



TRANSCRIPT OF PROCEEDINGS

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

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

9.30 AM, FRIDAY, 27 NOVEMBER 2020

DAY 5

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

CHAIR: Good morning, everybody. I will ask Commissioner Mason to formally acknowledge the Welcome to Country for the fifth and final day of the hearing.

5 COMMISSIONER MASON: Thank you, Chair. As it's our last day, I would like to give an being acknowledgment of the translators who have translated the English into Ngaanyatjarra for this hearing, Lorna Wilson and Linda Riv.

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

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

I would now like to read the content warning message. This hearing will include evidence that may bring about different responses for people. It will include
20 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, 131 114, Beyond
25 Blue on 1300 224 636, or your local Aboriginal Medical Services for social and emotional wellbeing support.

Thank you, Chair.

30 CHAIR: Thank you very much for that, Commissioner Mason.

Yes, Mr Crowley.

35 MR CROWLEY: Thank you, Chair. The witnesses we have for the first session this morning, we have Candice Butler who is present to give her evidence in the hearing room in Brisbane, and then we have Dana Clarke from New South Wales and Olivia King from South Australia, each joining us on the videolink, and I think they're all present now and ready to go.

40 CHAIR: We have two present on the screen and we're waiting for the third.

MR CROWLEY: And we have Ms Butler present in the hearing room in person.

45 CHAIR: All right. Well, no doubt Ms Butler will appear on the screen in due course.

Thank you very much, Ms Butler, Ms Clarke, Ms King for appearing one way or

another to give evidence to the Royal Commission. Just so you're aware, Mr Crowley is in the Brisbane hearing room and along with Mr Crowley in the Brisbane hearing room are Commissioners Mason and Atkinson. Commissioner McEwin and myself are in the Sydney premises of the Royal Commission.

5

I will ask you, please, to follow the instructions of Commissioner Atkinson's associate who will administer the affirmation to you.

10 **MS CANDICE BUTLER, AFFIRMED**

MS DANA CLARKE, AFFIRMED

15

MS OLIVIA KING, AFFIRMED

20

CHAIR: Thank you. Yes. Mr Crowley will now ask you some questions.

EXAMINATION-IN-CHIEF BY MR CROWLEY

25 **MR CROWLEY:** Yes. Thank you, Chair. First of all, could I start with some introductions.

30 Ms Butler, if you could please tell us about yourself. You're a First Nations woman here from Queensland? Will you just tell us about your background and where you're from?

35 **MS BUTLER:** Good morning everybody. My name is Candice Butler and I'm a proud Aboriginal woman with strong links to Yarrabah, an Aboriginal community outside of Cairns. Unfortunately, due to the impacts of the Stolen Generation, I'm unaware of my traditional links. However, I'm on a journey of discovery and learning but I would like to pay my respects to fellow First Nations people joining the hearing today, as well as pay my respects to the traditional owners of the lands on which I live and work every day.

40 **MR CROWLEY:** Thank you, Ms Butler. Could you tell us what your current role is and what you do?

45 **MS BUTLER:** Sure. I'm presently the Director of Innovation and Practice Development with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak and I have been there for five years now.

MR CROWLEY: Thank you.

Ms Clarke, if I could ask you then, you're a First Nations woman from New South Wales?

5 MS CLARKE: Yes.

MR CROWLEY: Could you tell us about where you've come from and what your background is.

10 MS CLARKE: Yes, my name is Dana Clarke and I'm a Worimi Biripi woman from the mid-north coast of New South Wales. I'm currently the Chair of AbSec in New South Wales, which is the peak organisation for Aboriginal child protection and families and communities, and I'm also the CEO of Burrun Dalai, which is an agency
15 restoration, preservation and a range of services for Aboriginal people across 52,000 square kilometres.

MR CROWLEY: Yes, thank you, Ms Clarke.

20 Now, Ms King, if I could come to you. You're not a First Nations person but you have for a long time been involved in working with First Nations people and within organisations that provide support services to First Nations people. Could you just tell us a little bit about your background?

25 MS KING: Yes. So I'm Zooming in today from Kaurna country, and I represent Aboriginal Family Support Services. We are the peak child protection Aboriginal community controlled organisation here in South Australia, and we've been running for 42 years.

30 My position in the organisation at the moment is an NDIS Project Manager role, but previous to this role I've worked in residential care and prior to that I worked 13 years across the disability sector here in South Australia.

35 MR CROWLEY: And, Ms King, in addition to your professional work, personally you also have a role, an important role as a godmother.

MS KING: Yes.

40 MR CROWLEY: Just tell us about that.

MS KING: Yes. So my darling god-daughter, she will be 15 this year and me and her mother actually went to high school together, and that's when she became pregnant with my god-daughter, so she is a child of Aboriginal descent, both her
45 disability, autism and a physical disability. So she requires 24-hour care and really high levels of support.

MR CROWLEY: Yes. Thank you. No doubt your insights and experience working with your current role but also as a godmother inform the perceptions you can tell us about today.

5 MS KING: Yes. Absolutely.

MR CROWLEY: All right. Thank you. If I could just go back then and confirm if each of you could just indicate, each of you has provided a statement for the Royal Commission, a written statement already.

10

MS CLARKE: Yes.

MS KING: Yes.

15 MS BUTLER: Yes.

MR CROWLEY: The contents of the statements, can you confirm they are true and correct to the best of your knowledge and belief?

20 MS CLARKE: Yes.

MS KING: Yes.

MS BUTLER: Yes.

25

MR CROWLEY: Chair, if I could tender each of the statements, please, the statement of Ms Butler is Tender Bundle B Volume 3, Tab 1, and if it can be marked as Exhibit 8.2.1.

30 CHAIR: You mean 8.20.1?

MR CROWLEY: I've got 8.21.1.

CHAIR: 21.1, is it? Sorry, I thought you said 2.

35

MR CROWLEY: Yes, thank you.

CHAIR: Yes, Ms Butler's statement can be marked in that way.

40

EXHIBIT #8.21 - STATEMENT OF MS CANDICE BUTLER

MR CROWLEY: And the statement of Ms Clarke is in Tender Bundle B, Volume 1 at Tab 5, and if that could be marked as Exhibit 8.22.

45

CHAIR: Yes, that can be done.

EXHIBIT #8.22 - STATEMENT OF MS DANA CLARKE

5

MR CROWLEY: Ms King's statement, I tender that, if that can be marked, it's in the bundle B Volume 1, Tab 6. If that could be Exhibit 8.23, please.

CHAIR: Yes. That also can be done. Thank you.

10

EXHIBIT #8.23 - STATEMENT OF MS OLIVIA KING

15 MR CROWLEY: Now if I can come back, Ms Butler, to you, and if you can tell us a little bit more about QATSICPP and what the work is that the organisation does in that space.

20 MS BUTLER: Yes. QATSICPP are the child protection peak body here in Queensland, we provide advocacy and support and training to Aboriginal and Torres Strait Islander community controlled organisations across the State, so we cover all the way from the Torres Strait Islands down to the Gold Coast and out to Mount Isa and Beaudesert as well. I have been extremely privileged to hear the experiences and have learnings of working alongside my colleagues who work within Aboriginal and
25 Torres Strait Islander community controlled organisations, specifically within child protection.

MR CROWLEY: Thank you.

30 Now, in terms of the community controlled organisations, are you able to tell us how many organisations QATSICPP is in contact with and represents as a peak body?

35 MS BUTLER: Across Queensland we have approximately 35 member organisations who provide family wellbeing services or family participation services or fostering kinship care services, and a majority of those organisations are Aboriginal Medical Services too as well. So a broad range of wealth and experience and knowledge within those organisations.

40 MR CROWLEY: We heard some evidence earlier in the week about Family Wellbeing Services, and that that service was being provided, in many instances, through the Aboriginal Medical Services. They are part of your membership of QATSICPP as a peak body?

MS BUTLER: That's correct.

45

MR CROWLEY: Now could I ask you, Ms Clarke, if you could tell us, please, you've had dual roles you've told us about. First of all, could you tell us about

Burrin Dalai and what the work is done by that organisation?

5 MS CLARKE: Burrin Dalai was established after the Bringing Them Home Report, out of the need to have Aboriginal care for Aboriginal children. At that time we provided purely home care services for Aboriginal children, but as at currently what we do is we provide preservation services, restoration services. We provide NDIS services. We have a disability service. We have a happy clinic, which is where we use psychologists and literacy and numeracy teachers. We have occupational therapists to address the needs of our children in care. We also have youth workers.
10 We have people that go out in the community and do community development and all aspects of Aboriginal children, family, communities' lives, and we advocate for Aboriginal children and families that come into contact with the child protection system.

15 MR CROWLEY: And then in your role as the Chairperson at AbSec, can you tell us about AbSec and what function and role it has?

MS CLARKE: AbSec is the peak service in New South Wales for child protection, communities and families. We provide advice to government on issues arising that
20 affect our communities. We advocate for our communities on a regular basis. We do a lot of community consultation. We work with Government around Aboriginal self-determination, and the importance of ACCOs within New South Wales. Regularly I do roadtrips. We currently have about 581 members. We have, I think about 60 of those are Aboriginal community-controlled organisations. AbSec is also
25 really strong on working with Government about data sovereignty for our communities and for our families and ensuring that we are able to make decisions about our own kids and their own families and to keep our kids safe in community and in culture on community.

30 MR CROWLEY: Yes. Thank you, Ms Clarke. Can I just ask you about two of the things you've mentioned there, about the work of AbSec and if you could give us a little bit more detail. The first one is the advice to Government. What sort of advice does AbSec provide?

35 MS CLARKE: We provide advice, I guess, on what is happening in the communities or communities are telling us, what they are asking us to ask government. We talk about --- we provide advice to government on the amount of our children that are entering the out-of-home care system and how that could be different, how we could change that. We talk about what the Government provide,
40 papers and briefings up to government. The recent changes to adoption and to guardianship. AbSec presented papers to Government about what our thoughts on that were, and we also, I guess, have provided information to Government on what we would like around being able to collect your own data and make decisions based on the data that we were able to collect.

45 MR CROWLEY: Now, that's the second thing I wanted to ask you about. You talked about data sovereignty as being an issue that's something AbSec is concerned

with. Can you just tell us about that and what that means?

MS CLARKE: For us in New South Wales and I would say nationally, the data that is collected about Aboriginal people isn't owned by Aboriginal people and we are
5 unable to access certain things that influence our decision-making about how things should progress for our families and our kids. And one of the things that, you know, we are very strong on is, you know, there are programs and there are projects and there are things that are rolled out that children with disabilities and children entering the out-of-home care system that are based on data that we never see and we don't
10 have any input into being able to provide or to provide advocacy for that or to provide support for that, it just doesn't happen. So data sovereignty for Aboriginal people is a major issue across Australia, I would say.

MR CROWLEY: And insofar as that has been something that has been
15 communicated or discussed with government, has there been advice from AbSec on data sovereignty?

MS CLARKE: Absolutely. One of the things that AbSec propose is an Aboriginal Commissioner to ensure that we can have oversight over those issues and data
20 sovereignty, especially around, I guess, our children and our communities because at the moment the decisions that are made are often outside what we see as important, what we see as being able to --- you know, it's about being able to provide support to (inaudible) self-determination, and about how we can make those decisions at a community level about what our children and families need and how we can best
25 support them in that.

