

Statement of Witness  
to Queensland Child Protection Commission of Inquiry

Name of witness	Clare Tilbury
Address	School of Human Services and Social Work, Griffith University, Logan campus, Meadowbrook, Queensland
Occupation	Professor, Life Without Barriers Carol Peltola Research Chair
Date	20 August 2012

I, CLARE TILBURY, of c/- Griffith University, Logan campus, University Drive, Meadowbrook, Queensland, solemnly and sincerely affirm and declare:

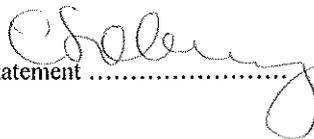
**Background**

1. I hold the position of Professor, Life Without Barriers Carol Peltola Research Chair in the School of Human Services and Social Work at Griffith University.
2. I have been a social worker for thirty years, mainly in child and family services, in direct practice, policy development, teaching and research roles. A curriculum vitae setting out my employment history and research publications is attached (Attachment 1).
3. My educational qualifications are Bachelor of Social Work (1982), Graduate Diploma of Business (1990); Master of Philosophy (2001) and Doctor of Philosophy (2004) in the field of social work.
4. The focus of my research is on the quality and outcomes of child and family services, utilising performance measurement and mixed-method approaches to investigate the effectiveness of child protection systems, strategies and services. In making this statement about Queensland's child protection system, I draw upon the findings from my own research and the larger body of research evidence about child protection services for children and families.

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5. My statement relates to three areas being reviewed by the Commissioner: (1) the adequacy and efficiency of the current use of resources in the child protection system; (2) the Childrens Court; and (3) the transition of children through, and exiting, the child protection system.

**The adequacy and efficiency of the current use of resources**

6. I have published the results of three studies relevant to the issue of effective use of resources. The articles are attached as follows:  
Attachment 2: Tilbury, C. (2003) Repeated reports to child protection: interpreting the data. *Children Australia*, 28, 3, 4-10.  
Attachment 3: Tilbury, C. (2009) The over-representation of indigenous children in the Australian child welfare system. *International Journal of Social Welfare*, 18, 57-64.  
Attachment 4: Tilbury, C. (2009) A 'stock and flow' analysis of Australian child protection data. *Communities, Children and Families Australia*, 4, 2, 9-17.
7. These studies analyse child protection administrative data, and show that there is significant under-investment in Queensland in intensive family support, which is an early intervention response to concerns about child abuse and neglect that may be provided prior to, as well as, or instead of, departmental intervention. Further, the under-investment is particularly pronounced in relation to services for Aboriginal and Torres Strait Islander children and families.
8. There are high levels of renotification and resubstantiation in the child protection system in Queensland, both of which involve repeat work. Receiving a notification takes time and resources, as it may involve receiving a call, recording information, checking previous child protection history, providing advice to the caller, obtaining information from other services. It may result in an investigation which involves two officers making a visit to the family, sometimes accompanied by police or a representative from an Indigenous Recognised Entity. As set out in *Child Protection Australia* (Australian Institute of Health and Welfare, 2012, table 2.2), in 2010-11 there were 19,353 children subject to 21,655 notifications (i.e. approximately 12% of children notified were notified more than once in

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the same year) and 5,941 children were subject to 6,598 substantiations (i.e. approximately 11% of children substantiated were substantiated more than once in the same year). Further, the *Report on Government Services 2012* (Steering Committee for the Review of Government Service Provision, 2012, table 15A.72) shows that in 2009-10 there were 1,371 children subject to a resubstantiation within a twelve month period, comprising 17.7% of all children substantiated. This is an inefficient use of resources, which is not effective in providing protection for vulnerable children. The data paint a picture of families being notified and substantiated again and again and not receiving the assistance that is needed to safely care for their children

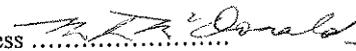
9. The lack of investment is also evident in relative spending levels. In 2010-11 Queensland expenditure on child protection investigations was \$295.2 million and out-of-home care \$369.5 million (Steering Committee for the Review of Government Service Provision, 2012). In contrast, funding to non-government organisations for what the Department of Communities, Child Safety and Disability now defines as 'intensive family support' is \$52.6 million, with only \$10.1 million of this for Indigenous family support services. The stated commitment to early intervention is not matched by policy attention and spending. There needs to be considerably more policy and practice attention to intensive family support, along with a shift in relative spending, to achieve the change that is necessary to move away from a crisis-oriented response to child abuse and neglect.

