

CHILD SAFETY COMMISSION OF INQUIRY

Level 5, Courtroom 23, Brisbane Magistrates Court,  
363 George Street, Brisbane

On Wednesday, 4 February 2026 at 10.10 am

Before: Mr Paul Anastassiou KC, Commissioner

Counsel Assisting: Ms Robyn Sweet KC  
Mr Nathan Boyd  
Ms Bianca Mendelson

1 COMMISSIONER: I note that I adjourned the hearing to  
2 10.15. That was habitual. I didn't mean to. But  
3 tomorrow --

4  
5 MS FREEMAN: There's no complaints from me.

6  
7 COMMISSIONER: Well, then you'll be pleased by this news,  
8 Ms Freeman. Tomorrow we'll have to start at half past 10  
9 because I have another meeting.

10  
11 MS FREEMAN: Thank you, Commissioner.

12  
13 COMMISSIONER: Thank you.

14  
15 MS FREEMAN: Commissioner, before we start I just wanted  
16 to raise the issue of LPP claims that we finished on at the  
17 end of - on the day before.

18  
19 COMMISSIONER: Yes.

20  
21 MS FREEMAN: I just wanted to confirm that we've been able  
22 to obtain instructions to waive privilege in relation to  
23 those six documents that were in contention.

24  
25 COMMISSIONER: That's very helpful. Thank you,  
26 Ms Freeman.

27  
28 MS FREEMAN: I just wanted to also just indicate to you,  
29 Commissioner, that there was an issue raised during our  
30 discourse about the role of the Director as an independent  
31 statutory appointee and how that might impact upon the  
32 ability to claim legal professional privilege. We've given  
33 some considerations to that and there's some submissions  
34 I'd like to make to you, Your Honour, about that, but  
35 I don't want to do that today. I'll do that in writing, if  
36 that's convenient, just so that Your Honour can understand  
37 the basis for it.

38  
39 COMMISSIONER: Does that concern the privilege that OCFOS  
40 has, or that OCFOS creates, I should say; it's the  
41 privilege of the department and derivatively the Attorney,  
42 and the potential waiver for that if material is provided  
43 to the Director that is privileged? Is that the issue?

44  
45 MS FREEMAN: No. No, it's more broadly that if the State  
46 makes a claim of legal professional privilege does that  
47 legitimately arise when you have an independent statutory

1 officer. We say it does because of the way the DCPL Act is  
2 structured. But I don't want to bog us down in that today.  
3 Just in case it arises again in terms of other LPP claims  
4 being made by the State --

5  
6 COMMISSIONER: Certainly. I think we touched on this  
7 debate last year and I expressed the tentative view that  
8 the material that is privileged created by OCFOS if  
9 conveyed to the Director would remain privileged because of  
10 the principle of common interest. But, anyway, the point  
11 you might wish to ventilate may be different to that.

12  
13 MS FREEMAN: It's a slightly different point, yes. But,  
14 again, I don't want to get bogged down in that today  
15 because I'm very conscious of Ms Martin being in the  
16 witness box for a long period of time already.

17  
18 COMMISSIONER: Yes, of course. Of course.

19  
20 MS FREEMAN: So I just wanted to indicate there might be  
21 something coming from us about that in writing in due  
22 course but otherwise content for the examination of  
23 Ms Martin to proceed. Thank you, Commissioner.

24  
25 COMMISSIONER: Thank you very much, Ms Freeman. Ms Sweet.

26  
27 MS SWEET: Yes, thank you, Your Honour.

28  
29 **<CLAIR SHIRLEY MARTIN, CONTINUING** [10.13 am]

30  
31 **<EXAMINATION BY MS SWEET, CONTINUING**

32  
33 MS SWEET: Ms Martin, thank you for your continued  
34 attendance and assistance at this Commission. Can I take  
35 you back to the folder of additional documents that we were  
36 looking at on Monday and in particular to the departmental  
37 history record that we were talking about, which is page  
38 343 of the bundle?

39 A. Yes.

40  
41 Q. And I think in your - before I take you to specific  
42 parts of that document, I think you acknowledged on Monday  
43 that this child was a child with complex medical and  
44 developmental needs?

45 A. Yes, I believe in the Director's briefing note it  
46 referred to FASD and autism or ADHD, one or the other.

47

1 Q. Yes. If a child has FASD that is - I appreciate that  
2 you're a lawyer, not a doctor. Your understanding is that  
3 that's a form of acquired brain injury?  
4 A. Yes, caused in utero before the child's birth.  
5  
6 Q. Yes.  
7 A. Yes.  
8  
9 Q. Yes. I think you also acknowledged that prior to the  
10 child self-placing the child had been harmed in care?  
11 A. Yes, I believe there was a reference to a harm report  
12 in this document.  
13  
14 Q. Yes. So I just want to take you to - if we look at -  
15 and again you'll recall that the child self-placed from  
16 January 2022?  
17 A. Yes.  
18  
19 Q. We established that through the documents on Monday.  
20 You'll see that there's a harm report six rows down on  
21 page 344; do you see that?  
22 A. Yes.  
23  
24 MS SWEET: Do you have that, Your Honour?  
25  
26 COMMISSIONER: Yes, I do.  
27  
28 MS SWEET: Yes, thank you.  
29  
30 So just going through this line. So SOC, event type,  
31 that's a standards of care event?  
32 A. Yes.  
33  
34 Q. Yes. That occurs on 26 August 2021, and there's a  
35 harm report. What does that mean that there's a harm  
36 report that's made?  
37 A. My understanding in standard of care matters it's a  
38 review of whether the care arrangement is meeting the  
39 statement of standards in section 122. When it's recorded  
40 as a harm report I understand that to mean there's a - the  
41 concern indicates actual harm may have been experienced.  
42 So it's more serious than a standard of care matter where a  
43 harm report is not also recorded as part of that process.  
44  
45 Q. Okay. So the harm report will mean actual harm has  
46 occurred to the child whilst in care?  
47 A. That's my understanding.

1  
2 Q. Thank you. So it says there it's the subject child -  
3 so it's this actual child we're talking about - who the  
4 harm report relates to?  
5 A. Yes.  
6  
7 Q. And it says, "SUB", so sub, "STDS" - standards - "not  
8 met"?  
9 A. Yes.  
10  
11 Q. And the type of harm is emotional harm?  
12 A. Yes.  
13  
14 Q. You'd accept from our review of the documents this is  
15 while the child is in residential care?  
16  
17 COMMISSIONER: Ms Sweet, can you just tell me where on  
18 page 344 is that?  
19  
20 MS SWEET: Yes, thank you, sir. So you see that there's  
21 four rows at the top where the first column says, "In, in,  
22 in, in"; do you see that?  
23  
24 COMMISSIONER: Ongoing intervention - I might be on the --  
25  
26 MS SWEET: You need to be on the next page, Your Honour.  
27  
28 COMMISSIONER: It's 345? Yes, okay.  
29  
30 MS SWEET: Sorry.  
31  
32 COMMISSIONER: No, that's all right.  
33  
34 MS SWEET: Sorry, I've given you a bad steer there.  
35  
36 COMMISSIONER: No, no, no, that's fine. Okay. Then at  
37 six --  
38  
39 MS SWEET: So six rows down you'll see SOC is the type of  
40 event?  
41  
42 COMMISSIONER: Yes, I see.  
43  
44 MS SWEET: Yes. Thank you.  
45  
46 COMMISSIONER: I'm with you now. Thank you.  
47

1 MS SWEET: Yes. Well, I've misdirected you badly.  
2  
3 COMMISSIONER: No, not at all, not at all.  
4  
5 MS SWEET: And just say if you can't say whether or not  
6 you're sure this - whether the child was in residential  
7 care?  
8 A. I can say the child was in care. There's a person  
9 responsible. I can't say whether that was a residential  
10 care placement.  
11  
12 Q. Yes. But in care where the department is the child's  
13 guardian?  
14 A. Yes.  
15  
16 Q. So this is in August 2021?  
17 A. Yes.  
18  
19 Q. So the child begins self-placing at the start of  
20 the next year?  
21 A. Yes.  
22  
23 Q. For a matter of - four and a bit months later the  
24 child self-places?  
25 A. Yes.  
26  
27 Q. You'll see then prior to that, just underneath that,  
28 there's a second standards of care matter from August of  
29 the year before, August 2020?  
30 A. Yes.  
31  
32 Q. And there's an outcome, "Continue monitoring"?  
33 A. Yes.  
34  
35 Q. So there's been a decision - there's been a standard  
36 of care matter raised in respect of the child. There has  
37 not been harm established but there has been an indication  
38 from the department that it needs to continue monitoring  
39 the situation?  
40 A. Yes.  
41  
42 Q. And, again, the child's in care at this point?  
43 A. Yes.  
44  
45 Q. Then you will see further down there's an "in, in, in,  
46 in" and then there's an MOC?  
47 A. Yes.

1  
2 Q. And MOC, can you say what that is?  
3 A. It's matter of concern. It's substantially the same  
4 thing as a standard of care, just a change in terminology.  
5  
6 Q. Okay. So this is sort of eight years prior?  
7 A. Yes.  
8  
9 Q. This was in 2012. You'll see this relates to - so  
10 there's been a notification in respect of that child.  
11 That - again sub MOC. Do you know what MBOS means?  
12 A. No.  
13  
14 Q. Okay. And it says under the column, "Intake and  
15 assessment most serious harm", "Risk of emotional harm  
16 caused by neglect"?  
17 A. Yes.  
18  
19 Q. And then there's a person responsible, which indicates  
20 again this child is in care at the time?  
21 A. Yes.  
22  
23 Q. And that the child is at risk of emotional harm and  
24 that that risk of emotional harm is present because of the  
25 neglect of the child in care; correct?  
26 A. Yes.  
27  
28 Q. Yes. And so it's against that background where  
29 there's been two separate instances of the child - well,  
30 there's an instance of the child being neglected in care  
31 and then an instance of the child suffering emotional harm  
32 in care. By the time we get to the second harm being  
33 established it's a matter of, say, four months later that  
34 the child starts self-placing; correct?  
35 A. Yes.  
36  
37 Q. Yes. So we ought not to see the child self-placing as  
38 some sort of victory of the child deciding himself that  
39 this is where he's safest. It's a decision that reflects  
40 the fact that the child has been harmed over a number of  
41 years in care; correct?  
42 A. I disagree with that, and, to be fair, I think the  
43 child would need to be asked himself the reasons for  
44 leaving care.  
45  
46 Q. And the child has self-placed having been harmed twice  
47 in care, and it's been unclear on the evidence between the

1 time of the harm in residential care and the time of  
2 self-placing what, if any, substantive intervention has  
3 been made by the department to assist the child to remain  
4 in a care placement where his needs are being met?  
5 A. I haven't seen that in the material I've been asked to  
6 consider.

7  
8 Q. Yes. I appreciate that you came into this matter late  
9 but, having looked at that matter and having raised the  
10 grievance against the Director, you can't recall from your  
11 review whether or not there had been substantial and  
12 material interventions about that child by the department  
13 during that period; correct?

14 A. If I may, can I clarify. I wasn't raising a grievance  
15 with the Director. I wasn't disputing the decision the  
16 Director's office made to not file an application.

17  
18 Q. Yes.  
19 A. I think if I was I had the ability to request fulsome  
20 written reasons, I had an ability to request an internal  
21 review of that decision. I was taking issue with the  
22 barrier to a court considering updated circumstances for a  
23 young person and whether the long-term guardianship order  
24 is still appropriate and desirable unless Child Safety was  
25 able to establish the child was no longer in need of  
26 protection. It was that distinction.

27  
28 I believe I've accepted the deficiencies in that brief of  
29 evidence and concede that it was likely not an incorrect  
30 decision to make on the evidence the Director's office was  
31 given. My concern was in relation to the application of  
32 the legal test. That's my issue with the evidence - with  
33 the decision.

34  
35 COMMISSIONER: Ms Martin, I have understood the way you  
36 raise it.

37 A. Yes.

38  
39 COMMISSIONER: The expression "grievance" may not - you  
40 take issue with that characterisation; I appreciate that.

41 A. Yes.

42  
43 COMMISSIONER: Your query or the issue you raise, I think,  
44 is that the Director is the gatekeeper in the sort of  
45 structural sense through which an applicant must pass in  
46 this context. That, however, is a consequence, is it not,  
47 of the Director being charged with the responsibility to

1 decide whether particular applications should go before the  
2 court, and do I take it that you think or it's your view  
3 that to have a filter of that kind is not desirable?  
4 A. No, Commissioner. I think there absolutely should be  
5 a legal filter before any application goes to the court.  
6 My issue is in relation to the child in need of protection  
7 test, that the interpretation taken that that is a  
8 prerequisite or threshold before asking the court to revoke  
9 or vary an order of this nature. So in this circumstance a  
10 protective supervision order would have actually likely  
11 given the department more ability to protect this child and  
12 meet his needs. It would allow them to enter any home  
13 where the child was living, actually would give them more  
14 authority than a guardianship order that is unable to be  
15 utilised.

16

17 COMMISSIONER: I don't want to quibble with you,  
18 Ms Martin, but doesn't a protective order of that kind  
19 assume that the child is in need of protection?

20 A. Yes, Commissioner.

21

22 COMMISSIONER: It's just that the way in which protection  
23 can be afforded is different?

24 A. Yes.

25

26 COMMISSIONER: And less intrusive?

27 A. Yes, Commissioner. And that's my exact point, that  
28 sometimes a child is still in need of protection but the  
29 current order is no longer appropriate and desirable, and  
30 that conversation was shut down through the requirement for  
31 the Chief Executive to first establish the child was no  
32 longer in need of protection before an application was  
33 considered.

34

35 COMMISSIONER: I understand your point, and you took me to  
36 the workings of the statute in this respect.

37 A. Yes.

38

39 COMMISSIONER: Including I think section 65(5), which does  
40 impose a requirement that the order be appropriate in the  
41 circumstances.

