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TRANSCRIPT
OF PROCEEDINGS

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 20/08/2012

Continued from 16/08/2012

..DAY 6

THE COMMISSION COMMENCED AT 10.05 AM

APELT, LINDA ANN called:

COMMISSIONER: Yes, good morning.

MS McMILLAN: Yes, thank you. Mr Commissioner, I appear with Mr Haddrick today, or this morning at least, and just before we commence Mr Selfridge has a matter he wants to raise with you.

COMMISSIONER: Mr Selfridge?

MR SELFRIDGE: Yes, good morning, Mr Commissioner. There was a summons issued to Margaret Allison, the director-general of the Department of Communities. It's summons number 1974067. In relation to response to that summons, it's been suggested by those advising and instructing me that Belinda Mayfield who's the director of Child Protection Development would be the more appropriate person who would have first-hand knowledge, having been in that role from 2006 as to those issues that are raised in the summons, and I seek your leave or application certainly to produce a statement from Ms Belinda Mayfield answering those questions.

MS McMILLAN: Mr Commissioner, I have no difficulty with that except we have given an extension already, so long as that could be complied with within the time frame that was given to Ms Allison.

MR SELFRIDGE: It's ready. As soon as you give your leave, it will be filed immediately.

COMMISSIONER: Why don't I simply say that I will accept a statement from Ms Mayfield as compliance with the summons to Ms Allison?

MR SELFRIDGE: I appreciate that.

COMMISSIONER: Would that be okay?

MR SELFRIDGE: Yes, sir, absolutely, thank you.

COMMISSIONER: All right.

MS McMILLAN: If we need any further applications made in relation to information summonses, we can do that at that time.

COMMISSIONER: Sure, okay.

MS McMILLAN: Thank you.

COMMISSIONER: All right. Thanks very much, Mr Selfridge.

MS McMILLAN: Now, I had finished with Ms Apelt but there was one matter I put to her which was incorrect and I would just like to deal with that now, if I may.

Ms Apelt, I put to you near the end of your evidence on Thursday in relation to reviewing case - - -

COMMISSIONER: Sorry, just before you go on, I didn't take the other appearances. Could I do that before you begin?

MS McMILLAN: Yes, of course, Mr Commissioner.

COMMISSIONER: Mr Selfridge, I note your appearance.

MR SELFRIDGE: Yes, I appear on behalf of the State of Queensland, thank you, commissioner.

COMMISSIONER: Thank you, and everyone else as last week. Thank you.

MS McMILLAN: Except I think Ms Wood is appearing now for the CMC - - -

COMMISSIONER: Yes, thank you, Ms Wood.

MS McMILLAN: Ms Apelt, I asked you some questions about reviewing case plans and I had put to you erroneously that there was no mandatory requirement for a review, but it's the case, isn't it, under section 51V where there is no long-term guardian that it needs to be reviewed at least every six months. Is that your understanding as well? ---That's correct.

All right; and I note that nonetheless with a long-term guardian there is no mandatory time in which that plan should be reviewed. The act and subsection (3) of 51V(a) says that the long-term guardian must allow the chief executive to have contact with the child at least once every 12 months. Are you aware of why there appears to be a distinction between where there is no long-term guardian on one hand and there is a long-term guardian on the other in terms of requirements for review of case plans?---I am aware of what occurs in practice and the rationale for the practice.

Yes?---If you take, for example, a child who has been in a very stable, satisfactory placement with a foster carer over a long period of time, for example, 15 years, there's a good relationship between the child and the caseworker and the Children's Commission and good relationships with the foster carers, it seems sensible not to unnecessarily intervene or intrude in a family arrangement, if you like, that is going quite well and from a risk assessment point of view on balance it seems better to take a little bit of a step back rather than such a close review process one might do in the early stages of a placement or in a risky placement.

But nonetheless those children have an allocation child safety officer, shouldn't they?---They do.

They do?---Yes.

Always?---Well, I'm talking retrospectively.

Yes?---But there is certainly a requirement and indeed an expectation that all children have caseworkers. However, as we have heard earlier in the hearing, the challenge of retaining - of attracting and retaining caseworkers sometimes can mean a disruption in the continuity of having caseworkers assigned to children; you know, it's part of the challenge of retaining a continuity in the workforce.

COMMISSIONER: Ms Apelt, I'm assuming that when the act says where there is a long-term guardian, that's other than the chief executive?---Not necessarily because the chief executive can be the long-term guardian and the child is in a satisfactory foster-care placement.

Yes, but generally the act draws distinction when it's talking about when the chief executive is the long-term guardian and when there is somebody else in that role? ---Yes, and in practice whether - regardless of who might be taking the role of the long-term guardian, the principle is long-term guardianship, stability of placement, therefore from a risk point of view there's less of a need for the department, if you like, to be having such a close intervention in the young person's life.

Even though the care of that young person has been outsourced by the department and funded by the department to a non-government organisation?---To a non-government organisation or a private citizen. I think the other issue in practice is that caseworkers or child protection workers weigh up from their knowledge of their ongoing interactions with the organisation or the individual carer as to how things are going. There's quite a bit of, from my recollection, informal communication between children in care and caseworkers when there's, you know, a satisfactory arrangement in place and - - -

I'm sorry, is what you're saying that, as distinct from a formal review procedure, there's an ongoing monitoring by the caseworker and the department?---Yes, in various - through various forms, for example, through mobile phone contact sometimes; you know, there's quite - even texting I've noticed; you know, that sort of communication where it's really up to the caseworker to use professional judgment about how they can assess from all the sources of communication and information a situation is going, but nevertheless in the ideal situation if we were able to retain continuity of resourcing, suitably skilled staff, the six-monthly reviews, regardless of how big or small that might be, is a safeguard.

MS McMILLAN: Thank you. I have got nothing further for

this witness.

COMMISSIONER: Thank you. Mr Selfridge?

MR SELFRIDGE: Yes, thank you, commissioner.

Ms Apelt, it's been clear in the message being presently conveyed to the commission, I suggest, in relation to a need for reform, the performance system, and that's been as advocated here with evidence thus far and the question then is how to extend. If I could concentrate at least initially on paragraphs 10 and 11 of your statement, there are three points - again on my interpretation, three points that you raise in the course of those paragraphs, all of which would suggest an extricable link. The first is this: the assessment of risk, an assessment of risk, and this issue of self-filtering. As I understand your evidence thus far to the commission, section 10 of the Child Protection Act defines an assessment of risk and that's the department's legislative mandate for risk and really section 10 defines what constitutes harm and risk of harm. Now, I remember the discourse between yourself and the commissioner earlier in your evidence where you said that as far as you were concerned in your role that that's a tried and tested method of assessment of risk in relation to child protection issues and that it works. Obviously section 10 - the principles apply under section 10 are to be read under section 10. Is that the template you advocate to the commission that should be adopted across the universal services and, if so, why?

---I thank you for the question. I reiterate, I think, my central theme or thesis, if you like, and that is that the child protection system in Queensland has been set up as a safety net to be able to provide a safety net for children who need protection, they've suffered harm, they're suffering harm or at risk of unacceptable risk of suffering harm, and the child or children do not have a parent able and willing to protect the child from harm. That's what the legislation is framed around, that's what the system has been structured around, to be able to respond to that section 10, the definition of harm in the act. However, as time has gone by the child protection system has through default, if you like, become a bit of a broader and broader safety net, not only for children as defined within the Child Protection Act but other children who could get a more timely, better targeted, more helpful family support service somewhere else within the overall continuum of state provision and - or state funded provision. So I reiterate my initial point, that that the child protection system has been continually reviewed, particularly since 1999 and the Ford inquiry. There's been a series of recommendations from a whole range of reports and reviews that my observation and experience has been the government has responded with increased funding to ensure that over that time those recommendations are implemented in good faith to provide as good a system as is considered to be - will be best practice. That's not to say that improvements can't continue to be made, but that has been the trajectory of just an evolution of being more and more responsive as the state's safety net for those children who are most vulnerable children in the state. It is not fit for purpose to be able to respond to all those other reports of children who may be experiencing some risk or people have some concern about the children but they don't meet the definition as defined by this act. The child protection system alone is not set up to be responsive beyond its purview or mandate, if you like. So my proposition is that we need to strengthen that primary - the role of the universal services, so our education system, our health system, our justice system, our community based neighbourhood centres, early years centres, et cetera, to be able to be more responsive to supporting families and children at early stages of concern. Likewise, in order to support the role of the child protection system, from my view it's inevitable that we need to strengthen that intensive family support system, what is often defined as the secondary system, so that the child protection officers have some confidence that those families that could continue to care for their children or take responsibility for their children with intensive support, that that system is there, and as we have heard, that system is patchy investment throughout the state. Queensland does not have the history, the strong history, of investment in secondary family support services as we have seen in other states such as Victoria in particular in Australia. So the Helping Out Families is just one foray, if you like, into getting a better connection between the tertiary statutory system and the intensive family support or secondary system

so there's a good connect and confidence that children who might otherwise go into out of home care can be supported within the community with intensive family support. It's my proposition that those families in that middle, in that cusp situation, we're probably getting more of those families into the out of home care system at the moment because our officers don't have the confidence to be able to refer to intensive family support secondary arrangements.

Can I just take one step back? One of the things that I would suggest that's been prevalent in the course of a whole series of evidence that's fallen before the commission thus far is the obvious one, that there's no uniformity of reporting as such and there's no basic threshold and agreed threshold across the universal services as to what is reportable and to what degree. Would you agree then as far as this commission is concerned one of the things that might be a focal point might be Queensland's police service, health, education, family and communities, et cetera, all have a common template or threshold in relation to what is reportable and at what level?---Absolutely to have a decision-making framework, a bit akin to the tertiary system have, if you like. There's a decision-making framework, but as I have made the point earlier and I think the commissioner also made the point, that that decision-making frame-work is part of the judgment making. It needs to be married with professional expertise, professional judgment, life experience, so that on balance a decision is able to be made in an accountable decision about what's in the best interests of this child and family at this point in time. So it certainly would be a great assistance to our educators, health workers and other people in the universal system if they did have the support of a structured decision-making process, also the legislative support so that their decision receives some protection, if you like, otherwise there's - you know, the risk averse behaviour, well, this is pretty - you know, "This is difficult if this is not a right decision so let's just put it into the statutory system because there's some legislative support for decision-making need." So definitely the instrument, if you like, a decision-making instrument for the universal system, but also, I think, the confidence that the decision-making will be backed up in a legislative sense.

COMMISSIONER: Mr Selfridge, I just want to take some of those things up, if I can.

MR SELFRIDGE: Certainly.

COMMISSIONER: There is protection in the legislation already if you make - you honestly and in good faith - - -?---Yes.

You're protected from making notifications. The legislation talks about the concept of notification. It doesn't define what a notification is. I think Mr

Selfridge was asking whether a definition would be helpful and I gather you agree with him that it would?---Yes.

Just going back to the child protection system as it is and as it's developed, it seems to me that in the legislation although it talks about what the purpose of it is, it doesn't actually set out what the objective of the child protection system is?---Okay.

It says the purpose of the act is to provide protection for children, but in reality it's not there to provide protection for all children, is it?---No.

It's there to provide protection and care for children in need of protection?---Yes.

The other thing, it seems to me, is that when you look at the principles of a chief executive's functions it is much broader than just the tertiary system, but again, it lacks coherent definition. For example, the chief executive's functions in 7B includes providing or helping to provide preventative and support services to strengthen and support families and reduce the incidence of harm to children. Now, that's more of a secondary universal function than a tertiary one, isn't it?---It is, and I guess in practice the way that happens is that some of the child protection budget has funded other areas to carry out those functions.

Yes?---But I think - I hear what you're saying and I think that's an important point of definition, so that people who are in the universal system or secondary system have a sense of clarity about what their role is in the overall protection and wellbeing of children.

I mean, there might be overlapping functions?---Yes.

But you need clear lines of delineation. There is a need for a tertiary area, but it shouldn't be involved in the secondary and universal provision of services and vice versa.

Again, in the general principles in file BC it says the preferred way of ensuring the child's safety and wellbeing - wellbeing, support, prevention, none of these terms are defined - is through supporting the child's family, but it doesn't say how or to what extent. I'm not sure in a tertiary system how the chief executive actually protects children - that is, ensures their safety and wellbeing when they're in need of protection, because she doesn't come into the picture by then - by supporting the child's family as the preferred way of keeping them safe. How do you do that in practice?---I think in practice the assessment is really a continuum of risk and at the lower end of the list, risky end of the continuum, that's where every effort would be made to intervene with a parental agreement so that there's a close oversight of what's going on in the family in the interests of the child, but also where there's been a judgment that change in behaviour is possible through intensive support, but it's still within its statutory oversight.

I was going to say it seemed to me that that's aimed at - which is a preventative, again, intensive secondary service - of modifying the behaviour of the family to the extent that it's dysfunctional and puts the child in need of protection?---Mm.

Because the child is still part of that family even though it's in need of protection?---Yes.

And the family includes the parents, obviously?---Mm'hm.

So when it says "support the family", it means support the unit, that includes both the parents as defined, which can be a customary or traditional parent - - -?---Yes.

- - - for indigenous, and the child him or herself?---Yes.

I just wonder how in practise the chief executive supports the family as the preferred way of keeping the child in need of protection safe?---I think that amplifies the point that I've made about making sure that the secondary system operates as an adjunct to the tertiary, and in practice that's what actually happens. I guess the lives of the families that we're talking about are rarely static. They ebb and flow. So there might be a crisis situation this week but next week it actually dissipates. So when it's an intense situation where the decision has said, "Right, this is definitely within the purview of the statutory system, given the level of risk to the child, and uncertainty about the ability or willingness of parents to care for the child," this requires intense work through family convenors, linking up with drug and alcohol services, linking up with domestic violence services; very intensive close oversight over a period of time until decisions are made to, "Things are getting better, we can back off a bit now," and hopefully the universal system can do their job better, or, "No, this is not getting any better, this is" - like section 10 of the act - "the child meets the

definition of harm there. It's now time for more intensive intervention."

And long-term, that is - - -?---It can be long-term.

Up to two years, it is, it's a long-term order?---Yes.

And by that stage am I right in thinking that what you're telling me is that the preferred option as stated in the legislation of family support as a way of keeping a child safe and meeting their wellbeing needs, is overtaken by the fact that after two years whatever we've been doing and trying hasn't worked, there's no modification used by the child or the parents or the rest of the family, and we have to move to some other less preferable but more viable way? ---That's right. If on balance that's going to be in the better interests of the child.

Okay. The last thing I want to ask on this topic that Mr Selfridge has raised - because I think it's an important one - is in section 14 what it says is that, "If the chief executive becomes aware, whether by notification or otherwise, of alleged harm or alleged risk of harm to a child and reasonably suspects a child is in need of protection, then he or she must do certain things." That's very broad and it's not strictly notification-based. He or she only has to become aware of something, formally or informally, by a report or by otherwise, of not a child in need of protection or not facts that might give rise to a reasonable suspicion by the chief executive, but of an allegation by somebody. We know that anyone can make an allegation, sometimes not for pure motives, and people can have genuine but unreasonable suspicions. It would seem to me that under section 14 the chief executive has to react to either of those even though another limb of section 14 requires the chief executive personally to hold a reasonable suspicion?---Mm.

But it seems to be based on an awareness of an allegation rather than awareness of facts, a body of evidence, or alleged facts that might give rise to grounds for holding a reasonable suspicion?---Yes.

Was that a problem in practice, exactly what the chief executive should do without doing too much or too little in response to knowledge of alleged harm or a risk of harm? ---One example of where that section of the act was exercised while I was the accountable officer was when there were some media reports in Mount Isa about a housing development and - Aboriginal and Torres Strait Islander housing development in Mount Isa - there were media reports about violence, destruction of the housing and a whole range of other dysfunctional behaviours. Early investigations by our local child protection officers advised me that they thought with the powers that they had, that there was no clear evidence of children in need of protection. However, my instincts said, "No, by belief is all of this other behaviour is going on, chronic alcohol

abuse and a whole range of other things, reports to the police with domestic violence; there are children living in that housing development. I'm going to exercise this part of the act and we're going to go in there and do a very close and thorough investigation." And that's what we did and we did on that investigation make the determination that there were children who were in need of protection. That work was done in concert with housing officers, who also went in and had a look at the state of the housing. The situation was that this is unsafe for children and indeed adults to be living within that environment. So we did, through this power in the act, intervene on what was a reasonable suspicion that I had made that other people less senior in the system perhaps didn't have the competence to be able to exercise that level of intervention. When you ask, "Is that problematic?" Possibly, but it's a great safety net to have there, that the most accountable officer within the organisation can weigh up all the pieces of information and accumulated experience, if you like, to make a determination in the interests of children.

On the other hand making the chief executive aware of an allegation is enough to trigger a duty and responsibility to act by the chief executive?---Yes.

You don't think that's too broad or open-ended?---Look, it may be, but the situations we're talking about are often very poorly defined anyway, given the number of people that might be involved, number of children involved, the range of circumstances. I think like a lot of policies and actions in the interests of human beings, you have to weigh up a range of things - - -

Why I ask you is there was evidence last week that more than 25 per cent of the child population in Queensland will come to notice. Presumably that means the chief executive will become aware of allegations about more than 25 per cent of the child population, of which the chief executive will have to take the statutory action of assessing and investigating the allegation?---And I guess this comes back to my earlier point to equip other parts of the system with a decision-making framework to be able to do some filtering, if you like, some professional filtering, so that those allegations that do come to the attention of the chief executive after there's been some expert consideration are more likely to be more highly targeted.

So your solution would be not to simply make the chief executive aware of an allegation to trigger section 10 always but exercise some discretion by the reporter so as to not make the chief executive aware except of facts that might give rise to a reasonable basis for suspecting that there might be a child in need of protection as opposed to a child at risk because need of protection involves unacceptable risk, not any risk and it also involves a non-viable parent being around?---Yes; yes, I think that triaging, if you like, or sifting and sorting so that by the time the chief executive officer accountable for the child protection system gets involved there's been value-add along the way so that there's a more tightly targeted purview or consideration more clearly aligned to the purposes of this act, and I hear your point about the objective of the act. Perhaps some sharpening there would give better definition for all of those involves as to where their role stops and - you know, starts and stops.

It seems to me that the chief executive is not meant to be the risk manager for children in Queensland. It's meant to protect children who are assessed to be in need of protection?---Yes; yes, when we're talking purely about this piece of legislation.