10. The ineffective use of resources and the lack of balance between preventative family support and tertiary child protection services is very pronounced in relation to working with Indigenous families. Having come to the attention of statutory authorities, Indigenous children are more likely to be substantiated for abuse or neglect, more likely to be placed on an order, more likely to be placed in out-of-home care, more likely to stay longer, and more likely to be on juvenile justice orders and in detention. The over-representation of Indigenous children and families is linked to their level of social disadvantage and inequities in areas such as employment, income, housing and health. Clearly, government action is required to remedy this situation. It is not the fact of government intervention in Indigenous family life that is problematic, but the nature of the intervention. If a community has greater needs for support because of poverty or other

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forms of disadvantage, it is logical to expect them to have a greater need for services, including child protection services. The problem arises when services are only available in the stigmatising circumstances of child maltreatment and involuntary intervention, rather than being provided as a part of a family support response. Indigenous agencies remain a relatively minor part of the child welfare service response, certainly compared with the numbers of Indigenous clients. They are few in number and receive low levels of funding. Alternative policies and programmes would focus on children's quality of life and family living conditions, community development and genuine collaboration with Indigenous communities and agencies.

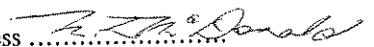
11. Not only is there insufficient attention to early intervention or 'family preservation', there is insufficient attention to family reunification once a child enters care. In Queensland as elsewhere in Australia, the prevalence of children in care has increased markedly over the last decade, whereas the incidence or entry rate to care is steady. There was a sharp increase in entries post CMC Inquiry (2004-05) but has declined since 2009 and in 2009-10 the entry rate returned to pre-CMC Inquiry levels, and steadied in 2010-11 at 2.4 per 1000. The underlying reason for this dynamic (of rising prevalence but stable rate of entries to care) is the increasing length of time children stay in care. There is a 'blocked pipeline' effect occurring. Gradually since 2004-05 the length of time children spend in out-of-home care has been increasing. Between 2004 and 2011, the percentage of children who were in care for less than two years before exiting decreased from 74% to 60%. The percentage of children who were in out-of-home care for 2 to 5 years prior to exit increased from 14% to 26% and the percentage in out-of-home for more than five years increased from 11% to 14% (Report on Government Services, 2012, table 15A.78).

12. Since duration in care is the main driver of current out-of-home care population dynamics, then policy and practice effort needs to be put into improving the quality of the care provided, and good casework with children and families. This requires a greater focus on intensive work with parents as soon as children enter care, to ensure short-term or voluntary out-of-home care does not unnecessarily become long-term out-of-home care. Family preservation and reunification work is demanding, time-consuming and resource intensive. But if children are to have the chance of a stable future, caring relationships and

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connections with a family, child protection agencies must recognise the inequitable situation whereby the balance of resources tends to be heavily weighted towards out-of-home care, rather than supporting parents to look after children safely at home.

### Childrens Court

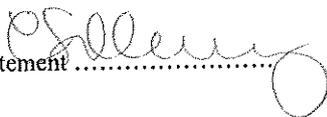
13. In 2010-11, I was a co-investigator on a national study titled 'Challenges possibilities and future directions: a National Assessment of Australia's Children's Courts'. It examined current challenges and possible future directions for the court, in both child protection and juvenile justice divisions. The project was led by Professor Alan Borowski and Associate Professor Rosemary Sheehan from Victoria. It included nine parallel studies which focused on each Australian State and Territory, and also considered Australia as a whole. The Queensland study was conducted by myself and Paul Mazerolle from Griffith University. The findings of this study are forthcoming in a book chapter which is at Attachment 5: Tilbury, C. and Mazerolle, P. (forthcoming) The Childrens Court in Queensland: where to from here? in R Sheehan and A Borowski (Eds), *Australia's Children's Courts Today and Tomorrow*, Springer Publishing Company, New York.