And data sovereignty, you know, one of the things that we would like to do is be able to collect --- you know, in New South Wales at any given time we don't know where our children are. You know, we haven't been able --- we could ask how many
30 children, Aboriginal children are in the Hunter, and at any given time we will get three or four different responses. And the data collection isn't really accurate or reflective of what we should be asking and what should be provided by communities and by different Nations across New South Wales.

35 MR CROWLEY: Thank you.

Ms King, if I can come to you now, please. If you could tell us a little bit more about AFSS and what the organisation does, how long it has been doing it for and what
40 your particular role is there?

MS KING: So Aboriginal Family Support Services or AFSS, we have been going for 42 years and our Chief Executive Officer Sharon Williams has been the Chief Executive Officer of AFSS for the last 22 years. We service the South Australian Aboriginal community across 25 locations. We have head offices here in
45 Metropolitan Adelaide and Northern Adelaide. We have offices in Ceduna, Coober Pedy, Port Lincoln, Port Augusta, Mt Gambier, Berri, Murray Bridge --- what's the last one, I apologise to the office that I'm forgetting.

So we provide services focused around child and family safety. So we provide kinship and foster care services. We provide targeted intervention and reunification services. We provide community and safety wellbeing services which is in a few
5 different forms. We have a Reconnect Youth Program. We have training facilitators who do group and individual training about family safety, support, Circle of Security and healing. We do domestic violence support and housing. We have emergency relief. We do residential care and we do gambling supports as well. And we are also
10 the gazetted organisation for South Australia, so we do cultural consultancy with the Department about the placement of Aboriginal children across the State.

My role in the organisation involves a road to becoming an NDIS service provider at the moment. So South Australian disability community is not well represented by Aboriginal community controlled organisations, so our Board and Chief Executive
15 think that that's a good space for us to move into. So that's my project at the moment is getting us ready for that, and I do some Senior Practitioner role for the Positive Behaviour Supports in residential care. And my substantive role is managing residential care in metropolitan Adelaide.

20 MR CROWLEY: Yes. Thank you.

Ms Butler, if I can come back to you now. I want to ask you about the current state of the situation with the child protection system and the numbers of children, First Nations children, in care in Queensland and the reasons for that from QATSIPP's
25 point of view.

In your statement you've cited that 43 per cent of children in care in Queensland are First Nations children. But the First Nations children are only 8 per cent of the population here in Queensland. Are you able to tell us about, from QATSIPP's
30 perspective, what are the factors that lead to that over-representation?

MS BUTLER: Yes, sure. I think part of the reasons for the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care stem from, transgenerational trauma, but also, you know, just kind of, at times, a lack
35 of understanding about what can constitute as neglect and also, you know, from my practical experience working within the Department in Alice Springs, I think also just the impact of the Stolen Generation. We are still seeing that those impacts coming through here in Queensland.

I think, you know, another reason that we are still seeing the over-representation is due to, and in QATSICPP's perspective, the services not meeting the needs of Aboriginal and Torres Strait Islander children and young people and their families, and not being truly responsive to their needs in terms of, you know, allowing for self-determination and allowing Aboriginal and Torres Strait Islander community
40 controlled organisations to really take the lead and to provide services to Aboriginal and Torres Strait Islander children.
45

MR CROWLEY: Just on that point you've mentioned then about allowing community to take the lead and self-determination to be at the forefront in this field, just tell us a bit about how you would see that would be optimised?

5 MS BUTLER: So currently within the child protection legislation we do have the opportunity for the Chief Executive of the Department to delegate powers and functions to an Aboriginal community controlled organisation. It's QATSICPP's belief that if this was to be properly implemented, then it could allow for Aboriginal and Torres Strait Islander community controlled organisations to really sit with their
10 community, and really unpack and understand what services are required to genuinely meet their needs, rather than programs being rolled out that don't necessarily, you know, touch on what are the genuine needs of this community and ensuring the safety and wellbeing of our children.

15 MR CROWLEY: Now, in terms of the services and programs that are available, if we're talking about First Nations families where a parent has a disability and the children are in contact with child protection, are you able to tell us about what is currently available to support and assist the family and a parent who experiences the disability?

20 MS BUTLER: Yes. Currently within Queensland we do have 33 Family Wellbeing Services across the State, and the benefit of those being linked to an Aboriginal Medical Service, I believe, is absolutely important because especially if a parent is presenting with a disability then they would be able to get the medical and emotional
25 support that they require. Our Family Wellbeing Services are more than well placed to provide support to Aboriginal and Torres Strait Islander children, families and especially parents who are experiencing disability.

I think one thing though, that if we could have the opportunity is that our Family
30 Wellbeing Services although are fantastic and are able to go above and beyond, we still don't see the funds or the appropriate investment within Aboriginal community controlled organisations to be able to provide those services and especially in the area of disability support, that is really lacking, and I think if we were able to provide opportunity and positions within those Aboriginal Medical Services and within our
35 Family Wellbeing Services, to have disability services specialists, then that will enhance the service that families and parents are provided.

COMMISSIONER ATKINSON: Mr Crowley, may I interrupt? I've been handed a note by the Auslan interpreters. I think each of the witnesses is speaking a little too
40 quickly for them. I know you have a lot to tell us but if each of you could slow down, that would be useful, particularly to our Auslan interpreters. Thank you.

MS BUTLER: Thank you.

45 MR CROWLEY: Thank you, Commissioner.

I was going to ask you then, Ms Butler, just in follow-up there, you talked about

what would be needed would be ideally a specialist disability service that would be available through a community controlled health organisation. Are there currently any disability specialist services that you are aware of which are being provided in that way?

5

MS BUTLER: Unfortunately not. I'm not aware of any that provide disability-specific services.

10 MR CROWLEY: In your statement you've cited that 43 per cent of children out-of-home care being First Nations children. Yet you've contrasted that with only 3 per cent of funding being allocated to the community controlled organisations. Just in terms of those figures, how do you see that the way forward for really utilising those community controlled organisations would be tied to the funding that goes into it?

15

MS BUTLER: Thank you. I think the genuine investment does need to shift. If we see the disproportionate representation of Aboriginal and Torres Strait Islander children and we put that in relation to the current funding, obviously that is nowhere near the funding that is being provided to mainstream organisations and those 20 organisations that receive funding who are Aboriginal and Torres Strait Islander community controlled is limited. And I think we even saw that in the recent Family Matters Report too as well in terms of they reported that there is a disproportionate investment within Aboriginal and Torres Strait Islander community controlled 25 organisations. And I have no doubt that they do go above and beyond, but the investment does need to shift and we do need to see Aboriginal and Torres Strait Islander community controlled organisations better funded to provide specific targeted resources and support in all areas.

30 MR CROWLEY: And from a cultural consideration and perspective, how important does QATSICPP consider the community controlled organisation's role is in assisting First Nation's families in contact with child protection system?

35 MS BUTLER: Very important. I think you even put yourself in the shoes of people that are accessing services, and it's always more appropriate, it's always a more genuine engagement when you are seeing people who are the same as you. So when you are --- and also who understand your story, understand your journey, understand 40 the issues that you are coming across when you're able to engage as an Aboriginal person or a Torres Strait Islander person with fellow Aboriginal and Torres Strait Islander people, you feel better connected and you're able to work alongside families and children in a much more productive manner.

MR CROWLEY: Yes. Thank you.

45 Ms Clarke, can I turn to you now, please, and just pick up something that you've mentioned in your statement and following from what Ms Butler has been talking about. In your statement you've said that Aboriginal people are 10 times more likely to have children removed in your jurisdiction. And you go on to say that you

consider that's even more likely for First Nations parents, a First Nation parent has a disability. Could you just tell us then first of all about how, from your point of view, you see the drivers that lead to that type of over-representation?

5 MS CLARKE: I think the drivers for over-representation of families being in the
child protection system in NSW are complex and varied. However, I would say
currently in NSW almost 40 per cent of all children in care are Aboriginal children,
and if you take the data that we have available to us with Aboriginal children have
disabilities, that's a huge amount of kids and parents that are subject to the child
10 protection system that have disabilities.

I think Aboriginal families that become involved with the child protection system,
where the parent has a disability are doubly disadvantaged because at times they will
not speak about their disability. If they have a cognitive disability they won't talk
15 about that because they see that that may lead to their children being removed
because they have that disability. At times the drivers for the children with disability
are that the parents at times are fearful to get the support that they need because the
support system that's available to Aboriginal children in New South Wales is usually
mainstream-driven. There are some Aboriginal service providers but not a lot.

20 And I think all of the things that affect, I think, Aboriginal people being so well
known to the child protection system have been kind of disbanded. Like, you know,
Aboriginal people were systematically removed purely for being Aboriginal and the
outpouring of that is almost like a cancer that is growing in our communities where
25 people are coming out of, you know, whether they were institutionalised, whether
they were put into foster care, are coming out of those things and want to be parents,
they become parents but they don't have parenting skills. So therefore they become
known to the child protection system immediately.

30 However, what happens is at times they're left there without any support or
intervention, and so therefore the children are removed. So instead of looking at our
families, I think what has also been said previously, where our ACCOs in our
community can provide those services to our families to help them stay where they
should be, which is embedded in culture and embedded in identity, don't happen.

35 So I think over-representation of Aboriginal people, you know, isn't reflective, they
don't recognise the trauma signals for Aboriginal people, they don't recognise
Aboriginal trauma, they don't recognise alcoholism, drug use and violence and things
are part of a trauma background. They don't see that. So I think, you know, as I say,
40 there's lots of things we need to explore in keeping our families safe, and I think the
first thing that we need to acknowledge is that Aboriginal people need to be given a
choice about changing, and they are not given that, especially people with
disabilities.

45 MR CROWLEY: Thank you. I want to pick up what you mentioned at the start of
the matters you talked about then. You spoke of something around 40 per cent of
children in out-of-home care being First Nations children in New South Wales.

MS CLARKE: Yes.

5 MR CROWLEY: Earlier you were talking about data and the importance of data and data sovereignty for First Nations people. I want to ask you, do you know if there is data that is kept by anyone to record the number of First Nations parents with disability whose children are going into out-of-home care or in contact with the system?

10 MS CLARKE: Not that I'm aware of. I don't think that that's data that's collected. And I think in New South Wales there is manipulation of data around some of those circumstances. I think, you know, there's shifting of kids into the NDIS system but, you know, their data going into the NDIS system that should be reflective in the child protection system. I don't see that data around children with disability for
15 Aboriginal children or their parents is reflected or recorded appropriately.

MR CROWLEY: Can I just ask you about that, if you'd explain what you have just identified as the shifting of children being counted under NDIS rather than the out-of-home care system?

20 MS CLARKE: I think the out-of-home care system in NSW, because I know that there has been a (inaudible) to say that there has been a 30 per cent reduction in Aboriginal children coming into care in NSW. I don't believe that that's true. What I believe is that there's a shifting of data. There's a shifting of data to reflect that, and I
25 think children with a disability, there's a constant argument between Government about whether it's out-of-home care or whether it's NDIS. I also think that there's a shifting of data about whether children go into guardianship or whether children are adopted or whether children go into the out-of-home care system, whether they go into alternate arrangements care system where they are not recorded as being in
30 out-of-home care, and a lot of our kids with disability go into that section of the statutory system because of their behaviours, because of their disabilities.

So I think data shuffling around children with disabilities within the child protection system is a big issue within New South Wales.

35 MR CROWLEY: And on that point about what you say, data shuffling, is that a reason from your point of view why data sovereignty is such an important fundamental for capturing and accurately recording data for First Nations people?