42 A. Yes.

43

44 COMMISSIONER: I'm paraphrasing.

45 A. Yes.

46

47 COMMISSIONER: But, as we discussed two days ago, it does

1 seem that embedded within that requirement is an assumption  
2 that the child needs some protection, so the statute sort  
3 of taketh away and giveth back at the same time?

4 A. I think, Commissioner, that there could be two  
5 pathways for revoking an order or varying an order. The  
6 court could be satisfied that all the concerns have been  
7 resolved and the child was no longer in need of protection  
8 and no order was required, or the court could still have  
9 the view that the child remains in need of protection but  
10 there's a better way or a better order, a less intrusive  
11 order, to meet the child's needs, and it was that  
12 distinction that was my concern on this matter.

13  
14 COMMISSIONER: Sure. Thank you. I think you've clarified  
15 your position.

16 A. Thank you, Commissioner.

17  
18 COMMISSIONER: I hope you're satisfied with having done  
19 so. Thank you. Ms Sweet.

20  
21 MS SWEET: Thank you. Thank you, Your Honour.

22  
23 I apologise; "grievance" was my word, certainly not your  
24 word, and I accept the correction. You've spoken about the  
25 gaps in the department's evidence. In terms of sort of the  
26 themes of what was missing, can you speak to what your  
27 advice is on that?

28 A. I think if this was my matter earlier I think I would  
29 have recommended that the department properly consider how  
30 the child's protective needs could be addressed in the  
31 future. So that could have included the affidavit material  
32 demonstrating whether they had considered an IPA or a  
33 supervision order, so it didn't just stop at, "The child's  
34 still in need of protection, and we don't need an order."  
35 Like, it properly could have particularised how this  
36 child's ongoing or this young person's ongoing needs were  
37 going to be met.

38  
39 I do think the form A that we briefly discussed on Monday  
40 was lacking in detail. I think it could have painted a  
41 much clearer picture for the Director's office as to why  
42 this matter should be reconsidered by a court or why they  
43 should consider invoking the coercive powers of the court,  
44 and I think I said on Monday that I did ask my senior  
45 lawyer to make sure any new referral or any brief comes to  
46 me for review before it went back across to the Director's  
47 office to look at all of those things.

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I also think our legal advice on this matter was lacking in detail. I think it was very, very brief. I did note on Monday that it was written in December, which - not by way of excuse but by way of explanation - is the busiest time for our team.

Q. Yes, if I just take you to it --

A. Certainly.

Q. -- it's at 517 - in case that assists you.

A. Certainly. I think it was lacking - my reading of that - and I haven't specifically asked the legal officer involved. My reading of it is that I suspect the legal officer involved thought more weight would be given to the evidence of the community-controlled organisation than the Director was entitled to decide how they place weight. I think the legal officer thought more weight would be given to the updates and reports from the delegated authority organisation, and in that thinking hasn't been as fulsome with respect to all of the other provisions of the Act.

Q. Yes. If you're just looking at that advice - and it talks about the primary evidence that would support the referral would be the assessment of the CEO?

A. Yes.

Q. And there's encouragement to "prepare a holistic written assessment which covers the excellent work the family and other stakeholders have done to support the reunification". Do you accept that there's an overweighting of the evidence about the child is at home and reunified with the mother rather than on whether or not a revocation of the order would best suit the child's permanency needs given the complexity of the child's needs?

A. Yes, I think one of the difficulties of the Act is that there are I think 45-plus principles in the principles of the Act, and it can be very, very hard to decipher which one should be given precedence or which one should be given more weight, and I think in this matter I think there were a number of - I think cultural - the child's cultural needs was likely given more weight than some of the other principles. And I don't mean that as a criticism because I think sometimes it's appropriate to place more weight on cultural needs. But there's no weighting to the order of the principles, so that can become very complex in

1 assessments in terms of determining what's in a child's  
2 best interest.  
3  
4 COMMISSIONER: Save for the --  
5 A. Paramount principle.  
6  
7 COMMISSIONER: -- overarching principle, or the paramount  
8 principle --  
9 A. Yes.  
10  
11 COMMISSIONER: -- I'm interested in your observation that  
12 there are 45 principles?  
13 A. Yes. I think it's 47.  
14  
15 COMMISSIONER: Forty-seven?  
16 A. Once you break them down into the subparts.  
17  
18 COMMISSIONER: Do you see scope for streamlining, as it  
19 were, those principles?  
20 A. Yes.  
21  
22 COMMISSIONER: They do seem to be an attempt in the  
23 statute to particularise the paramount principle?  
24 A. Yes.  
25  
26 COMMISSIONER: So if you see them in that context, if  
27 that's the right interpretation, then does it not come back  
28 to an evaluation of those principles, guided by the  
29 paramount principle, if you see them all as, if you like,  
30 expressions of that --  
31 A. Yes.  
32  
33 COMMISSIONER: -- overriding principle, and of course  
34 because there are boundless variations in the facts of a  
35 particular case the exercise involves evaluating the  
36 apposite principles in the case of the particular child in  
37 question?  
38 A. Yes.  
39  
40 COMMISSIONER: But maybe the Act doesn't need to be as  
41 explanatory as it is; is that something like what you're  
42 saying or --  
43 A. I think in my view part of the difficulty is that the  
44 principles have been added at different times along  
45 different points without necessarily changes to the  
46 specific or express provisions relating to the different  
47 parts. So I think that makes it complicated. My view,

1 I think the department and families would benefit from  
2 something more akin to the Family Law Act, which prescribes  
3 in section CC what the court should consider when  
4 determining best interests. I think the paramount  
5 principle incorporates safety, wellbeing and best interest  
6 now and for the remainder of a child's life, and I think  
7 guidance on how that should be interpreted would be helpful  
8 and would assist.

9

10 But I also think that there are specific principles that  
11 should be legislated elsewhere in the Act. I think  
12 particularly for First Nations children, until active  
13 efforts becomes part of the test before a court can make an  
14 order, I think the way that that is dealt with in different  
15 courts across the state will not have consistency.

16

17 COMMISSIONER: Active efforts in what respect? In  
18 relation to reunification?

19 A. No, so in relation to First Nations families, so --

20

21 COMMISSIONER: Yes, but in relation - in the context of  
22 reunification efforts; is that what you mean?

23 A. In the context - so the current principles require  
24 active efforts any time a significant decision is made. So  
25 in a court context the significant decision would be either  
26 the applying for the child protection order or the court  
27 making the child protection order. In my view, the court  
28 should have to be satisfied that the department has  
29 exhausted thorough, purposeful and timely active efforts.

30

31 COMMISSIONER: Can you assist me by --

32 A. Certainly.

33

34 COMMISSIONER: -- reminding me where or pointing out where  
35 in the Act the active efforts provision is?

36 A. May I have an Act?

37

38 COMMISSIONER: Don't worry, it's not an exam, Ms Martin.

39 A. I believe it's 5C.

40

41 COMMISSIONER: Pardon me?

42 A. I believe it's 5C or 5 --

43

44 COMMISSIONER: I'm very interested in your views as an  
45 experienced practitioner.

46 A. Commissioner, the principles in relation to First  
47 Nations children in themselves are quite difficult to grasp

1 because it places separate obligations on the Chief  
2 Executive and then different obligations on the Litigation  
3 Director in the Childrens Court. So starting at 5C.

4  
5 COMMISSIONER: Yes. I've read those principles and  
6 considered them several times, but it's the active efforts  
7 issue.

8 A. And then if you go - so 5C is the right to  
9 self-determination and then the application of the five  
10 elements of the child placement principle, and then if you  
11 go on to section 5F and 5G. So 5F is where the definition  
12 of "active efforts" is included at the end of that part,  
13 and that part places that obligation on the Chief  
14 Executive, the Litigation Director and any authorised  
15 officer.

16  
17 COMMISSIONER: So active efforts to?

18 A. Apply the principle.

19  
20 COMMISSIONER: It imposes it, as you say, on, well,  
21 everybody in the department, the Chief Executive and the  
22 Litigation Director; active efforts to apply the  
23 principles, the Aboriginal and Torres Strait Islander child  
24 placement principle, in consultation with the child and the  
25 child's family; and then "active efforts" is defined to  
26 mean "purposeful, thorough and timely efforts to apply the  
27 principle"?

28 A. Yes.

29  
30 COMMISSIONER: So it's pretty prescriptive, isn't it?

31 A. There's a - subsection (3), though, Commissioner,  
32 provides some exemptions if the person making the decision  
33 doesn't think it's in the child's best interest or it's not  
34 practicable. So it's well defined, it's prescriptive but  
35 there's exemptions, and it's not part of the legal test  
36 before a court can make an order.

37  
38 COMMISSIONER: I'm not so sure about that because it's a  
39 principle that is --

40 A. Excuse me, it's a principle. It's not one of the  
41 express requirements in section 59 that the court has to be  
42 satisfied of before making an order. Section 59 does have  
43 additional requirements for making a PCO in relation to a  
44 First Nations child, but there's no requirement that active  
45 efforts be demonstrated before the court makes a child  
46 protection order in section 59. The principles and the  
47 paramount principle obviously still apply.

1  
2 COMMISSIONER: And these principles, do you take them to  
3 apply to the making of emergent orders?  
4 A. Yes.  
5  
6 COMMISSIONER: So --  
7 A. Again --  
8  
9 COMMISSIONER: -- emergent orders often arise, as you've  
10 described, in an --  
11 A. Emergent way, yes.  
12  
13 COMMISSIONER: -- urgent context --  
14 A. Yes.  
15  
16 COMMISSIONER: -- and there may not, practically speaking,  
17 be any opportunity for anyone to make active efforts --  
18 A. Yes.  
19  
20 COMMISSIONER: -- where what is being sought is an urgent  
21 ex parte order to protect the child perceived to be or  
22 there's reasonable uncertainty about the child being at  
23 immediate risk of harm?  
24 A. Yes.  
25  
26 COMMISSIONER: So I mean, looking at it practically, it  
27 would be difficult to criticise the absence of active  
28 efforts that aren't practically possible in the context --  
29 A. Yes.  
30  
31 COMMISSIONER: -- but in a child protection order context  
32 your point is different?  
33 A. Yes, Commissioner. If an application is being made on  
34 the same day there may not be time or capacity or  
35 practicable in its ordinary sense would come into play.  
36 But once a child has been on an order for two years or once  
37 a court is ready to make a final determination on a child  
38 protection order there really should be little reason that  
39 that hasn't been properly explored and evidenced.  
40  
41 COMMISSIONER: So you would recommend some requirement to  
42 the effect that the court must be satisfied that active  
43 efforts in accordance with the obligations in section 5F  
44 have been undertaken?  
45 A. Yes, Commissioner. In my view, I think that's the  
46 only way that there will be actual change rather than just  
47 intentions, if the court had to be satisfied of it.

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COMMISSIONER: All right. Well, thank you for that. Are there any other important observations you would make in relation to the workings of the Act and its application in practice based on your substantial experience as a practitioner in this area?

A. There's lots, Commissioner.

COMMISSIONER: How long have you got?

A. There's a number of parts of the Act that I actually think makes the work of the department more difficult in some ways. One of the examples is in relation to the protection of notifiers even when the notifiers are professional organisations. So, for example, if the department gets a notification from Queensland Police we know that that information is likely verifiable; it's coming from police records. The notification itself is still treated as an allegation, and then in order to use it in evidence the department has to do an information request to QPS to say, "We can't use your notified concerns. Give us the evidence directly from QPS." I think small tweaks like that --

COMMISSIONER: Is that in the context of an emergent order or --

A. In the context of all of the work the department does. So they'll have to do a section 159M and N request to Queensland Health, to Education, to QPS to get source documents and original evidence to rely on in courts, when we know that the professional notifiers are sharing that information - essentially we're creating more work for those external partners, partner agencies, and for the department to have to make that request formally. I think you could protect the individual police officer or the individual teacher or the individual doctor without using their name but still clearly demonstrate notified concerns were received from Queensland Health and then the court knows that they can place weight on that.

COMMISSIONER: Well, there's the fact of the notification which is relevant in itself and would be reasonably given weight to in an emergent order context, just the mere fact that the notification from a responsible authority such as the health department or the police?

A. Yes.

COMMISSIONER: But when one comes to the question of an

1 ongoing intervention by way of a child protection order  
2 it's reasonable, isn't it, to produce and examine the facts  
3 that are the subject of the notification?

4 A. Yes.

5  
6 COMMISSIONER: And that's available, but you're saying  
7 I think that the process of obtaining the underlying facts  
8 is clunky and bureaucratic in some way, that makes more  
9 work that isn't needed?

10 A. I'm saying that the - currently in order to protect  
11 the notifier confidentiality the department isn't even able  
12 to put in court material that a relevant authority provided  
13 that information for the court to consider. So the  
14 applications will have to say, "A notification was recorded  
15 with these concerns," and then underneath it --

16  
17 COMMISSIONER: Without identifying the notifier?

18 A. Without identifying the notifier at all. And then  
19 underneath it we have to say, "On this day we called QPS,"  
20 or, "We called Queensland Health, and they told us this  
21 information," which inevitably is exactly the same as the  
22 original notified concerns that they told the department  
23 about. So it's doubling up the work for everyone.

24  
25 COMMISSIONER: So what's the workaround?

26 A. I think the workaround is if the notification comes  
27 from a professional agency rather than the community or  
28 family I think the department should be able to say, "QPS  
29 provided a notification with this information."

30  
31 COMMISSIONER: I'm surprised that the department can't say  
32 that as opposed to perhaps identifying the human --

33 A. Yep.

34  
35 COMMISSIONER: -- being who notifies on behalf of one of  
36 those agencies. In any case, perhaps I could invite the  
37 department to assist me by providing some sort of outline  
38 or submission based on the sort of observations that only  
39 those who are involved day to day can really have, can have  
40 a good understanding of. I am asked to look at the Act, so  
41 if there is some assistance you can give me in relation to  
42 the matters, the working out of the obligations under the  
43 Act that present practical problems, I'd be grateful to  
44 receive that information.

