



## SPARK AND CANNON

### TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

ROCKHAMPTON

..DATE 24/10/2012

Continued from 23/10/2012

..DAY 27

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

THE COMMISSION COMMENCED AT 9.31 AM

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COMMISSIONER: Ms McMillan.

MS McMILLAN: Thank you, Mr Commissioner. I call Katina Perren.

**PERREN, KATINA** sworn:

ASSOCIATE: For recording purposes please state your full name, your occupation and your business address?  
---Katina Perren, I'm a solicitor, Madden Solicitors 54, James Street, Yeppoon.

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COMMISSIONER: Good morning, Ms Perren?---Good morning, Commissioner.

MS McMILLAN: Could Ms Perren be shown her statement, please, Mr Court Officer.

Ms Perren, is that a copy of your statement?---Yes, it is.

And the contents are true and correct?---Yes, they are.

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Do you have a copy with you?---Yes, I do.

Okay. All right, thank you. Ms Perren, in your statement you indicated that you were admitted to practice in November 1998 as a solicitor and have been an independent children's lawyer; that would be in relation to Family Court proceedings?---It is.

And a separate representative for the last five years; separate representative is in relation to child protection proceedings?---It is.

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COMMISSIONER: The statement will be exhibit 94.

ADMITTED AND MARKED: "EXHIBIT 94"

COMMISSIONER: It will be published after some delusions of personal details.

MS McMILLAN: Yes, thank you.

You were appointed as a member of QCAT on 1 December 2011? ---That's correct.

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All right. Now, also prior to your admission as a solicitor you practiced as a registered nurse?---That's correct.

What was the rank, if I could put it that way, you reached as a nurse?---I was registered as a nurse. I didn't have any other certificates. I did my training as a

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hospital-based nurse. I was one of the last through. And then I practised as a registered nurse in various areas all though my law degree and article clerkship.

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All right. And, Ms Perren, I'll come back to this later, but I understand that you spent at least some years as a nurse in Woorabinda. Is that correct?---I did. When I was going through my law degree between 91 and 95 on my holidays I would spend block periods working at Woorabinda hospital.

All right. Okay. We'll come back to that, thanks. Now, you say in your - since your admission your primary areas of practise have been in the Family and Federal Magistrates Court, the Magistrates, District and Supreme Courts in the areas of criminal law, child protection, youth justice and domestic violence?---That's correct.

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You've also regularly appeared as a duty lawyer in the Magistrates Court at both Yeppoon and Rockhampton for the last nine years, including acting as a duty lawyer for respondents in the trial domestic and family violence program through the Rockhampton Magistrates Court. Can I just ask, in relation to paragraph 5 of your statement you say:

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*For most of this time and since my inclusion on the legal aid panel as an independent children's lawyer and separate representative, myself and Ms Madden -*

the principal of your firm -

*have been the only qualified separate representatives in the Central Queensland area.*

So you conducted the bulk of these files for areas including Rockhampton, Emerald, Longreach and Gladstone. You say:

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*There have also been only a limited number of firms practising in the area of child protection during this time and our firm has also carried out significant amounts of party work in the child protection jurisdiction.*

Just to clarify, party work, you mean acting for parents? ---That's correct.

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Or other applicants or respondents such as grandparents or - - -?---Grandparents and kinship carers and the like.

Right, okay. Thank you. Now, you say that there are a limited number of firms. Can you say in your view why you believe that's the case?---Unfortunately I don't think that the area of child protection is considered a particularly glamorous area of law to practise in just from the outset.

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But more to the point the funding levels in child protection work from Legal Aid are very low and these files are by nature very difficult and time-consuming, and the level of funding just doesn't cover the amount of time we spend working on them.

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All right. Can I also ask you in relation to that, at paragraph 68 you say that your firm ceased since mid-2011 undertaking child protection work due to lack of Legal Aid funding. Can you explain the differentiation of funding scheme between what we might call ICL work - independent children's lawyer's work in the Family Court - and separate representative work in the child protection arena?

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---Certainly. On my understanding of Legal Aid the federal funding is provided for Family Court Legal Aid funding and that funding scale is somewhat higher than the state level of funding provided in child protection matters. Therefore there are more available grants of aid that you can claim throughout the course of a proceeding - if you want me to go into more detail, I can - at the Family Court level than there is at the child protection level.

COMMISSIONER: So for Family Court work you're compensated more for the work you do than you are at state level?  
---Yes, in a nutshell. So it's still - the funding is still low no matter what.

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Yes, of course?---But it simply got to the point where our firm was losing money on child protection files because the funding simply wasn't there.

MS McMILLAN: Just give us some more particulars if you could. When you say you're better funded forward you do, can you give us some examples?---Certainly. For example, if you were funded for a mention in a Family Court matter then your funding will be three hours' work, so that enables you to, obviously, since some letters or whatever in the meantime, appear at the mention, and then come back to your office and go to work. In a child protection matter you are funded - and that total funding in the Family Court is about \$360; for the same funding in the child protection area you are to do three mentions, which means three times the court, and you don't get any grant of aid for the work you do between mentions. So taking phone calls from the department, taking phone calls from parents, solicitors acting for parents, none of that is funded at all at the state level.

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COMMISSIONER: So it is three times higher in the family area than it is in the child safety - - -?---For various things. And the child safety funding has dropped. We did use to - there was a grant of aid that you could claim for negotiations with the department; they've just completely taken that out. Another good example is the funding for a family group meeting, which are a mandatory step in child protection matters; the funding for a family group meeting

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is a total of two hours, which is 200 and something dollars, for that we have to attend at the family group meeting, and I've never been at a family group meeting that's gone under two hours in and of itself, generally there are around three to five hour mark. That actual funding also is for the next mention in court, so not only are you doing a three to five hour family group meeting, you've also then got to attend at court on the next occasion; that is all covered under a two hour grant of aid.

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So is this Legal Aid policy that determines the fee structure?--Well, yes, it was Legal Aid who sets the fee structure. I don't know who in Legal Aid makes those decisions. I know - - -

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All right. It's there, it's Legal Aid's area?---Purview, yes, it is.

Okay?---And that's what started to make these matters for our firm, given the number of files that we had, actually was making the firm lose money to quite a significant extent because if you're a solicitor who believes that it is appropriate for you to work on a Legal Aid file the same level that you would work on a private file, which we do, we were simply doing so many hours of work - - -

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Gratuitously?---Yes, huge amounts. And prior to that funding change, which was about 18 months, two years ago, we were still only just breaking even on those files. It sounds a little bit, sort of - - -

Mercenary?--- - - - sort of lay-term, but we would - sometimes what you lost on the merry-go-round you'd pick up on the roundabout, so one file might not have been as hard as it should have been and, you know, we just sort of figured it all evens itself out. We were losing money, we were breaking even, and we were happy to do the work. It is an area of law we love to practice in. But it got to the point where our firm was leaving significant amounts of money and we just couldn't provide the level of representation to the children and to the parties involved of the current grants of aid and continue to make money, and we are not a firm and is prepared to continue working if we don't put 100 per cent into each file and run them properly. We take those responsibilities seriously

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So what happens to those that you would have otherwise done but now don't do?---To my knowledge, a lot of those files are being sent out of Rockhampton for - child rep matters, so where the child representatives are required. A lot of them are going to a Toowoomba solicitor who works exclusively in child representative work and independent children's lawyer work.

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Who is that, do you know?---Laurene Vide.

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Yes?---Also Mr Michael Purcell from Townsville often gets ICL and separate representative file from here, however obviously the funding required to have them act in matters is actually more than is required to have Ms Madden or I acting in matters, because we don't have the cost of travel and overnight accommodation to do matters, at least within Rockhampton.

COMMISSIONER: But I suppose there's a head of claim for those things?---There is. There is. They can claim for those things, although in discussions I've had - and this is obviously hearsay, but in discussions I've had with Ms Vide I know that she finds the funding the same and is constantly reassessing whether she can continue to do this sort of work.

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MS McMILLAN: So in terms of what you've outlined would it be also fair to say that the rate of parents being unrepresented is higher in child protection matters and Family Court or Federal Magistrate Court matters?---While I don't have statistics, that's certainly my understanding.

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Is that your anecdotal experience?---Yes, that's my anecdotal experience, and certainly since we've stopped being involved in the matters, as far as I know the only firm - there are only two firms that might do child protection work here.

My next question is if there's more unrepresented, and I imagine a number of these parents perhaps have a more complex set of difficulties, then perhaps many of your Family Court and Federal Magistrates Court parents would. Would that be a fair - - -?---That's a - - -

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A broad generalisation, but would that be fair?---That's fair, yes.

Right, so therefore in many ways it's perhaps, if you like, more onerous than negotiations you need to undertake, probably more time-consuming, if you're undertaking separate representative work in child protection matters say as opposed to the Family Court?---That's correct. Much more.

Or the Federal Magistrates Court?---Much more. Whether you're acting for the parents or the children, you still are in a position where you have contact with all players, being the departmental staff, the parents, particularly if they're unrepresented, and obviously then you've got the children. The child protection system doesn't have the resources either that the Family Court and Federal Magistrates Court do, so they don't move along very quickly, but it is very difficult to work in that area of law. It takes 10 times more phone calls, longer

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discussions. There are reasons that family group meetings take so long, because explaining the procedures and the processes to parents and other stakeholders in a particular matter is much more difficult, and because, as is often the case with legally aided clients, they're not paying for your time, so they often are quite happy to take up more of it. 1

To continue to engage your time?---Yes. Yes, and they do it at length.

All right. In terms then of the family group meetings, paragraph 19 you talk about the over-stylised and the agenda, in inverted commas, of child safety is the only thing discussed. Now, do you also - is it your experience that they're also used as an information gathering exercise at times by the department?---They can be, and I suspect they probably are more so when there's not solicitors acting for the parties, so therefore there's no-one there to protect the parties against things that they may say. 10

Do you find either acting for a party or the child that you use that meeting as an opportunity to try to gain information yourself about the case?---To a certain degree you do that. One of the most helpful things for me as a practitioner in representing my clients with family group meetings is to be able to see the dynamic that's occurring with all the stakeholders in a particular matter, and you see some very odd presentations of carers and the like, because often before a family group meeting they also have a little pre-meeting with - - - 20

You've mentioned that, yes?---Yes, with solicitors.

Tell us a little bit about that?---Well, the department themselves have a meeting amongst themselves. 30

Yes?---I can't say what happens in those meetings, but they talk about them all the time, "Well, in the meeting we've decided that these are the agenda items we're going to deal with," but also then prior to the family group meeting - it may start at 11.00 but they'll call all the solicitors in and the carers and people like that and they have a little pre-meeting. It's interesting sometimes to watch the dynamic of the carers, who are really quite focused on keeping these children in their care because they're part of their family. So I do use it as a fact-finding mission to a certain degree in just seeing the dynamic that's going on outside of what we see formally in the evidence that might be before a court. 40

So this pre-meeting, they're between legal representatives, did you say, and the department? Are the carers included in that?---At times, yes.

What about the parents, are they included in that?---No.