40 MS CLARKE: Absolutely it is, because without that data, how do we adequately provide the services that are needed by these children and these families? If we shift children to an ACA, which is an alternate care arrangement due to their disabilities where they're looked after in almost a residential service, but we don't record them as having a disability, what are we doing? We're doing a huge disservice to that child
45 and to their family. If we can't manage our own data and know what we need to develop and provide, and I take that to what was said before about the services that are available to our families are services that are not developed in the majority by

Aboriginal people. They're services to support families that come from outside of Australia or they come from mainstream services. They don't fit our families and they don't reflect the needs or reflect, I guess, the expectations that are put on those families by the child protection system. Aboriginal people don't fit into that box.

5 Which is I think there was a development of the Aboriginal Case Management Policy.

MR CROWLEY: Yes. Thank you.

10 Ms King, now, can I turn to you for you to give us some views about the experience in South Australia. You've said in your statement that First Nations children represent about 30 to 35 per cent of children who are in protection in South Australia, but that that is a figure which continues to rise and is disproportionate to the First Nations population. Again, if you could perhaps start with --- if you could
15 give us your views on behalf of AFSS as to what are the contributing factors that lead to that over-representation?

MS KING: Yes. Thank you. I think Candice and Dana have both done a really good job of describing similar experiences that we have here in South Australia. We
20 see the lack of targeted and funded interventions at the first point where concerns are raised as an issue and we find that we are often asked to provide support or sought for support at a time when families are at the very pointy end of child protection concerns or the threat of child removal.

25 MR CROWLEY: Can I just ask you about that then, Ms King. With the difference as to the point in time when support services might be provided, you've contrasted early intervention when concerns are first raised with the pointy end, and I take it the pointy end you're talking about when the Department is involved and is taking action which might be seeking an order or removal on long-term basis?

30 MS KING: Yes. If at the point where we are thinking that prevention is the best possible option for child removal or concern, we see that when we are being asked to provide services, it's not when concerns are first raised, and it's not when the Department of Child Protection are first having interaction with the Aboriginal
35 families or children that we work with. We see it once concerns have been raised, and a number of concerns have been raised, and once families have had several interactions, we see, in instances where families are self-referring to our organisation rather than being referred by the Department to our organisation for targeted intervention, reunification or other supports.

40 MR CROWLEY: Just on that point about referral, is there some procedure or process by which the Department does have a role that it is to play in the referral to organisations like AFSS at the early first sort of notification and concern stage?

45 MS KING: Not that I'm aware of.

MR CROWLEY: How does the Department then refer families to AFSS when they

are already taking some type of action or involved with the family?

5 MS KING: In some cases it would depend specifically on the social worker or the senior practitioner involved with that family, and whether they are personally aware of our services and the intervention or supports we can provide, and at other times it's through our cultural consultancy once a child has already been removed that we become aware that there is a concern.

10 MR CROWLEY: Now, cultural consultancy, just explain for us, what that means and who is involved in that?

15 MS KING: Yes. So as the gazetted organisation, and there was a significant change in legislation around that in the last three years. So prior to the legislation change in 2017, as the gazetted organisation AFSS would have an interaction prior to a child's removal and we would also have the opportunity to make comment on where we think best a child is to be placed, and that was through our cultural consultancy program, and they were provided a large amount of information from the Department on the situation around why there are concerns about that child's safety.

20 Since the change of the legislation, now the cultural consultants are informed either when a removal is definitely going to be taking place or when it has already happened. They're provided a short summary of information and they are often asked their opinion on a child's placement once that child has already been placed, or asked to comment on a child placement with very small amounts of information but
25 the decision to remove that child has already been made.

MR CROWLEY: And from your perspective in practice, can you tell us about how and what effect the implementation of the consultant position and process has for First Nations families?

30 MS KING: With the AFSS gazetted team and their cultural consultation, if they're not the people consulted, to our awareness, the only First Nations people consulted are people that work for the Department of Child Protection, which could be considered concerning, and the people working for the Department of Child
35 Protection are also only privy to information that they're provided by the Department of Child Protection. So when we were able, as an organisation, to go through information and have our own connections in community and relationships with other organisations, we were able to make an informed decision and seek further information when we were able to --- as we needed to, sorry. Whereas now, the
40 information that we receive and the option for what we --- the capacity that we do or don't have to comment is significantly reduced. So without the cultural consultants being involved and having a true say, the concern is that the only say is had by principal Aboriginal consultants who work for the Department of Child Protection, and there are 12 of those in South Australia, to our awareness.

45 MR CROWLEY: And your concern about the principal Aboriginal consultant performing that role, one thing you've said is they are limited in terms of the

information coming solely from the Department as opposed to AFSS who can make their own inquiries and connections through the community?

5 MS KING: Yes, and we find ourselves in situations where if and when we do have a discussion with the principal Aboriginal consultant working with DCP, they are sometimes in a position where they haven't met the child or don't have a really good firsthand experience of that child, and when we're providing information or having dialogue around our concerns or why we believe there's not a concern, the information that we have isn't information that they were provided by DCP. So the social worker or the senior practitioner at the Department of Child Protection are the people who provide the information to the Principal Aboriginal consultant that allow them to make their decision.

15 MR CROWLEY: In terms of their role of providing that cultural perspective, would you just explain for us what weight or what effect does the advice from the Principal Aboriginal consultant play in the decisions that might be made for the child and the family?

20 MS KING: To my --- a lot of the time, the paperwork that we receive or see will simply say that the Principal Aboriginal consultant has been consulted and it won't give us much further information about that. I have attended one meeting at the Department of Child Protection in my two years at AFSS where there has been an Aboriginal Principal consultant present.

25 MR CROWLEY: Yes. Thank you.

Now, could I come back to you, Ms Butler, and I want to ask you about one of the matters which has been raised in your statement but also we've spoken about it in passing this morning.

30 I want to ask you about the Aboriginal and Torres Strait Islander Child Placement Principle, and how it exists in Queensland both in its legislative form but also in practice. You've spoken about, in your statement, the Principle and identified the five key core elements. Now, that is part of the current legislation, legislative framework in Queensland?

MS BUTLER: Correct.

40 MR CROWLEY: What I'm interested in, in your view is, is how you see it's being implemented and operationalised in practice by individual caseworkers within the Department.

45 MS BUTLER: Yes. No. Thank you. Great question. Similar to Commissioner Lewis in yesterday's evidence, I'm a massive advocate for the Aboriginal and Torres Strait Islander Child Placement Principle. I think it should truly guide everybody who works within child protection; whether you are a frontline practitioner or sit with the Director-General, your position and your role should really be guided by all

five elements of the Child Placement Principle.

5 My view of the actual implementation to date of the Aboriginal and Torres Strait
Islander Child Placement Principle varies. I think we see some child safety service
centres being very proactive in ensuring their staff are adhering to all five elements
but I couldn't genuinely say that it is being embedded throughout the entire spectrum
of child protection, especially those four, five elements. I think there is still a
10 reliance on the Placement Principle of the Aboriginal and Torres Strait Islander Child
Placement Principle and I think people, once they see that one, then it's "Oh, yes,
great, tick, children have been placed with family." But we've got four other
elements in terms of prevention, in terms of partnership, in terms of participation and
in terms of connection. So we're not seeing the full gamut of those five elements
being truly implemented in practice.

15 MR CROWLEY: Now, with the five elements, each of them is really to be given an
equal weighting and they should all synthesise together for all decisions that are
being made. Is that how you see it?

20 MS BUTLER: Absolutely, correct. Yes.

MR CROWLEY: Your evidence is that it still seems that notwithstanding that is
what the legislation identifies as the key principles, the Placement Principle is still
being given undue weight, and almost sole weight sometimes?

25 MS BUTLER: That's correct, yes.

MR CROWLEY: In terms of the individual caseworkers who are making decisions
for First Nations families and children, are you able to tell us about your
understanding about the level of training and knowledge that those officers may have
30 about the Principles and how they should be put into effect?

MS BUTLER: Yes, absolutely. I think I myself in my role have been approached by
sections of the Department to provide training in the Aboriginal and Torres Strait
Islander Child Placement Principle, but I don't think from my knowledge that it has
35 been rolled out across the State in terms of genuine training. I think when it was first
implemented within the legislation we were asked to kind of do a roadshow with
different regions as to, you know, what does the Aboriginal and Torres Strait Islander
child placement look like. However, there's a lot of room for improvement in
ensuring that case managers genuinely understand how do they implement the Child
40 Placement Principle within their practice. I think, like all good things, we can all be
trained every day in something, but unless you are sitting with your team leaders,
unless you are sitting with your managers and unpacking, "Okay, well, how did you
embed the Aboriginal and Torres Strait Islander Child Placement Principle today
with your work", then, you know, I think you need that hand-in-hand. You need
45 training but you also need the follow-up supervision and mentoring and to ensure
that genuine implementation of the Child Placement Principle.

MR CROWLEY: Is there any way that you are aware of at the moment that there can be a check and a monitoring to ensure that those --- the principle, all five elements are being embedded into decision-making?

5 MS BUTLER: So SNAICC, who I am also a board member for, they have released a really great resource as to how people can implement the Aboriginal and Torres Strait Islander Child Placement Principle, and that's a resource that is readily available, you know, not to give ourselves as a peak body more work, but we're always willing and able to, you know, have those conversations as to how people can
10 implement the full five elements of that Aboriginal and Torres Strait Islander Child Placement Principle. But there are resources out there, and I think it's more so just an awareness-building opportunity, but also just an opportunity to enhance our best practice and ensuring that we are meeting the needs of Aboriginal and Torres Strait Islander children, families and their parents.

15 MR CROWLEY: Just focusing on the parent aspect then, for a First Nations family where the parent, First Nations parent has a disability, I take it your view is that the principle and all its elements still has equal application to assisting the parent to be part of the decision-making?

20 MS BUTLER: Absolutely. I think the Child Placement Principle has even more opportunity to really enhance the service and the support provided to our First Nations parents with disability to allow them to choose who they would like to be involved in the decision-making process but also just to hear their voice and for them
25 to have a voice and that it's okay for them to have a voice.

MR CROWLEY: Just on those last parts of your answer then, if we were to take the element of participation, that might be a way of giving effect to that core element of the principle for a parent with a disability to assist them to participate in
30 decision-making?

MS BUTLER: Absolutely, and I think drawing on the concept of family-led decision-making in correlation with that participation element is really fundamental.

35 MR CROWLEY: And then if we can just tease it out a bit more, to enable a parent with a disability to be able to participate fully in that decision-making, how would you see that that could be done through the provision of services?

40 MS BUTLER: Absolutely. So I think, you know, that we're very fortunate in Queensland that we have had the rollout of the Family Participation Programs, and so therefore I feel if a parent was to come into contact with the child protection system and were able to, you know, connect with the Family Participation Program, they would be able to undertake a family-led decision making process where all members of the child's family come together and, you know, decide what is best for
45 this child at this time. And also ensuring that the voices of the parents who may have a disability is being captured too as well.

MR CROWLEY: I might just ask you about those two things you've spoken about, the Family Participation Program. Just tell us about that, what's that program and initiative?

5 MS BUTLER: Sure. The Family Participation Program was rolled out last year, and their primary function is to ensure that parents and children who come into contact with the child protection system have an opportunity to have voice and choice in any aspect along their child's protection continuum. We focus so they can be referred to a Family Participation Program at the early intervention stage, you know, when they
10 are looking at going on to orders or even when they are currently on orders and they are, you know, any significant decision is being made.