45 A. Commissioner, I am aware that my office has in the  
46 past developed, you know, a document of, "These are the  
47 type of practical legislative reforms that we would like to

1 see happen," and I'm sure that could be updated and  
2 provided.

3

4 COMMISSIONER: That would be of great assistance to me,  
5 and we'll fashion a notice, to protect everybody, that  
6 picks up that material. Thank you. Yes, Ms Sweet.

7

8 MS SWEET: Yes. Thank you.

9

10 Ms Martin, I don't need to refer you to that folder  
11 further. What I do now want to take you to is back to this  
12 concept of adoption. I think last year and also on Monday  
13 you gave some evidence about your team's involvement in  
14 providing advice about adoption?

15 A. Yes.

16

17 Q. And you gave evidence about the hierarchy and adoption  
18 being third in the hierarchy, and you spoke about practical  
19 impediments --

20 A. Yes.

21

22 Q. -- for the department to implement that hierarchy. So  
23 that is the context in which I now want to raise some  
24 questions with you. I'm going to hand up to the witness  
25 and to Your Honour a spreadsheet that the department has  
26 produced under a notice to produce. I appreciate you won't  
27 have seen this, and you don't need to look at it in detail,  
28 but what this shows is in respect of adoptions of children  
29 from care since the financial year 1996 to the financial  
30 year 2019/20, and it shows there have been 16 adoptions in  
31 that time, and what it shows by omission - and the  
32 department, as I understand it, accepts this - is that  
33 since the financial year 2019 there have been no adoptions  
34 of children from care; and you're happy to accept those  
35 matters?

36 A. Yes.

37

38 Q. Yes. This is in the context of the - from 2013 there  
39 was the Carmody recommendation that you'll recall?

40 A. I recall the recommendation with respect to adoption.  
41 I don't recall adoption being referenced in that report at  
42 all.

43

44 Q. In which report?

45 A. In the "Taking responsibility" - the Carmody report.

46

47 Q. Okay. What I'm going to also do is hand you the

1 recommendation closure report in respect of the adoption  
2 recommendations just for your information, and I hand it up  
3 to Your Honour as well.

4  
5 I'll tender these, Your Honour. I'm also conscious,  
6 Your Honour, I have not tendered any of the documents that  
7 I've taken Ms Martin to. What I will do is get the legal  
8 team to put together a schedule of the documents I've taken  
9 Ms Martin to and I'll formally tender those.

10  
11 COMMISSIONER: Yes. Ms Martin's statement has been  
12 tendered, has it not?

13  
14 MS SWEET: Yes, it has. It was tendered last year.

15  
16 COMMISSIONER: All right. That will be fine. Do you want  
17 to then include these documents in the tender?

18  
19 MS SWEET: In the tender bundle, yes.

20  
21 COMMISSIONER: Yes. Thank you.

22  
23 MS SWEET: That's suitable.

24  
25 And so you'd accept from me that this is a document that is  
26 a closure report which reports on how the department has  
27 implemented that particular Carmody recommendation?

28 A. Yes.

29  
30 Q. Does OCFOS have any role in advising the department on  
31 whether or not it has in fact implemented a recommendation  
32 from these types of reports?

33 A. I'm uncertain whether the Official Solicitor has, but  
34 I haven't.

35  
36 Q. Yes. You'll see there that the recommendation was the  
37 department routinely consider and pursue adoption,  
38 particularly for children aged under three, in cases where  
39 reunification is no longer a feasible case plan goal. So  
40 it's in that context that we see that from 2013 there have  
41 been - so if we take the financial year 2013/14 below,  
42 there's been nine total adoptions following that  
43 recommendation from Carmody?

44 A. Yes.

45  
46 Q. I know you've been employed within the department  
47 since pre-Carmody. Is it correct to say that in fact the

1 department has not routinely considered and pursued  
2 adoption, particularly for children under three, where  
3 reunification is no longer feasible?

4 A. I think it's correct to say that, but I think there's  
5 also a broader context. Apologies, it's been a while since  
6 I've looked at it, but my understanding in the acceptance  
7 of this recommendation that even in acceptance the  
8 government acknowledged that adoption of children from care  
9 is a contentious issue with a broad context around it as  
10 part of the acceptance, and I think the department takes  
11 that into consideration. And I think that the principles  
12 in the Adoption Act about adoption being suitable for  
13 children whose parents choose adoption or who don't have  
14 parents able, and the provision - I mentioned in December  
15 I think there is a difficulty still in pursuing an adoption  
16 if the child's parents are not agreeable to that course.  
17 But I do accept and I agree that the department doesn't  
18 necessarily consider it for all children under three where  
19 reunification is not an option and they could do better.

20  
21 Q. Even for all children under three --

22 A. For all children.

23  
24 Q. -- who are not - I mean, this recommendation didn't  
25 refer to a distinction --

26 A. Yes.

27  
28 Q. -- - where we deny - effectively deny Aboriginal and  
29 Torres Strait Islander children even the opportunity to be  
30 adopted?

31 A. To - yes.

32  
33 Q. All right. You see how in the recommendation it is  
34 rebranded by the department as permanency, previously known  
35 as adoption. So that is a rebranding by the department  
36 which moves it away from the text and the spirit of that  
37 recommendation, which speaks only to adoption, not  
38 permanency more broadly?

39 A. I see that, and I suspect that that probably aligns  
40 with the amendment to the principles in 2018 in terms of  
41 adoption in the Child Protection Act being included as part  
42 of the permanency principles in that new provision. But,  
43 yes, I accept that it's rebranded as permanency rather than  
44 adoption.

45  
46 Q. So, when it says "Description of implementation and  
47 delivery", the department - there's a bald statement there

1 that the department does routinely consider and pursue  
2 adoption, particularly for children under three, in cases  
3 where reunification is no longer a feasible case plan goal.  
4 So you say that - it's your evidence that that assertion is  
5 in fact incorrect?

6 A. Yes, I wouldn't say "routinely". I would say the  
7 department considers and pursues adoption when a  
8 practitioner has deemed that it may be appropriate for a  
9 child or a parent requests it.

10

11 Q. And it's the case, is it, that the department has both  
12 accepted the recommendation but said, "But it's a  
13 contentious issue, and therefore we take our view that it's  
14 contentious into account into whether or not we will  
15 actually implement this recommendation"?

16 A. My recollection wasn't necessarily that it was the  
17 department saying it was contentious. It was - and  
18 I apologise, it's been some time, but it was - that was the  
19 Queensland government response to the acceptance of that  
20 recommendation. But I'm happy to be corrected on that  
21 point; it's been some time.

22

23 Q. Okay. You see then under that provision, so under the  
24 heading "Description of implementation and delivery" four  
25 line paragraphs down:

26

27 *Adoption Services has implemented the My*  
28 *Home initiative, which is an alternative*  
29 *permanency option. It involves recruiting,*  
30 *training and supporting couples who are*  
31 *willing to provide long-term foster care*  
32 *for a child.*

33

34 Is it correct to say that what that is saying is that the  
35 department, under the heading of "Adoption services", in  
36 fact recruits people willing to adopt away from adoption  
37 and into long-term foster care?

38 A. I don't think it's necessarily accurate to  
39 particularise it like that. I think the - my understanding  
40 of the My Home initiative is that it looks at people who've  
41 already been assessed as prospective adoptive parents, who  
42 have already been deemed suitable and are on the list, who  
43 might have a significant wait until a child may be  
44 available for them to be - for adoption, and it's about  
45 approaching those people to see if they would be interested  
46 in considering becoming carers for particular children. So  
47 not carers that would generally be facilitating

1 reunification but for young children who are unlikely to be  
2 reunified, with the hope that either an adoption could  
3 later potentially be considered or a permanent care order  
4 or long-term guardianship to other order to those suitable  
5 people.  
6

7 Q. Just in the context of these numbers and there being  
8 no child in care adopted since the financial year 1920,  
9 that's also in the context - I accept the correction from  
10 my - so 2019 to 2020. So no child adopted from care from,  
11 say, 30 June 2020, that's also in the context of the  
12 recommendations of the coroner in the Mason Jet Lee  
13 inquest?

14 A. Yes.

15  
16 Q. And the finding by the coroner that in fact the  
17 Carmody recommendation had not been implemented in any real  
18 sense?

19 A. Yes.

20  
21 Q. You recall that finding?

22 A. Yes.

23  
24 Q. And the findings of that coroner then led to the  
25 changes in the permanency hierarchy?

26 A. Yes.

27  
28 Q. So in that context, with that finding of the coroner,  
29 with those amendments into the priority - into the  
30 permanency priority, there have - the department has not  
31 pursued and obtained a final adoption order for any child  
32 in care?

33 A. Yes, on those numbers.

34  
35 Q. Yes.

36 A. I can also say that I'm not aware of any matters where  
37 our team has represented the department in relation to a  
38 final adoption order for a child in care. There have been  
39 matters where we've consulted or given legal advice, but  
40 it's not yet - those matters are not at the point yet where  
41 an application has been made.  
42

43 Q. Yes. Is it the case based on your experience within  
44 the department over a long period of time that there is -  
45 within the department there is an anti-adoption culture?

46 A. No, I don't think it's fair to say an anti-adoption  
47 culture. I think it's fair to say that Queensland

1 recognises past historical practices with respect to forced  
2 adoptions, I think it's fair to say that the department and  
3 adoptions team consider the apology for forced adoptions,  
4 and I think it's fair to say that there's a reticence to  
5 consider or pursue adoption if the family are not agreeable  
6 to that or not supportive of that. So I think there is a  
7 resistance to considering adoption unless it's almost  
8 directed or supported by the family so that the department  
9 can be reflective in terms of the Queensland context with  
10 respect to adoptions.

11  
12 Q. Does that effectively mean that in a context where the  
13 department is required to consider the best interests of  
14 the child as paramount it is taking into account past  
15 historical practices, which are clouding its judgment and  
16 responsibilities in respect of what children in care  
17 currently need?

18 A. No, I think that forms part of their assessment in the  
19 same way research or all of the other various matters they  
20 consider to reach a practice assessment. I think it forms  
21 part of it, and I think you couldn't suggest it didn't.  
22 But I think what is guiding them really is the provisions  
23 in the Adoption Act and the difficulty with pursuing an  
24 adoption for a child unless the parents are agreeable to an  
25 adoption plan. If the parents are not agreeable to an  
26 adoption plan, the court is restrained from making an  
27 adoption order.

28  
29 Q. Yes, I just want to take you to that. So the way the  
30 adoption system is currently set up, even if the department  
31 had taken upon itself to pursue adoption because it was the  
32 best interests of the child and the parents were unwilling  
33 and there was, say, a double dispensation which meant that  
34 both the parents had been unreasonably withholding their  
35 consent to the adoption --

36 A. M'hmm.

37  
38 Q. -- that adoption would still not proceed because to  
39 make a final adoption order you would have to get the  
40 agreement of the parents, who are unreasonably withholding  
41 their consent to the adoption to the adoption plan?

42 A. Yes, with an added nuance of it's only if the parents  
43 come to the - if the parents say - if the parents are  
44 parties to the meeting about the adoption plan and don't  
45 agree. So if the parent doesn't attend or disengages then  
46 the matter can progress, but if the parent remains -  
47 despite a dispensation, if the parent remains a

1 conscientious objector, comes to the meeting and then  
2 refuses to agree to the adoption plan, an adoption can't  
3 happen.  
4

5 Q. Is that a legally absurd set-up?

6 A. Yes, I think it is - with the intent of both Acts  
7 meant to be working together. So the Child Protection Act  
8 and that principle anticipates that that should be an  
9 option for children in care. The Adoption Act almost  
10 presupposes a finding about a parent not being willing and  
11 able in the foreseeable future before you can even consider  
12 adoption. So I think they absolutely could be reformed to  
13 make those two pieces of legislation work more coherently  
14 together.  
15

16 Q. Yes.  
17

18 COMMISSIONER: So should I understand that under the  
19 current provisions of the Adoption Act if agreement isn't  
20 obtained there's no power in the court to order adoption,  
21 so it is essentially a consensual jurisdiction?

22 A. Commissioner, it's not that it's a consensual  
23 jurisdiction. It's - the court's still making - it's still  
24 a best interest jurisdiction where the court makes that  
25 determination. But before the court can make a final  
26 adoption order of a child who was in State care, if there's  
27 an adoption - if there's an adoption plan, it must be  
28 agreed - sorry, there must be an adoption plan agreed by  
29 the parties. So if the parents don't come to the meeting  
30 and don't participate and don't engage there would be an  
31 adoption plan signed by the parties who attended the  
32 meeting.  
33

34 COMMISSIONER: But not by the parents?

35 A. But not - it's not required to - it's not required to  
36 be signed or agreed by the parents unless the parents say  
37 they want to participate and attend the meeting. So if you  
38 have parents who are just disengaged and say they don't  
39 agree to the adoption but don't come along to the meeting  
40 as almost a conscientious objector and say, "I refuse to  
41 agree to this plan," then the court - the court's  
42 restrained from making an order if the parties to the plan  
43 don't agree.  
44

45 COMMISSIONER: So if by reason of the non-participation of  
46 parents in the plan they're not parties one way or the  
47 other to the agreement --

1 A. Yes.  
2  
3 COMMISSIONER: -- then the court can --  
4 A. Can make.  
5  
6 COMMISSIONER: -- make an order. So let's call that not  
7 opposed.  
8 A. Yes.  
9  
10 COMMISSIONER: But if they actively oppose by refusing to  
11 agree to the adoption plan then the court has no power to  
12 make an order in the face of that contest by the parents?  
13 A. Yes, that's my reading, Commissioner. Even if the  
14 court has previously made a dispensation with respect to  
15 that parent's consent they still - the court --  
16  
17 COMMISSIONER: That seems a little self-contradicting?  
18 A. Inconsistent. Yes, I agree. I think it's a  
19 technicality in the legislation that means there's a  
20 barrier to progressing adoption orders.  
21  
22 COMMISSIONER: So, just coming back to the recommendation  
23 closure report, in the last paragraph under that box  
24 "Description of implementation and delivery", the view's  
25 expressed that:  
26  
27 *Permanent care order provides a long-term*  
28 *permanent care option for children with*  
29 *benefits equivalent to adoption without*  
30 *adoption's negative effect obscuring birth*  
31 *relationships.*  
32  
33 Now, that seems to be a summary of the department's sort of  
34 policy, if you like, with a view to adoption. To put it  
35 another way, there's a better option. The option is a  
36 permanent care order because in substance it achieves the  
37 same outcome as adoption but doesn't carry with it the  
38 negative effect of obscuring the identity, if you like, of  
39 the child being born to particular parents. Is that how  
40 I should read that?  
41 A. Commissioner, that's how I read it. It doesn't  
42 necessarily mean I agree with it. But that's how I read  
43 it, the same as you.  
44  
45 COMMISSIONER: Well, what don't - we agree on the  
46 construction?  
47 A. Yes.

