



TRANSCRIPT OF PROCEEDINGS

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

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

9.30 AM, THURSDAY, 26 NOVEMBER 2020

DAY 4

Lincoln Crowley QC, Senior Counsel Assisting
Ben Power and Elizabeth Bennett, Counsel Assisting

CHAIR: Good morning, everyone. I shall ask Commissioner Mason to perform the acknowledgement of country today, the fourth day of our hearing.

COMMISSIONER MASON: Thank you, Chair.

5

We acknowledge the First Nations people as the origin inhabitants of the lands on which this hearing is sitting. [Ngaanyatjarra language spoken]. We recognise nation Brisbane [Ngaanyatjarra language spoken]. We recognise the country, north and south of the Brisbane River as the home of Turrbal and Jagera nations.

10 [Ngaanyatjarra language spoken] 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.

15

I would also like to read a content warning for today's hearing. 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 parents with disability and their experiences with child protection systems across Australia. First Nations viewers, please note that the evidence will describe removal, and if the evidence raises concerns for you, please contact the National Counselling and Referral Service on 1800 421 468. You can also contact Lifeline, 13 11 14, Beyond Blue on 1300 224 636, or your local Aboriginal medical services for social and emotional wellbeing support. Thank you, Chair.

20

25

CHAIR: Yes. Thank you very much. Yes, Mr Crowley.

I've been reminded of an additional appearance from the State of South Australia. Are there any additional appearances to announce? Apparently not.

30

MR CROWLEY: It seems not at this time, Chair.

CHAIR: Thank you, Mr Crowley. Please go ahead.

35

MR CROWLEY: Thank you, Chair. This morning the first witness we have to give evidence is "Shontaya". She will be giving evidence by AVL (Audio Visual Link). And she has provided a statement which is in Tender Bundle part A volume 1 at tab 33 and I tender that statement. If it could be marked as Exhibit 8.16, please.

40

CHAIR: Yes. That can be done.

EXHIBIT #8.16 - STATEMENT OF MS "SHONTAYA"

45

MR CROWLEY: And associated with the statement there are other materials which are in part A, tabs 34 to 63. I tender those and if they could be marked Exhibits

8.16.1 to 8.16.30, please.

CHAIR: That also can be done, thank you.

5

EXHIBITS #8.16.1 TO #8.1.30 - ANNEXURES TO STATEMENT OF MS "SHONTAYA"

10 I think we have Shontaya on the screen.

Good morning and thank you very much for coming to the Commission to give evidence.

15 MS SHONTAYA: Good morning.

CHAIR: If you could pay attention to the Associate of Commissioner Atkinson.

20 **MS "SHONTAYA", AFFIRMED**

CHAIR: Thank you, very much. Now Mr Crowley will ask you some questions.

25

EXAMINATION-IN-CHIEF BY MR CROWLEY QC

MR CROWLEY: Good morning, Shontaya, can you hear me, see me okay?

30

MS SHONTAYA: Good morning, I can.

MR CROWLEY: Shontaya, you are a First Nations woman from South Australia?

35

MS SHONTAYA: Yes.

MR CROWLEY: And you are the proud mum of three children?

40

MS SHONTAYA: Yes.

MR CROWLEY: You've given a statement to the Commission about yourself and about your children?

45

MS SHONTAYA: Yes.

MR CROWLEY: And the things you say in your statement, are they true as best as you believe?

MS SHONTAYA: Yes, they are true.

5 MR CROWLEY: Shontaya, I want to ask you some things first of all about yourself and when you were growing up. Could you tell us, without getting too specific, just generally about your growing up? Where did you grow up?

MS SHONTAYA: On an Aboriginal community.

10 MR CROWLEY: And when you grew up on the community, did you go to school there?

MS SHONTAYA: Yeah, I did.

15 MR CROWLEY: Did you do your primary school while you were living in the community?

MS SHONTAYA: Yes.

20 MR CROWLEY: And when you were growing up, who were you living with?

MS SHONTAYA: My mum and dad.

MR CROWLEY: And do you have brothers and sisters?
25

MS SHONTAYA: Yeah, I have one brother and two sisters.

MR CROWLEY: And what was school like for you, primary school?

30 MS SHONTAYA: I enjoyed primary school, got along with all the kids.

MR CROWLEY: When you were at primary, did you learn about your culture?

MS SHONTAYA: Yes, I did.
35

MR CROWLEY: And did you also learn language as well?

MS SHONTAYA: Yes.

40 MR CROWLEY: Now, when you were a teenager, when you were around 14, did you move from the community to Adelaide?

MS SHONTAYA: Yes.

45 MR CROWLEY: Could you just tell us about that, what was it like moving to Adelaide?

MS SHONTAYA: It was good. I liked it, yeah.

MR CROWLEY: And did you move there so you could go to high school?

5 MS SHONTAYA: Yes.

MR CROWLEY: What year level did you reach at high school?

10 MS SHONTAYA: Year level I completed, I started Year 12 but then I finished --- started Year 12 but then I went to work.

MR CROWLEY: Where did you go to work?

15 MS SHONTAYA: It was at a place called Adelaide CDEP.

MR CROWLEY: What sort of work were you doing there?

20 MS SHONTAYA: I was doing courses, like business administration course. I completed Business 1 and Business 2, so that certificate with actually working.

MR CROWLEY: This was through the Adelaide CDEP?

MS SHONTAYA: Yeah, yeah.

25 MR CROWLEY: Those courses that you did, were they courses done through the TAFE college?

MS SHONTAYA: Yeah.

30 MR CROWLEY: And how long did it take you to do the courses?

MS SHONTAYA: About 12 months. I was also doing hospitality as well.

35 MR CROWLEY: Did you finish that one?

MS SHONTAYA: No. I got changed from hospitality to business admin, yeah.

40 MR CROWLEY: Now, when you finished those, did you go to work later at a factory for a time?

MS SHONTAYA: Yeah. It was actually --- yeah, I was working at a factory, a seafood factory.

45 MR CROWLEY: And then after that did you go and get another job doing some admin work?

MS SHONTAYA: Yeah, I was doing receptionist work, yeah.

MR CROWLEY: How did you find that?

5 MS SHONTAYA: I actually enjoyed it, I liked it. I was working in an office by myself and I did everything on my own. Someone actually taught me how to do things and I done it pretty quickly, so that was really good.

10 MR CROWLEY: Now you say in your statement that did you that job for a few months.

MS SHONTAYA: Yeah.

MR CROWLEY: But you had to leave for your brother because he got sick.

15 MS SHONTAYA: Yeah.

MR CROWLEY: Was your brother in Adelaide?

20 MS SHONTAYA: Yes.

MR CROWLEY: And you became his carer then?

MS SHONTAYA: Yes.

25 MR CROWLEY: For a long time?

MS SHONTAYA: Yeah.

30 MR CROWLEY: During that time you were caring for him, you weren't doing that admin job anymore?

MS SHONTAYA: No.

35 MR CROWLEY: Now, I want to ask you, Shontaya, about your children.

MS SHONTAYA: Yes.

40 MR CROWLEY: You've got three children. You had your first one, your first child when you were in your early 20s?

MS SHONTAYA: Yes.

45 MR CROWLEY: And at that time can you just tell us about the type of support that you had when you had your baby?

MS SHONTAYA: When I --- my baby, my first one?

MR CROWLEY: Yes.

MS SHONTAYA: I had a lot of support with my first son. Like, I had my mum around and my family around when I had my first son.

5

MR CROWLEY: Now, was Mum living nearby as well?

MS SHONTAYA: She was living with me, yeah. I was living with my mum.

10 MR CROWLEY: And other family as well?

MS SHONTAYA: Yes.

MR CROWLEY: Were they nearby?

15

MS SHONTAYA: Yeah, I had my sister nearby.

MR CROWLEY: Now, a couple of years after that you talk about having your second child?

20

MS SHONTAYA: Yeah.

MR CROWLEY: But you say that was a little bit harder because you had two kids?

25 MS SHONTAYA: Yeah. I lived in --- had my own house and I had my brother living with me I was caring for as well. So --

MR CROWLEY: So it was a bit harder but you were able to cope with that?

30 MS SHONTAYA: Yeah, I do it on my own, yeah.

MR CROWLEY: Did you still have support from Mum?

MS SHONTAYA: Not as much as with my first son, yeah.

35

MR CROWLEY: Now, one of the things you say in your statement is that you had relationship with the father of your second child but your family didn't like him too much?

40 MS SHONTAYA: Yes.

MR CROWLEY: Was that a reason why you didn't have as much contact with Mum anymore?

45 MS SHONTAYA: Yes.

MR CROWLEY: Now, do you know why they didn't like him much?

MS SHONTAYA: Because he was abusive to me.

5 MR CROWLEY: What sort of things --- when you say abusive, what sort of things would he do?

MS SHONTAYA: He would hit me and stuff.

10 MR CROWLEY: How often would that happen, Shontaya?

MS SHONTAYA: A couple of times.

MR CROWLEY: Now, you then later had your third child, the youngest?

15 MS SHONTAYA: Yes.

MR CROWLEY: And you stayed as being the person, mum, and looking after them, the main role of looking after them until the Department of Child Protection got involved in October 2019?

20 MS SHONTAYA: Yes.

MR CROWLEY: Now, I want to ask you a little bit more about the relationship with the father, with your ex.

25 MS SHONTAYA: Yes.

MR CROWLEY: Now, he is the father of your two youngest children?

30 MS SHONTAYA: Yes.

MR CROWLEY: And you told us that he was abusive. Did that happen throughout the whole time that you were with him?

35 MS SHONTAYA: Yeah, most of the time. Since I was pregnant, when I became pregnant he started becoming abusive towards me.

MR CROWLEY: Now, pregnant with your first --- your second child or your third child?

40 MS SHONTAYA: Both.

MR CROWLEY: Both?

45 MS SHONTAYA: Yeah.

MR CROWLEY: Now, in your statement you talk about the relationship being like

chronic abuse.

MS SHONTAYA: Yes.

5 MR CROWLEY: Is that how it was?

MS SHONTAYA: Yeah, it was like that.

10 MR CROWLEY: Even though that was happening, you stayed with him for a few years?

MS SHONTAYA: Yes.

15 MR CROWLEY: Now, you do say in your statement that sometimes you did try and leave him, but you would end up going back.

MS SHONTAYA: Yes.

20 MR CROWLEY: Just tell us about that if you could, Shontaya. How was it?

MS SHONTAYA: I tried to leave him but he like would always use that excuse of trying to commit suicide and stuff, so I didn't really know how to get out of that relationship.

25 MR CROWLEY: And so you would keep going back to him again?

MS SHONTAYA: Yeah. Yes.

30 MR CROWLEY: Now, when he was abusive at home, what would you do to look after the children?

MS SHONTAYA: When I just --- I looked after my children, but it's like, it was hard to pay attention to them when I was getting abused.

35 MR CROWLEY: And so you would leave with the children when you could?

MS SHONTAYA: Yes. Yes.

40 MR CROWLEY: Now, the relationship with your ex, you say it ended in 2019?

MS SHONTAYA: Yes.

45 MR CROWLEY: And you would still see him sometimes but not very often, is that how it was in 2019?

MS SHONTAYA: Yes. Because we had contact for like our children?

MR CROWLEY: Yes. And you talk about in the end of the year in 2019 in December, that you went to his home, he asked you to come over there and you went over to the home to look at some Christmas presents?

5 MS SHONTAYA: Yes.

MR CROWLEY: For the kids. Tell us about that, Shontaya, what happened then?

MS SHONTAYA: I got assaulted, yes.

10

MR CROWLEY: And that was -

MS SHONTAYA: I wanted to leave but he wouldn't let me leave. He bashed me and, yes, just --- hard to talk about, sorry.

15

MR CROWLEY: That's okay. But you had some pretty bad injuries from that?

MS SHONTAYA: Yes. I had three fractured ribs and black eye. I was bruised up from him. He had beaten me up pretty bad.

20

MR CROWLEY: You had to go to hospital for that one?

MS SHONTAYA: Yes. Yes.

25 MR CROWLEY: Now, after that the police ended up arresting him and he got charged?

MS SHONTAYA: Yes.

30 MR CROWLEY: Since that time, you haven't seen him since that time, have you?

MS SHONTAYA: No.

MR CROWLEY: And when this happened around Christmas of 2019 -

35

MS SHONTAYA: Yes.

MR CROWLEY: - you had already ended the relationship with him earlier in that year?

40

MS SHONTAYA: Yes.

MR CROWLEY: Now, in - earlier this year you were able to go and see the Aboriginal Family Support Service ---

45

MS SHONTAYA: Yes.

MR CROWLEY: --- and they helped you get involved with the domestic violence program?

MS SHONTAYA: Yes.

5

MR CROWLEY: Has that been helpful for you?

MS SHONTAYA: Yes, it has been helpful. I've been getting counselling every week, I go back every week, and --- there's DV (domestic violence) workshop. So it has been really helping me with my domestic violence. So I know not to go back to him.

10

MR CROWLEY: And that domestic violence, that's still something that you feel, it still worries you now?

15

MS SHONTAYA: Yes. It still affects me, yes.

MR CROWLEY: I want to ask you then about some testing that was done when after your children were born.

20

MS SHONTAYA: Yes.

MR CROWLEY: Now, you say in your statement that after the children were born you had some genetic testing done for them?

25

MS SHONTAYA: Yes, I did. Yes.

MR CROWLEY: And they found that there was a chromosome duplication or abnormality?

30

MS SHONTAYA: Yes.

MR CROWLEY: Now, that was the first that you knew about that?

35

MS SHONTAYA: Yes.

MR CROWLEY: Did you have some testing then to see whether that was something that might run in the family on your side?

40

MS SHONTAYA: Yes, I had some testing myself and the father of my children had some testing, so we both got it done. So they have told me that the testing did come from me so I've got the same condition, the same condition, the chromosome, yes.

MR CROWLEY: And it was described to you as something that might, when you're younger ---

45

MS SHONTAYA: Yes.

MR CROWLEY: --- have a development delay for the children?

MS SHONTAYA: Yes.

5

MR CROWLEY: They might have delays in their language or speech or other learning?

MS SHONTAYA: Yes.

10

MR CROWLEY: Now, from yourself, you weren't aware that you had that chromosome condition when you were a kid?

MS SHONTAYA: Yeah. No, I've never had problems with my learning, not when I was little. I only had problems with my hearing, like, that was it. Like, I just had to get tubes in my ears and that was it.

15

MR CROWLEY: Yes. Now, during the time that you were still with your partner, sometimes when you would leave you would go and stay at the women's shelter?

20

MS SHONTAYA: Yes. Yes.

MR CROWLEY: And you talk about, in your statement, in early 2018 being at a women's shelter and you got in contact or a service called Kanggarendi got in contact with you?

25

MS SHONTAYA: Yes.

MR CROWLEY: Did you know about that service before they came to see you at the shelter?

30

MS SHONTAYA: No, that was the first time I heard of that service. They just told me they were there to protect me from the DCP (Department of Child Protection). I didn't know it was actually a part of them.

35

MR CROWLEY: That's the Department you are talking about, the DCP?

MS SHONTAYA: Yes.

MR CROWLEY: Up until this time, this is early 2018, had you had any contact with the Department about the kids?

40

MS SHONTAYA: Like, up until now or?

MR CROWLEY: In 2018, when you were at the women's shelter and Kanggarendi come along?

45

MS SHONTAYA: I had never heard from DCP at all. Didn't even know --- like, I had no notifications or anything when my children was removed.

5 MR CROWLEY: Yes. So later on when the Department did get involved with the children, you say that you found out that there had been about 23 notifications in the past?

MS SHONTAYA: Yes.

10 MR CROWLEY: Now, did you know anything about those before the Department came along?

MS SHONTAYA: No. No.

15 MR CROWLEY: No one had ever spoken to you about these things to investigate?

MS SHONTAYA: No.

20 MR CROWLEY: Now, when you had Kanggarendi, did you find them to be a good help?

MS SHONTAYA: They were a good help. They did support me.

25 MR CROWLEY: What sort of things did they do for you?

MS SHONTAYA: They came over to my home and whatever me and my children needed, they would support us. They would get things and even help me to appointments, if I needed financial counselling, like --- with Kanggarendi, I just heard that they deal with people in shelters, like they help families, when I heard
30 about them.

MR CROWLEY: And then after you had been with them for a while -

35 MS SHONTAYA: Yes.

MR CROWLEY: --- in about February 2019 you say that they closed your file?

MS SHONTAYA: Yes, they did. Before I moved --- I had a house, and I moved into my new property and they closed me off before I went and moved into the house
40 with me and my kids.

MR CROWLEY: Around that time in 2019, by then you had already split up with your ex?

45 MS SHONTAYA: Yes, yes.

MR CROWLEY: So it was just you and the kids then?

MS SHONTAYA: Yes.

MR CROWLEY: Living in the house, I mean?

5

MS SHONTAYA: Yes.

MR CROWLEY: You still had then your family around you to support you too?

10 MS SHONTAYA: Yes, I did.

MR CROWLEY: Mum and your sister that you talked about?

MS SHONTAYA: Yes.

15

MR CROWLEY: But also extended family sometimes?

MS SHONTAYA: Yes.

20 MR CROWLEY: And when Kanggarendi closed your file, did they talk to you about whether you needed more support to keep going?

MS SHONTAYA: No. No, they just said that they could see I was doing good and I was doing good with my kids, so they just didn't affirm it to everyone and just closed me off.

25

MR CROWLEY: And how were you doing then, after Kanggarendi stopped seeing you, were you going okay then?

30 MS SHONTAYA: I was actually in and out of hospital a lot due to kidney stones, and I had to have three surgeries. I had a lot of physical injury with myself and stuff. So I was actually struggling a bit, yes.

MR CROWLEY: This is throughout the year in 2019?

35

MS SHONTAYA: Yes. Yes.

MR CROWLEY: When you had to go and go to the hospital or go and see about the kidney stones -

40

MS SHONTAYA: Yes.

MR CROWLEY: Was Mum or family around to look after the kids?

45 MS SHONTAYA: I had my dad watching my kids.

MR CROWLEY: Now, you talk about in your statement, about your family being a

tight family.

MS SHONTAYA: Yes.

5 MR CROWLEY: And that usually there's a lot of support from the family?

MS SHONTAYA: Mm.

10 MR CROWLEY: Later in 2019 you say that there was a lot of things going on with the family and there had unfortunately been a few family members pass away?

MS SHONTAYA: Yes.

15 MR CROWLEY: Can you just tell us about that, Shontaya, when that happened, how did that affect you and the support from the family?

MS SHONTAYA: It was really --- well, when my Aunty passed away, my kids wasn't actually in my care, they were in my mum's care. It was really hard for her as well.

20 MR CROWLEY: And, your Aunty especially that you talk about, you were very close to her?

MS SHONTAYA: Yes.

25 MR CROWLEY: And that was a big loss for you?

MS SHONTAYA: Yes, that was a big loss for me. Yes.

30 MR CROWLEY: And all the family?

MS SHONTAYA: Yes.

35 MR CROWLEY: Now, you say during that time and also at other times in the year, there was a lot of Sorry Business to attend to?

MS SHONTAYA: I had obviously, like, my aunty, my dad's sister that also passed away the same year, and my best friend in the same year. So that was just really hard.

40 MR CROWLEY: Now, when those things happened, was it the case that Mum wasn't around to look after the kids like normal? She had to go out of town and go and see family and do sorry business out there too?

45 MS SHONTAYA: Yes.

MR CROWLEY: Now, you also say in your statement that on top of that your sister

was also having some issues too around this time?

MS SHONTAYA: Yes.

5 MR CROWLEY: Because of those things, did you have any other support with you, with the kids at the time?

MS SHONTAYA: No. When I had my children in my care, I didn't really --- in my care, I didn't really have much support because everybody was all going through
10 their own stuff.

MR CROWLEY: And you also describe in your statement that you also had to go to hospital because you had an abscess in your foot that became infected.

15 MS SHONTAYA: Yes, I did. Yes.

MR CROWLEY: And that was quite serious. You had to stay there for a few days in hospital?

20 MS SHONTAYA: Yes.

MR CROWLEY: Now, because of your own physical health at the time -

MS SHONTAYA: Yes.
25

MR CROWLEY: --- and not having the support, did you find it was hard to do all the chores and things at home that you had to do?

MS SHONTAYA: It was very hard because, like, I couldn't even walk properly.
30 Like, couldn't even walk. So I was going to get surgery done but I didn't need to because they kept me on a drip. Sorry.

MR CROWLEY: And did you try and see if you could get someone else to help at that time?
35

MS SHONTAYA: I went to --- my sister actually came and had to pick up the kids and she took them to her house so she watched them there while I was actually in hospital. And the day I actually came out of hospital to come back home to my kids, my little one actually got sick and I had to take him to the hospital. So by the time
40 that I brought him back home from the hospital to even clean up, I had DCP actually there, (inaudible) my kids.

MR CROWLEY: And it was around that time then that they said that they were going to remove the kids?
45

MS SHONTAYA: Yes. They went into my home without us there, without me or the kids there, and they seen how messy it was, so they said they had no choice but to

remove my kids.

MR CROWLEY: Now, you say that they --- when they did that, they were initially going to take the kids for three months?

5

MS SHONTAYA: Yes.

MR CROWLEY: And they said that it was because of neglect, was one of the things that they said?

10

MS SHONTAYA: Yes.

MR CROWLEY: But also that you had missed some appointments, some medical appointments?

15

MS SHONTAYA: Yes.

MR CROWLEY: Was there trouble or problem getting to medical appointments?

20

MS SHONTAYA: I was actually going into surgery for my kidney stones the times that my children had the appointments, and I missed them.

MR CROWLEY: And you say they also said that another reason was because of domestic violence at the home?

25

MS SHONTAYA: Apparently they heard that I was going back to the father of my children so that's a reason why they took my kids away.

MR CROWLEY: You weren't with the father anymore?

30

MS SHONTAYA: No, no. He was actually up in Sydney. Yes.

MR CROWLEY: Now, when the Department did this, you say in your statement that they told you, you could have a chance to make things better at home, and if you could make it better for the kids and safe, that they could again come back to the home to live you with?

35

MS SHONTAYA: Yes.

MR CROWLEY: Now, it was around then that you went then and saw your lawyer at the Aboriginal Legal Rights Movement?

40

MS SHONTAYA: Yes.

MR CROWLEY: And they helped you with dealing with the Department?

45

MS SHONTAYA: Yes.

MR CROWLEY: Now, when you saw them, from talking to them, you decided that you would try and do the things the Department was asking you to do ---

5 MS SHONTAYA: Yes.

MR CROWLEY: --- so you could get the kids back?

MS SHONTAYA: Yes.

