, or if it's the best thing for emotional stability, which is completely undefined. How it's proved, how it's investigated, when, by whom, not there. 10

MR HANGER: We'll respond to that in writing. 20

COMMISSIONER: Thank you, and why is it there if best interests is the overriding, paramount consideration? Why do you need it? Obviously because best interests is not a test for the court to apply. Emotional stability is there because best interests is exactly that, not a test, it's an aspiration. The other question I had was what do you say about defining "parent" to include family members? 20

MS STEWART: Within the act, well, probably a consistent definition in accordance with Aboriginal custom and Torres Strait custom understanding of parent. Commissioner, we've also proposed amendments to section 82(7). We propose an amendment that would allow the chief executive to grant approval to Aboriginal and Torres Strait Islander foster and kinship agencies the authority to place children. 30

The benefit of these proposed amendments is it allows the Aboriginal and Torres Strait Islander professionals to administer those legislative requirements of section 5C, which is the additional principles for Aboriginal and Torres Strait Islander children, the very important child placement principle under 83 and section 88, which is the provision that provides that the chief executive has to facilitate contact between the child and the child's community and language group. Commissioner, this is a partial delegation which we believe is achievable within the short and medium term, however we do still rely on the proposal of a staged transfer of full delegated responsibility over a 10-year period. 40

COMMISSIONER: Have we got a milestone plan for that?

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MS STEWART: We should have. I think there would be quite a bit of work in that, quite a lot of consultation. 1

COMMISSIONER: Listen, while I think of it, that 59(6)(ii), why it's there is for the situation where a child's been in foster care for a long time and mum or dad deals with the problem that they had at the time five years later and then comes out of the blue to claim their child back. That's when the court is supposed to look at - weigh that situation up by reference to emotional stability. It still doesn't say how, how you resolve things like that, and whether it should be restricted to that situation rather than just left there as if it's an option in all cases. That's really why I was raising it. It's been put to me that it might be at least of symbolic importance if indigenous provisions were collected together in a single chapter. What do you say? Do you have a position on that? 10

MS STEWART: I don't know if we have a firm view but I'll - - -

COMMISSIONER: It gives it a prominence that it might not currently have, on the one argument. On the other argument, it might be that you don't want to identify the indigenous situation by contrast to the non-indigenous. It might not be as productive as the symbol might suggest. 20

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MS STEWART: It's more adherence to those provisions of the act. I don't think it's unwieldy how it's posed it. 1

COMMISSIONER: Yes, okay.

MS STEWART: Given time - - -

COMMISSIONER: So there's no strong position from ATSILS that it should be collected in - child placement principle is specially stated. Now really, that principle is a general application. But it's given prominence largely historically because it was part of the recommendations of the royal commission. Whether it needs to be reintegrated more with the act itself and actually given practical expression rather than just being stated is - take your point, there's no point having a stop sign if you don't actually stop there. 10

MS STEWART: Yes, Commissioner. Just in relation to what I've just spoken to, we say that it's this legislative intent that speaks to children and young people's cultural identity being supported by holistic concepts of Aboriginal and Torres Strait Islander traditions which the elders, kin and immediate families have embedded within the cultural heritage and knowledge. This intent can assist Aboriginal and Torres Strait Islander children and young people to build a foundation of cultural strength which can assist to successfully navigate the unintended detrimental experience that relates to out-of-home care. 20

It can also support the creation of an environment of resilience which is supportive of children and young people's development stages, their transition into adulthood, and the long-term development of relationships with immediate and extended families, with community members, which goes to creating a supportive safety network. 30

Commissioner, it goes without saying that the creation of the Aboriginal and Torres Strait Islander child protection well-being agency needs to be appropriately resourced and funded properly. It will be setting an organisation up to fail if this model, with its added responsibility, was not properly resourced. This culturally competent service-delivery model must be seen as a socio-economic investment assisting a reduction of overall expenditure.

A cultural competent statutory response is required to reverse the presence of intergenerational cycle and divert and exit families out of the statutory into differential responses. I'm going to go on and speak about what I mean by differential responses. It's actually a second recommendation and it relates to a proposed model that allows for a differential response to initial notifications. By way of clarity we mean a process and 40

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practice that provides for more than one initial response to notifications of reports of abuse or neglect. 1

In this context we recommend a differential response to the notification with a process and practice in place to allow a referral pathway to the most appropriate universal, secondary or tertiary service. I have to be clear that this is not a reduced safety standard but it is dependent on a comprehensive assessment of the identified harm and risk to determine the most effective response to the children's safety and well-being needs. 10

A differential child protection and well-being approach must be responsive to low, medium or high risks and we propose that this function sit within an independent non-government organisation. Under a differential response model the Aboriginal and Torres Strait Islander child protection well-being agency, which has capacity to provide services and case management across the child protection continuum, will be well placed as a culturally competent service-provider to receive a direct referral from this non-government organisation.

The culturally competent service will sit alongside and have integrated referral pathways to other specialist differential non-government providers as well as remaining government statutory services to best meet children, young people and family's child protection and family restoration requirements. There's actually a diagram, which I think is attachment C to the written submission, if you would prefer to see that as a visual. 20

I don't propose to reiterate what's in our written submission but to highlight how our proposed agency sits within the system. I need to be clear that we're talking about integrating within the system and not segregated system. Finally, Commissioner, we would like to acknowledge counsel assisting, both senior and juniors; the commission staff and other parties with leave to appear for the commitment, their care and diligence, and the respect that's being shown throughout this inquiry which will ultimately benefit all Queensland families that come into contact with the future child protection system. 30

Commissioner, unless there's something that you'd like me to specifically address, those are submissions.