So if police and teachers, any reporter, was more discerning instead of just making the chief executive aware of allegations, made the chief executive aware of more substantial grounds for the chief executive having reasonable suspicion to think that the child might actually be in need of protection, then you might reduce that figure below 25 per cent to something that would not involve as many dedicated resources to investigating allegations that in the end went nowhere or were unreasonable or even malicious?---Yes, I think that's a logical conclusion and if we look at the level of education and experience that educators have, health workers and police - you know, they're just as well educated, if not better sometimes, than child protection workers so there's no reason why they can't be well equipped to have the confidence to be able to make those professional judgments at an early stage.

Did you ever come across figures as to what proportion of information provided, allegations made, suspicions held and reported, turned out not only to be just off the mark but frivolous, vexatious, false, made by parties to Family Court litigation, that sort of thing - - -?---Yes, I'm not aware of the drilling down to what might be determined as mischievous or vexatious categorisation but, as we've heard earlier, you know, less than half of even notifications end up being substantiated. So, look, there's no doubt that there will be people who use the child protection system for vindictive means that, you know, it is, but I'm not conscious that that's, you know, a large - you know, great proportion of the workload that our regional intake services actually have, but I have sat on the telephones with our regional intake staff from time to time over the last few years and a lot of the calls are people just - you

know, are family-related calls, "Who do I ring? This has got 'children' on it. We'll ring this number."

Yes, but I suppose if it was a problem, if it was a lot of those, that would be needlessly costly and moving resources from where it was needed most to running up dry gullies? ---Yes; yes, absolutely.

All right, thank you. Mr Selfridge?

MR SELFRIDGE: Yes, thank you.

Ms Apelt, I'd like to stick with this concept because it ties in with the questions of the commissioner put to you, this concept of a universal decision-making process. As I understood what you said just before to myself - sorry, if I could break it down in parts, there are three parts to how we would achieve that, the first being a legislative mandate, some uniformity in that legislative mandate, the second being perhaps a structured process policy, whatever it may be, of decision-making tools and the third part would be about a capacity or a discretion or exercising forensic or professional judgment. Is that a fair analysis of what you're suggesting to the commission?---I do think that's a fair analysis and certainly when I finished in the role that I had as director-general, Department of Community, work had begun on developing the decision-making tools to support teachers, health workers, police in being able to make that professional judgment so that we didn't have reports, if you like, going into the child protection system that really weren't the purview of the child protection system.

Sure. Now, just picking up on one theme that you were asked some questions by the commissioner in relation to, it's about definitions in the legislation, terms being defined. Now, schedule 3 of this act, the Child Protection Act, defines certain terms, the most notable feature of which is that there's a whole series of definable terms, for want of better words, that are not part of schedule 3. I suppose it's a rhetorical question, but in order to define or comply with it and make it easier for the services to administer and the workers to have some confidence to know that their responses or the proactive involvement in cases is correct, surely there should be more terms defined in section 5B, the principles and the other principles are outlined at section 5B in different things?---Mm.

I think it's a bit of a rhetorical question, but people to know exactly what they're working to.

COMMISSIONER: Like, I suppose, what does an unacceptable risk look like as compared to an acceptable one?---Mm.

MR SELFRIDGE: Absolutely, yes. Commissioner, it just seems that there's a whole of series of interchangeable terms too between departments such as notification, such as

report, et cetera. What constitutes a notification? What constitutes a report?

COMMISSIONER: "Notification" is not defined.

MR SELFRIDGE: It's not.

COMMISSIONER: No, and nor is report.

MR SELFRIDGE: Yes, exactly.

COMMISSIONER: If you haven't got an act which sets out the objectives of the act, it's hard for people who might want to notify to work out whether their notification falls within the ambit or the intended ambit of the responsibilities and role of the chief executive.

MR SELFRIDGE: Sure, and even having regard to the materials before the commission thus far, depending on whose material you pick up, who defines a notification in a certain way, who defines a report in another way or defines a report as a notification and vice versa. I'm sure you've come across that, commissioner.

COMMISSIONER: I notice, for example, that the police report to the chief executive allegations of abuse which they themselves investigated.

MR SELFRIDGE: Yes.

COMMISSIONER: So you have both departments, if you like, having responsibility over the one allegation or notification and once the police report it onwards to the chief executive, that invokes the chief executive's role and responsibility.

MR SELFRIDGE: Under section 14, if nothing else.

COMMISSIONER: Yes.

MR SELFRIDGE: Okay. Carrying on, I suggested to you earlier there were three concepts of principles that you had outlined in the course of paragraphs 10 and 11?---Yes.

Going onto the second one - as I said, they are linked obviously, universally linked, an inextricable link, but if we have a universal assessment of risk across those entities, you know, health, Education Department, police service, et cetera, do you consider it will have some bearing in terms of reports made to the department, again probably rhetorical?---I think it's reasonable to assume that it will have some bearing because what it would mean then is that those people, if you like, or officers who are providing the bulk of reports to the child safety system at the moment will be equipped to be able to make some judgments, some value-add, if you like, and a better determination or a better informed determination as to whether or not other action or referrals are more

appropriate, more helpful to the child in the family than simply reporting onto the child safety system, and I think that's the nub of the question. At the end of the day we want a system that is resources and operates in a way that it's able to provide fit-for-purpose services at points in a child or family's life and at the moment a number of concerns or reports going to child safety - child safety is not fit for that purpose.

Okay. When you suggest a system of other actions wherein other actions are more appropriate, you're talking about perhaps preventative, proactive-type actions. That's what you're referring to, isn't it?---Yes, absolutely, so early signs of stress within a family's life to have family support services or it might even be, you know, some work with families around literacy levels that might be - you know, that's having a flow-on effect to a child's performance at school and a range of other things, so from very basic universal rights, if you like, some intensive support there, through to more intensive family support for people to be able to change their behaviours and be better parents.

Yes, and that reduction or suggested potential reduction in reports, if we can call it reports, would also extend to being proactive and by definition would be less reports being made?---Mm'hm.

Yes?---Yes.

Yes. In your estimation, how then does this concept of perhaps a retention of other information or dealing with other information - how does that fit in with a suggestion that perhaps there could be a cumulative risk of harm that could emanate from a whole series of different reports coming from different departments and entities and no-one - everyone's blissfully aware of exactly what material information each have. Do you have a view on that and, if so, could you express it?---I do have a view on that because cumulative risk of harm is obviously essential for being able to make a judgment about a situation a child is in and with the - I guess perhaps one thought is with all the information going through the central child safety system, then coming out again there's a way of somewhere in government, if you like, being able to make that cumulative assessment. This was a consideration that was very well worked through with the establishment of Helping Out Families and that was why a decision was made that the information systems of Helping Out Families had the non-government organisations have access to, articulate with the central child protection system so that if a domestic violence service is dealing with a family, they can talk to child safety to say, "Look, what other information have you got about this situation that helps us make a determination about the best way to act?" Look, I don't underestimate the significance of what it takes to be able to set up information systems that collect the right information for the purpose of sharing for a certain

objective takes. It's a very complex situation and involves a lot of principles around human rights and privacy, et cetera. However, the principle about being able to assess cumulative harm is absolutely essential within this context.

So ultimately then you would have to have some form of a single source of information or at least one form of a single source of information in order to address those issues a cumulative harm, wouldn't there?---Either a source of information or the ability for officers who are making determinations to be able to gather that information from, you know, the key sources of information about families.

So we're talking either a central hub as such or a capacity and an ability to access information from a whole series or potential information provided?---Yes, I think the mechanism can be worked out. The principle remains that there needs to be the ability to assess cumulative harm to be able to make judgments and working, you know, with the professionals on the ground out there that are working in intensive family support services. By and large people are very well trained to be able to use their antennas about, you know, "There's likely to be an issue here that the police might have some information about that we need to take into account or the education system might have some information here." So good case management does use their professional judgment to gather information but, nevertheless, it's not a failsafe system.

COMMISSIONER: It's ironic, isn't it, in the age of information overload that we are still having difficulties accessing information to protect children?---I know, yes.

You would have thought that you would just be able to plug into where you were and find out the information you need?---Yes.

It can't be that hard?---Having said that, the info to client management system that Child Safety works with and a number of other agencies get access to is very, very cost offensive.

MR SELFRIDGE: Then the difficulty arises as to who should access or be given access to what information and how should that then be used when realising that scenario?---Yes, and I guess, you know, the simple answer to that is that those people charged with providing intensive support or working with families to provide support need to have access to information for the purpose of which they're entrusted.

COMMISSIONER: Yes, I suppose that's it and it raises again the question of people misusing the system?---Yes.

You said before that you accept that happens and there will always be a level of that. Have you come across a phenomenon where the same people or the same information

providers who end up at child protection making a complaint about a former spouse or a neighbour or something like that have before they have got to you already been through a number of other departments making complaints about the same people or the same complaint?---Yes, that does happen.

What do you do about that? How do you stop that sort of waste of time and resources by people who are, you know, trying to create evidence for some other purpose?---I don't know. I don't know, but I do know that it is a phenomenon.

And in your experience it has happened?---Yes.

I suppose one way might be to keep records of when it does happen so at least - and how much it happens so you can identify common people who are making - you know, repeat reporters, if you like, people who shop for various departments and forums to make the same frivolous or false complaints. That would be the first step, wouldn't it, in the process of doing something about it and weeding out people who waste time and money or finite resources?---Yes, certainly that is one way. The other part to that phenomenon is exercising one's rights through freedom of information and searches. That's another resource-intensive exercise that often can go on and on for similar - as an adjunct to this.

Is that what the department does as a sort of protection of its own resources and in misuse and wastage of them?---Yes, in practice it gets to a point where a judgment has to be made about is this in the best interests of whoever.

But in order to get to that point where you can actually make that call you would have to spend a lot of time, energy and scarce resources working out whether this is genuine or ulterior?---Yes; yes, absolutely, and that does happen.

All right, thank you, because having access to information systems from other areas would be one way of tracking and keeping some sort of gauge on the bona fides of complainants who come into your system, wouldn't it?---It does, and there is quite a sophisticated complaints management system also that do that. The complaints management system attached to the child safety process has good liaison with complaints management system - you know, complaints management arrangements in other departments as well.

Okay?---And there is dialogue and liaison and some very good work that is done to try and elicit a conclusion to serial - you know, serial - I don't know if the word is "complaint", but serial reporters or - you know, that's often linked with the complaint, you know.

Suspect notifiers?---So there is a very sophisticated system to ensure that people's rights are taken care of, but there will be a small number and at a point in time a judgment has to be made, "Well, this has been run to ground."

So you actually have - there's a section that keeps - whose function it is to maintain and ensure the integrity of the system against false complaints?---Yes.

Or doubtful complaints?---It's built into the decision-making process that the complaints managers go through.

Right, okay. So where are the complaints managers? Where do they sit in the scheme of things?---There's a - well, when I had responsibility there was a section within the Department of Communities whose job it was to receive, investigate and manage complaints.

Do you think that the department should be a complaint based as opposed to a reasonable basis for suspecting based agency? Do you see the distinction?---I mean, anyone can make a complaint, right? Anyone can make an allegation, anyone can hold a suspicion. They may be reasonable, they may have a basis for holding it. On the other hand, in order to spend the, you know, scarce departmental resources would it be better to make the investment based on the informed suspicion by the chief executive rather than somebody else's suspicion or allegation? Before you go spending departmental money on investigating something should it be the chief executive who has been given reasonable grounds for suspecting rather than simply being made aware of an allegation by Joe Blow about Bill Bloggs and his behaviour with children, or his own children? Do you see what I mean?---Yes, I can - I hear what you're saying and I think that in practice the way the decision-making framework operates, it works through a hierarchy of concern and relevancy, so that eventually it ends up with, you know, what the chief executive officer

might have a reasonable suspicion of.

Yes, but if you never got into your system those complaints that were doubtful or simply lacking any evidence base, if we

could reduce that 25 per cent down to, you know, a manageable number, then the chief executive and all the people in the front end who manage the complaints, maintain the - or ensure the integrity of the system, would have more time and money to do other things, like assess the needs of children?---Yes. So if there was - - -

Instead of assessing the value of a complaint or an allegation he'd assess the needs of children?---So I guess that would be some sort of a triaging system, so that once again I think it comes down to other professionals being equipped with the wherewithal to make those kind of judgments.

Would it be like a gate keeping to your system? You couldn't get into the child protection system unless there was reason to believe that the child actually needed protection?---Yes, I think that's a great way of describing it, that there be some threshold to be met before it then becomes part of the belts and braces consideration of the child protection system, so there's been, you know, some value and risk assessment ahead of time by people who are supported and equipped to make that kind of judgement then eventually when it does get across the threshold that's very, very intensive statutory intervention.

And that's what you're there for?---Yes. That would be a fit for purpose system within this act.

Okay, thank you. Yes, Mr Selfridge?

MR SELFRIDGE: Yes, thank you, commissioner.

Just before I move on, Ms Apelt, in staying with that then of information exchange just for a short period, we already have part 4 of the legislation. The Child Protection Act deals with information exchange and section 159M lists those prescribed entities that information from the department can be shared with. When one reads the material as a whole coming from those prescribed entities, it seems that that information exchange in practice doesn't have full effect, or there's major problems with that information exchange flowing both ways?---Yes.

Is that your experience or knowledge?---That is certainly my experience, that there are a number of documented cases where the outcome hasn't been as good as it could be because of not good information flow both ways.

Yes, so you would be in support of - I would assume you would be in support of any defined legislation that in tandem with this concept of a universal decision-making

framework, that there be an exchange of information that would flow, depending on who needs what information and what access that were available at any given time?---Yes.

You would be supportive of that, would you?---I would be.

Yes, okay. The third concept in those paragraphs 10 and 11 that I suggested to you I was going to go to is this. You make mention almost in these words, that it's not feasible for the department to continue to investigate 100 per cent of notifications. Yes?---Correct.

Right. There's two parts to that. The first one I think I've already touched on with the commissioner in relation to this strict interpretation of what a notification means. I don't know that we need to go there at this moment now, but could you explain to the commission, please, in your own words what you mean by this feasibility of, you know - sorry, what you mean by investigation of the 100 per cent of complaints and why you take umbrage at it?---Yes. I think it relates to the previous dialogue that we've just had within the commission, in that the figures that Mr Swan has relayed to the commission illustrate that if we continue on the same pattern of behaviours we have at the moment we're just going to need to keep putting on more and more officers at the back end to receive and do - receive reports and do investigations to identify what is a notification and then to go through a full belts and braces statutory assessment to determine whether or not a notification is relevant within the context of this act. If we were able to have the triaging arrangement that I think I hear the commissioner alluding to, that would enable the statutory system to be resourced and to operate according to its defined role.

Sure?---Whereas at the moment we're diluting its ability to provide a safety net to those most vulnerable children by asking it to also sift and sort a whole range of other concerns that could be better dealt with elsewhere within the system.

COMMISSIONER: Just to follow that up, I'd like you to comment on two propositions, (1) would you say that there are too many reports being raised to the department that don't require a statutory response?---Yes.

Would you say that the system has become overloaded by referrals, reports, notifications, awarenesses, with an expectation that the tertiary system, that is, the reserve, the residual power to remove and take over the care of a child in need of protection, will respond not only to unacceptable levels of risk of harm or actual harm but also to a wide range of family and child related problems - - -?---Yes.

- - - that have a much broader - are in a much broader context that have many origins and impacts on families? ---Yes, absolutely.

Okay, so now we've identified the problem. Being a solution based commission, what would you say about how we get around that?---I reiterate that we rearticulate the roles and purposes of the Child Protection Act, or the objective and operation of the Child Protection Act and the system that is resourced to implement that Act, and that we also have a clearly defined and appropriately resourced secondary system that operates in adjunct to the tertiary arrangement, because that reflects the way people's lives actually operate, and that the vast majority of children that come to the attention of the state is through the education, health, justice, you know, the universal system out there, that we have a decision-making framework that articulates right across that system, so some uniformity in decision-making to support professionals to be able to make some sort of a judgment at the first stage of the triage as to what would be more timely, better targeted, effective support for children and families at that point, but within that framework it would also enable those professionals to make a better judgment of what really does need to go straight into a tertiary notification.

So what is it, is it that the tertiary - sorry, that the primary and secondary services are inadequate, or are they not linked up enough, or both?---Both.

Now, what about part of the problem being the lack of clarity? Does that have an impact on the front line staff? That is, are they clear enough about their role and responsibility, do you think, without legislative objectives and clarity around that?---I think that there's every reason to believe that front line workers are clear about their roles and responsibilities, but that nevertheless doesn't prevent in the current arrangements for their roles to be diluted through the community at large having an expectation that their role is actually bigger than is actually defined within the legislation.

So it's not the child safety officers who need educating, it's the community at large?---The community at large, to understand what the child safety system is there for, but also for the community at large to have other options to be able to go to when families are in need of some sort of support that is other than having their children cared for or intensively supported by the state.

I suppose it's equally unsatisfactory for a child to be exposed to a tertiary intervention as it is for a child who needs not to be?---Yes.

Both are harmful?---Both are. History and research shows us that both are potentially harmful.

And over-reporting gives rise to the risk of the former? ---Yes.

All right, thank you.

MR SELFRIDGE: Now, out of home care, Ms Apelt, we talk about kinship care, foster care, independent living, transitional type living. Are you familiar with the concept of cottage homes? Is that concept that you know or understand?---I'm familiar with a wide range of out of home care group living arrangements. I haven't heard that particular terminology, but I have visited places within other parts of Australia and also in the UK and Canada some years ago where non-government organisations were funded to provide out of home care in a cottage or a, you know, small house. We've got those sorts of services operating within Queensland at the moment and, you know, that's a form of care that is sometimes a good placement or best placement for certain children, particularly adolescents or children who are getting closer to that 18 years of age, but it's also sometimes a - well, there's a therapeutic response added there for children who have quite extreme behaviours that need to be managed with much more professional, intensive support than is reasonable to expect a foster carer, for example, to provide.

How many children are we talking about under the same roof under that concept that has come into existence?---From memory, you know, up to eight children would be manageable, and we're talking here about 24 by seven support and often with at least two workers on at any point in time.

Yes. That up to eight children is obviously subject to their needs and whether there be complex needs and the specifics of that?---Yes.

When you say two workers, we're talking two foster carers, in effect. That's the - is that correct?---Well, they're two group home workers, usually youth workers.

Okay?---If it's a therapeutic service sometimes they will be people with professional counselling expertise or specific expertise to the needs of the children in their home.