10

MR CROWLEY: What sort of things did you have to do?

MS SHONTAYA: Well, they didn't really tell --- I had to get a mental health check. That was one of them. And a Parenting Capacity Assessment test.

15

MR CROWLEY: Yes. I will ask you about those in a minute, Shontaya, but did they say you had to do any program or any service? Did they tell you about those things at all?

20 MS SHONTAYA: No, they didn't tell me. I did everything --- sorry, I actually got myself into parenting courses and stuff. They didn't actually tell me what I had to go and do to address any of my issues.

MR CROWLEY: So you went and did some. What things did you do?

25

MS SHONTAYA: I went and actually got myself into Circle of Security. So I've done that. I've done a development resilience course for children. That, and a DV workshop, yes.

30 MR CROWLEY: And how did you get in contact with those services to do those courses?

MS SHONTAYA: I rang CentaCare myself and asked them if they had any programs or anything going on. Yes.

35

MR CROWLEY: And did your lawyer help you with this too?

MS SHONTAYA: Yes. I got myself into it and I just told her what I did. Yes.

40 MR CROWLEY: Okay. And did you tell the Department about doing those courses?

MS SHONTAYA: I actually --- yes, I told them that I was doing that. Yes.

45 MR CROWLEY: Now, you talked about having to get a mental health assessment and a Parenting Capacity Assessment?

MS SHONTAYA: Yes.

MR CROWLEY: I will talk to you about the mental health assessment first. Now, with that one, could you just describe for us, Shontaya, what did you have to do?

5

MS SHONTAYA: I just had to sit there and talk to him a lot about my childhood, what I went through. Basically that sort of stuff I had to talk about with him.

MR CROWLEY: And this was with a psychiatrist that the Department had arranged for you to see?

10

MS SHONTAYA: Yes.

MR CROWLEY: And that was okay?

15

MS SHONTAYA: Yes, that was okay. He said he didn't see me having a mental illness.

MR CROWLEY: Now, just on that, Shontaya, up until this time when you saw this psychiatrist for the mental health assessment --

20

MS SHONTAYA: Yes.

MR CROWLEY: --- you had never been told you had a mental illness or intellectual disability?

25

MS SHONTAYA: No.

MR CROWLEY: The only thing you knew about was the chromosome abnormality test that had been done when your kids were born?

30

MS SHONTAYA: Yes.

MR CROWLEY: Now, I want to ask you then about the Parenting Capacity Assessment.

35

MS SHONTAYA: Yes.

MR CROWLEY: This happened in around January 2020?

40

MS SHONTAYA: Yes.

MR CROWLEY: That's when you saw the psychologist from the Department?

45

MS SHONTAYA: Yes.

MR CROWLEY: How long after --- you told us before about seeing your ex, the

children's father and there was a domestic violence assault --

MS SHONTAYA: Yes.

5 MR CROWLEY: --- how long after that was it you had to do the Parenting Capacity Assessment?

MS SHONTAYA: It was 9 days after I was assaulted. Yes. 9 days.

10 MR CROWLEY: And how were you feeling at the time?

MS SHONTAYA: I was like traumatised still. I was very emotional. I was in pain and I had a head injury as well. I had been hit over the head so many times. So that was really hard for me, yes.

15

MR CROWLEY: And did you tell the psychologist about those things?

MS SHONTAYA: Yes, I did tell her about it. And I said I didn't really want to go into much detail because it was --- I didn't want to bring it all up again.

20

MR CROWLEY: Yes. Now, as part of that assessment, you had to do an intellectual capacity test or assessment?

MS SHONTAYA: Yes.

25

MR CROWLEY: Where the test was explained to you by the psychologist what you had to do?

MS SHONTAYA: Yes.

30

MR CROWLEY: You say in your statement that you found that to be confusing, the instructions that were given to you?

MS SHONTAYA: Yes.

35

MR CROWLEY: Just tell us about that test, what it involved and why it was confusing?

40 MS SHONTAYA: She just had a book like with all pictures. On the book with all pictures, it was all sort of shapes. So she was just telling me to match up the shape. Like, what's different between it, is that the bigger size or smaller size. That was about it and that's all it had on the book.

MR CROWLEY: And you say what she was telling you to do was confusing?

45

MS SHONTAYA: Yes.

MR CROWLEY: What was the part that was confusing, you say?

MS SHONTAYA: It looked like a little children's book. Like I'm looking at kids' books.

5

MR CROWLEY: Now, you say that the psychologist also spoke to you about an incident that had happened when your youngest child was dropped by your cousin, by a younger cousin?

10 MS SHONTAYA: Yes.

MR CROWLEY: Now, that incident, can you tell us what was happening at the time, why your younger cousin had your youngest child?

15 MS SHONTAYA: There was a lot of kids in the house because we was all family around each other because my Aunty passed away. So I was actually at the stove and I'm cooking so I can't turn just like --- like I couldn't turn my back while I'm trying to cook and my son was actually in his bouncer. So my 10-year old, 9-year old cousin actually picked him up, and then she dropped him but it was by accident because she
20 went to pick him up out of his little bouncer. So I dropped everything and I went to go grab him. I did the right thing and I took him to the hospital that night, that same night.

25 MR CROWLEY: In your statement, Shontaya, you say that you had a lot of the children there because that was culturally your responsibility to look after those kids --

MS SHONTAYA: Yes.

30 MR CROWLEY: --- while other people were away on Sorry Business and seeing the rest of the family?

MS SHONTAYA: Yes.

35 MR CROWLEY: Did you explain about that to the psychologist?

MS SHONTAYA: I explained everything to her, yes.

40 MR CROWLEY: Do you think she understood what you were talking about there?

MS SHONTAYA: I thought she did at that time, yes. But, no, she didn't. Yes.

45 MR CROWLEY: Now, one of the other things that you say in the Parenting Capacity Assessment you had to do was a psychologist had to watch you do an access visit with the children?

MS SHONTAYA: Yes.

MR CROWLEY: Now, was that when you could see the kids then, was there any problem with you being able to do things with them?

5 MS SHONTAYA: My baby is like heavy. I couldn't really hold him because I had fractured ribs. I was actually just sitting on the lounge and holding him and then she made a statement that I didn't want to hold him or something, is that right? Yes. She made a bad judgement on me just not holding my son because I had fractured ribs.

10 CHAIR: Mr Crowley, I'm sorry, I'm reluctant to interrupt but it might help if you could ascertain where the children were during this period?

MR CROWLEY: Yes. Yes. Thank you, Chair. Shontaya, so what you're describing there was a visit that you could see the kids?

15

MS SHONTAYA: Yes.

MR CROWLEY: Who had the care of the kids at the time?

20 MS SHONTAYA: My mum had the care of the kids. DCP, yes.

MR CROWLEY: They were placed with mum during this time?

MS SHONTAYA: Yes.

25

MR CROWLEY: Still there?

MS SHONTAYA: Yes.

30 MR CROWLEY: Now, you talked about the psychologist doing the assessment.

MS SHONTAYA: Yes. Yes.

35 MR CROWLEY: Later on there was a report that you found out about that the psychologist had done?

MS SHONTAYA: Yes.

40 MR CROWLEY: Now, after you did that test and assessment with the psychologist, did she talk to you about the results of your tests or what she had found?

MS SHONTAYA: No. She said that she was going to give me a copy of my test results but I've never seen her since or never even got a copy of my test results.

45 MR CROWLEY: You later came to know that her assessment was that you had low or poor intellectual functioning?

MS SHONTAYA: Yes.

MR CROWLEY: Had she spoken to you about that and told you about that when you did the testing?

5

MS SHONTAYA: She didn't even --- no. No.

MR CROWLEY: You got to see and hear about other things that were in the report after it was done by the psychologist?

10

MS SHONTAYA: Yes.

MR CROWLEY: And you saw or heard that she had said that you didn't really have any family support?

15

MS SHONTAYA: Yes. She stated that I didn't have --- I don't have any real family.

MR CROWLEY: And that upset you, Shontaya?

20

MS SHONTAYA: That did.

MR CROWLEY: That wasn't the case?

MS SHONTAYA: No, that wasn't the case.

25

MR CROWLEY: And she also said some things about the relationship with the children as well?

MS SHONTAYA: Yes.

30

MR CROWLEY: Now, one of the things that she also talked about was that any services that you might be able to receive, any services you might have that your engagement with them would be superficial.

35

MS SHONTAYA: Yes.

MR CROWLEY: Do you remember that?

MS SHONTAYA: Yes.

40

MR CROWLEY: And that you wouldn't be able to really take what you learnt there and use it as a parent?

MS SHONTAYA: Yes.

45

MR CROWLEY: Did you think that was true?

MS SHONTAYA: No. I'm engaging with so many services at this moment right now. Yes.

5 MR CROWLEY: Now, in the assessment that was done, the report that was done by the psychologist - -

MS SHONTAYA: Yes.

10 MR CROWLEY: Did you think that she had really listened to you and taken into account the domestic violence and the family loss at the time?

MS SHONTAYA: No. She didn't take anything into consideration whatsoever.

15 MR CROWLEY: What about your cultural strengths and - -

MS SHONTAYA: No.

MR CROWLEY: And background?

20 MS SHONTAYA: No.

MR CROWLEY: And what about your actual physical health at the time, do you think she took that into account?

25 MS SHONTAYA: No.

MR CROWLEY: You say in your statement that it felt to you like everything was made about your low intellectual functioning?

30 MS SHONTAYA: Yes.

MR CROWLEY: And as a result of that, you understand that the psychologist recommended to the Department that the Department should apply for orders, long-term orders for the children to be in care until they're 18?

35

MS SHONTAYA: Yes.

MR CROWLEY: Now, once you found out about the report talking about you having low intellectual functioning - -

40

MS SHONTAYA: Yes.

MR CROWLEY: You say in your statement that you were confused then about whether you had an intellectual disability or not?

45

MS SHONTAYA: Yes.

MR CROWLEY: She didn't say that you did but the way it was described made you feel a bit uncertain about this?

MS SHONTAYA: Yes.

5

MR CROWLEY: Now, after you had done the Parenting Capacity Assessment, you met with the Department and they talked to you about working towards reunification with the children?

10 MS SHONTAYA: Yes.

MR CROWLEY: That was the first plan they were going to work with you so you could have the kids back?

15 MS SHONTAYA: Yes. That's what they was planning to do. Yes.

MR CROWLEY: And this was in about early February of 2020?

MS SHONTAYA: Yes.

20

MR CROWLEY: A little while after that, though, you had another --- you had a meeting where you went to see your case worker with the Department?

MS SHONTAYA: Yes.

25

MR CROWLEY: Now, just tell us about that meeting, if you could Shontaya, what was explained to you then?

30 MS SHONTAYA: When I went into the meeting I had a feeling --- like I knew that it would be longer. I had a feeling about that. So he actually said to me we're going to go for a long-term order and the guardianship for 18 years. And I was like, I was shocked. I said, "Why?" And this is what he said, "Because you missed --- there's a lot of appointments that you missed" and because I have the intellectual disability and low functioning issues.

35

MR CROWLEY: Now, during that meeting was there any talk about if you could have the kids back with support or with services?

40 MS SHONTAYA: No. So I actually got angry with him and I walked out and I swore and I said, "I'll see you in court." That's what I did.

MR CROWLEY: I should ask you Shontaya, when you went to that meeting, did you have anyone else with you?

45 MS SHONTAYA: No.

MR CROWLEY: And you talked about then walking out of the meeting.

MS SHONTAYA: Yes.

5 MR CROWLEY: Did you go back and see your lawyers then about what the Department was now going to ask for?

MS SHONTAYA: She was shocked and she didn't believe it and she found out that, yes, they're going for a long-term order.

10 MR CROWLEY: And you had to end up going to court again?

MS SHONTAYA: Yes.

15 MR CROWLEY: And that's something that's still going on now?

MS SHONTAYA: And it's all based on that psych report.

20 MR CROWLEY: I won't ask you anything more about what's going on at the moment with that, but I want to ask you more about then after you found out that the Department was going to make the --- apply for the 18-year orders.

MS SHONTAYA: Yes.

25 MR CROWLEY: The things that you did. So you said that they didn't talk about any supports or services. What about the NDIS, did they talk about you getting on to NDIS and getting some help?

MS SHONTAYA: No.

30 MR CROWLEY: You later did get in touch with NDIS?

MS SHONTAYA: Yes.

35 MR CROWLEY: How did that happen?

40 MS SHONTAYA: Well, I got on to it pretty quick. My lawyers actually did another assessment. So we actually went and did another assessment and I had found out I've got an intellectual disability, but it is mild. He also stated that I am capable to look after my children with support and offered me to get on to the NDIS. So now I am on the NDIS now.

MR CROWLEY: And so this was all arranged through your lawyers getting you in contact with another psychologist?

45 MS SHONTAYA: Yes.

MR CROWLEY: So when you saw him, and he was able to do another assessment

for you ---

MS SHONTAYA: Yes.

5 MR CROWLEY: --- what was different with this psychologist compared to the Department psychologist that you had seen?

MS SHONTAYA: The difference, this psychologist actually went through everything with me. Cultural side they actually recognised my cultural history, made
10 me do a lot of stuff actually, like a lot of questionnaires and testing. So it was a lot more different than what I --- I've actually sat in there with him for 3 hours to get that test done. The other psych that I've actually had the test done was only 35 to 45 minutes.

15 MR CROWLEY: And you're a lot more comfortable with the psychologist you saw this time?

MS SHONTAYA: Yes.

20 MR CROWLEY: To go through the testing?

MS SHONTAYA: So, yes, I understood, yeah, I do have an intellectual disability so I can get help with that.

25 MR CROWLEY: So he told you after doing all the testing that he confirmed for you, you do have a mild intellectual disability?

MS SHONTAYA: Yes.

30 MR CROWLEY: But, as you said before, he also explained that you can learn, you can parent your children?

MS SHONTAYA: Yes.

35 MR CROWLEY: Now, when you found out these things, how did you feel then?

MS SHONTAYA: I --- I felt a bit more like understanding. This guy actually offered me support. I felt more relief, like this is what I can do. This is what I can do to help, you know, for my children. And to actually get offers, so I actually got
40 (inaudible) stuff, so.

MR CROWLEY: Now, after you saw him, you said you were able to get on to NDIS and get approved there for a plan with NDIS?

45 MS SHONTAYA: Yes.

MR CROWLEY: And you speak about in your statement as well about some other

things that you were able to get assistance with?

MS SHONTAYA: Yes.

5 MR CROWLEY: So one of them, you say you were able to see then a clinical psychologist for specialised therapy.

MS SHONTAYA: Yes.

10 MR CROWLEY: Now, how were you able to get access to the clinical psychologist, the new clinical psychologist?

MS SHONTAYA: I actually got access with her through my lawyer, so I see her once a month or once a couple of months, and that has been very helpful.

15

MR CROWLEY: And you also say that you were able to get a mental healthcare plan done?

MS SHONTAYA: Yes.

20

MR CROWLEY: How was that arranged?

MS SHONTAYA: That was arranged through one of my doctors, so they arranged for the mental healthcare plan and got me through to the psychologist from special needs, like --- what's that --- (inaudible) place, yes. So they actually referred me and got me more sessions, stuff as well, so, yes. Through the doctor.

25

MR CROWLEY: You talked earlier on about doing the domestic violence counselling through AFSS?

30

MS SHONTAYA: Yes.

MR CROWLEY: Is that something that you were able to get help with through your lawyers as well?

35

MS SHONTAYA: I actually called them myself, yes, and referred myself to them when my kids was actually first taken. So I tried to get all the support, you know, and they actually called me back and said that they would work with me and I've been having counselling every week. And has helped me, so yes.

40

MR CROWLEY: Now all these things you've been talking about, Shontaya ---

MS SHONTAYA: Yes.

45 MR CROWLEY: Did the Department offer you any help to get this contact with these people or these services?

MS SHONTAYA: No.

MR CROWLEY: Was this something that was suggested as something you might do to help you to parent?

5

MS SHONTAYA: Yeah, I did it myself, looked up on the internet and read it on the internet and rang them and called them up. Yes.

MR CROWLEY: What I was asking, Shontaya, was did the Department suggest you need to do these things if you want to show how you can be a parent to the kids?

10

MS SHONTAYA: No. They didn't suggest anything to me.

MR CROWLEY: And one of the other things you've talked about in your statement is having an Aboriginal family support worker as well?

15

MS SHONTAYA: Yes.

MR CROWLEY: Can you just tell us about the support worker, how you got in contact with them and what they do?

20

MS SHONTAYA: I got in contact with her through my lawyer here at Aboriginal Legal Rights Movement, and she has also helped me, referred me to places and actually come out from --- even when I have meetings with DCP, she will come and be beside me. So she's like a very good support person.

25

MR CROWLEY: And was that something that the Department offered or was able to arrange?

MS SHONTAYA: No. It was my lawyers that offered that.

30

MR CROWLEY: Now, I want to ask you, Shontaya, about after you had put all these things in place and been doing these things, have you spoken to the Department about telling them that the courses or the programs and the supports that you've got?

35

MS SHONTAYA: I have spoken to them and I've handed them my certificates and told them what I was doing. Yes. I have handed them certificates and stuff, so.

MR CROWLEY: Now, when it was explained to you that the Department was seeking the long-term guardianship orders because of your intellectual disability -

40

MS SHONTAYA: Yes.

MR CROWLEY: And how that affects your parenting, how did that make you feel?

45

MS SHONTAYA: I felt so lost. Like, I --- yeah, it just was a moment where I didn't know what to do. I couldn't stop crying.

MR CROWLEY: Now, you say --- sorry, Shontaya?

MS SHONTAYA: That was really hard for me to even accept that.

5

MR CROWLEY: You say in your statement you felt like you were being discriminated against.

MS SHONTAYA: Yeah, definitely, yeah.

10

MR CROWLEY: Why do you say that?

MS SHONTAYA: Because the way --- the way how she stated was that I don't have any real family and --- yeah.

15

MR CROWLEY: You were talking about what the psychologist had said in the report about you, that's the psychologist who did the parenting capacity assessment?

MS SHONTAYA: Yes.

20

MR CROWLEY: When you said you went and saw the caseworker, and you told us you were upset when you were explained the Department was going to seek the 18-year orders ---

25

MS SHONTAYA: Yes.

MR CROWLEY: --- you later on had found out through your lawyers that your Department had a meeting earlier in the year, before you saw that caseworker ---

30

MS SHONTAYA: Yes.

MR CROWLEY: --- when they were talking about what the plan might be for you and the children?

35

MS SHONTAYA: Yes.

MR CROWLEY: So you were telling us before that first of all it was working towards reunification?

40

MS SHONTAYA: Yes.

MR CROWLEY: You were happy to do that?

45

MS SHONTAYA: Yes. I signed papers for the reunification so ---

MR CROWLEY: Sorry, Shontaya.

MS SHONTAYA: So I was thinking that I was going to get my children, you know, returned back to me.

5 MR CROWLEY: And then it was a couple of weeks after that that you went into the office and saw your caseworker, and he explained, "No, we're going to look for the long-term orders"?

MS SHONTAYA: Yes.

10

MR CROWLEY: Now, what I was asking you about is, you found out through your lawyers that the Department had had a meeting in between those two things ---

MS SHONTAYA: Yes.

15

MR CROWLEY: --- where the caseworker and the psychologist and Principal Aboriginal Consultant were all involved.

MS SHONTAYA: Yes.

20

MR CROWLEY: You weren't at the meeting yourself?

MS SHONTAYA: No.

25

MR CROWLEY: But it has been explained to you that they had a meeting to decide what was going to happen with your case and your children?

MS SHONTAYA: Yes.

30

MR CROWLEY: Now, with what has happened, Shontaya, do you think that you've been given a fair go or a chance to show that you can be a parent?

MS SHONTAYA: No, never got a chance at all whatsoever.

35

MR CROWLEY: If you were able to say to the Commission here the sort of things that you think would be helpful, that could be done better to help parents in your situation, can you tell us about the sort of things that you think would make things better for someone?

40

MS SHONTAYA: I think, like, the Department needs to change the approach to parents with disability.

MR CROWLEY: How would they change it? To do what?

45

MS SHONTAYA: You know, like, not make disability as the biggest threat for the kids.

MR CROWLEY: You also have mentioned in your statement that you think that the Department should immediately send parents and families on to specialist supports to help them ---

5 MS SHONTAYA: Yes.

MR CROWLEY: --- if there's issues about disability?

MS SHONTAYA: Yes.

10

MR CROWLEY: One thing that you mention in particular is the NDIS.

MS SHONTAYA: Yes.

15 MR CROWLEY: But also other specialist supports for people with disability?

MS SHONTAYA: Yes.

20 MR CROWLEY: Now, during the time that you were --- before the court case started, were you offered any special support or any special programs for disability or intellectual functioning through the Department?

MS SHONTAYA: No.

25 MR CROWLEY: What about any cultural support from the Department?

MS SHONTAYA: No.

30 MR CROWLEY: I mentioned earlier that you found out about a meeting where the Principal Aboriginal Consultant was there.

MS SHONTAYA: Yes.

35 MR CROWLEY: Did you have any contact with that person yourself?

MS SHONTAYA: No. No. No.

40 MR CROWLEY: Or any Aboriginal person or First Nations worker from the Department?

MS SHONTAYA: No.

MR CROWLEY: Do you think those things might have been helpful?

45 MS SHONTAYA: Yes, I think it would be helpful to have Aboriginal workers work with them, like work with parents as well.

MR CROWLEY: You talk now about having the Aboriginal family support worker.

MS SHONTAYA: Yes.

5 MR CROWLEY: That you can go to. What sort of things do they do for you?

MS SHONTAYA: They just help me refer me to places and stuff, whatever I need help with. And, like, just help me with a lot of support.

10 MR CROWLEY: Now, in your statement you say that you feel that the Department should look at the positives and strengths of parents and not just the bad things or the deficits.

MS SHONTAYA: Yes.

15

MR CROWLEY: The things that you're talking about as being positives and strengths, what sort of things are you talking about?

MS SHONTAYA: Well, like --- sorry, what do you mean, positive?

20

MR CROWLEY: Yes. So one of the things you talk about is how your culture is a strong part of who you are, for you and for the kids?

MS SHONTAYA: Yes.

25

MR CROWLEY: Is that the sort of thing that you're talking about the Department should look at as well?

30 MS SHONTAYA: Yes. The Department should look a lot into the Aboriginal culture side and how it affects the family and stuff like that.

MR CROWLEY: Now, you say that your culture, your Aboriginality keeps you strong?

35 MS SHONTAYA: Yes.

MR CROWLEY: And that that helps you to stay strong for the children?

MS SHONTAYA: Yes.