COMMISSIONER: Thanks, Ms Stewart. Thanks for your and ATSILS' participation in the inquiry. It's been invaluable. There is one question though, just with the model that's proposed. As I comprehend this piece of legislation that we have at the moment, it's called the Child Protection Act, it's designed to protect children from harm and to allocate or redistribute responsibility for children between the private and public, formal and 40

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informal spheres. But except for children in care, the system at the moment protect the well-being of children, it doesn't meet well-being needs.

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MS STEWART: Yes.

COMMISSIONER: And extending the functions of the chief executive to do that would require a redesign and reconception of what child protection is. It's mainly safety-based but obviously it's intended to protect well-being, not to meet well-being, unless the child is in the custody or guardianship of the state, in which case interim, temporary or ongoing, you must meet all the well-being needs of any child in your care.

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So why I raise that is do you envisage the agency that's proposed as coordinating all the levels or tiers of services and to incorporate protection as part of the provision of meeting well-being needs?

MS STEWART: Yes. If I just clarify how I've understood your question; yes to the first part, to be able to deliver across universal, secondary and statutory. Once they're in the statutory system that agency can still provide a function. There's always going to be that need for the statutory stream.

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COMMISSIONER: Who would administer the body?

MS STEWART: I've addressed that in the written submission, Commissioner, pages 3, 4 to 5, perhaps just 3 to 4. It's our proposal that it's a single state-wide similar to the ATSILS model.

COMMISSIONER: On the basis of the theory that if you meet a child's well-being needs the greater will cover the lesser and the protective needs will be met as a matter of course.

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MS STEWART: Yes, Commissioner.

COMMISSIONER: Except for those that do need statutory help.

MS STEWART: Well, they still need to be met if they need statutory help and I think that can still be provided by the organisation that we've proposed.

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COMMISSIONER: But meeting their other needs earlier is designed to ensure that protection of the state never becomes a primary need. Is that - - -

MS STEWART: Yes, Commissioner.

COMMISSIONER: Okay. Thanks very much, Ms Stewart. Much appreciated. Mr Capper?

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MR CAPPER: Thank you, Commissioner. Commissioner, I'd seek to formally tender the submission on behalf of the Commission for Children and Young People and Child Guardian responsive discussion paper.

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COMMISSIONER: Mr Capper, the Commission for Children and Young People and the Child Guardian submission will be exhibit 194.

ADMITTED AND MARKED: "EXHIBIT 194"

MR CAPPER: Thank you. Commissioner, the Commission for Children and Young People and Child Guardian wishes to thank the commission of inquiry for the opportunity to participate in the public hearings and to assist in providing insight into the function of the child protection and the related monitoring systems. We'd obviously also like to thank the commission staff, counsel assisting, and those with leave - and certainly those behind the scenes who are doing a tremendous amount of work.

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Since the 1994 Forde Inquiry and more particularly since the 2004 CMC Inquiry there have been significant efforts undertaken and achievements made to promote the safety of children in Queensland, particularly those in out-of-home care. The terms of reference for this inquiry clearly indicate that its purpose to ensure the child-protection system is sufficiently placed in coming decades to meet the needs of the most vulnerable members of our community, namely, children and young people who require state intervention to protect them from harm.

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In demonstrating its commitment to this inquiry the Commission for Children, Young People and Child Guardian has provided three written submissions, the most recent being that handed up this morning, all of which have been published on the Commission of Inquiry's web site. The Children's Commission also provided a response to the options for reform paper. In addition, the Commission for Children, Young People and Child Guardian has responded to eight information summonses and responded to a number of specific data requests to assist the inquiry in its regional hearings. I don't propose to cover this material further and the Children's Commission hopes that these submissions and evidence have assisted the inquiry.

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What has become evident from the information presented by a variety of stakeholders during the course of the Commission of Inquiry is that change is required in relation to Queensland's child-protection system. As the Commission of Inquiry embarks on the process of establishing a road map for the future of the child-protection system, it's important to strike a balance between onwards and upwards from the system designed as a result of the Forde and CMC Inquiries and maintaining the important safeguards for children that those inquiries have established.

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Government agencies are delivering better services than they have in the past but significant gaps remain and there will always be a need to make sure that children have a voice when and where they feel unsafe or are receiving substandard services. The Children's Commission submits that its role as a centralised oversight agency for the child-protection system is crucial to providing this voice for children in the child-protection system. The Children's Commission's oversight is informed by specialised knowledge, skills and experience of its staff and is sharply focused on issues affecting children and young people as opposed to broader public administration issues.

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By regularly visiting children in out-of-home care the commission is able to verify the safety and wellbeing of children and efficiently resolve issues of concern to them. This information is then used to support systemic monitoring and advocacy. In doing so, it ensures that

there is a concrete, independent mechanism to achieve improvements in service delivery as identified by the recipients of that service delivery. While the Children's Commission understands that a revised child-protection system will require a revised oversight and it's open to change, it submits that its core role of obtaining and representing the views of children to the Queensland government and the public should be maintained.

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As identified in our first submission to this inquiry and addressed with Ms Fraser in her evidence, changes to the systems, practices and government policies will occur which may necessitate a change in the focus and monitoring and oversight. If the Children's Commission's monitoring and oversight work was identifying fewer issues, it would also be reasonable for it to be reduced or rolled back in some areas, but this is not the case.

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For oversight to be effective it must result in a system which is responsive and adaptable to address issues as they arise. Some may argue that as the system matures there will be a lesser need for oversight. However, to effect real change there must be a commitment to and continuity in leadership and governance. We respectfully remind the inquiry that our second submission makes a number of practical recommendations for reform to address these ongoing issues with governance and leadership. We submit that the same evidence base that drives accountability can and should be used in a leadership context to inform and drive innovation.