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So what is your experience? Have parents complained to you about that, that they're excluded from that meeting, effectively?---They haven't. I mean, once again, because I act I can report back to them about anything that's said in that meeting. 1

Yes?---It tends to be a bit of an attempt to clarify the issues and to see what people want to raise, however fruitless that exercise may be, but certainly as either a party representative or a child rep I always made sure I was at those meetings, because it was often where you could find out what was going on behind the scenes, because a lot of things they don't say in the presence of the parents. 10

So can I ask you, do you see that there's merit - perhaps this is an obvious question - of the mediator in that process being independent of the department?---I think that's of primary importance to having those meetings become more effective. The difficulty at those meetings, as I've said in my statement, is that they are run to a departmental agenda. Nothing - when they're supposed to be a collaborative thing with the parents, and even as a practitioner who is quite capable of having robust discussions it's very difficult for me to get the department to consider anything that's not on their agenda. It's a case of really having to fight to get that even on the agenda, because the mediator is either an ex-departmental worker or a current departmental worker or employed in some way and affiliated with the department. I'm certainly not trying to be derogatory of those mediators. It's difficult for them when they work with these people every day to take a contrary view to them at a family group meeting, or to advocate against them or do something against them in those meetings. 20

COMMISSIONER: I notice there's - well, there's provision in the act for an independent convenor. Have you ever seen an independent convenor yet?---No, not in my view. There were people that may not - they were paid by the department and they technically didn't work in the department anymore, but usually they were ex-departmental workers or over in a different section and they would be pulled over to do it. Their affiliations are clearly with the department. 30

So do you think the fact that the department pays them conflicts them?---I think it does.

It would conflict anybody who wanted to get repeat work? ---I think it does. 40

Whether they're employed in the department or not?---Yes.

All right. There's provision in the legislation also for the inadmissibility or immunity from self-incriminating statements to be used in criminal matters. Do you think it would be useful to broaden that immunity to include



protection proceedings?---I think that's a difficult one. Obviously from a child representative's point of view, where I'm acting in the best interests of the child, then I wouldn't want to be precluded from relying on something that was said because it was privileged when I knew it to be something that would affect the child. Having said that, for the purposes of family group meetings then that may well be an advantage, similar to the conferences that we have in a Family Court mediation.

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Well, I was going to say, there are confidentiality constraints in the family law area that are intended to get people to participate without fear of that fulsome participation biting them later on down the track?---Yes.

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You've got balance that, but if the idea is to keep litigation about - contested litigation down, the only way you're going to do that is if you put more effort in the mediation process or the conferencing process. So this is going to have to be - maybe there should be a bit of trade-off there. What about the idea of having - well, let me ask you this. You represent the best interests as a separately representative?---I do.

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There's another model which has direct representation for the child so that you represent the child's self-interest? ---Yes.

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And leave it to the court to determine what the overall best interest is rather than you representing your idea of what the best interest is?---Yes.

Right. What do you think of that model so that you act on the instructions virtually of the child; not only take into account what the child says in determining how you will run your representation but actually consult and take instructions directly from and then leave it to the court to work out what the best interests of the child are overall in the long term where you have, like in the Family Court, the concept of "best interests" defined a little at least?---Yes, well, that covers a couple of - in terms of the concept of "best interests" being defined more clearly in the act I believe that that needs to be done. In respect of the argument of direct representation of children as opposed to separate representation, I do not think that direct representation is appropriate. I certainly know that the practice here even in separate representation is probably even more separate than in other states. Certainly Queensland independent children's lawyers and child representatives are often chastised by people in other states who make a point of speaking to every child that they represent.

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Here it's quite common that the lawyer representing the best interests of the child might never meet the child they represent?---That's correct, and once again it comes down to, in my view, only having the best people working in those roles so they can make good judgment calls about whether they do speak to the children because, as independent children's lawyers and separate representatives, we have the ability to do that and certainly I have spoken to children in matters, but I make that judgment call very carefully because it's important in representing the children that I don't let myself become emotionally involved in the matter and I am certainly not qualified. As much as I may think I am, I don't actually have qualifications that if a seven-year-old child said something to me, I could assess whether that child was truthful, whether there were other factors in play in respect of a child saying it and everybody who works in the system, either family law or child protection, know that what children say is not necessarily what they want and what they say they want is not necessarily what's in their best interests.

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But that's a problem with most clients in litigation. You can't always rely on what the client tells you?---Yes, but adults can take responsibility for their decisions.

But the problems is that children have the right to be

heard - - -?---They do.

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- - - and listened to and surely that would start with their won lawyer or with the lawyer representing their interests. Isn't that the point, their interests?---In my view, that is something that - it's part of both jobs. I can speak about them together, both an independent children's lawyer and separate representatives. We're required to make sure that we find out what the children's wishes are and have them put before the court. It's semantics in how we get that information, in my view. I use a family report process or reports from counsellors and the like to assess what the children's views are because the people making those assessments and reporting those views - and they do report them word for word, what the children have said that they want, but then they also have the capacity and the ability and the skills to go back and assess why the children are saying that. It is still my duty as a separate representative to make sure the court knows what the wishes of the children are and in a case, for example, where a child is very adamant that they don't - they want to live with their parents or whatever their view is I make sure the court is aware, "This is a very adamant view that this child holds. This is the reason the child holds it."

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But you don't advocate for the child's wishes?---No, I advocate for the child's best interests and unfortunately - - -

You think that is the best model?---Well, I do think it's the best model because the analogy that you made with adults as opposed to children is if I give an adult advice and they say to me, "Yeah, I don't care what you say, Katina. I want you to do X," then I simply write them a letter saying, "I confirm you're going against my instructions, but if you wish me to proceed, please sign here and I will proceed," and they are responsible for that. We're talking about children.

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They are paying you too normally?---Well, yes, if you're not a Legal Aid lawyer, but they know they've got the capacity to make decisions on their own behalf and to face the consequences of that. Children in these situations are often emotionally damaged. They often intellectually have difficulties and what they might want - you know, I think direct - - -

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I can understand that, about what they need and what they want may not coincide. I understand, but they know things about their situation that nobody else does?---Yes, that's right.

Especially when the allegation of the investigation is surrounding their emotional wellbeing?---Mm.

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So how do you get from the horse's mouth before the court what their emotional state is if you don't talk to them about it?---Well, we don't talk to them directly but we engage people with the skills to talk to them and those people then report back to us. It's like every step in this process. If you have good people at every step of that process, you don't need it.

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I'm just looking from the child's point of view?---Mm.

A lot of people are dissatisfied with litigation?---Yes.

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Winners and losers are dissatisfied?---Mm.

With mediation most people, whether they win or lose, are satisfied with the process. They're happier with the process because they're more involved in the process?  
---Yes.

That's the single difference between mediation and litigation?  
---Yes.

Litigation is governed by rules that have existed for a long time that they had no role in making or agreeing to?  
---Yes.

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Mediation you choose your own rules of the game?---Yes.

So what about a system or a process that is supposed to be designed to represent the interests of somebody who doesn't participate in that process at all?---Yes, I take your point on it and that's what I'm saying in respect of a separate representative being experienced enough to know what children need that. If I'm dealing with a two or three-year-old child, I don't want to speak to them. If I've got a 14 - even 12 to 15-year-old children who are voicing a wish to speak to me, then I certainly would speak to them in those circumstances.

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Yes?---I would even speak to younger children if they were somehow really vocal about wanting to speak to me.

From a client's satisfaction point of view you talk to them, right, because they're noisy. They want to be heard?---Yes.

But then you don't necessarily advocate for what they said to you when you spoke to them?---No.

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How do you think they feel as a 14 or 15-year-old about a system that does that?---Yes, I can see that they may be dissatisfied at the end of the day about that, but my children would probably be dissatisfied about some of the decisions I make for them as well in their lifetime.

Yes, but the decisions that you are making aren't the decisions that the court is making about where they are going to live and for how long and with whom?--But I don't see that so long as - and when I meet with children, for example, if I'm meeting with older children who have a view, then I say to them, "I will make sure the court knows that this is what you want. These are my concerns," and I will talk to them about what I'm concerned about and I will get their feedback on that, but I think that it's dangerous to go into a direct-representation system, because where's the age that's right? You might have a 14-year-old child who is intellectually handicapped. Once again direct - - -

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Yes, but you're not making the decision. The court is. That's the thing. You don't have to make that call based solely on what - - -?--No.

In England they have both. They have a child advocate who represents the interests of the child from the child's point of view?---Yes.

And they have a separate representative who represents what's seen to be the overall best interests of the child? ---Yes, and I'd have no problem with that system being in place.

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But it's expensive?---I was going to say the funding for that would be a problem.

MS McMILLAN: Ms Perren, just a couple of things out of that: (1) do you also explain to children who you meet that whilst you listen to their views, for instance, the judge or the magistrate takes into account more than just their views?---Yes, I do.

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Do you consider - obviously depending on the age and maturity of the child - that they seem to generally understand that sort of situation?---Yes. 1

The other thing is do you consider that - at all in terms of whether you meet a child or young person - how many others they've been interviewed or met?---Yes.

So for instance, if a child has been interviewed by police; someone - at least one person by the department, perhaps more; there might have been other experts retained in the matter. Does that play a part in your consideration as to whether you meet them?---Very much so, and that's a part of my point about me not having the qualifications. They come and speak to me and then I'd still send them off to a psychologist or qualified social worker to get to the bottom of it. Like I say, it is a judgement call on each particular matter. 10

Do you think, though, that - you have a great deal of experience in these matters - do you think, though, that there is benefit perhaps of some guidance, perhaps within the legislation, that depending on the child's age or maturity, that the separate representative should make them, leaving some flexibility, but with the idea that a separate representative should, where they can, consult with the child?---Yes. And I believe that in my role as child representative or independent children's lawyer, that that is part of what I have to consider in every matter. 20

Yes, but you're taking that as read?---I am.

You exercise individual judgement?---Yes.

And your experience, no doubt both as a solicitor but also probably your nursing background as well - - -?---Yes. 30

- - - about what an appropriate step is to take?---That's correct. And certainly if it was clearer in the legislation surrounding our role, then that wouldn't hurt. It certainly couldn't hurt the situation.

All right. Now, can I just ask you, do Legal Aid conferences still occur in parenting matters, say Federal Magistrates Court or Family Court?---They do, but they seem to be less frequent and more difficult to get.

What do you think of that model? Because although - correct me if I'm wrong - they're without prejudice, but as an independent children's lawyer, if you heard something that was deleterious to the child's welfare, that didn't bind you, effectively?---Yes. 40

What do you think about that as a working model?---Well, I think that that model is better, and he had the benefit of it is it stops that varies stylised "department walks in

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with their agenda and off we go", it's more of a -it's done outside of the department's offices in a neutral place with a neutral mediator and it is without prejudice within that conference time. 1

But would you want something like that, that if you heard a matter was obviously of significance to that child's welfare - for instance a disclosure or some indication which was highly suggestive of some form of abuse or significant neglect - would you want that as a caveat, if you like, to that process?---Yes. And in the Legal Aid conferences, that is a caveat on the confidentiality. If there's any threats made to damage person or property then that can be taken into account. And as an ICL, for example, in those sorts of situations, I may not be able to use the exact words that are said, but it may bring something to my attention that I could issue a subpoena on and investigate more. It still gives me the heads-up. It's not like I can't act on it afterwards. 10

No?---It's just that I can't rely on what was said in that actual conference.

All right?---I don't have an issue with that. 20

Just moving on to staff management. You talked about that, "It's common" - paragraph 24:

*for child support workers conducting the files at the initial point of contact, being the court assessment order (a CAO) or a temporary assessment order (a TAO) to be relatively junior and inexperienced.*

You then suggest at paragraph 31 that:

*Less experienced staff should commence their time with child safety working with children on long-term orders and work their way up the shorter term orders, and then to making decisions about urgent temporary orders such as CAOs and TAOs.* 30

Just to understand that, are you saying effectively turn it on its head in that is what you're saying that children in long-term orders probably need less day-to-day input, if you like, from child safety officers and also there need to be less decisions made, and not often necessarily on an urgent basis - - -?---That's correct 40

- - - within long term orders?---That's correct.

And you're saying, "Get your experience doing that sort of work and work your way up to effectively the pointy end, the very urgent matters," where you say in your statement that you need a high level of experience to make those sorts of calls, if you like?---Yes, because the calls are

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made with usually very little information. There might be a notification to the Department of Child Safety, they'll interview the child, they'll interview the parents, and then they'll make a decision to take the child at the home, and I really think that those decisions should be made by experienced and - I'm not so hung up on qualifications as experience. I think you need the experience before you should be making those very quick decisions that ultimately can have a very serious effect. One of the examples I think I give is taking a newborn away from their mother.