40

MR CROWLEY: That strength you're talking about through your culture, when you're describing that, are you describing the strength you get from your family too?

45 MS SHONTAYA: Yes. The strength and, you know, the struggles that I have got is because of, like, my mum basically, she has been raising my kids since I've been going through all of this. So that's how I keep strong, knowing that my children are actually with their grandma. That's what keeps me strong.

MR CROWLEY: With your mum, you described before about how your mum has the care of the children.

5 MS SHONTAYA: Yes.

MR CROWLEY: Do you get to see the children?

10 MS SHONTAYA: I get to see my kids at access three times a week, but they won't allow me to go to my mother's house or they won't even allow me to go --- yes, to go to my mum's at all.

15 MR CROWLEY: Now, before this happened, how often would you see your mum, go to her place?

MS SHONTAYA: Well, she actually lived out of Adelaide so it was actually hard to see her because she was actually helping my Aunty, you know, who passed away. She was actually taking care of her. And then it was hard for her because she has to take care of my children and she couldn't be there for her. So that was really
20 upsetting.

MR CROWLEY: And you find it hard now not being able to go and see Mum?

25 MS SHONTAYA: Yes.

MR CROWLEY: Shontaya, I've just got one more thing I want to ask you about. In your statement you've said that your disability is not your fault, you can't change it.

30 MS SHONTAYA: No.

MR CROWLEY: And you describe that as being something you think is unfair.

MS SHONTAYA: Yes.

35 MR CROWLEY: Is that something that you feel in your case is how you describe as being discriminated because of your disability?

MS SHONTAYA: Yes.

40 MR CROWLEY: Thank you, Shontaya, that's all the questions I have for you. Just wait there for one minute, please.

45 CHAIR: Shontaya, I'm just going to ask the Commissioners if they would like to ask you any questions. Just so you know, Commissioners Mason and Atkinson are in the Brisbane hearing room.

MS SHONTAYA: Yes.

CHAIR: They are together. And Commissioner McEwin and I are in Sydney. So I will first ask Commissioner Mason if she has any questions she would like to ask you.

5

MS SHONTAYA: Yes.

COMMISSIONER MASON: Thank you so much, Shontaya, for giving your evidence today.

10

MS SHONTAYA: Yes.

QUESTIONS BY THE COMMISSION

15

COMMISSIONER MASON: I really appreciate it. I wanted to ask you a question about the supports you now have from ALRM, the Aboriginal Family Support Service, from the Aboriginal Health Service and the Disability Rights Advocacy Service. My question is, if you had that support even before the Department had become involved in your case, just as the one needing extra support in the community -

20

MS SHONTAYA: Yes.

25

COMMISSIONER MASON: --- what do you think would have been different about your life if those supports were there earlier?

30

MS SHONTAYA: Yes. If they was there --- if I had like a lot of support in that earlier, I think it would have actually helped me. Or --- and probably would have let me keep my kids in my care still probably, yes.

COMMISSIONER MASON: Thank you very much.

35

MS SHONTAYA: Thank you.

CHAIR: Yes. Thank you. Commissioner Atkinson, do you have any questions of Shontaya?

40

COMMISSIONER ATKINSON: No, I don't. Thank you.

CHAIR: Commissioner McEwin?

45

COMMISSIONER McEWIN: Yes. I have one question. Thank you, Shontaya. Shontaya, I know it is early; you've talked about your NDIS plan.

MS SHONTAYA: Yes.

COMMISSIONER McEWIN: What is your hope that your NDIS plan will do for you? Thank you.

5 MS SHONTAYA: I hope that it will get me to where I want to be in life and help me achieve what I need to achieve with my goals and stuff, especially for my children.

COMMISSIONER McEWIN: Thank you.

10 No further questions. Thank you, Chair.

MS SHONTAYA: Thank you.

15 CHAIR: Shontaya, if you don't mind, I want to ask Mr Crowley something before we finish.

MS SHONTAYA: Yes.

20 MR CROWLEY: Yes, Chair. And can I just clear one point up, though. In Shontaya's case, the evidence that has been given is at the point where the matter has gone to court, and has not yet been decided, and that's why I indicated earlier that we wouldn't go beyond what has happened up until this point.

25 CHAIR: I'd rather read the statement slightly differently, I'm sorry. All right. Well, thank you very much.

Shontaya, thank you very much for giving evidence.

30 MS SHONTAYA: Thank you.

CHAIR: As the other Commissioners have said, we very much appreciate your coming to the Commission. We know it's not easy and we can see that it sometimes a little bit distressing to talk about your experiences. But it has been of great
35 assistance to the Royal Commission and we value the story that you have told us. Thank you.

MS SHONTAYA: Yes. Thank you.

40

THE WITNESS WITHDREW

CHAIR: Do we take a break now, Mr Crowley?

45

MR CROWLEY: If we could, Chair, please, until 11.05am Brisbane time.

CHAIR: We will adjourn until 11.05am Brisbane time, 12.05pm Sydney time.

ADJOURNED

[11.42 AM]

5

RESUMED

[11.05 AM]

10 CHAIR: Yes, Mr Crowley.

MR CROWLEY: Thank you, Chair. The next witnesses that we have are a panel. We have Commissioner Natalie Lewis in person in the Brisbane hearing room and Commissioner April Lawrie to give evidence by the AVL link in South Australia.

15

CHAIR: We will just wait for Commissioner Lewis and Commissioner Lawrie to appear on the screen which I hope will happen very shortly.

20 MR CROWLEY: Chair, while that's happening, if I might deal with the statements. We have Commissioner Lewis now --- Lawrie, I'm sorry.

CHAIR: I thought momentarily we might have had both Commissioners but we seem only to have one.

25 MR CROWLEY: We have Commissioner Lewis in person in the hearing room and Commissioner Lawrie on the videolink.

CHAIR: All right. Well, we will assume one way or another everybody can hear everybody else.

30

Commissioner Lewis, Commissioner Lawrie, thank you very much for coming to give evidence to the Royal Commission. I shall ask Commissioner Atkinson's Associate to administer the affirmation to each of you. Thank you.

35

COMMISSIONER NATALIE LEWIS, AFFIRMED

COMMISSIONER APRIL LAWRIE, AFFIRMED

40

CHAIR: Did we get both Commissioners to say "I do" or "yes"?

MR CROWLEY: Yes, we have.

45

CHAIR: Very good. Mr Crowley, after he deals with some formalities, will ask you some questions.

MR CROWLEY: Thank you, Chair. If I can deal first of all with the tender of the statements of the Commissioners.

5 Firstly, Commissioner Lewis' statement is in the Tender Bundle C, Tab 8. I tender that and ask if that might be marked Exhibit 8.17.

CHAIR: Yes. That can be done.

10

EXHIBIT #8.17 - STATEMENT OF COMMISSIONER NATALIE LEWIS

MR CROWLEY: And the statement annexures are at Tabs 9 to 15, if they could be
15 tendered and marked as Exhibits 8.17.1 to 8.17.7, please.

20

EXHIBITS #8.17.1 TO #8.17.7 - ANNEXURES TO STATEMENT OF COMMISSIONER NATALIE LEWIS

CHAIR: Yes.

MR CROWLEY: Then, for Commissioner Lawrie, the statement of Commissioner
25 Lawrie is in Part C of the Tender Bundle at Tab 16. I tender that statement. If it might be marked Exhibit 8.18.

CHAIR: Yes, that can be done.

30

EXHIBIT #8.18 - STATEMENT OF COMMISSIONER APRIL LAWRIE

MR CROWLEY: And the annexures to Commissioner's statement are at tabs 17 to
35 21. If they could be marked as Exhibits 8.18.1 to 8.18.5.

CHAIR: Yes. That too can be done.

40

EXHIBITS #8.18.1 TO #8.18.5 - ANNEXURES TO STATEMENT OF COMMISSIONER APRIL LAWRIE

MR CROWLEY: Just to note, Chair, that one of the exhibits, one of the annexed
45 documents to Commissioner Lawrie is the subject to a non-publication direction which was made on 24 November 2020.

CHAIR: That will appear on the transcript.

EXAMINATION-IN-CHIEF BY MR CROWLEY QC

5

MR CROWLEY: Firstly, if I can ask Commissioner Lewis who is present in the hearing room, could you tell us first of all, you are a First Nations woman?

10 COMMISSIONER LEWIS: Yes.

MR CROWLEY: Tell us a little bit about your background and about yourself.

15 COMMISSIONER LEWIS: Certainly. I'm a Gilmaraay woman. While I moved to Brisbane when I was a small child, I've lived in and worked on Jagera and Turrbal country for most of my life, and so I pay my respects to the Elders, both those of the past, of the present, and those that will lead in the future.

20 I also just want to acknowledge First Nations children and families whose lived experiences give meaning to this work. I'm the daughter of a (unclear) woman who throughout her life contended with very real impact with intergenerational trauma, who struggled privately with mental health issues without much support. A woman who is characterised in my eyes as a woman of strength and a woman who, above all else, knew how to care and protect her children. We drew our strengths from our
25 matriarchal lineage who survived colonisation, dispossession and mission management. Their courage and resilience is beyond imagination and it is what I try to live up to in the work that I do.

30 COMMISSIONER ATKINSON: Can the witness maybe slow down a little bit.

COMMISSIONER LEWIS: Certainly. My apologies.

35 MR CROWLEY: Thank you for that, Commissioner. If you could slow down a little bit, because we have to have the interpreters as well.

COMMISSIONER LEWIS: Of course.

MR CROWLEY: Thank you for that.

40 Commissioner Lawrie, can I ask you, please, you are a First Nations woman from South Australia. Could you tell us a little bit about yourself and your background?

45 COMMISSIONER LAWRIE: Yes, thank you. Respect and acknowledgement to traditional owners, First Nations people everywhere, and respect to Kaurna whose lands in which I live and work on here in the Greater Adelaide Plains. And I'm (unclear) and I herald from the far west coast region of South Australia where my traditional lands extend across into Western Australia, which is essentially the

Nullarbor region and the Great Australian Bight. And that's where my ancestral roots are deeply with, in that area, particularly (unclear), and my (unclear) ties are with the Gawler Ranges and lakes areas extending to just above the Nullarbor.

5 However, my forbearers were forcibly settled at (unclear) community with the establishment of the Lutheran church mission, approximately 47 kilometres north-west of Ceduna, which I call home. I spent my formative years in Whyalla. I'm of the Lawrie mob from the Ceduna Kooniba area, and part of the generation that felt the brunt of the last wave of government force removal policy.

10 However, you know, I'm proud to say that we resist and challenge that brunt and wanted to make things better than what my mum and my grandparents, my great-grandparents and ancestors experienced at the hands of settlers in government policy and practice.

15 And I want to make a contribution to stopping further Stolen Generations and keeping our Aboriginal children connected to their families and culture and to see the help that so many of our families need to keep them functioning and connected to who they are as Aboriginal people. That's what motivates me to do what I do.

20 MR CROWLEY: Thank you, Commissioner Lawrie. Thank you both for those introductions. Can I come back then to Commissioner Lewis.

25 Commissioner Lewis, you're currently one of the Commissioners with the Queensland Family and Child Commission. Can you tell us, please, about the role that you currently have and how long you've been in that role?

30 COMMISSIONER LEWIS: I commenced with the Queensland Family and Child Commission on 1 June this year. Our primary role is oversight of the child protection system to raise awareness, provide systemic advocacy and accountability for the safety and wellbeing of children in Queensland. We do particular monitoring and oversight work that is focused on the Carmody Recommendations from the Queensland Child Protection Commission of Inquiry. But also additional reviews of particular matters as referred by the Minister.

35 MR CROWLEY: Commissioner, under the legislation for the Commission, it's a requirement that one of the Commissioners must be an Aboriginal or Torres Strait Islander person.

40 COMMISSIONER LEWIS: Yes, that's correct.

MR CROWLEY: That's a role that you currently fill?

COMMISSIONER LEWIS: Yes.

45 MR CROWLEY: But you're the first Commissioner, First Nations Commissioner to fulfil that role?

COMMISSIONER LEWIS: No, actually. There have been two Commissioners in the role prior to me. Yes.

5 MR CROWLEY: Now, can I ask you, Commissioner Lawrie, if you could tell us, please, about your current position and what your role is?

10 COMMISSIONER LAWRIE: So my current role is Commissioner for Aboriginal Children and Young People. I've been in the role since late 2018. I guess my role is to address, at a systemic level, the issues that impact on the outcomes for Aboriginal children and young people across health, education, justice, and child protection, and that means examining policy and practice that impact on our children, young people, and to engage and hear directly from Aboriginal children and young people of their experiences but also of their families and their communities as well.

15 MR CROWLEY: Yes. Thank you, Commissioner.

20 Now, can I ask you, back to Commissioner Lewis, you talked about in the role having an oversight of the child protection system. Could you just explain for the Commission what it is that you do in that function and how you go about performing it?

25 COMMISSIONER LEWIS: At the moment we have a number of oversight priorities. While we continue to provide oversight of the implementation of the Carmody reforms and a number of other reforms, recommendations that have been made since, there are particular issues from time to time that we will sort of build a program of oversight around to have a much clearer indication of a particular systemic issue.

30 So, since joining the QFCC, for me one of the areas that we needed to improve upon significantly was new oversight of the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. That has probably been one of the most compelling and compounding issues. It has sadly become a feature of contemporary child protection systems across the country. I think the QFCC is well placed to provide true accountability for the overgrowing representation of
35 Aboriginal and Torres Strait Islander children in child protection, but also is well placed to provide guidance and advice in terms of policy or practice reforms that could significantly impact on that rate of over-representation.

40 MR CROWLEY: Yes. Thank you.

45 Commissioner Lawrie, can I ask you then, please, in terms of your role as Commissioner, what sort of functions and powers that you have in fulfilling your position?

COMMISSIONER LAWRIE: I don't have powers as such, but I do have functions which enable me to interrogate and closely examine the systemic issues that impact

on the child safety and wellbeing, what has been a pronounced issue in South Australia and, indeed, across every State and Territory, and as already alluded to is the significant over-representation of Aboriginal Torres Strait Islander children in the care and protection system. And so when you look at this particular role that I'm in
5 as the Commissioner for Aboriginal Children and Young People, the origins of my role stem from, you know, the Aboriginal communities lobbying over many years in response to the history of removals of Aboriginal children from their families. And this role has, since its establishment, has had an acute focus on particularly the child protection and youth justice system with regard to adherence to the Aboriginal
10 Torres Strait Islander Child Placement Principle and its application to our children and families and ensuring that our children remain connected with family and community and culture.

MR CROWLEY: Yes. Thank you, Commissioner. I'm going to ask each of you in
15 a little while some more about the Aboriginal and Torres Strait Islander Child Placement Principle, both in the legislative framework but also in its operation and practice. But I want to ask, first of all, Commissioner Lewis, each of you have just spoken about over-representation of First Nations children in child protection systems throughout the country and in your own jurisdictions. And you've
20 mentioned about systemic issues being something that you are concerned to examine. Could you tell us from your perspective what the systemic issues are that you see that lead to that over-representation?

COMMISSIONER LEWIS: Well, it probably appears that I have a bit of an
25 obsession with the Child Placement Principle but I think when we talk about the systemic issues, the remedy around particular systemic issues like an imbalance in the level of investment in prevention and early intervention, or if we look at the compromised participation of children and families in decisions about their lives, they're all things that the Child Placement Principle, in terms of the five constituent
30 elements, are intended to address.

We've certainly --- there has been plenty of evidence before the Commission with regard to the drivers of over-representation. Looking at, you know, disproportionate levels of disadvantage across a range of social indicators, experiences of poverty,
35 intergenerational trauma. All of those things have a compounding impact, in particular when we're looking at families when a parent or both parents has a disability, those impacts are compounded even further. So, you know, marginalised within the margins.

40 So I think, you know, it's pretty important and I think it's disappointing that we haven't paid significant attention to that cohort of families that are experiencing such extreme vulnerability in the scope of work that we've done to date around the child protection system.

45 COMMISSIONER ATKINSON: Mr Crowley, can I interrupt. I've been passed a note by the interpreters. Commissioner Lewis, I really appreciate your passion but I think it's causing you to speak a little bit too quickly for our Auslan interpreters.

COMMISSIONER LEWIS: My apologies.

5 COMMISSIONER ATKINSON: If I can just encourage you, as was said before by the Chair, to slow down. Thank you.

MR CROWLEY: Thank you, Commissioner.

10 Commissioner Lawrie, can I go to you now and ask you for your perspectives on the same topic and the same issue of what you see as being those systemic issues that result in the current over-representation of First Nations children in the child protection system?

15 COMMISSIONER LAWRIE: Well, one of the obvious points is that the number of Aboriginal and Torres Strait Islander children in care has been attributed actually to the increase in number of removals. But it has often been described as what I would say wrongfully about the lack of Aboriginal carers. But you have to look further to the fact that we have unprecedented levels of removals, therefore that equates to unprecedented levels of children, Aboriginal and Torres Strait Islander children in
20 care.

We know that there isn't enough done in the early intervention and prevention work. We see the application of the Aboriginal and Torres Strait Islander Child Placement Principle applied at removal rather than systemically, and ensuring that we have its
25 application early on in, you know, the child and families contact with the system. We don't do enough to refer our families and divert them away from the child protection system and connect them to early help services.

30 Furthermore, we know that the workforce demography mostly of our Child Protection Service system is completely different to the demography of the Aboriginal community and the Aboriginal children and young people which is there to serve the needs and interests of our Aboriginal children and young people.

35 And, furthermore, we know that, you know, the Child Protection Service system is so different and unlike the cultural make-up of our Aboriginal children and families that there is bias against our families and our children, and essentially what we have is a very foreign, you know, I guess, institution of child protection that is quite distant to the experience of Aboriginal children and families.

40 And, you know, it has been alluded to, but we know that --- the research has established the link between higher levels of socioeconomic disadvantage and the related problems with Aboriginal over-representation in the care protection system. So, you know, we know the issues around the fact that we have many impoverished families that are, you know, having contact with the care and protection system, and
45 what we need is more of the targeted and sustained early help services that can have the effect that we so desire to keep our children and families out of that system and to prevent that over-representation and turn that tide. And we can only then describe

what that looks like when you have the, I guess, the double disadvantage in relation to the experience of disability.

5 So there are those drivers that have impact on the over-representation of Aboriginal and Torres Strait Islander children in the system, and indeed that includes the youth justice system.

MR CROWLEY: Yes. Thank you, Commissioner.

10 Commissioner Lewis, can I ask you about the last points that were raised then by Commissioner Lawrie. Amongst the factors which may contribute, how do you see the contribution to the over-representation, if it is the case, where the parent --- the First Nations parent within the family has a disability?

15 COMMISSIONER LEWIS: Well, I think there are, I guess, a number of reasons why there is, you know, the potential for a sort of disproportionate impact. And I think that, you know, there is issues around equity of access to quality services. I think that there's a lack of appropriately skilled culturally grounded assessment tools for people to make proper assessments of disability, but also of the most appropriate
20 supports that can be wrapped around an individual or a family.

And I think those two things, in the absence of those two things, using things like Structured Decision Making tools is most likely going to result in a finding that a child is at a heightened risk by virtue of a parent's capability to exercise, you know,
25 their functions as a parent. I think it's shameful in that if we have parents that are absolutely willing, and remembering that willing and able is the criteria, when you've a family member or a parent who is absolutely willing but unable by virtue of not having equitable access to the supports that they need, I think that that's a travesty. And I think that that is the type of area that we need to focus on to ensure there isn't a
30 disproportionate adverse impact on parents with a disability in terms of their children being expedited to the child protection system.

MR CROWLEY: Yes. Thank you. Now, Commissioner Lawrie, can I come back to you now. You were talking about --- both of you spoke about early interventions as being a key aspect of what might address over-representation. From your
35 perspective and in your experience, is there a concern amongst First Nations people about being involved with services and agencies that might be introduced in that early phase?

40 COMMISSIONER LAWRIE: Well, from what I understand as my work and role as a Commissioner, and my own direct experience in that particular sector, our families fear the intervention of services and the so-called helping welfare agencies, and this stems from the experience of the Protectionist era and what we know as paternalistic policy, and so practices that which have led to intergenerational trauma which still
45 hold strong and is fortified in the memories of many of our Aboriginal people.

So the consequence of this, is ongoing, like the distrust of Child Protection Service

system, which means that our families, you know, aren't willing to engage with early help support services for fear of attracting the attention of, you know, the child protection agencies and further entrenching the marginalisation and the disadvantage of our families.

5

Notwithstanding, I've got to say this, that much of the early help services and child protection work is delivered largely by non-Aboriginal institutions. And we would have to argue, or I would have to say that perhaps they are not culturally apt at supporting our most vulnerable and particularly our vulnerable Aboriginal children and their families. And that just seems to be at the heart of it.

10

And so once our Aboriginal children and families are having contact with the system, rather than being directed away from the acute response, our families, who are more than often our impoverished families with multi-dimensional, multi-faceted, complex issues, will not be afforded the early help services. While there might be a level of distrust, those early help services need to be provided by Aboriginal community-controlled sectors so that our families have a high degree of confidence and are able to access services which they feel can meet their needs in a culturally appropriate way.

15

20

MR CROWLEY: Thank you, Commissioner.

Commissioner Lewis, on that last point about access to services provided by Aboriginal community-controlled organisations, how important do you see that as being part of the solution for over-representation and interactions with child protection systems?

25

COMMISSIONER LEWIS: It's fundamental. And it's probably one of the areas, I think, that is showing the most promise in terms of Queensland reforms. So in late 2017 we began a process of implementation of Aboriginal and Torres Strait Islander Family Wellbeing Services across the State of Queensland. There are 33 sites or services operated by 31 different Aboriginal and Torres Strait Islander community-controlled organisations. One of the very early, you know, signs through the data was that because the organisations were very clear in their separation from the Department of Child Safety, as it was then, and were able to respond to the needs of families wherever the families found themselves on the continuum of need. And that, you know, they had taken the time to actually develop service models that responded to the needs of families and communities, not to respond to the demand or the needs of the child protection system, or the types of services that they felt would be required.

30

35

40

So an early indicator of success of those programs is the high rate of self-referral. So, in being non-stigmatising services, Aboriginal and Torres Strait Islander people are more than willing and capable of accessing services they need at different points, whether it's of crisis or, you know, early identification of need, as long as the services that can respond to their needs and are delivered in a culturally safe way, as long as they are available, it is shown in the data that our families have no problem

45

with help-seeking behaviour.

MR CROWLEY: And if we were then to consider the parents, First Nations parents who have a disability and are involved with the child protection system, what then is the importance of having the community-controlled organisations provide and deliver those supports and assessments and assistance for families?