Now, can we just turn our attention to the Ford and the CMC recommendations? You're very much aware that one of the terms of reference before this commission is to review the implementation of those recommendations?---Mm'hm.

There were some 42 and 110 respectively in the Ford and CMC. Now, are you aware that - would you have some knowledge that there's a whole series of documents from the department and the government known as progress reports or blueprints that have issued and which periodically serve to outline the manner or the degree of that implementation? Are you aware of that?---I am, yes.

So just for example, and I'm not suggesting this is by any means an exhaustive list, as such - commissioner, just for your information, these are documents that we've been able to obtain thus far that we understand are response documents to those recommendations and these are just

examples, but in terms of tendering these documents I don't see I need to tender any such documents at this moment in time. They're self-explanatory at face value in terms of what they represent.

You see, what I have before me, Ms Apelt, is a response - - -

MS MCMILLAN: Well, perhaps I might just ask Mr Selfridge to read them into the record. I believe we have them, but just perhaps to identify - - -

MR SELFRIDGE: Sure.

MS MCMILLAN: That might be - - -

MR SELFRIDGE: I'll do that. I'm happy to do that, commissioner.

COMMISSIONER: Thank you.

MR SELFRIDGE: Yes. What I have before me here is a response document dated August 1999 from the Ford inquiry and it's a Queensland government document, "Response to the recommendation of the commission of inquiry into abuse of children in Queensland institutions."

COMMISSIONER: Was that by the monitoring committee or was that the department response?

MR SELFRIDGE: That's a departmental response.

COMMISSIONER: Okay, yes.

MR SELFRIDGE: The next one is entitled, "The Queensland government response to recommendations of the commission of inquiry into abuse of children in Queensland institutions, progress report," and that's a response document dated 11 September 2001 in response to the Ford inquiry recommendations. Those are the only two documents I have at this moment in time that we're wishing to - do you have - sorry, the second date was 11 September 2001, which history shows was somewhat lost in the system at that time for other reasons - most of what happened on that same day. The next documents I have all relate to responses to the CMC recommendations, commissioner, and they're as follows in chronological order. The first one is child safety progress report dated September 2004. It doesn't have any specific date as such. The next one is a child safety progress report dated 22 March 2005. The next one is a progress report entitled, "Progress in reforming the Queensland child protection system, report to the Crime and Misconduct Commission," dated January 2006, and the last one I have is undated as such, or at least on my copy, but it's a blueprint for implementing the recommendations of the January 2005 Crime and Misconduct Commission report.

It's a departmental document but it doesn't have a date on it as such, at least on this copy, Commissioner.

COMMISSIONER: Mr Selfridge, is there any document that instead of reporting of the response and the implementation of, it actually looks at the value of those recommendations? Having been implemented, how did they go?

MR SELFRIDGE: I can't answer that question in its immediacy, but can I take notice in relation to that and come back to you?

COMMISSIONER: It would seem a worthwhile line of inquiry, wouldn't it?

MR SELFRIDGE: It would, of course, sir. As I say, those documents speak for themselves and are self-explanatory. I don't know that I've any further questions, then. Thank you, Ms Apelt?---Thank you.

COMMISSIONER: Thanks, Mr Selfridge. Who's going to go next? You want to ask Ms Apelt some questions?

MS EKANAYAKE: I do.

COMMISSIONER: All right. Just tell Ms Apelt who you are and who you represent so she knows.

MS EKANAYAKE: Ekanayake, initial J, solicitor at ATSILS - on behalf of ATSILS. Ms Apelt, in your responses to the commission there was discussion relating to the best interests of children. In the provision of child safety services, would you agree that cultural competency can be described as, "The skills and abilities to cater effectively for clients with diverse values, beliefs and behaviours including tailoring (indistinct) to meet client's social, cultural and linguistic needs," and that it includes a clear set of behaviours, attitudes and policies to enable a system, agency or profession to work effectively in cross-cultural situations?---Yes.

Would you like to expand on that?---Clearly the demographics of the child protection system illustrate the disproportionate number of Aboriginal and Torres Strait Islander children within the system and we've traversed that in the commission hearings to date. But in addition to that children from other cultural backgrounds also unfortunately find their way into the child protection system as well. So therefore in order for our officers to be able to provide the most skilful service, if you like, or interaction with children and their families, it's very important that they have good cultural understandings, and so defined competencies in order to carry out that work with sensitivity.

Thank you. Bearing in mind the definition of cultural competency, ATSILS recognises the importance of discussing and clarifying how the best interests of Aboriginal and

Torres Strait Islander children and young people are determined and served. In an international law context this inquiry has recognised the conventional rights of the child ratified by the general assembly and which became effective in September 1990. You are aware of article 30 that provides:

> In those states in which ethnic religions or linguistic minorities or persons of indigenous origin exist a child belonging to such a minority or who is indigenous shall not be denied the right in community with other members of his or her group to enjoy his or her own culture, to profess and practice his or her religion, or to use his or her own language.

Are you aware of that?---Yes, I am.

Are you also aware of the Family Law Act where provides for - 60CC - factors for determining the best interests of a child, and at subsection(3) it talks of:

> *If a child is an Aboriginal or Torres Strait Islander child, the child's right to enjoy his or her Aboriginal and Torres Strait Islander culture including the right to enjoy the culture with other people who share the culture and the likely impact any proposed parenting order under this Part will have will have on that right.*

That is in relation to the Family Law Act. Also in describing the right enjoy that child's Aboriginal and Torres Strait Islander culture it says:

> *An Aboriginal and Torres Strait Islander child's right to enjoy his or her Aboriginal and Torres Strait Islander culture includes the right to maintain a connection with that culture and to have the support, opportunity and encouragement necessary to explore the full extent of that culture consistent with the child's age and development level and the child's views, and to develop a positive appreciation of that culture.*

Would you say that within the child safety system this is provided for with children who are placed in out-of-home care?---Certainly a reading of the Child Protection Act identifies the key principles that guide the work of officers in working with Aboriginal and Torres Strait Islander families and children, the resourcing of recognised entities to be involved in significant decisions about the rights of children of Aboriginal or Torres Strait Islander families is a very significant part of the way that the child safety system operates. Likewise, the funding of specialised family intervention services and support services, plus the safe houses in the deed of grant trust communities to enable indigenous children to stay close to their community rather than being taken to other foreign communities are very, very significant parts of the

overall system. So my belief is that child safety officers exercise their best endeavours to implement the principles that you have outlined in the beginning of your discussion.

On that same subject but further, in the national context we have an essential policy framework, you probably would have detailed knowledge of the national framework for protecting Australia's children?---Yes.

Which is a collaboration between the Australian governments, states and territories, and NGOs?---Yes.

As you would be aware, the national framework outlines six supporting outcomes in order to ensure Australia's children and young people are safe and well, that is:

> *Children live in safe and supportive families and communities; children with families access adequate support to promote safety and intervene early; risk factors for child abuse and neglect are addressed; children who are being abused or neglected receive support and care they need for their safety and well-being; indigenous children are supported and safe in their families and communities; child sexual abuse and exploitation is prevented; and survivors receive adequate support.*

You are aware of what is contained - - -?---Yes, I am. I'm aware of those.

Thank you. So it is reasonable to suggest that these overarching international and national laws - the international laws that I mentioned, the Convention, the rights of the Child, plus the Family Law Act and the policy that I just mentioned - can assist us in exploring Aboriginal and Torres Strait Islander children's best interests and the responses required to create safe environments in their families and communities. Would you agree?---I agree.

Obviously within the child protection context a fundamental point to start exploring the best interests of the Aboriginal and Torres Strait Islander children is the paramount principle of the Child Protection Act which reads as, which is section 5A:

> *The main principle for administering this act is that the safety, well-being and best interests of a child are paramount.*

Ms Apelt, is it a fair conclusion that the paramount principle of safety and well-being and best interests of Aboriginal and Torres Strait Islander children when in contact with child safety services are interlinked with the provision at section 5C which refers to additional principles or Aboriginal and Torres Strait Islander children? I can read it out, it says:

The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child: (a) the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community; (b) the long-term effect of a decision on the child's identity and connection with family and community should be taken into account.

Would you agree that these additional principles that I mentioned are more comprehensively outlined for the purpose of achieving best interests of an Aboriginal or Torres Strait Islander child at section 83 sets out the additional provisions for placing Aboriginal or Torres Strait Islander children in care?

COMMISSIONER: Sorry, that's a question in itself?

MS EKANAYAKE: Yes.

Would you agree?---Sorry, I was - - -

Yes. I outlined the principles?---Yes.

The additional principles were Aboriginal and Torres Strait Islander children in care?---Yes.

I said to you is it a fair conclusion that the paramount principles of safety, well-being and best interests of Aboriginal and Torres Strait Islander children when in contact with child safety services are interlinked with provision at 5C, which I just read out to you, which is that child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language - - -

COMMISSIONER: And that's better achieved by section 83?

MS EKANAYAKE: That's right, that is interlinked.

Now, would you agree with what I said to you before, the additional principles for placing Aboriginal or Torres Strait Islander children in care are more comprehensively outlined for the purpose of achieving best interests of Aboriginal or Torres Strait Islander child at section 83? Would you agree?

COMMISSIONER: Do you want to have a look at section 83 before you - - -

MS EKANAYAKE: I can read it out for you.

COMMISSIONER: She's got it there. I think Ms Apelt has got it, have you not?---Yes, I'm familiar with the section and the answer is yes.

MS EKANAYAKE: If I may read it out:

This section applies if the child is an Aboriginal or Torres Strait Islander child. The chief executive must ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where with whom the child will live. However, if because of urgent circumstances the chief executive makes a decision without the participation of a recognised entity for the child, the chief executive must consult with a recognised entity for the child as soon as practicable after making the decision. In making a decision about person in whose care the child should be placed the chief executive must give proper consideration to placing the child in order of priority with: a member of the child's family; or a member of the child's community or language group; or another Aboriginal or Torres Strait Islander person who is compatible with the child's community or language group; or another Aboriginal person or Torres Strait Islander. Also, the chief executive must give proper consideration to: the views of a recognised entity for the child; and ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.

At subsection (6) it says:

If the chief executive decides there is no appropriate person mentioned above in whose care the child may be placed, the chief executive must give proper consideration to placing the child, in order of priority, with: a person who lives near the child's family; or a person who lives near the child's community or language group.

At subsection (6) (sic) it states further:

Before placing the child in the care of a family member or other person who is not an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to: facilitating contact between the child and the child's parents and other family members, subject to any limitations on the contact under section 87; and helping the child to maintain contact with the child's community or language group; and helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.

Ms Apelt, wouldn't you agree that the legislated child placement principle has comprehensive requirements broader than the initial placement within the preferred hierarchy?---Yes, and I can say from my observations of the

three years that I had direct responsibility for this area that our officers use every endeavour to ensure that what is considered to be good practice principles for placing Aboriginal or Torres Strait Islander children in out-of-home care arrangements. I also can say that there were significant reforms of the recognised entity formations across the state and intensive family support in order to be able to make it easier to implement the principles that are outlined here. I have been on communities with child safety officers who have on a number of occasions had difficulty in being able to make contact with the funded recognised entities in order to ensure that these principles were followed through, because the circumstances were not always clear-cut. Sometimes very, very complicated with people moving in and out of communities, for example. But having said that, I have absolute confidence that child safety officers are well-trained in the purposes of the act, particularly sections pertinent to Aboriginal and Torres Strait Islander child placement principles and they use their best endeavours to ensure that they are implemented.

COMMISSIONER: Sorry, Ms Ekanayake, is your point that because the priority of placements is fluid - it changes rather than remain static - that what section 83 requires is a consultation at the very least or greater participation by recognising entities about placement issues needs to be an ongoing and evolutionary process rather than being undertaken at initial placement and then left in abeyance? Is that your point?

MS EKANAYAKE: That's correct, yes.

What about the requirements for optimal retention of relationships, meaning living near to their community and place of belonging? And most importantly the requirement for cultural preservation in non-Aboriginal or Torres Strait Islander placements?---There are a number of initiatives that I can recall were implemented to ensure that that ongoing connection actually happened in practice. If we talk about the remote communities, the investment in safe houses, so keeping children on community close to family and kin has been a very significant initiative. In the rural and regional areas our staff have been - are well-trained in these principles. But I think it is also true to say that it is often challenging to ensure the principles are implemented according to their intent because of fluidity of family formations and sometimes the family context that has led to a child coming into care in the first place. But I reiterate that I have confidence that the level of training that staff generally receive and also the oversight of peak bodies and their ongoing liaison with the Department, the recognised entities - the relationship with recognised entities tends to be an ongoing relationship, not just a one-off relationship. So it is obviously an area that is challenging for us all but I've confidence that best endeavours are used to implement the intent of the act.

COMMISSIONER: Sorry, Ms Ekanayake, how much longer do you think you'll be? I might just give Ms Apelt a bit of a break.

MS EKANAYAKE: Perhaps about 15 minutes, 10 to 20.

COMMISSIONER: What's your preference, Ms Apelt, would You - - -?--- I'm happy to go to finish this section.

Keep going until you finish?---Yes.

Everyone else okay to keep going? No one desperately needs a break? Okay, we'll keep going.

MS EKANAYAKE: Would you be reliant on families to provide for the maintenance of identity of a child? How would you - - -?---There is an identified process for confirmation of identity of children which - from recollection, I can't recall exactly how that happened, but I do know that, you know, there's a documented process and practice about that and I'm also aware of discussions about it not necessarily being a scientific process, one that requires the ability to make connections with the right people who are well qualified, if you like, to proffer information.

Thank you. I would like to read you section 88 which provides for the chief executive - provides for contact between Aboriginal and Torres Strait Islander child community or language groups.

MS McMILLAN: Can I just suggest that, given Ms Apelt appears to have the act with her, perhaps Ms Ekanayake might just ask her to read that section to herself - - -

MS EKANAYAKE: Certainly.

MS McMILLAN: - - - and then ask her perhaps some questions that might be - - -

COMMISSIONER: Would that be convenient to you, Ms Ekanayake?

MS EKANAYAKE: Certainly.

COMMISSIONER: Would that be suitable to you also, Ms Apelt?---Yes, that's fine.

MS EKANAYAKE: Would you be aware of the historical importance of section 83, particularly the significant role of Aboriginal and Torres Strait Islander child care agencies played in achieving national recognition in the 1970s?---Sorry, the Aboriginal child?

Aboriginal and Torres Strait Islander child care agencies played in achieving national - - -?---Yes; yes; yes.

Do you recall the 1986 - the ACCAs were accepted in the Queensland and Aboriginal and Torres Strait Islander child placement principle has - was after being enshrined in the act, in the Child Protection Act, the ACCAs were accepted and ACCA's knowledge was drawn on in putting together the child placement principle. Do you recall this?---That was before I had direct responsibility but I do - I am familiar with the history of that process.

Would you say that it's evident that the best interests of an Aboriginal and Torres Strait Islander child is outlined in some detail in section 5A, the paramount principle section 5C, the Aboriginal principles for the Aboriginal and Torres Strait Islander children, section 83, the provisions for placing those children in care and at

section 88 which provides for the chief executive to provide for contact between the child and the child's community and language group? Would you agree with that? ---I agree, yes.

Would you say ideally decision-making and core practices must assist Aboriginal and Torres Strait Islander children to be appropriately connected to a foundation of cultural strength to successfully navigate the unintended detrimental experience arising from statutory out-of-home care?---Yes, that certainly is the ideal.

Would you also say there is clear provision within the Queensland Child Protection Act to respond, explore and clarify - to respond to, explore and clarify the best interests of Aboriginal and Torres Strait Islander children and young people?---Yes.

The recognised entity consists of Aboriginal and Torres Strait Islander child protection professionals whose role is outlined at section 6 which - you have a copy of the act?---Yes.

Accordingly, would you like some time to read it, Ms Apelt? ---Yes, I would, section 6. Yes.

Would you say the legislation requires recognised entity child protection professionals to provide cultural family and community advice across the child protection area and to inform Child Safety to make culturally appropriate and safe decisions? Would you say that?---That is one role of the recognised entities.

What else would you read from the provisions of the legislation?---From the provision of the legislation and how that transcends in practice the recognised entities provide important cultural understandings to held child safety officers do their work, but they also provide a bridge or a liaison, if you like, between the statutory system and the family of the child so that the interactions are sensitive to what's defined as being culturally appropriate.

Thank you. Would you agree recognised entity services are instrumental in supporting Child Safety Services through participation and consultation in decision-making to achieve the best interests and wellbeing of Aboriginal and Torres Strait Islander children and young people?---That is accurate in terms of the definition of their role.

Would you have historical knowledge of the Aboriginal and Torres Strait Islander community being served by Aboriginal and Torres Strait Islander agencies since the 1970's?---No, I don't have that. I don't have a full comprehension of that history.

Recent knowledge?---I have some tangential knowledge but I don't have a comprehensive knowledge.

In your evidence you refer to the Palm Island Aboriginal and Torres Strait Islander agency as being a positive service to their community?---Yes.

Would you have an awareness of section 7 of the Child Protection Act, in particular subsection (1) - I'm sorry, subsection (1)(f)?---Right.

Have you had a look at it?---Yes, I have; yes.

About which is helping Aboriginal and Torres Strait Islander communities to establish programs for preventing or reducing incidents of harm to children in communities? ---Mm'hm.

This important function of the chief executive has supported the development of 11 Aboriginal and Torres Strait Islander family support services?---Yes.

And the establishment of agencies such as Palm Island Community Development Corporation that you referred to. What are your thoughts about the important role for Aboriginal and Torres Strait Islander led early prevention and intensive family support?---I feel very strongly about the importance of Aboriginal and Torres Strait Islander led, if you like, leadership, in this role within their communities, across urban communities, regional communities and also the remote communities. The Palm Island Community Co was a model that was developed specifically for the Palm Island context and that, as I mentioned on an earlier occasion, is staffed by people who are by and large Palm Islanders. It's indigenous run, indigenous owned and there are still some non-indigenous people and non-locals involved on the board because of their specific expertise, but as time goes by the board membership is being taken up by more and more community based members as expertise develops; and not only is the Palm Island Community Co providing a localised service to support the safety of children but it's also providing employment, education, training and an important part of community building within that community which one can reasonably assume has positive spin-offs for the functioning of the community in a broader scale So I would support not the replication of that model but the replication of the basic principles about Aboriginal and Torres Strait Islander led initiatives in the child safety arena.

Are you saying that that Palm Island model can or cannot be used as a one-stop-shop approach with universal and early intervention services?---It's certainly a one-stop shop for family support services, including Child Safety Services at the moment.