So the Family Participation Program, their role is to ensure a family-led decision-making process occurs with the children and the families, to ensure that
15 they've had voice and choice and self-determination in the child protection system.

MR CROWLEY: And who provides that program?

MS BUTLER: Currently there are 30 Aboriginal and Torres Strait Islander
20 community-controlled organisations across the State who provide family participation programs. So our member organisations.

MR CROWLEY: Yes. Thank you.

25 COMMISSIONER McEWIN: Mr Crowley, before you move on, may I ask Ms Butler, the Family Participation Program, are you aware of or what support for First Nations parents with disability --- are you aware of any specific support or what's your knowledge and understanding of how First Nations people or parents with
30 disability can be supported as part of that program?

MS BUTLER: In relation to the first part, in terms of if I'm aware of any specific support being provided through our Family Participation Program for a First Nations parent with a disability, I'm not aware. However, I do feel as though the Family Participation Program would be able to ensure participation, they would be able to
35 ensure that the parents are supported, and I think with further investment within that Family Participation Program and the opportunity for specialists roles within that Family Participation Program, then we can truly see the support to be provided to First Nations parents with disabilities.

40 COMMISSIONER McEWIN: Okay. So perhaps when a parent might become first into contact with that program, a parent with a disability, is there some sort of assessment or some sort of conversation about what kind of support might be needed?

45 MS BUTLER: I can't answer that right off the top of my head, but my initial thoughts would be yes, that they would sit with --- the Family Participation Program would sit with the family and identify any support needs that are required to ensure

that the family have --- sorry, the parents are being supported to participate fully in the family-led decision-making process.

COMMISSIONER McEWIN: Thank you. Thank you, Mr Crowley.

5

MR CROWLEY: Yes. Thank you, Commissioner.

Now, Ms Clarke, could I come to you now and perhaps just pick up this same topic with you and if you could tell us, please, from the New South Wales perspective, how the Aboriginal and Torres Strait Islander Child Placement Principle is being implemented in practice from your perspective?

10

MS CLARKE: I would say initially that the Aboriginal Placement Principles have been in place for 36 years and we actually should, I guess, take that at the forefront of the discussion. In all honesty, the Placement Principles are used to, I guess, at times force placements that the Department wants in New South Wales, and at other times they're totally a tick and a flick. It's a "Let's go through this, let's --- how do we talk to kin, are they suitable", but there is no family-led decision-making in adherence to the Aboriginal Placement Principles. I think what Candice said is very true. We need to have the family-led decision-making and the community decision-making process involved in the Aboriginal Placement Principles. I believe that the Placement Principles should be implemented at the first time Aboriginal families become known to the child protection system. Whether it becomes --- whether they go into the statutory system or whether they go --- and exactly what we were saying, I think what Olivia was saying is that in most instances you don't become aware of Aboriginal families until it's the pointy end of the stick.

15

20

25

The Placement Principles clearly guide that there are other ways to work with Aboriginal families, and I think whilst the principles are about kids entering the out-of-home care system, they could very well be utilised in a much more effective way of stopping our kids entering the system, but also our families and kids being able to get what they need. Because when you talk about participation, when you talk about prevention, when you talk about placement and connection, they're all things that need to be considered and they're not. Partnership, our families are never offered to work in partnership. There is always a position of power in the child protection legislation and child protection system, and often our families, even though the Placement Principles are there, saying that children should be placed with kin, that doesn't happen. I mean, our service is funded to do family consultation, as is Olivia's, and it's a service that we are actually advised by the Department we will be paid for. If we don't agree to do the family consultation with a certain family that is known to the Department, they will proceed without asking for consultation, because they have to obtain documentation to pay us. If we don't participate, the child goes into the child protection system without Aboriginal consultation. And we always do, without payment. We do that on a regular, regular basis because the placement principles are kind of pushed to the side around the need to get a child into a placement. Does that make sense?

30

35

40

45

MR CROWLEY: You've mentioned about the family-led decision-making as being something that should form part of the implementation of the Principle.

MS CLARKE: Yes.

5

MR CROWLEY: Can you just explain for us perhaps how you would see that that could be done in an ideal way in New South Wales?

MS CLARKE: In an ideal way in New South Wales we would be getting families together to work with, you know, people involved in the child protection system, especially people with disabilities. Families know the members of their families and how we can support them with disability. If we could implement that family-led decision-making that would lead to a family action plan, right at the beginning, when they're first known and we start to implement the Placement Principles, we go up to prevention. Family-led decision-making can be a big part of prevention. Family-led decision-making can be a big part of partnership and with participation. Participation should be by all of the people within that person's family and community that are available --- we know at times that's not always practical, but in an ideal world, to me, family-led decision-making should be at the beginning rather than at the pointy end when it's time for children to be removed, or where there have been so many reports on children that it's far too hard for families to actually work with the Department to have their children returned to them.

25

MR CROWLEY: Yes. Thank you, Ms Clarke.

Ms King, could I ask you now, please, the position in South Australia, we've heard some evidence about the legislation in South Australia from Commissioner April Lawrie, and I wanted to ask you, from AFSS' perspective, how is the principle being implemented on the ground for First Nations children that your service supports?

MS KING: Thank you. I think not dissimilarly to Candice and Dana, it doesn't filter down particularly well. And I think Sharon, my Chief Executive, uses a really great analogy of turning the Titanic when she talks about the implementation of the principles and how that's working. Because we do think that people at the top and the big decision-makers across the Department may well have very good intentions with the principle, but the way it filters down, it ends up being at the hands of individual social workers and senior practitioners in the organisation to make sure that it is completely implemented. And we don't see that prevention partnership or participation come before placement. We see, for us, placement is probably --- not -- - quite similarly to what Candice said, that's the part that gets a lot of focus, rather than the point before it, whereas they should all equally be considered.

MR CROWLEY: Just in contrasting what you've said there about there may be good intentions at the higher levels but how that then filters down to individual social workers or senior practitioner level, one thing that you've referred to in your statement is the possibility of better training staff about the Principle in practice. Is

45

that something that you would consider would be something that might improve the implementation in practice of the principle?

5 MS KING: Yes, I think adequate training on the Principle would be fantastic, and I think it would be fantastic if that could be facilitated by First Nations people who aren't employed by the Department of Child Protection. And I think that appropriate reflection should be used. So not only the initial training to make sure that people understand the principles but also that as they're going about their day to day business, that there's a formal space for reflection and reporting about how the principles were used and how they worked.

10 MR CROWLEY: And just on that, when Ms Butler was talking a moment ago about, for example, SNAICC providing publication which gives practical examples about how the key elements might be implemented, is that sort of resource something that, from your view, might assist in that thoughtful reflection about making sure that the principle is being put into effect in actual practice?

15 MS KING: Absolutely. I think SNAICC do a wonderful job with the representation that they do of Aboriginal and Torres Strait Islander children. I think that that tool would be fantastic to be used.

20 MR CROWLEY: Yes. Thank you. Now, could I come back in the hearing room to you, Ms Butler. I want to ask you in particular now some aspects about the decision-making as you understand and see it within the Department, for families with a parent --- First Nations families with a parent with a disability. You have referred in your statement to effectively the Department doesn't understand disability and its impact on parenting capacity. Just explain about that, what you mean by that?

25 MS BUTLER: I think from my past experience in being a practitioner, I think there is an opportunity for people's understanding and knowledge of disability, and how that may impact on a First Nations parent with a disability to definitely be expanded and explored further.

30 MR CROWLEY: There's a couple of things that you identify in your written statement. One is that there's a limited training for workers about disability. And also, following from that, an inadequate understanding by staff about disability.

35 MS BUTLER: I think there is an opportunity for further training in the impact of disability on any parent's capability and capacity to parent. I think there is also an opportunity for the further exploration of referrals out to specialists who are able to provide support, diagnosis, you know, whatever that may be for parents who may be presenting with a disability.

40 MR CROWLEY: Now, the point that you've mentioned there about the issue of capacity, as I understand your evidence you're making a distinction, it's not just simply knowing about or identifying the disability. The real effect should be what is the effect that that may have on parenting capacity. Do you see that that is

something which the Department is aware of and officers are able to put into their decision making?

5 MS BUTLER: From my knowledge and understanding, I think that there is opportunity for further exploration on what exactly does this disability impact on a parent's capacity to properly care for their child. A person may have a disability but that should not be the reason why a child is placed into care. It should be about, okay, well, how can we support this parent to genuinely --- with that genuineness in ensuring they are able to care for their child without necessarily going on to a
10 statutory order or being placed away from family, away from country and away from kin.

MR CROWLEY: One of the things that we've heard about during this week has been the Structured Decision-Making tools and assessments and how they may be
15 used by practitioners to assist them with their decision-making. Are you able to tell us, from your experience and viewpoint, how they are used as a guide and how that fits in with then ultimately a case worker having still a discretion to exercise?

MS BUTLER: I think with the Structured Decision-Making tool, the tool in itself
20 there is definite opportunity for improvement. However, there is still that opportunity for professional override, you know, when you are having certain scores come out with the Structured Decision-Making tool. However, I'm not aware of how regularly that professional override is utilised.

25 I think, though, you know, just to --- and this again comes back to my personal experience as a practitioner, due to the timeframes, due to, you know, being heavily involved in other pieces of work, sometimes your ability to reflect and assess using your professional judgment is hindered when you do rely on a tool such as the Structured Decision-Making tool.

30 MR CROWLEY: If we were just to consider an example for a moment. The Structured Decision-Making tool, if it's administered the answer might be there's a risk, for example?

35 MS BUTLER: Yes.

MR CROWLEY: For this child but the practitioner still retains the discretion and the ability to override that if they consider in their professional judgment that
40 notwithstanding that result from the tool, there isn't such a risk?

MS BUTLER: That's absolutely correct. Yes.

MR CROWLEY: And how do you see then the understanding and assessment of an impact of disability on a parent's capacity to be a parent and ensure safety for the
45 child? Where does that fit in, in the use of the tool and the judgment?

MS BUTLER: Yes. Great question. I think similar to what I was speaking to before

in terms of understanding capacity, if we alone as practitioners are relying on a tool to guide our casework, then especially myself being a social worker as a background, I feel as though then we are not staying true to our professional judgements. We still should be having those robust conversations with our team leaders, with our
5 managers, with our senior practitioners if we are thinking "Okay, well, yes, the score has said high, however I've been in conversations with this family, I can see that there aren't necessarily, you know, there isn't any risk to the child right now, what is it then that we can do to, you know, potentially override this score that has come out of the Structured Decision-Making tool.

10

MR CROWLEY: Yes. Thank you.

Ms Clarke, can I ask you on the general area of decision-making within the Department, in your statement you've referred to a number of matters which you
15 consider may have bearing upon the decisions made by Departmental officers. So you've referred to cultural bias and then also an insufficient number of First Nations staff in the Department and a need for more supports. I want to ask you about those things. How do you see that they bear upon the decision-making of First Nations families, particularly with a parent with a disability?