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COMMISSIONER: That's a good thing. What in relation to the substance of what is there said do you not agree with?  
A. I don't agree that a permanent care order provides children with benefits equivalent to adoption, as a starting point.

COMMISSIONER: In what respects, just pausing there?  
A. I think adoption is creating an entirely new family arrangement for a child or young person. It's giving them a sense of identity within that new family unit. They're not a child in State care. So even when there's a permanent care order they're still a child under a child protection order in State care.

COMMISSIONER: But with the State stepping back?  
A. With the State stepping back. But in terms of their sense of identity they're still a ward of the State or they're still in State care. They're still under a child protection order. I just don't think the benefits of an adoption are equivalent to any child protection order, so a permanent care order.

COMMISSIONER: So in your view in an appropriate case - you can't fashion the definition of an appropriate case in advance, I don't think, but let's just assume that an appropriate case can be identified after evaluation of all of the factors pertaining to the child - would you say that where adoption is sought it would be a preferable outcome from the child's perspective to a permanent care order?  
A. Not necessarily. And I think - it's really hard to answer without a specific set of facts to apply that to, but I think there's cases where adoption absolutely would be in a child's best interest and then there's cases where a permanent care order would be in a child's best interest. I think one of the most relevant considerations for these types of decisions is siblings because we know that it's rare that you have one single child and you don't then have later siblings. An adoption permanently severs that family of origin connection even to the siblings. So through the actions or inactions of the parent the child loses that ability and that right to have a relationship with siblings, and I think in my experience practitioners place a lot of weight on the importance of that family of origin connection. So adoption isn't considered - adoption isn't considered as an easy option. They have to give consideration to that broad range of circumstances of

1 severing, you know, relationships with grandparents and all  
2 other kin and siblings.

3

4 COMMISSIONER: Okay. So adoption has potentially at least  
5 a benefit in your view in that the child is, for want of a  
6 better way of describing it, fully embraced by the adoptive  
7 family and is no longer a child subject to a child  
8 protection order made by the State?

9 A. Yes.

10

11 COMMISSIONER: Against that, it erases the child's  
12 identity and connection to the child's birth family?

13 A. Yes.

14

15 COMMISSIONER: Does it necessarily have to do so? I mean,  
16 there are forms of adoption, are there not, where the  
17 adoptive parent is prepared to agree to ongoing connection  
18 with the birth family, and that presumably would extend  
19 also to siblings?

20 A. Yes. So there - as part --

21

22 COMMISSIONER: Is that called open adoption?

23 A. Yes. So as part of that adoption plan that the  
24 parties have to agree to the adoption plan can outline  
25 how - you know, whether the parents want to stay in  
26 contact, what siblings contact could look like. So those  
27 relationships can be maintained through arrangements in the  
28 adoption plan. But there's no way to not completely sever  
29 the legal relationship to the family of origin. So there  
30 might be agreement in terms of ongoing contact and seeing  
31 each other and remaining connected. But the legal  
32 relationship is completely severed.

33

34 COMMISSIONER: What is the legal relationship? You mean  
35 the guardianship powers?

36 A. All parental responsibility powers. So the powers  
37 that a parent has by virtue of being a parent. So parental  
38 responsibility. After an adoption a new birth certificate  
39 issues with the name of the adoptive parents as the  
40 parents. And then it has flow-on effects for things you  
41 wouldn't necessarily consider like succession and visa  
42 entitlements. So all of those family of origin type  
43 connections transfer to the adoptive family and away from  
44 the biological family.

45

46 COMMISSIONER: Sure. How is a permanent care order in  
47 substance different to an adoption which is what I'm going

1 to call an open adoption where there is within the plan  
2 that's been agreed to the availability of ongoing contact  
3 between the adopted child and his or her birth family and  
4 siblings? What's the difference in substance?

5 A. So a permanent care order is still a State child  
6 welfare order. So if a permanent care order is made and  
7 then the guardians decide they want to move to New Zealand  
8 they have an order that's not enforceable in another  
9 country in the same way an adoption would. So there's  
10 still limits on the family who have that order. There's --

11  
12 COMMISSIONER: Can they travel overseas without seeking  
13 permission? Can they go on a family holiday?

14 A. Essentially it depends what country they go to. So  
15 they can. But frequently they will need to consider  
16 registering that permanent care order under the Family Law  
17 Act so that it's recognised as a federal parenting order,  
18 and then other countries would be more inclined to accept  
19 it as an Australian order. But there are complications in  
20 even going to New South Wales or going interstate with a  
21 permanent care order. Medical practitioners may not accept  
22 that as sufficient basis. Some may not question it, but  
23 some may query it, given it doesn't have federal effect.  
24 So the order is still in place but it can't necessarily be  
25 enforced in other states, unless it's registered under the  
26 Family Law Act.

27  
28 COMMISSIONER: Well, can I ask you to extend the homework  
29 to include your observations about the interplay between  
30 the Child Protection Act and the Adoption Act?

31 A. Certainly.

32  
33 COMMISSIONER: Any other observations you would like to  
34 make about the either desirability or undesirability of  
35 adoption in the child protection context?

36 A. The only other observation I would like to make is -  
37 I'm sure, Commissioner, that you've heard a lot of evidence  
38 about the resourcing of Child Safety and the workloads.  
39 The type of assessment that needs to happen for an adoption  
40 cannot be done by a child safety officer that has a  
41 caseload of 30 children, and the assessments we see from  
42 our colleagues in adoption and permanent care services are  
43 really reflective of how thoughtful and thorough those  
44 assessments need to be. I know that --

45  
46 COMMISSIONER: They don't seem to have resulted in a  
47 single adoption?

1 A. They're - of children from care.

2

3 COMMISSIONER: Of children from care.

4 A. So there are adoptions that happen from parents -  
5 mothers or parents approaching and saying, "We want our  
6 child adopted." The Adoption Act has a care agreement  
7 option where a parent can sign a care agreement, an  
8 adoption care agreement, which means the child can get  
9 placed with a foster carer under the Child Protection Act  
10 but the child isn't considered in care under the Child  
11 Protection Act. So there are adoptions that happen -  
12 interim adoptions and final adoptions usually from children  
13 who have been on adoption care agreements rather than being  
14 formally in the child protection system.

15

16 COMMISSIONER: That's another complicated nuance that  
17 I need to think about.

18 A. Absolutely.

19

20 COMMISSIONER: All right. Anything else you can think of?

21 A. Nothing further, but we, I'm sure, would respond to  
22 that notice with any other specific provisions that we  
23 thought could assist the operation of the Act.

24

25 COMMISSIONER: Do you see it, adoption that is, in the  
26 child protection context as remaining as a potential  
27 worthwhile outcome in an appropriate case, in the right  
28 case?

29 A. Yes, Commissioner. I also think it's unusual to me  
30 that there is the separation. So it's the Childrens Court  
31 that makes both these orders but it's not the same  
32 Childrens Court. So I think when considering whether to  
33 make a child protection order the same judicial officer  
34 that's been overseeing the case or determines the matter at  
35 hearing could or should have that option available for them  
36 to consider, even if it's making a declaration that  
37 adoption may be suitable for a child and then those steps  
38 could be taken.

39

40 COMMISSIONER: Who makes an adoption order?

41 A. A Childrens Court magistrate. So it's the same --

42

43 COMMISSIONER: And a Childrens Court magistrate makes --

44 A. The child protection order. It goes --

45

46 COMMISSIONER: Well, where's the problem?

47 A. It's goes to the same court; it's just completely

1 separate proceedings that don't interplay with each other  
2 at all.

3

4 COMMISSIONER: Notwithstanding the permanency hierarchy?

5 A. Yes. So I think the permanency hierarchy could be  
6 given more effect if it was open for a Childrens Court  
7 magistrate to consider whether adoption was appropriate as  
8 part of the child protection order proceedings.

9

10 COMMISSIONER: Impliedly, the court should consider that  
11 and in particular whether the permanency hierarchy has been  
12 shown on the material before the court to have been  
13 complied with?

14 A. Yes, and the court may not be satisfied that it had  
15 been complied with or may make specific comment or finding  
16 about that. But that then doesn't in any way compel an  
17 adoption to happen or that next - it would compel the  
18 department to consider an adoption, but the court's power  
19 is - once the determination is made about whether a child  
20 protection order should be made or not, that court function  
21 has ended. So for an adoption to then proceed there has to  
22 be a completely separate court application under the  
23 different Act.

24

25 COMMISSIONER: Why do you say the court 's power is ended  
26 once the order is made?

27 A. I say that in relation to the conclusion or the  
28 finalisation of proceedings, and I believe there's an  
29 appeal decision about putting conditions on a final order.  
30 So I think, once the court's made that determination about  
31 whether a child protection order should be made or should  
32 not be made, the matter is no longer before the Childrens  
33 Court.

34

35 COMMISSIONER: And thereafter it becomes a matter entirely  
36 of administrative decision-making in relation to placement?

37 A. Yes.

38

39 COMMISSIONER: All right. Thank you.

40 A. Thank you.

41

42 COMMISSIONER: Ms Sweet.

43

44 MS SWEET: Yes, thank you. Those are my topics for  
45 Ms Martin today.

46

47 COMMISSIONER: Thank you. Mr Creamer or is it - who's

1 going first?

2

3 MR CREAMER: I think Ms Greenwood would like to go first,  
4 Commissioner.

5

6 COMMISSIONER: Very well.

7

8 <EXAMINATION BY MS GREENWOOD

[11.18 am]

9

10 MS GREENWOOD: Can I just take you to that last point  
11 about permanent orders. Do I understand it correctly that  
12 a court can't impose contact conditions such as contact  
13 with siblings in permanent orders but can for temporary  
14 orders?

15 A. So on a final child protection order the court can't  
16 impose conditions, but the court can make interim orders  
17 with respect to contact if a matter is proceeding through  
18 the court.

19

20 Q. Doesn't it seem strange that you can't have a  
21 condition requiring ongoing contact with siblings, for  
22 example?

23 A. To me it does. I think what would benefit a lot of  
24 families in this jurisdiction is if you could have  
25 something that looked more like a consent order in the - a  
26 parenting order or an order under the Family Law Act that  
27 prescribed what contact arrangements would look like, and  
28 I think that for a range of orders. So even permanent care  
29 orders, it could potentially attribute the parental  
30 responsibility to the guardian, but then clearly set out in  
31 a court order what contact with the family looks like.  
32 I think it's one of the weaknesses in our Child Protection  
33 Act that there's limited ability for the court to make  
34 those sorts of longer term orders that would give clarity  
35 to the whole family.

36

37 Q. Which you can get in the Family Court --

38 A. Yes.

39

40 Q. -- but you can't get here?

41 A. Yes.

42

43 Q. So that may be an appropriate recommendation for the  
44 Commission, and to improve that consistency between the  
45 jurisdictions?

46 A. I'm not sure if I said this in December, but I'm aware  
47 that - comparatively, if you look at New South Wales that

1 uses just parental responsibility without the division of  
2 custody and guardianship, I'm aware that our colleagues in  
3 New South Wales have the ability - if they think a Family  
4 Court option would be better for a child, they have the  
5 ability to apply in the Family Court and have a parenting  
6 order made in that jurisdiction rather than just the child  
7 protection space.

8  
9 COMMISSIONER: How does that arise? Is that under the New  
10 South Wales Act?

11 A. My understanding is that there's a part of the New  
12 South Wales Act that authorises them to do that.  
13 Technically in the State of Queensland our Chief Executive  
14 can make an application to the Family Court. So in terms  
15 of standing it's a person with an interest in the child's  
16 welfare. So our Chief Executive does have the ability to  
17 apply for a family law parenting order. The difficulty  
18 arises in that, if, for example, the court didn't agree  
19 with Child Safety's assessment about who should have  
20 parental responsibility, there's no option for the court to  
21 give that to the Chief Executive because we can't have -  
22 our Chief Executive can't have parental responsibility  
23 because then it doesn't align with the Child Protection  
24 Act. So there's some complications with the distinction of  
25 custody and guardianship rather than just parental  
26 responsibility.

27  
28 COMMISSIONER: Why is there a distinction? What is the  
29 point of that distinction?

30 A. I don't know the original intent, Commissioner, but  
31 I think it's something that is - and I know that most  
32 states in Australia don't have that distinction. It's  
33 simply guardianship.

34  
35 COMMISSIONER: It seems to create some difficulties where  
36 there's, say, a short-term custody order, by whatever name  
37 that goes by --

38 A. Yes.

39  
40 COMMISSIONER: -- but guardianship and what that entails  
41 remains with the parent from whom the child has been  
42 removed?

43 A. Yes.

44  
45 COMMISSIONER: Is there in your mind clarity about what  
46 the rights of a guardian are? What are the guardian rights  
47 that are not removed?

1 A. There's not clarity, and, really, what the department  
2 has to do is look to family law decisions and precedent  
3 that describes the types of things that may amount to  
4 parental responsibility or not. So you're taking  
5 jurisprudence from a jurisdiction that has a different  
6 term. So it's very difficult. And practical issues arise  
7 with respect to medical care decisions.