COMMISSIONER LEWIS: Again, I think that's critical. The Family Wellbeing Services can provide direct service or they can make referrals or bring other services to families. We know that there is --- there are very few Aboriginal and Torres Strait Islander community-controlled specialist disability providers in the State, and I think that, you know, rather than use the excuse that they don't exist or that it's too difficult to build that type of sector to respond to the diverse needs of Aboriginal and Torres Strait Islander people, I think that a useful approach would be to look at the Family Wellbeing Services across the State as a central infrastructure and start building specialisation of those services over time so that it can respond to the different and emerging needs in different community contexts across the state.

So there has been some examples of, for example, the specialisation in the space of family and domestic violence. We had a number of parts of the state that did not have community-controlled services that specialised in domestic and family violence. So rather than try and build an extra system or sector to tack on, it was actually --- the approach was to introduce that specialist skill set into the existing infrastructure of the Family Wellbeing Services, where they are then able to extend the scope and scale of the services that they are able to provide to communities.

MR CROWLEY: And just while we're talking about the Family Wellbeing Services, in your statement you've described how those services are often linked with an existing service like the Aboriginal Medical Service?

COMMISSIONER LEWIS: Yes.

MR CROWLEY: Which can then be a known point for community where they can access those types of services as well as the existing services which they're familiar with?

COMMISSIONER LEWIS: Yes, that's correct. The majority of those services across the state are attached to already existing, well-established, high-performing Aboriginal Medical Services, and it really gives us some insight into what optimal integration of social services looks like from a community-controlled perspective. And, you know, the range of services and supports becomes --- the families' need become possible in a real wraparound issue. I know there has been a lot of talk about wraparound services, but it's when we look at particularly some of our Aboriginal Medical Services across the state and the scope and quality of the services that they are able to provide to families, I think that, you know, we've really got a great model, you know, to consider in terms of future reform.

MR CROWLEY: Now, just in terms of the way you've spoken about the model, is it the case its indications at the moment are positive for the Family Wellbeing Service, but there hasn't yet been any formal evaluation?

5 COMMISSIONER LEWIS: So we've had data available for probably the last two years. A formal evaluation is about to commence with regard to that particular initiative. But the early data is certainly showing us that families that are referred to or are self-referring to Family Wellbeing Services have a re-notification rate to the Department half of that of other families that have gone to other service types. So
10 they're performing in that space around preventing entry to the child protection system at a rate twice that of other service types that are funded across the State.

MR CROWLEY: Yes. Thank you, Commissioner.

15 Commissioner Lawrie, can I come back to you now to ask you to address the issue about the Aboriginal Child Placement Principle which you mentioned earlier and you talk about in your statement. First of all, can I ask you from a legislation point of view what is the position in South Australia with respect to the enactment in legislation of the Principle?

20 COMMISSIONER LAWRIE: So the Principle is currently in the child safety legislation of South Australia. However, we still have growing rates of Aboriginal children being removed and placed into care with people that aren't with their family, with non-Aboriginal care. So the point that I want to highlight is that having the legislation --- having the Principle enshrined in legislation is important but what is
25 even more important is the adherence and compliance with the Principle and ensuring that we hold the care and protection system to account in its application of the Principle. And the Principle is basically a recognition, and there's a hierarchy about how our children [audio distorted] and what needs to happen around placing
30 children with family and the community.

So what it recognises is that Aboriginal people have the knowledge and the experience to make the best decisions concerning our children and the importance of, you know, each and every Aboriginal child staying connected to their family, their
35 community and culture and, indeed, country.

MR CROWLEY: In your statement, Commissioner, you speak about five pillars of the Principle. I wonder if you could just perhaps give us just an outline about what those pillars are, and how you see they should be, in practice, put into effect?

40 COMMISSIONER LAWRIE: Well, those five pillars, you know, are well established and they are partnership, participation, prevention, connection and placement. And what's really important about those five pillars is how they interact with the system and how they are aligned systemically into legislation, to policy, to
45 process, to practice and programs.

So if you're looking at the five pillars and you're making decisions as a system about

Aboriginal children and young people's care, then you would go to the Placement Principle as enshrined in the legislation here in South Australia, that would be the case.

5 However, we don't apply those pillars and its application systemically to considering
early intervention and early help and prevention work with our families and our
children so that rather than applying the Principle in the acute end when the
Department is moving towards a removal, they actually afford the family the
10 participation and management of that decision-making with regard to the safety and
wellbeing of their children or their child and ensuring that we have, you know,
maximum and optimal opportunity for Aboriginal community, our families'
participation, in the decision-making.

15 So what we often hear, and what I've often heard, particularly in the extensive
engagement that I've conducted over the last 12 months particularly throughout 2019,
is that our families aren't given or provided the opportunity to participate in
decision-making or to be afforded the opportunity to engage in early help services.
Once you have contact with the system, the system begets the system, so the
outcomes are pretty much moving towards the adversarial end which is removal.

20 So there needs to be much more understanding about the application of the five
pillars in concert with its application systemically across the system. And it isn't
something that is just specifically --- while it is prioritised in child protection and
out-of-home care, I believe the Principle can be applied equally so in service systems
25 like education and in health, so that we maintain and preserve the Aboriginal child
with family, culture and identity.

MR CROWLEY: Yes. Thank you, Commissioner.

30 Commissioner Lewis, can I ask you ---

CHAIR: Just before we leave Commissioner Lawrie, you've said, I think, that the
five pillars are enshrined in the legislation? Where are they enshrined in the
legislation?

35 COMMISSIONER LAWRIE: No, the Aboriginal in --- in South Australia, the
Aboriginal and Torres Strait Islander Child Placement Principle, the hierarchy of
placement is enshrined in our SA legislation currently as it stands.

40 CHAIR: Where?

COMMISSIONER LAWRIE: Section 12.

45 CHAIR: No, it's not. It might be described as the Principle. You compare that with
section 5(c) of the *Queensland Act* and I think you will notice stark differences. All
that section 12 does, it doesn't enshrine the five pillars at all, and all it does is to
provide some principles that are to be applied once a child is removed. So I'm not

sure how that can be described as the adoption of the five pillars.

5 COMMISSIONER LAWRIE: And we are certainly advocating, and I've certainly been a strong advocate for reforms in the legislation, and to look at best practice in other jurisdictions with regard to legislation and we know, we certainly do look to the Queensland legislation as being an exemplar in that regard.

CHAIR: Very good.

10 MR CROWLEY: Commissioner Lawrie, is it your evidence then that the way the South Australian legislation is framed, it's really only acknowledging the placement part of the five pillars in terms of the acknowledgement of the hierarchy of where a First Nations child might be placed but ignores the other four pillars before it?

15 COMMISSIONER LAWRIE: That's the fundamental issue. And whilst the service system is trying to embellish those five pillars through training and development, I believe that those five elements need to be expressed in legislation, then to form itself into policy and then into practice, so we get much more robustness in adherence to the Aboriginal Child Placement Principle, and how we want to enact
20 that systemically and more broadly with regard to frameworks, practice regimes, our funded programs, and how we certainly develop policies and procedures and guidelines about the importance of the five pillars and those elements that they're aligned to.

25 MR CROWLEY: Yes. Thank you, Commissioner. Now, if I can come back to you then, Commissioner Lewis, and ask you then about the Queensland legislation and the enactment of the Aboriginal and Torres Strait Islander Child Placement Principle here. The Chair mentioned section 5(c) of our legislation. If you could just tell us then from your perspective how the legislative framework is set up to recognise those
30 principles?

COMMISSIONER LEWIS: Certainly. So I just want to mention first that in terms of the Child Placement Principle, as it had become well known in Australia and had been embedded in all jurisdictions for a couple of decades now, was unfortunately
35 very one-dimensional. And what that led to over time in practice is we could observe then that officers operating functions within the Act were only compelled to think about an Aboriginal child's right to cultural continuity after they've already made a decision to remove that child. So when we started doing some work with SNAICC and looked back over a whole range of pieces, advocacy from the ACU
40 movement in the 70s and 80s and even in the testimony of the Bringing Them Home Report, it became very clear that that original intent of the Child Placement Principle was far more than what it had become in a legislative sense across Australia.

45 So the work that we did was trying to recapture that intent and reconceptualise the Child Placement Principle to give full effect to the idea that we should be trying to preserve family structures, we should be trying to ensure that we are not asking children or expecting children to make concessions about their rights to connection

because, you know, we were unable to, you know, partner properly with an Aboriginal organisation or elicit the participation of their parents.

5 So when we started to look at the original intent, that's where those five constituent elements came from.

10 So that was actually agreed under the National Framework, Protecting Australia's Children. So it became agreed national policy under the Third Action Plan of the National Framework, and then continued, and was agreed by all Child and Family Services Ministers into the fifth --- sorry, into the Final Action Plan, which also agreed to move towards implementation to the standard of active efforts.

15 That's a really, I think, important distinction because we can all cite examples of where legislation might look strong on paper but you find very little evidence of its application on the ground level at that interface between children and families. So some of the work that we did in Queensland around, firstly, bringing each of the five elements into legislation under 5(c), as the Chair mentioned, we also took an approach to implementation that acknowledged there is no point having strong legislation unless that intent can be safeguarded through the processes of policy development, of program design, of the processes and administrative systems that operate in child protection, but also in the practice on the ground.

25 So what the expectation is in Queensland for the legislation is that all five of those elements are given equal consideration and application across all significant decisions regarding Aboriginal and Torres Strait Islander children in Queensland. When we look at design of programs, we actually can see in some of the, you know, statement of program intents, for, example, the family wellbeing, it actually is aligned to show how it gives practical effect to the areas of prevention, participation, partnership, placement and connection.

30 So I think what we've tried to do here is actually build all parts of the system to, as best we can, safeguard that intent of the Child Placement Principle, and to try and promote the safe care and protection of Aboriginal and Torres Strait Islander children regardless of the point on the continuum at which they come ---

35

COMMISSIONER ATKINSON: Can you slow down a little bit.

COMMISSIONER LEWIS: Oh, have I gotten fast again. I apologise.

40 MR CROWLEY: If you could please, Commissioner.

I want to have you explain something that came through your evidence just then. You talked about the work that we did and how you were involved in having the policy that was agreed from a national perspective before your current role.

45

COMMISSIONER LEWIS: Yes.

MR CROWLEY: You were involved in this field as well in your previous life?

COMMISSIONER LEWIS: Yes, that's correct.

5 MR CROWLEY: Tell us what it was you were previously involved in and how you were connected to that policy development?

COMMISSIONER LEWIS: Absolutely. So I was the Chief Executive Officer of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak here in
10 Queensland for a period of eight years. I finished up there in May, just prior to commencing with the Commission. During that time I also served on the board of SNAICC and was the Co-Chair of the national Family Matters Campaign. And so effectively my advocacy functions across those three sort of quasi-roles, we were able to influence different parts of the system.

15 So many of the solutions that are put forward by the Family Matters Campaign, for example, stem from many, many, many years of advocacy from SNAICC. So I think that we were able to connect the dots, we had three different points of influence to try and drive reform that had been advocated for a really long, long time.

20 So QATSICPP particularly, in Queensland, plays an important role. They are a very respected, high impact peak body, and have been directly hands-on involved in the development of reforms since the Carmody Inquiry, but more recently in the development of the Our Ways strategies, in the reform of legislation, and also in the design and development of all of the Family Wellbeing Services, family participation
25 programs.

MR CROWLEY: Yes. Thank you.

30 Commissioner Lawrie, just going back to you, you mentioned earlier about the difference in the Aboriginal Torres Strait Islander Child Placement Principle from a legislative framework and then you talked about policy and then practice. I just wonder if you could perhaps turn to the policy and practice areas, and if you could give us your perspective then from how those --- the Principle and its five pillars are
35 actually put into effect in your jurisdiction.

COMMISSIONER LAWRIE: Well, one thing that's underpinning the, I guess, effective application of the five pillars of the Aboriginal Torres Strait Islander Child Placement Principle is the involvement and engagement of families. And --- but that
40 has been the biggest complaint from our Aboriginal community, is that they are marginalised, they are alienated from the very decision-making processes that are garnered in the way the child protection system manages, you know, a report, which ultimately requires the involvement and engagement of families to be able to participate in decision-making. But what our families speak about is the fact that
45 much of the decisions keep them outside of those processes, and so what the Aboriginal Torres Strait Islander Child Placement Principle pillars guide and direct are the practitioners into a way in which to engage with Aboriginal workers,

Aboriginal community, obviously the Aboriginal family and to be able to connect to those services that can coordinate the bringing together of Aboriginal families.

5 But when you have a service system that is fearful and xenophobic towards
Aboriginal people, like I said earlier, we have to acknowledge and address that
besetting all of this is a workforce that is so culturally removed, distant to the
demography and the cultural experience of Aboriginal and Torres Strait Islander
10 people here in South Australia, and this is probably an issue that pervades every
jurisdiction in this country, so far as to say that Aboriginal engagement in
decision-making is very, very minimal and we need better ways in which we can
access local level Aboriginal family engagement in managing the decision-making.
So we know that that's a gap, and in order to galvanise the Aboriginal and Torres
15 Strait Islander Child Placement Principle, I've called for the establishment ---
actually, the resurrection of what we used to have here in South Australia, but to
improve on them, which is a call for local level Aboriginal family care panels.
Because we need to establish the link between the parents, the family, their child and
community and extended family with the Department's processes.

20 So those Aboriginal family care panels should be present at the first point of contact
between the Department. And when you hear from families and, you know, I hear of
all the stories where things have gone terribly wrong, and they are many, where they
are the last to know of the removal, and the report that has subjected their --- you
know, their grandchild or their child to an investigation of whatever has been put
before the Department.

25 So the Aboriginal Child Placement Principle needs to be applied in early
intervention. So when a report of abuse and neglect --- or neglect is made to the
Department, the application of the Child Placement Principle needs to be applied
right through prior to where there is a decision being arrived at for removal. Because
30 what we don't have are the opportunities provided to the family to be diverted away.
And we know that if we apply the Aboriginal and Torres Strait Islander Child
Placement Principle better and much more effectively in terms of early intervention
focus, we wouldn't be needing to apply it exclusively in regard to our removal and
placement.

35 So that proper consideration needs to be given, and we know that we can have much
more of a relationship of the system with the Aboriginal community-controlled
sector, notwithstanding more engagement with local level Aboriginal family advice,
local level Aboriginal family input, rather than the contrary which is happening now.

40 MR CROWLEY: Now, can I ask you this, Commissioner Lawrie. Are you able to
comment upon how you would see the Aboriginal and Torres Strait Islander Child
Placement Principle apply or intersecting with a First Nations family where a parent
has a disability? Is that something where the Placement Principle should still be put
45 into effect to support that family?

COMMISSIONER LAWRIE: The Principle has equal application to, you know, any

Aboriginal family having contact. And probably more compelling with the disability, in terms of the double disadvantage that an Aboriginal person, an Aboriginal family with disability, because we know that the service system is quite harsh to our Aboriginal families, and we know that disability is often seen as a risk factor in leading to removals rather than affording our Aboriginal families with a disability the opportunity to be engaged in early help services, so there is remedial support, there is capacity building in the family, there is direct linkages to the much-needed services to support those families.

10 And we know it's those families with disabilities that are the highly impoverished families, and the Aboriginal community is tired of poor families being harshly treated and penalised, poor families having children removed, the acute end, butting with our poor families as opposed to directing and providing equitable services to our needy families who need them --- you know, who need them desperately. So there's lots to be said about the application of the Principle and its elements with regard to early intervention because, you know, I firmly believe, it's my firm belief that because of the system's inability to regard the Aboriginal Child Placement Principle in early help and early intervention work, that we are not safeguarding our families and our children, particularly, away from the highly interventionist child protection extreme result of removal.

We need to give and provide a just service system so that our families who need it the most are able to have family preserved and keep our children connected to family and community and culture.

25 MR CROWLEY: Yes. Thank you, Commissioner.

Commissioner Lewis, can I pose the same question then to you. How do you see the intersection or the connection between the Aboriginal and Torres Strait Islander Child Placement Principle in the Queensland setting where we have First Nations parents with disability whose children are in contact with the system?

35 COMMISSIONER LEWIS: Certainly. I think --- well, I agree with Commissioner Lawrie. I mean, there is broad applicability in terms of those five principles, and if we just think about prevention, what that means is about equitable access to quality, targeted services that people need to be --- you know, to keep their families safe. That is what prevention means in the context of not just the child protection system but youth justice or any other social service system that you can think of.

40 The right to participation, which is, you know, the second element, is incredibly important, and it's where you see a really significant adverse impact for people with disabilities. Everybody has a right to participate in decisions that most profoundly affect their lives, regardless of ability, and I think that we have an obligation to support that participation. One of the things that we try to utilise in Queensland in the child protection is the use of Aboriginal and Torres Strait Islander family-led decision-making, which is independent of the Department, which is independently convened by an Aboriginal or Torres Strait Islander person from the community, you

know, from which that family comes. That's an incredibly important part of the reforms here.

5 Because if we can't give effect to people's right to participate in decisions about their lives, then how do we expect them to exercise agency over the care and protection of their children? So do you want me to keep going through each of the pillars or you get the drift?

10 MR CROWLEY: I want to come back to something you mentioned earlier and which you've talked about in your statement.

You've mentioned about the enactment in the legislation here of the Principle and its five pillars. But you mentioned earlier that we really need to be looking at active efforts.

15 COMMISSIONER LEWIS: Yes.

20 MR CROWLEY: How we can measure or determine active efforts? When you are speaking about active efforts, are you talking about looking at not just to see what the policy is or what the legislation is, but at the other end to see what is actually being done to put it into effect and how that can be measured or ascertained?

25 COMMISSIONER LEWIS: Certainly. With regard to my statement, the references to active efforts is about the need to introduce a standard. Like, set the bar, an expectation about what constitutes application of the participation element or the prevention element. There was a witness earlier in the week spoke about this sort of lazy process of sending an email like --- as if a referral in and of itself constitutes active efforts in trying to get a support to a person who needs it.

30 We have to go beyond those superficial efforts, and one of the risks we have in legislation is that people pay passive regard to those principles. And so what we're expecting, through introduction of a standard, is to provide a set of very clear practical examples as to what constitutes each of those five elements to the standard of an active effort in the context of child protection for Aboriginal children in
35 Queensland.

40 So I think that what's really important, I would love to see that as a national standard, an active effort simply means that it is active, that it is timely, that it is thorough, that it is purposeful. And I think that that's a lot different than the sort of dismissive low-effort action around the Child Placement Principle that unfortunately we see in far too many parts of the State of Queensland.

45 MR CROWLEY: And is there a current plan or policy with respect to developing active effort?

COMMISSIONER LEWIS: Certainly. I think there were a number of submissions made probably about a year-and-a-half ago. There were some proposed legislative

amendments in Queensland. They haven't progressed, as yet but my understanding is that there was a high level of support for the introduction of the standard of active efforts into Queensland's legislation.

5 Like I said, under the National Framework there was already a commitment from every Child and Family Minister from every jurisdiction in this country to pursue implementation of the Child Placement Principle to the standard of active efforts. But we see very little effort of, you know, pursuit of that standard.

10 MR CROWLEY: Yes. Thank you, Commissioner.

Commissioner Lawrie, can I come then to another area that you've spoken about in your State, which is the collection of data and information, and how important that may be.

15

You've spoken in your statement about if data isn't recorded and collected for First Nations children in contact with the system, if it's not done in a more than rudimentary way, that that's a failing in the system in being able to determine what support might be needed and what responses might be needed --- yes, sorry,

20 Commissioner, if you could comment upon that?

COMMISSIONER LAWRIE: Well, yes. So we know that in South Australia we don't have good data on the extent of our --- our families, our parent with a disability in contact with a child protection system. That's fact. We know that our systems
25 don't really reveal, in terms of the data, what the complex issues that our First Nations families, including those with disability, can experience when in contact with the child protection system.

Well, I guess my experience and that I just want to highlight, is there is no way from
30 the data to clearly discern the types of disabilities children and families are experiencing. And we know, as I said earlier, that the data is formed around --- that's framed around disability is around disability as a risk factor. As a factor in, you know, allegations of neglect or emotional abuse. And so for me that raises, you know, questions about remedial services and the extent of early intervention supports
35 that are accessible to families. The data linkages across a number of South Australian agencies, whether they be health related, justice, education, is also, in my view, very poor. So overall, the way in which we collect data in relation to disabilities, and the nature and extent across child protection and across the Aboriginal community as part of that is lacking and needs greater development.

40

So the data collection plays a key role that child protection staff are best placed to recognise indicators of disabilities, and the socioeconomic disadvantage. It's important for First Nations parents with a disability that we have the data collection, we can interrogate service system and service design and we know that we can better
45 plan for early intervention services, prevention services, be much more responsive to their needs, and albeit provide those much-needed wraparound services so that we reach that goal where removal is not the last resort.

So of particular importance is the potential for data to track the types of service delivery being provided and whether they are being provided in a culturally appropriate way. And like I keep on referring to, are they being provided through an
5 Aboriginal community-controlled organisation or similar and, importantly, whether any decisions are being made in partnership with the family, and with the community in line with the Aboriginal Child Placement Principle.

10 Furthermore, we know that the data collection would contribute to and obviously inform Government expenditure and certainly policy development, and develop those mechanisms that can better identify and respond to the trends of disproportionate representation of our Aboriginal families and young people with a disability in the child protection system. And, you know, that could actually drive,
15 you know --- we could drive that focus in home community care and early intervention methods of service delivery and intervention. That data collection is critical and it's important that we have a better understanding of the nature and extent of this across our Aboriginal families and our children.

20 And that qualitative evidence is going to be also equally important. Because we know that when you look at South Australia, we've got, you know, quite geographical remote areas, and when you've limited support services available, that can lead to increased risk for our Aboriginal families coming in contact with the child protection system. So we need that data so we can better respond to our
25 Aboriginal families with disabilities.

MR CROWLEY: Thank you, Commissioner.

30 Commissioner Lewis, on that same subject matter, are you able to tell us what your understanding is about the data that may or may not be available for the First Nations families in contact with the child protection system where the parents have disability?

COMMISSIONER LEWIS: I'm unaware of any available data in Queensland that would, you know, give us some indication of that. And that clearly is problematic.
35 It means that we don't know what demand looks like. We don't then know how to respond to it, and I think that, you know, it's an area of data development that is long overdue. I think just on the point of data as well, I think we really need to focus on moving towards outcomes-based data. I know that, you know, at a national level there's always disagreement about are things being too hard or in compatible with the
40 systems that they are using to capture data. But I think that those excuses of inaction don't hold up any more; we've got plenty of information that tells us about the performance of systems, we know how many --- we know what the capability is of each jurisdiction's child protection system to remove children. We know how many children are notified, substantiated, we've got all of that information but nothing to
45 tell us how safe and well are those children.