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Yes?---Which happens.

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Yes. And I want to ask you about that. I suppose all so if you're a much more experienced worker you're likely to be more resilient as well in terms of what might be the fall-out, if I can put, in relation to that?---Certainly.

Because no doubt there is a risk either way often in those sorts of decisions, isn't there - - -?---There is.

- - - for the child?---There is. And I think that the ability to stay somewhat detached from the quite common - and understandable, in my view - reaction of parents at that time, and do not let parents' behaviour at that time sway a good decision based on the best interests of the child. Because if you, as the department worker - and I'm certainly not being derogatory of them in any way, it is a difficult job - if you go to a family home and say, "I'm going to take your child," then you can pretty much expect - - -

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COMMISSIONER: A hostile reception?---Yes, a very hostile reception.

And you don't what the parents being judged on that?---No.

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Because it's understandable and might not be reflective of their competencies and capacity is generally?---That's right. And it often is - and once again, not knocking the staff because it would be a natural reaction to then be angry with the person who is speaking to you in that manner - but the more experienced staff in my experience handle that so much better.

One thing I'd like your comments on is something that an English judge in this area told me, is that there is - in his view, and he was recently in Australia and he's been in New South Wales and Victoria looking at their systems - he says that there is a greater sense of urgency in disposing of - making assessments in Australia generally that there is in the UK; that there's more emphasis put on making a decision with full information over there, whereas here it is making a decision even if you haven't got a lot of information. Does that accord with your experience?---Yes, it does. And I think that's one of the biggest issues, and

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I don't think - I'm not saying for one second that the department shouldn't have powers or child safety workers shouldn't have the ability to take the child in an emergency situation, it's just what is an emergency, that seems to become a little bit blurred sometimes.

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Would you think that the removal power is overused?---Yes.

And you think that there is a sense of urgency about a case that's really illusionary?---I think that particularly in those beginning stages there's often that sense of urgency; as cases progress I suspect that it seems nothing ever gets done.

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Yes?---We get into this never-never land. But certainly in respect of TAOs and CAOs we probably don't look to other avenues of supporting parents rather than just coming and taking the child.

So there's this initial flurry of activity based on a sense of departmental urgency that later evaporates because you can see from the system - you can see how many interim orders are made?---Mm'hm.

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And obviously there just churning through the system?  
---Yes.

Then like running on the spot, a lot of movement that no progress?---Yes.

And when you look also at the fact that most of the substantiations or even the notifications are for emotional harm, which are not a single point in time event?---No, that's correct.

And for risk of, rather than actual?---Yes.

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It seems to me that the assessments could quite easily be done while the child is still at home, provided that you minimise the risk to an acceptable level - - -?---Yes.

- - - rather than taking the child - ripping the child out just in case?---Yes.

Is that your experience?---It is. And unfortunately those snap decisions can also just leap too horrible effects for the child.

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One of the easiest examples to explain is taking a newborn baby away from their mother whilst they're still in hospital. To my mind, that beggars belief. They're under the supervision of nurses and staff.

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The hospital?---Why would you go and take a child and say, "You're not allowed to see this child"?

You couldn't be in a safer place in fact?---Yes, and I can't see that there's any evidence - like I say, I'm not an expert in psychology, but I cannot see how they justify that as being in the best interests of a child.

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Yes?---Then you have other examples that I've given where a child is taken from a carer's home on one allegation that's completely unfounded from a child that's known to make them and a two-year-old child gets taken from the primary carer. Now, by the time that initial flurry has happened, then we go into - there are applications before courts. There are QCAT applications now to say, "Well, the department shouldn't have taken this child." By then the horse has bolted. The bond's been broken. The damage has been done. Putting the child back isn't going to help.

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And then you have a look at the return rates, once there has been a removal, are very low?---Yes.

Once you're removed and you're in the system, it's very hard to get out of it, on the figures?---That's right.

Secondly, so far as I have seen so far - there may be - there's no clear evidence where you can show that the removal or that the child was better off overall because of the removal than they would have been had they had not been removed?---Yes.

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There's no way of comparing, measuring, those things for sure?---Yes.

So bearing those things in mind, removal should be done very, very prudentially and perhaps rarely?---Yes, and I believe by experienced officers who have the capacity to handle those initial high emotional levels without personally - like I say, I'm not judging people for having a personal reaction to abuse. I'm a nurse, ex-nurse, and I'm a lawyer who works in family law. I have copped plenty of it over the years but it's how you react to that where you're experience level shows, in my view.

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You mean experience - your concept of experience is much more than simply a measurement of time?---Yes.

You don't experience only in years?---And certainly not in degrees in terms of - as in university degrees.

Yes?---It's on-the-ground work and that's - I mean, the

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suggestion that I made was my own view. It's my own suggestion, but that - if a new departmental worker, for example, was first on a long-term guardianship team, whereas, as Ms McMillan said - Ms McMillan said it just sort of - they start to get to know what the issues are like and then move to, say, the short-term-care team which are the children who are in care for the two years or so or less, then they work their way towards that pointy end of the stick and if they're trained and supervised by people who can teach them how to deal with what they're going to face rather than being chucked in at the deep end and being told, "Right. You have to go and remove this child," and having a very angry parent be very abusive and very threatening which is - you know, we see it all the time. It's completely unacceptable but it's going to keep happening. You can't stop it. You'd end up with better decisions being made at that first point.

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All right. Before I hand you back to Ms McMillan I want to ask you a couple of questions about the interim orders. I see in the annual reports the figure for interim orders. It varies by region but there seems to be a lot of interim orders and the explanation I have been given is that - and you can't tell from the interim orders which ones are just adjournments, right, but I'm figuring that adjournments probably account for a lot of them?---Yes.

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Now, either they are adjourned with a purpose or they are adjourned for no particular reason?---Yes.

What would you say of the proportion of adjournments? Are they all necessary or are many of them avoidable?---Most of them would be avoidable. A lot of the adjournments are due to the fact that, for example, we might have a matter adjourned for a family group meeting that doesn't get convened within the adjournment period or we'll have it adjourned to get a social assessment report, what's known as a family report in the Family Court jurisdiction, and that doesn't get done or we're adjourning it to get another family group meeting because the time has now elapsed and we have to do another family group meeting before we can come back to court and that problem - there's funding issues with that and slows everything down. They can't get the resources to do the jobs that they need to do.

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So what's the solution to that, case management by the magistrate?---Well, from a court's perspective then, yes, and I think a lot of our magistrates do try hard to case manage but, unlike the Family Court, it's not like the Family Court can say, "Look, I'm tired of waiting for you to do this. I'm just going to order one of our family consultants to come in and do a family report on this matter. This is ridiculous." They can't do that. There is no - the magistrates have no alternative but to rely on the department and the parties to get the things done that they need to get done, but because the resources are short

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on the ground, they're very difficult to find and to get, it takes a long time to get all these steps in the process done and that then makes those initial decisions that are wrong have such a long effect because things - before the final decision is made years have passed, years have passed, and all these interim orders - - -

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You have almost achieved your objective by default?---Yes, and then the children can't go back because you get - now they've bonded with their carer family and they don't know their family of origin so - - -

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It wouldn't be in their best interests to send them back? ---It wouldn't be in their best interests to send them back and in the meantime - and I know this is something I've said in my statement that I'm sure Ms McMillan will get to, but in the meantime there's no reasonable contact between the parents and the children, between the siblings. You might have a big sibling - - -

But the chief executive has got a statutory responsibility to ensure that there is appropriate contact levels under the act?---In my experience that rarely occurs.

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MS McMILLAN: What do you think about the prospect - firstly, can I ask you in your experience, do magistrates in child protection matters issue on an interim basis matters with conditions attaching to them?---They do.

They do?---Yes.

What sort of conditions, in your experience, are they? ---Once again you'd need legal representation, in my view, to get that happening because parties acting for themselves wouldn't even know that they have the capacity to ask the magistrate to give those conditions, but certainly as a child representative or a party solicitor I often ask for conditions surrounding time with the family of origin putting minimum levels in place. Notwithstanding the fact that magistrates are happy to use the - it's a bit of a loophole in the legislation to make - - -

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Broadly interpreting the powers?---Yes, broadly interpreting the powers given by the legislation and they're happy to do it.

COMMISSIONER: Probably an incidental power in there somewhere?---Yes.

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MS McMILLAN: An ancillary power, one might say?---Yes. You still get the situation though where you say, "Look, we would like to see a minimum level of contact, your Honour; you know, we're suggesting this," and the departmental response will be, "We don't have the resources. We cannot do it that often.

Well, I just want to ask you a little bit more about that. Firstly, do you think that there should be a provision for magistrates to do that in the final hearing of a matter? ---Yes, I do.

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All right. Do you think that that might, for instance, assist (1) because you may not have the same magistrate who hears the matter at the end of the day. It was clear what orders were made and it's transparent from their face what were the considerations. Do you think it might give parents something more tangible to work with? So, for instance, "You can have contact once a fortnight but you've got to undertake random drug screening tests, for instance"?---Yes.

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Do you think, having acted for parties, that that would be beneficial, that they could see in an order, "Right. I've got to do this if I want to see my child"?---Yes, certainly, and I think that it simplifies what's required of the parents and gives them something to work with.

I was going to ask you because that's something else you talk about in your statement, that at times there are unrealistic perhaps expectations of parents in terms of unachievable goals for them?---Yes, and along with those unrealistic goals that they set there's also no positive feedback being given to these parents. They jump through all these hoops and they're still not seeing their child any more so they're thinking, "Why am I doing this? I can't seem to please the department," and it's - a constant piece of advice that I give when I'm acting for parents is, "You have to do what the department says. If you don't jump through these hoops, you are not going to get to see your children more," because the power is simply so great and the parents can't maintain concentration for, you know, 12 and 18 months still only seeing their child once a month.

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They give up. They go, "Why am I bothering? I'm clearly not getting anywhere. I'm never going to get anywhere. They've taken my children," which increases the level of animosity and anger, it increases the drop-out rate of parents engaging in the process and doesn't end up with good outcomes for children.

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Given that obviously there's limited resources to be able to at times supervise contact, which it's the case that often parents seeing their children who are under orders it's supervised by the department, isn't it?---Yes.

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What do you think of if a foster carer was willing to supervise it, or do you think that puts them in a very difficult position?---I think it puts them in a difficult position. I think that the department should consider other people as having the capacity to supervise.

You mean like respected members of the community, for instance?---Yes, family members, other people who may have something to do with the family that could assist the family, because at the moment my understanding, and like I say, I don't work in the department, but it has to be, you know, one of their supervisors who does it, and these people, there's not enough of them on the ground. So I'm certainly not saying the department is deliberately going out of their way to stop this contact. It is just that we need a broader base of the people that can supervise.

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Now, can I just ask you, in terms then if there were the capacity to make conditions, do you think then it might have the impact of less matters needing to go to QCAT, for instance, because as we know, with many of the orders made, issues of contact, et cetera, are at the discretion, effectively, of the chief executive, that again, if it wasn't being complied with, conditions, by either the department or indeed the parents that there would be an ability to bring it back to court?---Yes. I mean - - -

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Do you think it's important the court have some case management - greater case management than they currently do?---Yes, definitely, and, I mean, I think it's clear in my statement that in general - I mean, if you ask me, frankly I'd love to see child protection matters be dealt with by the Family Court or the Federal Magistrates Court. I accept that it's a state by state thing, but that system is more open to the monitoring and case management of matters, so that the magistrate or federal magistrate who is dealing with those sorts of matters knows the matter and works it along and makes sure that it keeps moving and we have the capacity - because what happens now is - and once again, I think I've given evidence of it in my statement, where the department make these snap decisions in the middle of things and just withdraw all the children out of the care of parents who fought for two years to get them back where they are. All you're doing is teaching the

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children that all they need to do is make a complaint and they're going to be taken away from their parents, number 1. It disrupts the children's lives yet again, which is ridiculous, and there's nobody watching those decisions, which are often made on simply a reactionary basis by, you know, lower experienced staff. 1

Yes?---So you end up with this terrible situation, whereas if it was more case managed, if the department had a concern like that they could whack an interim application in before the court, come before the court and let a magistrate make the decision. 10

And critically look at whether there's evidence to support it?---Yes.