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In everyday life it is relatively easy for adults to lodge objections and raise concerns about services that they receive. However, children in a child-protection system are at a major disadvantage because of the fact that they are children and because of the degree of involvement with the state in their life. Those children who have been screened out or not had alleged harm investigated or the protective needs assessed due to unaddressed investigation assessment backlogs aren't just disadvantaged but living in peril.

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This type of risk can only be monitored and investigated and reported upon by independent agencies. Where any extraordinary step is taken to remove a child from the care of their family it's also important that there are appropriate supports to enhance that child's day-to-day experiences and their longer-term life outcomes.

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Regardless of the efforts undertaken to provide early intervention and prevention programs there will always remain a cohort or children who require the tertiary child-protection system to protect them from harm. Failure to intervene or, more importantly, to provide effective treatment of a child's needs when statutory intervention

occurs has been clearly identified as leading to a greater burden on the state through increased imposition on Juvenile Justice, criminal justice, health, welfare and child-protection system as the child transitions to adulthood. 1

Whilst it may be argued that the purpose of the tertiary child-protection system is solely to protect children from immediate harm, as acknowledged in your forward to the discussion paper, if the Child Protection Act was working as intended, it's incumbent on the chief executive to ensure, as far as reasonably practicable, that all children in out-of-home care have the requisite support to develop into responsible adulthood. Achieving this end will mean the child-protection system can then become and prevention and early-intervention mechanism for breaking into generational cycles of abuse. 10

The Children's Commission sincerely hopes that the recommendations of this inquiry will maintain ongoing support for the tertiary system to meet the needs of children who are in need of protection. In addition, it is desirable to reduce the number of children requiring tertiary-system intervention through increased early intervention and prevent programs so that families are able to protect their children from harm and meet their long-term development needs. It is important that any reforms in this regard include robust governance and transparency and don't just artificially reduce the number of children in the tertiary system and expose children to ongoing harm. 20

As the shift in the paradigm of child protection moves towards early intervention and prevent, it's imperative the child-protection system and service delivery models are focused on outcomes, not outputs. Presently there appears limited knowledge of the totality of secondary services available in Queensland and insufficient evaluation of objective evidence regarding the effectiveness or value of individual programs despite the significant expenditure being undertaken. 30

As we move forward, oversight should not simply focus on monitoring whether change has implemented but, rather, it is essentially that independent oversight and monitoring is undertaken to ensure that the objectives of the proposed reforms are realised. One of the critical ways of doing this is something relatively simple and which the Children's Commission already does, something that the children themselves have told us through our survey work; listen to the children themselves. 40

When we have spoken to children about the system, what would make the system better, they have told us variously, "Listen and interpret and see our point of view; not just

as children but as a person. People listen to us more and understand. Just because we're fostered doesn't make us poor or not wanted; to give kids more of a say because we're not dumb. We know what we're saying." In closing the Children's Commission submits that it's already done the listening for the Queensland government and we hope the inquiry continues this ability and positions government to better respond to what is being said.

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COMMISSIONER: Thanks, Mr Capper, and the commission thanks you for your assistance in helping it perform its task with insightful questions and submissions. Can I ask you: how do you define the current child-protection system for the purposes of the terms of reference?

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MR CAPPER: Certainly the child-protection system goes well beyond just the tertiary system, but for the purpose of this inquiry the obvious focus is upon that tertiary intervention and what happens there and certainly from our perspective that is where our monitoring squarely fits.

COMMISSIONER: So would you say something along the lines of the current child-protection system comprises the support and protection and care services delivered or coordinated by the chief executive under the act to children in need of protection, the court and tribunal processes and the oversight mechanisms?

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MR CAPPER: For the purpose of this inquiry, yes.

COMMISSIONER: Okay. For the purpose of this inquiry the words "early intervention", "secondary", "primary" or "universal" levels of services aren't mentioned anywhere in the act. The act refers to "family support and preventive intervention".

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MR CAPPER: Yes.

COMMISSIONER: It doesn't define "family support".

MR CAPPER: No.

COMMISSIONER: What do you say is the earliest intervention that the current child-protection system is authorised under the law to take?

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MR CAPPER: Those would be defined and we certainly had that discussion - you had that discussion with Ms Allison in relation to the functions as defined under the act include those early intervention and prevention strategies, and certainly it has to be considered in the context that the Department of Child Safety sits within that broader organisation which can deliver some of those services, those universal and secondary services. So there is a continuum, as we've heard throughout, as children move through that, and they can move into the tertiary system and back out. So certainly there has to be some fluidity and there's certainly a grey area there that I wouldn't like to define further.

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COMMISSIONER: When we do intervene early, usually with parental consent, to reduce or remove risk factors so that we can avoid harm preventatively rather than just protect after the event, who should have responsibility, do you say, for evaluating the effectiveness of the money spent on early intervention programs to ensure that the moneys being spent on an effective program that is high yield compared with its rivals?

MR CAPPER: We wouldn't like to define that. Certainly it's not our role to sort of dictate who does what and where within the system. Our job certainly is monitor that the system is effective and provide that effective oversight, but where that sits within - - -

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COMMISSIONER: But you wouldn't put up your hand. In order to monitor something don't you have to be able to test the validity of the claims that are made by those who say they've done something?

MR CAPPER: Certainly. Most definitely.

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COMMISSIONER: So if I said to you, "Listen, because we intervened early in this family we've got a better overall result," how do you know that that's a valid claim as an oversighter?

MR CAPPER: The issue for oversight will be about measuring the outcomes as opposed to rather than saying, "We offered this service to this person," you know, and - - -

COMMISSIONER: Well, how do you do that? If nobody checks to see how the child that exited at 18 is faring at 32 how do you know what the overall result was?

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MR CAPPER: Certainly that's an issue that's being considered and certainly we've addressed you on that previously, which is certainly not within the mandate of the commission at present. As to whether or not we would have any future role in that capacity, we would have to

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obtain instructions, and certainly I would have to - it 1
would be something to be considered as part of the
overall - - -

COMMISSIONER: Do you remember when I went through the
list of measures - outcomes, I think it was, in indigenous
over-representation with the director?