What are the benefits of these types of approaches to Palm Island?---The benefits that I have observed firsthand are that the approaches are localised. They provide an opportunity for local people to develop expertise that is

relevant to their community and to receive real jobs, real training, real education and because the community in that instance is a very small community of no more than 2000 residents, it makes good economic sense to have an integrated localised responsive service.

So you would agree that this would create more inclusion and participation for Aboriginal and Torres Strait Islander people, this kind of model?---Yes; yes, much better than having child safety workers from somewhere else flying across and then flying back again on a regular basis.

So this kind of service delivery could be implemented to support the state's identified Aboriginal and Torres Strait Islander communities. Would you say the Palm Island model is transferable?---I think that the concept would be transferable, but once again it would need to be - for it to be community owned it needs to be community developed which was the case for the Palm Island Community Co which took some five or six years to really work through with the community to get the confidence of what this was about and something that the community could own and then progressively manage and lead.

Thank you. Would you agree that if effectively designed and supported, Aboriginal and Torres Strait Islander early intervention and family support models can have a positive influence and outcome for children, young people and families to contribute towards or to reducing overrepresentation?---Absolutely; absolutely, and I think once again the importance of the Early Years Centres that are being rolled out across the state, particularly in, you know, the lower socioeconomic areas of our demographics I think have a very, very important role to play.

Finally, would you agree Aboriginal and Torres Strait Islander children and young people benefit from a legislated and policy framework, particularly the Child Protection Act paramount principle and the unique Aboriginal and Torres Strait Islander provisions to achieve their best interests?---Yes.

Thank you.

COMMISSIONER: Yes, Ms Wood, are you ready to go now?

Okay. That clock actually is about 10 minutes slow, so are you happy to continue with Ms Wood?---I'm happy to continue, yes.

COMMISSIONER: Okay. Ms Wood?

MS WOOD: I have no questions, Mr Commissioner.

COMMISSIONER: Okay.

MR CAPPER: We have no questions either.

MS McMILLAN: I just have a few matters, if I could.

COMMISSIONER: Yes, of course.

MS McMILLAN: Could I ask just ask you, Ms Apelt, in terms of the recognised entities, what department funds them, to your knowledge?---I'm not sure how it operates now, but certainly in the three years that I had responsibility it was the Department of Communities that funded the recognised entities.

Given that you have just been taken to, for instance, section 6, do you think that that does potentially raise a conflict, given that they're funded by the very department that the department is supposed to consult, was mandated to consult, in relation to decision-making processes?---It's all government money and - no, I don't think that it would be of material concern about of interest. I mean, I guess if there was a concern - it would be easy to have the appropriation coming from another agency if there was a concern, but I'm not aware - it hasn't been - it hadn't been raised with me as an issue while I had responsibility.

Thank you. Now, you've given answers in relation to your view that every endeavour is undertaken by child safety officers in relation to best practice and in relation to indigenous children?---Yes.

Is it your view that the department, certainly while you were there, places enough emphasis on recruiting Aboriginal and Torres Strait Islander staff?---Certainly the emphasis was there. The intent and endeavour were unquestionable, but the challenge remained to be able to recruit and train enough indigenous staff across the state. So I think - and I'm not sure what the case is now, but certainly while I had responsibility it was something that I was conscious of remained a challenge and we had increasing investment and emphasis on looking at ways to be able to attract and retain more Aboriginal and Torres Strait Islander qualified staff into the child protection arena. Having said that though, we're talking about conflict. I don't underestimate the difficulty of being - Aboriginal and Torres Strait Islander people doing child protection work within communities with kin and relationships. I do fully appreciate the difficulties that are involved there.

COMMISSIONER: What about other cultures and language diverse things?---Yes; yes, certainly in certain areas of the state where populations of Sudanese, for example, in the Toowoomba, Darling Downs area was an area where we really did try hard to be able to get people who are either of Sudanese background or certainly Sudanese appreciation to be able to work with the population and likewise the Vietnamese population in some parts of western Brisbane, but I think, you know, it's tied up with the overall question about how we can continue to work to improve our ability to attract and retain child protection workers. It remains a challenge.

MS McMILLAN: Queensland, as I understand it, has the second-largest indigenous population in Australia. Is that correct?---Correct.

Are you aware that in 2009 Western Australia's comparable department set a target of employing 20 per cent of its workforce to be Aboriginal by 2014? Were you aware of that?---No.

All right.

COMMISSIONER: I think Queensland by 2016 is projected to have the largest indigenous child population.

MS McMILLAN: Yes, thank you, Mr Commissioner.

In terms of Queensland you'd be aware, would you not, of the Queensland Government Project 2800 strategy?---Yes.

What year was that developed?---From memory, I think it was around 2010, 2011.

All right. Now, are you aware that it set as a target 4.4 percentage representation to be Aboriginal and Torres Strait Islander staffing? Is that correct?---Yes.

Do you think that's a sufficient target to set given the indigenous population that we have in Queensland and what Mr Commissioner has adverted to of the projected population by 2016?---Ideally the target would be in line with the proportion of indigenous people in the population but I think a target is a target. If one exceeds it, that's a great idea. It's a benchmark and I think targets often, particularly in early stages, are set with a judgment about what's realistic and what's an achievable target within the time frame that has been set.

Yes, thank you; no further questions.

COMMISSIONER: I just have a few final questions for you before you leave us. The evidence has shown that in the last 10 years reports, however you describe them, to the department about children have tripled?---Yes.

But subtantiations have remained fairly much stable?---Yes.

What does that tell you?---It tells me that the vast majority of people who are making reports are reporting to a system that perhaps they believe is set sup to have a broader mandate than it actually does have, and hence the need to really sharpen the clarity around what the child safety system is there for, its objective, and what it can do and does do, and then I think that will then help to triage away or to filter those reports that really are not best dealt with in the child protection system but are best dealt with either universally or with other secondary intensive family support services.

Another thing it was telling me was that the increase in reports didn't necessarily improve the detection of abuse or neglect - actual abuse or neglect, meaning that a child needed protection. Could you comment on that?---You could deduce that. Whether - I'm not sure about the word "improve", but it doesn't necessarily change the fact that the emphasis once reports get to the tertiary system will be sifting and sorting to identify the highest priority children that fit the definition of the act - - -

I guess what I meant was that there's not necessarily a correlation between the increase in intake and the increase in abuse or neglect, so that the number of notifications you get is not necessarily a reliable or accurate measurement of the health of children in Queensland, that is, the welfare and exposure to neglect and risks of harm? ---Yes, I think that's a fair observation.

All right. The other thing I wanted to ask you about was did the department when you were there do any analysis of repeat notifications or reports about the same family or siblings to you keep track of that?---The integrated client management system does record that data and it would be possible to produce those reports and I do recall from time to time that inquiry was made so that we'd get a better understanding of unique identified children, if you like, as opposed to the same child that might come to our attention multiple times.

So you would be able to say in a 12-month period, "This child has come to notice with a concern or a substantiated notification so many times"?---That's right, and also that, "This child has come to the notification of the department when the child was part of this family formation." Now the child is a part of another family formation the child's family or siblings might be coming to the notification of the department from a different familial arrangement, and that's a fairly common scenario.

Could you tell by interrogating that database how many children in say a 12 month period had been reported but not for substantiated harm, or assessed not to be in need at that time of protection?---Yes.

So I can say, "This child has been reported four times but on each occasion we've found that child not to be in need of protection"?---Yes. The system is set up to collect that data.

What do you do with that information? Do you keep an eye on that child and make sure that there's not a fifth time when the child actually does need protection from the state to avoid that fifth time?---I think it varies from case to case, but we can say from looking at the volume, the escalating volume of reports that are coming to the child safety system, the likelihood of being able to keep an eye on children that don't cross the threshold of serious harm becomes less. It dilutes the ability to do that, hence from my mind the urgency of rearranging the system so that the child protection system can get on and do the job it's set up to do and lets support children through strengthening other areas of the family support arena.

I take that point, but wouldn't that be one way of acting preventively or pre-emptively in a tertiary based system? ---It certainly would be.

Can you tell the difference between the metropolitan, regional and remote and indigenous Torres Strait Islander and other cultural groups of the repeat reporting patterns and outcomes?---From my recollection of the data collected on the integrated client management system, that deduction could be made. Those reports could be run.

All right. Lastly, during your period were you aware of whether or not there was a substantial number of children experiencing multiple placement while in out of home care? By multiple I mean say three or more over a five year period?---That is one of the indicators that we used to collect date on and monitor on a regular basis and report on the number of children that had three or more placements, and from memory, I think the data was also reported in our annual reports as well as other reports that we put on line publicly.

Did you identify the drivers of the need for multiple placements?---Yes. There's a range of reasons why placements might break down. Sometimes the foster family is unable to continue to care for the child within their family formation any longer for all sorts of reasons. They may not be just getting along. Sometimes children actually abscond from a placement and it's found that it's better then for the child to be placed with another fostering arrangement. Sometimes foster carers, their own family circumstances change. For example, they might have another child of their own that comes into the family and they're unable to continue to foster, but our objective by and

large is to be able to support foster families to remain fostering as long as possible so that we minimise the number of placements for children.

My last question is do you think we've run out of out of home care alternative residential options? Have we explored everything that's available out there and this is as good as it gets?---Well, I'm not - you know, on the basis of what the research tells us of the options that have been tried and seem to work well in specific contexts, I think that we certainly have explored and implemented those options as much as we can. You mentioned the other day the option of adoption. Obviously it's identified in the act as a possible option, but we also know from history as to why over time that's become a more difficult out of home placement option.

Especially if it's forced?---Well, and that's, you know, some of the history of adoption, but the very small number of adoptions that have happened in Queensland of children in care have been, you know, because there has been consent and it's been appropriate in that context.

So would you say it's a matter of enhancing the options we have, making them more attractive, giving incentives to more people coming into - or offering those options rather than there being a lot more options out there that we can tap into?---Yes, I think so, and I think also I'd like to just reiterate my concerns about parents with children with disabilities, extreme disabilities, being put in a situation where they have no option other than to relinquish the care of their child to the child protection system when in fact they are willing but simply not able to care for their child in the circumstances at a point in time.

Actually, that's a good point that you raise, because in the legislation it says, I think, that a parent can still be able even though might need support. Is that support in that example that you gave of the child with the disability there for parents who are willing, not able unassisted, to care for the child?---And that's the area that I believe needs more development. It's a very, very difficult area for loving, caring parents where any reasonable person would find it difficult to retain the care of the child in the family home. There needs to be a legitimate out of home care option for children with disability that doesn't stigmatise parents as being bad parents.

And offers them the support that they need for the child to stay safely at home rather than be cared for in an alternative?---That would be the ideal scenario.

All right, but would you say that's a problem for the current child protection system or some other area of government?---I think it's a policy issue for government, and I do not underestimate the significance of this, of defining the cohort that we're concerned about, but

nevertheless there is a small group of parents out there who are very concerned about relinquishing their child and being labelled, if you like, or seen in their community as somebody who is not willing.

Now, this is actually my last question. It seems that there's a commonality across Australia and elsewhere in the world that there are increasing notifications and increasing numbers of children in care for longer?---Yes.

It's a wide phenomenon, so therefore national averages don't help you identify the cohort of children who will always for one reason or another be a state responsibility as being in need of protection. Did your experience give you any idea of - in 2012 if 8300 is too high, including 4000 indigenous, what is the number that the community has to accept as the stable cohort of children within our society who will be in need of protection for one reason or another?---I think perhaps a crude way of being able to arrive at that proportion would be to look at the cohort in out of home care at the moment and determine of that cohort, if we did have stronger intensive family support to support children in the family home or with the family, what would that leave of the children that absolutely require the state as a safety net for out of home care. I think it would be possible to do some deduction along that line.

You haven't got a figure in mind yourself, though, having done that deduction?---No, I haven't; no.

Anything arising out of that?

MR SELFRIDGE: Just one question, if I may, commissioner.

Ms Apelt, you were asked a whole series of questions in relation to how do you keep a handle on a child or specific children when as you gave evidence they could be moving between families, they could be changing names and other such issues that arise. This concept of a unique identifier, is that something that you're familiar with and could you give us your view? Are you a fan of it?---Look, I'm familiar with the debate about unique identifiers in the health system, in the justice system.

Sure?---I'm familiar with national arguments and debate about, you know, unique identifiers, and the same principle of concern would apply in the child safety arena. You know, it's one to be thought out by people bigger than myself, but if there was a way of being able to access and share information, accurate information, more easily about vulnerable children and families there's no doubt that we would be able to save time and money by being able to intervene in a more targeted way earlier.

COMMISSIONER: And the child wouldn't fall between the cracks just because their name changed or the family structure changed or the make-up of their parents or the

marriages of their parents altered or their siblings varied over their lifetime as a child?---Yes. One could conclude that it would reduce the propensity for a child to just get lost in the system.

MR SELFRIDGE: No further questions, thank you.

COMMISSIONER: Ms Apelt, thank you very much for the lengthy of period of time that you've given up to assist the inquiry. It's very much appreciated?---Thank you.

Thank you. You're excused or released from the obligations of the summons.

MS MCMILLAN: Thank you. Might we have a short break. Mr Copley is here to take the next witness.

COMMISSIONER: Okay, but should I release Ms Apelt from the obligations of the summons.

MS MCMILLAN: Yes, thank you. Thank you. Sorry, yes.

COMMISSIONER: You're released from the summons. Thank you very much?---Thank you.

WITNESS WITHDREW

COMMISSIONER: We'll adjourn. We'll stand down until you're right - - -

THE COMMISSION ADJOURNED AT 12.10 PM

THE COMMISSION RESUMED AT 12.20 PM

COMMISSIONER: Mr Copley?

MR COPLEY: Mr Commissioner, I call Elizabeth Fraser.

FRASER, ELIZABETH affirmed:

THE ASSOCIATE: For recording purposes, please state your full name, your occupation and your business?
---Elizabeth Fraser; I'm the Queensland Commissioner for Children and Young People and Child Guardian and my work address is 53 Albert Street, Brisbane.

COMMISSIONER: Thank you, commissioner. Thank you for coming. Yes, Mr Copley?

MR COPLEY: Mr Commissioner, I tender the affidavit of Elizabeth Fraser which was sworn on 8 August 2012 and make available to the commission the annexures which have been exhibited to her affidavit.

COMMISSIONER: Thank you. Exhibit 23, Mr Copley, and the annexures will form of exhibit 23.

ADMITTED AND MARKED: "EXHIBIT 23"

MR COPLEY: Thank you.

Ms Fraser, it's correct to say, isn't it, that under your act the Commission for Children and Young People and Child Guardian Act you perform administrative functions?---I do, yes.

Yes?---Before I continue on with the questions, Mr Commissioner, I wonder whether it would be appropriate or whether I would be permitted to make a couple of opening comments.

COMMISSIONER: Mr Copley?

MR COPLEY: In my submission, no. The witness's affidavit speaks for itself. She will be examined or cross-examined as seen fit by each counsel and if it gets to the point where her counsel or counsel who is representing Ms Fraser's interests here feels that matters haven't been sufficiently elucidated, he will no doubt be given leave to attempt to undertake that exercise with the witness.

COMMISSIONER: Thanks, Mr Copley. I might hear from Mr Capper. It's just an unusual thing, commissioner, and I'm a bit reluctant to set a precedent. I know you would stay within your relevant limits, but other witnesses may find that a challenge. Mr Capper, did you want to say anything?

MR CAPPER: I'm happy to address matters at the end with

Ms Fraser where I will canvas some evidence.

COMMISSIONER: Thanks very much. All right. We will just continue, thanks, Mr Copley.

MR COPLEY: Thank you.

Now, in your affidavit you make some reference to suggestions for legislative reform which are referable, you say, to term of reference 3(b) and in particular you suggest that the efficiency or the efficiencies for the complaints function under tab 4 of the Commission for Children, Young Persons and Child Guardian Act might be enhanced if section 58 of the statute is amended. Do you recall that?---Yes.

Yes, and in particular you suggest to the commission that section 58 should be amended to remove the requirement that a complaint from an adult must be in writing. What is the rationale for that suggested amendment?---The rationale would be that sometimes people who are seeking to make complaints to us may not have writing capabilities or it would be also more efficient in some instances for them to be able to read and speak with us and make that sort of complaint, if you like, outside the written format.

Well, of course they can. Any adult can contact you by telephone or some other form of communication to make a complaint, can't they?---Mm'hm.

So the requirement that he must eventually put it in writing doesn't deter him or her from making the initial complaint, would it?---No, that would be correct, but I guess the issue is whether or not you need to have that throughout the process, particularly for some complainants who may be disadvantaged in their literacy skills and just, I guess, from our point of view could remove an unnecessary formality from the legislation and make it easier for people to in a sense engage.

There's no legislative impediment though to an officer of the commission assisting an adult to formulate this complaint in writing, is there?---No, there isn't. The issue is really one more of resources and why that would be - I mean, at the end of the day I guess what we're looking at is some opportunities for making things easier for complainants and I guess it's an additional impost for people if we've then got to go through that process of recording it as well.

One benefit in having the complaint reduced to writing is that you're able to obtain some particularity or some degree of specifics about what the person is complaining about, isn't it?---I think the use of that as a tool, yes, can be used in that way. There's no doubt that the person taking the complaint will be recording that and we obviously would keep that from the complainant and would get agreement from them that, you know, that's what they've

said, but I guess the issue is whether you want to put the onus on them to have to do that.

Well, in any event, even though the adult must put the complaint into writing eventually, you've agreed that there is no impediment on an officer of the commission from assisting that person to formulate the written complaint? ---I think the work of the commission is probably clearly focused on making it clear and understanding in terms of what the complaint is that the person's putting forward. I don't know in terms of - I'm not quite sure what the issue would be in removing the requirement for it to be in writing, particularly for some people for whom, you know, the written word would not necessarily be something that they're familiar with.

But there would be no impediment to a commission officer assisting the person to reduce the complaint to writing, would there?---I'm not aware of any particular one. I suppose in my head I'm just sort of looking at the issue of the fact that they're taking the complaint, they're looking at it and they're working it through so, no, not particularly.

In the case of children under section 58 subsection (3) the commissioner may provide help to a child to make the complaint in writing?---Mm'hm.

That would no doubt occur from time to time, wouldn't it? ---Could do, yes.