20

MS CLARKE: I think the cultural bias is a huge issue for Aboriginal families but more so for Aboriginal parents with a disability. Because, you know, even the SDM is very much in it has a strong cultural bias, it's not based on being equitably used or having appropriate interactions with Aboriginal families. And I think the cultural
25 bias is lots of things, we know there is a huge amount of cultural bias. And so the implication for our families in that is that they have, you know, decisions are made about them based on people's own understanding of Aboriginality as opposed to having an Aboriginal person that does that assessment that actually understands Aboriginality and understands what disability in our community means. The cultural bias is huge for our families in all decisionmaking. And I think also, the people that undertake these assessments always have, as I say, that position of power over our families where, you know, quite often people don't answer appropriately, they use
30 depth of face -assessments. They identify, I guess, issues for our families that perhaps we may not identify as being a risk. And I think the lack of First Nations people within our child protection system is huge. What's even worse is a lack of First Nations people in the Department that make decisions about families and communities that they don't know. Whether ACCOs could strongly come into that role, line up families and be able to go through who they know within the family structures to have strong connections with those individuals that can support them,
35 that have worked with them through their process. I think it's one thing to have Aboriginal staff or First Nations people working within those services, they have to be people that actually are connected and --- because our communities are all different. Every one of our communities across Australia is different and that's not taken into consideration either.

40

So I think cultural bias in that regard is, I guess, the arrogance of thinking that they know what they know about the families, and they don't.

MR CROWLEY: Ms Clarke, the Department has, with AbSec, developed an Aboriginal Case Management Policy?

5 MS CLARKE: Yes.

MR CROWLEY: Which is, as I understand it, a framework to guide decision-making for practitioners. Will you just tell us about that and how that's developed and how it is being implemented?

10

MS CLARKE: The Aboriginal Case Management Policy came about way back in 2015. There was a --- DCJ decided that we would have --- I forget what we call it, but we got together with Aboriginal agencies, and what DCJ wanted us to do was develop our out-of--home care sector. The Aboriginal agencies and Aboriginal individuals- that were there, decided that "That's not what we want to do, what we want to do is stop our children coming into care, not to build a system that's going to continue to do that."

20 So the Aboriginal --- the reflection out of that was given there's 40 per cent of care in New South Wales that are Aboriginal children, why don't we have a policy that reflects that. Why are we trying to jam Aboriginal people into a mainstream policy that doesn't fit us? So the Aboriginal Case Management Policy was a recommendation by DCJ as a follow--up to that co-design project.

25 Now, DCJ tried to implement it but couldn't get it up, so AbSec did a State-wide consultation with all Aboriginal communities and developed the Aboriginal Case Management Policy. That was then presented to DCJ, it sat on DCJ's desk for 18 months before anyone looked at it, and it was released back to us to start to develop across the sector and to training.

30

That has just ended up as an ongoing disagreement over the vision of the actual policy, the Aboriginal community controlled organisations, AbSec, and Aboriginal individual families' idea of what the Case Management Policy and what the Department feels it should be. There has been ongoing, you know, back and forth over semantics about things like "facilitated" or "facilitating". There has been ongoing discussions in the Department about there's no money to develop this program.

40 So there has been some movement, but in all honesty, there has been a very difficult process in the Aboriginal sector to actually get up and motivate it, and it still hasn't been used. Not by DCJ.

MR CROWLEY: Yes. Thank you.

45 Chair, we have in this session until 10.35 Brisbane time. We've got about 10 more minutes to go. Those are the questions that I wanted to ask but I wanted to allow enough time for the commissioners to ask questions.

CHAIR: Yes. Thank you very much. I will ask first Commissioner Mason.
Commissioner Mason, do you have any questions?

5 COMMISSIONER MASON: No, thank you.

CHAIR: Commissioner Atkinson?

10 COMMISSIONER ATKINSON: No, thank you, Chair.

CHAIR: Commissioner McEwin.

COMMISSIONER McEWIN: No. Thank you, Chair.

15

QUESTIONS BY THE COMMISSION

20 CHAIR: We are making very good progress. Can I ask you, please, about what I understand to be the trials concerning the allegation that you refer to in paragraph 65 and following of your statement. What stage have those trials reached, and what form do they take?

25 MS BUTLER: Great question, thank you, Chair. At this stage it's still very much in implementation phase, I would say. It's not progressed further at this time. You know, it's more just the implementation, getting ready, what support would the two trial sites require in terms of getting ready. So unfortunately it hasn't started as yet but we are still working towards implementing that within the new year.

30 CHAIR: So we can regard that as a gleam in the Department's eye? All right. Thank you. That's the only question I want to ask.

35 May I thank each of you for your appearance today and for your very frank and clear statements which are of great value to the Royal Commission. So thank you again, and we appreciate your assistance.

MS BUTLER: Thank you.

40 MS KING: Thank you.

THE WITNESSES WITHDREW

45 CHAIR: Mr Crowley, what do we do now? Do we have an adjournment for 20 minutes?

MR CROWLEY: If we could, thank you Chair. The next witness is Richard Weston. He is scheduled to be available at 10.55 Brisbane time on video.

5 CHAIR: Yes, perhaps we could attempt to arrange for Mr Weston to be available, let us say, from 10.50 Brisbane time, 11.50 Sydney time, so we will come back at those times. If there is a difficulty in obtaining Mr Weston before 10.55, then someone can let us know and we will resume then.

10 MR CROWLEY: Ten to will be fine, Chair.

CHAIR: Thank you very much. We will adjourn.

15 **ADJOURNED** [10.28 AM]

RESUMED [10.52 AM]

20 CHAIR: Yes, Mr Crowley.

MR CROWLEY: Chair, we next have Richard Weston, who is joining us on videolink and I think he's available. But just as we're connecting, I wanted to read something out in respect of Mr Weston.

25 He is the CEO of the Secretariat of National Aboriginal and Islander Child Care, and as I said on Monday, sometimes during the hearing we get to a point where a Commissioner will know of a witness or had some involvement with the organisation or association of which that witness represents, and that's the case for Mr Weston.

30 Commissioner Mason, thank you for advising us that you've had some engagement with the Co-Chair of the Prime Minister's Indigenous Advisory Group with Mr Weston when he was CEO of the Healing Foundation. Further, as is noted on the Commission's website, Commissioner Mason was the CEO of the Ngaanyatjarra
35 Pitjantjatjara Yankunytjatjara Women's Council, and the NPYWC is a member of SNAICC, and they've been involved in the national Family Matters Campaign which is an initiative coordinated and auspiced by SNAICC. So with that being stated, we now have Mr Weston available on the screen.

40 CHAIR: Thank you, Mr Weston, for joining the Royal Commission to give evidence. Thank you for your statement. If you would be good enough to follow the instructions of Commissioner Atkinson's associate to administer the oath.

45 Before we do that, it would explain, although it may have been explained to you that Commissioners Mason and Atkinson are in our Brisbane hearing room. Commissioner McEwin and myself are in the New South Wales offices of the Royal Commission. Mr Crowley, of course, is also in Brisbane hearing room.

I will now ask you to follow the instructions of Commissioner Atkinson's associate.

5 **MR RICHARD WESTON, SWORN**

CHAIR: Thanks, Mr Weston. Mr Crowley will ask you some questions.

10

EXAMINATION-IN-CHIEF BY MR CROWLEY

MR WESTON: Yes. Thank you, Chair.

15

Mr Weston, could I just start off perhaps by getting you to tell us something about yourself. You're a First Nations man?

20

MR WESTON: Yes. My people are the Meriam people of the Torres Strait. Our home is an island called Mer or probably better known as Murray Island. My mother is Torres Strait and my father is Scottish. The family moved to the mainland in the 1940s and I was born on Gadigal country in Sydney, but grew up Whadjuk Noongar Boodjar in Perth.

25

MR CROWLEY: Thank you, Mr Weston. Today, as you come to speak to us with that background, you are the CEO of National Aboriginal and Island Child Care, or SNAICC?

30

MR WESTON: Yes. That's correct, better known as SNAICC.

MR CROWLEY: How long have you had that role?

35

MR WESTON: Just on 12 months I've been there and 9 years previous to that I was the CEO of the Healing Foundation based on Ngunnawal country in Canberra.

MR CROWLEY: First of all, can you tell us about SNAICC and what the organisation does?

40

MR WESTON: Well, SNAICC is a national peak body, Aboriginal and Torres Strait Islander community- controlled. It's governed by an Aboriginal board, a Aboriginal and Torres Strait Islander board. It has existed for 40 years and plays an advocacy role for the rights of Aboriginal and Torres Strait Islander children.

45

The work of the organisation in doing that is to provide policy advice into Commonwealth, State and Territory Governments. We also auspiced and --- the Family Matters Campaign, and we produced the Family Matters report which is about tackling over-representation of Aboriginal and Torres Strait Islander children

in the out-of-home care system. And we provide advocacy for our membership, we have a membership of around 50-plus organisations, and operate that mainly in the early childhood education and care space, but also in the child protection space.

5 MR CROWLEY: Now, as well as coming to give your evidence here today, you have provided a written statement to the Commission?

MR WESTON: Yes.

10 MR CROWLEY: And that statement, the contents are true and correct to the best of your knowledge and belief?

MR WESTON: Yes.

15 MR CROWLEY: Chair, the statement of Mr Weston is in the Tender Bundle Part B, volume 1 at tab 1. I tender the statement and ask that it be marked as Exhibit 8.24.

CHAIR: Yes. It will be marked as exhibit 8.24.

20

EXHIBIT #8.24 - STATEMENT OF MR RICHARD WESTON

MR CROWLEY: And there is an annexed document, if that could be marked 8.24.1.
25

EXHIBITS #8.24.1 - ANNEXURE TO STATEMENT OF MR RICHARD WESTON

30

CHAIR: Yes. That document can be marked in that way.

MR CROWLEY: Now, Mr Weston, I just want to come back then to ask you about some of the things you've just mentioned that SNAICC has been involved in and
35 SNAICC advocates for.

In relation to the advocacy work for Aboriginal and Torres Strait Islander children, could you just tell us what does SNAICC see as its role and its vision?

40 MR WESTON: Well, SNAICC's vision is that our children grow up happy, safe, that they thrive. That their rights are protected, and that they just generally enjoy hopeful and optimistic futures. That they are empowered to determine their own futures, that they are connected to their culture and proud of their identity. So the work of SNAICC, you know, focuses on the rights of children, human rights, issues
45 like self-determination, but that connection to culture and cultural identity is paramount in the rights and the wellbeing of our children. And I think that comes from our work through the 80s and 90s in supporting the advocacy around Stolen

Generations that led to the Bring Them Home Report.

MR CROWLEY: Now, as for the involvement in the Family Matters Campaign, can you tell us what has been SNAICC's role in that?

5

MR WESTON: Look, our primary role is to support the campaign. The campaign doesn't receive any government funding at all. SNAICC provides the expertise and the resource to produce the annual Family Matters Report which was --- this year's report was released last week.

10

We work in partnership with the University of Melbourne to help analyse the data. We get all that information, we write to all the states and territories to get information and data that we can. But we also consult with Aboriginal and Torres Strait Islander organisations and communities at the jurisdictional level to get their views on what's going on in the home care system.

15

It's really clear that the Family Matters Campaign is about eliminating the over-representation of Aboriginal children in the out-of-home care system. And it's about ensuring that children grow up happy, safe, connected to their culture and proud of their identity. And so our role is really a coordinating role. The campaign itself is led by a formidable group of Aboriginal leaders from around the country, Aboriginal and Torres Strait Islander leaders from around the country. And up until recently I was a co-chair of that campaign but I stood down because I will be taking on a different role after this year.

20

25

MR CROWLEY: Now, Mr Weston, the Family Matters Campaign has an aim or a goal to end over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040?

30

MR WESTON: Yes. That's correct, yes.

MR CROWLEY: How are we tracking?