We've got an obligation, particularly in the statutory child protection system that

when a child is deemed unsafe and requires removal from their home, we have to be able to provide better. And while there is no data that can confirm that that's the case, I think that, you know, it's sadly lacking. We absolutely need to be able to provide that information, and until we start measuring what matters and focusing on real outcomes in the lives of real children and families with a disability or without a disability, we absolutely have an obligation to do better by those children and we should be able to publicly report on our performance in that space.

10 CHAIR: Commissioner Lewis, talking about data, can you help me, please?

COMMISSIONER LEWIS: I will try.

15 CHAIR: Queensland's [audio distorted]...Child Protection Reform Program 2014-2024, reports that between 2012-13 to 2016-17, there were increases in the number of children in out-of-home care. But the increases for First Nations children, (a) subject to intervention was up 23 per cent over that period, and 14.9 per cent increase of children subject to a Child Protection Order. What has happened between 2016-17 and 2019-20 in Queensland?

20 MR CROWLEY: Chair, we're just providing the document to the witness so that she can have it in front of her.

25 CHAIR: And while you're thinking about that, something else I would like help with which we might have explored yesterday, the Australian Institute of Health and Welfare reports in its latest report that although there seems to be a fall in the number of children being placed in out-of-home care, much of that is due to a change in definition what constitutes out-of-home care. And it apparently is the case that New South Wales and Western Australia changed their definition to include --- to exclude children on third party parental responsibility orders.

30 Yesterday we were told that the proportion of --- sorry, the number of out-of-home care orders in New South Wales had decreased by 33 per cent, but when one looks at the figures in the AIHW report at page 61 and thereabouts, we see that much of that may be --- subject to clarification --- due to a definitional change. So my question to you, in addition to what has happened to the figures, is has changed Queensland changed its definition and thereby attained an apparent improvement?

40 COMMISSIONER LEWIS: Okay. So I might work from the second question backwards. There certainly was a change in definition. If you have a look at the Family Matters Report for this year, what we were able to identify is that by virtue of that definitional change, 2,100 approximately Aboriginal and Torres Strait Islander children became invisible in the set of data that you are referencing under the AIHW. So for the purposes of the Family Matters report, we have included those children. Because regardless of what you call the order, they are still children in out-of-home care and there is still an obligation, and I think that was an important position for 45 Family Matters to take, to make sure those children were not made invisible and would be considered in the context of reform discussions and what needed to happen,

going forward. So the definitional change did apply to all jurisdictions. In Queensland permanent care orders would be those most likely to be impacted by that definitional change. So that was only introduced I think it was three years ago, and the rate of use of permanent care orders meant there was not a significant change after the change in counting rules for out-of-home care in the AIHW data. If that makes sense.

Whereas for New South Wales and WA, it was ---

10 CHAIR: It may make sense if my understanding is correct.

My understanding of what you were saying is that the definitional change, unless modified, rendered certain categories of children who are in fact part of the system invisible because they weren't regarded as part of the narrower definition but in Queensland you've taken those invisible children into account. And when you take them into account between 2017 at this stage and 2018 there has been no particular reduction in numbers? Is that what you are telling me?

20 COMMISSIONER LEWIS: We certainly haven't seen, you know, a significant --- well, we've seen mild increases. One point of interest ---

CHAIR: Sorry, I just want to be clear. Have I understood what you are saying correctly?

25 COMMISSIONER LEWIS: Yes.

CHAIR: Okay. That would mean that in order to get a meaningful picture of the position in each Australian jurisdiction, we need to understand, over time, the impact of this definitional change to make sure it's not just an accounting exercise?

30 COMMISSIONER LEWIS: Absolutely.

CHAIR: Okay. Thank you.

35 MR CROWLEY: Yes, thank you Chair. Thank you, Commissioner.

Commissioner Lawrie, I want to come back to you now and ask you about another area that you've referred to in your statement which is on the issue of decision-making by child safety workers, and how you see issues with respect to that in practice.

40 You've, in your statement, referred to hearing of some concerning practices about how decisions are made by individual staff and officers in cases despite the fact there are extensive policies by the Department about how they should conduct their assessments and go about their decision-making. Just explain for us what you're referring to there.

COMMISSIONER LAWRIE: So, if you take a look at what has been the case over the last 10 to 15 years here in South Australia, there has been a decrease in the number of Aboriginal children who are being cared for by members of their extended family, their Aboriginal families. So that, for me, tells a story that the
5 decision-making has more than likely not involved the Aboriginal family. So I'm aware that, from my role even as Commissioner for Aboriginal Children and Young People here in South Australia, that I've heard directly from mothers who have had their --- you know, their babies removed from birthing units, from health services, antenatal services, and the parents were never provided any supports for addressing
10 the reasons of the vulnerability of their infant child and, you know, as we know the outcome that the placement was the --- the removal and placement was the inevitable outcome.

15 So when you look at the decision-making processes that happen, I hear all the time from families that they are more than often the last to know and excluded from critical decision-making points in the decision-making process.

20 So the fact is that when you have a service system that is fearful of engaging Aboriginal families, and says that there are no families and that families are unwilling to engage with their services, it goes back to the heart of family-led decision making enacting initiatives such as the Aboriginal Family Care Panels with family group conferencing, so that we put the family in the early intervention sphere with the family and the child and the community at the centre of the decision-making early in the piece, rather than when removal is the inevitable decision by the
25 authority or by the Department.

30 And so what I've seen is that if you actually, you know, articulate the five pillars of the Aboriginal Child Placement Principle systemically and look at partnership participation and connection in the early --- you know, early on upstream when there is the initial contact, and the opportunity afforded to the family, to bring family together, to have family engagement and to lead the decision-making, then that just puts a whole different context into the outcome for the Aboriginal family and their child.

35 So what's really concerning is that I'm continuing to observe the practices of excluding and alienating families from the decisions despite there being very detailed and extensive policies and procedures developed by the child protection agency. And they certainly outline to the staff how they should conduct assessment and make decisions about possible child removal. But what we have is lingering
40 decision-making that also, you know, alienates the Aboriginal family. And what I would say, when I hear directly from families and their experience, is that staff that are overly judgemental, that are wholly judgemental in terms of Aboriginality and their own discriminatory attitudes and beliefs and also overly judgemental about anyone that might be presenting with disabilities; practice being risk-averse and
45 acting which assess safety without proper consideration of family and culture, both of which are not mutually exclusive from safety. So it's difficult to understand how all the policies and procedures developed by the institution of child protection, how

they operate. And I know that there's a manual of practice and an assessment framework and its Structured Decision Making tools, that --- in my experience it has been difficult to access all those relevant policies and understand how they operate in practice.

5

But what I do see and observe, and what I do hear, when I hear complaint from families who are distressed about the very harsh way in which the organisation has left them out of the decision-making system which could have been prevented, which could have had our families early on and being able to access those much-needed services within our Aboriginal community-controlled sector more importantly.

10

So, you know, the current practices and attitudes of practitioners, they exclude and they alienate families. Decisions in my view are continuing to be made without the informed discussions with family, and child removals occur very quickly, with little or no family involvement in planning and decision-making.

15

So, you know, I'm putting it out there again, we need mechanisms on the ground at the local level where you've got Aboriginal family engagement, you've got Aboriginal Family Care Panels that need to be resourced, supported and established where it can provide that and address the gap that currently exists, and the burgeoning gap where families are not engaged, where --- in times and moments where they most greatly need to be. Yes. I guess ---

20

MR CROWLEY: Sorry, Commissioner Lawrie. I just wanted to ask you about this when you are on this topic. You've spoken already about the Aboriginal and Torres Strait Islander Child Placement Principle and its five pillars. In your jurisdiction there is also the *Disability Inclusion Act* which has a similar type of statement of objective or principles about early intervention and support for people with disability. In the context of child protection workers performing their roles, are you able to comment about how those principles are seen and put into practice for First Nations families, particularly parents?

25

30

COMMISSIONER LAWRIE: Well, I do know the *Disability Inclusion Act* does outline principle supporting both early intervention and supports for people with disability. In practice I've also observed that the involvement of the child protection agency lead to removals. I know that. But what is the case is that there is not too much regard with the principles that underpins the *Disability Inclusion Act* around early intervention. There is no regard for the Aboriginal and Torres Strait Islander Child Placement Principle. So you need both of those being integrated and applied in a way that can safeguard the elements of the Aboriginal Child Placement Principle for the benefit of the Aboriginal child and family.

35

40

So, yes, I don't know whether you want much more from me in regards to that. But the Principle is there, but I don't see too much happening where there is that high degree of integration and accountability with how you observe and put into practice the Aboriginal Child Placement Principle with the *Disability Inclusion Act*.

45

MR CROWLEY: Yes. Thank you, Commissioner. And can I just touch upon something in your statement which you've referred to about the issues you've been talking about from child safety workers. You've made the observation that lack of understanding of culture and of disability by those practitioners or workers, the
5 logical consequence then is to use safety to justify removal. Is that how you see it?

COMMISSIONER LAWRIE: That is often the case and the outcome. So that --- the Aboriginal Child Placement Principle, particularly in regards to that fifth element where it's exclusively around the placement aspect, is that safety is seen exclusively
10 as safety but safety should have regard for the child's Aboriginality, the child's identity, the child's connection to family and community. Because what I know, and I've heard this directly from children and families in our community, is that all those things that are really important to the rights of a child and the rights of an Aboriginal child, is family. The Aboriginal child has a right to family. And so that the
15 importance of the application of the Aboriginal Child Placement Principle is fundamental to ensuring that we keep our Aboriginal children safe --- because we're not talking about abandoning safety; we're talking about how safety interacts, for our Aboriginal children and young people, with the aspect of family and culture, community identity. That in order to thrive, our children need to be safe, and safe
20 and connected with a great sense of belonging and attachment to culture and family. And what often is the case is that we don't see that as the outcome. And there is nothing that stops --- that is stopping child safety staff from thinking more holistically about their decision-making and their methods for how they could manage an Aboriginal child's safety and wellbeing.

25 You know, that could be something really simple such as picking up the phone and ringing and making contact with the immediate family, you know, and looking at options to support the parents, and reaching out to an Aboriginal consultant, a Principal Aboriginal Consultant who is already there in the system. And look at and
30 examine culturally informed ways. What our families say is that far too often, Aboriginal workers are used in replacement of the family to give advice about what is best for the family, and so decision-making once again is structured in a way and played out in a way that once again alienates the voice of the Aboriginal family with regard to their child.

35 MR CROWLEY: Sorry, Commissioner, we're just going to run short of time here and I just wanted to give the opportunity to Commissioner Lewis to pick up about something you've touched upon in the decision-making and in particular the Structured Decision-Making you've referred to by the Department. So I'm sorry to
40 interrupt you in your answer.

But, Commissioner Lewis, you have referred the Commission to a graph, a table document that you yourself have prepared, and you wanted to take the Commission to it to demonstrate and to explain something about some of the matters that
45 Commissioner Lawrie has been talking about.

COMMISSIONER LEWIS: Yes.

MR CROWLEY: Could we please have brought up, the document ID is DRC.0011.0007.0001.

5 Commissioner Lewis, can I just tell you we are running short on time ---

COMMISSIONER LEWIS: Yes.

MR CROWLEY: --- so could you please tell us what this document is?

10

COMMISSIONER LEWIS: Yes. So what we've done is mapped the substantiation rates for Aboriginal and Torres Strait Islander children across a 20-year period. What we've plotted at different points along here are the most significant child protection reforms in Queensland. What I find interesting, and which probably
15 raised my concerns with regard to the cultural efficacy of the Structured Decision-Making tool, particularly the Family Risk Evaluation which was mentioned in evidence in the last couple of days, is that if you look across the graph and you look at a point in time at which Structured Decision-Making tools were introduced, so in 2005 was where the agreement was made to introduce those, if you look at the
20 rate of disproportion alt in terms of the rate of substantiations for Aboriginal and Torres Strait Islander children in Queensland, I find it difficult, as much as I reflect back over the history of reform, to find any other reform that has had such a dramatic disproportionate impact on the rate of over-representation.

25

So if you look at the year of 2005/06, from that period of 2.3, that means that an Aboriginal or Torres Strait Islander child in the child protection system in Queensland was 2.3 times more likely than other children to be substantiated. After introduction of those tools, you see a fairly sharp increase and a continuing increase to the point of where Aboriginal children in 2017/18 were 7.5 times more likely to
30 have been substantiated as being at risk of or having experienced harm than other children in Queensland.

35

The point at which you start to see it go down is where we see the introduction of the legislative reforms which included the introduction of the five elements of the Child Placement Principle, the introduction of the independent entity and the rollout of Family Wellbeing Services and the Family Participation Program in the State of Queensland. So I thought it's probably an easier way to sort of summarise the impact of tools that are not culturally safe.

40

MR CROWLEY: And could we conclude from what you've demonstrated there in the graph and the line going up, the introduction of those Structured Decision-Making tools has worked to disadvantage First Nations families and children because of the way the tools are themselves constructed?

45

COMMISSIONER LEWIS: Yes. I think there was, you know, a lot of discussion, I probably don't need to go back over the particulars of that, but certainly Tracy Westerman, when she talked about the importance of culturally grounded and locally

informed assessment tools, the importance of that, it's not just about the cultural capability of the person who is administering those tools. We often just default to this position where we have to build the cultural capability of the actors within the system as if there is this mystical journey that we can send people on through training where they somehow land comfortably in culture. For me, the best demonstration of cultural capability is somebody knows, is self-aware enough to know that it is not their right nor their place to make a particular decision. And I think that what we are starting to see in the reforms in Queensland is that we need to stop thinking we can import cultural capability into a system that is largely incongruent with Aboriginal and Torres Strait Islander people, our way of being, and our world view.

I think what we start to need to looking at is the opportunity to transition power from the system into our services so that we can actually take responsibility for the decisions that most profoundly impact upon our children.

MR CROWLEY: Yes. Thank you, Commissioner.

Chair, I note the time and that's all the questions that I wanted to ask the Commissioners. I'm not sure whether Commissioners have questions or whether any of the parties who may wish to ask for leave to ask questions wish to do that?

CHAIR: Let me first ask if the Commissioners have any questions. Commissioner Mason.

QUESTIONS BY THE COMMISSION

COMMISSIONER MASON: Commissioner Lewis, just looking at the graph, I wanted to just get clarification. So prior to 2005 and working backwards to 1999, those were the years of the Aboriginal child care agencies, which were community-controlled organisations in each of the jurisdictions, that took the lead in supporting families and children?

COMMISSIONER LEWIS: Yes. Absolutely.

COMMISSIONER MASON: Thank you.

CHAIR: Thank you. Commissioner Atkinson?

COMMISSIONER ATKINSON: Chair, I did write down a number of areas that I want to ask about. That graph has blown everything out of the water. I might think about perhaps we can put some of those questions in writing because I think having seen that, it really puts a different complexion on everything we've seen. Thank you.

CHAIR: Thank you. Commissioner McEwin?

COMMISSIONER McEWIN: No. Thank you.

CHAIR: Thank you. I don't have any questions. But just to expand on what I think
5 Commissioner Lewis said, and so perhaps Mr Crowley it might be noted, the Family
Matters Report 2020 at page 56 explains that the out-of-home care counting rules
changed for all states and territories in 2018 and 2019. It goes on to say that that
makes the children removed from families, some of them effectively invisible and it
10 recommends that there be a reversal of that approach to the counting of out-of-home
care.

In order to address the issue concerning New South Wales, yesterday we were taken
to a document which I will hold up, but that document is DRC.0001.0006.0001.
That was the one that showed the number of young children and young people who
15 entered out-of-home care by way of Aboriginality in New South Wales. If you look
at the footnote you will see that the data for 2015/16 and 2016/17 being recalculated
using the new counting rules that came into effect so it may be that that 33 or
whatever percentage it was reduction is comparing apples with apples except that in
order to get a full picture we need to understand how many Indigenous children and,
20 for that matter, non-Indigenous children were the subject of third party parental
responsibility orders. I'm not sure yesterday we got the picture. In other words,
there may be nothing of substance that changes but we do need to understand how it
works and I'm indebted to Commissioner Lewis for compiling all of that.

25 MS MCMILLAN: Chair, I had a couple of areas, if I might ask, very briefly,
Commissioner Lewis about.

CHAIR: Yes.

30

CROSS-EXAMINATION BY MS MCMILLAN (Counsel for Queensland)

MS MCMILLAN: Thank you. Commissioner Lewis, there was some comment
35 made in earlier evidence, not today, about whether there was a *Human Rights Act*
oversight in relation to child protection matters. Now, obviously Queensland it has
only been in operation this year. Are you able to comment whereas if it's part of
your role or part of any strategic plan to have that *Human Rights Act* overview or
embedded in terms of particularly child protection issues?

40

COMMISSIONER LEWIS: Yes. So the QFCC last week released our new strategic
plan. In it we've been very clear about repositioning the organisation to have an
explicit focus on implementation of the *United Nations Convention on the Rights of*
the Child. So, in a sense, around the acuity or the extra attention that we can pay
45 across a range of systems, particularly focused on the individual rights of children,
we hope that that will be --- you know, that will, I guess, augment application of the
Human Rights Act.

I think it's just very important because as the Commission exists, we need to not only focus on the child protection system. We keep looking there and re-examining everything hoping that we're going to find solutions when actually what we need is a
5 mandate that is absolutely child rights-based and that gives us scope to look at those other systems where children experience inequity and where, through proper advocacy and accountability of those systems, that we can have an impact on the rate of entry to the child protection system.

10 MS MCMILLAN: Thank you. The second area I just wanted to take you to, you mentioned earlier domestic and family violence. Now, you would be well aware of the Queensland Taskforce Report Not Now, Not Ever?

COMMISSIONER LEWIS: Of course.

15 MS MCMILLAN: There were specific recommendations towards Indigenous, if I can use that word now, Indigenous communities and recommendation, for instance, 9 looked at wrap around services in communities addressing domestic and family violence. Now, if I can just move on from that, in terms of your graph, you are
20 aware in terms of the implementation, are you not, because you attended in fact meetings of the Implementation Council as a result of that Taskforce? And you are also aware of significant legislative reform in the area of domestic and family violence since that time?

25 COMMISSIONER LEWIS: Yes.

MS MCMILLAN: Now, in terms of your graph and perhaps in terms of any reduction, do you think that, and why do you think the introduction and particularly
30 looking at wrap around services, for instance, is so important in terms of child protection issues just in relation to that, for a start?

COMMISSIONER LEWIS: So, I was a member of the Domestic and Family Violence Implementation Council. I haven't been for probably at least a
35 year-and-a-half, two years so I might be rusty on the details. But in the first sort of tranches, implementation of those reforms, it became clear that there needed to be tailored and more dedicated approaches to address the rates of disproportionate and the experience of family violence for Aboriginal and Torres Strait Islander women and children. And where I think we have started to see some success in terms of access, parity to services is where we have focused on embedding specialist domestic
40 and family violence supports or close commercial relationships between providers of specialist domestic and family violence supports, Aboriginal Medical Services and Aboriginal and Torres Strait Islander Family Wellbeing Services that operate across the continuum of the child protection system.

45 MS MCMILLAN: My last question to you is this, is that clearly in terms of disability, you take it in that broader sense, I think, don't you, including psychosocial issues?

COMMISSIONER LEWIS: Yes.

5 MS MCMILLAN: Clearly domestic violence, you would agree, affects disability issues with children in terms of psychosocial issues that they're exposed to, correct?

COMMISSIONER LEWIS: Yes.

10 MS MCMILLAN: And women in terms of issues which would then render them, in terms of disability such as acquired brain injuries and those sorts of issues. Would you agree?

COMMISSIONER LEWIS: In those circumstances. Thank you.

15 MS MCMILLAN: Thank you, I've got nothing further.

CHAIR: Thank you very much.

20 Mr Crowley, anything arising out of that?

MR CROWLEY: No. Thank you, Chair.

25 CHAIR: Thank you very much. In that case, thank you, Commissioners Lawrie and Lewis, for your evidence and for your detailed statements. Your evidence has been very useful to the Royal Commission. Thank you very much for your appearance.

COMMISSIONER LEWIS: Thank you.

30 COMMISSIONER LAWRIE: Thank you.

THE WITNESSES WITHDREW

35 CHAIR: Mr Crowley, should we now adjourn and, if so, until when?

40 MR CROWLEY: Yes. Could we adjourn now, Commissioner, but could we resume as close as possible to what would be the scheduled start time of 1.35pm Brisbane time. There is quite a bit to get to this afternoon and I'm concerned to make sure we stay on schedule then, even though I haven't here.

45 CHAIR: Well, we need to stay on schedule because we will need to finish by 4.35pm. There are some commitments at this end that have to be honoured that take place very shortly after 4.35pm.

So we shall resume then at 1.35pm Brisbane time, 2.35pm Sydney time and even Melbourne time. Thank you.

ADJOURNED

[12.52 PM]

5

RESUMED

[1.36 PM]

10 CHAIR: Yes, Ms Bennett.

MS BENNETT: Chair, I understand that the next two witnesses will be giving evidence as a panel, they are Ms Taylor and Ms Boswell. I'm not sure if they're available online.

15 CHAIR: We will wait for them to come up on screen, which we hope will happen very shortly. Five fingers have been raised.

Sorry, is there a problem?

20 OPERATOR: They are in the room ready to go.

CHAIR: They are on the screen ready to go.

25 Thank you, Ms Taylor, thank you, Ms Boswell. If you wouldn't mind following the instructions of Commissioner Atkinson's Associate who will administer either the oath or the affirmation, as the case may be to you. Thank you.

30 **MS CATHERINE MAREE TAYLOR, SWORN**

MS LOIS BOSWELL, AFFIRMED

35 CHAIR: Thank you very much. Now Ms Bennett will ask you some questions. Just so you are aware, Ms Bennett is in Melbourne. Commissioners Mason and Atkinson are in our Brisbane hearing room. Commissioner McEwin and I are in our Sydney premises. And you are somewhere else.

40 MS TAYLOR: Adelaide.

MS BOSWELL: Adelaide.

45 CHAIR: I knew that, but I just wanted to see if you knew.

Yes, Ms Bennett.

EXAMINATION-IN-CHIEF BY MS BENNETT

5 MS BENNETT: Thank you, Chair.

Ms Taylor, you've made a statement of 68 pages dated 22 October 2020, is that correct?

10 MS TAYLOR: That's correct.

MS BENNETT: Are the contents of that statement true and correct?

MS TAYLOR: They are.

