



TRANSCRIPT OF PROCEEDINGS

THE HON RONALD SACKVILLE AO QC, Chair
THE HON ROSLYN ATKINSON AO, Commissioner
MS ANDREA JANE MASON OAM, Commissioner
MR ALASTAIR JAMES McEWIN AM, Commissioner

**THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND
EXPLOITATION OF PEOPLE WITH DISABILITY**

10.30 AM, FRIDAY, 19 FEBRUARY 2021

DAY 4

Dr Kerri Mellifont QC, Senior Counsel Assisting
Ms Janice Crawford, Counsel Assisting
Mr Ben Power, Counsel Assisting

CHAIR: Good morning, everybody. Welcome to the fourth day of this hearing. I shall invite Commissioner Mason to give the Acknowledgment of Country.

COMMISSIONER MASON: Thank you, Chair.

5

We acknowledge the First Nations people as the original inhabitants of the lands on which this hearing is sitting.

10 Nganana tjukarurungku kalkuni Anangu kuwaripa tjara nyinantja tjuta, ngura nyangangka.

We recognise Meeanjin, Brisbane.

15 Nganana ngurkantananyi ngura Meeanjin-nga Brisbane-ta.

We recognise the country north and south of the Brisbane River as home of both the Turrbal and Jagera nations.

20 Nganana ngurkantananyi karu panya Brisbane River-nya alintjara munu ulparira Anangu nguraritja tjuta nyinantja munu kuwari nyinanyi Turrbal-nga munu Jagera-nya.

25 And we pay respect to the Gadigal people of the Eora Nation. Their land is where the city of Sydney is now located.

We pay deep respects to all Elders past, present and future and especially elders, parents and young people with disability.

30 I'd like to read the First Nations content warning now. This hearing will include evidence that may bring about different responses for people. It will include accounts of violence, abuse, neglect, and exploitation of First Nations people with disability. It will also include references to First Nations people who are deceased. If the evidence raises concerns for you, please contact the National Counselling and Referral Service on 1800 421 460. You can also contact Lifeline on 13 11 14,
35 Beyond Blue on 1300 224 636, or, for First Nations viewers, your local Aboriginal Medical Services for social and emotional wellbeing support.

Thank you, Chair.

40 CHAIR: Thank you very much, Commissioner Mason. I shall now hand over to Commissioner Atkinson in the Brisbane hearing room.

45 COMMISSIONER ATKINSON: Thank you, Chair. Welcome to Meanjin. Ms Crawford.

MS CRAWFORD: Thank you, Commissioner. Today is Day 4 of Public Hearing 11 and it's the first of two days in the Winmartie case study.

5 Today we will hear evidence from Aunty Margret Campbell and Ms Lorelle Stoeckel who are sitting together. You will find Aunty Margret's written statement at Tab 3 of Tender Bundle A. I ask to tender her statement into evidence and for it to be marked as Exhibit 11.13.1.

COMMISSIONER ATKINSON: That will be done.

10 **EXHIBIT #11.13.1 - STATEMENT OF AUNTY MARGRET CAMPBELL**

15 MS CRAWFORD: You will also find photographs 1 to 4 of Winmartie at Tab 1 of Tender Bundle F2 and I ask to tender these photographs into evidence, and for them to be marked as Exhibits 11.35.1 to 11.35.4 respectively.

COMMISSIONER ATKINSON: Thank you. That will be done.

20 **EXHIBITS #11.35.1 TO #11.35.4 - PHOTOGRAPHS OF "WINMARTIE"**

25 MS CRAWFORD: In addition, you will find Ms Lorelle Stoeckel's written statement at Tab 4 of Tender Bundle A. I ask to tender her statement into evidence and for it to be marked as Exhibit 11.14.1.

COMMISSIONER ATKINSON: Again, that will be done.

30 **EXHIBIT #11.14.1 - STATEMENT OF MS LORELLE ANNE STOECKEL**

35 MS CRAWFORD: Thank you, Commissioner. I can indicate that Aunty Margret will take an oath.

COMMISSIONER ATKINSON: Thank you.

Aunty Margret Campbell, my Associate Elizaveta will now give you the oath.

40 **AUNTY MARGRET CAMPBELL, SWORN IN PITJANTJATJARA**

45 COMMISSIONER ATKINSON: Ms Stoeckel, my Associate will now give you the oath. Thank you.

MS STOECKEL: I'm sorry, I need to affirm.

COMMISSION ASSOCIATE: My apologies.

5 **MS LORELLE ANNE STOECKEL, AFFIRMED**

COMMISSIONER ATKINSON: Aunty Della Pearce, you are the interpreter and I understand you have already been sworn, is that correct?

10

INTERPRETER: Yes.

COMMISSIONER ATKINSON: Yes, Ms Crawford.

15

EXAMINATION-IN-CHIEF BY MS CRAWFORD

MS CRAWFORD: Aunty Margret, there's a map behind you. Can you point on that map to where your country is?

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AUNTY MARGRET: It's the blue one.

MS CRAWFORD: The blue one?

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AUNTY MARGRET: Yes, Arrente country.

MS CRAWFORD: So home, where is your homeland? Where do you live?

30

AUNTY MARGRET: Alice Well.

MS CRAWFORD: And Alice Well is south of Alice Springs, yes?

AUNTY MARGRET: Yes.

35

MS CRAWFORD: Thank you. You can sit down.

Aunty, can you tell the Commission what is your role in your community?

40

AUNTY MARGRET: I'm a strong lady, I'm an Elder, traditional owner as well.

MS CRAWFORD: And you're related to Winmartie?

AUNTY MARGRET: Yes. I'm his Aunty.

45

MS CRAWFORD: Are you his Aunty on mother's side or father's side?

AUNTY MARGRET: On father's side.

MS CRAWFORD: The father's side.

5 AUNTY MARGRET: I'm the elder sister for his dad, Winmartie's dad.

MS CRAWFORD: Does Winmartie have brothers or sisters?

10 AUNTY MARGRET: There's three men in the family. Myself, I'm the first.

MS CRAWFORD: And does Winmartie have any sisters or brothers?

AUNTY MARGRET: Older brother, there's three of them. There were three other
15 siblings after Winmartie.

MS CRAWFORD: After Winmartie. And boys? Girls?

AUNTY MARGRET: One girl. Four boys. One girl.

20 MS CRAWFORD: Okay, thank you. When was Winmartie born?

AUNTY MARGRET: He was born in Alice Springs Hospital.

MS CRAWFORD: Did he grow up in your country?
25

AUNTY MARGRET: Yes, he did.

MS CRAWFORD: And did you spend a lot of time with him when he was a child?

30 AUNTY MARGRET: Yes, we was living together. Mother, father, all of us. We
had one big house.

MS CRAWFORD: What was Winmartie like when he was a boy?

35 AUNTY MARGRET: Get around, used to go for visits.

MS CRAWFORD: Did he play with the other children?

AUNTY MARGRET: Yeah, he used to play.
40

MS CRAWFORD: Did the other children have any problems with him?

AUNTY MARGRET: They used to find that he was different but still they used to
45 play with him.

MS CRAWFORD: Sure. When you say he was different, can you tell the
Commissioners how he was different? What was different?

AUNTY MARGRET: They didn't care. No problem. He was what he was. When he was small.

5 MS CRAWFORD: When Winmartie was a boy, he grew up on country speaking Language?

AUNTY MARGRET: Yes. He was talking Language.

10 MS CRAWFORD: And was that Eastern Arrente or Pitjantjatjara?

AUNTY MARGRET: Pitjantjatjara, but also his mother's language is Eastern Arrente.

15 MS CRAWFORD: So he did both?

AUNTY MARGRET: Yes. Two languages.

MS CRAWFORD: Winmartie had seizures when he was a baby and a boy. Is that
20 right?

AUNTY MARGRET: Yes, like started then. He'd take a fit.

MS CRAWFORD: Did he have special doctors for that?
25

AUNTY MARGRET: There was no doctors. Because the doctors was in Alice Springs.

MS CRAWFORD: And that's far away?
30

AUNTY MARGRET: It's a long way.

MS CRAWFORD: A long way.

35 AUNTY MARGRET: Alice Springs.

MS CRAWFORD: So when Winmartie had seizures what did you do?

AUNTY MARGRET: We just --- we hold him down, rub his tummy and that to
40 settle him. That's what we used to.

MS CRAWFORD: Okay. And Winmartie lived with his grandmother, too, when he was a boy?

45 AUNTY MARGRET: Yes, that time. Grandmother, those day.

MS CRAWFORD: All right. And then there was a time, Aunty Margret, when you

tried to get help for Winmartie. When he was a boy.

AUNTY MARGRET: When he was small, I was looking to get help.

5 MS CRAWFORD: And where did you try to get help?

AUNTY MARGRET: I got help in Alice Springs. At that time, Patrick was there.

10 MS CRAWFORD: So when you got help with Patrick, where was Winmartie living then?

AUNTY MARGRET: He was living with me at Titjikala all that time.

15 MS CRAWFORD: Were you worried for Winmartie then?

AUNTY MARGRET: I was worried because he was growing up.

MS CRAWFORD: And what was he doing that was making you worried?

20 AUNTY MARGRET: Because he was going for long walks. And I was scared for him doing that.

MS CRAWFORD: Scared for him going on long walks?

25 AUNTY MARGRET: Yes.

MS CRAWFORD: Because you couldn't find him or because something might happen to him?

30 AUNTY MARGRET: We used to lose him. Where did he go? Sometimes on top of the hills sitting.

MS CRAWFORD: And he would go for long times, you didn't know where he was?

35 AUNTY MARGRET: Yes. A long time. That's when we start worrying.

MS CRAWFORD: Aunty Margret, how did you come to meet Patrick McGee?

40 AUNTY MARGRET: Patrick was looking after other families that are similar to Winmartie.

MS CRAWFORD: And where was Patrick working then?

45 AUNTY MARGRET: He was living and working at Santa Teresa.

MS CRAWFORD: So, Aunty Margret, did you go to Santa Teresa to meet Patrick?

AUNTY MARGRET: No, he come to see me because I was passing message, if someone see Patrick, tell him to come to see me.

5 MS CRAWFORD: I see. And Patrick came to see you at Alice Well or Titjikala?

AUNTY MARGRET: No, at Titjikala he came to see me.

MS CRAWFORD: And did Patrick say that he could help for Winmartie?

10 AUNTY MARGRET: "Yes, I will help you."

MS CRAWFORD: And did he help?

15 AUNTY MARGRET: Yes, he helped me very much.

MS CRAWFORD: Can you say what Patrick did that helped?

20 AUNTY MARGRET: To take him around in the car for a ride. And bring him back home, drop him off.

MS CRAWFORD: And it was Patrick who helped Winmartie to go and live with Kumantjayi, is that right?

25 AUNTY MARGRET: Yes, there with his Uncle.

MS CRAWFORD: And Aunty Margret, when Winmartie went to live with Kumantjayi were you happy about that?

30 AUNTY MARGRET: I was happy at the time because he was with his family, Uncle.

MS CRAWFORD: Did you visit Winmartie when he stayed with Kumantjayi?

35 AUNTY MARGRET: Yes, I used to go there and go back home.

MS CRAWFORD: Did Kumantjayi live near Santa Teresa?

AUNTY MARGRET: He was already living at Santa Teresa.

40 MS CRAWFORD: When you visited Winmartie when he was with Kumantjayi, was Winmartie happy?

AUNTY MARGRET: He was happy there with Uncle.

45 MS CRAWFORD: Then, the bad thing happened.

INTERPRETER: Sorry. Just to rephrase that to "something bad happened".

AUNTY MARGRET: Yes, a bad story happened.

MS CRAWFORD: Aunty, how did you find out about that bad thing?

5

AUNTY MARGRET: Uncle Kumantjayi went somewhere the whole day, and he was left --- Winmartie was left all by himself.

MS CRAWFORD: And when something bad happened, Aunty Margret wasn't there, that's right, isn't it?

10

AUNTY MARGRET: No, I wasn't there but I was at Titjikala.

MS CRAWFORD: So how did Aunty Margret get the news about the bad thing?

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AUNTY MARGRET: The police rang me and told me.

MS CRAWFORD: Did other people tell you where Winmartie was?

AUNTY MARGRET: He was inside the house and he was outside the house.

20

MS CRAWFORD: And the police took him away?

AUNTY MARGRET: Yes, that's when they took him.

25

MS CRAWFORD: Did they tell you where he was?

AUNTY MARGRET: No. No, I didn't know anything where they took him when I was home.

30

MS CRAWFORD: Were you worried about Winmartie?

AUNTY MARGRET: I was really upset and worrying about him. Where did they take him?

35

MS CRAWFORD: Did you try to find him?

AUNTY MARGRET: At the time I was, you know, like scared and didn't think much for a long time, and then I started to think where is he and looked for him.

40

MS CRAWFORD: When you started to look for him, where did you go?

AUNTY MARGRET: Patrick told me. Patrick found out where he was and came back and told me, he's here.

45

MS CRAWFORD: And Aunty Margret, did you go to see Winmartie?

AUNTY MARGRET: Yes, I went there to see.

MS CRAWFORD: Can you tell the Commission what happened that day?

5 AUNTY MARGRET: Yes, I went in to see him.

MS CRAWFORD: And how did he look?

10 AUNTY MARGRET: Sad, upset. He told me he had a sore arm.

MS CRAWFORD: Did you get to stay with him for a long time?

AUNTY MARGRET: No, I was told hurry up and get out.

15 MS CRAWFORD: Who told you to hurry up and get out, Aunty?

AUNTY MARGRET: The guards that are inside. "Get out."

20 MS CRAWFORD: Did you go back?

AUNTY MARGRET: I went back home.

25 MS CRAWFORD: When you were with Winmartie and he had a sore arm, did he tell you how he got a sore arm?

AUNTY MARGRET: I don't know. I don't remember.

MS CRAWFORD: Aunty, was Winmartie in jail for a long time?

30 AUNTY MARGRET: Yes. Thought it was a long time when he was a young age. When he was in prison, older.

MS CRAWFORD: Did Winmartie tell you how he was treated in jail?

35 AUNTY MARGRET: He told me about that sore arm.

MS CRAWFORD: Later, did he tell you what happened to him when he was in jail?

40 AUNTY MARGRET: He said something about they used to put me on a chair.

MS CRAWFORD: Did he tell you about the chair?

AUNTY MARGRET: That's the only one story he told me.

45 MS CRAWFORD: Can you tell us about the chair?

AUNTY MARGRET: Cover his face with a cloth. That's the story he told me that

has happened to him.

MS CRAWFORD: Aunty, when Winmartie told you that story, how did you feel?

5 AUNTY MARGRET: I cried.

MS CRAWFORD: At that time was Patrick still visiting Winmartie when Winmartie was in jail?

10 AUNTY MARGRET: Yes, he was visiting him. He would come back and (inaudible).

MS CRAWFORD: So Patrick would come back and tell you about Winmartie?

15 AUNTY MARGRET: Yes. He did come and tell me. Sometimes he rings me to tell me.

MS CRAWFORD: So Winmartie was moved into the FDU in Alice Springs, and just for the benefit of everyone watching, the FDU is the Forensic Disability Unit.

20 AUNTY MARGRET: Yes, he was put there.

MS CRAWFORD: Does Aunty Margret know how long it took for Winmartie to be moved from the jail to the FDU?

25 AUNTY MARGRET: He was in prison a long, long time. He was put there, FDU.

MS CRAWFORD: Aunty Margret, did you know that Winmartie had daytime at FDU but went back to the prison?

30 AUNTY MARGRET: I don't know if they kept him there.

MS CRAWFORD: They moved him backwards and forwards for a while before they moved him.

35 AUNTY MARGRET: So he used to go crazy, they probably used to send him back to prison, to put him back to prison. It must have been happening.

MS CRAWFORD: Aunty, have you been for a visit to the FDU?

40 AUNTY MARGRET: Yes, I went there.

MS CRAWFORD: Did you get to see Winmartie's room?

45 AUNTY MARGRET: Yes, I went in to see his room.

MS CRAWFORD: Can you tell the Commissioners what it looked like?

AUNTY MARGRET: His room, he sits and plays games, like games around. And the doors was locked, the doors around him, lots of doors.

5 MS CRAWFORD: Could Winmartie get outside?

AUNTY MARGRET: He was allowed out, he could get out, and he'd get the hose and water the plants, gardening, he'd done.

10 MS CRAWFORD: And when he was out, did he go out with the people who were looking after him?

AUNTY MARGRET: Yes, with them.

15 MS CRAWFORD: Aunty, when you go for a visit to the FDU, do you get to stay a long time?

AUNTY MARGRET: Yes. Spend longer time there.

20 MS CRAWFORD: Do you ever get to stay there all night?

AUNTY MARGRET: No, just in the afternoon, really. Go home.

MS CRAWFORD: Now, you came to be appointed as a Guardian for Winmartie.
25

AUNTY MARGRET: Yes, they put us together and put me, me and Patrick.

MS CRAWFORD: Did Patrick ask you to come and be a Guardian with him for Winmartie?
30

AUNTY MARGRET: Yes, he told me that and I agreed, yes.

MS CRAWFORD: What do you do for Winmartie as a Guardian?