35

MR WESTON: Look, not very well. If we don't do anything to change what's happening at the moment, so the over-representation of kids nationally is around just under 40 per cent of all children in out-of-home care, Aboriginal and Torres Strait Islander children. Our proportion of the child population in Australia is around 6 per cent, so we're heavily over-represented, 10 times over-represented in that system. If we don't do anything to address that situation now, within 10 years the numbers of our children will double in the system. So the actual number of children in the system at the moment that we used in the Family Matters report is just over 20,000 people. So if nothing is done to address that over-representation then within 10 years' time we will see that figure at 40,000. And that information, that trajectory has been produced by the Australian Institute of Health and Welfare.

40

45

MR CROWLEY: Now, one of the things you've spoken about in your statement is SNAICC negotiating with the Federal Government to establish the new national

agreement on closing the gap which was entered into earlier this year. Could you just tell us about that, please?

MR WESTON: Yes. Well, SNAICC is part of a coalition of peak Aboriginal
5 organisations. It's called Coalition of Peaks and there's 50 organisations involved
and SNAICC is one of those organisations. So we've been working over the last 18
months to negotiate a new Closing the Gap Agreement which was signed off in July
of this year. The previous agreement ran from 2008 until 2018, so roughly 10 years
of concerted effort --- life expectancy gap, and built around a number of targets,
10 different targets.

So SNAICC has been part of the dialogue and the conversation with Commonwealth,
State and Territory Governments and the Local Government Association to renew
and refresh the Closing the Gap Agreement. It has resulted in more targets, and one
15 of those targets is to reduce the numbers or the representation of Aboriginal and
Torres Strait Islander children in the out-of-home care system by 45 per cent by 2031
--- which fits, you know, well, it fits quite nicely with the objective of the Family
Matters Campaign to eliminate over-representation by 2040.

20 But targets, as we saw with the first 10 years of the Closing the Gap Agreement, just
simply setting targets isn't enough to have an impact.

MR CROWLEY: I want to ask you some more about SNAICC's network and the
role that SNAICC performs for the Aboriginal and Torres Strait Islander
25 community-controlled organisations. The function and the way in which SNAICC as
a peak body can provide guidance and an overarching framework for those
organisations, can you just describe that for us and how it works?

MR WESTON: Well, SNAICC is a membership organisation and in the past we've
30 had, at one time SNAICC had something like 300 to 400 members. But we still are
well-networked into our communities and with other organisations, so we have
affiliations with AbSec who have a membership on our board and what's called the
SNAICC Council, from which our board is drawn. QATSICPP is a member. And
there's a --- we have a membership from across the country. As well as providing
35 policy advice into government, SNAICC also has produced resources and delivered
training to Aboriginal and Torres Strait Islander organisations and also mainstream
organisations to support them to work better with our people, and to support the
development and capability of our own community-controlled organisations.

40 So the sort of training and resources that we've provided is around how to implement
the Aboriginal and Torres Strait Islander Child Placement Principle, improving
understanding of Aboriginal and family-led decision making. Training around
creating child-safe organisations and resources on how organisations can create that
in their own communities, and how mainstream organisations can partner with ---
45 effectively with Aboriginal community-controlled organisations to deliver better
outcomes for children. So there's a raft of ways that SNAICC works.

But, you know, we've built up a lot of networks and social capital. The organisation is generally well regarded by governments. We're always called on to participate in advisory groups. We provide policy advice. You know, we're working with the Australian Institute of Health and Welfare to review and evaluate how the Aboriginal Child Placement Principle is being implemented across the country. So it's that kind of work, and SNAICC has been quite successful in influencing that, and that's well before my tenure at the start.

So it does a raft of things. We also provide submissions into different inquiries, you know, sometimes that requires us to come in person and provide evidence. So we're heavily involved in things that impact on Aboriginal and Torres Strait Islander children.

MR CROWLEY: Yes. Thank you, Mr Weston. And through SNAICC's networks and membership, SNAICC has involvement with First Nations families where a parent has a disability and the children are involved in the child protection systems?

MR WESTON: Yes. Sorry, could you just repeat that? Sorry?

MR CROWLEY: What I was asking, Mr Weston, is through those networks, SNAICC has involvement with First Nations families where the parent has a disability and the children are involved in child protection systems?

MR WESTON: Yes. Organisations that are members of SNAICC provide direct services to communities. So organisations like QATSICPP and all of their membership are providing services to Aboriginal and Torres Strait Islander families and community and that includes children with disabilities and their families.

MR CROWLEY: Now, you mentioned earlier about the figures for children in out-of-home care. As far as you know, Mr Weston, is there any data that is being kept by anyone for First Nations parents with disability whose children are involved in child protection systems?

MR WESTON: No, not that I'm aware. The data capture around First Nations children with a disability I would describe as poor. There are a lot of gaps. And in terms of children with a disability, coming into contact with the child protection system, we just don't have enough information and data to really be --- you know, to accurately say how children in the system have a disability.

MR CROWLEY: And in particular the parents themselves who may have a disability?

MR WESTON: Yes. That's correct.

MR CROWLEY: Now, earlier you told us that in a former role you worked for the Healing Foundation. Could you just tell us about what the Healing Foundation is and what the position was that had there?

MR WESTON: I was the Chief Executive Officer of the Healing Foundation and the organisation was established following the apology in 2008 given by Kevin Rudd. The primary role was to support our communities to develop their own responses to trauma, healing responses. So the organisation provided funding to communities to help communities design, develop and deliver their own healing programs and services. We worked closely with the Stolen Generations to support them to develop their own approaches to healing and to better understand their stories and the impact of trauma on their lives. We also provided training and education around trauma into communities and organisations across the country. And, look, by the time I left after nine years, the Healing Foundation had funded 175 healing projects around the country that were engaged with 45,000 Aboriginal and Torres Strait Islander people around the nation.

Look, and what the work showed me at the Healing Foundation was just how deep the harms of historical trauma have been through issues like Stolen Generations. But just the colonisation of Australia generally has hurt Aboriginal people very deeply and that hurt, that pain, the issues of trauma have --- are still with us. So they've been passed down from one generation to the next, and it's known as intergenerational trauma.

And the other thing the Healing Foundation did was it evaluated all of the work that it did. So all the programs we funded, the training, the education, we always wanted to build a knowledge base to better understand trauma, but also to highlight the need for people to access healing so that they can deal with trauma, but just live better lives, live lives that are more hopeful and optimistic, and live lives that contribute to more positive outcomes for our families.

But trauma is a huge issue for Aboriginal and Torres Strait Islander people. It's not well understood by human service systems, which the out-of-home care system is one. I think it's often glossed over. We start to hear the term "trauma-informed care", "trauma-informed practice". There is not really a shared understanding of what that means around the country. Different people have a different understanding of what we're talking about. But I think the work at the Healing Foundation showed me that unless we start to design our systems around an understanding of trauma and the need for healing, unless we start to get better information and better data about the challenges in our communities like how many children there are, how many families there are living with a disability as part of their daily life, then the outcomes for our people will continue to be problematic.

And one of the manifestations of that that we see is a growing number of our children failing their way, or we have people failing their way into systems like the out-of-home care system.

MR CROWLEY: Just on that, Mr Weston, in your statement you've spoken about the impacts of trauma in the way you've just described, but you've also then identified what are the typical type of symptoms that might be experienced either by

an individual person or by a community collectively. And they're far-ranging symptoms.

5 MR WESTON: They are far-ranging. So many of the behaviours we see in our communities are driven by trauma. Issues like violence, risky health behaviours, so, overuse of or abuse of alcohol, drugs, mental health, mental illness.

10 You know, trauma is so pervasive, it just impacts, it affects the way people function in the world. It affects people's ability to have safe relationships, which makes it difficult for --- particularly the biggest impact of trauma is on children, they're the ones who feel it the most. And they don't necessarily have to have experienced it, had a traumatic experience. They can experience trauma through living with people who are affected by trauma. And that's one of the ways it's passed on from one generation to the next.

15 And it affects all aspects of life. It affects the ability to hold down a job, it affects the ability to access an education. And if we don't have systems that understand that impact then we can't provide a service that will support people. We end up seeing, like the out-of-home care system, we see misdiagnosis of what's going on for people.
20 We see a lack of cultural understanding, a lack of alignment with people's culture in the ways people are assessed or the way decisions are made for Aboriginal and Torres Strait Islander people going into these systems. And the trauma goes unaddressed. So children ultimately in the out-of-home care system, for example, the ultimate outcome is that a child may be removed from their family.

25 The family then are dealing with the distress of the removal of the child and then the child is also dealing with that distress. But laid on top of that is the historical trauma that comes with being a Aboriginal and Torres Strait Islander person. There is no services or there's not enough services for people to access the opportunities to heal.

30 MR CROWLEY: And the way you describe it in your statement, Mr Weston, is you've expressed the view that there's a link there between those symptoms which myth be identified in a child protection system intervention but the underlying causes of those being rooted in trauma for families and communities and individuals. Now -
35 --

MR WESTON: Yes.

40 MR CROWLEY: Now, just following on from that observation, Mr Weston, how important do you consider it then for knowledge and understanding of those past traumas which continue to be present, and the need for healing of those traumas to be for interventions or services and supports for families involved with the child protection system?

45 MR WESTON: Well, I mean, the answer to that is they're critical. If we don't have services or supports for families that are dealing with trauma then we can't --- and the way the system assesses that, it assesses those behaviours as being --- putting a child

at risk or putting a family at risk or making them vulnerable which can lead to decisions to remove children or children coming in contact with the out-of-home care system.

5 So what I think we have is we have a system that just is not designed around the needs of Aboriginal and Torres Strait Islander families that experience vulnerability through trauma. So decisions that are made to remove children are based --- you know, they're not based on the right information. They're based on an assessment of an Aboriginal person's --- whether it's a behaviour or whatever that issue is that is
10 bringing them in contact with the system. But it doesn't take into account that history. It doesn't take into account what the impact of trauma might be and how that might be driving some of the issues that are putting children --- bringing children into notice or putting them at risk.

15 But rather than the response being support for the family and support for healing and support to get access to services that can support the family and help them keep the child in the family, it leads to a decision, it leads to an addition, to a score that leads you to a point where a decision is made to, you know, put an order on a family or to remove a child from a family. So there's a complete mismatch, I think, between the
20 way the system understands or even recognises trauma as an issue and the way they respond to it.

Systems are responding to the trauma that Aboriginal and Torres Strait Islander people have experienced with measures that are punitive, rather than measures that
25 are steeped in an understanding of that historical intergenerational impact. But also a lack of understanding of the need for healing.

MR CROWLEY: Now, one of the topics that you've addressed in your statement is to speak about the absence of appropriate supports for First Nations families, parents
30 and children with disability. And that you've indicated that SNAICC's member organisations have reported a number of issues or barriers to getting appropriate supports. One of them you've spoken about is there being a lack of specialist consultation and assessment of a parent's capacity where a parent has a disability, and how that lack of consultation and assessment may lead to a risk of removal.

35 Just explain for us, Mr Weston, the concern that's held there by SNAICC and member organisations about how that lack of specialist consultation and assessment may feed into over-representation?

40 MR WESTON: Look, there's a couple of things for me to say in response to that. I think the first thing is that intergenerational trauma such as the way we see it manifest say, in, violence, mental health outcomes --- and a whole range of there's other issues that we've already mentioned, aren't seen as a result of trauma. They
45 aren't seen as a trauma behaviour. So they create --- the way the system assesses those issues is that it creates a higher risk for the family that a child will be removed.