15

MS BENNETT: Commissioners, you will find that statement in Tender Bundle Part D at Tab 80. I seek to tender that statement into evidence and ask that it be marked as Exhibit 8.19. The annexures referred to are numbered, I seek to have admitted as Exhibits number 81 to 160 --- sorry.

20

CHAIR: 8.19 ---

MS BENNETT: Yes, I'm sorry, Chair. 8.19.1 to 8.19.83.

25 CHAIR: Yes, the statement and the exhibits will be marked that way.

EXHIBIT #8.19 - STATEMENT OF MS CATHERINE MAREE TAYLOR

30

EXHIBITS #8.19.1 TO #8.19.83 - ANNEXURES TO STATEMENT OF MS CATHERINE MAREE TAYLOR

35 MS BENNETT: Thank you, Chair.

Ms Boswell, you've made a statement dated 22 October 2020 of 16 pages, is that right?

40 MS BOSWELL: Yes, it is.

MS BENNETT: And are the contents of that statement true and correct?

MS BOSWELL: Yes, they are.

45

MS BENNETT: Ms Boswell's evidence is at Tab 165 of Part D of the Tender Bundle, Chair, and I ask that it be marked as Exhibit 8.20.

CHAIR: Yes. That can be done.

5 **EXHIBIT #8.20 - STATEMENT OF MS LOIS BOSWELL**

MS BENNETT: If it please the Chair, thank you.

10 Ms Taylor, I wanted to start with your statement at paragraph 16. You refer in that paragraph to the long-lasting impact of past policies on the First Nations community. Can you tell this Commission what policies you are referring to?

15 MS TAYLOR: So I'm making reference to a series of policies. I'm reflecting the history of child protection practice and legislation that really accounts for the best part of the last 150 to 200 years.

MS BENNETT: And are those policies which actively sought the removal of First Nations children from their families, is that what that's a reference to?

20 MS TAYLOR: It's a series of different policies. They will be everything in terms of, as you will call, history. I'm not an anthropologist but I can certainly recall from memory it will pick up assimilation practices through to native persons and, yes, it picks up a lot of those historical policies.

25 MS BENNETT: And, in your view, when did those policies that you're referring to, when were they removed from South Australia.

30 MS TAYLOR: So I think rather than when they were removed, I think that the enshrining of the Aboriginal Child Placement Principle, first in practice, subsequently in regulations, and more recently in legislation has really brought to the fore the approach that we want to take in relation to child protection practice with Aboriginal children and families and communities.

35 MS BENNETT: And as far as those impacts of the past policies, do they include over-representation in the child protection system?

40 MS TAYLOR: Over-representation occurs for a variety of reasons. It's certainly fair to say that intergenerational trauma that has been experienced by Aboriginal families and communities contributes to that. But in fact, our information and our data that we've been lucky enough to have in South Australia, we share with the Northern Territory are quite unique data mine that we can actually access, which is the SA-NT Datalink.

45 What that shows for us is that the major reasons that are contributing to over-representation is firstly obviously the number of reports that we receive for Aboriginal families. So the greatest level of over-representation we see is at the

point of the matters being reported, and then by the time we actually get to notifications being screened in and then investigations and, lastly, children being removed, we start to see a narrowing, and the level of over-representation is still more than is reflective of the population.

5

But what it reflects is the complexity of the experiences that Aboriginal families are experiencing today, and particularly what we see is the impacts of domestic and family violence, the impacts of parental substance abuse and mental health are probably the three most significant issues. But also, I would add, things such as housing stress, employment, access to good primary health.

10

MS BENNETT: I'm going to take you through the steps of that child protection system in a moment, but is another cause of over-representation, in your view, the concept of unconscious bias that we've been discussing over the last few days?

15

MS TAYLOR: Actually, I would say unconscious bias is an issue that we all confront in every workplace across the nation. Interestingly, South Australia, the Department of Child Protection, the majority of our practitioners are social workers. So there's no question we have to pay really significant attention to unconscious bias. We're also conscious it manifests itself in lots of different ways. It might be bias in relation to race, culture, gender, age, it might also ---

20

MS BENNETT: Disability?

MS TAYLOR: Disability, I was going to say, absolutely. So we have to pay particular regard to that. As to whether it contributes to over-representation, I couldn't comment. What I can say is, it's one we're very --- pay attention to, and in fact it was as a result of the review that Queensland undertook in a case that we took the opportunity to take a step back and look at how do we actually continue to provide training to our staff about unconscious bias, how do you actually remedy that. And training alone isn't the answer. It's why the importance of good reflective supervision, case consultation --- because what you're looking for is multiple perspectives rather than just one view. But you're right, it remains a work in progress.

30

35

MS BENNETT: Now, as I understand the material that you put before the Royal Commission, and perhaps the witness could be shown SAG.0001.0002.1442. As I understand it, this is --- I will just wait for that to come up in a moment. This is the annual report for your Department and we've opened it to a page showing the rates of First Nations children in out-of-home care. Is it fair to say that the number of First Nations children in out-of-home care have increased between 2018/19 by 12.3 per cent?

40

MS TAYLOR: I'm just going to ask at our end if we can blow it up. Distance is my challenge.

45

MS BENNETT: Sorry, it's the box at the extreme right, "performance comparison".

MS TAYLOR: There we go.

MS BENNETT: I'm sorry, it's actually the next page along, 1443, and that box there.
5 Thank you.

The number of Aboriginal children in out-of-home care increased by 12.3 per cent from 2018. Is that right?

10 MS TAYLOR: That's correct.

MS BENNETT: Yes. And then, as I understand it, presently First Nations children, and this is returning to page 1442, if the operator would be so kind, First Nations children comprised 42.5 per cent of the out-of-home care population, which is a
15 slight increase from 2018, and that's the second box --- sorry, the first box on that page?

MS TAYLOR: That's correct.

20 MS BENNETT: Yes. Now, earlier today, Commissioner Lawrie ---

CHAIR: Sorry, what is the definition of "out-of-home care" that is being used? Is it the one that was amended in about 2017/18, or is it the earlier one, or both?

25 MS TAYLOR: Commissioners, I might explain in fact a number of years ago we discovered every jurisdiction had a slightly different counting rule in relation to out-of-home care. So for jurisdictions, and this was less of an issue for South
Australia, but for a number of jurisdictions where they might make a long-term order to another person or a permanent care order, for example if I was thinking about
30 Victoria, they weren't necessarily in the count of out-of-home care. So what the report on government services now does is it uses the same definition for all the jurisdictions. But we've also asked it to also include, as you have referred to, the old definition which is helpful to understand, we don't want anyone to be invisible to those receiving support.

35 So when we talk about children and young people in out-of-home care in the South Australian context we're talking about children and young people who are under the custody or guardianship of the Chief Executive in South Australia. This is obviously provided for under our legislation, and they will be placed either in family-based
40 care, which we would often see as with kinship or with foster carers, and a small percentage are placed in non-family based care such as residential care or supported independent living.

CHAIR: Thank you.

45 MS BENNETT: Thank you, Chair. Now, Ms Taylor shall earlier today Commissioner Lawrie described unprecedented levels of removal. Do you agree

with that assessment?

MS TAYLOR: Unfortunately I didn't see the evidence that Commissioner Lawrie provided, but I would certainly say that we're not seeing unprecedented levels of
5 removal. Yes, we are seeing growth in out-of-home care, but there are three factors that contribute to that. One is about entrance into out-of-home care. The second is about the ageing population and the length of time children and young people are spending in out-of-home care, and the third thing that contributes to those numbers is the numbers of reunification.

10

So in relation to Commissioner Lawrie, what I would say is that we are seeing growth in our out-of-home care numbers, but we're not seeing levels of unprecedented removal.

15 MS BENNETT: Are the levels of increase concerning you?

MS TAYLOR: I'm always concerned when we have to remove a child, a young person from their family. But I'm really reminded of the legislative framework and statutory framework under which we operate. In South Australia, our legislation,
20 we've got new legislation that commenced in 2018 and this came on the back of the Nyland Royal Commission. And it really put front and centre the critical need to focus on the safety of children and young people. And so I think it's fair to say that's the paramount principle under which we operate in the current environment. There are amendments currently before the House that the Minister introduced two weeks
25 ago which will also introduce the concept of best interest, and I'm also delighted to say, also expand the Aboriginal Child Placement Principle to pick up the five domains that you will see reflected in the Queensland legislation, for example. So I think it's ---

30 MS BENNETT: I'm going to interrupt you there because I've received a note to ask you to please slow down your speech to assist the interpreters.

MS TAYLOR: I'm happy to do that.

35 MS BENNETT: We're going to cover a fair bit of ground and I'm not going to prevent you talking about the issues I would like you to elaborate on, but I would like to understand for a moment, the concept of safety, as your department understands it, if that encompasses a concept of cultural safety?

40 MS TAYLOR: What I would say to you is we have really clear legislative framework and certainly we obviously intervene in the lives of children and young people and their families where there is concerns or risks identified. Now, obviously when we're making an assessment and we're looking at the whole question of safety, we will definitely look at the questions around cultural safety. That will certainly
45 form part of our assessment.

But we have to always secure safety as per the legislation as our primary, you know,

approach.

MS BENNETT: Yes. Now, I would like to step back and understand a little bit about the vision of responsibilities between your Department and Ms Boswell's
5 Department. So as I understand it, Ms Taylor, you are the Chief Executive of what is a relatively new Department for Child Protection. Is that right?

MS TAYLOR: Yes, we were established on 1 November 2016, so we're just four years old, and we were formed in the aftermath and in response to the Nyland Royal
10 Commission that requested that it be very much focused on the statutory framework.

MS BENNETT: And, Ms Boswell, you work in the Department of Human Services. Can you tell the Commissioners your role in that Department?

15 MS BOSWELL: I'm the Chief Executive of that Department.

MS BENNETT: Yes. Now, as I understand it, the Department of Human Services is the Department that has responsibility for early intervention, the identification of supports for children and young people who might require them, for example, by
20 reason of disability; is that right?

MS BOSWELL: Yes. For early intervention in the child protection system and we've had that responsibility since 1 July last year.

25 MS BENNETT: And so how do --- how does your Department receive, I guess, notification that it needs to provide that early intervening support?

MS BOSWELL: A part of the purpose of the system being transferred to us is that we're undertaking a major reform of the early intervention system. That reform is
30 also on the back of the Nyland Royal Commission and so therefore ---

MS BENNETT: Sorry, my question is about children. How do children get referred to you? How do they come into your system?

35 MS BOSWELL: And I'm saying the system is in reform at the moment and therefore there is a changing practice in how they are referred. We are in ---

MS BENNETT: Sorry, as at today, how would that happen?

40 MS BOSWELL: As at today they can be referred, depending on what part of the system they're referred into, either by the Department of Child Protection or by various health services, or by education system or by other NGO services. So they can actually be referred in a number of ways.

45 MS BENNETT: Now, your Department is not concerned with the removal of children into out-of-home care; is that right?

MS BOSWELL: No. But we work very closely with the Department of Child Protection to try to sustain families and allow children to remain safely and culturally within their family systems.

5 MS BENNETT: And when it appears that that may not be possible, is it the case that the responsibility for that family transfers to the Child Protection Department that Ms Taylor, you are a part of?

10 MS BOSWELL: Yes, it is. Because the legislation and the statutory provisions sit with Ms Taylor.

MS TAYLOR: I was going to take the opportunity to tease that out a little bit more. So, for example, Lois's services may be working with a family. They start to get very concerned about the risk that they're seeing. We might see, you know, a referral
15 back into us. Now we may work with them about how do we best wrap around additional supports around a family. But if we don't believe that that can be sustained, then we may have to undertake an investigation and, you know, obviously as a last resort seek to remove a child or young person from that environment.

20 MS BENNETT: I understand. So is there one agency, though, that has a clear line of responsibility in relation to that child at any one point in time, given that you work together are we able to identify as at any moment which Department is responsible for that child?

25 MS BOSWELL: Yes, in that there is responsibility for the child with the service with which that child has been referred. However, there is statutory provisions that kick in at certain periods of time, and at that time then there will be --- there may be intervention by the child protection system. Our service has no powers of investigation or of particular orders that sit with the Department of Child Protection.
30

MS TAYLOR: So I think [audio distorted] ---

MS BENNETT: Sorry, go on.

35 MS TAYLOR: I was going to say the easiest way to look at it, and I know it was one of the attachments to my statement, is we have a framework in South Australia called Safe and Well. And in a way the most simple way to describe it is the responsibility of the supporting families is led by the Department of Human Services and the responsibility for protecting children is --- the lead for that sits with the Department
40 for Child Protection.

MS BENNETT: Yes. And so we've had some discussion this week around primary supports and secondary and tertiary interventions. Have you heard any of that evidence?
45

MS TAYLOR: I've heard of it. I haven't obviously listened to all of it this week. I'm well acquainted with a number of the experts who gave advice.

MS BENNETT: Yes. So would it be accurate to say, Ms Boswell, that your Department is concerned more with the primary functions and, Ms Taylor, yours with the more tertiary, and there's a spectrum in between?

5

MS BOSWELL: No, I don't think that's correct, and the reason I don't think that's correct is that part of the reform that we're trying to undertake with the system at the moment is to target resources to families with greater complexity. So we clearly do have universal and primary services, and they sit with many of our government departments, so they are --- education and health have universal empowerment services.

10

We are moving our resources and moving in a way that we respond to families to try to respond to those families with the greatest and the most complex needs because it has become clear that the lack of targeting of supports has not been serving people well. So there is different debate about the categorisation of primary and secondary and tertiary. It would be fair to say that Department of Child Protection sits probably at the tertiary end.

15

MS TAYLOR: We agree.

20

MS BOSWELL: But I would say we are moving to sit more in the secondary place because we think that that is actually an evidence-based approach to intervening with families.

25

MS BENNETT: Yes, thank you. Is it the case that at the point that a child transfers, from primary responsibility sitting with DHS to Child Protection, does the orientation of the attitude to that child shift from secondary to tertiary?

30

MS TAYLOR: No. And what I was probably going to say to you is that rather than conceiving of child protection as a linear process, I'd be more inclined to say to you, see it more as a Venn diagram with some overlap between our respective Departments, particularly in our tertiary environment. We are clear who has the lead, but obviously we work hand in glove to ensure that we wrap around the practical supports that are required for families, but when there's no alternative we will have to undertake, you know, as per our statutory framework, what we need to do.

35

MS BENNETT: But there is a point in time where the Department of Child Protection will take over primary responsibility for a child or family, and at that point, questions of additional interventions or removal become available. I'm not saying they will be used, but that's the point at which they will become available. Is that right?

40

MS TAYLOR: No, I wouldn't conceive it as becoming available, because we may have the lead on this with the child, but in fact the way in which the family is getting support, even after we've taken the lead may be delivered, for example, through a

45

child wellbeing practitioner who are funded and supported through the Department of Human Services in our schools. So really what I would probably suggest is dealt for child protection lead, as I said, for child protection. But in fact, how we discharge that, we will often be working with DHS and the funded providers to actually give effect to that.

5 MS BENNETT: But only your Department can make an application to remove a child?

10 MS TAYLOR: That's correct. Yes.

MS BENNETT: Okay. So when a child moves to your Department, that intervention is available and it is not before that transfer takes place?

15 MS TAYLOR: That's correct.

MS BENNETT: Okay. Thank you. Now, I would like to just understand a bit more about interaction with clients. Do you refer to the children you work with as clients?

20 MS TAYLOR: Are you directing it to myself or Lois in the first instance?

MS BENNETT: Well, either. How do you refer to the children you work with?

MS TAYLOR: I'm probably more inclined to refer to them as children and young people in the care, and before that obviously children and young people and families that we work with. "Clients" is always hard because it's probably an easy go-to but, I'm not sure that they would always see themselves as necessarily a willing participant in that process.

30 MS BENNETT: Well, we might return to that concept. I wanted to take you to the Disability Access Inclusion Plan that I think Ms Taylor you annexed to your statement at SAG.0001.0002.1542. Now, as I understand it from that document, 25 to 30 per cent of the children and young people, and it's at page 1544, third paragraph from the top. So that's 25 to 30 per cent of children and young people in care have a disability or developmental delay. Is that right?

35 MS TAYLOR: That's correct.

MS BENNETT: So is it fair that a high number of people that interact with the child protection system in South Australia have a disability or developmental delay? That's a reasonably high proportion, isn't it?

MS TAYLOR: It's certainly higher than the population in terms of I think --- and Lois would be able to correct this --- but I think in terms of the population the percentage in the population sits at 7 per cent from recollection and for really significant disability it sits at about 4 per cent. But what I would certainly say is, yes. What we see is children and young people, they do represent, you know, as you

say there, just over a quarter of all of those children and young people in out-of-home care.

5 MS BENNETT: And are you able to assist the Commission in understanding what proportion of First Nations children in your system have a disability?

10 MS TAYLOR: In terms of --- probably the best proxy measure that I could refer to is we have NDIS plans for children and young people in out-of-home care. At the moment we're sitting at about 946 NDIS plans for some, you know, 4,400 children and young people in out-of-home care. What we know is about 35 per cent of those NDIS plans are for Aboriginal children. So about 330 ---

15 MS BENNETT: I'm sorry, I'm asked to ask you to slow down again for the interpreters. I'm very keen and I'm sure the Commissioners are keen to hear your evidence, and I'm keen to take you through it, but we might need to do it more slowly.

20 Are you able to tell the Commissioners --- and I would ask if that graphic be taken down --- are you able to tell the Commissioners what proportion of adults who interact with your Department have a disability, so either parents or carers.

MS TAYLOR: No, I'm not.

25 MS BENNETT: I notice from your statement at paragraph 45 that you don't have a uniform definition of disability. Are you able to explain why there is no uniform definition?

30 MS TAYLOR: I think what I would actually say is that we follow the definition of disability that is reflected in the NDIS, the *National Disability Insurance Scheme Act*. What the challenge is for us is that, and I think it's reflected in the statement, we record that information for parents often in case notes, and so it's not easily extractable to be able to give you the numbers.

35 MS BENNETT: In your statement you say that you don't prescribe the use of specific definitions of disability, but that you would seek to record information including intellectual impairment, autism, physical disability, hearing and vision impairment, and acquired brain injuries that have been diagnosed by other agencies or professionals. Does that cluster of disabilities reflect the NDIS definition? Why have you chosen those as what you expect to be recorded?

40 MS TAYLOR: The NDIS obviously also pick up children, and obviously that will pick up particularly for those 0 to 6, that will be the additional category of developmental delay that obviously also plays out for children there. What we were really trying to illuminate in that part of the statement is that we capture the information about parents in a variety of ways. We capture the information about children.

One of the things I am pleased to flag for you is that the Federal Royal Commission into Institutional Responses to Child Sexual Abuse, identified that it was an area that needed further work, and so there is national work being undertaken to settle that definition and how it's captured.

5

COMMISSIONER McEWIN: Ms Bennett, I have a question for Ms Taylor. Can we just go two steps back. When you were being asked about the percentage of children and young people, you said about 25 to 30 per cent as we saw in the document. You then said that the total --- the population sits at about 7 per cent, from recollection;
10 7 per cent of what population? Can you just clarify what you mean by the percentage in the population sits at 7 per cent and for really significant disability it sits at 4 per cent? I really want to understand and get a full picture of what you mean by those numbers. Thank you.

15 MS TAYLOR: I was referring to the population in South Australia as a whole, not to a distinction between child protection and adults, but actually the population as a whole.

COMMISSIONER McEWIN: Okay. So I need to really clarify. You're saying that
20 the population in South Australia, of that population, 7 per cent have a disability?

MS TAYLOR: If I can provide further detail, but I understand in the Australian Children's Report there is some of the data actually referred to for the population.

25 COMMISSIONER McEWIN: I'm sorry, I'm a little bit lost here. I'm just trying to get an understanding. When you say 7 per cent, do you mean 7 per cent of the population in South Australia have a disability regardless child or adult? I would appreciate clarity.

30 MS TAYLOR: Certainly, Commissioner, and my apologies if I'm not being clear. What I was really trying to say is when we're talking about children and young people in South Australia, I am talking about children. What I was trying to not do was focus on out-of-home care for the child population in South Australia. My recollection is that the indicators are approximately 7 per cent of the children's
35 population identifies having a disability.

COMMISSIONER McEWIN: Okay. Are you able to point to a data reference for that, and then I'll stop there. Thank you.

40 MS TAYLOR: I will certainly get the reference for you.

COMMISSIONER McEWIN: Thank you.

MS BENNETT: Thank you, Commissioner. While we're discussing disability
45 among children in your system, do you record data in relation to Foetal Alcohol Spectrum Disorder?

MS TAYLOR: We record information about Foetal Alcohol Syndrome Disorder obviously in our case notes, but in terms of being able to easily extract numbers, that's not available to us at the current time.

5 MS BENNETT: Is there a requirement for a formal diagnosis of that condition or is that informally identified? Are you able to tell us that?

MS TAYLOR: No, I'm not. Obviously, as you will appreciate, one of the challenges very early on is when children, young people come to our attention, what we are
10 getting referred to us are areas where there are concerns about abuse and neglect, and obviously we're seeing trauma play out. What we often need to do is then actually get specific assessments undertaken so that we actually understand what might be attributable to disability as opposed to trauma. And obviously there's a significant amount of overlap there, but it's certainly the case that it's not easy to diagnose Foetal
15 Alcohol Syndrome Disorder in a baby, you know, it's certainly recognised that we need to capture that information and we think that's an area that we need to do more work in.

MS BENNETT: So what's the distinction you draw between trauma and disability?
20

MS TAYLOR: Well, obviously we've talked about the definition of disability. Obviously with trauma we're looking at the impact of children and young people having experienced abuse and neglect and the harm that they've experienced as a response to that.
25

MS BENNETT: I would like to --- while we're talking about the proportion of children with a disability, I would like to ask you a few questions about the proportions of your workforce.

30 Could I take the witness to Table 1 of Ms Taylor's statement, which is at STAT.0194.0001.0031, which is page 31 of your statement. And there's Table 1 there. As I understand it, this tells us about the training available by your Department between March 2018 and March 2020; is that right?

35 MS TAYLOR: That's correct.

MS BENNETT: Now, as I understand it, up to 30 per cent of the children that you work with, the children, young people that you work with have a disability? Is that
40 right?

MS TAYLOR: That's correct.

MS BENNETT: And a proportion of the adults you work with will have a disability but we're not sure of that proportion; is that right?
45

MS TAYLOR: That's correct.

MS BENNETT: Now, I can see on this list one training course that relates to people with a disability. It's the seventh box down. It's working with children and young people with an intellectual or developmental disability, so it's a subset of children or young people with disability for which you offer training. Is that right?

5

MS TAYLOR: That's correct.

MS BENNETT: Now, that's a non-mandatory training requirement?