35 AUNTY MARGRET: They ring me and tell me what are the changes of medication they're doing for him and all that.

MS CRAWFORD: You were worried about the medication, weren't you?

40 AUNTY MARGRET: I was a bit worried about the medications because every time, you know, also put him or get him to be drowsy or sleepy all the time.

MS CRAWFORD: And you and Patrick tried to get the medication to be used less, so not so much?
45

AUNTY MARGRET: Yes, we talked about that.

MS CRAWFORD: And the medication did get used less for a time, didn't it?

AUNTY MARGRET: Yes, they lowered the medication.

5 MS CRAWFORD: And when the medication was used less, was Winmartie not sleepy?

AUNTY MARGRET: He was okay, he's awake, alert.

10 MS CRAWFORD: Was he doing more things?

AUNTY MARGRET: Yes, he's walking around doing things. He's doing painting. Good things he was doing.

15 MS CRAWFORD: Can we put up the two photographs, please, that have the paintings in them?

COMMISSIONER ATKINSON: Do you need a document number?

20 MS CRAWFORD: All right. So that photograph, Aunty Margret, can you see the photograph?

AUNTY MARGRET: Yes.

25 MS CRAWFORD: Yes? Can you tell the Commissioners about those photographs?

AUNTY MARGRET: The one with Lorelle, Winmartie and Lorelle, the next photograph, are you talking about the painting?

30 MS CRAWFORD: Yes. Is that - where is that?

AUNTY MARGRET: I think that's Lorelle's office.

35 MS CRAWFORD: And the painting, Winmartie put that painting up on the wall, didn't he, with staff?

AUNTY MARGRET: Yes, did it himself. And we had to get to the painting, like the windmills. He was hoping to set up the windmills in the yards.

40 MS CRAWFORD: Okay. And Aunty, the windmills, are they the windmills that are at Alice Well?

AUNTY MARGRET: Yes. Windmills, the tank, they're there.

45 MS CRAWFORD: And is that his favourite place to sit at Alice Well?

AUNTY MARGRET: Yes. It's near the river, that painting. Yeah, he used to love

it.

MS CRAWFORD: And when he's sitting there, what is he looking at?

5 AUNTY MARGRET: The trees, the windmill, and talk about it.

MS CRAWFORD: And he likes the donkeys, too, doesn't he?

10 AUNTY MARGRET: Donkeys there. He liked the donkeys. And the cattle, brooks.

MS CRAWFORD: Now, Aunty, when you spoke to the FDU about the medication, did they listen to you?

15 AUNTY MARGRET: They don't listen to me. I think they was giving it to him. All along. Because I said, "Don't give him that. Leave it."

MS CRAWFORD: Do you have a special name for the medicine?

20 AUNTY MARGRET: I can't remember.

MS CRAWFORD: Did you tell me that you called it "shut up" medicine?

25 AUNTY MARGRET: Yeah, that's the one. That's the one they give him. So I told them stop it. Don't give him that because he's always drowsy and sleepy.

MS CRAWFORD: Now, recently, so just - you talked to FDU about a ngangkari?

30 AUNTY MARGRET: I wanted to take him to see a ngangkari.

MS CRAWFORD: Aunty, can you tell the Commission what is a ngangkari?

AUNTY MARGRET: A ngangkari man.

35 INTERPRETER: Can I just - excuse me. Can I just let the Commissioners know to explain the ngangkari, about the ngangkari man?

MS CRAWFORD: Yes.

40 COMMISSIONER ATKINSON: Certainly.

INTERPRETER: A witch doctor, the animal doctors, the doctors can't see, in hospitals, this is --- our ngangkaris can see through us and they can fix us up. That's what we call ngangkaris, they're just like a bush doctor.

45 Very similar. They touch and see where our pain is or whatever, and they draw it out, suck the blood out, and they've got powers. We know that we believe in them.

COMMISSIONER ATKINSON: Ms Crawford, I might ask Commissioner Mason if she might explain her knowledge of the ngangkari because I think Commissioner Mason has very good knowledge, and then Aunty Margret can say if that's the same as she understands.

5

COMMISSIONER MASON: Thank you, Commissioner.

What Aunty Della has just said is true. Before, in the old times, before piranpa, white people were on country, ngangkaris looked after, well, in their minds, in their bodies, in their spirits and they made sure everyone was well. And today ngangkari traditional healers, they work two ways with piranpa non-Indigenous doctors. So Anangu Aboriginal doctors, ngangkari, and piranpa non-Indigenous doctors with the medicine, it must work two ways, because the ngangkari traditional healers side is about understanding the family, the love for that person, and also where they are from. So it's really important for them to have that two ways. But they, ngangkari traditional healers were there since time began, looking after, caring for that's okay?

20

AUNTY MARGRET: Palya yes that's right what you said.

COMMISSIONER ATKINSON: Thank you.

MS CRAWFORD: So, Aunty, you wanted Winmartie to see a ngangkari?

25

AUNTY MARGRET: Yes, to take him to see a ngangkari.

MS CRAWFORD: Would you have to take Winmartie to the ngangkari, or can the ngangkari come and see Winmartie?

30

AUNTY MARGRET: I used to take him from FDU to the ngangkari person.

MS CRAWFORD: You told the FDU that you wanted to do that, didn't you?

35

AUNTY MARGRET: Yes, I told them, take him to a ngangkari.

MS CRAWFORD: What did they say?

AUNTY MARGRET: They agreed, "Yes, we'll do that."

40

MS CRAWFORD: Did they do that?

AUNTY MARGRET: Yes, they took him.

45

MS CRAWFORD: When did they take him?

AUNTY MARGRET: For ten days.

MS CRAWFORD: Did that help Winmartie?

AUNTY MARGRET: He was good after that, his spirit was straightened out.

5 MS CRAWFORD: Aunty Margret, Winmartie comes to visit you at Alice Well sometimes, doesn't he?

AUNTY MARGRET: Once, camp over, one night and he will go back.

10 MS CRAWFORD: And do the staff from the FDU come and stay with him?

AUNTY MARGRET: Yes, they all come and camp over together with him.

MS CRAWFORD: Were the family happy to have him come back?

15 AUNTY MARGRET: The father, sisters and family were happy to see him when he comes.

MS CRAWFORD: And is that because the bad thing business is finished now?

20 INTERPRETER: Sorry?

MS CRAWFORD: The bad thing that happened, that sad business has finished now?

25 AUNTY MARGRET: Yes, everything started to work out and sort things out, slowly towards him.

MS CRAWFORD: And he liked coming to visit, didn't he?

30 AUNTY MARGRET: Yes, he liked to come there. He could welcome by all his family, and he's happy to see them. And they will be happy for him going back there.

35 MS CRAWFORD: Does he bring something with him when he comes to visit with you, Aunty?

AUNTY MARGRET: Bush tobacco.

MS CRAWFORD: Bush tobacco?

40 AUNTY MARGRET: Yeah. For me.

MS CRAWFORD: For Aunty Margret.

45 AUNTY MARGRET: From his garden.

MS CRAWFORD: So he grows that for Aunty Margret, is that right?

AUNTY MARGRET: Yes, he makes that for me.

MS CRAWFORD: I'm just going to show you another photograph. Can we put up the photograph of Aunty Margret with Winmartie, the fourth one?

5

Aunty, a photograph is just going to come up on the screen for you.

Aunty Margret, who's that?

10 AUNTY MARGRET: That's Winmartie.

MS CRAWFORD: And where are you?

15 AUNTY MARGRET: I'm on the other side. This is where the outstation is, homeland.

MS CRAWFORD: That is at Alice Well?

20 AUNTY MARGRET: Yes. It's at Alice Well.

MS CRAWFORD: And when Winmartie comes to Alice Well, how many other people come to visit with him when he stays?

25 AUNTY MARGRET: Each family. His families.

MS CRAWFORD: His families?

AUNTY MARGRET: Yes, if they know he's coming to Alice Well.

30 MS CRAWFORD: Is that a lot of people?

AUNTY MARGRET: Yes, lots of people.

35 MS CRAWFORD: More than ten?

AUNTY MARGRET: Yeah, lots. Brothers, younger siblings, grandmas, nieces, nephews. Lots.

40 MS CRAWFORD: Lots. Does Winmartie help with the painting with the children as well?

AUNTY MARGRET: Yes. They will sit down with the little ones, all of us get together.

45 MS CRAWFORD: Do you have a big cook-up when he comes to visit?

AUNTY MARGRET: He cooks and he helps with the food, cooking.

MS CRAWFORD: Aunty Margret, in 2020 there was a big sick, COVID-19.

AUNTY MARGRET: Yes.

5

MS CRAWFORD: Did that stop Winmartie from coming to visit on country?

AUNTY MARGRET: For a long, long time there's no visiting. It was later and later and then they brought him out.

10

MS CRAWFORD: And you couldn't go and visit him either, could you?

AUNTY MARGRET: No, I didn't even go there to see him as well.

15

MS CRAWFORD: But you did use FaceTime, you could FaceTime call with Winmartie, couldn't you?

AUNTY MARGRET: I could see him talking to me, and see me talking to him. I'd show him where the donkeys are. Yes.

20

MS CRAWFORD: So Aunty, in the FDU, do the staff speak Pitjantjatjara or Arrente?

AUNTY MARGRET: No, not at all.

25

MS CRAWFORD: And when you speak to Winmartie, you speak to him in Pitjantjatjara, don't you?

AUNTY MARGRET: Yes, when I talk to him, he listens to me.

30

MS CRAWFORD: Did you offer to help the staff at FDU to learn some Pitjantjatjara?

AUNTY MARGRET: He used to help them and so try to teach them. And for himself as well.

35

MS CRAWFORD: And you tried to do that with some flip charts, didn't you?

AUNTY MARGRET: Yes, I was showing him this, this and this. Nobody was listening.

40

MS CRAWFORD: Was that because you were worried because Winmartie had no one speaking to him in Pitjantjatjara?

45

AUNTY MARGRET: I was talking to him but from the iPad as well, I was teaching him through showing him this is what we say in Pitjantjatjara, learning him as we were doing the FaceTime.

MS CRAWFORD: And when it came time for him to come back out for a visit last year, you had to story him for a long time, didn't you?

5 INTERPRETER: Sorry?

MS CRAWFORD: For the July visit, the June visit, you had to story him for a long time about coming back to country because it had been a long time?

10 AUNTY MARGRET: Yes. Yes, to bring him out.

MS CRAWFORD: And they brought him out but there was a problem that day?

15 AUNTY MARGRET: Because the next day they were going to pack and said "We have to go back", when he said, "I'm not going." At that time, he was upset.

MS CRAWFORD: Because it had been a long time since he had been on country.

20 AUNTY MARGRET: Because it was long, long time, because of the COVID. Because --- he was probably thinking ---

INTERPRETER: Quite hard to hear.

25 AUNTY MARGRET: --- because he was telling them "Go away. You guys can go. I'm staying."

MS CRAWFORD: He didn't want to go back?

30 AUNTY MARGRET: He said no, I want to stay.

MS CRAWFORD: But they took him back, didn't they?

35 AUNTY MARGRET: Because I think trying to confuse him a bit, like, you get in that car and you go back, because we're jumping into our car and we're going out. So we all driving out together.

40 MS CRAWFORD: Yeah, that's what you tried to do so that Winmartie would see Aunty Margret, you pack your car and then he sees the other car, and he's not --- he gets upset.

AUNTY MARGRET: Yes, getting ready in the other car.

45 MS CRAWFORD: But that day, that day the staff packed their car up first, didn't they?

AUNTY MARGRET: Yes, they were all packed and just waiting for him.

MS CRAWFORD: And that's what upset him?

AUNTY MARGRET: He smashed the windows, windscreens --

5 MS CRAWFORD: Of the car.

AUNTY MARGRET: --- of the car.

MS CRAWFORD: He did that, didn't he?

10

AUNTY MARGRET: Yes. That's right.

MS CRAWFORD: And since that day the "shut up" medicine has gone back up. Is that right?

15

AUNTY MARGRET: Yes. Yes, they gave him back the "shut up" medicine. Then he was drowsy all the time, sleepy. (Inaudible) medication. Let him be, so he can see the sunrise, he can see the sunset. He was always sleepy, drowsy.

20 MS CRAWFORD: Do you think that the FDU are listening to you about Winmartie?

AUNTY MARGRET: Sometimes they never listen to me. It's just them doing their jobs.

25

MS CRAWFORD: Aunty Margret, you told them that a woman shouldn't be helping with touching Winmartie for showering and things like that, didn't you?

AUNTY MARGRET: I told them to give him a bath, don't let the lady go in to bath him. Send the man to bath him. Didn't want the woman to shave him. I told them that, and the beard, leave it.

30

MS CRAWFORD: Did they listen to you about that?

35 AUNTY MARGRET: No, they did not listen to me. They probably keep doing that now, as we speak. It's true.

MS CRAWFORD: So after the car problem, Winmartie didn't come back to see you on country until nearly Christmas, is that right?

40

AUNTY MARGRET: Yeah, for a long time. They kept him like now, no visits still. And they'll go to town, that's where they take him, and sit around the parks, lawns in Alice, barbecue or something.

45 MS CRAWFORD: He came out to country in December for a visit?

AUNTY MARGRET: Yes.

MS CRAWFORD: But he couldn't stay that day?

5 AUNTY MARGRET: That day they came, and in the afternoon it was that hot, he was taking a fit. So they had to pack up and go back that afternoon.

MS CRAWFORD: Because he was sick and had a seizure, that's right, isn't it?

10 AUNTY MARGRET: A seizure, yes.

MS CRAWFORD: Aunty Margret, usually when Winmartie is visiting, he's happy with you, isn't he?

15 AUNTY MARGRET: Yes, he's happy.

MS CRAWFORD: Do you sometimes ask the staff to give him any medication or not?

20 AUNTY MARGRET: No, I don't. Because the carers, they will always give him the medication.

MS CRAWFORD: Aunty, what would you like to see happen for Winmartie? What do you want?

25 AUNTY MARGRET: I want him out of that place where he is, to get his own house and have two carers, men carers. Even though the FDU is still a closer accommodation.

30 MS CRAWFORD: So if he had his own house, where would that have to be?

AUNTY MARGRET: In Alice Springs. There's too many caring at the place he is now, but at the house just have two male workers. So what I'd like to see happening is, I like to go there to that house, and it is open and just have two carers, male carers there, to look out for him. Get him out of this place from the FDU.

35 MS CRAWFORD: And somewhere where the family can visit whenever they want?

AUNTY MARGRET: Yes, I really want that. So we can go to him and sit down, long as we like. (Inaudible) for a long time, it's like a prison.

40 MS CRAWFORD: It's so closed in, is that what you mean?

AUNTY MARGRET: Yeah, it's like the prison. Similar to the prison.

45 MS CRAWFORD: And he needs some space to see outside.

AUNTY MARGRET: Yes.

MS CRAWFORD: And if he had a place of his own, Aunty Margret, would you stay there some nights?

5 AUNTY MARGRET: Yes. I would like to go and sit down with him, and also other families. Because the place he's at right now is just closer and closed in, FDU is.

MS CRAWFORD: But he needs to be in Alice Springs to be near the hospital because of his epilepsy, that's right, isn't it?

10

AUNTY MARGRET: Yes, yes.

MS CRAWFORD: Because Alice Well is too far away.

15 AUNTY MARGRET: Because if he has a house with carers they could also come out to visit us, to Alice Well.

MS CRAWFORD: Thank you. Thank you, Aunty Margret. Thank you, Aunty Della. Thank you, Commissioners.

20

COMMISSIONER ATKINSON: Thank you.

Aunty Margret, I will ask Commissioner Mason if she would like to ask you a question.

25

QUESTIONS BY THE COMMISSION

30 COMMISSIONER MASON: Sister Margret, thank you for coming to give your evidence today. Nyuntu minyma kunpu.

You're a strong lady. You just talked about a better place for Winmartie to be in, your ngura, a house, a better place.

35

AUNTY MARGRET: Palya, wiru yes that's right.

COMMISSIONER MASON: One of the important stories, tjukurpa about what keeps Arrente strong, I've been told this, I know this, that we need as Anangu people, we need country, manta family, walytja, language, wangka uti tjukurpa culture. Those things heal us. Is that true?

40

AUNTY MARGRET: Wiru Yes.

45 COMMISSIONER MASON: And that hospital is in Alice Springs and the idea of having a place for him, that's on Arrente country, that's his country.

AUNTY MARGRET: Palya. Yes that's right.

COMMISSIONER MASON: So it's a good idea, you're saying?

5 AUNTY MARGRET: Wiru yes.

COMMISSIONER MASON: But also being able to maybe visit family on the homeland?

10 AUNTY MARGRET: Wiru yes.

COMMISSIONER MASON: So I wanted to say, Sister Margret, for this time that he's been in that place, the FDU. So what does that do to him inside of him, his thinking, being in that place? What does that mean without those things?

15

MS CRAWFORD: Aunty Della, could you interpret the answer?

AUNTY MARGRET: The Commissioner said how sad it is for Winmartie being in a closure and there's no family, there's no language spoken, families are talking and not his country. In a way, where he is in this place, he's got nothing. Like Aunty said, that is sad for him and also for us, as being family, we always been together in open space.

20

MS CRAWFORD: Commissioners, I might suggest we take the morning tea break and come back with Ms Stoeckel in 20 minutes, perhaps.