So there would be commission officers who would have some skills in that area of helping a complainant formulate their complaint in a written document, wouldn't there? ---Well, the people in our complaints area are skilled in assisting people to, I guess, be clear about what the complaint is, making sure that they're aware of what the person is asking, trying to sort through what it is that they're wanting, how in a sense the issues are impacting, so the skill sets would be the same, I would imagine.

Yes, and it could be that the legislature thought it desirable to have adults put their complaints in writing eventually so that the complaint can be sufficiently particularised to assist the commission to conduct a focused investigation, couldn't it?---I think that that probably is the rationale. I think potentially it also sometimes acts as a disincentive for people to come forward and make complaints, particularly if they don't have those skill sets. So I'm not suggesting that we couldn't help them if they do come forward, but just the fact that it has to be promoted in that frame would be - you know, could be inhibiting for some people who may not have those skill sets and I guess we've already - we've looked at and highlighted some of the people who in a sense may wish to make complaints to us and some of them may be disadvantaged in that context. So I don't think we're looking to try and create a system that is going to inhibit people who might

legitimately have complaints from using that process by a requirement to - for them to have to put that down in writing.

So it could be summarised this way: there are advantages in requiring an adult to make a written complaint and there are disadvantages in requiring an adult to make a written complaint?---Well, I don't know what the - I don't know quite what the advantages might be for someone who can't write.

If a complaint can be refined down to some particularity in writing, it assists the commission to undertake or conduct a more focused investigation, wouldn't it? Wouldn't that be an advantage?---I believe that could be established orally between the commission's officer and the complainant.

And then could it be reduced to writing that late?---Well, the commission's officer would put it in writing.

Yes, all right?---I guess I'm looking at the benefit for the actual complainant in that context.

But another way of looking at it would be that there could be some benefit for the commission in terms of the efficient discharge of its responsibilities if it has got a written complaint to proceed with, couldn't it?---It would be a starting point, but I'd have to say that most of the work of the commission in the complaints environment is really having a conversation and discussing and working through what the complainant is putting forward.

I see; now, in relation to term of reference 3(a) - and this may have some relevance to term of reference 3(b) possibly, but so far as you're concerned, you've allocated these observations to paragraph 3(a) of the order in council. You refer to the fact that with the passing of or the making of administrative arrangement order number 4 of 2012 the minister responsible for administering the Commission for Children and Young People and Child Guardian Act is now no longer the premier but the minister for Community Services, Child Safety and something else?---Disability.

Disability, yes?---Yes, that's correct.

Yes, and you wish to make an observation or you do make an observation in the affidavit about that change to the administrative arrangements?---I should make it clear that there have been some changes over time with the commission's links with ministerial portfolios for the act.

But since you've been the commissioner it's been to the premier, hasn't it?---When I took up the position in 2005, it was with the premier. However, prior to that - - -

Since then it's remained with the premier until this year,

hasn't it?---No, prior to this in the previous government's administration it was with the Minister for Communities. When they created the mega-portfolio, if you like, with the communities and disabilities and child safety and housing and Aboriginal and Torres Strait Islander affairs, it moved from reporting through to the premier through to Minister for Communities. With the change of government this year it was appointed to the Minister for Communities, Child Safety and Disability Services. The change there is that the minister for whom the legislation links also now has responsibility for child safety which the previous minister did not.

Prior to the enactment of the elusive arrangements order number 4 of 2012, who had responsibility for your act? ---The current administrative arrangements. Prior to that the Minister for Communities. I have to just double-check the title but I think it was Minister for Communities and Disability Services, but she did not have responsibility for Child Safety. She did, however, have responsibility for Youth Justice. Youth Justice under the current administrative arrangement sits with the attorney-general.

What is the significance in your mind about who administers the Commission for Children and Young People and Child Guardian Act?---The significance I think is particularly with respect to the oversight function. If we have a responsibility, as we do within the child guardian function, to oversight what's happening for children in the tertiary child protection system, then the act - my act indicates that I am to act independently. I don't report to any minister, et cetera. I guess the issue from my point of view is whilst there's been no particular practical interference with what I'm doing, there is a perception issue within the broader community about form sort of following function, following structure. Because the act does require me to act independently, it is important that in order to establish confidence that I am doing that and that there isn't any perception that there can be inference with that I'm suggesting that it would be preferable that the portfolio administration of the act, ie, people who can lead discussion around changing the particulars of the act or deal with the issues around funding or appointments could be seen to be at arm's length from what you're oversighting.

So who do you say should be the minister administering your act?---I think that it would be - because it essentially performs a broad audit function, I think it would be preferable that it was managed by a minister who had a central-agency function. I don't have a particular view about who that might be, but I do think if we go back to the issue of the broader advocacy that I do for all children and when we look at some of the universal levers that are needed to promote children's wellbeing and probably look at reducing child abuse and neglect in the community, it's probably useful to have someone who's looking across government at a range of portfolios that

have impact on that. Clearly critical things are around education, health - they're the sort of things that promote wellbeing so to a certain extent I think it's either premiers or treasury. If potentially, I guess, Youth Justice wasn't sitting with the attorney-general, I would say the attorney-general would be another central agency minister who could be responsible. I don't see, I guess, the function that I perform as being a continuum of child protection services in that respect in terms of oversight. I see it more as an audit function.

You mentioned the attorney-general. He has administrative responsibility for the Supreme Court of Queensland Act 1991, doesn't he?---I'm not aware of all his responsibilities in that regard, but I'm sure he probably does.

And the District Court Act 1967?---I'm sure that sits there as well.

And the Magistrates Court or the Magistrates Act 1991, but you're not aware of that?---I'm not saying that it's not correct but I'm not aware of all the particular administrative responsibilities of the attorney-general.

Well, if you're not aware as a person administering the statute which particular statutes the attorney-general is administering, how does it detract from your independence and the independence of the statute that you're in charge of that your statute is attached to the same minister who's administering the Child Protection Act? You said before that it would enhance public confidence in the system? ---The reason why, you know, I say that is because I guess people have raised that with me from the community as to - and there is generally a questioning of the status of that independence and that didn't occur when that responsibility sat independently of the group that I have responsibility for oversighting.

So members of the public have actually raised with you which minister is administering your act at the moment? ---Yes.

That's an issue for them, is it?---They have asked who it is and why it's there and whether or not that impacts on the independence.

Well, it doesn't have any impact on your independence, does it, I'd suggest?---No.

COMMISSIONER: What do you tell them when they ask you that question about whether it does or not?---I tell them that I'm required - under my act I'm required to act independently and that I'm not under the direction of any minister. I guess the issue around that is - as I said, it's not a practical issue of interference, but form does sort of follow and the other area, I guess, is that the funding that comes through to the commission is actually

funded through that portfolio and that minister has responsibility for the grant that's made available.

So there are sort of areas where people - and depending on people's various knowledge of how things work, there are sometimes questions that are made. And I guess from our point of view the Forde Inquiry, the Briton Review and the CMC all indicated that they thought that basically we should sit in a different frame, and we did do for some time. And during that period the perception, the - and it is not to say - and you've heard here, I think many people say that everything is funded under government, there are all sorts of frames there. But I think there is a perceptual issue as far as the community is concerned, which may or may not be real, but there is I think greater capacity when you are within a portfolio frame for some efforts, I guess, to be influenced in that sense.

So it's perception so that your independence is actual and seen to be actual rather than appearing to some, perhaps compromised. But the other issue you raised, was it, that because you were administered and funded by the department, did that make you feel compromised or did that - did you mean to convey to me that others felt you might be compromised because if you - that there might be some funding repercussions another position you took publicly or decision you made?---I think the latter in the sense that I haven't felt, myself, particularly compromised in that, but I guess I've paused to think because people raise it with you. The other issue, I guess, is that there are a number of organisations that sit within different ministerial portfolios. I guess it also relates to how the funding mechanisms for those work. I'm aware, for instance, that - and I don't know in any great detail how courts, et cetera, are funded, but I assume that there are some processes in there that maintain some capacity for that to be looked at as a budget item of its own, and that's another area where sometimes independent entities like the CMC or the ombudsman may be funded in that way.

So you'd like to be at arm's length for appearance sake, mainly. Is that fair?---I think that would be fair to say that, and - - -

Those people who have raised it with you, have you been able to put their mind at ease, or has the perception created a practical problem for you discharging your function independently?---I think that it's hard to know where the you've put people's minds at ease. You've said what you said, they don't necessarily continue to come back, but I think if you're talking about an oversight function you want to make sure that you created it in the way that the form of it inspires people's view that it is actually going to act in the way that does, whether or not - and if you don't do that I guess you've got to provide a rationale as to why you don't do that.

So what about have you had feedback at the end of it to say, "Well, I figured that this was going to be the outcome. It's not what I was looking for and I'm unhappy because of my perception of lack of independence"? Is

there a discernible feedback of that nature, or is it dissipated, or nothing to really worry about, or just a - - -?---I think it's more about constructed issue. I seek the rationale for it. I think if the inquiry is in a sense looking at how the child protection system operates from end to end I think it is a legitimate to ask what is the rationale for it to be either within the portfolio, external to the portfolio? Many of the other inquiries that have occurred in Victoria and New South Wales, Tasmania recently, et cetera, have all made some reference to what they think it would look like, and in some instances where they have sought to achieve the strongest and most robust mechanism to enable that to occur, they have tended to sit outside the portfolio.

And that's your preference as well?---And my view is that it is important to have something that people can have confidence in; that they feel basically fulfils that sort of notion of independence. And I think you've got to have a clear rationale for why you put something here or there as opposed to changing it from time to time without any public explanation.

Sure. And the rationale for putting it back externally - that is, external to the department - would be perception of the outsider?---Yes.

Okay, thank you.

MR COPLEY: Because it's not the reality, is it, in law in performing your functions and exercising your powers you are obliged to act independently, aren't you?---I am.

And you are not under the control or direction of the minister?---No.

That's the law, isn't it?---That is right, that is the law.

And in law you are given protection from certain liabilities, aren't you?---Yes.

For example, you do not incur any civil liability for an act done or an omission made honestly and without negligence under the legislation, are you?---That's correct.

And neither is your assistant commissioner or any of the officers for your commission?---That's correct.

Insofar as the section says that you must act independently and you are not under the control or direction of a minister, that is a very powerful legislative guarantee of your independence, isn't it?---I think it's certainly a very strong statement and signal. The guarantee of that, I guess, is the actions that flow and - - -

The guarantee is how you and your commission conduct themselves, isn't it?---The issue is that you also have to

conduct yourself within a context as well.

Yes. But you're not aware of any - - -?---Within the sort of frame of what one is provided, yes, I think it's a very strong guarantee that you can act independently.

And you're not aware of any public perception that the courts of Queensland are perceived a lack of independence simply because one of the most frequently-appearing litigators before those courts administers the statutes which establish or continued in existence of the courts, are you?---I wouldn't make any comment on that.

But you're not aware of any public perception along those lines, are you?---I guess it depends on who you talk to or what you read, but I'm not making that an opinion of mine and I don't see that it links in that way.

The legislative independence that you have been given under section 22 and the formula of words "is not under the control or direction of the minister" can also be found, I'd suggest, in the QCAT Act of 2009 where it is stated there in the provision concerning the functions of the president - and you know the president is a Supreme Court judge, don't you?---Mm'hm.

That in performing those functions he is not subject to the direction or control of the Minister?---Mm'hm.

So that's a statutory formula that the legislature seems to have adopted and put into various statutes to ensure the reality of independence of - in the case of the president in that capacity - his administration of QCAT, and I'd suggest to you in your case the administration of your statute. So what I'm suggesting to you really is it really couldn't get any clearer in law, could it, that you are completely and utterly independent of government in performing your functions and exercising your powers?---No, I would agree with that, and I - - -

The only, perhaps, control the government has over you is the amount or level of funding that provide?---That's true, yes.

And that's a level of control that the executive government - if you would call it control - exercises over the court system to, isn't it?---That would be correct.

And we don't see in your statute any expression such as the following, that you, "Shall, upon the direction of the minister," do such and such, do we?---No.

The next thing that you suggest in your affidavit at paragraph 63 is an additional measure that you say is necessary to support public confidence in the oversight of the child protection system, and that measure would be to require there to be a regular review of your act, and you use the expression "mandate the regular review of your

act". Do you have in mind there some sort of legislative amendment to provide for a review on an annual or two-yearly or three-yearly basis of your act, do you?---No, what I was suggesting there was that it would line up with the existing provisions in the Ombudsman's Act and the CMC Act.

Why does it need to do that?---Because I think what that provides for is a review over a five year period.

Yes?---And my thinking around that is that the commission's formulation, if you like, has been thought about arisen out of some of the earlier inquiries and reviews which were in a sense constituted in response to particular issues. But I think after a period of time - and I think it's good practice - that the role of the commission's oversight function is looked at and that there is a formal process whereby the parliament, if you like, can think about whether its functions and its powers are contemporary and relevant to the issues that are ongoing for the future. I think there is no doubt that things change, things move on, and this is in a sense seven years since the previous CMC inquiry where we are having an opportunity to look at formally be commission's oversight function and what it's doing. I think it is a timely and good thing to do on a regular basis so that if there are changes they can be made at that time, but we've certainly done some other reviews ourselves of different processes and functions, but I don't think that that substitutes for a broader review by the parliament.

COMMISSIONER: What did you mean by the review would ensure that the commission's ongoing relevance to current government policy? What do you mean there?---I think that the issues around child protection, the mechanisms and the focus and the priorities can change over time and the role that we might play with in that may need some adjustment.

But as you say, you're the key independent external oversight mechanism for the child protection system, that would be always relevant to current government policy regardless of who the government was, wouldn't it?---Yes, I'm thinking about the way in which that's done. My act has a lot of detail in it about how various functions are to be managed and undertaken; the complaints function, the community visitor function, the systemic oversight function, the child death review function, all those sort of roles. There may be some opportunity to have a think about whether or not there're pointing in the right direction and they delivered what they should have.

Given that this is the first opportunity, as you pointed out, for seven years, have you discern that there is some lack of relevance at this point in time with the current government policy?---No, I don't think there is a lack of relevance but I think - - -

Or a change that needs to happen to make it more relevant,

or - any of those things that you mentioned, do they need to change to keep the relevant connection with policy? I guess I'm trying to understand, it hasn't happened for seven years, and in that seven years have you identified some departure between the commission's ongoing relevance and current government policy?---No, I don't think that's what I was intending to mean.

I see?---I think it was meant in a broader sense that what you'd been looking for is an opportunity for a formal look, just make sure that the way in which things were being administered and managed were promoting, if you like, the direction that's going to move on. I mean, I'm assuming out of this process there's a requirement to look at setting the agenda for the next 10 years. There may be some recommendations or ideas or changes that come out of this, particularly around some of the areas that we've highlighted may need some greater effort and some thinking around the assessments and interventions, the over-representation of indigenous people, transitions from care, that potentially could put some different priorities into how government was going to manage the child protection system and its priorities into the future. I'm not pre-empting that, all I'm saying is that as those things move on you don't always need an inquiry for that to occur.

No?---That might have occurred through the government of the day or the department or - - -

Or the regular review, as you suggested?---Or the regular review, yes.

Am I understanding you correctly that treating this as if it were a regular review, the changes in direction and focus and emphasis that you see might be worthwhile exploring are all contained in your affidavit?---I think they're broadly. We will be making a submission as well and I will be looking to provide that to you in the next couple of weeks.

Excellent. All right. Thanks very much. I just wonder whether - it's almost 1 o'clock, Mr Copley. Would you - - -

MR COPLEY: I won't be finished in the next five minutes.

COMMISSIONER: You won't?

MR COPLEY: No, so we could adjourn if you wished.

COMMISSIONER: All right. I think we might. We haven't had a morning break so I think we might break now. Quarter past 2 suit everybody?

THE COMMISSION ADJOURNED AT 12.57 PM UNTIL 2.17 PM

THE COMMISSION RESUMED AT 2.17 PM

COMMISSIONER: Yes, Mr Copley?

MR COPLEY: Before lunch we were talking about paragraph 63 of your affidavit in which you expressed the view that it would be helpful for your legislation to be subject to regular review and you mentioned, as I recall it, review by a parliamentary committee. Is that the only type of review you have in mind or are you prepared to countenance other forms of review, and if so, what forms? ---I don't have any particular commitment to a particular model. I think review could be conducted - as long as it's an independent review that was acceptable to sort of parliament. In that sense I think the general formula has been that the parliamentary committees that you meet with and talk with can be a useful governance frame in which that occurs and then they can bring that report to the parliament with any recommendations that have been done, but I know there are some other models where government might choose to contract to someone with skills and expertise that's perceived to be independent to go through that. So I just think the issue is it has to be something that is capable of doing it, has some terms of reference that are agreed an is seen to be something on which the parliament can rely.

In your affidavit you posit two examples, that of the ombudsman and that of the Crime and Misconduct Commission? ---Yes.

Now, I'd suggest to you that the Crime and Misconduct Commission's activities are reviewed at least once every three years by a parliamentary committee, whereas the office of the ombudsman and his activities are reviewed at least every five years by an appropriately qualified reviewer appointed by the governing council. So there's two different forms of review?---Yes.

Which one do you favour? Given that this is your opinion, that there ought to be some sort of review of your office, which one do you favour?---Well, given that - I mean, I don't - I think both do enable the job to be done. I think if I had to make an opinion I guess I would have thought the five year sort of review was sufficient in that sense.

Yes, well, that would involve obviously less expense to the taxpayer, wouldn't it?---Yes.

Yes?---And I think in terms of the - you know, being able to see what is actually emerging and what's happening, I think that gives a reasonable period of time for things to progress in the context of the sort of things that we're talking about with child protection.

You don't think that subjecting yourself to review in the nature of that contemplated by the Ombudsman Act would

detract from your independence?---No, I think it's important that in that sort of - I guess, if you've got an oversight role I think it's importance that the oversight role is reviewed as well. I mean, there has to be some accountability that we have for that process.

The review that you're speaking of is really a review of the functions and powers of your commission, isn't it? ---Yes.

Because your commission is, so far as its individuals are concerned, subject to the Crime and Misconduct Act in terms of it being a unit of public administration, aren't you? ---Yes.

So if there was misconduct or malpractice in your commission that would be susceptible of the CMC investigating it, wouldn't it?---Yes, and I mean that would have to be - those sort of things would be dealt with on an ongoing basis. Should issues emerge or allegations be made you'd refer those to the appropriate processes. What I'm talking about is more a performance sort of review in terms of whether the functions that you're being tasked with performing are actually delivering in the way that was envisaged when the functions were given to you and whether in fact it's assisting and making a difference and adding value to the system that you're overseeing, in that sense.