MR CAPPER: Yes.

COMMISSIONER: When you analyse their measures of what 10
they did to reduce over-representation, like, for example,
adhering to the child placement principle, they actually
had nothing to do with over-representation.

MR CAPPER: No.

COMMISSIONER: Preventing over-representation is to stop
harm from occurring in the first place so that you don't
need to come into the system. It's got nothing to do with
what you do for children in care.

MR CAPPER: That's correct. 20

COMMISSIONER: So would the commission be responsible in
its - or would it be within the oversight role of the
commission to say, "No, look, your measures are actually
measuring the wrong thing. You want to know this but that
measurement won't give you that answer. This is what will,
so you measure yourself against this and we'll see how well
you've performed," or, "We will measure you against this
rather than against what you want to measure yourself with.

MR CAPPER: It's certainly a situation where those issues 30
have been raised. The commission has published numerous
reports in relation to that. The indigenous child
placement principle audits, there's certainly been two of
those, the key outcomes indicators indicate and measure the
NAPLAN results and unmet health needs of children and those
sorts of matters. The commission is obviously reporting on
those factors.

As I've identified, though, through our submission, it's
incumbent upon the agencies to take not only the fact that
we are monitoring their systems and that we're reporting on
these systems aren't working, it's incumbent on those who
receive that information to action that information, 40
whether that be at government or at department level.
Certainly we can identify that there are issues. There
needs to be that impetus on the agencies to actually give
effect to those representations.

COMMISSIONER: Accepting that, is it also part of your
remit, though, to actually make sure that not only did you
report on what was lacking but that their response to your
report was adequate?

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MR CAPPER: I don't think that there's currently sufficient provision for that in the current system. 1

COMMISSIONER: Right.

MR CAPPER: Sorry, I take that back. Sorry, in fact, I'm corrected. The effectiveness of our reporting can be reported to the minister for the fact that we haven't received an adequate response.

COMMISSIONER: Yes, okay. 10

MR CAPPER: That's as far as our - - -

COMMISSIONER: Have you done that ever?

MR CAPPER: I'd have to get instructions on that point?

COMMISSIONER: Okay.

MR CAPPER: Thank you.

COMMISSIONER: Thanks, Mr Capper, much appreciated. Yes, Ms McMillan. 20

MS McMILLAN: Thank you, Mr Commissioner. Can I tender, because they don't propose to appear personally, the Legal Aid submissions both in response to the Department of Communities, Child Safety and Disability Services submission and the response to the discussion paper on behalf of Legal Aid. This morning, during the course of these oral submissions, it's been received from the CMC their written submissions. Again, they don't propose to personally appear. Unless there's objection, I propose to tender those as well. 30

COMMISSIONER: Thank you. The Legal Aid submission will be exhibit 195 and the final exhibit to the commission is from the Crime and Misconduct Commission and it will be exhibit 196.

ADMITTED AND MARKED: "EXHIBIT 195"

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MS McMILLAN: I imagine if anyone at the bar table wants to respond to anything in relation to that submission they could do so briefly when I've finished what I wish to raise with you, Mr Commissioner. 40

COMMISSIONER: Sure. We fell short of the double hundred, only just.

MS McMILLAN: I'll see if I can rustle up a few more, commissioner.

COMMISSIONER: A couple more exhibits, thanks. Tender Mr Hanger. 1

MS McMILLAN: No doubt he can find a couple more. Could I just start by briefly alluding to one goes back to the evidence of Prof Lonne who said in his oral evidence to you and in his written evidence at page 11, paragraph 59 of his statement, that the child protection legislation was basically sound, which was interesting given his rather trenchant criticism of the department in many other respects. Indeed, in many of the submissions that have been tendered before you today there isn't a great deal of criticism per se of the actual legislation. It appears to be really of the systemic issues as a whole and also the implementation and aims and aspirations of it that is really drilled down to in the submissions before you. 10

If one looks at what the system is, and I've heard your questions particularly to Mr Capper a moment ago, it is clear from the different submissions from each particularly of the government departments that child protection is part of a broader system encompassing, naturally, health, education, police as prime examples. They must have and do have legitimate concerns and responsibilities so therefore it's hard to encapsulate in any statement what is a child protection system, because it must encompass various pieces of legislation, various government departments, just as hard to probably track all the funding that could be construed as going towards child protection in a broad sense. 20

COMMISSIONER: You might say the family is part of the child protection system.

MS McMILLAN: Exactly. 30

COMMISSIONER: Or the system for protecting the children.

MS McMILLAN: Or child advancement, if you want to put it even in a broader sense.

COMMISSIONER: Well, child protection might be a subset or a sub-system of child welfare.

MS McMILLAN: Exactly.

COMMISSIONER: Child safety might be a subset of child protection. 40

MS McMILLAN: Exactly, just as it is difficult to say, "Well, what am I actually getting for the funds expended?" just as I as a parent might like to say and wish I could say to my teenage children, "I have expended this amount on your education. I expect this much in return." For many

children, unfortunately, we know who are part of the child protection system, they have a suboptimal, unfortunately, it seems, many of their life outcomes. So that it is difficult often to measure whether the fact at what point they may have been involved in the broader child protection system and how well it's served them, whether, as you - an example you gave a moment ago, at 32 what is their life outcomes and how has their life developed? It is difficult; what does one measure that against, because there are so many other factors that operate often upon that person in terms - - -

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COMMISSIONER: I suppose if you gave me money - public money - to spend for child protection - - - 1

MS McMILLAN: Yes.

COMMISSIONER: And perhaps if we envisage the system - rather than calling it the child protection system, we call it the system for protecting children.