25

COMMISSIONER ATKINSON: Yes.

First, can I thank you, Aunty Margret, from the bottom of my heart for sharing your story and helping us to understand Winmartie's story. It's very important to us.

30

Thank you, Aunty Della, for interpreting so carefully and so culturally appropriately. It has been wonderful to hear Pitjantjatjara spoken in this room, and for you to bring your country to us.

35

Thank you, Ms Tarago, for sitting with them, and thank you, Ms Crawford, for the careful and respectful way in which you asked questions.

We will now adjourn for 20 minutes to 11.10am Queensland time.

40

ADJOURNED

[11.51 AM]

45 **RESUMED**

[12.17 PM]

COMMISSIONER ATKINSON: Yes, Ms Crawford.

MS CRAWFORD: Thank you, Commissioner.

5

Ms Stoeckel, can you explain to the Commission how it came to be that you became involved with Aunty Margret and Winmartie?

10 MS STOECKEL: Yes, I moved to Titjikala community about eight years ago after a woman's journey with my daughter from Uluru, from Wave Rock to Uluru, where I was being courted by a gentleman and we had had made the decision to move in together. So he asked me to come to Titjikala and see if I would be comfortable. And from there I met Mum and the community and I went home.

15 MS CRAWFORD: For the benefit of everyone watching, you refer to Aunty Margret as Mum. You're Aunty Margret's bush daughter, aren't you?

MS STOECKEL: Yes, that's correct.

20 MS CRAWFORD: Can you explain how that came about?

MS STOECKEL: Mum and I became friends within the capacity of my job which was an Aboriginal community worker assisting the clinic to identify community members that may not have felt comfortable in entering the clinic at the time. And
25 Mum got very ill at one stage and I had a phone call from my partner to come to the clinic as the family had asked for me to come and help them understand what was happening with Mum.

30 Mum was trying really hard not to pass away. And my husband was trying really hard to keep her alive. She got a brain infection which, at that point in time, we didn't know what was happening. So I held Mum in my arms as she asked me to, because she was coming in and out of consciousness, and it was very distressing to see such a beautiful woman that I had become really good friends with in such a way, and I have seen big sick like this take Elders very quickly before. And I wanted to
35 make sure that Mum understood that I loved her and I respected her. So holding her, I told her I loved her, and she said, "It's okay, daughter. I will be okay. You're with me." And from that day forth I'm her daughter and she's my mum.

40 MS CRAWFORD: And you have got a professional role with Winmartie as well as a family role, haven't you?

MS STOECKEL: Yes, I do. Because of Winmartie, I am his Support Coordinator for a company called My Voice.

45 MS CRAWFORD: And you say Support Coordinator, is that something to do with the NDIS?

MS STOECKEL: Yes, so it's an NDIS provider, we are NDIS providers, so we provide the services that are required by clients that have an NDIS Plan, and those services are depicted by the clients' needs individually. So Patrick McGee wasn't very happy with what was happening with his NDIS Plan at the time and he spoke
5 with Margret and opted to change him to a company called My Voice, which I was employed by. And from there I've stepped in and provided the services that we could.

MS CRAWFORD: The NDIS package that Winmartie has, can you say how much it
10 is and what you're doing with it?

MS STOECKEL: Today?

MS CRAWFORD: When it started, when you started with it how much was it then?
15

MS STOECKEL: It was in the hundreds of thousands to provide good OT, behavioural management services, teaching Winmartie the skills that he had lost after many years of imprisonment and being in prison so long he needed a lot of behavioural management training, social training, education in all facets of normal
20 life.

MS CRAWFORD: And was it the role of the Care Coordinator to identify the therapists that would be suitable to work with Winmartie under the package?

MS STOECKEL: So my job is to get the professionals that are qualified to do the job, to do their assessments and then I organise what they say needs to be done, and also with the Guardian's input of what they would like to see happening, as well as Winmartie is able to communicate these things for himself. So the Guardians would guide me, being Patrick McGee and Mum, as well as the occupational therapists and
30 the physios and things like that.

MS CRAWFORD: All right. So you said that it was worth hundreds of thousands of dollars. What's it worth now?

MS STOECKEL: Nothing.
35

MS CRAWFORD: So how did that happen?

MS STOECKEL: I believe a report was put in that there was what they classed as
40 "double-dipping" by the FDU, and so they wouldn't work together with the Guardians at the time about a Behavioural Support Plan and a Transition Plan to transition Winmartie from the FDU to society.

MS CRAWFORD: All right, so it got cut to nothing?
45

MS STOECKEL: There was some money there as a Support Coordinator, but there was no money for anything for me to coordinate.

MS CRAWFORD: So in addition to some of these therapists that you had engaged to work with Winmartie, one of them was a speech therapist, wasn't she?

5 MS STOECKEL: Yes.

MS CRAWFORD: And she prepared a report about Winmartie?

MS STOECKEL: Yes.

10

MS CRAWFORD: And she talked in that report about how he communicates in language as well as by his behaviours.

MS STOECKEL: Yes, that's correct.

15

MS CRAWFORD: And she worked with Winmartie in the FDU, didn't she? She went into see him there.

MS STOECKEL: No, she used to go via FaceTime because it was dead smack in the middle of COVID there was no entering. So we, through the NDIS plan, we provided Winmartie with an iPad, and the occupational therapist that was on --- that's employed by the FDU, was assisting our speech therapist with the iPad, and Winmartie so that Mum and the therapist could all work together.

25 So the therapist, our speech therapist also engaged in language lessons so that she could converse with Winmartie in his first language.

MS CRAWFORD: Did any of the staff at the FDU speak Winmartie's language, Pitjantjatjara?

30

MS STOECKEL: No.

MS CRAWFORD: Did any of them ask you to assist to learn Pitjantjatjara?

35 MS STOECKEL: Yes, [Redact] at one stage did ask Mum to sit with her and give her some words, basic words, you know, window, door, floor, but that's all. I did ask that they were able to do some language lessons.

MS CRAWFORD: When you say they, you mean the staff?

40

MS STOECKEL: The staff, the care staff, because Winmartie responds better being spoken to in his first language. I was told that wasn't possible unless the staff paid for it themselves.

45 MS CRAWFORD: Did that situation change a bit later? Did the FDU then change that view and say that they would actually pay for the language if the staff indicated that they wanted it?

MS STOECKEL: Yes, [redact] told me that was not quite the way it should be and that the Government would pay for the staff to participate in a language course.

5 MS CRAWFORD: Have any of them done that to your knowledge?

MS STOECKEL: To the best of my knowledge, no.

10 MS CRAWFORD: Do they have any staff at the FDU now that speak Pitjantjatjara?

MS STOECKEL: So, yes, there is now a young man that has been employed as an ALO, Aboriginal Liaison Officer, to work with Winmartie and the staff.

15 MS CRAWFORD: How long has he been there, do you know?

MS STOECKEL: Only a few months.

20 MS CRAWFORD: Now, part of the therapy that the NDIS package was providing was for an art teacher.

MS STOECKEL: Yes.

25 MS CRAWFORD: Can you tell the Commissioners what the art teacher was doing and how often he was going to work with Winmartie?

MS STOECKEL: So, he would be there around 12 hours a week, three days a week. He would do various different things with Winmartie, from gardening through to painting, sculptural art. Many diverse Indigenous artworks and burning arts, carvings, and things like that.

30 MS CRAWFORD: And when you said earlier that Winmartie can't always express what he would like about his therapies, how did you know that he wanted that?

35 MS STOECKEL: He liked painting and he had, to the best of my understanding, had indicated to the FDU staff that he liked to paint. So I was already engaging with Winmartie before the NDIS plan came into play, doing gardening and different bits and pieces of art, just painting and things like that. And when his NDIS plan came in we were able to keep that going and provide funding so that that didn't cease.

40 MS CRAWFORD: You said a moment ago that the package was cut and it's now nothing. So what is happening with those types of therapies now for Winmartie?

45 MS STOECKEL: Well, unfortunately, when an NDIS plan is defunded, all therapies that were being provided by that plan cease. So any therapies that we were able to provide with that funding we've had to stop, but we have made an agreement with the FDU about his art. So they are paying for his art teacher to stay working with Winmartie. At this point in time, they'd only be able to fund three hours a day, twice

a week.

MS CRAWFORD: Is that half of what he was getting before?

5 MS STOECKEL: Yes. And they did tell me that that wouldn't be a permanent thing, but they would try to support while the NDIS - while we could work with the NDIS to reinstate his plan, if possible.

10 MS CRAWFORD: So over the years that you've known Winmartie, how would you describe him, for the Commission?

MS STOECKEL: A jovial, beautiful young man with a personality that is a treasure to see. He gets excited at the sound of a donkey. He's just a beautiful young man with a lovely, calming way about him.

15

MS CRAWFORD: So when Winmartie was able to re-engage with the community, were you there then?

MS STOECKEL: Yes.

20

MS CRAWFORD: Can you describe for the Commission how that all come to pass?

MS STOECKEL: Mum had come to me and expressed that we really wanted him home, to come and visit the family. So Patrick and myself and Mum and the FDU, we all came together. And the community were a little bit trepidatious to start with, and so they really didn't want him in Titjikala just because they weren't sure what was coming home, because it had a been such a long time. So Mum and I agreed that the best place is Alice Well as it was his childhood stomping ground, that's where he used to hang out as a young kid with his cousins and his brothers. And it was also far enough away from the community that they could look in at their time when they were ready and see Winmartie and come if they wanted to, where he wasn't in the community's faces but they were all there and they were all standing back watching to see if - how and who he was, as they hadn't seen him or knew him anymore, as it had been such a long time he'd been incarcerated and not able to interact with the family. They did have some concerns of who was the young man coming back.

30

35

MS CRAWFORD: So they hadn't seen him for many years and he hadn't seen them for many years, did he know them when he saw them?

40

MS STOECKEL: Oh, yes, yes. He identified not only their English name, but one of the amazing things, he could remember everyone's bush name and story and who they were, how they fitted in the family, and it was an education for me because a lot of the bush names aren't spoken very much anymore. So it actually was great for me because I got to learn some things about the family members that I didn't know.

45

MS CRAWFORD: So was part of the coming back to visit on country, was that in

part funded by the NDIS package that was involved at that time or not?

MS STOECKEL: In the beginning, no. The funding was --- because we didn't have a lot in for care work and things like that because the FDU provided that. So I ---

5

MS CRAWFORD: So just to go back to your other point, that would be double-dipping?

MS STOECKEL: Yes.

10

MS CRAWFORD: Right. Sorry to have interrupted you there.

MS STOECKEL: So, no, the FDU provided the guards as he is a court order where he must be in line of sight at all times. And I provided everything else.

15

MS CRAWFORD: Via the NDIS package or yourself?

MS STOECKEL: No, just myself.

20

MS CRAWFORD: All right. Did there ever come a time where some of those things were provided by the NDIS package?

MS STOECKEL: We had consultations with the FDU and Mum had indicated that she would like the guards to step out while he was home on country and they didn't want to do that without a carer being on hand. So we were able to provide, through his plan at that time, a couple of carers which we employed through the community, local community people. Barry Campbell was one of the carers and he would come and work with Winmartie and sit with Winmartie. So the guards could stay with the line of sight but far enough back so they weren't impeding upon the family's interaction with Winmartie and the kids, and they could do their job, and Barry was there if a seizure did happen or if Winmartie required a couple of tea, or wanted to go for a walk, Barry and Winmartie would do that together with the guards at a distance.

25

30

35

MS CRAWFORD: All right. So there were a couple of community - did you say two of them?

MS STOECKEL: Yes.

MS CRAWFORD: And were they both men?

40

MS STOECKEL: No.

MS CRAWFORD: One man?

45

MS STOECKEL: Yes, and one lady.

MS CRAWFORD: Were they both community and family?

MS STOECKEL: They were both community members. The lady was not there to work hands on with Winmartie. Barry was. The lady was there to help prepare the food and provide Margret the help within the household.

5

MS CRAWFORD: So when you said not be hands-on with Winmartie, can you explain a little bit more about this idea of women and working with men in the Indigenous community?

10 MS STOECKEL: So Winmartie is a boy. He is not a man. He requires ---

MS CRAWFORD: Why is that?

15 MS STOECKEL: Because of Winmartie's disability, the community won't allow him to go forth into that next stage of men's business. Because when a boy goes to that next stage, he then has requirements, and he is not capable of those requirements so he will forever be a boy and never have to be that sole provider, have a job, earn money, put food on the table. Because he doesn't have that, they don't expect that of him. So he gets the privilege of being with the aunties and talking stories whereas
20 men that isn't really appropriate. So he's not capable of the requirements of a man, so therefore he won't - the community say that he can't be.

MS CRAWFORD: All right. But the hands-on issue, how does that work as between the women and the men? Is it appropriate, for example, Aunty Margret
25 gave evidence earlier that it's not appropriate for a woman, for example, to be involved with Winmartie showering or shaving.

MS STOECKEL: No.

30 MS CRAWFORD: Can you explain why that is?

MS STOECKEL: Okay, so from Mum's mouth to my ears, is that it was --- he's not - he's only allowed to be seen in his nakedness as by his mother, his aunty or his wife. He can't take a wife as he is not privileged for that. He should never be seen
35 by somebody that is not a direct aunty or mother because if he's in his nakedness in front of a woman he may believe that that is his promise wife, because all young fellas have a promise wife, and we have concerns that he could try and claim that lady. So women would never --- our family members would never do those things. It would always be done by a man. It's not spoken about. It just doesn't happen.

40

MS CRAWFORD: There was a time when you had had a conversation with the FDU staff about a tailored sex education program for Winmartie. Can you explain to the Commissioners what happened about that?

45 MS STOECKEL: That was stopped abruptly.

MS CRAWFORD: Can you say how the conversation came to be?

MS STOECKEL: Yes. Well I had noticed upon some of his return trips home he was looking at a couple of his sisters' breast area and showing signs on his face of interest. And I spoke to Mum about this and she said, "He is looking, he is looking."
5 So this raised concerns with me as he is still a male, and I was concerned that the natural instincts of life were kicking in. And I believe that he needs to understand what's happening within his own body. So I had spoken to Patrick McGee and Margret about it because there's a Birds and Bees Program out there specifically designed for people with disabilities, acquired brain injuries, that helps them to
10 understand what's happening inside when they see a lady that might make them feel good about themselves, so that we didn't end up in a bad situation where Winmartie may grab a lady because that is the culture that he grew up in in the early days. I wanted to make sure that everybody was protected, not only himself but the women that do work within the FDU unit.

15

MS CRAWFORD: So you suggested that program?

MS STOECKEL: Yes.

20 MS CRAWFORD: Do you remember when you did that?

MS STOECKEL: Oh, that was around 18 months, two years ago, roughly.

MS CRAWFORD: And what was the response that you got?
25

MS STOECKEL: No, they hadn't seen it. Their guards hadn't noticed any of the things that we had seen and they didn't feel that it was applicable and it wouldn't happen.

30 MS CRAWFORD: And moving forward from that time when you first suggested it, have the FDU now agreed that a sex education program would be helpful as far as you know?

MS STOECKEL: No, not to the best of my knowledge, no.
35

MS CRAWFORD: Now, you live at Alice Well, don't you?

MS STOECKEL: Yes, I do.

40 MS CRAWFORD: And you're there when Winmartie comes to visit?

MS STOECKEL: I most certainly am.

MS CRAWFORD: And other family come to see him when he comes to visit?
45

MS STOECKEL: Yes, lots of family come.

MS CRAWFORD: All right. And he brings a gift with him, he never would come empty-handed?

5 MS STOECKEL: No, so when a young fellow journeys back to family, in the old days before white man might come, he might come with a kangaroo over his shoulder or a lizard and he would bring that for the women as a "I'm coming home, here's a feed, let's sit down and have a chat."

10 So, returning to country, he used to provide the groceries today in the modern world, and we would provide the cooking and the cleaning and look after him that way. But Winmartie used to like joining in, helping prepare the food with the ladies as well.

MS CRAWFORD: And he brings a gift specifically for Auntie Margret?

15 MS STOECKEL: Always brings Mum out her bush tobacco, commonly known as mingkulpa.

MS CRAWFORD: There was an incident that happened on a visit to country in June last year.

20

MS STOECKEL: Yes.

MS CRAWFORD: Now we've talked a bit already about the impact of COVID-19 on Winmartie coming to country. So it had a been a while since he'd been there.

25

MS STOECKEL: I believe it was around about six months between his last visit, COVID-19 kicking in, and his next visit.

MS CRAWFORD: So the visit in June of 2020, can you tell the Commissioners what happened that day?

30

MS STOECKEL: So, Winmartie arrived with his - in his vehicles and all the family were there. The young kids had already cooked up a big pile of food, and he came and he sat on Mum's front porch, as he normally does, and watched the donkeys and talked and yarned and nattered with the family and engaged in some paintings, always put a canvas out for him and the family to sit. So they all join in together.

35

MS CRAWFORD: Was he due to stay there overnight?

40 MS STOECKEL: Yeah, he was meant to stay overnight. He did stay overnight that night, and that was all good. Winmartie likes to sit on the front porch and watch the sun go down. He - that's where he likes to have his bed. So Mum set up a camp bed there for him so he can watch the sun come up in the morning.