Now, in your affidavit at paragraph 64 you point out what might be described as an incongruity between the position concerning 17-year-olds who are not in youth detention and 17-year-olds who are simply subject to the child protection system. What is your suggestion in relation to that incongruity that you talk about there in paragraph 64?---I think the issue that I'm talking about there is within the youth justice system the powers that I have to undertake monitoring activities are limited to those relevant to children on child protection orders within that frame and I think it just makes sense to enable you to look at the children who are also not necessarily on child protection orders as part of that monitoring arrangement. Under my research sort of powers I can actually look at what's happening there. The issue is what you can require and what you can't. I think probably the responsibilities for that were devised at a time when the effort was actually looking at the issues with respect to the child protection system and therefore probably the balancing of that was not quite as it might be. It's a tidying job, really, as far as I can see.

A solution to the difficulty would be to simply put those in youth detention beyond the ambit of your act, wouldn't it?---That wasn't the solution I was thinking of.

No, I know, that may be so, but I'm simply asking you, a solution theoretically or legally would be to put those youths who are in youth detention simply beyond the ambit of your commission, wouldn't it?---A solution to what? It

would mean that those people would then be outside an oversight function. Is that what you're suggesting?

They wouldn't be in your oversight function, would they, and so the difficulties that you would experience in attempting to oversee them and to monitor their complains and concerns because they're in youth justice would go away, wouldn't it?
---Well, the general provision that I have is to promote and protect the interests of children in Queensland - - -

I understand that?--- - - - which is under 18.

I understand that?---But that also highlights that it's for a particular cohort who are vulnerable and identifies in a sense who those might be. I would have thought that children in detention would have fitted within that frame.

Well, that might be a policy position, but a solution to the difficulty would simply be to put those children in detention aged up to 17 years and 11 months and 29 days beyond the purview of your commission, wouldn't it? Whether you agree with that as a solution or not, that would be one option, wouldn't it?---I don't see it as an option, because I guess I'm not understanding the purpose or the - maybe I don't understand the question, I'm sorry.

Parliament, if it wanted to, could legislate to say that once you turn 17 you're an adult and then people who are 17 would be outside the scope of your commission, wouldn't they?

COMMISSIONER: Which would alleviate the problem you identified in your affidavit. Is that your point?

MR COPLEY: That's the point.

COMMISSIONER: It may not be - - -?---Are you talking about 64.2 here?

MR COPLEY: Yes?---Sorry, I was thinking we were still talking about 64.1. In terms of 64.2, the children who are 17 who are outside the youth justice system now are outside my ambit anyway and it's on administrative agreement with the interest of government that they've agreed that - I developed up an MOU with a community safety group to actually visit them in adult prisons, but they don't currently sit within my ambit at this point.

COMMISSIONER: Do you have a relationship with the official visitors? Do they still have them, or is that a prisons - - -?---In terms of adult prisons?

Yes. Is that an adult prison?---Yes, that's an adult - the 17-year-olds I'm talking about here are in adult prisons.

Are in adult prisons?---Yes, because they're outside the youth justice - - -

So they do have an oversight - - -?---There is an official visit process that goes on.

Yes?---But there isn't any oversight by us because adult prisons are not a visitable site for us.

No, not for you, but is there any liaison between your commission and official visitors?---Yes, because you also have some official visiting that goes on in youth detention as well.

So could you use them as your agents, for example?---At this stage this group, if you like, is right outside our ambit because they're not in the Youth Justice system and they're not in a site so the - because I advocate for that group to be within the Youth Justice system, there was then agreement and discussion that I should visit them in the adult - - -

So they didn't fall between the cracks?---No.

You do administratively and via policy because there's a bit of a gap in the legislation?---Yes, that's right, and the official visitor role is slightly different in the context of it's a little bit more removed in terms of frequency and - - -

Yes, and they have to self-activate for access?---That's right.

Okay, good.

MR COPLEY: A solution to the difficulty though would be for parliament to simply leave people aged 17 in adult prisons to the adult detention system - - -?---Where it is now.

- - - and to cut them completely off - - -?---Yes, where it is now.

- - - from any supervision over them?---Yes, and that's where it sits now.

But you're not happy with that?---No.

Why is that?---Because I think 17-year-olds fit within the purview of being under 18 and for all intents - - -

They clearly do, don't they, because they're under 18?
---That's right, and I think that the place for them to be is in the Juvenile Justice umbrella.

The whole issue would go away though if parliament legislated to say that a child is no longer a child once he turns 17?
---That would have ramifications for a whole range of things.

Yes; yes, be that as it may, that would be a solution to this difficulty?---They could do that. I wouldn't necessarily agree with it. I think there's a lot of research to suggest that potentially there should be some support and assistance to young people for longer periods of time, not less periods of time, particularly where their in situations where they have been evidencing some dysfunction.

All right.

COMMISSIONER: How do you do that though? In 12 months' time they're going to lose their children's rights? ---Mm'hm.

Which are more expensive that adult rights in some respects and they will be adults and at the moment the system treats them as though they were adults for the purposes of detention, doesn't it?---Yes.

Would your position be that that is anomalous and should be changed because of their age rather than their behaviour? ---Yes.

Because they're in an age of minority?---Yes, and I think that that then puts them into a situation where they have access to a range of other supports which are more age appropriate. I'm not arguing in a sense that responsibilities or accountabilities for actions are not to be taken into account, but I just think that if the true purpose of the Juvenile Justice system is to actually try to address some of the issues and move some of these people forward so that they're not continuing to reoffend into the future, then the reality is that we should be linking in with them to try and find ways to offer them education, offer them a range of support that they don't get in the adult prison.

Accepting that theoretically they're at a vulnerable age still at 17. They are not 18 and 12 months to a child makes a lot more difference than it does to an adult and you might be able to do something, but I'm just wondering how in practice how big the cohort would be, because to be in an adult gaol they're likely to be there well beyond their 18th birthday, aren't they?---Mm.

They have done something that's taken them out of the youth detention system into the adult detention system?---Mm.

So I wonder what practical benefits they would get in that 12-month period which they would then lose when they got to 18?---Well, the reality is that when they're 17, they are treated within the adult correction system so it's not a function of them having done something that puts them in there so it is an age issue. So I agree that they would graduate into the adult system, some of them, if that was - - -

But wouldn't they have committed a crime to get into the adult detention system?---Yes, but because they're 17, they are put into the adult system.

Because of the gravity of what they have done or because - - -?---No, because of their age.

Because of their age?---Mm.

Because they're 17?---Yes.

Would there be someone who was 17 who would be put into an adult prison for, say, less than 12 months? So could it be that they would spend the rest of their childhood in an adult prison but none of their adulthood?---Yes, there are some time frames around that which I can provide you the details of - - -

Yes, I would be interested?--- - - - but the tripping factor is the age at which they are charged with the offence.

Do you think there could be - if your argument succeeded, was accepted, do you think there should be a different tipping point other than age? Would you envisage something like that, like, for example, the gravity of the behaviour?---I think that the - I think the gravity of the behaviour obviously links with the length of the sentence and the courts make those sort of decisions.

Yes?---From my point of view I think that if somebody is for all intents and purposes a child because they're under the age of 18, then I think they're entitled to be treated within the Juvenile Justice system up until such time as they're no longer there. I guess I'm old enough to have been around when the age was 21 before you reached the age of majority, but in this instance we've now agreed that for most things 18 is that age and - - -

We've actually heard evidence for - we're talking about the vulnerable children here?---Yes.

Not the 1.1 million Queenslanders who come from stable, ordinary family backgrounds?---Mm.

So in fact the age of 25 is a much better period of time to support them, especially if they're extra vulnerable because they're in gaol?---Yes.

What do you say about that?---I agree. I think that in terms of from a developmental point of view and for a reaching point of view I think probably there is great benefit in trying to see what we can do to address some of those issues, try and get people in to at least sorting out some learning skills, competencies, tend to any mental health issues, et cetera, and put them on a different path. I think if you mix particularly young cohorts of people in with older people who are perhaps more entrenched in that behaviour, I think you've got less opportunities.

And you mean benefits not only for them but to society generally?---Yes. I think there's a benefit for them and every individual is in that context but I think from a societal point of view it makes a lot of sense to try as hard as we can up until, you know, a period of developmental maturity that's going on with various people to make the difference and put people on a different pathway.

So although from their own childhood's point of view it's fairly late in the game, it's still early intervention if you looked over the course of their lifetime?---Yes, and there's a lot of research around in terms of the sort of maturation processes and the brain, et cetera, that suggests that, you know, some of that - you've still got a lot of opportunities up to the age of 25.

I suppose on the basis of most mortality we're children for only a quarter of our lives?---That's right.

Adult for the rest?---We're long gestational and some are a little bit longer than others, but I guess in this instance that's an issue where I think it's useful for us to engage in the research, look at what's happening, but to some extent I suppose part of the reason why I was pleased that we were able to start linking and visiting these young people - and it's only fairly recent that I've been able to negotiate that - is that we can start to hear and see what is actually going on for them and in the short period that I have been visiting the feedback is more along the lines that they don't have enough to do. They're not engaged in activities in the same way that they would be if they were in the youth detention centre and in some instances there's good effort being made in the adult prisons to try and perhaps even separate or segregate them but that in a sense has its own issues with respect to - - -

You're responsible for youth detention as well? The children in there?---Yes, I visit them.

Same role?---I can visit all of them in the youth detention centres.

Would you see any practical problem with any of the children you've had contact with who are in gaol for the period of 12 months between 17 and 18 actually spending it at a youth detention centre with the other cohort of children you're also responsible for?---I think that even in the juvenile detention environment there has to be management of different individuals and what are their presenting issues; what are their offences; and what are the treatments that they need to have? But I think that the 18-year-olds could be managed within a youth environment, not necessarily putting them all together from sort of, you know, 12 to 17.

Because as you say consistently with your position, that them being 17 in gaol, they're likely to be unduly influenced by the adult criminals; they may have disproportionate influence as the older cohort in a youth detention centre on the younger, if you didn't do something?---And that's managed already - - -

Is it?--- - - - in the context of how the young people within those centres are housed and separated and offered - - -

But apart from their age then, their personalities, their management, their susceptibility to management and correction and the gravity of what they've done would also become relevant factors, wouldn't they?---They would.

MR COPLEY: So are you suggesting that a better solution to 17-year-olds in detention would be for them to serve their periods of detention in a youth justice centre until they turn 18 and then be transferred?---And certainly to have access to the same sort of supports and services and facilities that the people in youth detention - - -

Is it your view that for the purposes of the criminal law a person of 17 should be regarded as a child?---It is.

And that he should not attain or be deemed to be an adult until he turns 18?---It is.

And why is that?---Because that's the age when we deem somebody as an adult.

Yes, but that's - - -

COMMISSIONER: And you don't think that inconsistency is justified?---No, I don't.

MR COPLEY: It could be said that that age of 18 is just a figure that parliament has picked like it once picked 21 or

it once picked 17 for the age of consent to heterosexual sexual activity. What do you say to that, that it's just a figure that's been picked?---And as I was talking before with you, Mr Commissioner, I guess my preference would be to extend the consideration of support to meet what we know are developmental milestones. But in the first instance I guess I'm saying I'm arguing for at least everyone to be consistently treated as either a child or an adult and that we don't just pick some aspects for detention in - - -

COMMISSIONER: Even if age is an arbitrary point, you say it should be consistently applied?---Yes.

But for it to have any real value, that 12 month period before they moved into the - you'd have to have a transition, wouldn't you, a staged sort of integration into the prison system as well, otherwise that - say for 12 months that they're in detention might actually be more disruptive than if you put them in adult prison and they were used to it over the 12-month period before they turned 18, mightn't it?---I think there are a lot of those sort of considerations, but at the end of the day I still would argue that under the age of 18 you should be treated within the youth justice system as a matter of priority.

Is that done in other states?---Yes, it's done in other states. In fact, Queensland is consistently mentioned in the UN reporting on - this is an issue. It's raised as a human rights issue in that sense. In fact when it went through as a piece of legislation it's actually not a legislative change that's required, it's a regulatory provision that keeps them there, so it wouldn't actually take very much to change it. I think the main issue has been cost.

Have you made representations to government on that?---I have, yes.

What about the children's court system, have they made representations as well?---There's quite a lot of representation that has been made to both state and federal agencies, like the Human Rights Commission, and also to the attorneys general, government, with both - and I would say there's probably quite a bit of interest from different groups, both legal and child development advocates, and in some instances people from other sort of perspectives.

Have you had any feedback from your representations about what's wrong with that idea?---Basically there's been different feedback. Previous government indicated that their intention was to move there when it was a possibility, that they would make that an option.

That had a long gestation period too, didn't it?---But it would have - yes, it would have a long process to get there. I've been advised by the current government that there isn't any consideration to change that.

MR COPLEY: So if we can just go back in time for a moment. To your recollection, or from your research, when was it that people aged under 18 but over 17 were regarded as candidates for the criminal justice system in an adult prison?---I haven't got the exact dates with me, but I can provide those for you.

Do you remember which decade?---It would have been not the last one.

No. Would it have been at least since the enactment of the Juvenile Justice Act in 1992?---Yes, it would be in that sort of order.

So that's been the position then, if that's right, for the past 20 years?---Yes.

And you say that if that's correct the government which enacted that law and that regulation recently told you before it no longer governed that it was considering changing it, did it?---It indicated that the legislative provision - that there was interest in considering that, yes.

That's as far as they took - - - ?---Yes.

- - - make further (indistinct)?---And I guess the agreement then was that I could visit those young people in the adult prisons in the meanwhile.

Okay. Now - - - ?---But it is quite different to other - - -

- - - with respect to - - - ?--- - - - jurisdictions.

We'll just move on now. with respect to paragraph 3(b) of the order in council you at paragraph 68 and in those which follow, to 69, identify some amendments to the Commission for Children, Young Persons and Guardian Act which you believe are necessary?---Yes.

We've already talked about the amendment - or the need or otherwise for the amendment to section 58 so we'll leave that one go, but in relation to paragraph 68.1 you suggest there's a need for better consistency and clarity around legislative provisions for providing reports and recommendations about child guardian functions to parliament and ministers?---Yes. I guess the rationale for including that is that this inquiry is looking at parts of our act and these are tidying up provisions, really.

Okay. Are you suggesting that your act has got you reporting to different bodies for different functions? ---No.

What are you suggesting?---I'm suggesting that - basically that there are some slightly different provisions which apply to my investigations, monitoring, and the

requirements on how I'm to report within those provisions.

Can you take us to your legislation and show us what you're talking about specifically?---I can provide that for you, yes.

Can you do it now?---I haven't got my legislation with me.

We'll see if we can get you an act. Mr Selfridge is able to lend you his, I think.

COMMISSIONER: Do you want mine?---At this stage I think probably in terms of the detail around that I'd probably have to provide that to you out of this session.

It's just that you say at 68.1, "Better consistency and clarity around legislative provisions for reports and recommendations is required," then you say, "Currently the commission has different requirements about reporting." Let's leave the matter of justice aside?---Okay, well with - - -

What are you talking about there? Where are the inconsistencies or the discrepancies in the reporting to the commission in the act?---Well, with regard to the reporting there's a mandated requirement for me to provide an annual child death report on all children in Queensland to the parliament by 31 October every year.

To the parliament, did you say?---To the parliament.

Yes?---That is required to be tabled in the first sitting - sorry, to the minister.

You would be happy with that, wouldn't you?---Sorry, can I just say, by 31 October to the minister.

Well, you'd be happy with that, reporting to parliament on that?---Yes.

Yes?---I don't have a problem with that.

Okay, so that one is okay?---Yes.

Where is the problem?---If I do a monitoring report such as my child guardian report which I also provided as an annexure to this report, I can seek to have that tabled, but there's no mandatory requirement for me to table that, more for it to be provided by any particular date. So there's no mandate on that, and similarly with any investigative report that I do it would be the same issue.

Okay, so you do these reports on monitoring and investigation. To whom do you send those reports?---The ones that are mandated by a particular date are provided to the minister and the minister is required to table those within so many sitting days after they're provided with that report.

Yes?---The same process can apply with other reports. I can ask for them to be done but there is no requirement for me to either make those reports tableable or for me to follow that process.

But to whom are those reports made?---To the same person.

Okay, so narrowing it down a little bit, all of your reports, be they for child death case review reports, investigation or monitoring, they're all going to the same person?---Yes.

The difference is that he's obliged to table the ones concerning child death case reviews but he's not

necessarily obliged to table your other reports?---No, and I'm not necessarily obliged to ask him or her to table them. So I can ask for them to be tabled and if I do - - -

Well, what's your policy? What's your policy on that? Do you always ask him to table them?---I don't always ask for them to be tabled, no.

Okay?---And for - - -

So what change are you suggesting, that the change be confined to that if you do ask for such a report to be tabled it should therefore have to be tabled? Is that the change you want?---No, the change I was looking for was around the notion that if there are some reports that are deemed to be necessary in terms of the oversight function, that they should potentially be treated in the same way, with a requirement - an onus on me to have to do them and to provide them in a timely way and to - they may well be available through the parliamentary frame. I guess it's not a question - it's more really in terms of whether or not the commission is required to do those sort of things.

Well, correct me if I'm wrong, the child death case review committee is required to make a report to the minister, is it?---Yes.

The minister is, is he not, obliged to table that in parliament?---Yes.

When you do your investigation report you're required to give that to the minister. Yes?---Yes.

When you do your monitoring report you're required to give that to the minister?---No, I'm not required to.

You're not?---No.

Who would you give it to if you didn't give it to the minister?---I don't have to give it to the minister.

All right. So are you looking for an obligation to be imposed upon you to report in all cases to the minister? ---I think that it makes sense to have some consistency there.

Yes, but are you looking for that consistency, that you must report on all these issues to the minister?---I think the issue that I was looking for more was the notion that there would be an onus to have some particular reports that have to be provided to parliament in a particular way irrespective of - you know, as opposed to having a slightly different process for each of them.

So you don't necessarily want to be laboured with more reporting obligations, but insofar as you do report you would like it to be the law that the minister must table whatever you report on to parliament?---That is available

now. The issue - - -

Well, see, I'm just trying to get at and flesh out what it is that you're after, because you're saying this at a level of generality in the affidavit and to assist the commissioner I'm trying to ascertain from you what legislative change or changes you want under this topic? ---What I was asking is that there was some consistency and clarity around the way in which all those reports are treated. At the moment there is some discretion on some parts and not on others.