8  
9 The other one that arises in particular is NDIS. So  
10 because NDIS is federal they would generally need  
11 guardianship approval to sign the plan, to progress a lot  
12 of those actions. If the parents don't agree and were  
13 still on interim orders for a year or two years it has real  
14 barriers and impacts on the ability to get the child the  
15 supports and needs that they need.

16  
17 COMMISSIONER: And the distinction between rights of  
18 guardianship as opposed to custodial - rights of custody,  
19 it's a legal construct, isn't it?

20 A. It is, and it's defined in the Act --

21  
22 COMMISSIONER: From the child's point of view the issue  
23 is, "Who's looking after me"?

24 A. Yes.

25  
26 COMMISSIONER: Is it not?

27 A. It is. It's - and there can absolutely be  
28 disagreements as well, and it's so nuanced. I actually was  
29 having a conversation yesterday with a lawyer about how she  
30 had done a hearing in relation to whether a child's haircut  
31 is a long-term parental responsibility matter, and  
32 ordinarily it wouldn't --

33  
34 COMMISSIONER: Seriously?

35 A. Ordinarily it wouldn't, but for cultural reasons it  
36 may be. So, you know, there's nuances like that. So from  
37 a cultural perspective a haircut may be a long-term  
38 guardianship decision. There's a lot of nuance in relation  
39 to what is a guardianship decision for a child.

40  
41 COMMISSIONER: So if the child wants a mullet it's a  
42 mullet potentially?

43  
44 MS GREENWOOD: No, Your Honour --

45  
46 COMMISSIONER: Well, I'm - I'm joking.  
47

1 MS GREENWOOD: No, Commissioner, if I can intervene there,  
2 there has been litigation about a specific topknot and in  
3 the Sikh community there are issues about growing hair.

4  
5 WITNESS: Yes, in relation to the cutting of hair. Yes.

6  
7 COMMISSIONER: Of course. I'm sorry, I don't mean to be  
8 flippant about it. The question of whether or not there  
9 should be this sort of legal construct that separates  
10 guardianship from the rights of - custody is worth  
11 considering, I think, because it does seem to create -  
12 potentially create more problems than it solves. What does  
13 guardianship mean in the Act, as you understand it?  
14 A. I believe it's section 9 where it's defined, but  
15 it's --

16  
17 COMMISSIONER: All right.  
18 A. So custody is the daily right to a child's care, and  
19 guardianship is the longer term decisions. But it's not  
20 defined with any prescriptive list.

21  
22 COMMISSIONER: Sure. All right. Thanks. Ms Greenwood.

23  
24 WITNESS: I may be wrong on that provision.

25  
26 MS GREENWOOD: Thank you, Commissioner. If I may refer to  
27 a passage from the Child Protection and Other Legislation  
28 Amendment Bill 2020. I've made copies so that everyone can  
29 follow along.

30  
31 WITNESS: Apologies, it was section 12, not section 9.

32  
33 COMMISSIONER: Thank you.

34  
35 WITNESS: I knew that was wrong as soon as I said it.

36  
37 MS GREENWOOD: Witness, if I can take you to page 3.

38  
39 COMMISSIONER: What's this document?

40  
41 MS GREENWOOD: So, Commissioner, this is a statement of  
42 compatibility, which is provided with bills passing through  
43 the parliament.

44  
45 COMMISSIONER: All right. Thank you.

46  
47 MS GREENWOOD: Forms an obligation for the government

1 under the Human Rights Act.

2

3 COMMISSIONER: Yes.

4

5 MS GREENWOOD: So if I may just take you to page 3 and the  
6 bottom paragraph?

7 A. Yes.

8

9 Q. So just picking up a bit further on basically  
10 maintaining a bit of - well, creating a bit of consistency  
11 between Family Court and child protection matters, if I may  
12 just read this passage out to you, ask if you agree with it  
13 and can comment on how the department currently carries out  
14 this role. So it quotes a passage from the Full Family  
15 Court of Australia in re CP (1997) 21 Fam LR 486, and in  
16 that passage the Full Family Court says:

17

18 *Aboriginal children [those are inserted*  
19 *children] are born into a world of kin*  
20 *which is so vast they will probably be*  
21 *meeting new kin when they are old men and*  
22 *women. For an Aboriginal child this*  
23 *network will become one of the two key ways*  
24 *in which their identity as a person is*  
25 *constructed. The other is through*  
26 *relations to country. Both are able to*  
27 *link the child to its ancestors and thus by*  
28 *implication to its descendents. The harm*  
29 *caused by the loss of kinship ties for*  
30 *Aboriginal peoples and Torres Strait*  
31 *Islander peoples may include the loss of*  
32 *relations with kin who will perform a wide*  
33 *variety of roles associated with social*  
34 *relations, emotional and physical support,*  
35 *educative knowledge, economic interactions,*  
36 *and spiritual training. The loss of*  
37 *knowledge which stems from those*  
38 *interactions and ambiguities in or loss of*  
39 *identity with one's own kin and country*  
40 *which are essential to identity from an*  
41 *Indigenous point of view.*

42

43 Can I ask you the difference between what an adoption order  
44 would do to a child with that vast array of kinship  
45 relations as opposed to, say, long-term guardianship -  
46 other or long-term guardianship CE in terms of the  
47 disruption to that much wider group of relations?

1 A. Yes. So an adoption order would permanently legally  
2 sever that connection to family, culture, kin, community,  
3 and an adoption order can only be discharged if  
4 extraordinary circumstances are demonstrated. So it's  
5 lifelong and it would completely sever that connection to  
6 family and kin. And I think when we consider the paramount  
7 principle of the Act, the newly added end bit, "from now  
8 and for the rest of the child's life", I think that's when  
9 there needs to be due deference and consideration given to  
10 these sorts of statements and these sorts of issues that  
11 impact First Nations people. It's not about necessarily  
12 what a child says at 10 years old what they want to happen;  
13 it's about the impact when that child is 30 and doesn't  
14 have that connection with kin and community.

15  
16 MS GREENWOOD: Thank you. Commissioner, may I tender  
17 that?

18  
19 COMMISSIONER: Certainly. The Child Protection and Other  
20 Legislation Amendment Bill statement of compatibility will  
21 be AT-7.

22  
23 **EXHIBIT #AT-7 - CHILD PROTECTION AND OTHER LEGISLATION**  
24 **AMENDMENT BILL STATEMENT OF COMPATIBILITY**  
25

26 MS GREENWOOD: Now, moving on to the question, is it fair  
27 to say at the moment we have quite flat rates of  
28 reunification while at the same time actually have  
29 increasing intakes of children into the child protection  
30 system?

31 A. Apologies, I can't comment on the rates of  
32 reunification. My role or my team isn't necessarily  
33 involved in reunifications. I can say that I sit in a  
34 service centre where they celebrate every good outcome for  
35 a child or family, and they have a little bell and they  
36 ring that when either a permanent order is made or a child  
37 is reunified, and I hear that bell ringing multiple times a  
38 month. But that's about as far as I can take it.

39  
40 Q. So you have nothing to do with the reunification  
41 process at all?

42 A. The only involvement our team would necessarily have  
43 with reunification is if you had a child on a short-term  
44 custody order and, say, it was a two-year order. At  
45 18 months we might say to the office, "Do you need a  
46 consult in relation to whether you need a further order or  
47 not?" They might come back and say, "We've successfully

1 reunified. We don't need a legal consult," or they might  
2 have a legal consult and they tell us during that consult  
3 that they've successfully reunified but they still need a  
4 supervision order or they still need something further, but  
5 only in that expiring order space rather than every  
6 reunification that happens. And, apologies, if a child is  
7 on a long-term order and they do a reunification they  
8 inevitably would contact us if they want that order  
9 revoked. So it's only if they want an order revoked or a  
10 further order that my team would definitely be involved.

11  
12 Q. I think you expressed the opinion a couple of days  
13 back - and correct me if I'm wrong because it was two days  
14 ago - that you thought that in the context of revoking an  
15 order that the lawyers could be more risk averse than the  
16 child support officers about that. Can you just unpack  
17 that? How would that be given you've deferred to the CSO's  
18 opinion whether an application ought to be brought, but  
19 when it comes to revocation less so?

20 A. Yes. So from a legal point of view if I'm considering  
21 a matter I want to see that all the concerns, original  
22 concern, had been in some way mitigated. Unfortunately  
23 Child Safety is not necessarily great at documenting the  
24 work that they do. So a lot of home visits, a lot of  
25 meetings, a lot of the engagement that they do as human  
26 services practitioners isn't particularised into a neat  
27 file note or case note that as a lawyer I can review as  
28 evidence and say, "I'm satisfied." And that goes to the  
29 fact that they're making a professional recommendation or  
30 assessment based on their expertise and their professional  
31 qualifications. Sometimes they can't particularise that to  
32 a standard that would satisfy a lawyer of the evidence, but  
33 they would be willing to stand by and back their  
34 professional assessment.

35  
36 As lawyers we want to see very clearly articulated the  
37 foundation of that assessment and every single one of those  
38 facts that lead to the conclusions. That's not how human  
39 services practitioners do their assessments. My concern  
40 about lawyers being more risk averse is if they were unable  
41 to properly demonstrate how they reached their practice  
42 assessment it may create additional barriers or hurdles or  
43 additional reports that need to be generated before a child  
44 could safely go home.

45  
46 COMMISSIONER: But mightn't those additional hurdles be in  
47 the best interests of the safety of the child? Let me put

1 it to you this way. Any assessment, professional  
2 assessment, is an opinion.

3 A. Yes.

4

5 COMMISSIONER: Any opinion, however expert, is only as  
6 good as the factual foundations upon which it is based. So  
7 that's true of a medical professional, it's true of  
8 lawyers, it's true of accountants, architects, you name it.

9 A. Yes.

10

11 COMMISSIONER: If the opinion or assessment cannot be  
12 explained by the person holding the opinion based upon the  
13 underlying factual basis from which the opinion has been  
14 derived then it is opaque, it is not capable of scrutiny,  
15 and at least on the face of it is an unsafe course to  
16 embark upon - well, it's unsafe potentially to embark upon  
17 a course of action founded on an opinion that the person  
18 who holds the opinion cannot explain the basis for. So if  
19 by saying lawyers are more risk averse you mean that by  
20 training they're more likely to require an analysis of the  
21 underlying basis upon which the opinion was formed, which  
22 is what any court would require, then I fail to see  
23 presently how that is a negative attribute.

24 A. Commissioner, it's the form. So it's the form. So  
25 I'm not at all saying that practitioners can't defend their  
26 assessment or can't articulate their assessment or can't  
27 explain why they think this is a safe decision for a child.  
28 I'm saying that that would usually be done in a three to  
29 four - two to three-hour practice panel meeting where they  
30 have these really robust discussions. What comes out of  
31 that is one page of a summary of discussions. So as a  
32 lawyer I want to look at the document and I want to unpack  
33 the document and review the evidence. As a social worker  
34 they want to engage with families. And they still have  
35 their risk assessment based on their skills, experience and  
36 qualifications. They just don't communicate or translate  
37 that into a legal document that as a lawyer I'd be  
38 satisfied of.

39

40 So team leaders will defend their assessment. They will  
41 rationalise why it's a safe decision. They will be able to  
42 speak to that decision and, in the worst case if something  
43 goes wrong and there's a systems review, they will be  
44 reviewed and they will be able to speak to and explain the  
45 decision and how they got there. What they're not great at  
46 doing is documenting that in a way that, as a lawyer,  
47 I would like to see. There's multiple instances where, you

1 know, reviewable decision letters are required and as a  
2 lawyer I'd be saying, "Where are all your reviewable  
3 decision letters?" Sometimes the letter itself can't be  
4 produced. It's those technicalities of translating a  
5 practice assessment from a human services perspective into  
6 a document or a piece of evidence for a lawyer.

7  
8 COMMISSIONER: Well, on that point yesterday I heard  
9 evidence about the complete absence of any documentary  
10 evidence of an evaluation of a reunification decision in  
11 circumstances which were quite stark, in circumstances  
12 where the decision to reunify seemed to me at least to be  
13 unsupported by the objective facts, and might even rise to  
14 the point of being a legally unreasonable decision in the  
15 legal sense of no rational decision-maker could have come  
16 to a view in the very narrow judicial review sense. And it  
17 is troubling that evaluations of these very important  
18 decisions that have the effect of reversing in practical  
19 terms the removal of the child seem not to be open to  
20 scrutiny by any forensic analysis by anyone other than the  
21 section of the department that makes the decisions. Does  
22 that trouble you?

23 A. It does. Commissioner, I was in court yesterday. So  
24 I didn't watch all of the evidence, but I saw some of it.  
25 And I think what could have assisted in that matter was if  
26 they got legal advice in relation to the process because it  
27 seemed to me that they conflated the two legal decisions  
28 that needed to be made in relation to whether the kin were  
29 suitable people to be approved as carers and then the  
30 placement decision. It seems to me that that was all  
31 bundled into one. And in a matter like that if they got  
32 legal advice and they knew the steps and legal processes  
33 you would have had two separate decisions. So you would  
34 have had kinship approval/carers approval process and then  
35 you would have had a separate decision about whether the  
36 placement with kin was in the child's best interest. And  
37 that separate decision should have and would have been  
38 particularised in a decision letter. But it seemed to me  
39 in that matter that it was all bunched up into the one  
40 decision that kin was available so that happened.

41  
42 COMMISSIONER: Well, I don't think there was any  
43 suggestion as to unsuitability. It was more practical  
44 constraints on the ability of the chosen kinship carer to  
45 be able to provide care for that particular child.

46 A. But when the kin was identified, that starting point  
47 of doing the assessment of whether they're a suitable

1 person to be approved as a carer I think was the only  
2 assessment that happened. I think there wasn't a  
3 subsequent assessment in relation to whether that placement  
4 was in the child's best interest, or those placements.

5  
6 COMMISSIONER: Yes. Yes, thank you. Sorry.