45 MS CRAWFORD: And it was all going fine -

MS STOECKEL: Yes.

MS CRAWFORD: - until the moment that it wasn't.

5 MS STOECKEL: I had taken - because we had pizza for lunch that day, and I'd taken it over to the house and dropped off because they were all sitting over there. I normally cook in my house and take the meal over to Mum's house. And one of the guards had said to me "We'll have to get ready to start packing up soon", and I said, "Can you just let Winmartie and the family know that that's what's happening." And as I took the empty containers back to my house.

10 MS CRAWFORD: And what happened?

MS STOECKEL: All I can tell you is I heard the car pull to the front of the house.

15 MS CRAWFORD: Which car?

MS STOECKEL: The FDU car which Winmartie would be taken home in.

20 MS CRAWFORD: Is that what usually happens when they get ready to take Winmartie away?

MS STOECKEL: No.

25 MS CRAWFORD: What would usually happen?

MS STOECKEL: What would usually happen is we'd start to gammin pack up, which is not real. So Mum would - so Winmartie, leaving is the worst thing for him. So it was less traumatic for him just to - and we're waving goodbye as he drove down the road. We found a process where Mum and the families, they would all start to pack their cars up, a little bit of bag here and just slowly start to pack the cars up. And he would see this and he would always ask the family, "Oh, what you doing? " They would say "Oh, we're getting ready to go back to Alice Springs soon", or whichever the story was that they were telling him, "We might be going to community" or "We're going to Alice for KFC." So he would be happy to pack his things up.

35 MS CRAWFORD: Okay, so on this day, you said you heard the car come around, so what had been happening before that?

40 MS STOECKEL: They were all sitting out the side of the house eating their pizza, and I heard him start yelling "No, I'm not going." So I came out to see what was happening and Winmartie had a plate full of pizza in his hand and was getting really agitated at the car and said, "I'm not going. I want to stay."

45 MS CRAWFORD: There was then an incident where he actually damaged the car quite badly, wasn't there?

MS STOECKEL: Yes. He found a shovel which we thought we had hidden well enough under the beds in the house and he had spotted it somehow, and he had taken that shovel and proceeded towards the escort vehicle from the FDU, not his car. So his car had been pulled up at the front and then the escort vehicle was between the two houses and he then proceeded to walk towards the car and I said to him
5 "Winmartie Wiya Wanti", which means "Leave it, no, don't do this." And he told me to "F off, get out of this, I don't want to hurt you, go away."

10 So I said, "I'm leaving, I'm going." And I went and told - went back to Mum's house, I told the family to go into the house because Winmartie was becoming upset. He didn't want to leave and he had a shovel. So Mum escorted everybody into the house, this was a pre - if we did have an incident, this was a plan between FDU, Mum, the family and myself, if an incident did happen, what we would do was put the family inside the houses as they're very strong, he couldn't be able to enter the
15 building, they have cages all the way around, to keep him safe as well as the family members, which Mum did. She proceeded to get everybody in.

I was going from Mum's house over to my house to let the guards know that we're inside my house, so there's always four guards when he comes, two on duty, two off
20 duty. And the two off duty guards at that point in time, I believed, were sitting in one of my bedrooms, which they use when they come to stay. So I was going to my house and as I passed Winmartie, I asked him, "Please don't do this." "I'm not going. You, F off. Get out of this." So I said, "I'm leaving." Went to my house to let the two guards that were off duty know that Winmartie was escalating.

25 MS CRAWFORD: So that became a fairly dramatic incident, didn't it?

MS STOECKEL: It went on for quite a few hours.

30 MS CRAWFORD: And eventually it was able to be contained, Winmartie was taken back to the FDU.

MS STOECKEL: Yes.

35 MS CRAWFORD: Did you speak to the staff at the FDU about what happened that day?

MS STOECKEL: I did speak to Tom and [redacted] while it was happening. So I was - because the guard in charge, and the one that was trying to calm Winmartie
40 down, he was outside and occupied and not able to use his phone, and I was unable to find the other two guards in my house, and so I had concerns that head office may not have known. And I also have a requirement as his support coordinator to inform my hands in Sydney that we were having an incident. So I did ring [redaction] and let them know and my company as well.

45 MS CRAWFORD: All right. Were you involved in what would be termed a family debriefing after the incident? Did anybody from the FDU speak to you about what

happened, how you responded, what the impact was on you?

5 MS STOECKEL: No. I asked Tom, who was the Unit Manager at the time, if I could be part of the debriefing. He said that I wouldn't be able to be part of the first debriefing because he wanted to debrief with his staff first and then after that fact then I'd be called in for a debriefing with the staff as well. That didn't happen.

10 MS CRAWFORD: All right. So the conversation that you had with Tom about potentially being involved in a debriefing, was that on the day or ---

MS STOECKEL: Yes.

MS CRAWFORD: That was on the day?

15 MS STOECKEL: I'd say, "When this is all over, we will need all to sit down and have a good talk about this so that this doesn't happen again." He said, "Yes, we'll do that. We always have debriefings after visits or after an escalation anyway." But he wanted to do - a few days later I did call him and ask him when the debriefing would be because I know they can take a week or two to get all of their information
20 together, and Tom said that he would let me know. They were having their debriefing that day and that I couldn't participate in that one as he wanted to do it with his staff first and he would let me know in the future when we'd all come together and I'd be able to participate.

25 MS CRAWFORD: All right. Was Aunty Margret involved in the conversation with Tom?

MS STOECKEL: No.

30 MS CRAWFORD: Either of those conversations?

MS STOECKEL: No. I was calling him as a support coordinator for Winmartie.

35 MS CRAWFORD: And if I've understood your evidence correctly, you're saying that there's never been a debriefing with the family about that incident?

MS STOECKEL: No.

40 MS CRAWFORD: So the visits home stopped for a while after that, didn't they?

MS STOECKEL: Oh, they stopped for right up until the last one we had, I'm sorry I can't recall the date off the top of my head. But we've had one since then.

45 MS CRAWFORD: There was one in December just before Christmas.

MS STOECKEL: Thank you, yes.

MS CRAWFORD: But that was the one that Winmartie had a seizure?

MS STOECKEL: Correct.

5 MS CRAWFORD: And the visit was cut short?

MS STOECKEL: Yes.

MS CRAWFORD: Because he had to be taken back.

10

MS STOECKEL: Yes. It was a long seizure.

MS CRAWFORD: You were aware that there had been some conversations around the medicine that Winmartie was taking?

15

MS STOECKEL: Yes. So Mum had spoken to me many times. She had concerns that the medication was increasing again because he was very drowsy and very sleepy and even when he did come out that day he was quite unstable on his feet.

20 MS CRAWFORD: This is the December day?

MS STOECKEL: Yes. A little bit wobbly with his walking, not being able to talk properly. It was very slurred and not being able to communicate. He wasn't interested in painting or doing anything. He normally wants to go for a walk or look for a donkey or pat one of my kangaroos. But he was just sitting.

25

MS CRAWFORD: And you've been involved as well in that sort of time between the June incident and the Christmas visit with FaceTime calls with Winmartie?

30 MS STOECKEL: Yes, we try really hard to --- and it was working really well through COVID, the iPad, and he would call pretty much every day and have a yarn with Mum and the family that were out there, and to me, and we'd take him out and show him the bush, we'd show him the country and the donkeys having a drink in the dam.

35

MS CRAWFORD: And since the visit in December, and the seizure that he had that day, has he been back on country since then?

MS STOECKEL: No.

40

MS CRAWFORD: And he's sick now, isn't he?

MS STOECKEL: Yes, unfortunately, right at this point in time Winmartie is in Alice Springs Hospital.

45

MS CRAWFORD: And that seems to be really to seizure activity and behavioural disturbance, is that right?

MS STOECKEL: Yes, that's correct.

5 MS CRAWFORD: Now, when you were - when he was painting more prolifically than he is now, as part of his NDS plan, and also as part of the family plan, you had some plans for his artwork, didn't you?

10 MS STOECKEL: Yes. We are still hoping to follow through with it. So we've been given a little bit of funding from his personal money to organise curators. We'd like to have a showing of his art in Melbourne. So people can get to see his amazing pieces of artwork.

15 MS CRAWFORD: When you say from his personal funds, his personal funds are managed by the trustee, aren't they?

MS STOECKEL: That's correct, yes.

MS CRAWFORD: What would you like to see for Winmartie, Ms Stoeckel?

20 MS STOECKEL: I would like to see him with the family a lot more. I would like to see him in a place where he has the freedom to walk outside his front door and have a walk around his yard. I would like to see him have a dog. He loves my dogs. He loves animals. I would like to see him just be able to have normality as far as we possibly can. He can't go outside without permission. He can't go outside without
25 somebody being with him, and sometimes we all like to just sit and be alone, but he doesn't have that privilege. I'd like to see him in his own home where he has what he needs to have a quality life where he gets to interact and be with the family, where he's cared for, loved and without the restrictions and the requirements that the FDU units do have.

30 MS CRAWFORD: I've just been helpfully reminded. Was part of the NDIS funding used for the ngangkari or is that something separate altogether?

35 MS STOECKEL: No, I paid for that myself.

MS CRAWFORD: All right. Is it possible to get NDIS funding for something like that, do you know?

40 MS STOECKEL: It's not something I've actually looked into at this point in time. Possibly not because they would need to be registered as an allied health professional, I would believe. It would be something I'd have to look into.

45 MS CRAWFORD: So as a traditional healer you'd just have to put in the application and say is this a possibility and wait for the decision, is that right?

MS STOECKEL: Yes, that would be the best to my understanding, yes.

MS CRAWFORD: I have nothing further. Thank you, Commissioners.

COMMISSIONER ATKINSON: I'll ask Commissioner Mason if she has any questions. Thank you.

5

QUESTIONS BY THE COMMISSION

10 COMMISSIONER MASON: Thank you so much for your evidence today, and for making the trip to appear today. So thank you. I wanted to just follow on with that question about ngangkari. They are also working in the Alice Springs Hospital, in the Royal Adelaide Hospital, and that understanding of their importance and value for Aboriginal people in Central Australia is important. I wanted to ask you a
15 question about the importance of continuing practices of culture, and if there's time to be made up, given the time that has been lost for him away from culture and country.

Is the family feeling hopeful that if things change, that he can be supported to pick up
20 that learning, and for it to be something that helps him to be part of the community and family in a stronger way, or do they feel like there might have been some things lost in him that can't get back, if you can understand what I'm saying? Thank you.

MS STOECKEL: Culture is the utmost important thing. This is a young fellow that
25 grew up with culture, he grew up learning from the day that he was born who he is, who his family song lines are, what his story is, where he comes from, where his ancestors come from, the land that we sleep on is his ancestral land. Without culture, I believe an Arrente person is sick. They don't - they can't be without. It would be like us cutting off our arms. If you don't have culture in your life you're not whole,
30 you're not full. You can't do who you are because culture is who you are. It is part of your breathing, your living, your family, your stories. It is everything. It is the most important thing for our central desert mob family that his culture is brought back to him and able to be practised by him at his home. And yes, there would be a lot that has been lost because he hasn't been with the family. He hasn't been able to
35 learn what he should have been learning over the last years of being in prison because he hasn't been able to sit with his Uncles and learn his stories. He hasn't been able to sit with his mums and his aunties to learn the stories.

So when he comes out home it's actually more about getting his feet in the dirt,
40 which is fundamentally important and feeling that Mother Earth underneath him and telling the stories with Mum and the family that he recalls.

But, yes, I don't know what he's lost by the incarceration from his culture, because unfortunately I can't answer that because only he would be able to answer that, if he
45 knew. But how could he know if it hasn't been taught? But every trip home he gets stronger. Every trip home he remembers more and he has more happy stories to tell. He remembers walking down to the water tank with his brother, Barry, when he was,

you know, 8, 9 years of age. He likes to tell me these stories. He likes to tell me about the malu that he sees in my backyard --- kookamalu, as he calls it --- and the donkeys and they're the most important thing to him, is to see the bullocks and the donkeys, and I think that comes from the stories that the old men were telling him
5 when he was a young boy because his grandfather, Mum's father, was a cattleman on Maryvale station. I know he can smell the faeces of the bullocks and it reminds him of all those stories and he likes to sit and tell Mum those stories.

10 Unfortunately, I can't tell you what he's lost. It's not a question I could answer, Commissioner.

COMMISSIONER ATKINSON: Yes, thank you very much for your coming to Brisbane, Meeanjin, to tell your story and bringing your story from Central Australia, and for sitting and walking and talking with Aunty Margret, your mum. We really
15 appreciate it. It's been very, very important to the Royal Commission to hear these stories. Thank you.

MS CRAWFORD: Thank you, Commissioner.

20 MS STOECKEL: Thank you.

THE WITNESSES WITHDREW

25 MS CRAWFORD: Commissioner, might it be possible to take a short break until 12.10?

COMMISSIONER ATKINSON: Right. We'll break until 12:10 Brisbane time, 1.10
30 NSW time and then I will hand back to the Chair for the next part of the evidence. Thank you. We're adjourned.

ADJOURNED [1.02 PM]
35

RESUMED [1.12 PM]

40 CHAIR: Yes, Ms Crawford.

MS CRAWFORD: Thank you, Chair. The next witness is Mr Patrick McGee. You will find a copy of Patrick McGee's written statement at tab 4 of Tender Bundle B.2 and I ask to tender the statement into evidence and for it to be marked as Exhibit
45 11.15.1.

CHAIR: Yes, thank you, that can be done.

EXHIBIT #11.15.1 - STATEMENT OF MR PATRICK McGEE

5

MS CRAWFORD: Thank you. Attachments to Mr McGee's statement are at tabs 56 through to 88 of Tender Bundle D.2. I ask to tender those documents into evidence and for them to be marked Exhibits 11.15.2 through to 11.15.34 respectively.

10 CHAIR: Yes, that also can be done.

EXHIBITS #11.15.2 TO #11.15.34 - ANNEXURES TO STATEMENT OF MR PATRICK McGEE

15

MS CRAWFORD: In addition there are five photographs of Winmartie at tab 1. Number 5 photograph of Winmartie at tab 1 and five paintings by Winmartie at tab 2 of Tender Bundle F.2, and I seek to tender those documents into evidence and for them to be marked as Exhibits 11.35.5 through to 11.35.10.

20

CHAIR: Yes. Did you say 11-point ---

MS CRAWFORD: 11.35.5 through to 11.35.10.

25

CHAIR: Yes, thank you. That, too, can be done. Thank you.

EXHIBITS #11.35.5 TO #11.35.10 - PHOTOGRAPHS and ARTWORK OF "WINMARTIE"

30

MS CRAWFORD: Thank you, Chair.

35 CHAIR: Mr McGee, thank you very much for coming to give evidence before the Royal Commission. We very much appreciate your attendance and the statement that you have made. Would you be good enough, please, to follow the instructions of my Associate who will administer the affirmation to you.

40

MR PATRICK McGEE, AFFIRMED

45 CHAIR: Thank you. Mr McGee, I believe you're in the Brisbane hearing room, is that right?

MR McGEE: No, I'm in Melbourne, Chair.

CHAIR: Oh, you're in Melbourne, sorry. The information I've got is a little misleading. Just to let you know, Ms Crawford is in the Brisbane hearing room, Commissioners Mason and Atkinson are also in the Brisbane hearing room,
5 Commissioner McEwin is with me in the Sydney hearing room, that is where we all are. Now, Ms Crawford will ask you some questions.

EXAMINATION-IN-CHIEF BY MS CRAWFORD

10

MS CRAWFORD: Mr McGee, you're one of Winmartie's guardians at the moment, aren't you?

15 MR McGEE: That's correct, yes.

MS CRAWFORD: And you've been involved with him for a long time.

MR McGEE: Yes, I first came to know him when he was 9. I was asked to come up
20 and work with him on his community at Lyentye Apeurte at Santa Teresa.

MS CRAWFORD: All right, so Winmartie at 9, when you came to be involved, can you tell the Commission how that happened?

25 MR McGEE: A friend of mine, [REDACTED], was head of the Child Protection Unit, and Winmartie was someone who was on the radar as a vulnerable child and, in fact, at the time that the conversation was occurring between myself and
[REDACTED], there was a concern that he would need to be removed from his
30 my background in disability, with people with intellectual disability, was to come up and work with him around his behaviours so that we could reduce the risk of harm to self and others and ideally keep him on community.

MS CRAWFORD: All right. So when you say that you would work with him to try
35 to help with his behaviours, what was it specifically that you would do with Winmartie?

MR McGEE: Well, when I arrived in to managing the (audio distorted), Winmartie was very isolated and very marginalised. It wasn't that people weren't taking care of
40 him, he was --- always had somewhere to sleep and something to eat, but people didn't know how to interact with him when he was behaving in a way that was aggressive or violent, and at 9 years of age it could be both of those things. He had a long history of, after his grandmother died, no one really being the primary caregiver for him, and this left him in a position where he felt, you know, isolated from the
45 community. He wasn't attending school, he was living - roaming the hills around community during the day, and so his behaviours towards other children and their interaction with each other meant that they were often aggressive towards each other.

MS CRAWFORD: All right. And so when you started working with Winmartie, how - what did you do? Did you visit with him? How often did you do that?