14. There were two sources of data for the study. The initial data collection drew on legislation, government reports, policy documents and research to establish the history and current workings of the court. Subsequently, data were collected from judicial officers and other stakeholders to ascertain their views about the operations of the court. Interviews were conducted with 22 people, and seven focus groups were conducted with a further 25 participants. Included were six judges, six magistrates and representatives from police, community services, justice, children's advocacy and legal aid agencies. Interviewees were based in Brisbane and regional centres. A standard list of questions was asked in accordance with the methodology of the national study.

15. Stakeholders were asked about the purpose of the Children's Court and referred to relevant legislative principles in stating the purpose and philosophy of the Children's Court. It was generally agreed that a special court is appropriate to recognise the needs and rights of children in court proceedings. In relation to child protection, stakeholders

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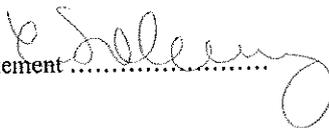
indicated the Court was part of a broader child protection system in which the main goal was protecting children from harm. Judicial officers defined their role as a decision-maker in accordance with legislation - they could make balanced decisions about the best interests of a child by considering the evidence put before them, and ensure fairness and transparency when the State intervenes in family life. Many participants acknowledged the limited capacity of the court to resolve the problems causing people to appear in court. Most regarded the court's purpose as resolving the consequences, rather than addressing the causes, of the individual and social problems that bring children and families before Children's Courts. Diversion and alternative dispute resolution were considered vital and appropriate, but under-developed.

16. Participants discussed the two-tiered structure of the court, the Children's Court of Queensland at District Court level and Children's Courts at the Magistrates Court level, which operate separately and distinctly. Different Presidents and Chief Magistrates have taken different approaches to their roles, with greater or lesser degrees of communication between the two levels of the court. Many stakeholders regarded the dual structure for the courts as problematic as the separation between the courts means it is difficult to obtain a comprehensive picture of the nature of justice dispensed to children, young people and families, and leadership is dispersed. The two-tier structure and the appointment of a District Court Judge as President of the Children's Court coincided with the introduction of new youth justice laws in 1992. It was designed to improve the status and credibility of the Court. Many interviewees, however, expressed the view that children's court work continued to have a low status amongst judicial officers and lawyers, in part because the Children's Court of Queensland has very little involvement with child protection matters.

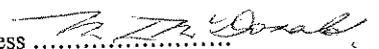
17. Structural separation between Children's Courts and other courts and tribunals was raised. It was noted that matters which the Queensland Civil and Administrative Tribunal hears (such as reviews of departmental decisions about contact and placement) would be heard by the Children's Court in other jurisdictions, and some felt that opportunities for children to have decisions changed or reviewed should be extended.

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18. Opinions about the effectiveness of the courts were varied. Many interviewees expressed overall positive views about the Court and the constructive role it plays in dealing with complex issues, while acknowledging there is room for improvement. Others saw the court as having to deal with the failures of other social service systems and were pessimistic about the court's capacity to effect positive change for children and young people. Most referred to the need for treatment programs and more effective preventative services for disadvantaged families.