What do you think of the - you also say in your statement, paragraph 136, "Beneficial for child support workers to have ready access to a solicitor." Do you think that there's merit in really having the part of the department, if you like, who prepares court applications to perhaps sit within say justice so that you have say Crown Law or an entity like that within justice critically evaluate whether (1) material measures up, whether it's actually probative, cogent. You talk about hearsay and material not being properly prepared. Do you think there's a good argument that it should, the locus of that, be shifted to a specialist legal area, if you like?---Yes, I do. 20

Do you think it would also have the benefit, perhaps, of taking some of the heat off departmental workers to say, "Well, we're not actually bringing the application. That's with the legal team," or whatever else, that perhaps draw out those roles so that they can get to do more of what you talk about, making decisions and implementing case plans? ---That's exactly the case, and I make criticisms of departmental material before the court, in that it is so lengthy and repetitive and at times completely irrelevant. Why wouldn't it be? The people preparing that material aren't lawyers and you can't expect them to know how to draft those sorts of affidavits. Sometimes with really experienced child care workers, Joanne, I might say to them, "That's a good affidavit," and they say, "Well, yes, I fought really hard to have it worded like that," because they have, once again, "This is how you will do your affidavit," and they have to do it that way every time, whereas if they effectively had a lawyer acting for the department then the department officer could give the information to the lawyer, as a client gives them to me now, and I put it in a format that is relevant, cogent, cohesive and hopefully as brief as possible to go before the court. 30 40

COMMISSIONER: What does the court say when it receives inadmissible or irrelevant or voluminous affidavit that's not necessary. Do they have a position on it?---No, I've

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never seen a court - - -

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They don't award costs against the department for wasting time?---No. No-one is funded to bring applications for costs and because most parties are either not represented or legally aided there's - - -

What, are the magistrates passive in this process, are they?---There are some magistrates who will at least give the departmental staff a talking to, but I've never seen them give departmental staff a razz about the contents of their affidavits. I think that the magistrates accept that the people preparing the affidavits really don't know how to prepare affidavits properly and are simply working to protocols set within the department. I know that we in Yeppoon - in Rockhampton here, our coordinating magistrate, for a while we were doing like stakeholder's meetings once a month with, you know, Joanne or myself, members of the department, we would get speakers from other areas to come in and talk and we'd try and assist the department as much as we could, but unfortunately at times from less experienced departmental officers we're also seen as the enemy, so they're not going to listen to us.

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Now she's been transferred anyway, so somebody else might not have the same system?---Yes, and that has fallen by the wayside over time, probably due to time constraints and the levels of work that we do.

But the magistrates are the ones that are supposed to read these lengthy affidavits?---Yes, and they are lengthy. As I think I say in my statement, when you're appointed as a separate representative the only thing you get given are the court documents, and it is - I get court documents that sit on my floor - will stand two feet off the ground in court documents.

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So do you think the legislation should be more prescriptive about the role of - well, about the material, about the role of the magistrate, the available options for orders, the nature of the material that should be put up and relied upon and acted on by the magistrates?---I think that in all - everything you've just covered that it's a yes. There's different ways of doing all of those. Having clearer forms and the format for forms - and perhaps I'm biased because I do family law as well, that those forms are much clearer, particularly in terms of applications and responses and then your affidavits, once again, are left, but also what I was speaking to Ms McMillan - saying to Ms McMillan before, about having a lawyer act for the department to prepare that material, because you're expecting too much - I believe the system expects too much from their departmental workers if they expect them to be able to know the law to such a degree that they can prepare court documents in an appropriate manner, apply legislation in an appropriate manner, and it's not as clear as the Family Law Act, for

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example, in terms of best interests of the child. They don't have those qualifications and they shouldn't be expected to. They should have someone readily available to them to give them advice and prepare their documents, whether it's - and once again, I know this is a funding issue, but whether it's a case that each centre or between some centres there is a lawyer who works for the department, whether that's outsources under a legal aid sort of funding scheme where this is going to be the departmental lawyer.

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Well, the concept and its practical content of best interests is very unruly. In the Family Law Act, for example, it's clearly defined, almost exhaustively defined, the factors that indicate where the best interests of a child lie?---Yes.

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Those best interests are interpreted and given effective to by a specialist superior court justice?---Mm.

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And even then the Family Court has a Full Court of Appeal because they get that wrong?---Yes. 1

And in the state system we have got magistrates who don't specialise in the area interpreting a phrase which has no definition?---That's right, and probably - - -

But who have the same power to make orders affecting children in the same way, that is, removing them from one or both parents?---Yes, but you also have the departmental workers who are trying to on the day-to-day basis, you know, enforce this act. They don't have an understanding either. I mean, in a perfect world you would have a separate court system for child protection matters who ran it in a very case-managed way similar to the Federal Magistrates and I know - and once again I can only speak on my experience from a regional solicitors point of view. I accept that in Brisbane there are specialist Children's Court magistrates. 10

One?---Yes, there's one, and so the hope of us getting one in regional areas is slim, but I think that is important because, like the family law, child protection is an extremely difficult area of law. It's an extremely important area of law and the Magistrates Courts are working hard as it is in so many jurisdictions, including around here. As I was talking to someone earlier about, they do QCAT here as well. Our magistrates cover a lot of QCAT work. 20

They are members, aren't they?---They are. They are members up here.

All magistrates are also Children's Court magistrates? ---That's correct. 30

Even though they don't have specialist training or interest necessarily in that area?---That's correct, and I think that - once again I accept that what I'm saying is pie in the sky stuff insofar as funding goes, but certainly in terms of trying to make this system better having specially appointed magistrates, having the department - the child safety workers having access to legal advice on a day-to-day basis would increase the effectiveness of the system which would therefore decrease the amount of funding that needed to go to departmental workers because their time would then be freed up not writing massive affidavits and the like. 40

I'm sure we can find a roadworthy model for this state somewhere between bad practice and world's best practice? ---Yes.

MS McMILLAN: Can I just ask you in terms of some of these issues around court material, what do you think of at least having some practice directions a little bit like the

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Family Court where you have got pre-action procedures that need to be adopted as well so that - and, of course, you have always got the caveat that if your family is extremely urgent, you can skip obviously, in effect, some of those. What do you think about that where there are some standardised practice directions?---I think there's merit in that. 1

Or do you think that's too onerous where a lot of parties act in person?---Well, it's always going to be difficult where you've got parties acting in person. I think that the current system is so all over the place that at least if there were some definite rules in place where they could be provided with that information, they would have more assistance. 10

You say forms, for instance, would be a big help?  
---Exactly, clearer forms.

Clearer forms?---Having a family group on the one application and affidavits - I mean, even the department files a different affidavit for every single child in a sibship which is just ludicrous. Those poor departmental workers just ploughing out six and seven affidavits for a family group instead of one affidavit that might deal with the individual issues of every child, as happens in family law. 20

COMMISSIONER: Are you talking about practice directions or rules? Rules would be subordinate legislation, but who would make a practice direction, the chief magistrate or the president of the - - -

MS McMILLAN: At the current time it would have to be the president of the Children's Court because under the current legislation that's the only person who has got the power to issue practice directions for Children's Court matters. 30

Has he got power?

MS McMILLAN: Yes. Well, that's my understanding of the legislation.

But whether it be by way of rules and/or practice directions, do you think there's a place for some pre-action procedures?---Yes; yes.

All right. Can I just ask you this: you talk about one of the advantages of the Federal Magistrates Court and the Family Court with family consultants being available. Now, we know that in the child protection legislation there is a section which allows for magistrates to seek expert assistance. In your experience, has that ever occurred? ---Not through the magistrates. 40

Right?---It certainly occurs where the separate

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representative will go and get a social assessment report done and certainly one of the things I was alluding to in there talking about that was the ability to do 11F's or 11F-type proceedings where on an urgent matter that comes before the court where there are all these allegations going on we can get a short report before the court that says, "Well, I've spoken to the children. I've spoken to the parents. This is my evidence on this," so that on an interim basis maybe better decisions can be made and we can stop this.

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I don't know if you're aware in Victoria and New South Wales they have the use of Children's Court clinics where experts can be ordered to complete family reports on matters. Now, where you say that, for instance, there might be a short-form report in an urgent matter, do you see that as having utility in child protection matters? ---Most definitely, for the reasons that we were talking before where snap decisions are made on an interim basis either right at the beginning or during a matter; that there can be some expert evidence put before the court to make that decision rather than have the department make it.

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And the funding for that instead of sitting - you going and getting a social assessment report - in fact it's usually the department who does that, doesn't it?---Yes.

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It could be done via the court - - -?---Yes.

- - - through them having the - and that consultant may be able to continue on with the family, say, as in the Family Court or Federal Magistrates Court so that you've got some continuity as well?---That's correct, yes.

All right, yes. I just wanted to finish with you spent some time, you say, about four years at Woorabinda on and off in your holiday period, working there as a nurse? ---That's correct.

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All right. We've heard a lot of evidence about the over-representation of Aboriginal and indigenous children in the child protection system. Could you perhaps just indicate, given the sort of work that you undertook there, what did you regard as being of particular note in relation to issues which revolved around child protection concerns? What sort of ones were they that you observed?---It's a complex issue and there are a lot of things that happen within our indigenous communities and certainly we have Woorabinda here which is not far out of Rockhampton and Rockhampton itself has a high level of indigenous community. Alcohol is the underlying factor, in my view, and once again it's not as a lawyer and I haven't been out at Woorabinda for quite some years but I do hear anecdotal reports from what's going on out there at the moment. The elder generation are not having the effect on the younger generations so we've got generations of children coming

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through with parents who don't know how to be parents. They may not even want to be parents. It's not a priority for them and the supports aren't there within those communities to assist these children. So as a nurse, for example, we would have children - even when I was the Rockhampton base hospital when I was doing my training which was in the early nineties, we would see Woorabinda children staying at the hospital for years. They were constantly in the hospital for up to a year at a time, children with bad burns, for example. I can remember incidences where children were page boys for the doctors' weddings because they'd simply had so much contact with us that they were part of the hospital family. Those children that I'm talking about that I nursed back then I now see in the criminal justice system as adults with significant issues of alcoholism and the like and these were children who were sent to hospital and nobody ever visited them.

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COMMISSIONER: Are they also parents?---Yes; yes, they're parents who don't have the capacity to care for their children. It's very different out there. It's very sad how the children come through the system and it's very hard to get them out of the system once they're in it and, quite frankly, it's similar difficulties as we have with non-indigenous families. If a child is removed from care - from their parents in Woorabinda, they necessarily have to come out of Woorabinda because there's no-one out a Woorabinda to monitor. So these children are then taken out of not only their family unit but they're moved into Rockhampton or out to Biloela or Emerald or places like that. They're so far removed from home into a very different environment and there's no family of origin contact.

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The family of origins often don't want - aren't seeking the contact because of alcohol issues or the like. 1

What about birth control opportunities and - - -?  
---Choices?

- - - access to services and choices and things like that? Are they available there?---Certainly I can't say whether they're available now. It was certainly nothing that I ever - we were even given a mandate for when I was nursing out there. I hope that things have changed out there, but if they have, I suspect that they're not being taken up. I mean, education once again is one of the biggest things. Getting someone to routinely, for example, take the oral contraceptive pill, would be a big issue. It would need to be - and even whether you could get them to come in for Depo Provera injections, that's another question. 10

So you've got - there's a difference between knowing and doing?---That's right.