5 MR McGEE: Initially I lived on community with him and I would work with him every day and, look, at the end of the day, what we did was just spend time with each other. I had a big four-wheel drive and so we would drive around in the four-wheel drive together, he would take me out bush, we'd go goanna hunting. I also worked to try to get him into the school so that he was able to attend some classes. I provided
10 the one-to-one support to him, that meant that I was able to interpret for him the world around him so that he didn't feel frustrated, and that frustration then would lead to behaviours of concern where he would be aggressive.

MS CRAWFORD: All right. As a component of that work that you were doing with
15 Winmartie when he was aged 9 and a little bit up, were you also liaising with the family and the community about the work that you were doing?

MR McGEE: Yes. I mean, I need to say that, you know, I was young and naive and a white fella from the city, so I don't think I was very culturally sensitive. But I
20 certainly tried in my way to involve the family and they were very receptive to the work that I was doing, and community. I mean, I think that at the end of the day, community came to see that I was able to take care of [Winmartie], and in taking care of [Winmartie] that reduced everybody's anxiety about him and his behaviours. And he, too, was able to then interact with community under my guidance in a more
25 positive way.

MS CRAWFORD: Mr McGee, I know it's difficult, but can you just try to remember that the reference is the "Winmartie" reference.

30 MR McGEE: My apologies.

MS CRAWFORD: I know it's a difficult thing to do.

MR McGEE: Sorry. So sorry.
35

MS CRAWFORD: That's all right. When you were working with Winmartie, you came into contact with Aunty Margret and other members of the family.

MR McGEE: Not initially. I certainly came into contact with all of the family
40 members on Santa Teresa, and I had visited Titjikala on a number of occasions. But it was just a visit and really my job was to drop him off at family and pick him up again. I didn't come to know Aunty Margret until sort of around 2014, 2015.

MS CRAWFORD: All right. But it did come to be that you were instrumental, I
45 believe, in Winmartie going to live with his --- Kumantjayi?

MR McGEE: The way it worked was that he was already living in Kumantjayi's

house with Kumantjayi and his wife at the time. And what I was able to do was to help everybody understand how to interact with [Winmartie] so that his behaviour towards them and their interaction with him was much more positive and that strengthened the capacity of the family to actually keep [Winmartie] living with them. So in the end, really, it was a number of dynamics that were played out. There was my work, there was the role that Kumantjayi played in [Winmartie's] life, and there were the cultural obligations on Kumantjayi for --- to be the caregiver for [Winmartie] --

10 MS CRAWFORD: For Winmartie.

MR McGEE: My apologies. I will pay attention to that. For Winmartie to live with Kumantjayi.

15 MS CRAWFORD: All right. The other issue, Mr McGee, we have to slow it down a little bit for our Auslan interpreters.

Now, it ended up that you worked with Winmartie for quite a few years, didn't you?

20 MR McGEE: That's correct. I worked with Winmartie for about two years before I went overseas, and in that time I spent the first few months with him on community and then I moved into Alice Springs and took up a position with the Positive Behaviour Support Unit and continued to work with Winmartie through the work of that Unit. I arrived to work with Winmartie in January of 2000 and I left in about the middle of 2002.

MS CRAWFORD: All right. Now, you are well aware of Winmartie's offending history and custodial history.

30 MR McGEE: Yes.

MS CRAWFORD: With respect to his offending history with Kumantjayi --

MR McGEE: Yes.

35

MS CRAWFORD: --- when did you become aware of that event?

MR McGEE: I became aware of the event after it had happened through a friend, Graeme Giles, who rang me to say - to tell me what had happened on community.

40 Graeme Giles and his family lived at Lyentye Apeurte at Santa Teresa. When I lived there with Winmartie, and in fact it was Graeme Giles who continued to provide the one-to-one support that I'd been providing Winmartie after I left. Graeme rang me to let me know what had happened.

45 MS CRAWFORD: And when did you first become involved with Winmartie as his appointed Guardian?

MR McGEE: So the incident that we're referring to occurred in 2007. Between 2007 and 2009 I went to visit Winmartie at the juvenile detention centre as often as I could make it up to Alice Springs. During that time I became concerned for his welfare, that I felt that he was very heavily chemically restrained whilst detained in the juvenile holding centre. And over that time I realised --- I was already a guardian with the Office of the Public Guardian in Melbourne, so I knew how guardianship worked and I knew you could become a guardian for someone upon application.

10 So in 2008 I decided, after discussing it with some friends of mine who were guardians, that I would seek to become his guardian and did so and that occurred in 2009.

MS CRAWFORD: At that time, was anyone else acting as a Guardian for Winmartie?

15 MR McGEE: No, there was no Public Guardian for Winmartie and I was the only person initially. I think the Public Guardian came onto the order, though, very soon after that. At first I was welcoming of the Public Guardian's involvement because I felt that I lived in Melbourne, there needed to be a Guardian and a service system connection in Alice Springs for Winmartie and as well as the guardianship that I would provide. I felt both were complementary roles and each could play a part in decision-making.

25 Over time, the relationship between myself as guardian and the Public Guardian deteriorated because we were on different paths and we had different frameworks that we were operating under in terms of what was in his best interests.

30 So, for example, the Department of Corrections transferred him across to the adult prison from the juvenile holding centre, and this was something that I fought because I think whilst he was - Winmartie was 17 at the time, I didn't feel that he was capable of managing in a maximum security prison, whereas the Public Guardian wasn't as - didn't oppose that.

35 MS CRAWFORD: All right, so in your view, as a Guardian for Winmartie when he was still a juvenile, what did you hope might happen for him then?

40 MR McGEE: I was - it was a very difficult time, and the judgment hadn't come down from the Supreme Court hearing, and so everybody was in a state of limbo and I think what I'd hoped - I can tell you what I hoped when I became his guardian: I'd hoped that I would be able to protect him from the terrible things that I knew would happen to him if he was in a maximum security prison.

45 MS CRAWFORD: Now, he ended up being transferred to the maximum security prison, didn't he?

MR McGEE: He did.

MS CRAWFORD: And he was just 17 at that time?

MR McGEE: That's correct.

5 MS CRAWFORD: All right.

CHAIR: Mr McGee, when you refer to waiting for judgment, I take it the sequence of events was that Winmartie was found unfit to plead to a certain charge, then there was, what in other jurisdictions might be called a special trial to determine what sort of order should be made, and that led to a hearing to determine the length of time that he should be subjected to a custodial order, the Northern Territory is not the same as other jurisdictions, and that opened the way to him being detained for an even longer period. Have I got that right?

15 MR McGEE: That is correct, Chair.

CHAIR: Thank you.

MS CRAWFORD: Chair, this might be a convenient moment to break for lunch but before finishing, perhaps a reminder to everyone that there is a non-publication order over the name of Winmartie and any information which will or is likely to identify him.

CHAIR: Yes, thank you. All right, we'll adjourn now.

25 I'm sorry for the interruption, Mr McGee, but we'll need to come back. You're in Melbourne, that will mean that you come back at 2.30 pm, or we'll resume at 2.30 pm, and it will be 1.30 pm Brisbane time. Thank you very much.

30 **ADJOURNED** **[1.30 PM]**

RESUMED **[2.29 PM]**

35 CHAIR: Thank you, Mr McGee, for returning. Ms Crawford will continue to ask questions. Thank you.

40 MS CRAWFORD: Thank you, Chair.

Just before we go back to Mr McGee, just a very brief history for Winmartie, just to set the scene. Winmartie was born in 1990 and at the age of 9 he was diagnosed as having an abnormality in his right temporal lobe. At the age of 16, so that was in 2007, Winmartie killed a family member Kumantjayi, who at that time was his sole carer. He was initially held in juvenile detention. He was transferred to adult custody about two years later in June 2009.

5 In November 2009, the Northern Territory Supreme Court found that Winmartie was not fit to plead. At the conclusion of a special hearing, a jury returned a qualified verdict of manslaughter and an order was made by the Northern Territory Supreme Court that he be subject to a custodial supervision order.

10 The custodial supervision order was for an indefinite period of time, as is permitted by Northern Territory law. The court ordered a mandatory review of the order no later than 8 years and 11 months from the date of that order. The order was made in April, in around April/May 2010.

15 In 2014, the Australian Human Rights Commissioner released a report that described Winmartie as having been subject to the most severe treatment whilst he was in prison, including frequent use of physical, mechanical, and chemical restraints, seclusions and shackles when he was outside his cell.

20 In early 2018, the custodial supervision was ordered such that he was to be transferred to a secure care facility. He was transferred to Alice Springs Security Care Facility which has been referred to in this hearing as the FDU in 2018. And in November of 2020, the Northern Territory Supreme Court conducted a periodic review of the custodial supervision order confirming the order as it existed at that time.

25 Thank you, Chair.

CHAIR: Thank you.

30 MS CRAWFORD: So, Mr McGee, we stopped just before lunch talking about at the age of 17 that Winmartie was transferred into a maximum security jail. Now, you were involved with him then. Can you describe for the Commission what those conditions were?

35 MR MCGEE: Certainly. The maximum security jail that we are talking about is outside of Alice Springs, about 30 kilometres. And I remember one of the first times that I went there, it took - there were 13 gates to get from the reception area to the point where I could see [Winmartie] --- there were 13 gates that needed to be opened and closed. It was a very hot day and it's a very hot place, lots of concrete and it was a maximum security jail is what you would expect.

40 The unit where [Winmartie] was held, when I got there he'd been in a small - been held in a small cell, but they built a veranda onto the front of that cell. The veranda was just simply a cage of bars that were onto the front of the cell and it allowed him to sit out of the cell but still be contained in a solitary fashion.

45 MS CRAWFORD: I just read briefly into the record the Australian Human Rights Commission report in respect to Winmartie's treatment at the jail. It was also the case, wasn't it, that the jail accepted the criticism that they, in fact, were not equipped

with alternate measures that would have enabled them to treat Winmartie in the way that his disability really dictated that he needed.

5 MR McGEE: It's important to remember that the jail were not operating according to the disability needs of Winmartie. The jail was operating on the security classification that Winmartie bought with him when he was transferred from the juvenile holding centre. And that security classification was based on the crime that he had been - that he'd committed, and so he was classified as at the highest security threat that the classification allowed, and thus he wasn't allowed out of his cell very often. I think that there was a long period where he spent 23 out of 24 hours in that cell. And when he was out of that cell, to go and have --- to go from one part of the prison to another, he would be shackled. His hands and feet would be shackled and there would be a chain that would run from there and connected to a belt similar to the previous person we've been talking about earlier in the Commission.

15 I think that this classification, this security classification is what dominated how the prison felt they interacted with Winmartie.

20 MS CRAWFORD: And to your knowledge, it was when he was in that maximum security prison environment that he began to harm himself by banging his head on the wall. That's right, isn't it?

25 MR McGEE: Look, I suppose I just would like to say that there is, in fact, a history to this particular behaviour of concern that Winmartie had. I know that when I was with Winmartie on his community when he was a child, that he would bang his head if he would get frustrated.

30 What was different in the prison was the fact that there was no one there who was intervening in a way in which would take into account his impairment and thus changing the behaviour through a positive interaction. The security classification meant that he was often in his cell for long periods of time and so he would be banging his head against the wall in frustration for long periods of time. The security classification dictated the response of the prison to that behaviour, and Winmartie would often be, say, guards would go into the cell, they would pin him down to intervene in the head-banging behaviour. Often this would occur, you know, a long time after he'd commenced banging his head and then they would take him to a restraint chair similar to the restraint chair here that Mr Volahad been put into, and there they would inject him with a tranquilliser. And he would be in that restraint chair for a period of time anywhere between, say, half an hour and two hours, depending on how agitated he was.

45 And so the response that they utilised was a response that came out of their security policy regarding intervening in what they determined self-harming behaviour. But it was based on a personal risk capacity. So the intervention had the assumption in it that if they did this once, a person was unlikely to do that again, whereas with Winmartie, this learned behaviour from childhood became amplified and intensified in the context of a very restrictive setting.

MS CRAWFORD: Now, when those types of interventions, security interventions were used by the prison for managing Winmartie, were you advised of that by the prison as Winmartie's guardian?

5

MR McGEE: No.

MS CRAWFORD: But you have been?

10 MR McGEE: I was never advised that they were doing this. It came to my attention that they were doing this and I was able to see a particular document that had shown how many times they had done this over a period of time. So that document, which I saw said between 2012 and 2015, they'd --- this had taken place 17 times, this placing him into a restraint chair.

15

I bought - whenever I felt that there was - I mean, what would happen is people would ring me up and tell me that things were happening, and so then I would go to the CEO of the prison and say "Is this going on" and he wouldn't confirm or deny it but I suppose we had built up a relationship over the period of time that Winmartie was detained there, and so it allowed us to have a conversation and I kept saying to them, "If this is what you have to do to restrain him, then he shouldn't be in this place."

20

MS CRAWFORD: And is it true to say that your whole concern for Winmartie was that there was no one there that was suitably trained to work with him or to explore the communication that he was attempting to engage in?

25

MR McGEE: Yes, that's correct.

30 MS CRAWFORD: And so it wasn't a suitable place for him, is that what you're saying?

MR McGEE: Yes, that's exactly what I'm saying.

35 MS CRAWFORD: All right. So he came to be transferred to the FDU, didn't he?

MR McGEE: He did. And that conversation began at the height of the issues around the way that they were intervening in his head-banging behaviour, between myself and the - what we now know as the FDU. And we all agreed that we thought it was important that he wasn't - that he didn't continue to be detained in that maximum security prison, and I think that conversations began around 2013, and by 2014 he was going for an afternoon a week over at the secure care facility, and then returning to the maximum security prison.

40

45 MS CRAWFORD: Can you recall how long it took for him to transition from the jail to the full-time care of the FDU?

MR McGEE: Four-and-a-half years.

MS CRAWFORD: And during that time did you have occasion to challenge how slowly that transition was progressing?

5

MR McGEE: I certainly did. As often and as loudly as I could. It fell on deaf ears. So I resorted to getting people with - like Dr Astrid Birgden, Mr Simon Wardale, Dr Afries(?), all of who were clinical psychologists, to comment on the transfer process. I think Dr Astrid Birgden actually said, in a couple of reports, he should just
10 come over, and this transition process is not in his best interests. And importantly, not therapeutic.

MS CRAWFORD: From your perspective, as a guardian for Winmartie and someone who had known him for a very long time, can you comment on the effect
15 that that had on him personally?

MR McGEE: Well. I mean, so it would be a terrible moment when he was at the secure care facility, and it came time for him to be transitioned --- to travel back to the maximum security prison. And what would happen is guards from the prison
20 would arrive and he would see them drive up in their car and he would know that he's going to get back in that car and go back to the prison.

And so it's important to understand that he was going from an incredibly restrictive environment, a maximum security environment, to a therapeutic environment. So
25 whilst he was at the therapeutic environment, the secure care, he would be able to laminate photos of people that he, you know, that were important to him. He would collect bits and pieces and all of that had to be taken off him once he arrived back at the jail. And so there was significant concern about that moment where he would walk out of the secure care facility and he would get transported in the back of a, like
30 a paddy wagon, if you know what I mean? The vehicle that would transport him back to the --- and so often by the time he arrived back at the jail, when they opened the doors the first thing that happened was he punches, kicking, spitting, he was furious at the way that he was being treated.

35 And there was often violence between him and the guards that were transporting him. Sometimes he was the one that was hurt and sometimes they were the ones that were hurt.

MS CRAWFORD: And is it your opinion that none of those things were done with
40 the appropriate behavioural support or disability focus that was really needed for Winmartie on any day?

MR McGEE: The clinical expertise, the clinical advice was, "You don't need to do this this way at all." The common sense advice that we were all sitting around, you
45 know, talking to each other about is, "Well, this is not working very well for anybody." But the FDU people were convinced that there needed to be this staged approach, and the problem with the staged approach was that it was punitive in

nature so that when he behaved in a way that was inappropriate, he would go back a stage and have to commence all over again building up the amount of time where there were no behaviours of concern.

5 It was ludicrous because the very fact that he was in the secure care facility was because he had behaviours of concern, but their expectation for him to fully transition across was that he did not exhibit any behaviours of concern.

10 The prison had the responsibility for the supervision, the custodial supervision order, and they were not convinced that the capacity of the Forensic Disability Unit existed to keep Winmartie secure in the way that he needed to be kept secure as a result of the way their security classification occurred. And it was clear to me that the Forensic Disability Unit struggled and were fearful of Winmartie and his behaviours, and that they also - I don't think that they really knew --- at that time, I don't think
15 that they really knew how they would manage his behaviours. And so this ludicrous situation of him coming across every day but going back every night in the end occurred because of these dynamics.

20 MS CRAWFORD: At that time were there any other patients in the FDU?

MR McGEE: Over the time there has been a number of other patients in the FDU. But Winmartie has been the only one there for some time now. He's still there by himself and he has been for at least 18 months.

25 MS CRAWFORD: All right.

MR McGEE: But I will add that most recently in Dr Birgden's risk assessment for the review of the custodial supervision order, Dr Birgden wondered whether there was any therapeutic value in Winmartie remaining at the secure care facility.

30 MS CRAWFORD: So when Winmartie was transferred there on a full-time basis, is it your view that the staff who were to take over his full-time care had been adequately prepared and trained to take on that role with Winmartie?