10 MS TAYLOR: That's correct.

MS BENNETT: And as I understand this data, 77 out of 2,010 officers have attended the training in that period?

15 MS TAYLOR: That's right. In terms of that data, as you will appreciate its not cumulative data. It's simply that proportion of the workforce who have attended training during that period of time.

MS BENNETT: Yes. But --- yes. By my maths, about 3 per cent of your workforce have attended training on some --- in this disability module?

20

MS TAYLOR: During that 12-month period --- 2-year period.

MS BENNETT: Yes, that 24-month period?

25

MS TAYLOR: Yes.

MS BENNETT: Is that a high enough proportion, given the number of children and young people you're working with, with disability?

30

MS TAYLOR: We've tried to take a two-pronged approach in relation to working with young people and people with a disability. As you will be aware from my statement, we've specifically established a specialist section of staff. It is now totalling some 30 staff with expertise specifically in disability and developmental disability. These staff obviously support regional service delivery staff.

35

What we are now doing, and we've been delivering it through this month of November, has then been delivering learning sessions to all of our service delivery staff through our regions. So, as I said, it's a two-pronged approach. A core team of some 30 staff who hold significant expertise in disability and then ensuring that we roll out ongoing learning and development to all our staff so they actually have a very strong working knowledge of working with children and young people with a disability.

40

MS BENNETT: So is the answer to my question that you consider this level of training to be adequate?

45

MS TAYLOR: No. What I would say is that I consider it a work in progress and it will continue to invest in core expertise as well as augment learning to all of our staff.

5 MS BENNETT: So you would agree with me that this needs some work?

MS TAYLOR: I would agree with you that it's a work in progress.

10 MS BENNETT: And are there any other training modules that you offer in relation to children, young people with a disability that is not listed here?

15 MS TAYLOR: Yes. So that was only the training that was delivered in that two-year period. As I flagged, during the entire month of November we've been rolling out a series of learning sessions to our staff working both with parents, and also with children with disability.

20 MS BENNETT: Now, as I understand the situation at the moment, your statement at paragraph 46 tells us that you are not presently capturing data about the operation of the Aboriginal Placement Principles. Is that right?

MS TAYLOR: I'm going to have to check that because I'm not sure that's what it's meant to say. I can certainly talk to our level of compliance with the Aboriginal Child Placement Principle.

25 MS BENNETT: As I understand paragraph 46, it says, at a national level, the Department is a member of an organisation, that work is underway, it's improving, and various other matters.

30 MS TAYLOR: No. We absolutely capture already our level of compliance with the Aboriginal Child Placement Principle. All jurisdictions around the country do. What we have been doing is working with SNAICC, and I think you're hearing from Richard Weston later in the week, to actually enhance that level of compliance.

35 The other thing I would point you to which really shows how every jurisdiction is performing in relation to that, is I would refer you to the Family Matters report which was only released last week and it actually looks at the level of compliance, every jurisdiction, how we're travelling against the four building blocks, and in particular the Aboriginal Child Placement Principle.

40 So I can say to you, as at the end of September, just past our level of compliance was at approximately 64.3 per cent.

MS BENNETT: Across which measures?

45 MS TAYLOR: In compliance with the placement hierarchy that's reflected in the legislation.

MS BENNETT: And I think we've established that at present the legislation does not reflect all of the Aboriginal Child Placement Principles. Is that right?

5 MS TAYLOR: I know you heard from Commissioner Lawrie earlier. I don't know if she mentioned it because she has been part of the Expert Advisory Group who has been working with us with Commissioner Lewis. But our Minister tabled in the South Australian Parliament two weeks ago, amendments to the legislation to actually take on-board all five domains of the Aboriginal Child Placement Principle, and actually went further ---

10 MS BENNETT: So my question is at the moment, have you been tracking the Five Principles, or is it ---

15 MS TAYLOR: So I was going to say to you, in terms of the Five Principles, yes, we capture that, so we know how we are tracking against that in terms of if you look at our Aboriginal Action Plan, we have absolutely focused that in paying attention to the five domains. We didn't wait for their legislative amendments, we felt it was important, we've had our staff trained by SNAICC about the criticality of those five domains but ultimately we would like to see them reflected in legislation, and that's currently before the House.

MS BENNETT: And so do you consider your Department's compliance is at an acceptable level at the moment?

25 MS TAYLOR: Oh, I'd always say I would like to do better in relation to the level of compliance with the Aboriginal Child Placement Principle, and that's why all of the jurisdictions, as is reflected in my statement, are working together with SNAICC because we believe there is more to do.

30 MS BENNETT: Commissioner Lewis, I think, gave some evidence that the principles generally attract passive regard rather than active steps that can be easily measured. Would you agree with that?

35 MS TAYLOR: Yes, and that's actually some of the very helpful feedback that Commissioner Lewis provided to South Australia, so we've taken the opportunity, in our amendments that are before the House, to actually go further than Queensland and to reflect and include in the amendments the need for active efforts. So we try to actually take the best of Queensland and actually become nation-leading in relation to the implementation of the five domains of the Aboriginal Child Placement
40 Principle.

MS BENNETT: And what are the safeguards you have in place to ensure they are complied with?

45 MS TAYLOR: So we've got a number of safeguards. Probably starting in no particular order, we report to Family Matters on a national basis. We are part of that group. We're keen to also see the alignment with the Closing the Gap targets. We

report at a State level, and you reflected that, in our annual report in terms of how we're travelling. But really, for us, the big safeguards are about our practice; how do we actually embed and sustain what is reflected in our legislation and in our policies in our practice? And so we undertake regular annual reviews where we have
5 children and young people participate, and that includes Aboriginal children and young people. We have carers participate. So at every step, what we're really trying to see is are we actually paying attention to the Aboriginal Child Placement Principle. As I said, we've come some ways, we still have further to go.

10 CHAIR: Sorry, I wonder if you could explain what difference it's going to make to include the specific reference to Child Placement Principle in the legislation, which in fact is the *Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020*. It's a little curious in a way that you've applied the Child Placement Principle, you say, but it wasn't actually in the Act. So how were you able to apply the Child
15 Placement Principle that wasn't in the Act but is going to be in the Act if the Amending Bill is passed?

MS TAYLOR: So in terms of the way in which the South Australian legislation is framed, the part they refer to, Commissioner, as the Aboriginal Child Placement
20 Principle is quite rightly, as you say, really only about the placement hierarchy. We've taken a view that we actually need to pay attention to all five domains. That's why ---

CHAIR: I understand you've said that. I'm just wondering how that is compatible
25 with the existing structure of the Act which provides in section 7 that the predominant principle is harm or risk of harm to the child?

MS TAYLOR: Yes. So the way in which that's going to be changed, Commissioner, is at the moment you will see that the Aboriginal Child Placement Principle in
30 section 12 follows the general placement principle. The amendments actually propose to move it forward, that actually bring it up as alongside ---

CHAIR: I do understand that, I've got the material in front of me. My question is
35 how you are able, you say, to apply the Child Placement Principle, all five elements thereof, under the existing legislation which simply doesn't refer to them in those terms?

MS TAYLOR: Commissioner, I'm not sure that I'm understanding the point. As I
40 said, our view is we want to bring all five in, we don't believe it should be only seen as a placement hierarchy, we --- (overspeaking) ---

CHAIR: You can take it I follow that. Thank you very much. What I don't follow is
45 how it was consistent with the Act. But anyway, no doubt someone from South Australia in due course will explain it.

COMMISSIONER ATKINSON: May I ask a question since we have a little break. I wanted to ask you about evidence we've heard, from more than one witness, about

the unintended adverse consequence of the use of the last of the placement principles only at the point of forcible removal, which leads to the fracturing of a family when the child is placed with a relative of the mother, in particular, and the access of the mother is required to be limited so that she loses the support of her wider family.

5 Have you given any thought to the way in which you can avoid what I presume is an unintended adverse consequence?

MS TAYLOR: Commissioner, it's definitely an ongoing challenge and, you know, it's similar to the challenges we see in Family Law where it's absolutely critical ---
10 we really want to see the children, if they can't stay with their own family placed with extended family. But you're quite right, and there can be issues where it then means that one of the parties may lose the support of the broader family. So it's one of the reasons why we've started to trial, earlier this year, in family group
15 conferencing because we think that only doing it at the point of placement is a challenge that in fact we need to engage all family much earlier in the process. And you will have heard about family-led decision-making and family group conferencing, and for us, that's one of our opportunities, we think, is to actually involve all family earlier in the processes to actually focus on how will they best support those needs for children and young people who have either suffered harm or
20 at risk of harm without further fracturing the family. Because we certainly recognise that children, you know, do their best when they are placed with family and extended family.

COMMISSIONER ATKINSON: So you say it's a trial. What kind of trial is it?
25

MS TAYLOR: It's a trial in which the Government funded us for one of our non-Government services, Relationships Australia, South Australia, to do a trial for a time limited period. It is now reflected in our legislation but we will be seeking to expand that. It's a trial in terms of how many families they will be able to work with
30 during that 18-month period.

COMMISSIONER ATKINSON: So how many families have they worked with? I would like you to be more specific than just general by saying there's a trial.

MS TAYLOR: That's the language that we're using here because obviously it's the first time we've funded it. I've got some updated data in terms of that, and if you bear with me for half a minute I will be able to pull up the number of families. So as
35 at --- when's this, 23 November, the family group conferencing had worked with approximately 58 families in total and of those, 26 of those families were Aboriginal. And that involves some 116 children. And obviously that's also been during the
40 period of COVID. So, as you can see, it is early days.

COMMISSIONER ATKINSON: Thank you.

MS BENNETT: Now, Ms Taylor, you tell us in your manual of practice that
45 reasonable steps must be taken to consult with an Aboriginal organisation that is, in the opinion of the co-ordinator, appropriate to the child or young person or a member

of the Aboriginal community to which the person belongs.

Now, that's in the Manual of Practice at the Case Planning chapter at SAG.0001.0002.0069. I want to understand briefly, is it the case that it is not compulsory for that consultation to take place? Or is it compulsory for that consultation to take place?

MS TAYLOR: There are two elements I want to pick up on. The legislation is where we need to consult about placement, and it obviously picks up the requirement about where practicable. Where the Manual of Practice takes it further, it actually provides much more guidance about doing it in a timely way, so in terms of being mandatory, it's absolutely our view that, yes, we do need our staff to consult with, it might be the gazetted organisation or it might be another suitable community member or Elder, or someone from their family or clan group, and it needs to be done in a timely way. So we certainly, in terms of placement, are looking for that to be done within 24 hours.

MS BENNETT: Just to pause there, just to step back, as a matter of case planning, so at each decision point for your intervention, is it mandatory to consult with such an organisation?

MS TAYLOR: As I said, the legislation prescribes that we've got an obligation to consult around the placement decision. We take the opportunity, and this is what the manual of practice takes it further, is that we actually believe we do our best work when we actively consult with, from a cultural perspective, at key decision points. So think about it in terms of good case consultation.

MS BENNETT: Yes. So, Ms Taylor, can I summarise as I understand it. At the point --- a placement decision is mandatory under the legislation, is that right?

MS TAYLOR: It's certainly required under the legislation.

MS BENNETT: So the answer to that question is yes.

And then at every other decision point, it is your preference that it occur. Is that right?

MS TAYLOR: It's more than a preference, and this is what the Manual of Practice goes to. This is absolutely what we know to be best practice, and what we require and our staff to engage in. As I've said in my statement, the Manual of Practice was introduced last December and obviously is being rolled out and reviewed, and we are going to keep taking the opportunity to check that it's being embedded in practice.

MS BENNETT: So the answer is yes, it is mandatory at each decision point for your officers to attempt to consult with an Aboriginal organisation?

MS TAYLOR: Or it might be a principal Aboriginal consultant. It might be a

member of a local community member, it might be others involved in the child and young person's life. I wouldn't want you to narrow it to a specific agency or setting.

5 MS BENNETT: Well, my question was directed to a specific agency. So I think the answer to that it is not mandatory to direct your inquiries to that particular agency, I understand that. So that might be one. The other options appear to be other community members, are they First Nations people that are being consulted with?

10 MS TAYLOR: They would be.

MS BENNETT: Are they required to be?

15 MS TAYLOR: So as I said, the only absolutely mandatory requirement we have at the moment is in the legislation. What the Manual of Practice absolutely signals to our people is the critical need to engage and to have all of those cultural discussions as we're doing, good case planning, good case formulation. As I said, good case consultation.

20 MS BENNETT: Is it fair for the Commissioners to understand that it is mandatory in the case of placement decisions and preferred in other decisions?

MS TAYLOR: You can use the word "preferred". I would probably say it is absolutely recommended.

25 MS BENNETT: Yes, recommended.

MS TAYLOR: Yes.

30 CHAIR: Sorry, can I ask this. You've said that there is something in the legislation which requires consultation to take place. Can you help us by telling us what that provision is?

35 MS TAYLOR: I certainly can. In terms of --- there's probably two areas I would refer you to, Commissioner. In terms of section 12 of our children and young people safety Act, if I refer to obviously the application of the Aboriginal Child Placement Principle, to 12(3)(c), we obviously have the requirement before placing a child to where reasonably practical consult with a recognised organisation. I would also pick up in 12 --- section 8 in terms of what a recognised organisation is, and you will see there they particularly turn to, in relation to the placement of an Aboriginal child, a young person. And so it actually makes reference there specifically to us declaring by notice in the Gazette which we've done.

40

45 CHAIR: Thank you very much. That's helpful. There is no comparable provision for consultation in relation to any other children or young person? In other words, it's confined to what the Act describes as Aboriginal and Torres Strait Islander child or young person?

MS TAYLOR: You're right, it only references at the moment placement, and I guess that's why, Ms Bennett, I was just trying to tease out, we believe from a practice perspective that it is in fact absolutely recommended that we critically consult at key points along decision-making pathways.

5

CHAIR: Thank you.

MS BENNETT: And do you recall, Ms Taylor, when that does not occur?

10 MS TAYLOR: What we do record is obviously a rationale ---

MS BENNETT: Sorry, Ms Taylor, I'm just going to ask you, first of all, it will be easier if you answer my question first and then go to the next step. So do you record when that consultation does not take place?

15

MS TAYLOR: Are you talking about the placement consultation?

MS BENNETT: Well, let's start there. The placement consultation does not take place, is that recorded?

20

MS TAYLOR: I can definitely say to you we definitely record where we consult under the legislation.

MS BENNETT: Do you record if that does not take place?

25

MS TAYLOR: I'm not sure that they would record that it does not take place but I can certainly check that for you.

30 MS BENNETT: And in the case of other decisions, other than placement decisions, do you record whether consultation has taken place or not?

MS TAYLOR: So in terms of our practice, what we do is absolutely reflect who we've consulted with, and the outcome of those consultations in terms of reflecting the different perspectives and also ultimately our rationale for decision-making.

35

MS BENNETT: So are you able to audit, for example, how many times an officer has failed to consult with an organisation in decisions other than placement decisions?

40 MS TAYLOR: Not without --- and it's more to do with the fact you would have to get down to the individual case file by case file level, and you would have to go through that. But I just wanted to flag to you, that's actually one of the really important issues that SNAICC have raised with the national working group about how do we capture information so that we can actually respond to audit questions in
45 the future.

MS BENNETT: But it's fair to say that information is not being reliably or

systemically captured centrally by your department at the moment?

MS TAYLOR: No, and that would be because obviously it's a client management system rather than a performance system, but we will seek to remedy that over time.

5

MS BENNETT: Thank you.

CHAIR: Ms Bennett, are you planning on having a break before we conclude today?

10 MS BENNETT: The Chair has read my mind. I've been directed to ask for a moment for a break if it's a convenient time for the Commissioners. It is a very convenient time in my line of questioning.

CHAIR: The schedule calls for 15 minutes, is that how long you want?

15

MS BENNETT: Could we shave it to 10?

CHAIR: Yes, we could, we will adjourn for 10 minutes. Done.

20

ADJOURNED [2.38 PM]

RESUMED [2.50 PM]

25

CHAIR: Yes, Ms Bennett.

MS BENNETT: Thank you, Chair.

30

Now, Ms Taylor, there have been some discussions over the last few days about Structured Decision Making tools and I'm going to refer to those SDMs. I would like to ask you a few questions about those. Do you understand the SDMs to be validated in roles to First Nations communities?

35

MS TAYLOR: I would certainly say to you that they're validated for each of the respective State populations. When we engage with the Children's Research Centre, they certainly have validated, in our case for example, in South Australia. But I don't know that I can --- I'm not quite sure whether they've actually specifically validated the Aboriginal population in South Australia.

40

MS BENNETT: And you heard the evidence this morning from Commissioner Lawrie and Commissioner Lewis that these instrument are not necessarily responsive to First Nations issues?

45

MS TAYLOR: I didn't hear their evidence but I received advice about their point, and I think you're talking or you've received evidence from Professor Claire Tilbury

who has done a lot of research in this space. I would certainly defer to her knowledge there. What I will say is that ---

5 MS BENNETT: I might just come back to those matters. I would just like to go through a few questions about the SDM at this stage to lay some groundwork about it. It's fair to say the Department at least doesn't know if it's validated for First Nations people. Is that fair?

10 MS TAYLOR: No, what I would say is it's validated for the South Australian population. When we engaged the Children's Research Centre in 2017 to do that validation, they will have done it there, but I don't know if they separately did the Aboriginal proportion of the population separately. I don't know that.

15 MS BENNETT: Yes, but you don't know if it was validated for First Nations people separately?

MS TAYLOR: That's correct.

20 MS BENNETT: Thank you. Now, I would like to just draw some comparisons between different SDMs. I understand different SDMs are used at different stages of decision making. I would like to talk to you about the SDM that is used at the point of screening in, so this is the point in your statement at SAG.0001.0002.1174.

25 As I understand it, when a person is screened into the system, that is they are identified as being at a risk of harm or likelihood of harm, so as to trigger the involvement of your Department. Is that fair?

30 MS TAYLOR: It's really --- I mean, at the screening point, what helps us is whether the notification requires a response and what response time. At that point it's really the purpose of the SDM at the screening and response priority assessment.

MS BENNETT: So if the SDM tells you there is a risk or likelihood of harm, that will trigger your involvement with that child and family; is that right?

35 MS TAYLOR: It's certainly a flag to our call centre staff. One of the things I was going to flag is what we say to our staff is, "We need you to exercise your professional judgment. The tools are a guide to exercise that professional judgment".

40 MS BENNETT: So we might come back to that. Could the operator put pages 6 and 7 up on the screen together, .1181 and .1182, because together these are the screening tool, as I understand it. Thank you, operator.

45 Now, as I understand it, it's necessary, and perhaps the operator could highlight on the second of those pages the initial screening recommendations section that appears below the bolded heading. And that says:

.... *'Screen in: At least one harm, or likelihood of harm grounds was selected.*

Screen out: No harm, or likelihood of harm ground was selected"

Do you see that?

5 MS TAYLOR: Yes, I do.

MS BENNETT: So the recommendation is excepting there is a discretion that I'll come to, at least on its face, a child or young person should be screened in. If one of the criteria under harm or likelihood of harm is ticked, is that right?

10

MS TAYLOR: If selected, yes.

MS BENNETT: Yes. Could the operator please highlight "likelihood of harm" that appears directly above the "Screening and Recommendation Overrides".

15

Now, this is one of the categories of likelihood of harm. And there are two that I would like to discuss with you, the first is L03, mental health.

20

Now, as I understand it, mental health is, in this tool, identified as a potential harm to the child. Is that fair?

MS TAYLOR: It's identified, yes, as a likelihood of harm that needs to be explored.

25

MS BENNETT: Yes. So a tick to that box will lead to that child or young person effectively entering the orbit of your system?

MS TAYLOR: It's going to mean that it's likely to be a notification that is screened in, yes.

30

MS BENNETT: Yes. Now, do you --- is there an evidence base that suggests that mental health, for any deficit in mental health leads to a risk of a parenting deficit?

35

MS TAYLOR: So what I was going to say to you is in relation to this, you will appreciate I'm not a practitioner and I've obviously attached these various tools to my statement to really clearly outline how that's provided. I'm very happy to take on notice this question, because I would be the first to say I wouldn't be able to talk to you about the evidence that sits behind this in terms of mental health. And I imagine you also will want to ask me about intellectual disability.

40

MS BENNETT: I will. Is there a risk that your Department in this tool conflates mental health or intellectual disability with a parenting deficit?

45

MS TAYLOR: As I said, I'm really happy to take this on notice, but what I would say to you is, it's not necessarily that it's a parenting deficit, it's more in relation to the likelihood of harm.

MS BENNETT: Well, that's my question. Someone with an intellectual disability doesn't

't necessarily present a risk of harm to their child, do they?

5 MS TAYLOR: So this is where the validation is important from the population level. So going back to the work that the Children's Research Centre does for all jurisdictions who use SDM, this is why it's essentially an actuarial tool and so this will have drawn upon evidence and validation. But as I said, in terms of deep-dive and understanding of this, I wouldn't be doing you a service to talk to the evidence that sits behind it.

10 CHAIR: Yes, but what does it mean to you? I think that's what perhaps Ms Bennett is getting at. You may not be able to tell us what the reasoning process was behind this structure. What do you understand the point of this document and, in particular, the references to mental health and intellectual disability?

15 MS TAYLOR: What I understand it --- thank you, Commissioner, it's an important question. What I understand is that it asks our call centre staff, and obviously it's part of the guide, as part of their professional judgement to think about the impact that a parent's mental health might have upon their ability to provide a safe environment for a child or young person. And, you know, going back to our
20 legislation, you know, are they at risk of harm, are more likelihood of harm. And so in terms of mental health, no, it's not that everyone with mental health will necessarily harm their child, but what we do know is that, as I said earlier, when we see our data we know that it's something like 75 per cent of parents where we've seen significant issues about domestic violence, over 50 per cent where the parents have
25 mental health issues, and over 50 per cent where they've had parental substance abuse.

30 So from a predictive actuarial model, what we know is there's a likelihood there's harm. That's what we have to explore with this.

MS BENNETT: Well, I'm going to explore that with you in a moment through another tool, but I think it's really important that we go back to my question before, and my question to you was, an intellectual disability does not necessarily indicate a lack of parenting capacity, does it? And bear in mind people are listening to your
35 answer have an intellectual disability.

MS TAYLOR: No, it doesn't.

40 MS BENNETT: Having a mental health difficulty doesn't necessarily mean you've a parenting deficit, does it?

MS TAYLOR: No, it doesn't.

45 MS BENNETT: In fairness, I want to be clear, it is not ticking those boxes alone, they are accompanied by notes as to their application at page 23, which is .1198.