7  
8 MS GREENWOOD: No, that's fine, Commissioner. In fact  
9 that leads on quite neatly to the next question of forensic  
10 oversight, and I'm going to touch on reunification here.

11  
12 Are you aware of the reunification courts in South  
13 Australia?

14 A. I was provided an article yesterday with respect to  
15 that, and I had also read that article many years ago.

16  
17 Q. Which probably means the government gave away their  
18 one copy; is that right?

19  
20 MS SWEET: No, I've got another one.

21  
22 MS GREENWOOD: So Counsel Assisting and government already  
23 have it. They have it. So it's mainly for the  
24 Commissioner, and any left over come to here.  
25 Commissioner, the first document is an article from the --

26  
27 COMMISSIONER: By Judge Penny Eldridge?

28  
29 MS GREENWOOD: Yes, by Judge Penny Eldridge from the Law  
30 Society of South Australia.

31  
32 COMMISSIONER: That will be AT-8.

33  
34 **EXHIBIT #AT-8 - ARTICLE BY JUDGE PENNY ELDRIDGE REGARDING**  
35 **THE REUNIFICATION COURT**

36  
37 MS GREENWOOD: And then the second document is a practice  
38 direction to do with that reunification court.

39  
40 COMMISSIONER: Yes, that will be AT-9.

41  
42 **EXHIBIT #AT-9 - PRACTICE DIRECTION IN RELATION TO THE**  
43 **REUNIFICATION COURT**

44  
45 MS GREENWOOD: So you're saying you had a chance to read  
46 through that document?

47 A. Yes.

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Q. And so it's a little difficult if you're not aware of how flat the reunification rates are, but --

COMMISSIONER: Do you have some figures about that?

MS GREENWOOD: Commissioner, we were given figures from the evidence of --

COMMISSIONER: Don't worry about it now; we can come back to it. But I'm not sure what you mean by flat.

MS GREENWOOD: CL-76 --

COMMISSIONER: All right.

MS GREENWOOD: -- is the exhibit I'm referring to. And maybe that's something I can more usefully take up with tomorrow's witness, and in particular I guess probably more relevantly for you because as I understand it at the moment when there is a reunification process going on that there isn't a reunification plan or some sort of plan filed with the court with the order?

A. Yes, that's the case. I think I said this in December. One of the difficulties that I see - another one of the difficulties in the Act is that the case plans only go for a six-month period. So you might have a two-year short-term order where the intent is to reunify, but the case planning period articulated is only six months, after which parents don't necessarily have access to lawyers to assist them in the negotiation of subsequent plans. I think there would be far more benefit if the case plan covered or reunification plan, whatever it's called, covered the intent of the duration of the order, the length of the order.

Q. And you just referred to the parents not having access. This would be some sort of scrutiny by the court that if things weren't going according to plan that there could be oversight of the reunification process?

A. Sorry, I thought the question was whether the court should have a plan or - I think they're two different questions whether the court should maintain ongoing supervision of the process or whether the court should be satisfied that there is a plan before making an order.

COMMISSIONER: Well, I think you can express it both ways.

1 But the document that you've been given, this article,  
2 which I'm just reading for the first time, it says, "What  
3 is the reunification court" on page 2. The essential point  
4 is that the process of reunification is overseen by the  
5 court.

6 A. Yes.

7

8 COMMISSIONER: It appears to be a consensual jurisdiction  
9 in South Australia as described in the following paragraph.  
10 It needn't necessarily be, but that seems to be the case  
11 according to this article. It may have changed since. But  
12 it does go on to describe, this document, does it not, a  
13 sort of process of judicial oversight and a cooperative  
14 process that is engaged between the department, the family  
15 and the court? That summarises very broadly I think is  
16 what this is describing.

17 A. Yes.

18

19 MS GREENWOOD: That was essentially my point. And,  
20 Commissioner, I added CL-8 for context because I understand  
21 as yet there have been no legislative amendments. So it's  
22 a matter of practice.

23

24 COMMISSIONER: This has been the - as I would understand  
25 it presently, and I'll make some enquiries, but this would  
26 seem to be the product of an initiative by this particular  
27 judge, Judge Eldridge, who under her power to control her  
28 own court processes has made provision by way of a practice  
29 direction, which I think is what AT-9 is, to institute this  
30 process of involvement in the reunification process.

31

32 MS GREENWOOD: Exactly, Commissioner.

33

34 COMMISSIONER: Yes. Do you know anything about the  
35 reported success or otherwise of this method?

36

37 MS GREENWOOD: I have actually put an enquiry in with our  
38 equivalent. There is a website, Commissioner, which is  
39 mainly - it mainly has resources added to it.

40

41 MS FREEMAN: The second last paragraph on the last page,  
42 Commissioner, has some stats.

43

44 COMMISSIONER: Yes, I see. Thank you.

45

46 MS GREENWOOD: Thank you. Thank you. So we at least -  
47 yes, we have the statistics to show.

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COMMISSIONER: Well, I would be very interested to hear from those you represent and Mr Creamer represent and others whether this sort of process is one that might be favoured as a potential change in the way in which the process is currently undertaken. I don't expect you to say anything about that now, but in due course it would be worth knowing.

MS GREENWOOD: Well, Commissioner, I can inform you a much bigger piece. So the child protection peak QATSICPP is preparing as we speak a much larger piece exactly on this issue, and they were the ones that alerted me to the existence.

COMMISSIONER: Well, I've had regular consultations with QATSICPP and as recently as last week. This particular issue didn't come up at that time; we were talking about other matters. But that's good to know.

MS GREENWOOD: As soon as the ink is dry on the page, Commissioner, I'm sure it will be winging its way --

COMMISSIONER: I have enough to read for the time being.

MS GREENWOOD: I rather thought that. And maybe any further discussion of this would be more usefully done with tomorrow's witness.

COMMISSIONER: Yes, though it's an issue that may be assisted - the Director might have views about it; he may not. But, in any event, further investigation of this issue does strike me as worthwhile, however it's undertaken, including by my staff.

MS GREENWOOD: I think along multiple pathways, Commissioner.

COMMISSIONER: Yes, yes. Good. Good to know.

MS GREENWOOD: And if I can just come to my final question --

WITNESS: Am I able to make comment with respect --

COMMISSIONER: Of course. Sorry. You're the witness, Ms Martin.

1 A. I wanted to flag that I do have a limited  
2 understanding of South Australia, but their system, as  
3 I understand, the welfare authority has a lot more power  
4 with respect to directing things for parents to do with  
5 respect to drug screens, reports. They have the ability to  
6 give administrative directions. That can all happen before  
7 they decide reunification is a possible outcome.

8  
9 The other thing that's slightly different is if a parent is  
10 convicted of specific offences against children the  
11 presumption is removed if there's a new child. So, if a  
12 new child is born and a parent has been convicted of a  
13 particular offence, the child is automatically declared to  
14 be in the guardianship of the State at birth.

15  
16 I think a case management or court management process is  
17 good. My caution around my reading of this process is that  
18 it seems that parents would need to jump through a lot of  
19 hurdles and obstacles before - in this report it seems that  
20 it's the department that decides reunification is  
21 appropriate or that a matter is appropriate to go to the  
22 reunification court. I would be concerned about the length  
23 of time from when a child first enters care to when it's  
24 determined by the department that reunification is  
25 appropriate to go to the reunification court. I think that  
26 might delay decisions being made; whereas in Queensland the  
27 context is, unless a long-term decision is made in the very  
28 beginning, the department continues to work towards  
29 reunification even while the matter's proceeding through  
30 court. I would caution against a process that requires  
31 parents to meet or jump through obstacles or demonstrate  
32 reunification's appropriate before those steps commence.  
33 At the moment it's done parallel.

34  
35 COMMISSIONER: Ms Martin, a court process of this nature  
36 adapted as may be appropriate to the Queensland  
37 jurisdiction is not mutually exclusive of concurrent  
38 planning for reunification, is it? Isn't the challenge  
39 rather to find a harmonious way to bring in to, in a sense,  
40 lockstep --

41 A. Yes.

42  
43 COMMISSIONER: -- the court process and the department  
44 process with embedded checks and balances and the earliest  
45 possible opportunity for resolution as between the  
46 department and the family of matters that are obstacles to  
47 reunification? And maybe the better model, perhaps adapted

1 and informed by the experience of the reunification court  
2 to some degree at least, is the approach taken in the  
3 Family Court?

4 A. M'hmm.

5  
6 COMMISSIONER: We can learn from these different systems  
7 and approaches.

8 A. Yes. Commissioner, I think I just wanted to clarify  
9 that that 30 per cent number on the last page, that's  
10 30 per cent - reunifications are happening through this  
11 court 30 per cent but only of the matters that their Chief  
12 Executive already thought should be reunified. So there's  
13 a barrier to entering that diversionary court in that their  
14 Chief Executive first needs to be satisfied that  
15 reunification's appropriate.

16  
17 COMMISSIONER: Sure. Well, that's a feature --

18 A. That was the only caution with respect to this  
19 specific model. But the intent around a process like that  
20 I take no issue with. I think if we're looking to other  
21 jurisdictions I think we need to understand that holistic  
22 picture of how their system works and then adapt  
23 appropriately.

24  
25 COMMISSIONER: And I accept that the system, however it's  
26 crafted, needs to be administratively workable as well.

27 A. Yes.

28  
29 COMMISSIONER: Decisions need to be made. The lives of  
30 children move quickly.

31 A. Yes.

32  
33 COMMISSIONER: You can't spend two years in the court  
34 process while the child's now two years down the track.  
35 All sorts of things change. So something that is quick and  
36 responsive is clearly what's needed.

37 A. Yes.

38  
39 COMMISSIONER: And it has to be practically implementable.

40 A. Yes.

41  
42 COMMISSIONER: If they are your concerns, they're also  
43 mine.

44 A. Commissioner, they are. I am - and again this may be  
45 the lawyer in me - I am also concerned about a court  
46 process where parents can't have legal representation.  
47 I think that the vulnerability of families in this

1 jurisdiction means that they should have that right.

2

3 COMMISSIONER: Well, contrary to the often disdainful view  
4 of lawyers, they actually assist the process very much.

5 A. They absolutely assist the process, in my view at  
6 least.

7

8 COMMISSIONER: Yes.

9

10 MS GREENWOOD: Yes, thank you, Commissioner. That would  
11 bring me to my last point. I think there was some implied  
12 criticism, if not outright criticism, at a young person  
13 under an order who had assaulted his mother on return being  
14 sent to a healing camp. And I suspect what a healing camp  
15 was was misunderstood; not a dyb, dyb, dyb scout camp or  
16 similar. Can you describe for me from the organisational  
17 point of view what it is? And what I was going to do,  
18 because I have been supplied with some information about  
19 the healing centres, if you could recommend to the  
20 Commissioner a good witness who might be able to --

21

22 COMMISSIONER: Well, I didn't understand there to be any  
23 criticism of the healing camp. Was that concerning the --

24

25 MS GREENWOOD: Maybe I'm unduly sensitive, but it did  
26 sound --

27

28 COMMISSIONER: This case about the child concerned in this  
29 particular case?

30

31 MS GREENWOOD: Yes.

32

33 COMMISSIONER: One action that was taken after some  
34 outburst, if I can put it that way, was to recommend the  
35 child have some diversion of that kind.

36

37 MS GREENWOOD: So I think, Commissioner, as I remember --

38

39 COMMISSIONER: I didn't take it to be a criticism; that's  
40 all I'm saying.

41

42 MS GREENWOOD: There was a question of whether it was an  
43 appropriate response.

44

45 COMMISSIONER: I see.

46

47 MS GREENWOOD: And so maybe if I can just explore just a

1 little bit further --

2

3 COMMISSIONER: Yes, of course.

4

5 MS GREENWOOD: -- how a healing camp fits into the general  
6 responses.

7

8 COMMISSIONER: I'm not sure if this witness knows anything  
9 about it. You're welcome to tell me about it or produce  
10 some evidence, but do you --

11

12 MS GREENWOOD: I think this witness was the one who was  
13 asked whether it was an appropriate response.

14

15 COMMISSIONER: I see. Okay. All right. Ms Martin?  
16 A. I don't have the cultural authority to properly  
17 explain what a healing camp is, but I can say in my  
18 experience I think in that document there was a reference  
19 to things being done out at [REDACTED]. So when I was a  
20 service centre manager and court coordinator I was in  
21 [REDACTED] and working with [REDACTED] out there.

22

23 Healing camps, on my understanding, is a culturally  
24 informed and responsive way to support young people to  
25 address in a therapeutic way with a focus on culture. It's  
26 reflective of the principles enshrined in the fact that  
27 First Nations families have been keeping children safe for  
28 generations in a way far better than any governments really  
29 have done, and it's about deferring to their wisdom and  
30 their cultural knowledge about what may be the best and  
31 most appropriate action or plan or arrangement for a young.

32

33 I think my reading of that email and the delegated  
34 authority staff member recommending it and the service  
35 centre adopting it as a good option I think is reflective  
36 of the work that the department has done to try and make  
37 their staff be more culturally informed and think in more  
38 culturally capable ways. I think they've still got a long  
39 way to go. But I think where they are now is very  
40 different to where they were when I joined the department  
41 15 years ago.

42

43 MS GREENWOOD: Thank you. That concludes my questions,  
44 Commissioner.

45

46 COMMISSIONER: Thank you. Mr Creamer.

47

1 MR CREAMER: Thank you, Commissioner.

2  
3 <EXAMINATION BY MR CREAMER

[12.02 pm]

4  
5 MR CREAMER: Ms Martin, my name is Joshua Creamer.  
6 I'm acting on behalf of QIFVLS. I'll probably pick up on  
7 that theme. There's obligations of a department in respect  
8 of ensuring that First Nations children maintain cultural  
9 connection, and I'll put that in a broad term but it picks  
10 up a number of aspects, and those obligations relate to  
11 section 5C. They also relate to the schedule as well.

12 A. Yes, yes.

13  
14 Q. Or the charter; sorry, the charter.