35 MR McGEE: So it's my view that the staff at the secure care facility tried to do the best that they can. There's no doubt about that. But I don't think that they are able to achieve the best that they can. The first thing is that there hasn't been - until recently there wasn't a proper clinical coordinator in place, there hasn't been a proper manager in place. Two managers came and went under very dubious circumstances. The
40 people who are employed at that facility are often certificate IV in disability trained only, and so we've got this situation where I think there hasn't been a good management structure in place, there hasn't been a good clinical governance structure in place, and they've employed a group of people who have a very basic qualification in disability management.

45 We're talking about someone who is detained for the purposes of treatment and I'm not sure that people will often - often knew how to take a behaviour support plan and

apply it in a practical context.

MS CRAWFORD: So in your role as guardian, you should be consulted with respect to the development of behaviour support plans. That's right, isn't it?

5

MR McGEE: That's correct.

MS CRAWFORD: Did that happen at the Forensic Disability Unit?

10 MR McGEE: There was quite a good working relationship between me initially, as the guardian, and then me and Aunty Margret as the Guardian until recently. And, in fact, I mean I've been working in disability since I was 18 and I'm now very old so it's a long time and I have a strong network of people around the country. I've done a lot of work in complex care, a lot of work in behaviour support, and I've been
15 Winmartie's guardian now for 13 years.

So I often had connections to expertise that people in Alice Springs - it's a remote location, it's a small town, often they would not have those connections. So we built up quite a good working relationship where I would bring people to them who had
20 necessary clinical expertise and they would accept that person and we would go on to do assessments and write behaviour support plans.

We had a good working relationship up until recently and the reason that that relationship faltered was around the production of the chemical restraint, and during
25 that time it became clear that we had two different frameworks that we were both committed to in terms of what was best for Winmartie.

MS CRAWFORD: I do want to take you to that question of the conversation that you were having with the staff at the FDU and your preferred approach with respect
30 to the restraint medication that was being used for Winmartie. There had been conversations about reducing that medication, hadn't there?

MR McGEE: Yes, I mean, so whilst Winmartie was at the prison, he was very heavily chemically restrained. So I would be sitting with him and he would be
35 engaging in an interaction with you and then he would just stop and fall asleep. And then he would wake up again about a couple of minutes later. That's the impact of, you know, heavy chemical restraint.

And so he was on a lot of medications, and when he transferred over to the secure care facility, we talked about the need for reducing the chemical restraint. We all
40 concluded that he needed some time to settle into the full-time nature of living and residing and being supported by the secure care facility. They needed to get to know him, he needed to get to know them. So we didn't immediately commence it. It was only after, I think, about 18 months that I said, okay, I think that it's now time for us
45 to look at how do we reduce his chemical restraint.

There had been a number of assessments that had concluded that he was very heavily

chemically restrained and that there was a need to reduce that chemical restraint.

MS CRAWFORD: And the reduction did start to happen, didn't it?

5 MR McGEE: Yes. So, I mean, when you undertake something like a reduction of
chemical restraint for someone who has been on it for a very long time, someone
who is in a restrictive setting, under an order, and who has behaviours of concern and
who is very complex, and for whom, you know, that often the issue of the interaction
10 and --- I'm sorry I've lost my train of thought, could you repeat the question?

MS CRAWFORD: There was a gradual reduction in the chemical restraint.

15 MR McGEE: So first what we did is to get the right people in place - Dr Colin
Marchant, the FDU staff. We needed to have someone supervise with Dr Marchant's
reduction and we sought out Dr Maria Tomasic who has expertise in intellectual
disability. And the Guardians, Aunty Margret and myself.

20 So we had a good team of people who were all agreed that yes, this was the right
thing to do. So that was the first thing to happen, and then we had to decide on how
and when. So that was a decision that was guided by Dr Colin Marchant from
Congress, Dr Maria Tomasic, and we began with the least problematic medication
and reduced that and then we moved onto the next one and then the next one and the
next one.

25 These decisions were taken by Dr Colin Marchant as we, as a team, agreed to the
advice.

30 MS CRAWFORD: And as you gradually reduced these medications of restraint,
what effect did that have on Winmartie?

35 MR McGEE: It was a very difficult, complex process, and everyone was always left
wondering, are we doing the right thing here? He'd been on these medications since
he'd gone to jail. So we're now talking since 2007, and we're now in 2017, 2018. So
for a long time he'd been on quite significant levels of chemical restraint.

40 Whilst he was in the prison, I would often have a chat with the psychiatrists who
would review the medication and we - it's a terrible place for a guardian because
there were clear side effects. He developed a tremor in his left hand, for example,
and I concluded that it was better, when he was in the prison for him to be doped up
and sleepy and dozy, rather than bang his head on the cell door and be restrained in
the restraint chair. But in the secure care facility, those - that restriction wasn't there.
So I think that we did one thing at a time and each time we did it, there was an
impact.

45 Initially the impact was a short, sharp burst of elevated behaviour. So Winmartie is
very sensitive to change. There's a question of whether he's autistic but he's certainly

on the spectrum, and there was an internal change going on in his body for after he'd been on the particularly those medications for a really long time. So he reacted.

5 As we reduced each medication, this impact was - it would increase in frequency and intensity. So there were often two or three-week periods after a particular reduction where the behaviours of concern elevated quite significantly. And during that time we all questioned ourselves as to are we doing the right thing? Is this harming him more than it is benefitting him?

10 But one thing that happened always after each of those reductions and each of those - each of the impacts, was that Winmartie emerged and he was a brighter, more assertive, better version of himself. He was happier. He was more engaged. He was more capable. He didn't get up, have breakfast and want to go back to bed. His personality emerged over this time. His painting intensified and he became very
15 prolific over this time. His capacity to sit with family out at Alice Well and have a conversation because he was quite echolaic, but during this time what I saw was he'd engage in backwards and forwards conversation with Aunty Margret and family, sitting on the veranda out at Alice Well, like families do, talking about nothing in particular and everything all at once.

20 I concluded, as Guardian, that despite the impact and those impacts were considerable, I don't want to underestimate that for us, the outcome was better. It was a very difficult, complex time.

25 MS CRAWFORD: What caused that to change?

MR McGEE: Head banging. The head banging in each of these times. So we got it down to the last of the medication, which was Haloperidol, and it was also COVID. COVID, the head banging, and I think that there was --- perhaps the one thing we
30 underestimated was the impact on the staff at the secure care facility. Since that time I think I've come to understand how fearful some of the staff at the secure care facility are of Winmartie. That fear is not just like carefulness, it's actually they're afraid of him. And I think that the team managing the reduction was a different group of people to the team experiencing the impact. And perhaps we didn't support
35 that team enough because I think that over the last little period of time, the last six months particularly, the head-banging impact, the distress of all of that, the fearfulness of that experience and that distress overwhelmed the staffing group at the secure care facility. It meant that the people in Darwin who were managing that Forensic Disability Unit, the executive management, felt compelled to withdraw
40 from the partnership arrangement in relation to the reduction process. And it was at that time that they then began to assert their own decision-making capacity rather than engage in a partnership approach to decision-making.

45 MS CRAWFORD: So that would be more where you would be advised that certain things were happening rather than being consulted as to what the options were. Is that what you mean?

MR McGEE: We had a regular sort of --- dependent on the time and what was going on, but it could be every fortnight or once a month, we had a regular mechanism by which we would all come together and we would chart out what was going to happen and make decisions about that, and we did that collectively and then that stopped.

5 That stopped, and then that process was taken back within the executive management of the Forensic Disability Unit up in Darwin. And suddenly we were no longer included in that decision-making process, whether it be about chemical restraint, referrals to, you know, psychologists for assessment, decisions about transition
10 planning or the BSP, the behaviour support plan. All of the things that we had been involved with up until then suddenly we were no longer involved with.

CHAIR: Mr McGee, I wonder if I could encourage you to speak a little more slowly.

MR McGEE: Of course.

15

CHAIR: I think as you were reminded before the break, we do have to translate your words into Auslan and also there is a real-time transcript. So thank you very much, if you wouldn't mind bearing that in mind.

20 MR McGEE: Thank you for reminding me, Chair.

MS CRAWFORD: So, Mr McGee, as well as the idea that you would be consulted around care decisions for Winmartie, when the FDU took the approach to change that, was that a unilateral approach or did they discuss making that change with you
25 before they made that change?

MR McGEE: It began when they decided to withdraw from the --- accepting the clinical advice of Dr Marchant, and so that was the first expression of this change, and then over the next few months that - it proceeded to pop up in different ways. So
30 it wasn't just - it was unilateral in that they did not come to us and say "We've decided to change our approach and it will now be this." What happened was we began to see and experience the lack of partnership decision-making.

I think that the experience of the - of when he - out on community in June after
35 COVID had ended, and he had gone out there and he damaged the car, they - the view of his level of risk that their view of his level of risk sort of changed dramatically.

The team that was involved in the reduction of his chemical restraint were very
40 aware of the risks associated with Winmartie, his capacity for unpredictable behaviour, his capacity for aggression and violence, but we also were very confident in the set of strategies that we'd all taken up together that we felt offset this risk. So they were more connection with family. More choice and control. More community access, more recreation. Mr Buffoon(?) coming in and working with [Winmartie] on
45 painting.

I mean during the period just before all this changed, Winmartie was producing one

painting a week. And so there was this gradual withdrawal of the partnership approach, and it hit its apogee with that incident, and then they started to really make - we started to see decisions that were being made without us.

5 MS CRAWFORD: Did you challenge that?

MR MCGEE: I certainly did. Communication became very tense. It was very difficult. It's important to understand that I was in Melbourne at the time, and by the time that it had gotten really heated, I was into our second lockdown, and for those of
10 us that were in Melbourne at that time, we all went a little bit mad and we had 100 days in lockdown. And they, in my experience of their behaviour at that time, was that they were exploiting the fact that, you know, I was not there and that I couldn't be there in the way that I had been previously.

15 They realised, I think, that, you know, they didn't really have to talk to me if they didn't want to, and so the communication between us became very, very tense. And there was one particular incident where the FDU went out to see Aunty Margret and asking her to sign a document supporting their view that he should be chemically restrained. And I felt that that was a line that they had crossed, and I got very angry
20 and lost my temper with the Director of Disability.

So there was heated and difficult communication by us all during August and September and October of last year.

25 MS CRAWFORD: That resulted in fact in you not being permitted to communicate with the FDU staff directly or, indeed, anyone from Northern Territory Health, other than by way of a generic email inbox. Is that right?

MR MCGEE: Yes, that's correct. In fact, only this week, so Winmartie has been
30 hospitalised this week due to the inability - the Forensic Disability Unit not being able to manage his behaviour, and he's had a significant escalation in his seizure activity and a significant escalation in his behaviours of concern, particularly his aggression, his violence. The assumption that we've all made is that this is because of the titration of medication that's been going on over the last few months where
35 there's been lots of changes, lots of increases, and as a result I texted the facility manager Tom Langcake, and I got an email from the, I think her name is the Deputy CEO, saying "Please do not communicate with our staff. You know that we've got a policy where you're to only use this generic email."

40 The generic email is simply a method by which they tell us, me and Aunty Margret, when there's been behaviours of concern, when they've administered a PRN and when he's had a seizure. Every now and again we get little social stories of things that he might have done but there's no - it's not an interactive communication. It's very didactic. It's enormously frustrating.

45 MS CRAWFORD: And so that happened last year around October, you say?

MR McGEE: Yes, I think so, yes. It began - there was a particularly difficult meeting where the occupational therapist did not like the questions that I was asking and so hung up on all of us, and after that there was no more communication, direct communication allowed with her. It didn't just affect me, but it was certainly
5 targeting me.

MS CRAWFORD: All right. In your experience with your work with adult guardians and working with people who are living with disabilities, have you ever had anyone put you on this type of restriction for communication before?
10

MR McGEE: No.

MS CRAWFORD: And with respect to being directed to communicate only by email, when you get emails from the facility or the Health Department staff, are those emails signed? Do you know who is authoring those emails?
15

MR McGEE: No, it's just Forensic Disability Unit. We have, so, you know, it became very difficult and so we took a decision to back off a little for a bit, and so we did that. And I suppose I expected there to be a calming down of everybody's
20 passions and that we would return to a more collegiate arrangement of at least communication. But it's clear that they do --- they are not going to ever communicate with me again. That's my view. They are intent on keeping me out of [Winmartie's] life. They are happy for me to go for a swim in the pool with him but they certainly do not want my involvement in his life any more, either in a
25 day-to-day capacity or a decision-making role.

I have worked for the Office of the Public Advocate as a guardian for 11 years and I have never ever seen a government department treat a guardian like this. And I need to say that this is not the first time I've seen the Northern Territory Government treat
30 a guardian like this. Ms Ann McKinley who was the guardian for another young woman, similar circumstances, highly complex, highly political was treated like this where they cut off communication ---

CHAIR: I think, Mr McGee, if you don't mind, we might confine ourselves to the case the Royal Commission is looking at. There might be other issues with other cases, thank you.
35

MR McGEE: Certainly.

MS CRAWFORD: Mr McGee, just taking up that point. On Tuesday we heard evidence from the NSW Public Guardian and she spoke about challenges arising from the interaction of the *Mental Health Act* and the *Guardianship Act* in NSW saying it was difficult for the guardian to carry out their role and that the *Mental Health Act* somehow trumped the *Guardianship Act*, but that didn't excuse you from
45 your obligations as a guardian.

In the context of your experience as a core guardian for Winmartie, would you agree

with Ms Osborne's observations that were made before the Commission on Tuesday?

MR McGEE: I certainly would. And it's not just saying the *Mental Health Act*, it's the *Corrections Act*. It often trumps guardianship in other States and Territories
5 guardianship stops at the jail gates. There was a little bit more ambiguous in the Northern Territory legislation and so that ambiguity allowed me to put forward a case for inclusion. But I think that guardianship is utilised as a decision-making vehicle until it doesn't suit other systems or until the framework that underpins the way guardians make decisions, best interest, least restrictive, comes into conflict
10 with what the other service systems believe should happen.

MS CRAWFORD: Now, a moment ago you said that you couldn't see the communication issues between yourself and the Forensic Disability Unit or the Northern Territory Health people getting any better. Was there a suggestion that
15 mediation might be used in order to try to move this communication impasse along a little bit?

MR McGEE: Prior to the Supreme Court review of the custodial supervision order, the community visitors, the principal community visitor wrote to both the CEO of
20 Health and myself and Aunty, explaining that she had concerns for [Winmartie's] best interests in the context of - sorry. She explained that she had concerns for Winmartie's best interests in the context of the conflict, and sort of putting forward that - her view was that mediation should occur.

25 In the correspondence and interactions between myself and the CEO of Health, it became clear that there were perhaps two different versions of what mediation might speak to and I think their version was that mediation would be used to discuss the way that I communicated, and their expectations about communication going
30 forward.

When I put forward that I was amenable to that, but suggested that we also needed to visit how we would once again make decisions with each other, they said that they would not be - that would not be part of the mediation.

35 Given the way that they were treating me at that point, I felt that I did not want to be sitting in a room where they were going to be, you know, simply mediating over a particular view that they had, without engaging in a sort of reciprocal arrangement about some of the problems I had with them as well. And we --- most recently, the principal community visitor wrote to me, and I assume to the CEO of Health as well,
40 asking what progress had been made towards mediation. So the intervening incident or the intervening situation was the review of the custodial supervision order, where the Northern Territory Government put forward the view that there could only be one decision-maker under one piece of legislative authority, and the CEO of Health under the order, under that legislation that governed the custodial supervision order, that
45 they should be the sole decision-maker, and that the guardian should not be, and did not have, the right necessary authority to make decisions whilst the order was enacted.

The judge, Justice Highley, sided - found - his findings were aligned with the position of the Government, and as a result, the guardians have no longer got any decision making authority in the context of Winmartie.

5

As a result of that, my disposition to participate in the mediation disintegrated markedly.

10 MS CRAWFORD: But not perhaps having decision-making capacity around treatment issues that may or may not be considered to be acute clinical decisions, that doesn't mean that you don't have a role to play in consulting about what is best for Winmartie based on your experience of him and your obligations under the *Guardianship Act*.

15 MR McGEE: Our view was there was sufficient - that Justice Highley pointed to the *Disability Services Act* as a mechanism by which the authority which now rested with the CEO of Health and the guardians could be played out through the obligations of the *Disability Services Act*. Despite amendments, the *Disability Services Act* in the Northern Territory is 30 years old. It's a piece of disability
20 legislation, like most pieces of disability legislation at that time, were orientated towards how to service and support people with disabilities rather than providing a mechanism by which the rights of people with disabilities could be undertaken and promoted.

25 I don't believe that there is any mechanism by which we are currently consulted. As such the behaviour support plan that was sent to us, was sent to us as a completed draft version. It was sent to me on an email and I was expected to respond via email as to my thoughts.

30 MS CRAWFORD: With respect to the behavioural support plan, so it was sent to you asking for comments, wasn't it?

MR McGEE: Yes. Just in January of this year.

35 MS CRAWFORD: So that's the document that's under development, really, isn't it?

MR McGEE: No, I think that they now have what they're calling a comprehensive behaviour support plan. It's three documents. It's a behaviour support plan, a functional behaviour assessment and a behavioural cycle analysis. And those three
40 documents make up what they call a comprehensive behaviour support plan.