So there is the tick box there is what I would suggest to you is quite a blunt and

un-nuanced instrument, and it is underpinned by these notes, "LO3 Mental Health", and it says here:

5 *A carer has a mental health problem that negatively impacts [on] care and protection of the child to the extent that*

10 And it goes on. I want to pause there. I think your evidence, Ms Taylor, was that you're not in a position to tell us when a mental health deficit will have an effect of presenting a risk to a child. That's right, isn't it you are not an expert who can do that.

MS TAYLOR: No, I'm not a ---

15 MS BENNETT: But are your call centre staff experts who can do that?

MS TAYLOR: Yes, they are. So unlike me, our staff who work in the call centre are qualified social workers, and they are provided with quite significant training and support to be able to make these sorts of assessments and that's guided by a lot of work that we do in that space.

20 MS BENNETT: So what are the qualifications of your call centre staff? They are all Social Workers with Bachelor's degrees?

25 MS TAYLOR: They are Social Workers, and in fact in South Australia, we are more narrow than some of the other jurisdictions, we actually have the requirement that you've undertaken the Bachelor of Social Work. We have some other qualifications more broadly that we've just opened it up to Allied Health Professionals, but, no, they are child development focused. But predominantly we are a Department of social work.

30 MS BENNETT: Now, I think you tell us at paragraph 44 of your statement that the suspicion of a mental health problem can lead to people being screened into the system. Can you have a look at that for me? It might be the wrong reference. I might need to come back to that. You don't have a definition of mental health in this tool that I can see. Is that right?

MS TAYLOR: Not that I can see. But not being a practitioner who using it every day, I could be doing you a disservice.

40 MS BENNETT: Well, they are not medical practitioners who are doing it every day, are they?

MS TAYLOR: No.

45 MS BENNETT: The concept of intellectual disability is a relatively broad concept. I can't see a definition of that included in the tool. Are you aware if a definition is applied consistently?

MS TAYLOR: No, I'm not.

5 MS BENNETT: Okay. Is it fair to say that once a child or young person is screened in, then a statutory barrier to their removal has been removed? They are in the system?

10 MS TAYLOR: They're certainly in the child protection system, I'll totally agree with you on that. One of the things that ---

MS BENNETT: Yes. Commissioner Lawrie gives evidence that First Nations parents experience a disability and their levels of disadvantage make it more likely that their families will come to the attention of the South Australian Department. Is there a risk that the combination of being First Nations and having an intellectual disability or a mental health problem raises the risk that you will enter the system?

MS TAYLOR: I think I said earlier, when we have a look at our data, particularly about those family and particularly parents who are notified to us, in terms of Aboriginal families and parents, it's certainly fair to say they are reported to us at much higher rates than the general population, and we know that from the work that has been led by Professor John Lynch and certainly Dr Rhiannon Pilkington and also supported by the Australian Centre For Child Protection, so it's certainly the case we've seen more reports. I flagged it earlier, actually the three big ones for us, it's not about disability, what we're seeing is concerns about domestic and family violence, we are seeing concerns about mental health, and we're seeing concerns about parental substance abuse.

COMMISSIONER ATKINSON: It's Commissioner Atkinson here. I would just find it really helpful if you would answer the question you were asked rather than answering another question you might prefer to be asked. Perhaps if Ms Bennett could repeat the question. I'm sorry, it's not the first time I've felt like this, but really, I think I would like to hear at least the answer to the question Ms Bennett asked.

35 Perhaps if you would ask it again, Ms Bennett.

MS BENNETT: I understand Commissioner Mason has a question. I might defer to Commissioner Mason.

40 COMMISSIONER MASON: Thank you very much.

In the evidence that was given by Natalie Lewis, she, at the end of her evidence she presented to the hearing a graph tracking the substantiation rate over the last 20 years in Queensland. And tracking it against changes in policy and service delivery and inquiries over the 20-year period, which really was of interest to the Commissioners. So my question is, if South Australia would be interested or willing to provide a similar document to the Royal Commission tracking the substantiation rates, perhaps

over a similar period for Aboriginal First Nations children?

5 MS TAYLOR: I think it would be a good thing we presented that, because I think you're right, it's important to reflect policy changes, legislative changes, but what has actually been happening is both investigations and substantiations. It will take time for us to construct that, but I'm very happy to provide that. What I can tell you is the substantiation rate here is pretty equivalent. It's actually the investigation rate that we see some differences but we will draw that out in data for you.

10 COMMISSIONER MASON: Thank you. And I'm also interested in the social determinants of health because we know with First Nations parents with disability and their intersection with child protection, the issue of housing is a really important factor. And I'm also interested in the picture of that in South Australia, in terms of
15 community-controlled housing, and if that has changed over the years, particularly public housing, how that has been managed over the last 20 years, because from memory, having lived in South Australia for many years, the arrangements in the South Australian Housing Trust through Aboriginal community-controlled decision-making was very effective because it was a South Australia-wide program. But that program was changed. I'm not too sure when, and whether that factor has
20 been able to provide housing in terms of crisis around domestic and family violence, issues to do with disability, women. I think that that's also an important factor so I will leave that for you, but I would be grateful if you could arrange that for the Royal Commission.

25 MS TAYLOR: Yes. I can certainly say, and I think Lois would be able to join me with this, we see housing as one of the most critical factors. We have a lot to do with the South Australian Housing Authority. Because as you quite rightly say, sometimes we're looking for significant supports for women escaping domestic violence. It might be a family who has been experiencing over-crowding or housing
30 stress, and we need some support and assistance. I will need to get some further advice about when those arrangements with community housing changed; as you will appreciate, I've only been in SA for four years. But I would say to you that the work that this Government is currently doing, particularly in relation to housing, and particularly for women and particularly women who have experienced domestic
35 violence is significant.

CHAIR: Ms Taylor, following up on Commissioner Atkinson's intervention, can I suggest that sometimes a simple "yes" will suffice? Thank you.

40 Yes, carry on, Ms Bennett.

MS BENNETT: Thank you, Chair.

45 Perhaps the graphic could be removed for now.

I think, Ms Taylor, I was just asking you by reference to Commissioner Lawrie's evidence, but perhaps it need not be put that way. Perhaps I can simply ask you as a

person who is in the position that you are in, do you understand that there is a heightened risk for people who have a disability and who are First Nations? Are they at heightened risk of contact with your Department?

5 MS TAYLOR: It's certainly the case that Aboriginal people are at risk and
heightened risk of contact with our Department. In relation to --- it has not been my
experience and this is why I want to be really clear, it has not been my experience
that parents with a disability are at heightened risk, and that's only because, and I
10 think this is one of these ones where it's not a yes/no, because often what we discover
is the parents aren't aware of their disability and neither are we. But certainly it's the
case ---

MS BENNETT: Right. I would like to ask you a little bit about Parenting Capacity
Assessments.

15 You say in your statement that --- and I'm at paragraph 54 of your statement --- you
tell us that:

20 *Intellectual function assessments may be undertaken as a standalone or as part
of a formal [Parenting Capacity Assessment].*

Now, I think your evidence is to the effect that if a person does not agree to a
Parenting Capacity Assessment, they can be compelled to undertake one. You say
here information may emerge through the family, observations by practitioner or
25 from service providers or professionals, that a parent may be living with a disability
that has not been formally diagnosed. In this instance the Department may request
the parent undergo an assessment or, if absolutely essential and consent cannot be
obtained, utilise the power under section 36 of the Act to direct a parent to undergo a
Parenting Capacity Assessment.

30 That's your evidence; is that right?

MS TAYLOR: That's correct.

35 MS BENNETT: I wanted to take you to paragraph 36 and help me understand how
that direction works. Because section 36 provides that:

40 *If the Chief Executive reasonably suspects that a child or young person is at
risk as a result of lack of parenting capacity on the part of the parent, guardian
or other person the Chief Executive may by notice in writing direct the
parent, guardian or other person to undergo an approved Parenting Capacity
Assessment.*

45 Is that the power you are referring to?

MS TAYLOR: It is.

MS BENNETT: Are you conflating an intellectual --- are you conflating a disability with a lack of parenting capacity?

MS TAYLOR: No.

5

MS BENNETT: Well, it's not actually --- in your statement at paragraph 53, you say that if a parent is living with a disability has not been diagnosed they may need an assessment and you can compel them. But you can't compel them simply because you suspect a disability, can you?

10

MS TAYLOR: No.

MS BENNETT: And so in your statement where you say, where a person doesn't consent, you can use section 36 to require that consent, you can't do that simply because they may be living with a disability and declining to have a Parenting Capacity Assessment, can you?

15

MS TAYLOR: That's correct, and as per my statement, it's why we put in the reference in paragraph 53 about if absolutely essential, because it goes back to the purpose of the Parenting Capacity Assessment ---

20

MS BENNETT: I don't want to interrupt you, Ms Taylor, but time is short. I want to be clear, because your statement seems to indicate that a person with a disability who is declining to have an assessment can be compelled to do so, and I would like to suggest to you that's not correct evidence.

25

MS TAYLOR: No, what I'm saying there is we are seeking to undertake a Parenting Capacity Assessment, and one of the issues we think that we need to explore as part of the Parenting Capacity Assessment is the ability of a parent with a disability to discharge that. What I'm saying is we're going to try and seek that if it's absolutely essential, by consent. It's our least preferred method to have to mandate that.

30

MS BENNETT: Why a parent with a disability? Why is it not sufficient that they are not parenting their child properly? Why do you have to suspect disability?

35

MS TAYLOR: I think it's probably inelegant framing of the evidence, but you are absolutely right, that legislation is clear in section 36(2) that it goes to the lack of parenting capacity. What sometimes we are looking at is what is impacting on that parenting capacity.

40

MS BENNETT: That's right, and disability, as we discussed, does not necessarily do so, does it?

MS BENNETT: No.

45

MS BENNETT: First Nations does not impact on your parenting capacity?

MS TAYLOR: No.

MS BENNETT: Now, I wanted to, in the time I have left, I wanted to ask you a few questions about the status of implementation of various recommendations from
5 previous reports, and I think Ms Boswell, that this is primarily from your statement. As I understand it, there are about 212 recommendations from the Child Protection System Royal Commission. Are you able to tell the Commission about the status of those recommendations?

10 MS BOSWELL: Of the 212 recommendations from the Royal Commission? We have a report that is actually administered by the Department of Child Protection that it reports against the status of the 212 recommendations, and so we can refer to the report. But off the top of my head, no, I can't recite all 212 recommendations.

15 MS BENNETT: No, I mean, as in, is there a record kept of how each Department is tracking against each of the recommendations, is that right?

MS BOSWELL: Yes, there is, and as I understand, it's reported to Parliament as well. Yes.

20 MS BENNETT: And are any of those recommendations not accepted by Government?

MS BOSWELL: The reason I will let Ms Taylor answer is because in fact she chairs
25 the cross-departmental board that looks at that --- I really want to have a chance to answer some evidence! However, she does chair it, and it is across departmental roles, and there was, and I was not responsible when the Royal Commission recommendations first came in. There are a few that are not fully accepted, but Ms Taylor knows those better than me.

30 MS BENNETT: Are you able to tell the Commissioners, Ms Taylor?

MS TAYLOR: There were 260 recommendations from what I refer to as the Nyland
35 Royal Commission, and that report came down in August 2016. The former Government accepted 256 of those, and I only checked yesterday because I thought I was going to get this question in another matter yesterday. To date, some 212 of those 256 recommendations have been completed, and under our Safe and Well Annual Report, and I can provide a copy of that to you if you don't have a copy, it actually shows the status of those that are in the planning phase and those that are in
40 the implementation phase.

What we also took the opportunity was with the Federal Royal Commission into
Institutional Responses to Child Sexual Abuse, to also pick up their 256
45 recommendations. So, for our sins, 512 recommendations in total. So we've taken the opportunity to report against the whole group.

MS BENNETT: Right. And what's the timeline for implementation?

MS TAYLOR: Under Nyland, it was three phases. Phase 1 went to the end of 2018. Phase 2 went to the end of 2019 and we are now just in phase 3 and I think that wraps up in 2022.

5

MS BENNETT: All right. Now, I would like to leave some time for the Commissioners to ask any additional questions that they have.

10 So, perhaps, Chair, I will complete my questioning there and defer to the Commissioners with any final questions.

QUESTIONS BY THE COMMISSION

15

CHAIR: Yes. Thank you.

Commissioner Mason, do you have any questions?

20 COMMISSIONER MASON: No, thank you.

CHAIR: Commissioner Atkinson?

25 COMMISSIONER ATKINSON: I'm interested in the relationship between yourself and the Commissioner that we heard from this morning, April Lawrie. What role does she have in informing the policy of your Department?

30 MS TAYLOR: Commissioner, she plays a critical role. As she would have pointed out to you, she is the Commissioner for Aboriginal Children and Young People in South Australia and one of her areas of priority is child protection. We meet with Commissioner Lawrie on a six-weekly basis. She's a member of our expert Aboriginal Advisory Committee. In addition to that, from time to time, quite appropriately, Commissioner Lawrie will raise issues with us on an individual or a systemic basis where she has got a particular concern about a matter or a case.

35

I think it's fair to say one of the most critical pieces of feedback she has given us, which is influencing how we're going to restructure the Department, is the critical need to have Aboriginal staff up front and available so when Aboriginal families come into contact with the system, they're actually dealing with Aboriginal staff. So
40 we're going to actually do some further work to actually bring that forward and invest further staff there. So I would say to you we don't always agree but it's a critical role and it's one that is absolutely important to outcomes for Aboriginal children.

45 MS BOSWELL: And Commissioner Lawrie is also involved in the expert panels for our Department as well and has been involved and consulted on the Aboriginal co-design principles that we've been re-designing the early intervention system, as

well as the Aboriginal System Design Criteria that we are using to establish a new early intervention approach.

COMMISSIONER ATKINSON: Thank you.

5

CHAIR: Commissioner McEwin?

COMMISSIONER McEWIN: One question, thank you, for Ms Taylor. Ms Taylor, in your statement at clause 56 when you talk about the conducting of an assessment of safety and risk and you say that the Department is relying on cross-government service systems to assist in identifying and sharing relevant information pertaining to a parent disability status. How would you describe that cross-government service system? Are they consistent in the way they collect and assess and provide information or is it different?

10
15

MS TAYLOR: I would say, Commissioner, it's fairly consistent. Probably the two big agencies --- obviously health as you will appreciate is a critical interface for us there. Less so for parents but for children education is obviously the other agency that we have a lot to do with but there is always room for us to be more consistent.

20

COMMISSIONER McEWIN: Okay. So what you are saying is that you have encountered challenges from time to time or in terms of consistency. Is that a fair characterisation?

25

MS TAYLOR: Yes, that's a fair characterisation.

COMMISSIONER McEWIN: Thank you. No further questions, Chair. Thank you.

CHAIR: Thank you. Can you just clarify something for me? The document entitled 'Assessment Framework for DCP Staff', what's the status of that document?

30

MS TAYLOR: That forms part of our Manual of Practice, Commissioner. That's what --- when our staff are undertaking assessments, that's the framework that we asked them to pay attention to.

35

CHAIR: So further to the questions that Ms Bennett asked, if one looks at page 23 of that document which is SAG.0001.0002.0271, one sees that the domain of assessment is parent's ability to meet child or young person's needs. And two of the criteria are as follows. The first is mental health including depression and suicidal behaviour, anxiety, post-traumatic stress and diagnosed or suspected personality disorders. And two down are the next one is cognitive or intellectual difficulties. So this is a document that is provided to the caseworkers and it's up to them to interpret what those expressions mean in the particular case, is it?

40

MS TAYLOR: This is part of the suite of documents that we provide to our staff and it's also accompanied by learning and development. Because you're right, what we don't want is everyone to interpret that differently, which is why we do a lot of

45

learning sessions with all our staff in rolling out the assessment framework and the Manual of Practice.

5 CHAIR: What sort of training would be given or explanations given of the references, for example, to depression, anxiety, their significance or the significance of intellectual difficulties?

10 MS TAYLOR: Commissioner, one of the key staff we have in the Department is a psychiatrist that we were lucky enough --- she previously headed up Child and Youth Mental Health Services here in South Australia. She has now come to work for us and quite rightly, as I think someone flagged earlier, sometimes these are things that aren't necessarily well known by us but in fact require health expertise. So certainly Dr Prue McAvoy is one of the experts we draw upon in providing this training along with our psychologists and others in our learning and development area. It's not one
15 where we just think it's, you know, just descriptions. We need to really embed this. And I will absolutely own, we will continue to need to do this as we have new staff come on-board so that we have a considered understanding of what do we mean.

20 CHAIR: So the way of ensuring consistency and continuity is for staff to participate in the presentations made by the psychiatrist you mentioned and/or psychologists? Is that how it works?

25 MS TAYLOR: And other --- obviously there's also professional supervision that we provide and also case consultation. But obviously learning and development is sort of like our foundational piece. We obviously then need to provide professional supervision to staff and we also support that by case consultation. The other one that I don't think I've talked about is we also do complex case reviews. So what we recognise is that no one staff member has all of the expertise and we need to bring this together.
30

CHAIR: Thank you, very much. Ms Bennett, in the 7 minutes that are left, is there anything further you want to develop? I notice we haven't had any appearances from South Australia. But I understand there is Counsel present in the room. Is that right?

35 MR GOLDING: That is correct, Commissioner. My name is Golding and I formally appear for the State of South Australia. I have been in the room for the duration, but at a sufficient social distance.

40 CHAIR: Yes. No, I asked at the beginning of the day whether there was an appearance for South Australia. It's good to know that South Australian counsel adopt such a reticent position. Very good. Thank you. I take it, Mr Golding, you've got no questions?

45 **RE-EXAMINATION BY MR GOLDING**

MR GOLDING: If I have the opportunity, there is one thing I would clarify with Ms Taylor.

5 Ms Taylor, you were asked some questions earlier by Commissioner Sackville, the Chair, about the Five Placement Principles and you indicated that there's a Bill currently before the State Parliament that is going to seek to enshrine them. I'm not sure you necessarily understood the Commissioner's question but it was to the effect that if they were only now being enshrined, how is it that your evidence can be that they have already been observed in practice when one has regard to what might be a
10 conflicting situation in section 7 of the current Act? Perhaps before Ms Taylor answers that, does that reflect the question that you were trying to ask earlier, Commissioner?

15 CHAIR: With admirable clarity, Mr Golding. It's produced a crystalline presentation compared with my own haltering attempts to put the question.

MR GOLDING: Ms Taylor, do you understand the question? Are you able to answer it?

20 MS TAYLOR: Yes. Thank you. And apologies, Commissioner, I think I had lost my ability earlier. What I can say is that we have sought to implement the five domains through policy and practice, recognising at the moment they don't exist in legislation. And there may be occasions when that policy and practice may seem to be at odds with the critical provisions about safety. Obviously the legislation will
25 always take precedence in that arrangement. But our experience is we need to weave safety through all of the areas, including right from the commencement domain of prevention, right through partnership and the others.

30 MR GOLDING: Thank you. So when you say it was already a matter of policy, and we acknowledge that policy is subservient to the legislation, that issue of policy, is that a formal policy? Is it something that all of the practitioners on the ground know about and actively seek to implement, or if I'm wrong about that, how is it that that policy has existed to date?

35 MS TAYLOR: Yes, it has existed in a couple of different forms, and I think Ms Bennett was coming to this earlier. It's reflected obviously in our Manual of Practice. It's reflected in our Aboriginal action plan, and it's also been reflected in specific training that we've had SNAICC deliver to all of our staff about the implementation of the five domains, and we've followed up with that.

40 But, as you will appreciate, I will be very excited when it's reflected in legislation.

MR GOLDING: Thank you. That was the only matter I wished to raise.

45 CHAIR: Thank you very much, Mr Golding. I see that Ms Boswell took the sensible precaution of moving 1.5 metres away.

MS BOSWELL: 1.7 metres!

CHAIR: In the three-and-a-half minutes, Ms Bennett, is there anything else you want to do?

5

MS BENNETT: No, Chair, thank you.

CHAIR: I understand we are going to resume at 9.00 am Brisbane time tomorrow, 10.00 am Sydney, is that correct?

10

MS BENNETT: If the Chair pleases.

CHAIR: We will adjourn until 9.00 am Brisbane and 10.00 am Sydney.

15

Thank you for your appearances, Ms Boswell and Ms Taylor.

THE WITNESSES WITHDREW

20

**ADJOURNED AT 3.32 PM (AEST) UNTIL FRIDAY, 27 NOVEMBER 2020
AT 9.00 AM (AEST)**

Index of Witness Events

MS "SHONTAYA", AFFIRMED	P-291
EXAMINATION-IN-CHIEF BY MR CROWLEY QC	P-291
QUESTIONS BY THE COMMISSION	P-323
THE WITNESS WITHDREW	P-324
COMMISSIONER NATALIE LEWIS, AFFIRMED	P-325
COMMISSIONER APRIL LAWRIE, AFFIRMED	P-325
EXAMINATION-IN-CHIEF BY MR CROWLEY QC	P-327
QUESTIONS BY THE COMMISSION	P-351
CROSS-EXAMINATION BY MS MCMILLAN (Counsel for Queensland)	P-352
THE WITNESSES WITHDREW	P-354
MS CATHERINE MAREE TAYLOR, SWORN	P-355
MS LOIS BOSWELL, AFFIRMED	P-355
EXAMINATION-IN-CHIEF BY MS BENNETT	P-356
QUESTIONS BY THE COMMISSION	P-386
RE-EXAMINATION BY MR GOLDING	P-388
THE WITNESSES WITHDREW	P-390

Index of Exhibits and MFIs

EXHIBIT #8.16 - STATEMENT OF MS "SHONTAYA"	P-290
EXHIBITS #8.16.1 TO #8.1.30 - ANNEXURES TO STATEMENT OF MS "SHONTAYA"	P-291
EXHIBIT #8.17 - STATEMENT OF COMMISSIONER NATALIE LEWIS	P-326
EXHIBITS #8.17.1 TO #8.17.7 - ANNEXURES TO STATEMENT OF COMMISSIONER NATALIE LEWIS	P-326
EXHIBIT #8.18 - STATEMENT OF COMMISSIONER APRIL LAWRIE	P-326
EXHIBITS #8.18.1 TO #8.18.5 - ANNEXURES TO STATEMENT OF COMMISSIONER APRIL LAWRIE	P-326
EXHIBIT #8.19 - STATEMENT OF MS CATHERINE MAREE TAYLOR	P-356
EXHIBITS #8.19.1 TO #8.19.83 - ANNEXURES TO STATEMENT OF MS CATHERINE MAREE TAYLOR	P-356
EXHIBIT #8.20 - STATEMENT OF MS LOIS BOSWELL	P-357