And doing requires some commitment, discipline, decision-making, or some fact of management?---Yes. And that's very hard to do with the socioeconomic problems that these people face or these mother's face in particular, because they're the ones who end up pregnant and having children that they may not wish to have. 20

Right?---But there's certainly no options for them in my view.

But yet one of the things that's happening is they're having children very closely together?---Yes.

The same mothers?---Yes. 30

Who you say didn't want the child before?---Yes.

They have a second or third or other child afterwards?  
---Yes.

What's happening there?---I think it's - I don't - in some cases I'm sure - and like I say, I can only speak about when I was out there, and I've had limited contact. I've acted for indigenous families in the child protection system. That's not something I investigate routinely as a child representative, is the causes of these, so I'm speculating or using the experience that I do have from a long time ago. I just think it's complete apathy, and it's not just around birth control, it's around everything in their lives. I mean, I was speaking to a community corrections officer recently about an indigenous lady that I did nurse as a child who is now severely dependent on alcohol and has quite a significant criminal history of minor offences. I was talking to her about what was happening and why she couldn't be helped and I was simply 40

told that even when they sent her to rehab and they did manage to see her sober for a couple of days, she said, "I don't want to be sober." I'm not a psychologist, so I can't say why she would say that. But certainly that's the anecdotal evidence I get, that even intelligent people, when they have cleaned up and aren't under the influence of alcohol, will still choose to go back to that lifestyle. I can't say in that particular case what that person's life had been like. I suspect I know, but how do you assist? I don't know. But certainly the level of unwanted pregnancies is possibly higher than it should be in those communities.

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MS McMILLAN: I have nothing further, thank you, with this witness.

COMMISSIONER: Okay. Mr Hanger?

MR HANGER: A few things, thank you, Ms Perren. Just going to this issue of an independent mediator, a lot of people have mentioned that?---Mm.

I'm not going to argue with you about it. But I was a little bit troubled by the material you give surrounding that. I take it in your legal practise you do work outside the family law and child protection work, you do personal injury stuff and things like - - -?---I don't do personal injuries.

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But other work?---Other areas, yes - minor. My major areas of practise are family law, criminal law and child protection sort of work.

I'm just - all right?---I don't do a lot of civil litigation.

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Tell me if you don't feel comfortable. I don't feel comfortable with family law, so, you know - but I do feel comfortable with mediation. It is normal, if I may say so, for people to come into a mediation with a bottom line. No insurer would come into a mediation without a bottom line. I'm just suggestion to you there's nothing sinister about that. From a mediator's point of view I might say it's annoying, but quite frankly it's fairly normal, is it not? ---I understand your point with the department coming in with bottom lines.

Yes?---The concern that I have is that when issues are raised that for example aren't on the agenda or are outside the bottom line, the response of the mediator is, "Well, there's no point talking about that."

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And that's the mediator's failing?---Yes, that is the mediator's - - -

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And not quarrelling with you?---That is the mediator's failing. 1

That's the mediator's failing?---Yes.

The mediator should say, "Well, this is on the agenda now, let's talk about it. Go and get instructions."

COMMISSIONER: Because the mediator comes from the same department with the bottom line.

MR HANGER: Yes?---Yes. 10

And that's the difficulty as I see it?---Yes, I mean, it's just - - -

I'm not going to argue about that, that is a matter for you in the end?---There's certainly nothing wrong with all parties coming and saying, "This is the minimum that I hope to achieve," but the purposes of a mediation are for there to be some concessions both ways.

Yes?---And I am a qualified mediator myself, but you need to be able to have everybody raise the issues. Basically what happens is we sit down and his family group meetings and the department essentially runs them. 20

Yes?---And the mediator will say to the department, "What's next on the agenda?" And the department will say, "Now we've got to deal with x, and this is what we want to do with that," and when other issues are raised they just say, "No, the department would consider that." And once again, not trying to be derogatory of the departmental workers, that is what they - - -

That's the system?---That's the system. They have been told that this is what they have to achieve by going in there, I assume. And certainly when something is brought up in those family group meetings that is outside of those bottom lines or a variation on the bottom line, it's common to get told, "We can't make that decision." And once again, not knocking them, but the person who can, should be there so that - - - 30

Or should be on the phone at least?---Yes, should be accessible in some way. And I've often said in those meetings - because they're held in the departmental officers - once again, not of assistance, I think, when it comes to making the parents feel in a neutral environment - "Can't we get them in?" "No, they're not available today." 40

So really in terms of the family group meetings, the problem as you see it would be very largely resolved by two things: one is an independent mediator; and secondly an independent premises, probably?---Yes, I think that both of those things would help. And perhaps, as has been



suggested, the fact that maybe the negotiations that occur within there be without prejudice. 1

Yes?---The agreement that comes out of it can be on the record, but what occurs in there to be without prejudice.

Yes.

COMMISSIONER: And maybe a pro-mechanism for the selection and payment of the mediator outside the department.

MR HANGER: Yes. It's a problem, sir, in the mediation field that sometimes you will have one party pay for both sides. I don't like it and I don't feel comfortable with it, but it does happen - and I mean by agreement at the beginning. For example, you can have a completely impecunious plaintiff in an insurance case where the insurance company knows that they're going to give him some money and they say, "Well look, we'll pay for the mediation up front. We'll pay both sides." That could - and probably one day will give rise to somebody making a serious complaint about it. 10

COMMISSIONER: I suppose, though, that the difference is that your mediation is for private purpose; this mediation is for a public purpose. 20

MR HANGER: Yes. It's the sort of thing we've come across before where it's one pocket of government paying another pocket of government as well.

COMMISSIONER: Yes.

MR HANGER: Because you'd have Legal Aid on one side and - - - 30

COMMISSIONER: Yes, it's a cost to the same government.

MR HANGER: Yes.

COMMISSIONER: But I was thinking more of the independence of it.

MR HANGER: Yes.

COMMISSIONER: Because if - you know, a bit like whoever pays the - - - 40

MR HANGER: Piper.

COMMISSIONER: The piper?---If I could address that, Commissioner. I think that it's not so much the funding, it's is the choice. When we come to a family group meeting we never get an option about who the mediator is going to be.

No?---The department pays for and organises that mediator to be there, whereas, for example, if it was a private matter, be a personal injuries matter, a family law matter or whatever - - -

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You'd negotiate?--- - - - we would write to each other and say, "Okay, well, we'll offer up a panel of these three people. You pick one. We'll pay for it," whatever.

Yes?---But the actual process of picking the mediator - and I know that there are mediators available who conduct mediations that don't get called in to do those sorts. The mediators, for example, who do the family law work at Legal Aid - - -

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Children's cases?--- - - - they're all qualified mediators. Ms Madden and I are both qualified mediators, there's a number of other lawyers in town who are qualified mediators, and there are other social workers in town who are qualified mediators.

Yes. No, it's the combination of the power of choice and payment?---Yes.

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If you eliminated one or separated them off it would be better?---Yes. I don't think that the payment is as big an issue as the - - -

MR HANGER: It's the choice.

COMMISSIONER: No, well, the government pays for everybody in the whole process?---Yes.

MR HANGER: Okay, thank you for that. Do you have any opinions on the training of child safety officers? That is to say, another matter that we have canvassed is the issue of whether we could improve their training before they come into the system. That would be at the university level?--- I certainly think training is very important, and I wasn't trying to say that it's not important when I was saying experience is more important than degrees or training.

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No?---I think it all needs to come together for it to work properly and I think that at times - and I'm speaking from experience now both as a lawyer and having done a law degree and a nurse who was, luckily for me, trained through the hospital system, that often you learn those skills on the job. It's not something that is easily taught in a classroom. The ability to stay calm when you're being abused is a skill, and it's a skill that a lot of people don't have who should have them. Once again, I'm referring not just to departmental staff but nurses, police officers, people who need to learn to be able to sort of keep a little bit back even though you might be being terribly verbally abused or threatened - and I'm not saying people should know how to do that instinctively. We all have a

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right to feel that that's not going to happen to us, but it's one of those fields. As a nurse I've been assaulted at least five times that I can recollect physically and innumerably verbally, but certainly never took offence at that and never took a slant against my patient.

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You obviously learnt it on the job. I suppose you can teach it at the university but then you've got to have some on job experience to practice it?---Exactly. Exactly, and I think that it is important and I think that current nurses are missing out on that training, in that they are university trained, but that's a whole other issue.

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Yes?---In terms of departmental staff, I'm not sure how they're trained on the job so I'm not prepared to comment on what actually is happening, but certainly they're a lot of the things that I see lacking. For example, we had a matter - it had been going on for year. We acted for, I think, the father. He'd lost his temper with departmental staff and said something along the lines of, "That's it. I'm going to come and blow you all up," or some equally stupid comment. I have no issue with the fact that the whole departmental office was shut down for the day and they treated it as a serious bomb threat. That's what they should do to protect their staff, but the flow-on effect for that family as a result was that, you know, he's labelled this mad bomber, whereas a senior officer actually commented to our office, from the department, said, "We all knew he wasn't going to do anything," and yet all the children get ripped out again and contact gets stopped again and we have this huge over-reaction on a professional level. I'm not saying that taking the bomb threat seriously was a stupid thing to do. Of course it should be taken seriously, and departmental staff should not have to tolerate those things.

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So someone should have said to him, "Well, that's one option. Let's talk about some other ones"?---Yes, or, you know, recognise the bomb threat but know that he really wasn't ever going to carry it through, he was just mouthing off because he was frustrated.

Yes?---But for that family that had effects, because then the way - then it was, "Okay, well, you can't have your kids again unsupervised because you've made this threat to departmental staff and you're unstable," and it was like, "Really?"

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Whereas you'd say it was just a stupid throwaway, bad-tempered - - -?---Yes, and the good staff knew - or the experienced staff knew that, but unfortunately it doesn't trickle down. Like, I'm not knocking people for having that reaction.

No?---But you need to be trained to know what it is.

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Can I go back to the issue of people like yourself not being prepared, for good reason, to continue working in the system because of a lack of pay. Can I ask your opinion as to the value of legal representation in the sort of cases that you now find yourself unable to do?---I think that like good child safety workers, good legal representation is really important in the child protection system, not just for the children but also for the parents. It's important that solicitors who practice in the area do the job properly and I think that the lack of funding prevents solicitors, even if they want to, from being able to do it well. This has a huge effect on almost every aspect. It makes the cases take longer to run through court because you're dealing with unrepresented litigants who don't know the procedures, and a lot of those adjournments that we were talking about earlier are probably due to the fact that they were supposed to file something and haven't because they don't know how to and we adjourn it off again, they were given another opportunity, because they will show up to court but they won't do what they've got to do in the meantime. As I said in my statement, I've had departmental workers say, "What are they going to do without you guys? We will walk all over them if you're not here." That's upsetting for me who takes - I've always enjoyed working in child protection. I've always thought it was a very worthwhile area of law to practice in, and I think that the whole system is affected by lawyers not being in it. I know that that's probably a very unpopular view given that lawyers are not particularly popular, but at the end of the day we do speed things up. We can help parents accept - if they really don't have the capacity to care for children, we can help those parents accept that they don't, consent to orders and then let the children move forward, still having a relationship with their parents and there still being some sort of positive relationship between the parent and the department that you may not have if the parents don't have somebody to explain that system to them and make - - -

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So you're an agent of reality?---Well, that's how I see myself, yes.

Yes, thank you.

COMMISSIONER: Thank you. Mr Guy?

MR GUY: Thank you.

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COMMISSIONER: Is there other administrative - is there an availability of administrative adjournments?---Well, not really, no.

So you've got to turn up to the magistrate?---You have to turn up.