19. The main factors identified as not working well with the Children's Courts in the child protection division were:

- limited specialisation in the magistracy and judiciary
- inconsistent decision-making across the state
- inadequate responses to children under dual child protection and youth justice orders
- inadequate responses to children and parents with complex or multiple problems (mental health, intellectual disabilities and substance abuse)
- inadequate case planning and poor quality evidentiary material presented by statutory officers
- lack of child participation and children's understanding of court processes
- parents who are intimidated and powerless in court proceedings, who lack awareness of their rights, and often are not legally represented
- lack of positive working relationships between professionals in the court and lack of understanding of roles of different players

20. As most Queensland magistrates and judges are generalists involved with a wide range of legislation in both adult and children's courts, several interviewees emphasised their dependence upon the information provided - expert advice, quality evidence and details of available services or programs - to reach decisions. The Department, it was asserted, does not fulfil its obligation to act as the 'model litigant' if information is withheld or documents are filed late. Dissatisfaction was expressed about the caseplans submitted to the court by child protection workers. Some magistrates pointed out they had a legislated

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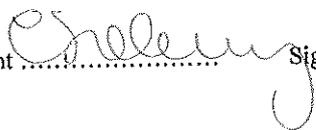
requirement to assess the appropriateness of caseplans, but not to monitor their implementation.

21. Stakeholders generally thought that most children did not fully understand court processes or decisions. The principle of children being able to have a say in decisions that affect their lives is becoming more recognised in Australian policy and practice, and the question of how children could participate in the family court jurisdiction has been examined, with a focus on children being 'listened to' without having to make a choice between alternative living arrangements. As well as advancing the rights and interests of children, their participation avoids negative impacts such as misunderstandings, frustration and hurt that can arise for children if decisions are made without an opportunity to provide input, or in their absence. The Charter of Rights for a Child in Care in the *Act* gives children the right to be consulted about and take part in making decisions affecting them. However, in reality children's voices are not often heard in court and decisions are generally made for them, without their input.

22. The directions for reform from the study relate to increasing specialisation and expertise, increased use of alternative dispute resolution, improving opportunities for participation by children and parents, and integrated responses to families. Currently the court is specialised to the extent that children are seen as having special needs and rights of their own and requiring a separate forum, but not specialised in terms of drawing upon a specialised knowledge base in children's law, child development, or child maltreatment. Participants were divided as to whether judicial officers with specialised knowledge of children's issues are necessary, given the court's role is to make decisions based upon evidence from statutory officers and experts on children's development and welfare. The size of the state and the decentralised population were seen as practical barriers to more specialisation, as resources dictate local courts must be generalist. Other interviewees asserted that increased specialisation is both possible and necessary for magistrates and lawyers.

23. Linked to limited specialisation, in the child protection jurisdiction, there is limited jurisprudence or case law. The vast majority of child protection matters are heard at the

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Magistrates Court level, are generally not reported, and appeals are rare. This means that despite the gravity and complexity of issues being considered, there is little analysis or review of decisions, or opportunities for judicial officers and others to examine reasons for decisions in cases other than those they are directly involved with.

24. Given that the Brisbane Children's Court is currently the only specialist children's court, ensuring all young people have equal access to justice and services, regardless of their location in Queensland, was seen as a challenge. It was generally thought that the Brisbane Children's Court provided superior responses to children and families than courts in suburban or regional centres. While some regional courts deal regularly with children's matters, most courts hear fewer than ten children's matters each year, limiting capacity to build expertise.

25. Many interviewees suggested that police, legal practitioners, child protection workers, magistrates and judges all require expertise in their own fields plus an appreciation of the disciplinary knowledge of other court personnel. Some magistrates advised they had addressed issues locally by providing courses on advocacy and admissible evidence, resulting in significant improvements in the quality of applications. Education and training for magistrates and judges was suggested around consistent interpretation of legislation, child development and the impact of poor environments on children. Some magistrates maintained there was sufficient training through the annual conference and regional conferences. The quality of legal representation was described as variable, with expertise being particularly lacking outside south-east Queensland.

26. Most of the court's clients are from socially disadvantaged, vulnerable families. Providing better prevention services or intervening earlier with children and their families was believed more effective than tertiary level interventions by the courts. The need for a therapeutic, integrated, multi-disciplinary team consisting of trained professionals with expertise in child development working together to assist children was identified.