Granted all of that, what change do you say the commissioner should recommend to the government they should make to the legislation to reflect the consistency you're looking for? For example, one consistent approach would be that the minister doesn't have to table anything. Another would be that he has to table everything. If they're the two extremes of it - let's assume they're the only options that are available. Which one do you want?---Well, basically I want the one that requires the tabling, but also some would require the provision of that report for tabling.

Okay, so you're looking for legislative changes that would obligate the minister to table everything that you provide to him as a report and a legislative amendment to require you to provide those reports. Is that what you're after? ---Yes, some of those oversight reports.

Some of them but not all of them?---Well, there are some investigative reports which basically you would institute as a function of what was happening during the sort of year, but, for instance, the indigenous child placement principal audit would be a report that I would think there should be a requirement to do and provide and have tabled on a particular - - -

Do you want - - -?---On a particular basis I'm required to do it. It doesn't add the same clarity as to when and how that should happen in comparison to the child death reports.

Do you want all of your reports that you give to the minister tabled in parliament? Is that the legislative amendment you're looking for?---I'm just sort of working through in my head - - -

Well, it wouldn't be any extra work for you, because we're assuming you've got to provide these reports?---Yes. No, but I guess from a legal point of view I'm just trying to look at what does that actually mean, and I think that probably would address the issue that I'm looking at. I'm trying to think of whether there's - yes.

You're looking for an enhanced oversight and transparency and accountability of the system, aren't you?---Yes

Requiring by law the minister to table your reports as the independent investigator into child safety could do nothing but enhance the oversight and accountability and transparency of the process. Would that be the case? ---Yes.

Thank you. Now, at paragraph 69 you suggest that there should be some consideration given to amending the Child Protection Act of 1999 to include a definition of what's in the best interests of a child. Do you have or have you formulated previously or do you have with you now any attempt at defining the criteria that might be taken into account to determine a child's best interests?---We have sort of had a look at some of the work that's been done in the Family Court and the guidance that's provided there. I think there are some areas where that wouldn't directly apply and from our point of view I guess what we're looking at is to try and standardise across agencies and courts an understanding of what best interests is and ensure that it is actually a legislative requirement to take that into account. In particular, I suppose, our interest is ensuring that it includes taking into account the views of children and young people, but in my submission that we are working to provide to the inquiry we have articulated - we're articulating that in a more precise way and I would be happy to provide it at that time.

What do you say to the proposition that the understanding of the concept of the best interests of the child are to be informed by what's contained in section 5B of the Child Protection Act?---I would have to have a look at what section 5 was.

COMMISSIONER: That's the supporting principles.

MR COPLEY: Yes. Well, I'll just hand you mine.

COMMISSIONER: I suppose the problem with those sorts of best interests, welfare principle, all those things, is they're contextual?---So could you repeat the question?

MR COPLEY: The question was what do you say to the proposition - let's say I put the - I'll put the proposition to you that parliament has done about the best it can do in amplifying the content or giving meaning to the expression "best interests" by what it has set out in section 5B of the Child Protection Act? There may not necessarily be a right or wrong answer to that. I'm asking you for your opinion?---I think there are some - there is some guidance which basically people have been looking at when they're making decisions which I think this doesn't necessarily highlight for them, because clearly that's one of the things that people have identified.

So in answer to my question, do you say that parliament could do better than what it's done in section 5B in terms of giving content to the expression "the best interests of a child"?---I think there could be some consistency, yes,

provided.

Well, that expression "the best interests of the child" is the overarching principle for the administration of the Child Protection Act, isn't it?---Yes.

But, of course, it can mean different things in different contexts, can't it?---Yes.

For example, if you turn to section 40 of the act, that requires the registrar of the court to do something, doesn't it?---Yes.

Just read that out to me. What does it say?---40 is about:

> *Registrar to fix time and place for hearing. When the application is filed the registrar of the Children's Court must immediately fix a time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as soon as possible.*

So we can gather from section 40 that parliament has given some content to the expression "the best interests of the child" this way by suggesting that speedy justice or speedy resolution of court cases is nothing other than in the best interests of a child, can't we?---That's right, yes.

Yes, and we see the same thing at section 55, don't we, again imposing a duty on the registrar to fix a hearing having regard to the best interests of the child?---Mm'hm.

Just read that one out?---55:

> *Registrar to fix time and place for hearing. When the application is filed the registrar of the Children's Court must immediately fix the time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as early as possible.*

Yes, and what about section 66? What does that say?---It's talking about adjournment of proceedings.

Yes. Can you read that one out?

> *---The Children's Court may adjourn proceedings of a court assessment order or child protection order for a child for a period decided by the court. However, for a court assessment order the total period of adjournments must not be longer than four weeks. Editor's note: section 47, duration of court assessment orders, contains provisions about when a court assessment order ends.*

Yes?---(3):

In deciding the period the court must take into account the principle that it is in the child's best interests for the application for the order to be decided as soon as possible.

So it's becoming apparent, isn't it, from those provisions of the Child Protection Act that whatever else might be the content of the phrase "the best interests of the child", it certainly includes speedy decision-making?---Yes.

COMMISSIONER: It's a bit strange, isn't it? You've got the equivalent of Supreme Court judges in the Family Court having to be told, you know, factor by factor what the elements of a best interests solution might be in section 60CC and administrative decision-makers like the chief executive or even a child safety officer making the same - apply the same test with no guidance or assistance at all from the legislation.

MR COPLEY: Well, perhaps some elements, apart from 5B.

COMMISSIONER: Apart from those that you've identified, and those that are in 5B that are relevant to that, but even so, even in the Family Court context, clearly they've got a Full Court for a reason, that even with all the legislative help they get they don't always get it right.

MR COPLEY: I'm not going to comment on that, but could I just get you now, to complete this exercise, to turn to section 226?---Transfer of proceedings to another state.

Yes?---This is, "The registrar to fix a time and place for hearing," and exactly the same sentence.

That's right. So, of course, what might be in the best interests of a child from a judicial decision-maker's point of view might involve a whole range of different factors when compared to what might be in the mind of the chief executive when he has to apply the phrase "the best interests of the child"?---Yes.

So do you think perhaps it may be too overly ambitious for parliament to be able to definitively define that concept for the purposes of the range of decision-makers that have to make decisions under the Child Protection Act?---Well, I think the decisions that the decision-maker is making under the Child Protection Act, I think there's got to be as much assistance as possible to try and make sure that there is some consistency in clarity applied, given that there are decisions by the agency and the court so they sit only - you know, I think we need to be clear that we're applying some of those same principles.

Okay. If you go back - - -?---The issue that I made as that I'm saying that consideration should be given to that.

Yes?---I think the exploration needs to occur with the people who are involved in making that, and I think some of

the evidence that's been brought forward is that some people have indicated they thought that would be useful if they were provided with some greater guidance.

If you go back to 5B, section 5B - and I don't have it here. Yes, I do. I may have missed it, but there's nothing in section 5B that suggests, is there, that the interests of the child have to be given any particular weight in making decisions under the act, is there?--- Sorry, in which part are we talking about?

5B - well - - -

COMMISSIONER: In 5A there is, though?---5A there is.

MR COPLEY: Yes, and explain to me where I see that?---In terms of 5A it's talking about the paramount principle.

Yes?---This is the safety, wellbeing and best interests of a child - - -

No, my question was in those principles, though, in 5B is there a principle there that says in determining what's in the best interests of a child a decision-maker is obliged to at least have regard to the views of the child?---No.

Would you see that as being a principle that should find some expression in section 5B?---Yes.

Leaving aside whether there can be a legislative definition of best interest?---Yes.

So for the purposes of 5E, 5B should be an opportunity for a child to express a view.

MR COPLEY: Yes.

COMMISSIONER: Is that what you mean?

Do you agree with that, commissioner?---I think so, yes.

Because it's not at the moment?---No.

MR COPLEY: And part of your remit - - -?---That is in the sort of criteria, I think, supplied through the Family Court.

Well, yes, but your remit is making sure that children and young people have a voice, isn't it?---Yes.

So it wouldn't be surprising or it wouldn't be astonishing, if I could get you to agree, that that sentiment should find some expression in section 5B?---Yes, I'm not - - -

COMMISSIONER: Again, the problem with that is it's a bit like applying the United Nations charter. It recognises the right of children to be heard on significant decisions affecting them but doesn't discriminate between the age or stage of development of any particular child. So it, for instance, doesn't say "a child over five". It just says "child" and a child is from zero to 17. It doesn't really help in telling you how to get assistance to the extent that it's appropriate from the views of a child because "child" - it's a wide range and I think that's part of the problem in the Family Court where they have never taken direct evidence from children about their best interests because it's difficult to have a consistent rule because of the difference in the disparity in ages and stages of development for children and also because they don't want children to pick between parents obviously in public, but the criminal courts have never shied away from taking direct evidence on oath from children as young as five, although in recent years they've facilitated giving evidence more indirectly even though they're talking about the same things like, for example, child sexual abuse? ---Mm'hm.

One jurisdiction will take evidence directly from a child at a tender age and a different jurisdiction dealing with family issues refuses to even though one of the determinants or highly relevant factors to determining, deciding, identifying the best interests of that child is whether they were sexually abused or not or whether there's an unacceptable risk that they have been or will be?---Mm.

So it's not a clear-cut, simple answer even within different jurisdictions in the same country, is it?---No, I'd agree with that and I guess the issue is you're talking about including taking account of their views and, you know, there's a process by which that can occur, but we're

not talking about an exact science and you're talking about different ages, as you say, and different capabilities, but I think the principle needs to be there.

And it's not given practical expression at the moment in 5B, as Mr Copley identified?---Yes.

MR COPLEY: Now, can you go to paragraph 70.1 of your affidavit where you propose that information about persons who have been alleged as being responsible for harm to a child under the 1999 act should be considered to be part of blue-card screening process?---Yes.

Do you see that?---Yes.

Now, correct me if I'm wrong, but are you suggesting that your commission should have access to - and maybe it already does, maybe it doesn't and if it does, you can tell me, but should your commission have access to the records of the Department of Child Safety to determine whether an applicant for a blue card has ever had so much as a notification made against him or her?---Yes, the way in which it operates at the moment is with the consent of the applicant or if there is something that reaches a sort of disciplinary level, then we would have access to it and we're proposing that when you're looking at the issue of people's eligibility to be foster carers and kinship carers, that would be a relevant consideration.

All right. We'll come back to that in a moment. It's the case, isn't it - and it doesn't particularly matter, unless you feel that it does, how it's done, but it's the case, isn't it, that your commission obtains from an entity such as the director of public prosecutions office records relating to the trials of certain persons who are applicants for blue cards even if those person aren't convicted at the trial?---It can do.

It can do?---Mm.

Yes, and you can also - well, you say "it can do", not only can it do, it has done, hasn't it? Your commission has asked for those records and been given those records? ---Mm'hm.

Similarly, your commission has asked for and been given records from the courts about the outcomes in cases?---Yes, we seek information in accordance with what we're able to do under the Act.

Yes, and if we think about it for a moment, if a person is put on trial on indictment for an offence relating to a child, the process of getting him to a trial has gone through a number of filters, hasn't it?---Mm'hm.

A police officer has decided there's sufficient evidence to arrest someone?---Mm'hm.

A magistrate has decided there's a prima facie case against the person?---Mm'hm.

And some in the director's office has decided that there's a reasonable prospect that if he is prosecuted or she is prosecuted, the case will succeed. Of course it doesn't always happen that way?---No.

But they're the filters it goes through, doesn't it?---Yes.

So the attitude could well be - and maybe this is the attitude that of your commission - that if the allegation against the person has got through all of those levels, then it's something we, the commission, need to know about in assessing whether this person should have a blue card. Is that the approach?---Yes.

Okay. There's a big difference though between that situation where a person has been arrested, been committed, the case has actually gone to a jury, the judge hasn't taken it away from the jury in the examples I'm positing to you and the jury wasn't satisfied beyond reasonable doubt and a situation where a person has simply had a notification made against him. There's a quantum difference, isn't there? You would be aware of evidence the other day - you may have seen it - where I think - the commissioner might help me. It might have been Mr Swan said that about 60 per cent of the notifications come from the Queensland Police Service and about 80 per cent of them are found not to be substantiated.

COMMISSIONER: I think he said it was much higher than that. I think he said it was nearly 90 per cent came from them and about 80 per cent didn't reach the threshold - 83 per cent. Anyway, certainly more - - -

MR COPLEY: I defer to the commissioner on that.

If 83 per cent of the complaints aren't even - if those complaints aren't even reaching the threshold, why is it that the commission feels that it needs to know about those sorts of things in assessing whether a person should have a blue card?---I think the issues around what reaches a threshold of substantiation is, you know, a relevant consideration but if you're talking about somebody's capacity to - eligibility to work with children, then the information that relates to reports and notifications and concerns being raised against them with respect to - that may provide a picture, I guess, in relation to the eligibility of that person to work with children. I mean, it's a broad picture of information and clearly whether or not it's substantiated would have a bearing.

If a person had a conviction for indecently dealing with children, you'd hardly need to be checking out what notifications there had been made against him to perhaps come to the view that he shouldn't have a blue card?---No.

No. If a person doesn't have any convictions at all and hasn't had any notifications ever substantiated against him by the government department that is, I would suggest to you, zealous but not in an improper way about ensuring the children are protected, isn't it just going a little bit too far for your commission to have access to these unsubstantiated allegations that couldn't even get over the first low threshold in determining whether or not a person should get his blue card or her blue card?---I think that when you're looking at those issues, you're talking about a consideration of matters and until you've seen what the various concerns are that have been raised or a pattern of those, I don't know that you can make that determination.

So you would, as it were, elevate the rights of the children above those of that person in that process so that you could know what the nature of the unsubstantiated notification was?---That's the function of the blue-card scheme, yes.

COMMISSIONER: Is the test risk based?---The test is really the best interests of the child.

And that would include not taking unacceptable risks with the child's safety?---There's a lot of conversation and discussion around risk and unacceptable risk. The test in the sort of blue-card environment is really looking at whether or not that person - it would be in the best interests of the child for that person to be working with children.

Again that begs the question of what is in the best interests and that's a slightly different context to the one we're just talking about?---That's right, yes, and we would be quite happy to have that clarified because I think that's often a point of discussion between ourselves and the tribunal.

Even reaching a consensus about what the test is?---Yes.

And then having to apply it?---Yes.

Are you looking for consistency and predictability in outcomes by having a list, a checklist, for example, on what might be included in a best-interests judgment?---I think that's helpful.

MR COPLEY: My suggestion to you is that it would be both unnecessary and unfair to your commission to weigh in the balance unsubstantiated notifications in assessing whether a person should have a blue card. That's my submission to you?---I guess what we're looking at is the notion that it's relevant information.

COMMISSIONER: I think that's a rejection of your proposition, Mr Copley.

MR COPLEY: But how is it relevant that if the neighbour

said, "I think he's molesting the kids," and the department goes and investigates and says, "That's not substantiated at all. We've spoken to his three children. We've spoken to his wife. We regard it as unsubstantiated"? How does that assist you at all in deciding whether that person should get a blue card?---I mean, obviously the test of how - the decision around whether or not what you do with that information is one thing. Having access to information is another because having access to information allows you to have a look at the complete information. The fact that somebody has the investigative information or disciplinary information or offences is part of the consideration that I already have. It doesn't necessarily mean that decision is that they won't be granted eligibility for a blue card to work with children, but the reality is it allows you to see the complete information and if you then have a number of those sort of concerns being raised in different environments with numbers of different sort of circumstances or children, particularly in the charges arena, you may come to a different conclusion.

So are you saying that effectively if there was smoke, there would be fire?---No, not necessarily. I'm just saying that if there is - - -

Well, when you're saying that if there were - - -?---If there is a definite amount of information in different areas, you can actually look at all of that in a composite way - - -

So if there were five unsubstantiated allegations from three towns where this person lived over five years, that would be a matter that you would give weight to if you could have access to that information?---I don't think that the level of - if it hasn't reached a level of substantiation or an offence in some other environment, then, you know, that wouldn't necessarily reach that level but - - -

We're only talking about notifications.

COMMISSIONER: Lady Bracknell thought losing two husbands was sinister.

MR COPLEY: Sorry, your Honour?

COMMISSIONER: Lady Bracknell in the Importance of Being Earnest thought that losing husbands was more sinister than losing one.

MR COPLEY: Yes.

That's essentially what's at work here, isn't it?---Yes.

You want to have access to the notifications register because if a person has got more than one notification, you regard that person as being a greater risk to children than if he had no notifications?---Mm.

And my point to you is that, unlike the person who's been arrested and charged and prosecuted with whatever outcome - we've been assuming not guilty - notifications are really just that. They're just a person ringing up. They could be malicious notifications, couldn't they, for all you know, if they're not substantiated?---Mm.

They could be reckless?---But that's the information we'd have.

So it's just something that you feel you need to know? ---Yes.

And at the moment you can't get it?---On consent, yes.

And if the person doesn't consent, what view do you take of him?---I haven't got the information.

COMMISSIONER: Wouldn't that be a relevant factor too? Wouldn't you draw an adverse inference from the refusal to consent?---I don't think you can do that.

The process of reasoning isn't all that different, is it? If I had nothing to hide, I wouldn't refuse, would I, or maybe I would because I was standing on my rights not to have my privacy invaded by a question which I regarded as irrelevant? How do you know which is which?---Mm.

MR COPLEY: So to be consistent you must draw an adverse inference against a person that won't consent practically, mustn't you?---I can't use information that I don't have.

COMMISSIONER: Except the information you do have is that a person who could you consent to open up their files has refused?---Mm.

You know that much?---Mm.

In a situation where they're applying for a privilege? ---Mm.

So you wouldn't use that?---I can't use it in the decision-making because I don't know what it is that I don't know.

Mr Copley, can the commissioner use that logically in her decision-making?

MR COPLEY: Well, if she can't use it in her decision-making, the question that goes begging is: how can you logically use simply the fact of a notification which isn't substantiated in the process of decision-making?---I'm asking to have consideration of the child protection information.

And we're just testing out the basis for the amendment that you're suggesting and if there is a basis for it, what

practical content you can give to the fact that there has been a series of allegations against a person, none of which warranted the department taking any action against him? See, I'm suggesting to you that when you think about it really logically, you couldn't give any weight to the simple fact that there were notifications which weren't ultimately actioned unless, of course, you could ascertain that they weren't actioned because the department was negligent, but that's not what's behind this suggested amendment, is it?---No, but the issue is that if you haven't got access to it, you can't consider it and therefore you don't - I mean, you're only going to consider it in terms of the decision-making if it's relevant to what your - and it reaches a certain, you know, level and threshold that - - -

So it's just something you need to know to ascertain if you need to know it?---To get the complete picture because otherwise there could be a body of information there that would be relevant that someone had substantiated notifications, had had children removed, et cetera, et cetera, that you would maybe be able to deal with.