Just to adjourn it?---Yes.

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Yes, sorry, Mr Guy.

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MR GUY: Yes, thank you, commissioner, witness. In relation to this lack of funding which you've mentioned that comes from the state government through Legal Aid Queensland would it be fair to say that that has a fairly disastrous effect on families and children as far as their ability to be legally represented before courts and in matters?---Most definitely, yes.

You've mentioned support for having an independent mediator?---Yes.

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Away from the child safety system?---That's right.

Also independent premises. In relation to FGMs that you have attended over, I presume, a number of years, where have they been held?---Always at the department.

Always at the department?---The departmental offices. We have two here in Rockhampton, the one or the other.

I'm just asking this question in relation to Aboriginal and Torres Strait Islander families. Under section 6 of the act dealing with Aboriginal and Torres Strait Islanders subsection (5) states, "As far as is reasonably practical the chief executive or an authorised officer must try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander, whether a child or not, in a way and in a place that is appropriate to Aboriginal tradition or Island custom." What you're saying in relation to that is that it's always at departmental offices?---It is always at departmental offices. I think that there is some assistance there for indigenous parties, in that there's usually a recognised entity present as well, but certainly in terms of where it's held, it's always at the departmental offices.

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Certainly in a matter I had where an indigenous family was involved - I think I was the separate representative in that matter. Because the family or the parents were at Woorabinda, they couldn't travel in for whatever reason to be present at the family group meeting so we linked them in by phone which was wholly inappropriate, wholly unsatisfactory and really it was a waste of time at the end of the day because they didn't have anyone really to support them on their end. We couldn't see them. They couldn't see us. All they could hear was this mob of voices on the phone. We're all, you know, talking and arguing and I just thought it was wholly unacceptable for that family to be dealt with like that.

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What would be your view in relation to Aboriginal and Torres Strait Islander people if there was an independent mediator, that there could be a possibility that those mediators could be an indigenous organisation or come from an indigenous organisation?---Certainly, and I know that in Rockhampton one of our - one of the mediators who one again was appointed by and paid by the department was a Torres Strait Islander lady and she was quite helpful in conducting those mediations because obviously not everybody who is there understands the cultural aspects that might be involved. So she was always very helpful so I think it is helpful in those matters to have an indigenous mediator that's familiar with the cultural things that need to be dealt with. It may not be practicable in that I don't know how many of them we have around and certainly the one I'm speaking about actually works for the department. I don't know how many independent people there are who are qualified mediators, but certainly it would be nice if that was a best-case scenario and if it wasn't, then I think the recognised entity needs to be heavily relied upon in the family group meeting.

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Just in relation to family group meetings generally, I think you've said in your statement there that you regard them as a very important process?---I think that they could be a really helpful process.

Particularly in regard to trying to get a reunification? ---That's correct. I mean, that's what they're there for, to try and come up with a plan for where we go from here.

Just in relation to the family group meetings that you have attended with indigenous or Torres Strait Islander people, have you been able to ascertain at those meetings whether extended family, elders of the families, have been brought along to those meetings?---At times they are. As is the cultural norm, often the children will go into the care of a kinship carer whilst they're in care so often the carer might be there and that person might be a member of the family group as well. Yes, we often see other members of the extended family present. Like I say, I don't do a lot - I haven't had a lot of matters where I've dealt with

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indigenous people in the child protection system. For what reason I don't know, whether ATSILS handle them more than we do, but I've certainly had my fair share and at those there were other members of the family present. 1

Yes, but certainly in relation to that where family group meetings are organised, quite possibly the recognised entity could be given the task of calling the elders and extended family?---Yes. Well, I certainly don't see an issue with that and I certainly think that it may be helpful to make the parents of the children more receptive to the process and more able to work along with the process. 10

I just ask for your comments in regard to the court-ordered conferences and the mediation that happens at those court-ordered conferences?---I've done a lot of court-ordered conferences and I can't say that I - I actually think that they're quite helpful. Once again I think that they're helpful if everybody is represented, otherwise I think that they can be a waste of time. Certainly when I'm a separate representative, I often am a separate representative in matters where the parties aren't represented and it's part of my role to try and assist the mediation process to try and get a resolution of the matter and it is often harder for me to get the parents to negotiate with the department when they're not represented simply because they feel that they're at a disadvantage. When you consider a lot of these people have difficulties with language, you know, understanding all these documents that have been given, understanding the process, you know, I take that on as my role a child rep to explain all of that to them. I think when there are representatives present, then often they are useful. 20

Yes, once again just re-asserting the need for legal representation in these child-protection proceedings? ---Yes; yes, and that goes equally for indigenous and non-indigenous families that are coming before the courts on these issues. 30

Just in relation to the social-assessment reports, how many people in Rockhampton are there that are referred - you would refer people to them for social-assessment reports? ---There are two.

Mr Swarbrick?---Mr Swarbrick and I was using - Ms Philippa Dunsner is another one and before we ceased working in this area - and I haven't been able to get her for family law matters at the moment. There's actually an ex-departmental worker who's got a psychology degree, Ms Mandy Dexter, who I had been trialing but I've only seen one or two reports. 40

Are you aware whether either of those two mediators have any sort of cultural awareness qualifications or knowledge?

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---Sorry, I think I've got - did you say "mediators"  
or - - - 1

No; no, social - - -?---Social-assessment report - - -

Yes, social assessment?---I'm not aware. I couldn't say.  
I suspect Ms Dexter probably does because she's worked for  
the department so I'm sure - I hope that that's part of  
their training. I suspect that both Mr Swarbrick and  
Ms Dunsner have a lot of experience in those areas, but  
whether they've got formal training I couldn't say. 10

Just to recap then, you believe it's extremely important  
that legal representation be made available to families?  
---I do.

Indigenous or non-indigenous?---Yes, I do.

Yes, thank you?---Thank you.

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

MR CAPPER: I have no questions, thank you. 20

COMMISSIONER: All right, thanks, Mr Capper. Any - - -

MS McMILLAN: No; no. Might this witness be excused?

COMMISSIONER: Ms Perren, thank you very much for the time  
and evidence that you have given. It is very much  
appreciated?---Thank you, commissioner.

WITNESS WITHDREW

MS McMILLAN: Might we have a short break? The next  
witness is here but there is just a matter I need to  
briefly raise. 30

COMMISSIONER: When you say "short" - - -

MS McMILLAN: 10 minutes; 15 minutes.

COMMISSIONER: 15 minutes.

MS McMILLAN: Thank you, sir.

THE COMMISSION ADJOURNED AT 11.08 AM UNTIL 11.23 AM 40



THE COMMISSION RESUMED AT 11.31 AM

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COMMISSIONER: Yes, Ms McMillan.

MS McMILLAN: Thank you, Mr Commissioner. I call Cheryl Lynn MacDonald.

**MACDONALD, CHERYL LYNN** affirmed:

ASSOCIATE: For recording purposes please state your full name, your occupation and your business address?---My name is Cheryl Lynn MacDonald. I'm a child protection liaison officer with Queensland Health, and my address is 82-86 Bolsover Street, Rockhampton.

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COMMISSIONER: Welcome, Ms MacDonald. Yes, Ms McMillan.

MS McMILLAN: Ms MacDonald, have you prepared a statement in relation to the matters before this inquiry?---Yes, I have.

All right. Would you have a look at this document, please. I presume you've got a copy with you?---Yes, thank you.

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Just have a look at that document, please?---Yes, that's correct.

That's a copy of it?---Mm'hm.

And the contents are true and correct?---Yes.

I tender that, Mr Commissioner. There's no reason this couldn't be published, is there, Ms MacDonald?---No.

No. Thank you.

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COMMISSIONER: That will be exhibit 97.

ADMITTED AND MARKED: "EXHIBIT 97"

COMMISSIONER: Thank you. Ms MacDonald, if I could just ask you some questions: you've indicated you're the child protection liaison officer. Quite a mouthful, isn't it, that title?---Yes.

And you prior to this appointments - I should just say you've been in this position since June 2007?---That's correct.

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All right. Just keep your voice up a little, if you would? ---Okay.

Prior to that you were a clinical nurse, Child and Family Health Services, Rockhampton District Health, February 2001 to June 2007?---Yes.

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MACDONALD, C.L. XN

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Prior to that, May to July 2001, you worked as a clinical nurse with Rockhampton Aboriginal Health Service?---Yes. 1

And would I be correct in saying really from 1982 until that time you worked continuously as a nurse, and for most, if not all of them, it has been in the paediatric area? ---That's correct.

All right. Now, you say that by formal qualification you're a registered nurse; you have midwifery qualifications and you have a child health nurse qualification. And you currently hold the relevant registration with the board. Correct? 10  
---That's correct.

Which is now the Australian Health Practitioners Board? ---Yes, it is.

Now, you say that a number of Queensland Health staff members contributed to the preparation of this statement and they include Dr Roper, who's the director of paediatrics. Correct?---That's correct.

And a member of the SCAN team. You also asked the commission to refer back to the statement of Ms Davies - Corelle Davies. Correct?---That's correct. 20

All right. Now, your duties, you've outlined in paragraph 9 of your statement. If I was to encapsulate them, you are really the single point of entry as between Health and the Department of Child Safety, would that be - from the health perspective?---Yes, that's correct. There are also - there's another child protection liaison officer in that role. There's 2.5 full-time equivalent to do this role, so we all share that role. 30

I'm always intrigued by a point 5 of a person. I take it by that - - -?---Full-time equivalent, you know, in time.

Right, okay. At paragraph 10 you set out there the reporting of reasonable suspicion of child abuse and neglect. I'll come to the figures in just a moment, but can I ask you this: having worked in this district, it seems really for at least the last 10 years if not more, do you see any particular trends of the types of harm that you see coming through, obviously you being affected with that gatekeeper of notifications or referrals being made. What do you notice? Any particular trends of the type of harm that you notice? 40

---First off I haven't got the statistics here, but we do keep that statistics in relation to what Queensland Health have in our reports. We actually keep that on our database. But - - -

COMMISSIONER: Can you provide that to the commission? ---Yes, we can.

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MACDONALD, C.L. XN

Thank you. Would you mind doing that?---No, that's fine. We can do that. We're more likely to see the physical harm to children because it's actually been seen, but more and more we're seeing neglect, as also goes with physical harm to the children. But yes, earlier on it was more physical in our reporting, but we're seeing more and more, like, a neglect-related.

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What are the symptoms of neglect?---The symptoms? That would be they're grubby, untidy, failing to - medical services, like following up all those appointments. The doctors are becoming more aware of the non-attendance for their medical needs, so there's more reporting around that.

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MS McMILLAN: Is failing to thrive? That is, not meeting your developmental milestones?---We don't see that a lot in the reporting. Like I was saying, when we - a lot of the staff do not have a lot of developmental - the nursing staff within community, like Child and Family Health and the Philip Street Health Service, the nurses involved with that have a lot more to do with child development. They will see that a lot more and they will be going out and seeing those failure to thrives in that early ages, but not in the older children. We don't have a lot of that. And then there's failure to thrive in the older children too.

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So in other words it's perhaps not that it doesn't exist, it's just that the numbers of nurses who have specific training in developmental stages of children are only either - are obviously considerably less than the general nursing population that would - - -?---That's correct.

- - - that would see children generally. In terms of emotional harm, is that a frequent issue that's raised in terms of protective matters?---It's a really hard one, to put emotional harm on paper, because most of it is - you know, you're having to write about how it affects the child, and a lot of staff have difficulty in actually writing that in a - they can actually verbalise, they understand, but it's really hard to put that in a written context.

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And of course your protocol is that you have to make a written report, don't you?---That's - - -

That's, I think, statutorily mandated?---Yes.

But it's also the protocol within Queensland Health? ---Queensland Health.