MS McMILLAN: Yes.

COMMISSIONER: Then what I would do - so that I wasn't Jack and the Beanstalk and I went and bought beans instead of milk with the money you gave me - - - 10

MS McMILLAN: Yes.

COMMISSIONER: The system for protecting children would spend what funds it had available on providing services to children who needed them that had a child protection purpose and outcomes, wouldn't they? That's how I test if I was spending my money on the right things.

MS McMILLAN: Well, yes. One would think that you'd probably look at: what are the aims and aspirations that we seek to achieve and what are the most cost-effective ways of achieving these? Because it is well-nigh impossible to say what our aim is, that we will ensure the protection of every child, because that's just simply not possible. And it's not possible, unfortunately, to advance the welfare of every child that may come in connection with the department or the broader child protection arsenal, if I can put it that way, that's comprised by Education, Health, Police, et cetera. 20

COMMISSIONER: A lot of the children who come into the child protection system have been failed by another system. 30

MS McMILLAN: Exactly.

COMMISSIONER: That's why they're there.

MS McMILLAN: Exactly. So that perhaps it's good to look at, and the appropriate way is: what is it that we are seeking to achieve by the grants of money that are given to various government departments and the non-government sector? And perhaps one goes back to basic tools and basic tenets so that if you look at evidence, for instance from Dr Fryer, who gave evidence to you, that she said most parents love and want to parent their children. That's a basic, and one would think axiomatic proposition. 40

Many parents themselves who come into contact with, again, the broader ambit of the child protection system have themselves been subject to child protection involvement.

You know, and it's again repeated particularly in the Department of Child Safety and Community's submission, that that is zero to three is a very critical time in the life of most children. So that if one is looking at what is the best way to advance through this in terms of offering the best possible outcome for children who may need to engage with the system at some point in time, you look, in my submission, at these basic propositions.

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Therefore a starting proposition that's being raised in both the discussion paper and responded to in all, really, of the submissions is looking at that primary and secondary sector. All agree that it needs to obviously be reformed; that there has been inadequate, both funding and attention paid to that sector. The department of - and just so child safety for convenience - in their submission at about page 15 and following looks in some detail at the funding traditionally allocated to it and, quite properly, in my submission, says that because of the number of children in out-of-home care, just servicing that has taken a great deal of funding and will for a considerable period to come.

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Now, that doesn't necessarily mean all of those children should have been in out-of-home care or should necessarily be in out-of-home care, but it is a cost that continues to inure. And it will take, as they point - and that must be, again, correct - some time, effectively - and this is my paraphrasing - to turn the ship around. There are - and you've heard evidence of this - it seems, quite promising, albeit still fairly early signs of some initiatives such as Helping out Families and RAI, which is one of the other early intervention services.

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Now, the Department of Child Safety submission in page 16 talks about the model of the Family Support Alliances and as I understand, this really describes in a sense the development and implementation, to quote it:

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Of place-based planning and investment process for child and family support services to align and integrate services funded by various agencies within the state and Commonwealth government.

Now, if one works through with that, that has a lot to commend it on, it seems, almost all of the submissions. DATSIMA, for instance, the Department of Aboriginal and Torres Strait Islander Affairs, in their submission at page 2 talks about a family support hub model which, as I read it, doesn't seem to be terribly different from this idea but perhaps modified to take into account the particular needs of those communities. And the idea is that obviously would be supportive of government and non-government sector, as is the DATSIMA submission.

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So the idea is that you would obviously form an alliance between these government and non-government services to

provide for families who are very much in need of services at this earlier time. Now, that is not necessarily inconsistent, it seems to me, with what the ATSI submission propose. They have what is, as I understand it, really a parallel idea that would run alongside other services provided to the rest of the cohort, if I can say, of children, which would provide not only this sort of hub, if you like, but generally delegation of child protection case work, a whole plethora of services.

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So it is far more comprehensive, it must be said, than what DATSIMA is addressing here and other submissions. But again the Department of Child Safety go on further in their submissions later and they don't appear to again cavil with the idea that over time there should not be generally a delegation and general devolution of power over to - whether it's called the well-being agency, as ATSI refer to it, or another peak body, but it should be done with appropriate accreditation and training.

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COMMISSIONER: Who would be the delegate? Would it be a company, an NGO, a person?

MS McMILLAN: Well, it's not entirely clear. With the ATSI model it would be, as I understand it, a stand-alone, it would be a non-government organisation, a peak body - - -

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COMMISSIONER: So a group of people would be the delegate.

MS McMILLAN: Yes, and they have provided with an annexure the governance that they propose with it, so that it would gradually, as I understand it, with appropriate accreditation, take on many of the functions that the current department has. Now, what the Department of Child Safety - and I can turn to it now - in their submission propose is that - they particularly address from page 51 in their submission in relation to a question posed in the discussion paper about the most efficient and cost-effective way to develop Aboriginal and Torres Strait Islander child and family well-being services across Queensland.

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Again consistent with DATSIMA and Queensland Health, the department endorses that there be family support services building links with existing stable service models and including medical services such as the Aboriginal and Torres Strait Islander medical service; create partnerships with capable non-government organisations such as the Red Cross; refocus recognised entity expenditure.

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And again, the DOCS submission in detailed talks about the funding given to the ATSI cohort and the particular issues, including the remoteness and the regional issues that pose particular challenges to the delivery of services; and,

with respect, they must be correct in terms of those posing particular challenges. So clearly what is proposed by the department, it seems, is that they work with mainstream and indigenous organisations to broker partnerships; extend the Helping out Families initiative across the state with Aboriginal and Torres Strait Islander family support services, part of the alliance which I spoke to you earlier about.

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The department at page 55 supports approaches that would enable the partnerships to be formed between existing non-government organisation and innovative local solutions to build capacity. The department supports integrated service delivery and models that enable services to vulnerable families.