15 A. The charter; yes.

16  
17 Q. And there's also obligations in respect of the Human  
18 Rights Act.

19 A. Yes.

20  
21 Q. One of the central mechanisms to ensure those  
22 obligations are maintained is the cultural plans?

23 A. Yes.

24  
25 Q. We heard as some of the evidence a theme that those  
26 cultural plans aren't probably the best they could have in  
27 terms of being able to meet those obligations. What  
28 assessment does your office or do you undertake  
29 particularly when looking at an order coming to expiration  
30 and perhaps new orders? I'm sure the cultural component  
31 would be part of that. In terms of your assessment, what  
32 type of rigour do you apply to ensure that cultural  
33 connection is being maintained and is there room for  
34 improvement?

35 A. I think there's always room for improvement. Our team  
36 has a statement of commitment - that I believe is attached  
37 to my statement - that we encourage all of our lawyers, our  
38 team to engage in that way, so engage in a culturally  
39 competent way and make sure that we do not lack the courage  
40 of our convictions with respect to giving legal advice on  
41 cultural issues.

42  
43 The expectation is that our lawyers, our legal advice  
44 should include reference to the relevant principles, the  
45 Human Rights Act and point out any vulnerabilities or gaps  
46 with respect to the evidence. The point I made earlier  
47 about those matters not being part of the section 59

1 requirements before a court makes an order means that there  
2 are matters on the legal requirements that are referred to  
3 the Director's office where we do have concerns or worries  
4 about the department's ability to evidence active efforts  
5 and we've raised those or we've raised that cultural  
6 support plans are either absent or have minimal  
7 information. It doesn't necessarily mean that is then  
8 corrected before the matter is referred to the Director's  
9 office or before an order is sought. But our expectation  
10 is that our lawyers are giving advice on that in relation  
11 to matters.

12  
13 Q. One of the issues the Director raised was perhaps  
14 cultural plans becoming part of the order.

15 A. Yes.

16  
17 Q. Sorry, the case plan becoming part of the order.

18 A. The case plan.

19  
20 Q. And if that were the case that would pick up the  
21 cultural plan and perhaps give the court greater oversight  
22 in terms of compliance with that issue?

23 A. Yes. The court currently has to be satisfied not only  
24 that there's a case plan but that there's a case plan  
25 appropriate and desirable for meeting the child's needs.  
26 But there's not necessarily specific scrutiny of whether  
27 those needs include cultural needs and whether the case  
28 plan should formally incorporate the cultural support plan.

29  
30 Q. I just want to ask you you have a number of service  
31 centres or a number of regions in which you're responsible  
32 for?

33 A. Yes.

34  
35 Q. Far North and obviously a number in the south-east.  
36 Many of those would have a large Indigenous population or a  
37 number of Indigenous children.

38 A. Yes.

39  
40 Q. I wanted to ask you whether there was any difference -  
41 sort of a remote area bias perhaps - in terms of the issues  
42 that might arise in South East Queensland verse the far  
43 north for First Nations families and children.

44 A. Yes.

45  
46 COMMISSIONER: In what context? Can you clarify,  
47 Mr Creamer?

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MR CREAMER: I was actually going to leave it as an open question, Commissioner.

COMMISSIONER: All right.

MR CREAMER: Because this witness obviously has vast experience, and I thought my question should be open to her?

COMMISSIONER: Yes, all right.

WITNESS: Yes, there is difference and there is difference in practice. There's difference in how the regions engage with the community-controlled organisations and services that they work with. I don't know if I'm able to say with clarity that there's a bias that is introduced into thinking. I can say anecdotally that my colleagues in Far North Queensland - that there's higher populations of First Nations families up there. So, in my experience, they are more aware of the obligations with respect to active efforts and the placement principle and independent persons. I think in South East Queensland there are some child safety officers who may not have had very many First Nations families on their caseload. So I definitely think they're more aware in Far North Queensland with their obligations. But I'm also mindful that they have resourcing issues that may impact their ability to do the type of practice that they would like to do.

MR CREAMER: It's an issue I will take up with the Director tomorrow, but you might be in a position to discuss. When you look at some of the changes within the department over the last decade that has been to elevate the voices of First Nations families, cultural practice advisers, community-controlled organisations?

A. Yes.

Q. And decision-making seems to happen in that context, that there are a number of First Nations entities or people who have some input. The Director's office doesn't seem to have any of that exposure to that type of decision-making input. Now, would that be a challenge in a role such as yours if you didn't have the exposure to Indigenous decision-makers?

A. Yes. I can't comment on whether the Director does or doesn't. I read his annual reports. But what I can say is

1 the incredible benefit that me and my team get from  
2 participating in decisions with First Nations colleagues.  
3 So even our legal consults that we do with service centres  
4 we always make sure there's a cultural practice adviser  
5 invited to those. Even just understanding the value and  
6 benefit and wisdom that they can bring to the consult about  
7 legal advice and legal direction I think informs the way  
8 that I give legal advice. And I think it would be very  
9 difficult to genuinely rather than tokenistically be  
10 culturally informed in your legal advice if you haven't had  
11 at least some exposure to that type of decision-making.  
12

13 Q. Thank you. Nearly every witness who has given  
14 evidence talks about the importance of early legal  
15 representation for families.

16 A. Yes.

17  
18 Q. I don't think there's any dispute about that. Perhaps  
19 what I probably should be asking now going forward for  
20 witnesses who suggest that is what are the barriers to  
21 ensuring that happens; is it just a resourcing issue that  
22 the Commissioner should recommend more money or practically  
23 what do you see are the barriers to ensuring that families  
24 have early and ongoing representation in this process?

25 A. I think there's some great initiatives. I think in  
26 December I mentioned BiOC with the Urban Indigenous Health  
27 Service where it's Birthing in Our Community. Pregnant  
28 women have the opportunity to get not only social work and  
29 human services support but access to a lawyer during the  
30 pregnancy, so before the child is born. I think that that  
31 decision about whether to agree to work with the department  
32 on a support service case or not, I think parents should  
33 get legal advice on that. So there should be some sort of  
34 pathway or avenue.  
35

36 I also think that a few of our non-government organisations  
37 have already taken the initiative to outreach in unusual  
38 ways. I can think of one on the Gold Coast that every week  
39 sends a staff member along to Childrens Court day and is  
40 there and is able to speak to families, make connections,  
41 see if they need any support or assistance to make contact  
42 with ATSILS. But I think it has to be - and I'm sure it  
43 has to be funding, but I also think it needs to be  
44 multidisciplinary. I think it can't just be Child Safety  
45 saying, "Go get a lawyer." I think families don't  
46 necessarily take that step if Child Safety say it. I think  
47 if the support agencies or the family intervention services

1 or Legal Aid or ATSILS or QIFVLS, if there's that  
2 wraparound support so they've been told to get a lawyer  
3 from all avenues I think there's more likelihood that  
4 they'll follow through.

5  
6 COMMISSIONER: At what stage should legal advice or  
7 representation be available?

8 A. To be honest, Commissioner, I think if the State is  
9 removing someone's child that person - or considering  
10 removing a child or even intervening in their lives,  
11 I think that person should have a right to legal advice.  
12

13 COMMISSIONER: From the outset?

14 A. From the beginning, yes. I think even with respect to  
15 safety planning and those very early decisions the  
16 departmental officers aren't lawyers, they don't  
17 necessarily understand the consequences. So if you agree  
18 to a safety plan for your child to live with a family  
19 member for a set period of time you create a new status quo  
20 that could have Family Court implications that child safety  
21 officers wouldn't necessarily think about, and it could  
22 even be harder for parents to get their child back.  
23 I think they don't understand the longer term consequences  
24 of safety plans, but neither do the social workers or  
25 departmental officers.  
26

27 I think if parents had the ability to get legal advice  
28 early it would be good. And I think QATSICPP has a few  
29 years ago developed cards called "Know your rights" cards,  
30 and we encourage our child safety officers to give those  
31 out to families that they're engaging with, which tells  
32 them what their rights are with respect to safety planning.  
33 I think as early as possible when the department first  
34 knocks on your door people should have that ability to get  
35 legal advice.  
36

37 COMMISSIONER: And isn't one of the potential advantages  
38 of having lawyers involved early - and I know I'm sticking  
39 up for lawyers here but --

40 A. I do that all the time, Commissioner.  
41

42 COMMISSIONER: Well, I'm not going to suggest I have no  
43 interest in that. But is the ability to inject some  
44 objectivity into the discussion because it's a pretty  
45 fraught business, isn't it, when what's in issue is whether  
46 a child should be removed --

47 A. Yes.

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COMMISSIONER: -- or even a lesser intervention but nonetheless an intrusive intervention into the family's lives, often arising in circumstances which are very strained; I mean, it could arise often in a domestic violence context and many other contexts. So isn't one of the potential benefits of the family being represented early introducing somebody who has the ability to provide some objectivity along with some obviously legal and forensic ability, one would hope?

A. Yes.

COMMISSIONER: And that could make the process quicker and facilitate earlier resolution?

A. Yeah, Commissioner, I think it goes both ways. I think it's a parent having a lawyer but I also think it's critical at that early stage that the department has a lawyer so that they have someone saying, "These are the legal realities of your practice decision and what you can and can't prove."

COMMISSIONER: And in an appropriate case also the child.

A. Yes, absolutely.

COMMISSIONER: Because if there's some relevant conflict between the interests of the child and the parents' aspirations, and the parents might themselves be in a position of conflict --

A. Yes.

COMMISSIONER: -- then somebody representing the child might really be desirable for a lot of reasons.

A. Yes. The other thing that is missing from this jurisdiction is any ability to appoint like a guardian ad litem for a child who is also a parent. So in Queensland the Public Guardian can't get involved until that parent is an adult. So we also see sometimes parents who themselves are still children who - if a lawyer thinks they don't have capacity to give instructions, there's a gap where they don't have --

COMMISSIONER: Can't the court appoint of its own motion a child's representative?

A. In child protection order proceedings the court can appoint a separate representative for the child subject of the order. Sorry, I meant when the parents of that child are also still children.

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COMMISSIONER: No, I understood what you meant. But in that circumstance why can't the court of its own motion appoint a representative of that parent, because if that parent is under the incapacity of being a minor and not able to give instructions properly then somebody has to take responsibility for that?

A. I think it's a gap, Commissioner. I think the court has the ability to appoint someone for expert help under 107. So that could happen. But essentially what needs to happen in those matters is and what we see frequently is we see lawyers acting as friend of the court to try and assist that parent through the proceedings until they turn 18 and a QCAT appointment for a guardian can occur.

COMMISSIONER: And that's done pro bono, is it, by a --

A. Yeah, most - in my experience a lot of the preferred supplier - Legal Aid preferred supplier lawyers or ATSILS or QIFVLS, if they can't take - as a lawyer can't take instructions, if they have capacity concerns or there's a report that indicates that a parent doesn't have capacity to give instructions or to understand the proceedings, they will still continue to come along to court and try explain things to the parents as best they can as a friend. But it creates a gap in the legislation, which I'm more than happy to add to the list of legislative issues.

COMMISSIONER: I'll look forward to your long list.  
Mr Creamer.

MR CREAMER: Ms Martin, I took some of your evidence under the broad umbrella of the tension that exists between the human services model and the litigation model, and certainly the Official Solicitor did give some very direct evidence about that.

A. Yes.

Q. And I think an analysis of the matters that we've looked at over your evidence sort of highlights that tension.

A. Yes.

Q. And it's probably one of the tensions that will increase. The greater role of lawyers will always impact no doubt with the work of CSOs and others. But what do we do to ensure that we maintain an element of that human services focus if it is lawyers ultimately that are (a)

1 making the decision, (b) initiating application, (c)  
2 getting the evidence ready, how do we ensure that there is  
3 this focus on reunification and human services?

4 A. To be honest, I think part of the conflict comes from  
5 the fundamental question of whether it should be a human  
6 services decision or a legal decision in relation to  
7 whether a child's removed or whether a child's returned.  
8 I, as a lawyer, would not want to make that decision.  
9 I don't think I have the skills or the qualification.  
10 I might have the qualifications; I don't have the  
11 experience to make that decision. I think it's a human  
12 services decision. But I think the human services  
13 practitioners need to understand the legal realities of  
14 their legislative obligations, of what the Act gives them  
15 the authority to do, and the strength and quality of their  
16 evidence.

17  
18 Part of what I said on Monday in relation to why I think  
19 the current model is so difficult is there's no reflection  
20 or there's no requirement for there to be a reflection on  
21 whether that practice decision is sound, or whether the  
22 contact decision is sound, or whether what the parents are  
23 proposing is appropriate to make you as a practitioner  
24 amend your practice assessment. That remains separate to  
25 the litigation and separate to the court proceedings  
26 currently.

27  
28 COMMISSIONER: Can I just clarify something you said. You  
29 say it's a human services decision. Do you include in that  
30 the removal of the child?

31 A. Yes.

32  
33 COMMISSIONER: So you think the department should have the  
34 power to remove the child without a court order?

35 A. So the decision about whether - the risk assessment  
36 about whether there's unacceptable risk, or whether there's  
37 immediate risk, or whether a child should be removed is a  
38 human services assessment. But I think a court - there  
39 should be court oversight of whether that assessment is the  
40 appropriate decision.

41  
42 COMMISSIONER: So that assessment is anterior to the court  
43 being persuaded that that assessment is right?

44 A. Yes.

45  
46 COMMISSIONER: And that there's good reason to remove the  
47 child?

1 A. Yes.

2

3 COMMISSIONER: Now, do you suggest that the end point in  
4 decision-making, the ultimate decision-maker, which is  
5 presently the court, should not be the court but the  
6 department?

7 A. No, I think it should be the court. I think the  
8 nature and the gravitas of the decisions made and the  
9 powers that the department has needs court oversight and a  
10 court should make those decisions.

11

12 COMMISSIONER: Well, if it's right on the way out that the  
13 court should make the decision, what distinctions the  
14 return of the child in terms of who the ultimate  
15 decision-maker should be, in your mind?