So I think --- I did see some evidence given yesterday by "Shontaya" who talked

about her experience of being assessed by a psychologist during a conversation that took three-quarters of an hour. Following that conversation she was, well, hinging around that conversation was a decision that her child might be removed until the age of 18 years.

5

Now, that to me is a catastrophic outcome for a family and a child and she was diagnosed with having some kind of disability, but when she got a second opinion, she was --- you know, the diagnosis was different. And the way of coming to an understanding of what her issues were took a lot longer, with a three or four-hour conversation. And it took into account the whole person, her whole life experience or history. I think that's a very telling example of how the system operates to increase the risk of Aboriginal and Torres Strait Islander children being removed and taken into the out-of-home care system when they don't need to be.

10

15

What's needed --- when the system --- one of the issues that drives, creates a risk for Aboriginal and Torres Strait Islander children is that there is a previous history in the family of removal. Now, in Aboriginal and Torres Strait Islander communities, that risk is always there because of the Stolen Generations. You know, 100 years of taking children from families and culture just because they were Aboriginal based on a misguided notion around assimilation, that has created a history in our families of removal.

20

25

And we've seen, and our member services tell us, and Aboriginal people tell us this, and the Stolen Generations tell us this, that there are generations of removal. So families have reported where the grandparents have been removed and then the parents have been removed and then the person themselves have been removed. So the system is using that history, that impact of trauma to justify removal. And what it really should be doing, it should be flagging it as a need to refer somebody to support services. So it's one of the causes, I think, why we have so many of our people or their young children going into these out-of-home care systems.

30

35

MR CROWLEY: In your statement, Mr Weston, you've described it like the child protection system is being used as the primary means to address intergenerational trauma impacts within community, and you've likened it to being like the ambulance at the bottom of the cliff-top.

40

45

MR WESTON: Yes. The child protection system is heavily weighted towards removal, so the tertiary end of the system. 85 per cent of spending in the system is at the tertiary end and 15 per cent or less is around early intervention and prevention. So the system isn't geared towards stopping children from coming into the system, and it's not geared towards engaging with other human services to improve, you know or reduce the chances for children coming into the system. The system pretty much operates on a report-substantiate-remove process. There's not enough stop and go points, there's not enough points of reflection where Aboriginal and Torres Strait Islander people can be referred to services that are then going to support them. And if we can identify vulnerability earlier or risk earlier and then put families in touch with services that can support them through that period of vulnerability --- at the

moment that vulnerability and risk isn't being addressed through referrals to support services. As you said, it's being addressed through removing the child and putting them into the out-of-home care system. So our people are failing their way into these systems.

5

MR CROWLEY: You've mentioned thereabout the child protection system and removal being an example of a tertiary intervention. If we were looking then at the early interventions as a primary step, how would we go about knowing what funding and expenditure should go into that part of the system?

10

MR WESTON: How --- sorry, can I just clarify? Could you just say the question again? Sorry about this?

15

MR CROWLEY: It's my confusing question, Mr Weston. What I was asking you about is, how do we work out what funding is to go to the primary end of the system?

20

MR WESTON: I don't know that I've got a direct answer to that question, but I guess what we do know is we're not spending enough to stop our kids going into these systems. So that's one thing. You know, if there was some way to reorientate the system, well, that would be the way to start doing it. I suspect that that's a very challenging proposition to put forward. Some of these systems become immovable objects. But I think one of the best ways to prevent our people from going into systems like out-of-home care is to begin investing in Aboriginal and Torres Strait Islander organisations. We need to grow our community-controlled organisations that are operating in the child protection space, in the out-of-home care space, and we need to engage better, more directly with families and communities, to come up with solutions. And we need to be able to wrap supports around them.

25

30

Now, one of the --- I guess one of the ways to assess need and allocate resources is to have data, is to have information. We don't collect enough of that at the moment, so we need to do something about improving that data collection and data capture around Aboriginal and Torres Strait Islander children and, in particular in this case, families, parents and children with disabilities that are being treated so badly by these systems.

35

But, you know, I think in terms of what would be the quantum amount, I think the way to look at that --- I don't know the answer to that, but I think the way to look at it is, we spend \$6 billion on the child protection system, it's the taxpayer funded system, nationally we spend \$6 billion, 85 per cent of that spend is in that tertiary end, and that expenditure grows by 10 per cent per annum.

40

45

Now, the taxpayer is not getting much bang for their buck from a \$6 billion annual spend. The cost of maintaining these systems and the cost of keeping children in care, I would argue, is far greater than the cost of keeping children out of care. And the way to keep them out of care, I think, is to invest in the development of Aboriginal community-controlled services and organisations. You know, there are many non-Indigenous or mainstream organisations operating that are not-for-profits

in the space that are reallocating funding into the growth of a good strong community-controlled system. You know, I think we would start to see some change and I think major change. We can't --- and the scale of this problem and this challenge I don't think we've quite understood yet, but we're talking about doubling the numbers of children within 10 years if we don't do anything.

And we're spending so much money but we're not keeping kids out of the system. We're not really keeping kids safe. That's what it's all about. It's child protection. But when children go into the systems, they experience even more harm, ongoing harm, and that harm is caused by, amongst other things, you know, notwithstanding physical abuse and those kind of things, but there's a disconnection from culture. There's a disconnection from culture, family and community, and an undervaluing of a child of Aboriginal and Torres Strait Islander identity. These are fundamental things that contribute to the wellbeing of a child, and they're no different for our children and our parents that are living with a disability.

You know, our people see disability --- we don't see it as a problem to be fixed. We see it as this is part of who a person is, and it's an issue that needs to be supported. And Aboriginal and Torres Strait Islander people that live with a disability are just as keen on their cultural connections and the valuing of their identity. When we look at a tree, if we look at a tree and it has got broken branches or we look at a tree that has been scorched by a bushfire, it's still a tree. And, you know, children and families that live with a disability are still very much parts of our community.

Yes, so to stop them --- to stop that flow of our kids into out-of-home care, we need Aboriginal and Torres Strait Islander people more involved in the system.

MR CROWLEY: Now, just picking up the point you've made there about not having data, or sufficient and adequate data available, you've spoken about that in your statement as well, that without the data for First Nations parents with a disability involved in child protection systems, we don't know the numbers, it's not possible really to identify the need for which services and what service and supports could be provided. Is that a fair point?

MR WESTON: Yes, that is. Yes. Yes. Without information, it's hard to make decisions. It's hard to design a system without - unless we count. What we count, it's what matters. If we don't have a system --- so we don't --- we have a system or a response to Aboriginal and Torres Strait Islander people that is not based on any information or data. So we can't design a system that's going to meet their needs and if we don't have an understanding, and you're compounding the challenges of not having data with not having enough knowledge and information and understanding about the impacts of things like trauma and a whole range of other issues. So the work of the Family Matters Campaign and the report, whilst it was released last week, whilst it's critical of, you know, Governments and the system, the child protection system, it also identifies where there are green shoots of progress, and most of those are where Aboriginal and Torres Strait Islander people are involved, designing and developing services. And there's an investment going in, jurisdictions

like Queensland and Victoria are starting to see, you know, some better outcomes. But, you know, we continually have to wait for things to be evaluated. We have to prove --- we're constantly having to prove, you know, that our race work --- and the magnitude of this issue and this challenge is --- I don't think we can wait for that.

5 We can't wait another five years to decide if we should invest more in Aboriginal and Torres Strait Islander community-controlled sectors of organisations and so forth and working more closely with families. We have to start doing it and evaluate it on the way.

10 One of the things I would say, that our Aboriginal and Torres Strait Islander cultures are 60,000 years old in this country. So prior to 1788 we survived, raised our children and continued our culture, passed on our babies, knowledge across generations for thousands and thousands of years. So in my head that's a pretty good KPI that we have the capability and the knowledge to be able to address and fix these
15 problems, and now people are proving it. I've seen it in the work I did at the Healing Foundation. I saw it in the work I did out at Maroondah Health in far western New South Wales, when I worked in the Aboriginal Health. And I've seen it in the work of SNAICC and the member organisations and the State jurisdictions that work in this space, that when Aboriginal and Torres Strait Islander people are involved in the
20 design, the development and delivery, we get better outcomes. And the magnitude of this issue is so great. We can't --- we're not going to solve the problem by incremental improvements. We need to be --- there needs to be some massive action taken, in my view.

25 MR CROWLEY: Thanks, Mr Weston. I want to ask you about something you mentioned earlier about assessments of parents where the children are involved and the child protection system becomes involved with a family. You mentioned about how some of those symptoms of trauma or behaviours may be interpreted as risks and score as a risk.

30 Now, in the child protection system settings we've been reviewing this week, we've heard about Structured Decision-Making tools, assessment tools. And you've expressed a view in your statement about and cited research implies there's a cultural bias in the use of those type of tools. Would you just explain for us why and what
35 you mean by that?

MR WESTON: Well, the research shows that those tools don't account for Aboriginal culture, and part of our culture is our history. So when people are being assessed under those --- using those kind of mechanisms, they're just assessed on
40 how they present. So if a person is coming with a record of risky behaviour or, you know, trauma, symptoms of trauma, there's no account given to where that has come from. So the decisions that are being made to advance children and families through the child protection system are inaccurate. They're not correct measures. They're not done from the perspective of Aboriginal and Torres Strait Islander peoples' lived
45 experience. And just the history of the country. And it leads from a decision, and the evidence I heard yesterday from "Shontaya", that a life-changing decision is made in a very short space of time where her whole

life is summed up in 45 minutes and a decision is made.

Now, that's --- the consequences of getting it wrong for us are great. Yes, so there's not enough accountability for the system to address, you know, to address those kind of --- those tools or mechanisms that aren't culturally appropriate for our people.

MR CROWLEY: Can I just ask you this, Mr Weston, about what you've just outlined. Those type of assessments or tools, if they are coming from a construction that counts risk factors to arrive at a score, are you saying that there's, from your perspective, there's no way of scoring, in any of those tools, positive factors that might be culture, kinship, family?

MR WESTON: That's right. They're ignored, basically. I mean, the things that keep us strong, keep us safe, is our connections. That's our --- our culture is an asset. Our culture is our strength. Our pride and identity is a strength. Our family relationships are a strength. None of these things are thought of as strengths because the system doesn't --- it's systemic racism, in my mind, that the system is discriminating against Aboriginal and Torres Strait Islander people even before they walk in the door. I mean really the system should be --- and Aboriginal and Torres Strait Islander people that are working or have developed these tools, and I don't have a deep knowledge of that, but they look at the things that contribute positively to our wellbeing. So culture isn't --- it's not a deficit for us, it's a strength, it's a positive. Our identity is a strength, it's a positive. Our family relationships. Our families are different from a lot of Indigenous families. Our families are made up of a broad range relationships that involve siblings, Uncles, Aunts, a whole range of people. These aren't necessarily viewed by systems as strengths. They are certainly not used to find, you know, good placements, and kinship carers, they're not used enough.

And I think the way again to get better outcomes around this is to involve and go to the Aboriginal people to design better assessments, but also have those assessments delivered by Aboriginal and Torres Strait Islander people themselves.

MR CROWLEY: Can I ask you this, perhaps, Mr Weston, and perhaps draw this comparison with something you said earlier in your evidence when you were talking about the need for data, so that service supports could be identified and properly funded. You said something along the lines of what gets counted matters.