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They then go on at page 55 to specifically answer your question that the priority role for a Peak Aboriginal and Torres Strait Islander child-protection body should be to support non-government organisations to build capacity and capability to provide services to Aboriginal and Torres Strait Islander children and families at risk. The scope of the Peak body's role could be extended to building capacity across both indigenous controlled and mainstream organisations.

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This role could be similar to the business model of AbSec in New South Wales, although the AbSec model is focused towards building capacity to provide services to children who are already the subject of child prevention intervention. Similar to AbSec, the Peak body could play a role in assessing the capacity and capability of an organisation. So the department would support the recasting of the Peak body explicitly as a sector and organisational development body which is not defined as a voluntary membership. It would be a condition of funding in all departmental service agreements with indigenous organisations that they operate within the framework set by the Peak body.

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So as I understand it - no doubt Mr Hanger can correct me if I'm wrong - the department's approach is not that it would be - and one would imagine they couldn't devolve all of their responsibility to another Peak body but that it would devolve a lot of its responsibilities to accredited organisations and it would look at working with existing structures such as the medical services, NGO's such as Red Cross that currently exist, and, with respect, that would seem to be an appropriate approach given those structures already exist and would be much less expensive than setting up new structures.

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COMMISSIONER: Has anyone dealt with the question of whether - I understand the department's position. If you have got 100 per cent risk and responsibility, you want 100 per cent control because the buck is going to stop with you if something goes wrong and if you are delegating to someone else to perform your functions for you, you want to control them. It just makes sense, but has anyone made submissions about the practicality, advisability or otherwise of instead of making an order for guardianship to the chief executive or to another person making an entity the guardian?

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MS McMILLAN: No; no.

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COMMISSIONER: Could that work? 1

MS McMILLAN: The difficulty, just thinking aloud,
with - - -

COMMISSIONER: I mean, the department is an entity. The
chief executive is the guardian for a lot of children.

MS McMILLAN: That's right. The difficulty, just thinking
aloud, with making an entity the guardian such as - one's
thinking of the recognised entity is that there could be
personnel changes and - - - 10

COMMISSIONER: What about the wellbeing council?

MS McMILLAN: It's probably preferable that it should be
either to give as much certainty - I mean, it's axiomatic
that children thrive on certainty and stability. If at all
possible, I would imagine that - and my friends from ATSILS
can answer this - the points along the continuum would be,
if at all possible, the child not come into the
child-protection system so that there be efforts to
differentiate that response first but, if they do, there be
increased efforts. The submissions do address various 20
measures to look at ways in which the placement principle
could be better implemented so that if you're looking at,
if the child can't remain at home, perhaps the guardian be
to either another family member of someone who is regarded
within those cultural parameters as being a family member.

COMMISSIONER: Sure.

MS McMILLAN: I mean, that would seem to me to be better
than probably an entity because there's an issue about
whether that depersonalises it for the child. It doesn't
give necessarily a great deal of stability; all of those 30
sorts of things. I mean, if that Peak body, for instance,
were wound up which is always possible, then you would have
all of those sorts of difficulties, it would seem to me.

COMMISSIONER: See, that's the point. At the moment what
happens is the court gives guardianship to the chief
executive and then the question of placement becomes
entirely an administrative decision for the chief executive
as guardian/substitute parent. Now, there's no court
control over that so under section 82 the chief executive
may place a child in the care of an approved kinship carer,
an approved foster carer or an entity conducting a 40
departmental care service.

So we have that availability already and then the
department's role for a guardianship order to another is
to ensure standards are met and services are provided and
agreement benchmarks satisfied because in 82(1)(f) if the
chief executive is satisfied another entity would be the
most appropriate for meeting the child's particular

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protection and care needs of that entity - so if the chief executive can do it as guardian, why can't the court do it directly and identify the most appropriate entity as the child's guardian rather than going indirectly, taking the extra step by having the state chief executive involved?

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MS McMILLAN: I suppose this comes down to again proper training and good practice. One issue that there is a reasonable degree of consensus in the submissions is that section 59 should be amended to include that the order isn't made until all attempts at services offered to the family have been exhausted and perhaps there needs to be some strengthening and buttressing of those threshold issues being satisfied in terms of the making of the order prior to the order being made.

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COMMISSIONER: Yes.

MS McMILLAN: Again one of the issues that is addressed fairly squarely in the DOCS submission is the need for proper practice and this seems to run through a lot of the evidence. The DOCS submission takes it head on. It appears that in a very low percentage of cases the practice manual or the diagnostic tool is actually overridden by decisions made by a particular child safety officer. So this comes back to the vexed question of proper professional skill and judgment being utilised.

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So with respect, again, Mr Commissioner, what you have raised already exists in the legislation. This probably comes back to proper training of departmental child safety officers, upskilling, if I can put it this way, and availability of legal advice to parents and representation of children and also, as is fairly strongly recommended in a number of the submissions, proper specialise Children's Court Magistrates being available. So I would say that you would look at a number of those options there. It's not simply a matter of necessarily amending the legislation. It's about attaching a number of those issues.

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COMMISSIONER: Paragraph (f) is obviously designed for allowing the chief executive to get a hospital or some other facility to take over the care of a child, say, with a mental illness or a disability. That's clearly what that's for, but it could be adapted to - and if the chief executive was satisfied that this entity was most appropriate, you could do that. I don't think it's limited to - it's not limited by the language. See, even under 82(2) the chief executive as guardian or custodian can place a child in care of a parent. So once the state becomes the substitute parent, it's got very wide powers of decision-making. Mr Hanger, would you mind finding out for me how many children at the moment are placed under 82(1)(f) and 82 subsection (2); that is, with their parents?