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So perhaps would it only be if you're speaking to that either doctor or nurse that you might say, well - if you were following it up verbally, that they might explain to you that there are issues of emotional harm that they're concerned about as well?---Yes. Some of the health professionals that we see - not see, that will phone us and

talk to us, because part of our role is they will discuss before they make a report because they have issues and they want to know should they make a report or shouldn't they make a report. They may ask - may contact us as a resource for reporting because they're developing a reasonable suspicion to report to child safety. We will then talk to them about that and then we might indicate they may not have thought about that emotional harm when they're talking about neglect, that this child has failed to meet appointments; or we may think that they may be at risk of emotional harm related to the neglect as well, when they're making that report.

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All right?---Yes.

Do you think - as you know, there are penalties in the Health Act for not reporting matters that there's a reasonable suspicion. Do you think penalising that is a good idea, or do you think that it would be perhaps better from your perspective if there was no penalty for not reporting it?---I think there's probably more over-reporting than under-reporting. In relation to being penalised, we stipulate that in our mandatory training to the doctors and the nurses, that there's a monetary penalty and there's a disciplinary penalty in relation to non-reporting.

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Yes?---They take that on board very seriously. I don't know if - personally I wouldn't know how someone would react.

Yes?---I couldn't give that evidence.

All right. I think you've answered what I needed you to. In your statement at paragraph 10 I see that really each year - and clearly we're not finished this year - but there seems to have been a steady rising - largely, except for 2009 - of the number of reports per year of a reasonable suspicion in this health region. Do you have any views about why that is the case?---Better education. We've actually really - because we've increased our staffing with child protection liaison officers I do believe that that has actually made more staff aware of harm to children, who they see in relation to - you know, that's why there's probably an increase in the reporting, probably.

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All right. The figures about Aboriginal, in particular, and perhaps to a lesser extent Torres Strait Islander population, one would think that that obviously supports the view that there's an over-representation of children who have Aboriginal background in terms of reports of reasonable suspicion being made vis-à-vis the general population. In terms of that issue are there particular initiatives via health to address that matter, that there's obviously an over-representation within this reporting structure?---Not to my knowledge. Like, I haven't got any - - -

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Whatever primary health services? Are there any initiatives - - -?---Primary health services, with Philip Street Health Service it's mainly an indigenous - a community indigenous centre.

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Who refers to it?---All Queensland Health can refer - any other entities can refer to that service.

Is it promoted as a service that - - -?---For indigenous - - -

- - - is staffed by and for indigenous people? ---Non-indigenous people can actually attend the service as well, but it has a high indigenous service, because it's a house within the community. It's not like a big - you know, a big building. It's behind the CES building.

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Where is it located?---Over in North Rockhampton.

Okay, right?---Yes, close to a shopping centre, close to a bus service.

I see?---So it's easier for people who are - like, indigenous people would be going to those other services, using services - housing is close by that, like, the public housing office is close by that. So it's a service that's close by that. They can - it's a hub they can visit for support.

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All right, thank you. Can I take you, please, to paragraph 14(f) of your statement? You say there's effective communication between child safety and the child protection liaison officers but the communication is less effective with other Queensland health workers. There would be benefit in improving the communication between child safety and key Queensland Health clinicians who are directly involved with children and their family. Can you just expand a bit on that, please?---That would be - sometimes with clinicians changing with different clients and the processes of different departments within Queensland Health, within the ATOD service, Alcohol, Tobacco and Other Drug Services and Child and Youth Mental Health and Mental Health as well, they have different caseworkers. The communication - sometimes child safety

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are wanting written communication, sometimes they have -  
advocating for the client, sometimes different clinicians,  
being psychologists, social workers, have different -  
they're protecting their clients' confidentiality as well,  
because these are mothers and fathers and other people that  
have these children, as well as the children themselves. I  
think there's a better communication with Child and Youth  
Mental Health. They seem to liaise a little bit better  
with those services because child safety refer a lot of  
children to that service, so they're having a lot more  
contact with those services, whereas it's more adult based  
in the other services, which is just - they're dealing with  
the parents in the removal of the children or having the  
children in care.

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So there's an inherent tension there, is there, in  
that - - -?---Sometimes, sometimes not. Like, I can't  
guarantee that, but there is not as open communication as I  
have with child safety.

Do you have any particular ideas about how that  
communication may be improved?---I think sometimes it would  
probably be better having education sessions, you know,  
sharing of information, of education. To give an example,  
a few years ago we started doing education at our community  
health centre and department officers came down and we  
talked about development and did a few sessions of that.  
Then staff were meeting their child safety officers and  
feeling comfortable about talking to them and engaging with  
them. These were all the people that sit in an office in  
town but they were just normal people, clinicians  
themselves, working with families, and I think that was  
more engaging and everyone was learning about development  
and child behaviours and things like that, because we found  
that some of the child protection officers didn't have that  
knowledge on child development that - of what children's  
needs at specific ages - stages of their life cycles.

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Would that clearly seem to be a very important aspect,  
wouldn't it, that they have a proper understanding of that?  
---Yes.

All right. I want to ask you about the issues at (h), (i)  
and (j) of your statement. Now, you've indicated there  
these relate to the removals of newborn babies. You say  
there are occasions, in (h), where child safety officers  
will make requests of Queensland Health, that things do not  
meet legislative practice. Examples, a newborn baby be  
removed from a mother without any statutory orders being in  
place. As an example, request from the child safety after  
hours to health professionals to serve a temporary  
assessment order on parents in the absence of local staff  
during weekends. You've give those examples, and another  
one. How prevalent is that, in your experience, say in the  
last five years?---That's been asked a few times. I could  
say, yes, probably at least five times, of my knowledge,

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six times, that would have been asked of a nurse on a maternity ward to do that, and that's not part of what's required of Queensland Health. We don't do serving of orders. We care for the client and their infant.

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Has it been requested at times that health service - so say, for instance, nurses, supervise a mother and baby whilst in the hospital?---Yes, and that's not part of our positions either. We don't supervise the care of the mother with the baby, because once the baby is born it normally goes to be with the mother on the ward and if there's a temporary assessment - we can't supervise 24 hours a day what that mother is doing. She might be in a ward with five other women, so we can't actually supervise one on one with her what she's doing with her baby, but we have been asked to do that.

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Again, do you have any idea of how often this has been asked, so far as you can tell?---It's getting better because we keep telling them that we can't supervise. It's because there's new staff at child safety. We'll tell some staff then we'll get new staff and they don't know the procedures. They're not aware of what happens, so we have to re-educate new staff that keep coming along.

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In (i) you've spoken about the unborn high risk alert, that uniformed police officers on weekends and public holidays have attended the maternity unit and served a postpartum woman with a temporary assessment order and arranged for the baby to be removed. You say that there's no explanation given to the mother and it's served without any knowledge. Now, I take it - do you understand that the police are serving the order because it's after hours, effectively, and there's no departmental person available? ---That exact thing happened two weeks ago, like, not last Sunday, the Sunday before. Yes, it happened.

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Right, and as I understand it, for the high risk alert to have been raised really it can only have been cumulative, if you like, harm, because the baby has just been born. So there can't be - - -?---There's a - - -

- - - one would think, largely a risk particularly associated with anything the mother has or hasn't done at that time. Has there been any explanation so far as you're aware about why it is left to this point in time for firstly this order to be served - well, I'll withdraw that, because it has to be served after the baby is born?---Born, yes.

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But is there any explanation as to why there's been no effective explanation to the mother beforehand or any warning that this may occur?

---The reason why sometimes they're not told, we're told by Child Safety, is that there's a risk of flight to the mother or going underground or leaving the state or district so that Child Safety aren't aware that the baby has been born mainly because they've got history with Child Safety. I'd say that would be it. We have unborn high-risk alerts come from all departments all over the state so at the moment in our folder at the hospital we have - there are seven unborn high-risk alerts but only two of those are for the Rockhampton area, so we'll get them from all over the state. So I couldn't say what their investigations have done in the other areas, but for the ones that we have got from the local offices here on the investigation and assessment team they - sometimes they've had - they've got children in care and they're working - they're talking to them, but when they're served with the order, the parent still has not got any idea of what the processes, what's going to be happening after the birth of the baby. 1 10

COMMISSIONER: Is there a trend for the alerts to relate to siblings, that is, the same mother giving birth over a period of years which the state intervenes at hospital? ---Sometimes they will do that for every child that comes along. It just depends on the circumstances of the parent. If the parent's been drug-using, I'd say - if she's a regular, if she's known and we've given a lot of information to Child Safety in the lead up to the birth of the baby, it's just depending - and they won't intervene before because the child may- we don't know the harm to the child, if the baby has withdrawing symptoms which is the harm to the child. They're suffering from withdrawals after birth and then there may be an assessment then. We may even just get unborn high-risk alerts and the parents take their child home with them or Child Safety will say, "We've done the investigation. Yes, they're fine." We just notify them and they'll do the investigation when they go home. They just want to be notified of the birth of the baby. 20 30

So when you get an alert, you then become an informant for the department on the mother?---Yes, we inform them of the birth of the baby.

But also of the progress of the mother during the pregnancy?---Yes.

Does the mother know that?---Not generally, no. 40

MS McMILLAN: So I just want to clarify some evidence you gave a couple of minutes ago. So when you say the department might be working with the mother about other children she already has - - -?---Yes.

- - - but she is what, unaware that there's an unborn child-risk alert about the one she's pregnant with?---She's carrying, mm.

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Right?---So she doesn't know what's going to be happening for the baby, this one that she's carrying, after birth. So people don't - they don't talk to them about that. 1

COMMISSIONER: From your observations, what's the reaction of the mothers?---Very traumatic, especially the other week it was a lady that had, like, an intellectual impairment and for understanding - it was very difficult for her to understand that process.

MS McMILLAN: So who ended up explaining to her what was happening?---The social worker. 10

From the hospital?---From the hospital, yes; like, she was given by police the temporary assessment order - the court-assessment order, I should say, she was given then and then Child Safety came on the Monday and spoke to her and then they removed the baby at that stage and the mother was discharged from hospital, but the social worker spent many hours with her after that time of that removal and so - - -

COMMISSIONER: So the hospital social worker had to spend a lot of time dealing with the mother's trauma to the removal?---Yes, that's correct. 20

MS McMILLAN: And, from what you understand, assisting her to understand it as well?---Yes, understanding that process; yes.

Right. Do you know how much of a part her intellectual impairment played in the basis for the court-assessment order or are you unable to tell us that?---I am unable to tell you that because I don't know - like, I don't know their assessment process and how they came to that removal. 30

COMMISSIONER: Was the role of the hospital social worker something that was arranged with the department or something that the hospital did out of - - -?---No, the child protection liaison officer - we all know that this mother will need support after the removal.

So that's part of your role to arrange it?---Yes, we will do that or if they have engaged with a social worker previously, we will engage that same social worker who's looked after her antenatally.

So the liaison officer really is an agent of the department?---I should hope not; I should hope not. 40

What you do is sort of an agency thing, isn't it? You tell the department what's happening with the mother without her knowing?---We have to share information with them under legislation. Yes, we do.

Which legislation?---159M and N of the Child Protection

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Act. It's the sharing of information with Child Safety if it's in relation to child protection, yes. 1

MS McMILLAN: In fact you talk about that in 10(b) of your statement, don't you?---Yes.

COMMISSIONER: Let me catch up with that. It's permissive, not mandatory. You may give it?---Yes, but if we get a letter N, we have to give it.

Yes, and do you always get a 159N requirement from the chief executive?---N? 10

Yes, do you always get - - -?---From the manager not always, no.

No?---Sometimes we do.

All right. Let's leave the legislation and its interpretation alone for the moment, but whether it's legislated or not, you virtually are acting as the agent of the department, aren't you?---If we don't give it, they'll request it from freedom of information and they can request a copy of the records. 20

That takes a long time though?---Yes, that's right.