MS CRAWFORD: All right. Is that what you've been asked to look at now?

MR McGEE: I was asked to look at the behaviour support plan, yes.

45

MS CRAWFORD: All right. And that is something that you will no doubt do, isn't it?

MR McGEE: I've already done that. I've sent back my comments.

5 MS CRAWFORD: With respect to the cultural aspects of care for Winmartie in the Forensic Disability Unit, Winmartie predominantly speaks Pitjantjatjara, doesn't he, or Arrente?

10 MR McGEE: Yes, that's correct. That's his first language --- English is probably his third language.

MS CRAWFORD: Were you aware if any of the staff that were employed by the FDU to look after Winmartie spoke Pitjantjatjara or Arrente?

15 MR McGEE: There's no one on staff that I'm aware of that speaks those languages. I do understand that a Cultural Liaison Officer has been employed at the secure care facility and that person does speak the languages of [Winmartie]. I also understand that person is someone that can't interact with Aunty Margret due to the nature of the cultural prohibitions around the relationships between those two people. I think that having one person for the entire Forensic Disability Unit who is there to provide
20 cultural advice, it's a good start, but what I think we've been after for a long time is two things. We need people in that facility because he's the only one there who speak his language, and can interact with him in a culturally safe manner. And we need the platform of cultural safety to be built up over time, and that the employment of people and the direct care capacity as well as in a management capacity we felt
25 was the way to go.

However, it's been many, many years of us saying to the Forensic Disability Unit people, there is a need for people who speak his language to be employed.

30 In 2017 they went as far as to employ a consultant to develop a 10-week cultural and language plan where the staff would be, once a week they would sit with an Elder from - an Arrente Elder, and experience culture and language training. But it never actually got off the ground.

35 MS CRAWFORD: So, Mr McGee, what do you want for Winmartie? What would your wishlist be?

40 MR McGEE: Winmartie needs to leave the Forensic Disability Unit. He no longer derives any therapeutic benefit from it. There's a terrible dynamic. I listened to Professor James Ogloff's evidence and he said a couple of key things. He said that everybody needs to feel that they're progressing towards something. At the moment, there is no progression of anything for Winmartie, and that creates a sense of hopelessness, a sense of hopelessness in Winmartie's mind, in his family's mind, and I think in the minds of the professionals at the secure care facility.

45 He also said that you can't actually just rely on chemical restraint as the mechanism by which you control behaviour. And I concur with those thoughts and I think that

that's the other thing. I think that Winmartie is someone who is heavily chemically restrained to no benefit and it's doing him harm.

5 We've got a situation where at the moment he's in the Alice Springs Hospital because of the problems that he's having with the chemical restraint. It's dispiriting to think that since the review of the custodial supervision order, his seizure activity has grown significantly, his behaviours of concern have grown significantly, and his hopelessness has grown significantly.

10 Like Aunty Margret, I would see a house in the community of Alice Springs, perhaps on the edge of town where there's room to move, where family could come and visit and he could then also go and visit them at Titjikala and Alice Well where they've got a culturally safe model of disability support which is - which draws on the best expertise from both Aboriginal people and white people, where he can actually live
15 his life in a way that is culturally safe for him and that makes him feel happy and confident, and gives him dignity.

MS CRAWFORD: And just a final question. With respect to the breakdown in the relationship between yourself and the FDU, do you feel disrespected with respect to
20 the experience that you've had with Winmartie over all these years, that you actually have something valuable to add to the conversation and you're not being heard?

MR McGEE: So, I'm not just a service provider. Winmartie and I have a very special relationship. It's the most wondrous thing that the universe has given me in
25 this life, is to be Winmartie's friend. And he has given me so much. I owe who I am to him. And in turn, I have devoted my life to being there for him in what has been a very difficult life. I didn't know this is what that was going to be, but this is what it is. And we now have this special relationship and I now am a co-guardian with his aunt, Aunty Margret. I get to go to an Aboriginal community and speak with Arrente
30 people about life and living in Australia. I can't tell you the special nature of our relationship.

I don't mind if they want to turf me out of the service delivery point, but they have excised my good friend out of my life, and they've excised me out of his life without
35 so much as a by-your-leave. And they don't understand the emotional impact that that has had on me and I think it's also had on Winmartie.

MS CRAWFORD: Thank you, Mr McGee. I have nothing further.

40 CHAIR: Thank you.

Mr McGee, I will ask my colleagues whether they have any questions. I will ask first Commissioner Mason, do you have any questions?

45

QUESTIONS BY THE COMMISSION

COMMISSIONER MASON: Yes, I do. Thank you, Chair. When I began in this role as a commissioner, Mr McGee, I was told that First Nations people are leaders of inclusion with disability. So, listening to your evidence this afternoon, I thank you
5 for coming today to give your evidence. We, through what you have told us, is a very strong story around the medical model of disability, but also your evidence as well as Sister Margret's evidence has talked about the social model of disability and this transition for Winmartie towards that model of inclusion is really, really critical.

10 I also wanted to make an observation before I come to the question that he is an Arrente and Pitjantjatjara first language speaker. He not only speaks in those languages, he also thinks in those languages. So if we're talking about transition, talking about therapeutic care, for people that are speaking in English, then the level of understanding but also of increasing his agency is limited. So you make a very
15 strong point about his isolation there with really one person amongst many who speak his first language.

So my question is around the social model of disability for him, so talking about him, and around that transition to the community and the way that that is communicated to
20 him. What are you looking for from the Royal Commission in terms of advancing that? That's the question I'm asking of us. And before you answer that question, I will give you a chance to think about it, I also wanted to take this opportunity --- and you talked about it in your final comments --- that I want to thank you for working as a Malpa friend with Mr Winmartie and working malparara way which is working as
25 a companion or friend in the Pitjantjatjara language. Again, culturally safe, culturally capable when it's done in a way that is expressed through companionship and people bringing into that relationship what they know, what they have knowledge in and you've definitely bought your expertise and knowledge in terms of support.

30 So I wanted to say that before you gave your response. Thank you.

MR MCGEE: Thank you, Commissioner. The response I would make is that for a long time now, there has been a lack of leadership at the Commonwealth level
35 around the expectations that we might have for people like Winmartie who do need significant and structured support in order to be safe themselves and to make sure that others are safe.

40 That lack of leadership has resulted in a lack of political will, and then a lack of resources that are needed for us to actually meet our international obligations and your domestic human rights obligations.

45 There is a need for strong leadership at the Commonwealth level out of the Disability Royal Commission with good, strong expectations that set expectations and benchmarks that we can all then try to adhere to.

COMMISSIONER MASON: Thank you very much.

CHAIR: Commissioner Atkinson, do you have any questions?

COMMISSIONER ATKINSON: No, thank you.

5

CHAIR: Sorry, Commissioner Atkinson.

COMMISSIONER ATKINSON: No, thank you.

10 CHAIR: Commissioner McEwin?

COMMISSIONER McEWIN: No, thank you.

15 CHAIR: Mr McGee, thank you for your evidence and your statements as well that set out your experiences and concerns. We very much appreciate the assistance you've given to the Royal Commission. Thank you very much.

MR McGEE: Thank you, Mr Chair.

20

THE WITNESS WITHDREW

25 CHAIR: Ms Crawford, can we take an adjournment for ten minutes or so. There's something that needs to be addressed here. And we will resume at 2:45 Brisbane time, 3:45 Sydney time.

MS CRAWFORD: Thank you, Chair.

30 CHAIR: Thank you.

ADJOURNED

[3.32 PM]

35

RESUMED

[3.46 PM]

40 CHAIR: Yes, Mr Power.

MR POWER: Chair, I call Professor Patrick Keyzer.

45 CHAIR: Yes, thank you, Professor Keyzer, for coming to give evidence to the Royal Commission. We appreciate your attendance. Just to explain how we're operating, Mr Power is in our Brisbane hearing room and he will ask you some questions shortly. In our Brisbane hearing room there are also Commissioner Mason and Commissioner Atkinson. In the Sydney hearing room with me is Commissioner

McEwin and, of course, I'm here as well. And you are in Melbourne, we assume.

PROFESSOR KEYZER: Yes, that's right, Judge, thank you.

5 CHAIR: Mr Power, do you wish to tender some material before Professor Keyzer is either sworn or affirmed as the case may be?

MR POWER: Thank you, Chair. Commissioners, you will find Professor Patrick Keyzer's written statement at tab 9 and his curriculum vitae at tab 10 of Tender
10 Bundle B1. I ask to tender these documents into evidence and have them marked Exhibits 11.16.1 and 11.16.2 respectively.

CHAIR: Yes, that can be done.

15

EXHIBIT #11.16.1 - STATEMENT OF PROFESSOR PATRICK DENIS KEYZER

20 **EXHIBITS #11.16.2 - CURRICULUM VITAE OF PROFESSOR PATRICK DENIS KEYZER**

MR POWER: Thank you. There are also attachments to Professor Keyzer's written
25 statement, they are at tabs 15 and 16 of Tender Bundle D1. I seek to tender these documents into evidence and for them to be marked exhibits 11.16.3 and .4 respectively.

CHAIR: Yes, those documents can be admitted into evidence with the markings you
30 have indicated.

EXHIBITS #11.16.3 TO #11.16.4 - ANNEXURES TO STATEMENT OF PROFESSOR PATRICK DENIS KEYZER

35

Professor Keyzer, if you would be good enough to follow the instructions of my associate and she will administer the oath to you. Thank you very much.

40

PROFESSOR PATRICK DENIS KEYZER, SWORN

CHAIR: Thank you, Professor Keyzer. Mr Power will now ask you some questions.

45

PROFESSOR KEYZER: Thank you.

EXAMINATION-IN-CHIEF BY MR POWER

5 MR POWER: Professor Keyzer, could you tell the Commission your full name and your current role.

PROFESSOR KEYZER: My name is Patrick Denis Keyzer and I am the Dean of Law at the Australian Catholic University where I hold a position as Professor of
10 Law and Public Policy.

MR POWER: Have you provided a statement to the Royal Commission dated 28 October 2020 and is that statement correct to the best of your knowledge?

15 PROFESSOR KEYZER: Yes.

MR POWER: Now, we have heard evidence today about Winmartie, and in your statement you discuss the role that you've played in providing legal advice and assistance to Winmartie and his guardians. Does that experience with his case
20 inform your approach to the recommendations that you propose in your statement?

PROFESSOR KEYZER: Yes, it does.

MR POWER: All right. Now, there's been considerable reference to what occurred
25 in Winmartie's case and those - what occurred was under part IIA of the *Criminal Code Act* 1983 of the Northern Territory. Could you assist the Commission by briefly outlining how that system works and in particular the nature of orders that are given under it and their length and how they are reviewed?

30 PROFESSOR KEYZER: Certainly. So if a person comes before the court and there's a question about their fitness to plead, under section 43J of part IIA of the *Criminal Code*, there is a statutory formulation of the pressure test of fitness to plead. Of course, we start with the presumption of fitness, which is established in section 43K of the Code. And then under section 43P, a jury will determine fitness pursuant
35 to those tests.

Then under next 43R, a judge will determine if that unfitness exceeds 12 months and if so, a special hearing under section 43V will be held to determine if the defendant is not guilty, not guilty by reason of mental impairment, or if they find that - and find
40 beyond reasonable doubt that the defendant committed the offence, or that an alternative charge is proven, then they will make that finding.

MR POWER: All right. Now is the consequence of that finding that, that is that a person was unfit but "committed the offence", is it the case that the Northern
45 Territory law specifically provides that is not a basis in law for a finding of guilty of the offence to which the finding relates, it's simply a procedural step that provides some degree of protection of factual finding and that under 43X(3), the court must

then declare the accused person either liable for supervision under Division 5 or to discharge the accused person unconditionally?

5 PROFESSOR KEYZER: Yes, that's correct. Section 43X(3) refers to what they call a qualified finding of guilt there.

MR POWER: All right. Now there are procedures for investigations in the interim orders but ultimately, under 43ZA, is it the case that:

10 *The court must not make a custodial supervision order committing the accused person to custody in a custodial correctional facility unless it is satisfied that there is not practicable alternatives given the circumstances of the person.*

15 PROFESSOR KEYZER: Yes, that's correct. And, of course, that's a section that requires some explanation and some context at an appropriate point in time.

MR POWER: All right. And in terms of the context and explanation, what you're referring to is the legislative requirement about practicable alternatives is something we'll come to in your evidence, but, of course, the legislative test requires
20 consideration of practicable alternatives which is meaningless unless they're present?

PROFESSOR KEYZER: Yes, absolutely right.

MR POWER: Now, under the Northern Territory Code, is a supervision order for a
25 particular term or is it indefinite?

PROFESSOR KEYZER: Yes, it's indefinite under section 43ZC.

MR POWER: Now, it's imposed for that indefinite term; is there some nominal term
30 or some other check that requires a review of that order at some point?

PROFESSOR KEYZER: Yes. So there are provisions in the Code for variations or revocations under section 43ZD and E, but typically what happens is 43ZG is
35 invoked to engage in a major review.

So what happens when an order is made pursuant to 43ZA is the term is indefinite, but the judge will make --- will usually register what they call a term of a major review which is coincident with the sentence that they would ordinarily order if a
40 person was found guilty. So that major review mechanism provides a basis for the court to, you know, listen to evidence and so on and so forth to make a fresh order if one is deemed to be appropriate at the conclusion of that term.

MR POWER: All right. Just to quote from the Act itself, the term being referred to is that which, in the judge's opinion, quote - sorry, which in the judge's opinion:
45

.... would have been the appropriate sentence to impose upon the supervised person if he or she had been found guilty of the offence charged.

PROFESSOR KEYZER: Thank you, yes. That's the basis for the major review.

5 MR POWER: All right. Now, the major review exists at that point and as you've indicated, there is the potential for applications to variation or revocation under some other sections of the Act. Is there any limitation upon a person or a person on their behalf making an application to vary an order?

10 PROFESSOR KEYZER: Yes. So section 43ZD(3) says if the court refuses to vary an order, you can't go back to the court to apply for a new order within 12 months. And so the effect of that is that after a review, where there are periodic reviews, or when there are applications for variation or revocation, you can't make them more frequently than ever 12 months.

15 MR POWER: Now, the principles are that the court must apply when making the order are set out at 43ZM of the Act, and the matters the court must take into account in making the order are at 43ZN. I will just read 43ZM into the - read it out.

20 *In determining whether to make an order under this Part, the court must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community.*

25 And then 43ZN goes into some more specific matters that - that apply that principle.

PROFESSOR KEYZER: Yes.

30 MR POWER: Now, I read that out because at paragraph 12 of your statement, you say that the *Northern Territory Criminal Code*:

.... acknowledges the need to protect the community and the person from themselves. It contains reasonable criteria and discretionary powers that could be used to develop orders that are just.

35 And I just pause there for a moment. Is it the case that the principles, 43ZM and 43ZN and some of the other aspects of the Code, is it the case that you consider they, in themselves, are appropriate?

40 PROFESSOR KEYZER: Yes. I mean, certainly. I mean there's nothing in the language of the Code that doesn't provide the courts with the opportunity to do justice in the individual case. But, unfortunately, the Code sits within a broader social and - within a broader social and community context, you know, including aspects that I've dealt with in other parts of my statement that make it extremely difficult or extremely rare in my opinion for orders to have the sort of, you know, for
45 orders to be sufficiently nuanced to address the complex needs of many people who are subject to these orders and to really be the least restrictive alternative.

MR POWER: So there is a gap between the language of the Act and what is occurring in practice, and what you've noted at paragraph 12 is at least part of that is the significant gaps in the service systems available to Indigenous people with cognitive impairments.

5

PROFESSOR KEYZER: Yes, absolutely, and also a certain volume of access to justice challenges as well for advocates and their legal representatives in advancing these sorts of applications for, you know, variation, revocation, and what have you.

10 MR POWER: Right, and by volume of justice, you mean that the complexities of these matters don't sit well with the volume of work that individual lawyers and individual judges or magistrates are faced with within the Northern Territory justice system?

15 PROFESSOR KEYZER: Yeah, I'd be more specific and say that I think the solicitors who are ordinarily charged with the responsibility of representing Indigenous people in the Northern Territory have a lot of work to do and they're already very busy, and probably require additional resources to be able to do all of this work effectively. And given the importance of the issues that we're traversing
20 today, I think it's vital that those resources be provided so that these vulnerable people can be provided with access to justice.

MR POWER: And you've said at the final part of paragraph 12:

25 *.... many Indigenous people end up detained in unsuitable places where their needs are not met.*

What sort of places are you referring to there?

30 PROFESSOR KEYZER: Well, look, certainly I understand that a - you know, what's referred to as a qualified finding of guilt is necessary - is a necessary part of the Part IIA arrangement under section 43X, but notwithstanding that, these people are often highly vulnerable people who really shouldn't be in a prison. Prisons are dangerous places and I accept that some of the people incarcerated under these
35 provisions are themselves people who may have challenging behaviours that create a risk for themselves or others. They are, nevertheless, people with disability who are very vulnerable, who require specialised treatment and assistance perhaps in ways that, if I can say this, ordinary, average, garden variety prisoners may not need.