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MR HANGER: We'll do that as soon as we can.

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COMMISSIONER: Thank you.

MS McMILLAN: Thank you. Just on the structured decision-making, pages 26 and 27 specifically of the department's submission refers to that, so what I was just addressing you about was that in the 2012 report the Children's Research Centre identified that only in - the risk level overrides were applied in 2.2 per cent of family risk evaluations rather than the typical override rate of 3 to 9 per cent. "This finding highlights that it's not the tools that require changing but rather the need for ongoing training for staff in the use of application of SDM tools," and on it goes. Now, you've already heard quite a deal of evidence that there is not the availability of training, and if it is it's not necessarily being taken up, particularly at the managerial and team leader level. That that seems to be a common theme running through, that there's not this consistency of training and skill of child safety officers making these critical decisions.

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Indeed, as the ATSILS submission points out - and really, this should be, one would think, across the board not just for Aboriginal and Torres Strait Islander caseloads, that there should be proper training and responses targeting harm and risk factors for things like neglect, domestic and family violence, substance misuse, parenting capacity, mental health. Now, that's not to say, and the evidence strongly supports this, that they are particular issues that unfortunately beset a lot of the children who are of that heritage. You have also heard the historical factors of why that is the case.

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If you contrast that with the evidence you've heard and also the submission from the Queensland Police Service, that in detail talks of the extensive training that that department undergoes with their officers given that in some respects some of their duties are quite significantly similar, there is before you quite a deal of evidence that, paraphrasing, the department has likely dropped the ball in a lot of its training and skilling through their child safety officers and that that appears to be some of the issues that run through children perhaps necessarily coming into the child protection tertiary sector when they need them to and further, decisions being made that may not be supported by good practice, that might be supported on the structured decision-making tools but not by good practice.

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COMMISSIONER: The Queensland Police Service submission was very thorough.

MS McMILLAN: Yes. I commend it to you. Based on the evidence that you've heard it is, with respect, a concise summary of the evidence you've heard and many of the

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recommendations it makes are difficult to cavil with, in my 1
submission.

COMMISSIONER: A lot of the - well, most, I think, of the
responses we've had to the discussion paper were of high
quality, I should say.

MS McMILLAN: Yes. So, for instance, one of the issues
that you've heard quite a deal of evidence about was
service delivery coverage or after hours service. Now, at
page 35 the QPS submission speaks of that, and that again 10
appears to be an issue that resonates through, that that
needs to be addressed. That's again not a legislative
issue, but you heard the director-general give her evidence
about what it would cost and it wouldn't be insignificant.

Again, one is not necessarily suggesting it needs to be a
manned 24/7, but certainly there needs to be extended
hours, because although the department's submission talks
about joint investigations and that there is a joint
responsibility with other departments, particularly the
Police Service, you've also heard a great deal of evidence
that many of the matters ventilated were properly the 20
province of the Department of Child Safety and that simply
by the fact that the police have been the last man
standing, really children have unfortunately needed to be
taken into care, ended up in watch houses over the weekend.
There's been significant delays in being able to process
investigations even when they are joint investigations
because of information being obtained from the regional
intake services. So that there appears to be a very good
argument on the evidence for there being extended service
and delivery coverage.

I want to move to issues such as secure or therapeutic
care. Now, it's fair to say on the submissions received 30
by you that there is a division of views, perhaps
unsurprisingly, because this is a controversial issue.
ATSILS takes the view that obviously there are concerns
about it, and one can understand why that it should be
short-term care, if at all. Of course, Dr Stathis: if
you remember, his evidence was that it may need to be
longer care in order to achieve the therapeutic benefits
that would inure from it. Others give it cautious
approval. The CMC have in their submissions, as I've
briefly read them this morning, indicated that there would
need to be very significant oversight mechanisms in place 40
for that sort of model.

The Department of Child Safety's response, one might say,
is not particularly supportive of that model to occur and
would prefer, it seems, to go down the track of the need
for adolescent mental health services. Now, the difficulty
with that is that you've heard evidence from Dr Stathis and
others that the department, it seems, extraordinarily, is

not a stakeholder in a number of the initiatives such as the Child and Youth Forensic Service, so that outreach service, they're not a stakeholder. 1

So children who are in, for instance, residential placements or foster placements can't access any of those outpatient services unless they otherwise become a patient of the Child Youth Mental Health Service or an inpatient, et cetera. So that yes, it is no doubt far more desirable to offer outpatient and outreach mental health services, but having said that, there needs to be a proper investment in that and at the very least the department needs to be a proper stakeholder in that so those services can be provided. 10

In terms of what Queensland Health has to say about it, it also is not an advocate of secure or therapeutic care. It would prefer the model again of the Mental Health Act, but again, you've heard Dr Stathis's evidence about that, that there are particular issues going down the track of the Mental Health Act, that it's stigmatising, there are other particular issues that inure with it. I make no submissions about whether secure care is the way in which the commission should proceed. There are obviously very significant issues of civil liberties, proper oversight and proper mechanisms to ensure that young people's rights and in fact their welfare are properly adhered to. 20

One of the issues that was posed by the discussion paper was whether there should be a division between investigation and otherwise case work undertaken by departmental officers. Really, other than the CMC and the Legal Aid office, none of the submissions advocate that. They are generally of the view that they should remain within the general purview and expand upon general reasons and rationales for that. Most of them take up the view that the SCAN team should provide assistance with multi-disciplinary advice and the mechanism to obviously address issues that would be undertaken by having the separation in the forensic as opposed to case work. 30

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What might be said about that is you've heard a great deal of evidence about the shortcomings of the current SCAN model. The QPS submission speaks about the SCAN model problems in its current format, and my submission to you is that the SCAN model, when it worked well in former times, was a very valuable tool for interagency cooperation and exchange of information. Again, my submission is - and this is consistent with, it seems, a number of the submissions - the problem is not the legislation about the exchange of information; the difficulty is about siloing of information and how that is exchanged.