16 A. My only concern with respect to the court reviewing  
17 that and reviewing reunifications is whether the courts  
18 have capacity and whether that's going to delay urgent  
19 matters being heard or - so it would be a court resourcing  
20 capacity issue. I don't have a fundamental issue in  
21 relation to a court maintaining oversight. And I've looked  
22 into a lot of the systems in the United States where that's  
23 what happens; the court case manages all the way through.  
24 I don't have any issue with that other than delay and the  
25 potential for delay.

26

27 COMMISSIONER: So the concerns you have are understandably  
28 about delay and there being adequate resources to avoid  
29 such delays.

30 A. Yes.

31

32 COMMISSIONER: But isn't the challenge also to design the  
33 system of court involvement so that it is conducive to and  
34 not an impediment to reunification?

35 A. Yes.

36

37 COMMISSIONER: And something like the reunification  
38 experiment, I think, in South Australia might provide some  
39 guidance to how one could design a court process which  
40 would allow everybody who has an interest to have a say but  
41 not hold things up --

42 A. Yes.

43

44 COMMISSIONER: -- in an unwelcome kind of way.

45 A. And, Commissioner, I might add that was also one of  
46 the original intents from the 2016 reforms and the reforms  
47 to the Childrens Court Rules. So the Childrens Court Rules

1 currently allow for a case management process but only  
2 until the making of a final order. But, in my view, what's  
3 missing from that is the caseworker, the child safety  
4 officer or the team leader as a stakeholder that has agency  
5 and voice in relation to the case management.

6  
7 COMMISSIONER: I don't understand why they would be  
8 excluded from it.

9 A. They currently are. So currently their only role with  
10 respect to court proceedings is as a witness. So they  
11 provide their affidavit to the Director's office. It's  
12 filed. But they don't go to court. They're not a party to  
13 those proceedings. They don't get to make submissions  
14 about what they think should happen, whether they agree  
15 with the court's, you know, direction in which to move  
16 the case.

17  
18 COMMISSIONER: Are they not involved in the case planning?

19 A. So they're involved in the case planning, but the  
20 Director's office is not involved in the case planning. So  
21 they go have a family group meeting and they develop a case  
22 plan with the parents and the parents' lawyers but without  
23 the applicant to the proceedings.

24  
25 COMMISSIONER: There does seem to be a sort of  
26 bifurcation.

27 A. Yes.

28  
29 COMMISSIONER: I know there's a bifurcation because you've  
30 got the OCFOS and the DCPL respective jurisdictions. But  
31 then the bifurcation continues right throughout the  
32 process.

33 A. Yes.

34  
35 COMMISSIONER: So one hand isn't talking to the other and  
36 yet they're all involved in the singular question of, "What  
37 is in the interests of this child and how can we achieve  
38 that child's best interests?"

39 A. Yes. So if you were a lawyer representing a parent  
40 you have to make contact with the Director's office to  
41 discuss the litigation and your client's position, but you  
42 have to contact the department to discuss contact and  
43 whether your client wants more contact. So you're doubling  
44 up but you're also having separate conversations about  
45 things that are enmeshed and are joined together.

46  
47 COMMISSIONER: And you've got these separate proceedings.

1 They're sort of serial processes.  
2 A. Yes.  
3  
4 COMMISSIONER: You start with the emergent order. That  
5 come to an end.  
6 A. Yes.  
7  
8 COMMISSIONER: Then you start a new proceeding with the  
9 Director.  
10 A. Yes.  
11  
12 COMMISSIONER: And it just seems - it's serial rather  
13 than --  
14 A. And, Commissioner, there's other layers of  
15 complexities and one of them is appeals. So, you know,  
16 children are on section 99 for a significant period of  
17 time. We had an appeal towards the end of last year where  
18 the actual appeal was about a temporary custody order made  
19 in February, but the Director's office had been in court  
20 for eight months litigating a child protection order. But,  
21 because the child was still subject to that original  
22 temporary custody order, our office then and our department  
23 is the respondent to that appeal. So it just --  
24  
25 COMMISSIONER: Because that order continues until a new  
26 order is made.  
27 A. Because 99 continues. So the order underpinning why  
28 the child is still in care is the first order that was made  
29 rather than anything that had happened in the subsequent  
30 court appearances. It just creates a level of complexity  
31 in which parents don't know who they're appealing against.  
32 Frequently appeals will go to the Director's office and  
33 they'll say, "No, this is yours," and it will come to us.  
34  
35 COMMISSIONER: So, until a child protection order is made  
36 on the application of the Director, because of section 99  
37 the emergent order is extended --  
38 A. Yes.  
39  
40 COMMISSIONER: -- until it's replaced by a subsequent  
41 child protection order; is that --  
42 A. Yes, but just noting that a child protection order  
43 also includes an interim order under section 67. So if the  
44 Director's office has already got an interim order and a  
45 section 67 then there's no lingering effect.  
46  
47 COMMISSIONER: Then the early order is spent.

1 A. Yes, it's spent. But that doesn't always happen. So  
2 some children remain on section 99 for a longer period of  
3 time, and then the appeal court gets very difficult to  
4 determine who the respondent is.

5

6 COMMISSIONER: Section 99, which is the provision that  
7 extends the order.

8 A. Extends.

9

10 COMMISSIONER: So the child remains on the emergent order  
11 extended by operation of law; is that how it works?

12 A. Yes.

13

14 COMMISSIONER: All right.

15

16 MR CREAMER: You mentioned the Childrens Court Rules.  
17 I just want to ask you about section 64 of that rules, and  
18 I'll just read it out. I don't have a copy. But, rule 64,  
19 and it's about the way the court may manage child  
20 protection proceedings:

21

22 *The court may manage a child protection*  
23 *proceedings by making an order or issuing a*  
24 *direction it considers appropriate about*  
25 *the conduct of the proceedings.*

26 A. Yes.

27

28 Q. And then paragraph 2:

29

30 *The court may do any of the following*  
31 *proceeding at any time.*

32

33 And there's a long list.

34 A. Yes.

35

36 Q. But that list includes identifying the issues in the  
37 proceedings, identifying the issues for investigation. We  
38 talked yesterday about the limitations in the Child  
39 Protection Act in terms of considerations. On its face,  
40 that rule gives a court much broader discretion in  
41 determining a decision. Is that rule invoked at all in  
42 proceedings? Is it something which is relevant or - it's  
43 relevant but is it utilised?

44 A. To be honest, it's probably a question for the  
45 Director's office whether it's revoked in child protection  
46 proceedings, given we're not involved in those at the  
47 moment. But I will say that generally courts take an

1 inconsistent approach to court case management. So some  
2 courts play a really active role in directing and  
3 progressing and going through factors. Some courts leave  
4 it to the separate representatives or the legal  
5 representatives to progress matters. There's not  
6 necessarily consistency at least across the courts that  
7 I manage.

8  
9 COMMISSIONER: And is that a resources issue so far as you  
10 can discern a reason for that variability?

11 A. I don't think I can - I think that's probably a  
12 question for the judiciary. I don't think I can discern a  
13 reason why courts deal differently with matters.

14  
15 COMMISSIONER: You'll get as many different answers to  
16 that question as there are judges, I suspect.

17 A. Yes.

18  
19 MR CREAMER: The only other question I wanted to ask, and  
20 it was a broad one, it was about improvements for  
21 Aboriginal and Torres Strait Islander families and children  
22 in terms of participating in the child protection system.  
23 You've got vast experience. Are there any, no doubt, ideas  
24 or recommendations that you would put forward in terms of  
25 improving that process?

26 A. I do think that - so previously we had recognised  
27 entities, and after the amendment to independent entities  
28 that shifted. I think one of the things that I always  
29 found beneficial in my court coordinator days was that the  
30 recognised entity staff members would come to court and  
31 tell the court directly. So the court had the ability to  
32 get cultural wisdom and experience directly from someone  
33 that wasn't the department. I think there would be  
34 benefits if the court had that ability to get cultural  
35 advice and cultural recommendations in relation to how  
36 decisions should be made.

37  
38 I also think that a court system like the Murri Court or  
39 the Koori Court in Victoria I think in terms of making - so  
40 still a court decision but making the decision in a  
41 culturally informed way for First Nations families, taking  
42 on the advice and recommendations of the people with  
43 cultural authority in relation to how decisions should be  
44 made.

45  
46 I think one of the comments I made on Monday with respect  
47 to the case was if you looked at the engagement that that

1 young person and family had with the delegated authority  
2 workers comparatively to the engagement they had with child  
3 safety workers I think that is illustrative of what I see  
4 all the time, which is the ability to engage with families  
5 and get them to participate and engage with young people  
6 and get them to participate, that expertise should sit with  
7 culturally appropriate agencies.

8  
9 MR CREAMER: Thank you, Commissioner.

10  
11 COMMISSIONER: Can I ask you in relation to the recognised  
12 entity --

13 A. Yes.

14  
15 COMMISSIONER: -- that structure was abolished, as  
16 I understand it, at some point and we now have an  
17 authorised person that is not always available, as  
18 I understand it.

19 A. Yes.

20  
21 COMMISSIONER: And, if not available, then effectively  
22 input from the nominated authorised person is sort of  
23 dispensed with.

24 A. M'hmm.

25  
26 COMMISSIONER: In your experience is it dispensed with  
27 more often than it should be for whatever reason that is  
28 advanced?

29 A. Yes, I think it is. I think more than it should be.

30  
31 COMMISSIONER: Is that because of difficulties, practical  
32 difficulties, in identifying an authorised person on the  
33 part of the - by the family, who are presumably offered the  
34 opportunity to have an authorised person with them to  
35 assist?

36 A. I think there's a range of factors. I think sometimes  
37 the family or the young person are not asked, and that's on  
38 the department. I think sometimes they are asked and they  
39 may not necessarily have a family member that wants to open  
40 their door to being scrutinised by the department. There's  
41 still a lot of apprehension or fear to getting involved  
42 with the department, so even for the family member.

43  
44 COMMISSIONER: You mean the nominated authorised person  
45 might be apprehensive?

46 A. The independent person. The independent person might  
47 have their own history with the department or their own

1 fears about the department getting involved with their  
2 family. It's a difficult enough system for the  
3 practitioners and the lawyers involved to understand, and  
4 the role of the independent person is to help facilitate  
5 engagement with the department, and that can be hard for  
6 family members to do. I think I would really like to see  
7 some way in which community-controlled organisations  
8 provided direct support to independent persons so they  
9 actually had the ability to get an understanding of their  
10 role and the system that sat outside of the department  
11 telling them what their role was.

12  
13 COMMISSIONER: Do you have an understanding as to why the  
14 recognised entity model was discontinued?

15 A. My understanding is that there was consultation, and  
16 I think in some areas there were families that didn't want  
17 one organisation who were automatically involved without  
18 them having say about whether that organisation should be  
19 involved. At the time I was in Beaudesert and they had a  
20 very small - sorry, they had one recognised entity who  
21 covered the whole area, and it was a small community. So  
22 the parents that we were engaging with would know the  
23 workers from that organisation and wouldn't necessarily  
24 want them to know that the family's involved with Child  
25 Safety.

26  
27 I think any process or any system needs to talk to Elders  
28 and talk to people in the community and talk to QATSICPP to  
29 figure out maybe it's not just one, maybe it's not  
30 recognised entities or independent people; maybe it's a  
31 range and families get to choose which avenue they go down.  
32 But I think that should be informed by the cultural wisdom  
33 of not me, Elders.

34  
35 COMMISSIONER: Okay. All right. The recognised entity  
36 model, can you tell me where were such recognised entities  
37 based? I think they were usually Aboriginal  
38 community-controlled organisations, were they not?

39 A. Yes.

40  
41 COMMISSIONER: Right. Is there some potential to have a  
42 recognised entity and in the case of Aboriginal children a  
43 community-controlled organisation somehow colocated with  
44 the courts so that you might have a recognised entity with  
45 coverage of a particular region with a sort of physical  
46 presence within the Childrens Court performing a number of  
47 roles which could include participation in case planning

1 and being on hand to assist in the explanation of the  
2 process or in any other matters that they can assist with?  
3 I'm not suggesting this as a substitute for legal  
4 representation but perhaps as an adjunct to that.

5 A. I think it would come down to the purpose. So if the  
6 purpose was to inform the court about what may be  
7 culturally appropriate or inform the court about why things  
8 are being done in a particular way or should be done in a  
9 particular way I think it could have a lot of benefit.

10  
11 COMMISSIONER: But there might be multiple purposes?

12 A. Yeah.

13  
14 COMMISSIONER: I mean, concurrent purposes that would  
15 include assisting the families involved and advising the  
16 court and bringing a culturally informed perspective to  
17 bear?

18 A. My only hesitation is whether families would want to -  
19 would necessarily engage with an entity directly attached  
20 to the court. Like, I think it's a great idea and I think  
21 it could work, but I think it shouldn't work to the  
22 exclusion of families getting to choose their own supports  
23 in the community.

24  
25 COMMISSIONER: Right. Well, understood. All right.  
26 Thank you.

27  
28 MR CREAMER: No further questions, Commissioner.

29  
30 COMMISSIONER: Ms Martin, thank you very much for  
31 participating, for being so patient in the process which  
32 I know has extended over several days and at some  
33 inconvenience to you. I have found your evidence to be  
34 very informative and I look forward to your further  
35 contributions when you do the homework that I have  
36 requested. So thank you very much.

37 A. Thank you, Commissioner.

38  
39 **<THE WITNESS WITHDREW**

40  
41 COMMISSIONER: Now, this is a record. We don't have  
42 another witness today, but we will tomorrow. It's good to  
43 see we're completing witnesses, which we didn't achieve  
44 last year. As I've said, I need to adjourn until half past  
45 10 tomorrow. So we'll adjourn now, and have a nice  
46 afternoon.

47

1 THE HEARING WAS ADJOURNED AT 12.39PM UNTIL THURSDAY,  
2 5 FEBRUARY 2026  
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