No, I'm talking about simply the fact that notifications aren't substantiated though. That's what we've been talking about?---I'm talking about having access to the information so that you know what is available there and you can use it depending on, you know, the standard of whatever's been determined out of it.

So do you wish to look behind the notification to see what the merits of the notification were?---No, I'm looking at whether or not it has been substantiated or whether it hasn't been - - -

Okay. Let's go back to the start?--- - - - and whether there are multiple notifications that have been made.

Let's go back to the start?---It's a history.

Can you get access to presently substantiated notifications without consent of the applicant?---No.

You can't?---No.

And you can't get access to unsubstantiated notifications without the consent of the applicant?---No.

Okay. My questioning all the way through has been about unsubstantiated notifications, simply the fact of a notification. Substantiated notifications might be in a completely different category?---Mm.

But simply the fact that there was a notification made against a person which the department took no action on, I've been positing to you is not a matter that you need to know in determining whether or not someone should get a blue card?---Mm.

What do you say to that proposition? Because maybe we've been at cross purposes for the past 15 minutes?---I think that in my head what I've been asking for is to have information about persons it had been alleged have been responsible for harm to a child under the Child Protection Act and for that to be available for consideration when I'm making blue card screening decisions.

So simply the fact that some allegation has been made against someone, even if not substantiated, is a matter that you think that your commission needs to have to make a determination whether or not someone gets a blue card?---I think you're asking for access to particular sorts of information. What has actually happened in that circumstance is what you are going to be making and basing your consideration on.

Apparently nothing has happened because it wasn't substantiated?---Well then it's not going to impact.

The question goes around in a circle then, why do you need to know about it?---But you're not going to know that unless you have got it.

If it hasn't been substantiated why do you need to know about it?---Because you're asking for access to child protection information.

You are. I'm suggesting to you, you don't need it and shouldn't have it?---Mm'hm.

That you've got enough and that you don't need and should not have access to unsubstantiated notifications because they won't tell you anything beyond the fact the department didn't think there was anything in it, will they?---That's what you're suggesting.

What is in it? What is in that that will assist you? How does it assist you that someone alleged that Mr Jones did something to a child yet the department decided he didn't? ---That isn't going to impact on the decision that we are making, the issue is whether or not you have access to the information at all.

But you want access to it to take it into account, don't you?---Because it is relevant.

Well, we'll go back to it, how is it relevant if the allegation - - -?---That particular piece of information isn't going to be relevant to the decision maker, is it?

So therefore - - -?---It's not going to be relevant to the decision that I make but the fact that you've had it doesn't necessarily mean you shouldn't - sorry, I might be in a circular situation here but what I've been asking for is access to the information so that a relevant decision can actually be made if it is pertinent to the decision.

Wouldn't it be more realistic to confine your claim to have access to details of substantiated notifications?---I think that - that is the level of detail that we're talking about in terms of when we finalise what's the level of information that we're looking for.

But you want access to all notifications, don't you? ---That's what I - I was saying that I wanted access to information around allegations of harm to children under the Child Protection Act, yes.

And you're after the details of substantiated allegations. Correct?---Mm'hm.

Which might be fair enough, but you're also after the detail of unsubstantiated allegations, aren't you? And I'm suggesting to you that if an allegation is unsubstantiated in the eyes of the department, then it simply can be of no assistance to you in determining whether or not a person should get a blue card?---I think it can - we might have to agree to - - -

I'm inviting you - you tell me now - state the case for why the Commission for Children and Young People needs access to unsubstantiated allegations to determine if a person is going to get a blue card. Put the case at its highest to this commission for that?---I think what I was looking at is the notion that in some instances the picture on what are child protection information is that broader range of information that allows you to know what, in a sense, are the allegations that are being made and what's happened with them.

If there is nothing on the file it says there is a substantiated allegation you can assume one of two things, can't you; that there's never been an allegation, or any allegations have not been substantiated against the person?

---Yes.

Why do you need to know whether or not there's ever been an allegation as opposed to the latter, that there's never been a substantiated allegation? Comment on this proposition if you like, I'll suggest to you that you want to know about unsubstantiated allegations because that would be another basis for knocking back an applicant for a blue card?---I think in the context that we are talking, we're talking about having the information. In terms of substantiation that's obviously a level that could be sifted through, but I think there are also - there's a range of information that one does get also from concern reports, et cetera, that have been raised.

So you want to have access to unsubstantiated allegations because that could provide a basis for knocking back an applicant for a blue card?---I think it could give you a broader picture if there is other information that is available as well.

I see, so you wouldn't use and unsubstantiated allegation against a person in the absence of some form of corroborating evidence was something that wasn't substantiated?---No, that's right.

Give me an example of how this might work. Give me an example of how an unsubstantiated allegation could support other evidence that a person shouldn't get a blue card. Just give me an example of the factual scenario?---I can't think of one immediately.

Okay?---I'm happy to provide some greater detail.

COMMISSIONER: You've got a submission coming anyway? ---Yes, we do.

MR COPLEY: At paragraph 72 you assert that the resources allocated to the commission are broadly sufficient?---Yes.

And then at paragraph 73 you have something to say about the community visitor function?---Yes.

Which you regard as being money well spent. Is that the case?---Yes.

Yes. The community visitors, are they committed to share information that they gather with a child safety officer assigned to the child that they've gone to visit?---Yes.

And does that occur in practice?---Yes.

There's a recommendation - - -?---And they do that in a sense on the basis that they visit and their responsibility is to report back to me in relation to what's happening with that young person. We have a process whereby if there are issues that need to be resolved on the ground then they are - there's a process by which they follow to discuss that the relevant officer who is the case manager with that child.

So is it the case that if the community visit discovers certain things that she or he thinks the child safety officer needs to know - - -?---Yes.

- - - that can be communicated to that officer?---Yes.

Not directly in a phone call but through a process?---Well, it could be - it's often done through an email or a phone call, yes.

So there is day-to-day communication and feedback between those two people from the two different places, the commission and the department?---Yes.

Okay. Now, one of the recommendations from the Forde Inquiry which was number 30, if it assists, was that the visits of what were then called official visitors but now community visitors be regular and frequent?---Mm'hm.

Is the frequency of visiting by community visitors obtained two years ago being maintained today?---No.

Why is that?---When I first took up my position in the commission in 2005, it was just after the CMC report and recommendations that had come through. The community visitor was extended into foster care at that time. The notion was that the community visitors should visit frequently and regularly. I determined that should be monthly.

Yes?---At that stage we had actually visitors visiting visitable sites so they were residential facilities and other places like detention - juvenile detention, et cetera, but we had never visited into foster care before so we didn't actually know what that landscape would look like. We worked through a process for a few years in terms of visiting every child that we became aware of through an agreement with the department, visited them, did reports, looked at what the circumstances were. After a few years of visiting on that basis there were some children within that cohort that we determined hadn't been - there weren't any issues being raised on a regular basis or hadn't been raised for some time. The view was that those children were in stable and good care, good quality care, and we felt that - and I felt that it was reasonable that those visits should move on to a bimonthly schedule.

Yes?---At the same time the numbers obviously in some areas were growing. We were also - there were more children

being placed with carers in some of the remote areas of the state and we maintained a monthly visiting schedule for them. So the policy position was that if there had been no issues raised for six months and it was deemed that that visit was - those children were in good quality care, that they felt comfortable that they could access the community visitor if they needed to should an issue arise, they would move on to a bimonthly schedule. So there's about 53 per cent of the children that we visit who are now on a bi-monthly schedule. The others are all on a monthly schedule. Some of the young people who are in residential facilities, like detention, we actually have community visitors there every week or second week because of the numbers of children, if you like, and the flow through so it's a little bit different in different areas.

So for the children that aren't in detention you've adapted your policy in an effort to suit the need or the needs of those children?---Yes.

It's not just a uniform we visit every month regardless of whether there's issues or not?---Yes, and it's a risk based frame.

Sorry, what's that?---A risk based frame.

So you're attempting to take - you take the view that if there's been nothing going wrong there for the last six months, you can take the risk, as the commission, to decrease the visits to once every two months?---That's right, and should an issue then come back, then it goes back onto a monthly schedule. That doesn't occur - - -

So that's an example, is it? When you decrease the visits to one every two months, that's an example of the commission taking the view that there's an acceptable level of risk here and we need only come once every 60 days? ---Yes, and I think in some instances that's indicative then that the standard of care in that context you could say is meeting the standards required.

COMMISSIONER: Mr Copley, I'm going to adjourn at 4.00 today so it's 15 minutes.

MR COPLEY: Okay, your Honour, thank you.

Now, how many children - and it may be in your annexures perhaps. Are you able to tell us approximately how many - sorry, first of all, how many community visitors there are in the state?---I've got 153 at the moment. The community visitors are actually employed on a casual basis. They work from home. They don't all work the same number of hours so they're contracted for different numbers of hours, if you like, depending on their own capacity and then we employ as many as we need in particular areas where children are actually based. We do have a zonal sort of arrangement so there is a zonal person who manages and supervises a group of community visitors.

Now, apparently in November 2010 it was determined that community visitors would make unannounced visits?---Yes, that was to residential facilities.

Yes. Are you able to tell the commission after nearly two years how that measure is going?---Basically the issue that we have with unannounced visits is the - the idea is a good one and we had quite a lot of discussion with some of the forgotten Australians about their experiences in residential facilities and the notion that - - -

Now, can you just define terms here, the forgotten Australians. Which group are they now?---I was talking about the ones who had been in institutions and residential facilities who had had sort of improper treatment which were a result of the sort of Forde Inquiry that came through.

So from years ago?---Yes.

Yes?---But one of the issues that was raised in that context was that often when they did have official visitors for quite - you know, that used to come and visit but often they were sort of - knew when they were coming and they felt that that hadn't been a very helpful process. Although we were now having people there much more frequently and they were able to see quite a lot more about what was happening in those facilities, we thought it was still important that we put a sort of - you know, an unannounced series of visits in there. The issue is really trying to make sure that when you're not announced, particularly in residential sites - some of them may be shelters, other places - that the children are actually there. So you're trying to manage the sort of - I guess the efficacy of managing that program against the need to keep a sort of an effective oversight in that space. So we've been following that through and trying to make that work. I don't believe that it's highlighted any particular differences in terms of the sort of issues that are being identified from announced or unannounced and we'll have a look at it in a bit more detail to see whether or not we'll continue to do them.

So to sum up, you didn't particularly catch anyone out? ---Anything particularly different, no.

Okay. So that would be a cause for some comfort to you? ---Yes.

Perhaps when people present for the expected or scheduled visit, what they're presenting to you is things as they are every day of the week?---Yes.

Okay. Now, I just want to go back a bit in your affidavit before 4.00 just quickly to paragraph 42 where you speak about the statutory function to oversee departmental reviews of service delivery to those children and young

people who have died and they're known to the department within three years prior to death?---Mm'hm.

The focus was to identify shortcomings in the child service system which may have impacted upon a child's death? ---Mm'hm.

The question that I have for you there is: what shortcomings in the child safety system has that committee found since it's been established? Are you able to say in a general way?---In a general way the sort of issues that have been identified are some practice issues in terms of compliance with the process.

Is this by departmental officers?---Yes.

Right?---But in some instances some of those may have had - may not have had an adverse outcome but they fall short of what is best practice or is required in terms of compliance. There are in some instances issues that have highlighted about where - greater collaboration between different agencies. You may have had a young person who had been involved in a hospital or a health facility, then in a child protection environment, maybe there had been some disability services support, where there were also some opportunities for better sharing and case management in that context. In some instances there was some evidence that when children had multiple people working with them the information wasn't being necessarily shared as effectively as it might have, and in some instances there was some evidence of training issues where potentially people seemed to not be aware of what some of the standards and compliance requirements were.

So without seeking to trivialise the role of the child death case review committee, can it be said perhaps, even pleasingly, that the committee hasn't found any case since it's been established where the actions of officers of the child safety department made a substantial or significant contribution to the death of the child concerned?---Yes. In the vast majority of cases the issues are around practice and the ways in which services have been provided and whether or not they've in a sense been addressing the critical issues that have been - that that child has in a sense required. There have been - - -

Do you see any value in the committee continuing?---Yes, I do. I think there have been a couple of times in the period that the process has been running where the inactions of the agency have been identified as being linked to a child's death, but I think the issue around a death of a child in a service environment which is responsible for providing child protection services, I think the onus is on that agency to look at review what were the circumstances, what was - - -

Yes?---So there's a level of accountability that has to be done by the agency. That was not happening before this process was put in place. The role of the committee is then to audit, if you like, the reports and the reviews that the agency does to see whether or not they have actually picked up on all of the things, made the recommendations that they needed to and are actually implementing those in a way that is improving the system into the future.

What about recommendations made by the coroner? Does the child death case review committee oversee the implementation of any of those?---No, all the child death case reports go to the coroner so they're available for the coroner to see, but we don't - if the coroner makes any findings around the cause of death then that's noted, but, yes, it's not - we don't oversight what they're doing.

Does the child death case review committee add anything to the process beyond that which the coroner can bring to it? ---I think the coroner is looking at the causes of death. The child death case review committee is looking about service delivery to that child. The reality is that the fact that a child has died, it's not presumed that that's been - children die through a multiple series of circumstances. Some of them are in traffic accidents or whatever.

Yes?---It doesn't take away from the notion that the services that have been provided to that child are then required to be reviewed to see whether or not there are any issues with respect to - - -

Can I just interrupt you now? So in the case where a child dies in a traffic accident and he was known or she was known to the department within the last three years, the

committee goes back and looks at the services that the department provided to that child even though his death was just completely and utterly the actions either of the child running onto the road or the driver driving without due care and attention and hitting the child. So this is really in that example just another level of oversight of the Department for Child Safety, isn't it, because nothing that the department did in that particular case, one would think, would have really had any impact at all upon the child's death?---That's right in terms of - and if you were looking at causes of death that would be correct. It doesn't necessarily mean that the - the trigger is the child's death.

Yes?---The process is an opportunity to look at whether or not the services provided to that child when that child was alive accorded with promoting their best interests in that broader sense and met the standards of service that was required and that that could then be fed back into the considerations of the agency.

So although the trigger was the child's death which causes a review of the services given to that child in his life, couldn't that review of the services to that particular child be adequately enough carried out by your commission through its ordinary investigative and monitoring functions of children generally?---Well, I think there's an onus of responsibility of service providers to do that. Whether or not - and I think if they have a process which adequately covers off that looking and reviewing and if in a sense the child death process that we conduct is really an audit to see that they're capable of doing that review and that they've come up with the appropriate sort of response and recommendations, if that's all happening quite well it's a very straightforward tick and flick, if you like, on that.

So in the case of the child that's unfortunately hit by the car or the truck is the review tantamount to - or could the review be seen as being tantamount to the department analysing itself or being analysed and the department being able to announce publicly that it had nothing to do with the death?---And it wouldn't be seen to have anything to do with causing - - -

No, I'm not suggesting it would?---No.

But it's a rather elaborate mechanism that's been created to review the department that any death of a child known to the department in the last three years must be investigated by this committee?---The reality is that what was constructed out of the recommendations the CMC made was that if there is a death of a child known to the child protection system they have to conduct a review and the committee, which is an external committee, checks to see whether or not they've done that review properly and if they have then that's the report they make.

Well, can I ask you, in the case of the poor kid that gets

hit by the vehicle, has the time come now - since that CMC recommendation was implemented, has the time come now where one could look at the functions of the child death case review committee and safely say, look, in the case of any child known to the department in the last three years who died in circumstances that purely amounted to an accident like that, there's no longer any value or role for the committee to perform in relation to that death, that even though that was the recommendation of the commission some years ago, funds are tight, the budget is tight, that's a function we could jettison safely without adversely impacting upon the safety of children in care or known to the Department of Child Safety. What do you think about that proposition?---I think there is some streamlining that could occur. I still think there is an onus of responsibility on the department to make sure that it has had a look at any child that is within its watch, if you like, and you could - - -

Even if it's just to make sure that they couldn't have done more for the child. Is that what you're suggesting?---Yes, and to learn from that, yes.

Yes?---But it may be that even there you could reduce the scope in terms of what they are required to look at.

Yes. So there's no particular magic in this particular recommendation from the CMC, is there, when it comes - extends out as far as the child that gets killed in a traffic accident?---I think that the major issue is really making sure that there is an approach whereby there's an accountability frame that's looked at.

But you could do that, couldn't you, just through your normal functions, couldn't you, as the commissioner?---Yes, I mean, we could audit whatever they did.

That's right?---There's no problem with that. The main - - -

It could just be at your level without having to have the committee do those sorts of deaths, couldn't it?---You could do things - you could do it in a range of ways, yes.

There's nothing particularly wrong, is there, with the suggestion of hiving off the deaths that are accidental and just leaving them to be looked at by your commission if you feel the need?---I think the department still has to look at that and then we would look at that.

Yes, but you'd be looking at the departments looking at it? ---Yes.

Apart from having the committee - - -?---Yes. No, I understand what you're saying.

- - - looking at the departments looking at it?---Okay, yes.

Do you see what I'm saying?---Yes.

Less functions?---Yes.

Fewer functions for the child death case review committee?---Yes.

Perhaps more for you, but you're doing them anyway because you're in both places?---Yes.

COMMISSIONER: Is that an appropriate time, do you think, Mr Copley?

MR COPLEY: Yes, your Honour - I mean, yes, Mr Commissioner.

COMMISSIONER: That's all right. Ms Fraser, do you mind coming back tomorrow? How long do you think - do you have an estimate for what - - -

MR COPLEY: My understanding is that this witness has some difficulty with tomorrow and Wednesday.

COMMISSIONER: Not available, right.

MR COPLEY: That seems to be the case, yes.

COMMISSIONER: So would Thursday - would you be able to resume on Thursday?---I can come back on Thursday.

All right. Is that okay with everyone?

MR COPLEY: That's fine, thank you, sir?---Thank you.

COMMISSIONER: All right. Well, thanks again and we'll adjourn the proceedings till tomorrow morning.

WITNESS WITHDREW

THE COMMISSION ADJOURNED AT 3.59 PM
UNTIL TUESDAY, 21 AUGUST 2012