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The problem is to get a matter elevated to SCAN, as you've heard the evidence, it has to reach a notification before it's elevated to SCAN, whereas formerly it didn't need to reach that level. So by this there are - that's simplifying the situation, but SCAN is not being well utilised in my submission.

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COMMISSIONER: That's the unintended consequence of formalising SCAN in legislation.

MS McMILLAN: Yes.

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COMMISSIONER: It worked better when it was an informal arrangement.

MS McMILLAN: Yes. And there are other issues such as who chairs SCAN. Whereas again in the older days it appears it was the most experienced practitioner was the chair, whereas this - and you would have heard the evidence, for instance, from Dr Connors and others - that the Department of Child Safety is the chair and they will close a matter to SCAN whether or not the other partners agree. There was also evidence that SCAN was a valuable training ground also for those involved in it. So SCAN had a lot of uses.

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Another aspect that's underutilised, it would seem, is urgent SCAN meetings, which was also a way of elevating information gathered, for instance, by maybe QPS, Education, which again, put together could give a well-rounded picture of where a child was and whether they were at risk. So again the mechanism is there. It needs to be addressed in a way that actually assists children and assists the proper information and exchange of information.

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In terms of the current situation with confidentiality, the departmental submission address is that and in my submission quite properly says that issues such as public confidence, one needs to tread warily because again they can be the unintended consequences of release of information which may of course not benefit the child, really, the subject of the media information or the

discussion at all. But underpinning that and not addressed is that there would seem to be the necessity for a proper duty of disclosure by the department when, for instance, there are court proceedings on foot. 1

It appears to be an absolute matter of procedural fairness that a parent, for instance, knows the case that they have to meet against them.

COMMISSIONER: So you don't have to summons the departmental file.

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MS McMILLAN: Yes.

COMMISSIONER: They just have to produce what's relevant to the proceedings.

MS McMILLAN: Yes. And also because you again have unintended consequence. That same parent might be then involved later in family court proceedings and have access to the file down the track later when they couldn't have it in the Children's Court proceedings where they actually had the matter, the subject of that litigation, there and then. So there are issues such as that, in my submission, which need to properly still be addressed. 20

The courts and tribunals; there appears to be again a reasonable degree of agreement that there needs to be reform in those areas. There is probably disagreement about how much case management should occur and the rationales for why that should or shouldn't occur. Certainly Legal Aid and the department appear to agree that there should be an amendment to section 59 that all reasonable steps should have to be satisfied that they've been undertaken to provide the family with help and assistance. 30

Naturally you already have your urgent orders available so that that wouldn't seem to impinge upon that at all. But again there seems to be good sense for there to be specialist training for Children's Court magistrates. Again as per the Legal Aid submission, there are very good reasons for there to be a proper legal representation available to parents. You've already heard evidence that a lot of parents are disenfranchised in many ways, so they are probably in need, much more so than many other litigants who appear before courts in need of representation. 40

One other issue I had meant to address and moved past that in relation to a question you asked me was intakes. Some submissions favour there to be that dual pathway; there to be the statutory and then the non-government. The Queensland Police Service don't favour that; as I understand it are concerned that you might actually fall

between stools, if I can put it that way, but do favour a differential response so that naturally the family don't immediately go towards the tertiary end of the spectrum.

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The QPS also favour an outposting, for instance, of a child safety officer in various government departments such as the QPS. I would understand that to be somewhat like the child safety liaison officer that exists in Queensland Health, for instance, and there could be good reason to do that so that again that might assist the flow of information into the department where there is some appreciation and training of, for instance, mandatory reporting requirements and what is a proper matter to be reported to the department before it's passed on to the department gateway.

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In terms of overall issues of harm, there again is a consensus that emotional harm is a very important issue that needs to be encapsulated and properly dealt with in the act. Page 20 and following in the departmental submission in my submission very well encapsulates the evidence and the research in relation to that. The department's submission points to the amendments to the Domestic and Family Violence Protection Act. And I'd also alert you to the recent amendments of the Family Law Act, section 60CG.

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Also very helpfully the Queensland Police Service refers to the issues of children exposed to domestic violence. You would have heard criticism of the police for reporting issues were children were present when police attended the scene of a domestically violent incident and why they report it. In my submission at page 21 they give a very good exposition of why again they do report it. Effectively they say, as the director general, Ms Allison said, that it is rarely one incidence, that it often signifies a broader dysfunction within the family, and that's why they consider it to be, one would think, an important issue to take on board.

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COMMISSIONER: Well, it's intelligence rather than a report.

MS McMILLAN: Yes. But they also say that impetus has been given, just as the department does, by the recent amendments to the Domestic and Family Violence Protection Act, so that that gives renewed, if you like, impetus to the issues of emotional harm, and that particularly posed by exposure to family and domestic violence. Unless there was anything further, those were the submissions, Mr Commissioner.

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COMMISSIONER: No, thanks very much, Ms McMillan. Appreciate your help throughout the inquiry and your closing submissions. That applies to everybody at the

bar table; appreciate all the help that I've been given. And it's my responsibility, but a shared piece of work, so I'm grateful for the dedication and commitment that all interested parties have given. Now, is that the end of our business for this limb of the inquiry?

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MR HANGER: We've got a few response to make and - - -

COMMISSIONER: Yes, subject to them?

MR HANGER: Yes, subject to that. We're making inquiries about those numbers that you just asked about.

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COMMISSIONER: Thank you.

MR HANGER: A note refers to that.

COMMISSIONER: All right. Well, in that case we'll close the public hearings on all the terms of reference other than 3E. Thank you again.

THE COMMISSION ADJOURNED AT 12.15 PM

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