MS McMILLAN: Sorry, this social worker from the hospital who explained both the terms - well, explained what was happening to this lady, the lady with the intellectual impairment, and obviously - - -?---Just a support role mainly.

A support role. I'm just interested - is there some sort of understanding with the department that the hospital will undertake that role or is it really a default setting? ---It's a default setting for us to deal with - to support the mother who's had the baby. 30

COMMISSIONER: So to do no harm, the hospital?---Yes, we wouldn't leave a mother just floundering when a mother's been taken from her - - -

Okay?---Yes, you know, we wouldn't just say, "Yeah, you can just go home," without any support in place.

But by necessary implication the department does do that? ---Yes. I'm sorry, sir, yes, of course. 40

And you're there to pick up the pieces?---Yes, that's correct.

MS McMILLAN: Thank you. I have nothing further with this witness.

COMMISSIONER: Thank you.

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There's no formal arrangement for that to happen or guidelines for how it should happen, how long it should happen, no negotiation or MOU with the department around that?---No.

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Thank you. Thanks, Mr Hanger?

MR HANGER: Just a couple of things. You said, I think, that in the maternity ward you're not equipped to do one-on-one supervision?---No, we're not.

Because the baby rooms in with the mother?---The mother, yes, that's correct.

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But I presume that it doesn't happen in every case?---No; no, we get - the only place that our supervision can occur is in the special-care nursery where - but we do get asked - - -

But a special-care nursery might be what, for preemie babies or sick babies?---Sick babies.

Yes, but what about a mother who's suffering from depression, third-day blues?---Like, who's had their baby removed or - - -

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No; no; no, the mother who's come down with depression three or four days after birth?---Yes.

I presume the baby doesn't necessarily room in with her, does it?---Depending on the circumstances.

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Depending on how bad she is?---Depending on that. Because we have mothers that on the third day - not just baby blues, that they can be admitted to the mental health unit because they'll have - - -

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But I presume those babies, because you want to protect them from a sick mother - - -?---Yes.

- - - are monitored basically full-time?---That's correct, yes.

Away from the mother?---From the mother, yes.

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And I'm not suggesting it's ideal, but if necessary that would happen in respect of these cases where you're asked to do that by the department?---Yes, because they could have sick babies themselves.

Of course?---Yes. And so they are in the special care nursery and there will be supervision there, but that's the only time.

Because you would hope that the department don't make the request for the supervision without some good reason when they're taking the baby away from the mother?---Well, I should hope not, yes.

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Of course, related to this is this business about, you know, police serving orders and so on, it's a question of who is working 24 hours a day, isn't it?---That's correct, yes.

That's the difficulty, anyway?---And it is difficult for the - you know, you get a police officer on a maternity ward with all these other mothers that are around, it's quite stigmatising to other that's been served with an order after birth of her newborn baby.

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COMMISSIONER: And she'll be in a general ward, presumably?---Yes, that's correct.

But you've got a bit of an idea when a child is going to arrive, I mean, you know - - -?---I don't work weekends or anything like that.

No, I know. But the system gets to know in a general way what the timeframe is for birth. I know it's not certain, I know they come early and late?---They have an expected day, yes.

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So you could do it another way than by the police, couldn't you?---I don't know - - -

What the arrangements are?---No.

MR HANGER: I'm just trying to get to the root cause of

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these things and it seems to me that at the hospital you're running a 24-hour service; to a large extent, of course, the police offer a 24-hour service, but the department doesn't offer the same service over the 24 hours?---That's correct. 1

That gives rise to some of these issues that you describe? ---That's correct.

Can I just go to paragraph 14(c), and I think it again that can be considered to be 14(d). It seems to relate to information-keeping systems. At the top of page there's a (c)?---Yes. Requests for information: we supply information to child safety. We might get a little bit - give them information, but then they may change case workers, like - and we've already given that information to the previous caseworker, and there's another caseworker, and we were wondering do they have a process of, you know, transferring over this information and the doubling up of the information? We may get to request within a couple of months for the same information. 10

It should be on a file somewhere, be it electronic or written?---It should be on a file somewhere, but they keep asking for the same information, and I'm thinking, "Well, you know, we are busy as well. We are dealing with other issues and supporting hospital staff." We don't need to have doubling up. 20

COMMISSIONER: So you only supply information on request? ---That's correct.

Not voluntarily?---No.

And sometimes you repeatedly provide the same information to different requesters?---Yes. 30

About the same child?---About the same child.

MR HANGER: And then you make the point in the next subparagraph that the systems don't seem to be compatible. So it's a problem that could be fixed up with spending some money?---Yes, it probably could.

So that you could have access to their system on a need to know and vice versa - - -?---Well, need to know basis, yes. We're not electronic records; we still paper-based records. We have different clinical records and I have to - like, hospitals, our area for the Rockhampton is Mount Morgan, Woorabinda, Capricorn Coast, all of mental health, they all run on different electronic systems. Everything is different and it is - yes, it is difficult. 40

Correct me if I'm wrong, but whether it's a good idea or not, Queensland Health is attempting now to go to an electronic system - - -?---They are.

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- - - whereby a record will follow anybody anywhere, so that if you're in Woorabinda you can have access to the x-rays that are in Brisbane and so on?---Yes, which would be really good.

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Which is the idea, anyway?---Mm.

Hasn't happened here as yet?---Not here. Quite expensive, I guess.

Can I ask you to elaborate on subparagraph (1) there, just in fairness to you, "There's an inconsistency in skill level, knowledge and application and frameworks across the system and there is no clinical leader." What are you referring to there?---That is with the child protection liaison officers. Within our area, like, the Central Queensland hospitals and health service district, there's a CPLO in Gladstone, there's a CPLO full-time equivalent in Billaweela, Emerald and us in Rockhampton, and we don't have a clinical leader to support us in our role, so we are attached to all different teams and we all work differently within those in our areas.

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And is that a vacancy in a position at the moment, or does the relevant position not exist?---The position does not exist. And we find that it would be beneficial we did have a clinical leader.

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If you have that position created?---That would support us in our - with what we're doing in ongoing education in relation to child protection.

Thank you. Thank you, sir.

COMMISSIONER: Thanks, Mr Hanger. Yes, Mr Guy.

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MR GUY: Ms MacDonald, just one point I wanted to raise with you; you've indicated that up at the hospital there is a special care babies - - -?---Nursery.

- - - nursery?---Yes, that's correct.

I'm just going back to the old days when all babies went to a nursery?---Yes, they don't now.

We had to look at them through a - - -?---Glass.

- - - a glass window.

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MR .....: You're showing your age.

MR GUY: So there is this particular avenue for babies with special needs to be placed for a period of time. What would be your thought that if a high risk alert was made, that something is put in place that these babies of these mothers go into that special care unit, say, for a week

where they could be brought to their mother for feeding but at least the mother has some interaction with that child for a period of time, and possibly also to get some advice?---Like attachment with the mother, you mean, and - - - 1

Yes, some bonding?--- - - - and supporting her. That would be lovely, but it's a high needs unit, it's not just for well babies, it's only for high needs.

But some of these babies may not be well in regard to possibly drug dependency?---Could be withdrawing, yes. And they will stay there and the mother will be supported while the baby remains in the hospital and the mother can remain in the hospital. 10

When you get these high risk alerts and the baby is born, are you able to give some sort of percentage of how many of these babies might need special care after birth? ---Depending on the drugs. Like, if they are using - some of the mums, with what they've been on, those affects don't happen straightaway, they can be, like, three days after. Normal births, they're discharged the following day to the midwifery service, so they don't remain in hospital. 20

What I'm just trying to ascertain is whether on the birth of a child - high risk - - -?---Alert.

- - - alert child - would it not be possible that those children could be kept in the hospital for a period of time rather than being taken by child safety?---Not if they're well, no. There's no facilities for that to happen in the hospital.

Yes?---Not to my knowledge, no - - - 30

But facilities could be - with funding, facilities could be made available?---They probably could be, but it doesn't - like, the unborn alerts don't happen every week. They're not there all of the time. They're not - yes.

Thank you. Just in regard - this is relating to Aboriginal and Torres Strait Islander people - you've mentioned that the recognised entity - the role of the recognised entity is not really understood by a lot of the parents?---Mm'hm.

Is that correct?---Yes. Because they're of a different family group they do not want those - they don't identify with that recognised entity that child safety may bring to the meeting that they may be having to discuss with the family. 40

I'll just explain. Not all children are removed from the hospital on unborn high risk alerts. Child safety will talk to the client, our patient, away from the ward and they will talk to them. I'm only giving this in the Rockhampton area, okay. It could be different in different areas, but they don't always remove the babies, they do not always go into care, okay. They sometimes will go, sometimes they won't, depending on their discussion with the parent.

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But certainly if the child is taken that has a fairly dramatic effect on the mother and the parents?---Yes, that's correct.

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Have you made efforts to discuss with the recognised entity you liaise with at the hospital about how to make their role more knowledgeable to - - -?---We don't deal with the recognised entity. Child safety bring the recognised entity with them. We have indigenous liaison officers within health, yes. We do have one that works within the community and works with the hospital as well based at Philip Street Health Service. There's also another indigenous liaison officer who does within the hospital as well with adult clients.

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Just in relation to children where there's child protection concerns, and I mean not as notified from child safety but just from the clinical people that are looking after the mother and the child, is there an avenue - rather than you making some notification to child safety, is there an avenue where there could be a separate referral from the hospital to say a place like Philip Street?---We will refer clients to other services in preference to child safety, like to the - are you talking specifically about indigenous clients?

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No, in relation to - yes?---Okay. Indigenous clients will be - to prevent them getting into the child protection system, they - we will refer them to the referral for active intervention with the Red Cross service which can support the families with housing and within the - they will go into the home, and also for the Central Queensland Indigenous Development. That's based at the university and they do the indigenous - and they will support the family. They will be trying to support the family before they get into the child protection system.

Yes, so that's a referral?---So we will refer clients to those services as well, yes.

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Yes. No further questions, commissioner, thank you.

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

MR CAPPER: Thank you. I have no questions, thank you.

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COMMISSIONER: No questions? 1

MR CAPPER: No questions, thank you.

COMMISSIONER: Ms McMillan?

MS McMILLAN: Might this witness be excused? I have nothing further.

COMMISSIONER: Thank you. Yes, thank you very much for coming, Ms MacDonald. We really appreciate the time and the evidence that you've given?---Thank you. 10

WITNESS WITHDREW

MS McMILLAN: Mr Commissioner, there are two further statements. Notice was given to the other parties that we were not seeking to have these witnesses give oral evidence. The first one is by a Dr Peter Clifton Roper who is a paediatrician based at the Rockhampton Hospital who I referred to in Ms MacDonald's evidence. His statement is 8 October this year. The second statement is from Paul James Elliot who is a detective senior sergeant of police performing duties as the officer in charge of the child protection investigation unit of the Rockhampton district. I'll just get the date of that. That is 11 October. 20

COMMISSIONER: Dr Roper's statement will be exhibit 98 and Detective Senior Sergeant Elliot's statement will be exhibit 99.

ADMITTED AND MARKED: "EXHIBIT 98"

ADMITTED AND MARKED: "EXHIBIT 99"

MS McMILLAN: Thank you. 30

COMMISSIONER: You haven't got one more?

MS McMILLAN: No, I can't make the ton today. Mr Commissioner, there's a matter that I need to raise with you about publication of a document. I propose, and I've indicated to others here, that I do it in a closed session, because it is in relation to a publication issue. So could I perhaps raise that now, because we've finished the evidence otherwise.

COMMISSIONER: What I might do then is I might stand down, close the proceedings, then I'll re-open in camera. 40

MS McMILLAN: Yes, thank you.

THE COMMISSION ADJOURNED AT 12.16 PM  
UNTIL TUESDAY, 30 OCTOBER 2012

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