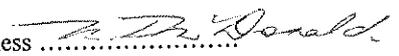
27. Adequate funding was seen as vital for legal representation in child protection cases.

Many parents do not have representation, contributing to an imbalance of power between

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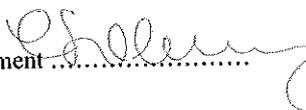


parents and the State. Interviewees identified the importance of both separate and direct representation for children, so that their voices are more often heard in proceedings, and they are more likely to understand the court process and outcomes.

28. It was concluded that the challenges facing the court are considerable. They are related to issues of effectiveness and quality: achieving the right balance of legal and welfare responses, ensuring the interests and voices of children and families are represented in court, ensuring consistent decision-making and resources across the state, and recognising the gravity and serious impact of court decisions on the lives of children and families. There are aspects of the court that are consistent with therapeutic principles, such as the court's focus on achieving the best interests of the child. But there are lost opportunities to make the court more responsive to children and families. This may include improving mechanisms for conciliation and settlement, professional development to encourage a shift away from adversarial practices, improved advocacy for parents, and strengthening children's input. Such initiatives would conceivably improve court operations and parents' and children's experiences of court. The court could seek information from other sources as well as the material provided by the parties. The Act (s.105) provides that the children's court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate. The Explanatory Notes of the Child Protection Bill 1998 in relation to this section state: *The court is inquisitorial, and may use whatever means it wishes to inform itself. For example, the court may accept a submission from interested family members, or may ask to speak to the child in the magistrate's office.* Given the nature of decisions made by the court, their life-long implications, and the complex human emotions involved, it is vital that the process is more satisfactory for the parties, that they feel listened to and understood, and that the court is perceived to be fair and just. It would seem overdue for the child protection division of court to keep pace with advances in non-adversarial approaches and therapeutic jurisprudence more generally.

**Transition of children through, and exiting, the child protection system**

29. In 2007, I commenced a study of the school to work transition of young people in care, with my colleagues Professor Peter Creed and Professor Nicholas Buys from Griffith

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University. It is well established that outcomes for care leavers in education, employment, health and other domains are poor, compared to the not-in-care population. Employment for care leavers is an important outcome indicator, as achieving in education and employment has long-term effects on quality of life. Employment is important not only to financial security (and therefore housing stability), it also improves self-confidence and social connectedness. Unemployment or insecure employment is associated with low self-esteem and mental health problems for young people, whereas better education leads to better overall health status and higher labour force participation. Therefore, it is important to provide the necessary supports to assist young people in care to develop work-related goals and interests. Two of the articles published from this study are attached, as follows:  
Attachment 6: Creed, P., Tilbury, C., Buys, N. and Crawford, M. (2011). The career aspirations and action behaviours of Australian adolescents in out-of-home-care. *Children and Youth Services Review*, 33, 1720-1729.

Attachment 7: Tilbury, C., Creed, P., Buys, N. and Crawford, M. (2011) The school to work transition for young people in care: perspectives from young people, carers and professionals. *Child and Family Social Work*, 16, 2, 1-8.

30. This study was a mixed-method (survey and interview), longitudinal project, which was designed to comprehensively investigate the career development of young people in care. The quantitative data from this project compared a group of 202 children in care with a matched sample of 202 not-in-care on a range of career-related variables, (including career aspirations, career barriers and educational aspirations) and career action behaviours (career exploration, career planning).

31. The young people in care reported lower occupational aspirations, less career planning, more career barriers, lower educational aspirations, and less school engagement. The main predictors of career aspirations for the in-care group were career decision self-efficacy, outcome expectations and perceived career barriers. This study found no significant differences between young people in care and not-in-care on career variables of career goals and outcome expectations, career exploration and career self-efficacy. There were significant differences between the young people in-care and not-in-care on a number of other variables: the in-care group had lower occupational and educational aspirations,

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believed their parents to have lower aspirations for them, engaged in less career planning, perceived more career barriers, and had a less stable and less positive relationship with their schools.