40 But I think this issue of how prisons manage people with disability and support people with disability is really the elephant in the room here, and unfortunately it's not just in the prisons. Also in Forensic Disability Units, there are two in the Northern Territory, and in the community. So --- and it's that --- it's a question of the resourcing of services within prisons and beyond the prison gate that I think are
45 really crucial here.

CHAIR: Professor Keyzer, I wonder if you could explain something that is

very - would be very puzzling to most people, it's actually quite puzzling to me. That is, if someone is found not fit to plead, how is it that in this special hearing that takes place, they won't necessarily succeed in establishing that they are not guilty by reason of mental impairment?

5

PROFESSOR KEYZER: Well, that is an aspect of the legislation that is puzzling, and I think one of the substantial human rights-based objections to the legislation is the fact that practically speaking, it means that people are incarcerated in prison even though a court has found them not guilty and, I mean, certainly there are
10 constitutional principles that have been raised at different times and some discussion of that in the plurality judgment in *Chu Kheng Lim* in 1992, but really, in the absence of detailed human rights provision in the Northern Territory, or nationally in a way that could apply in the Northern Territory, the only protections for these fellows are at that international level under the United Nations Human Rights
15 Committee and other mechanisms. And as I explain elsewhere in my statement, a number of Indigenous (audio distorted) in the Northern Territory have advanced those human rights communications, and I've also been involved in some of them, too.

20 So that's a long answer to your question, your Honour, but certainly ideally, if a person was found not guilty by reason of mental impairment, they would be placed in a special purpose design facility or some sort of accommodation arrangement that's designed to provide support for them so that their disability needs can be appropriately addressed.

25

CHAIR: Yes, thank you.

MR POWER: Just to follow on from the Chair's question, the Act itself provides that the court must not make a custodial supervision order committing a person to
30 custody in a correctional facility unless satisfied there is not a practical alternative. From your perspective, from a human rights - sorry, from a human rights perspective, in your view does that legislative test require that there be appropriate alternatives otherwise the test is meaningless?

35 PROFESSOR KEYZER: Yes, I think that's right. I mean, there are two forensic facilities. There's one in the Top End and one in Alice Springs. You know, there's an issue of fitness for purpose in terms of, you know, some of the units may not be suitable because there may be people who need less security around them, so they don't necessarily provide the sort of proportionate responses. And also the
40 opportunities for Indigenous people to spend time on country, which is so important for them culturally, and also, you know, also legitimate issue and questions to be raised about the services provided and the volume of services that can be provided, the quality of services that can be provided, and also the number of beds.

45 MR POWER: And so -

COMMISSIONER ATKINSON: Professor Keyzer, isn't also one of the problems

not just the question of whether or not there's a Forensic Disability Unit for someone to go to as a practical alternative, but if there are no services available in the community, then a judge doesn't have a practical alternative to make that person be subject to a community-based order, as opposed to a custodial supervision order if there aren't services available in the community which are suitable to the person's case?

PROFESSOR KEYZER: That's absolutely right, your Honour.

10 COMMISSIONER ATKINSON: That's a continuing problem in the Northern Territory, isn't it?

PROFESSOR KEYZER: It certainly is. It certainly is. I mean if I can use a metaphor of, you know, steps in graduated release from custody as, you know, bearing in mind we want the least restrictive alternative and we want to realise the human rights of people with disability. You know, prison is an inappropriate place for vulnerable people with disability. Then you have the Forensic Disability Units where there may be too much security and not enough opportunity to go on country, and there are legitimate questions and issues to be raised about quality of service, timeliness of service, chemical restraint, et cetera, you know, issues in respect of which other witnesses, no doubt, have provided evidence. And then, as you've correctly pointed out, your Honour, then there's entry into the community.

If community services for people with disability were appropriately supported and resourced, not only would we have better graduated release opportunities for people as they come out of prison, but you would have that sort of - you would have the services that would minimise the likelihood they're going to be engaged with the criminal justice system in the first place. So that's the sort of, you know, that's how I would describe those issues.

30 COMMISSIONER ATKINSON: Okay.

MR POWER: So, Professor Keyzer, in your statement you refer to a study that you conducted that led to an article but arose from a conference, the Line in the Sand Summit in 2014, and at which you conducted a focus group with participants. Could you just describe the nature of the participants at that conference?

PROFESSOR KEYZER: Yes. So we brought together about 50 Indigenous and non-Indigenous people who had a direct experience providing services to Indigenous Australians with disability, in different parts of the justice sector - lawyers, social workers, other professionals who are involved in different parts of the service sector, and we - our objective was to draw - generate data from that group and produce a report that would be useful in setting an agenda for a policy and legal reform.

45 MR POWER: And the chair of that summit was Mick Gooda, the Social Justice Commissioner?

PROFESSOR KEYZER: Yes, that's right.

MR POWER: At paragraph 16 of your statement, you describe that the people at the conference were asked to describe the six most significant challenges facing
5 Indigenous Australians with cognitive impairment coming into contact with the criminal justice system.

PROFESSOR KEYZER: That's right.

10 MR POWER: Now, you used a technique called a nominal group technique.

PROFESSOR KEYZER: Yes.

MR POWER: Can you just briefly explain what that is?
15

PROFESSOR KEYZER: Sure. Nominal group technique is a social science technique that's been used for 50 years. There are 17 million research studies that have used it. It's very commonly used in every part of social science and, indeed, amongst other types of scientists as well. Effectively, what we did here is we got
20 everybody together in a room. We asked them to write down, or if they had a disability to communicate in other ways what they regarded as the six most significant challenges facing Indigenous Australians with cognitive impairment who come into contact with the criminal justice system, and then that data was typed up, as it was produced into a laptop computer, and then after all that, after it was typed
25 up into the computer, we then workshopped the list of issues that people had identified and generated, and then compressed them through a process of permanetics, basically everybody talking and getting involved and breaking up into groups and taking particular issues and then bringing it back together as a group. And then the group, as a single entity, produced a communique which is reflected in
30 subparagraphs (a) through (f) of paragraph 16 of my statement.

MR POWER: Yes. And so to put it in non-scientific terms, this was a distillation of the professional and life experience of 60 people who were either Indigenous or worked closely with Indigenous people in the criminal justice system?
35

PROFESSOR KEYZER: Yes, that's correct, and, you know, at the time it was, you know, it is - I think the recommendations there have stood the test of time even though it's six years on.

40 CHAIR: It does sound a bit like a reasonably well-organised focus group, doesn't it?

PROFESSOR KEYZER: Yeah, that's effectively what we were trying to achieve, your Honour. I mean it was, you know, I don't know if we need an analogy, but we were trying to get the experts to "hot tub", as it were, and to come up with, you
45 know, a sort of set of principles that would provide a policy agenda.

MR POWER: So a very, very large "hot tub" with a capacity of about 60?

PROFESSOR KEYZER: Yes. I mean, it was quite a day. We were all quite exhausted at the end of it. But that's a first world problem.

5 MR POWER: And it's been pointed out perhaps COVID might create a problem with such "hot-tubbing" at present.

PROFESSOR KEYZER: Yes, that's right. We were fortunate enough to be able to conduct this in a room with some funding and all there at the same time. But people
10 came from all over Australia. So we had every State and Territory represented, and a wide cross-section of people.

CHAIR: To avoid any misunderstanding among those following, we should make it clear that it is not an actual hot tub with bubbles and such!
15

MR POWER: So the reason for me introducing how these six points, (a) to (f), were developed, is to note their source, and I want to try to use them as a framework for your evidence about what needs to be done to remedy these issues.

20 PROFESSOR KEYZER: Thank you.

MR POWER: So using - going to (a), which is at the top of page 5 of your statement:

25 *There is a lack of distinctive, culturally responsive sentencing and service outcomes other than prison for Indigenous Australians with cognitive impairment.*

Then you list, or rather, the group listed four specific points.
30

Now, could you speak to that first point, why is this type of individualised, culturally responsive accommodation important?

PROFESSOR KEYZER: Yes, well, look, I think the important thing to note about
35 all of these dot points under subparagraph (a) is that the policies are designed to accommodate people, and everyone's different and people with disability are different as well. Some people with disability need more security for themselves and for others in an accommodation arrangement.

40 Some people with disability want to live with other people. Some may want to live alone. Some people may be comfortable living in different places at different points in time. Other people may need a particular place to live. But really, the important thing is to ensure that the accommodation is culturally safe so that Indigenous people have the opportunity to go on country and are supported to, you know, to be who
45 they are and realise their potential as human beings.

MR POWER: Now do any models or examples of this step down but secure

individualised responsive cultural accommodation exist?

PROFESSOR KEYZER: Well, look, colloquially, you know, there's the notion of halfway houses, you know, for people who are released from prison. And, of course
5 --- but people in the disability sector would be well aware of the notion of, you know, the group homes that emerged particularly in the early '90s, you know, under the early '90s, late '80s, *Disability Service Acts* in each of the States and Territories.

10 But I think we need to be careful not to sort of leap to those models as examples of what we should be trying to do. I think what we really need to do is we need to speak to the people who are going to be in these - in the accommodation themselves. We need to speak to people with disability. We need to communicate with people with disability and talk to them about what it is that they want out of accommodation.

15 I mean, this study, of course, is based on expert opinion, but we really need to speak to people with disability about what they want. I imagine that their --- you know, the information that comes from people with disability about how they want to live their lives is going to - I'd be surprised if it didn't produce the sorts of, you know,
20 recommendations that I've described here in these dot points, given that the people who provided this research data for us are extremely experienced individuals.

25 But really, we need a range of housing that makes sense. For example, you might have an Indigenous person with disability who has kidney problems and who needs dialysis. Well, obviously, you know, an accommodation that is close to dialysis equipment is going to be necessary. On the other hand, there could be Indigenous people who really particularly want to live back on country. Obviously that involves discussions with community Elders, particularly if they have come into contact with the criminal justice system because of activity that they engaged in, in that
30 community, which ended up with them being subject to a custodial supervision order of this variety under Part IIA.

35 But I think it's important to - I guess that's kind of a long-winded answer, but I guess the point I'm trying to really drive home is that I think that the dot points in paragraph (a) speak for themselves but they need to be animated by the voices of people with disability, and if they can't speak with a voice, then, you know, we need to communicate with people with disability, Indigenous people with disability and cognitive impairment, as best they can, so we can work out what they want and try and deliver that.

40 MR POWER: As you've said, the dot points are interlinked and speak for themselves, but if I can just turn to the last one, which is that the services must connect with and leverage support from families and other relevant social services.

45 Now, does that, in your view, mean that there really needs to be an involvement of Aboriginal Community Controlled Organisations who can link to the families of people with disabilities and other social services to achieve those dot points that are

listed above?

PROFESSOR KEYZER: Yes. I mean, look, I think that once --- you know, once people are leaving a prison environment, and, indeed, when they're in prison, you know, the NDIS is the funding framework, is the normative framework for planning. It's the legislative framework for planning. And what we really need are planners, you know, be they service providers in the community that provide that service. And there are, you know, planners in the Northern Territory, perhaps not enough, and perhaps not enough planners and services that have the, you know, the rich and diverse multidisciplinary professional experience that you'd need to build nuanced plans for complex forensic clients coming out into the community.

But the NDIS could provide that framework, and what needs to happen is that there needs to be a culturally safe way of - we need to make sure that planning occurs in a culturally safe way with services so that people with Indigenous people with cognitive impairment, Indigenous people with disability, are listened to, that they're given the opportunity to identify culturally significant people and/or Guardians who can help them with planning, that can assist them with planning and then they need to be connected into services that are culturally safe, if that makes sense.

So your comment before about Aboriginal Community-Controlled Health Organisations is apt. You know, they are organisations that are culturally safe but, you know, we really should aim for all services everywhere to operate in a culturally safe way, and cultural safety should be part and parcel of NDIS planning, and then we need to leverage families.

So often, not always, but often there will be family members who can assist, and assist in helpful ways. We just need to be really sensitive about this planning exercise because, you know, there are multiple layers when it comes to cultural issues.

As I said before, it needs to be handled in a very delicate and nuanced way because, you know, depending upon the behaviour that resulted in the custodial supervision order that placed a person in prison in the first place, you know, there needs to be a negotiation with the communities, in particular if the person intends to return to that community. Because, you know, there are circumstances where a community might not want a person to go back.

So it's a very complicated terrain but there are, you know, really, again, we just need to listen to Indigenous people because, you know, they're the experts in Indigenous culture, and they're going to tell us what we need to do as service providers, what we all need to do, to make sure the transition out of prison and into appropriate disability service arrangements can be made.

MR POWER: Thank you. I won't go through it, but paragraphs 21 through to 24 of your statement speak to some of the issues you just discussed and in particular Justice Liaison Officers and NDIS service providers. So you've spoken there.

PROFESSOR KEYZER: Yes, yes, yes. So, I mean, I think, you know, I think the Standing Council of Law and Justice, you know, the Federal, State and Territory Attorneys-General, I think there's an awareness the NDIS really --- it needs to meet
5 people with disability at the prison gate but further be involved in supporting prisoners with disability while they are in prison, while they're in the Forensic Disability Units and, of course, when they're in the community.

10 So, you know, that's an emerging and developing space, but I think, you know, ultimately it's not that complex when we accept that the whole point of the NDIS and the human rights that it advances should apply everywhere in Australia, including in closed environments.

MR POWER: Now, of course, you're speaking there about a bridge between
15 somebody who has been incarcerated with a cognitive disability getting back into community, and that's a really important position. But b, on page 5 of your statement, is the need for early assessment, diagnosis, support and intervention. Now, we heard very movingly from Patrick McGee today about his experiences with a very young Winmartie in his childhood. Is Winmartie's situation one that
20 illustrates why there is a need for that early assessment and support and intervention to try and avoid anybody ending up in custody?

PROFESSOR KEYZER: Absolutely. I know Professor Baldry and her colleagues at the University of NSW have done some very persuasive research on the need for,
25 you know, justice reinvestment and appropriate service provision for children and older children and young adults to support them so that they don't come into contact with the criminal justice system. And where they do, to divert people into effective and appropriate disability service provision.

30 You see, again and again, Winmartie's story is just one amongst way too many stories, you know, hundreds of stories, maybe more, where people aren't given the right services and supports in their tender years and then they come into contact with the criminal justice system, and it's only many, many years later where disability needs are accommodated and, frankly, many of these people live incredibly tragic,
35 very sad lives. And I find it deeply disappointing that in a country that has the sort of resources of this one that we can't build systems that are directed towards recovery where we can, and to respect those human rights and frankly show people with disability, show them love, effectively.

40 I mean, you know, we need to have systems that really realise those human rights. I think what we've been talking about today is a subset of that, that's an important subset.

CHAIR: Mr Power, I see the time.

45 MR POWER: Sorry, Chair.

CHAIR: While I, and I'm sure my colleagues, appreciate the importance of this, at the current rate of progress we will be finishing around 2.30 am. So can we move towards a denouement?

5 MR POWER: Yes, Chair. In fact, I was going to say that through the answers, I think we've covered all of those points, the points we wish to raise, so that's the evidence that I wish to elicit orally from Professor Keyzer.

CHAIR: Very good, thank you.

10

Professor Keyzer, I will ask the Commissioners if they have any questions of you and I will commence with Commissioner Mason.

15 COMMISSIONER MASON: No, thank you. But thank you very much for your evidence this afternoon.

PROFESSOR KEYZER: Thank you, Commissioner.

CHAIR: Commissioner Atkinson?

20

COMMISSIONER ATKINSON: Yes, I'm in the same position. Thank you.

PROFESSOR KEYZER: Thank you, Your Honour.

25 CHAIR: Commissioner McEwin?

COMMISSIONER McEWIN: No, thank you, and same for me.

30 CHAIR: Professor Keyzer, thank you very much for the detailed statement you've given and for your evidence and also, of course, for the research upon which it is based which we have the benefit of and which we will take into account. We appreciate your attendance and the evidence that you have given. Thank you very much.

35 PROFESSOR KEYZER: Thank you, your Honour. If I may, I just wanted to pay tribute to your staff for doing such a wonderful job for setting everything up. It's been seamless.

40 CHAIR: Yes, thank you very much for that as well. And I notice, Professor Keyzer, that presumably you've taken up a position very recently at the Catholic University?

PROFESSOR KEYZER: Yes, I've been here for a month, your Honour.

CHAIR: In that case, we wish you all the best in your new role.

45

PROFESSOR KEYZER: Thank you, I appreciate it. Thank you, your Honour. All the best.

CHAIR: Ordinarily I would ask if there are any questions from Counsel who - or legal representatives but, Mr Power, I understand there's nobody in that position at the moment who would wish to ask a question; is that right?

5

MR POWER: We've been informed that there are no questions for Professor Keyzer.

CHAIR: Thank you very much. Thank you, Professor Keyzer.

10 PROFESSOR KEYZER: Okay, thank you.

THE WITNESS WITHDREW

15

MR POWER: Chair, if we can adjourn until 10.00 am on Monday, Queensland time.

CHAIR: All right, we will adjourn, then, until 10.00 am Queensland time on Monday, which is, of course, 11.00 am Sydney time, or Victorian time or Tasmanian time. Thank you very much. We'll adjourn until then.

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**ADJOURNED AT 4.32 PM (AEDT) UNTIL MONDAY, 22 FEBRUARY 2021
AT 11.00 AM (AEDT)**

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