32. Results are consistent with previous research regarding low expectations held for children in care by professionals involved in their lives. Both caseworkers and guidance officers were pessimistic about prospects for a successful school to work transition for young people in care. Their attention was on behavioural and psychological issues, rather than future planning. This may reflect the fact that their work is dominated by the children who are not settled in placements or at school. Unfortunately, this may mean that many children in care, those who have needs that are “under the radar” or not acute, are missing out on resources that can help them to achieve their goals. All participant groups in this study commented on how practice with young people in care is preoccupied with the here and now - problems, placement, and finding appropriate services. On the other hand, the process of career development and preparing for the school to work transition is inherently future-oriented. It is about getting from where you are, to where you want to be; about future goals, opportunities, resources, life plans and outcomes.

33. The concentration on where the child lives as the basic need to be resolved first is not a rationale to de-prioritise education, work and the child’s post-care future. Many of the young people interviewed in this study were not in stable placements, but they still had future work-related goals, and needed assistance to plan towards those goals. All of the domains of development are important, and while some needs may take precedence at a particular time, this is no justification for permanently creating a hierarchy of needs in which placement trumps everything else, every time. Orientation to education and future work is an extremely important part of nurturing the development of young people; it should not be relegated to second-order for children in care.

34. There appeared to be confusion amongst professionals in the study about whose responsibility it was to facilitate a positive career focus for young people in care. Caseworkers – the delegated guardians – have overall case management responsibility for children; yet, they acknowledge they lack expertise in the area of career development.

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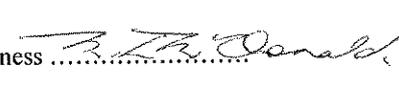
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Two remedies are possible here: resources and training for caseworkers, or bringing into the care system professionals who do have expertise in this field, such as educators and career advisors. Both strategies could be adopted. For example, agencies could develop career resources aimed at young people in care (there are many examples of career activities, workbooks and websites for specific target groups); ensure the caseworker role encompasses a focus on future goals and outcomes; and provide for the expertise of career development professionals to be readily available to caseworkers on a consultancy basis. At a policy level, targeting school stability, measuring educational attainment, and raising expectations about further education and work outcomes would be a positive step. While there were young people in this study who did receive appropriate career development opportunities, it was not consistent, and there was no evidence of any concerted attention to this aspect of development. If they had an Education Support Plan, they frequently did not know what was in the plan.

35. Young people need help at all stages of the career development process: they need to be exposed to diverse experiences and people (for example, through hobbies, part-time jobs, sports) so they can begin to form interests and get ideas (*aspirations*); they need help with naming their skills and talents and matching these to possible work choices, setting goals and making sound choices (*expectations*); and they need to be encouraged so they develop the confidence to achieve goals (*self-efficacy*). This includes having access to resources, as some goals require financial assistance to pay for hobbies, tutors, materials or fees, or transport. These career development activities need to start in the pre-teen years and cannot wait until transition from care planning (typically from age 15 or 16 years).

36. The implications of the research fall into four categories: raising the aspirations of young people in care to achieve a fulfilling career; improving their capacity to plan a career pathway and to overcome barriers; taking a longer-term and multidimensional approach to casework that is oriented to successful adult functioning; and responding more comprehensively to both the social and psychological effects of the care experience. Enhancing the capacity for career and life planning must start in the early secondary school years, followed up with consideration of specific employment and training options in transition from care planning. More attention to adult outcomes in general, and career

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development in particular, will promote the capacity of young people in care to choose positive pathways, to be supported in those choices, and to experience the personal and social rewards of workforce participation.

  
C. TILBURY

Declared before me at Brisbane, this .....<sup>20</sup>..... day of August, 2012.

  
MORAG LEITH McDONALD  
SOLICITOR

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