Could we then, looking at the child protection systems, commencing with a risk-type of approach and counting factors that go to risk, could the same type of assessment be used there, what gets counted matters?

MR WESTON: Yes. The short answer is yes. I think it's the way it's used. So issues like that manifests trauma are used as a mark against a person rather --- it's used as a justification or it's used as another step down the path towards, you know, an intervention or a removal or whatever it might be, rather than flagging as well, are the need is for a referral for a service. The need is for support. And support services, support mechanisms and that a recognition, if we valued Aboriginal culture, if we

valued Aboriginal identity, if we saw family connection being pivotal to the wellbeing of a child, then we would wrap supports around that family and that person to keep that child in the family.

5 Kids do better if they're in their families. That's what the evidence tells us. Families aren't perfect and we know from time to time families do become at risk or they become vulnerable for a lot of the reasons that we've talked about, but they don't necessarily have to stay vulnerable forever and a day. And that's why --- that's the strong argument for better of those earlier intervening services.

10 Services that support families through vulnerability, you know, that might be some support, counselling or whatever it might be for the parents, extra support then. And even access to services, but it keeps the child in the family.

15 MR CROWLEY: My last question for you then, Mr Weston, is following from what you've just said, how do we make culture, kinship and family count in those decisions which are made by child protection systems?

MR WESTON: I think we have to do our best, firstly, to capture it in legislation. If
20 it's in legislation, then bureaucracies and systems respond better than just making it kind of at the discretion of a particular CEO of a particular department. I think legislation is really important, but we have to engage Aboriginal and Torres Strait Islander people in the system through organisations, through better methods and Aboriginal and Torres Strait Islander, we do this or SNAICC organisations do it, we
25 engage with our communities. So, you know, partnering and working more closely with families to help inform design of systems and services that are going to keep our kids in the family and, you know, in a place where they're thriving, connected to culture and care.

30 But, you know, there's a strong need for, you know, accountability of the system now, and we need to invest, you know, and have a look at that, systems need to be accountable to our communities, to our peoples. But we could start with the legislation, but investment in our community-controlled sector. Our leadership, we have some great leaders in those organisations, do it under really challenging
35 circumstances. If we invested more in that, I'm very confident that better outcomes would emerge.

The system is very unforgiving the way it's run now. It's a very unforgiving system. Our people have a different approach. You know, when our organisations are
40 dealing with our families, they're part --- we're part of that community. We understand where they come from, we understand what's going on for those children and those parents, and what's going on in those communities. And that means we're going to design better services, we're going to design better programs. We're going to reach better outcomes because, you know, we instinctively and inherently know
45 our people. And, you know, we're best placed, we are the best placed people to provide a service to our mob.

MR CROWLEY: Yes. Thank you, Mr Weston. That's the questions I have. The Commissioners may wish to ask you something.

MR WESTON: Thank you.

5

CHAIR: Yes. Thank you. Commissioner Mason?

COMMISSIONER MASON: No, thank you, Chair.

10 CHAIR: Commissioner Atkinson?

COMMISSIONER ATKINSON: No, thank you, Chair.

COMMISSIONER McEWIN: No, thank you, Chair.

15

QUESTIONS BY THE COMMISSION

20 CHAIR: Mr Weston, might I take the opportunity to express the [audio distorted] the Murray Island in Australia's Indigenous legal and national history. I take you as [audio distorted] for that. So on behalf of myself and the Commission, we acknowledge that the people of Mer and of course Eddie Mabo has played in Australia's history.

25

MR WESTON: Thank you very much.

CHAIR: Can I raise a question with you which is triggered in a sense of your use of the word "unforgiving". I suspect there is an issue that one way or another we are going to have to address even though it hasn't formed really much of the examination this week. The child protection system is unforgiving in this sense, if it goes wrong, it attracts enormous attention, criticism and approbation. I'm not talking specifically about First Nations children, as you know. If a child is abused and in the worst possible cases, tragically might even be killed, the responses of the community, the media are really unforgiving. They look in retrospect at what should have been done, what should have been picked up, "why was this child not reported," "why was this child left in a situation of risk."

30

35

The force of the argument that you and others have put for the decision-making process in effect to be delegated to Aboriginal communities is very powerful. But how would you suggest that this problem of the response from the community if the system goes wrong, as it almost inevitably will in some individual cases, how can that be addressed in a way that doesn't lead to backlashes against the process of delegation?

40

45

I hope I'm not being too pessimistic about this, but I think there is a realistic issue that we need to consider and anticipate.

MR WESTON: Yes. Thank you, Commissioner, thank you for your comments about Murray Island and Mer. I really appreciate that acknowledgement.

5 Look, the question you raise or the question you ask is the one we get asked all the time. And it's always that question is basically the question is, well, what if something goes wrong? And, look, I don't think there's any of the Aboriginal and Torres Strait Islander people who work in the system and run and manage organisations are saying that, you know, that we should just apply a blanket approach
10 to Aboriginal and Torres Strait Islander people and that we won't remove any child. We still recognise that in some cases children do have to be taken out of the family home or community for their own safety. That's a given. And that, you know, the Chair of our organisation, the Chair of SNAICC, Muriel Bamblett, she is the CEO of VACCA in Victoria, and VACCA probably more than most other organisations,
15 Aboriginal organisations are heavily involved in the home care system and they do have to support decisions for removal at times.

You know, we're not afraid to take that responsibility and do that. That's not what we're saying here. We're just saying that the system is too tipped towards a removal
20 response rather than having some other checkpoints in between that gives more support to families to keep the kids in care.

In terms of community response, I think I understand completely where you're coming from. That's --- we're all horrified when something awful happens to
25 children. And we get a political response, you know, the politicians get pressured, get community pressure, and they have to be seen to be doing something. And what we generally see is something is bolted on to an already complex system, and I know that has happened recently in Queensland. You know, it seems to be --- that then seems to be the Government's response, and the politicians can talk about that and
30 say "This is what we're doing in response to that horrific event" and maybe it does satisfy the community.

I don't know that I have the answer that you're looking for, but I certainly understand the problem. I think one of the things that Megan Davis talked about in her report,
35 the Families and Culture Report, she talked about this issue of ritualisation, and I think one of the people giving evidence, Professor Higgins, earlier on in the week talked about the system being reactive. And we get into a cycle; when those horrific events happen, you can almost predict what the response is going to be, and it's outrage, community outrage, media gets their stories, we get it in the news cycle and
40 then politicians are scrambling to respond. I know, when it occurs for an Aboriginal and Torres Strait Islander family, we cop the blame. People, our culture, whatever, cops the blame. And I think that does create a risk-averse approach. We don't empower our public servants, our bureaucrats enough to be able to take risks, I guess, and --- not risk. I'm not talking about taking risks with lives of children, I'm talking
45 about coming up with different ways of doing the system, doing the program.

I think one of the answers is about the conversation we have in the community, and

about the way we raise awareness and talk about it with the Australian people. You know, the sort of political leadership we get, we need some champions to be able to talk about these issues in a very frank and honest way. But I don't think we ever take away the risk that children will be harmed or hurt just by making a complex and unforgiving monolith of a system even more complex, and it just doesn't seem to work.

CHAIR: Your comments suggest that the changes that you're proposing should be accompanied by open, realistic assessments of what is likely to happen. We want things to be better but they're not necessarily going to be perfect and the community needs to understand that and be prepared to accept that as with the existing system, there will be occasions when it will not work perfectly. The idea is for it to work very much better than the existing system.

MR WESTON: Exactly. We want it to work most of the time, I guess.

CHAIR: Yes.

MR WESTON: But I think if we had a system that had a greater focus on prevention and early intervention and supports, you know, I suspect that we may get better outcomes. Less of those more acute kind of horrific events that really disturb us all from time to time.

CHAIR: Well, thank you, Mr Weston, for your very thoughtful evidence both in your statement and your evidence today. We appreciate your assistance very much. Thank you.

MR WESTON: Thank you.

30

THE WITNESS WITHDREW

CHAIR: Mr Crowley, can we lead directly now to what remains to be done?

MR CROWLEY: Yes, if that's convenient, Chair. That completes the witnesses who will give the oral evidence to the Commission. The next is to deal with the balance of materials that are to be tendered and provided. Mr Power will deal with that aspect.

40

CHAIR: Yes. Thank you. By the way, I think there are no counsel that wished to ask Mr Weston questions. I hope that assumption is right because he seems to have disappeared from the screen. Yes.

MR POWER: Thank you, Chair. If the Commission pleases, if I may deal with some outstanding documentary matters, and we seek to make a residual tender of documents that have not yet been tendered over the course of the week, and a

supplementary tender of documents that have been provided to the Royal Commission by parties with leave to appear during the course of this week, or documents that have come to the attention of the Royal Commission in the course of this week that are relevant to the scope and purpose of this 8th Public Hearing.

5

The following documents are from two witnesses who had provided written evidence to the Royal Commission but did not partake in oral evidence. The first is Assistant Commissioner Nicole Hucks who is from the Northern Territory Children's Commissioners office. Her statement is at Tender Bundle C, Tab 22. I ask to tender this statement into evidence and have it marked as Exhibit 8.25.

10

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

15 **EXHIBIT #8.25 - STATEMENT OF ASSISTANT COMMISSIONER NICOLE HUCKS**

MR POWER: Professor Claire Tilbury of Griffith University has provided a written statement. Her statement is at Tender Bundle F, Tab 34. I ask to tender that statement into evidence as Exhibit 8.26, along with its annexures which are at Tender Bundle Part F, Tabs 35 to 50, and I seek that those be marked as Exhibits 8.26.1 to 8.26.16.

20

25

EXHIBIT #8.26 - STATEMENT OF PROFESSOR CLARE TILBURY

EXHIBITS #8.26.1 to #8.26.16 - ANNEXURES TO STATEMENT OF PROFESSOR CLARE TILBURY

30

CHAIR: Yes. Thank you.

35 MR POWER: Commissioners, turning now to Tender Bundle E.

During Senior Counsel Assisting's opening statement, he informed the Royal Commission that by compulsory notice or request, written statements from every Australian state and territory on questions of data collection practices with respect to First Nations and disability status was sought. Tender Bundle E contains the statements of representatives of the State and Territory Child Protection Departments. The statement of Ms Wood of the ACT Community Services Directorate is at Tender Bundle part E, Tab 1. I ask that that statement be received into evidence as Exhibit 8.27.

40

45

CHAIR: Yes.

EXHIBIT #8.27 - STATEMENT OF MS JO WOOD

5 MR POWER: The statement of Ms Leonie Warburton, Northern Territory
Department of Territory, families, community and housing is at Tender Bundle Part
E, Tab 2. I seek to tender Ms Warburton's statement into evidence as Exhibit 8.28
along with two annexures, including a supplementary statement. They are at part E,
10 8.28.1 to 8.28.2.

CHAIR: Yes. That can be done.

15 **EXHIBIT #8.28 - STATEMENT OF MS LEONIE WARBURTON**

**EXHIBITS #8.28.1 to #8.28.2 - ANNEXURES TO STATEMENT OF MS
LEONIE WARBURTON**

20

MR POWER: The statement of Michael Pervan of the Tasmanian Department of
Communities is at Tender Bundle Part E, Tab 5. I ask to tender that statement into
evidence as Exhibit 8.29.

25 CHAIR: Yes.

EXHIBIT #8.29 - STATEMENT OF MR MICHAEL PERVAN

30

MR POWER: The statement of Mr Shane Wilson, Victoria's Department of Health
and Human Services is at Tender Bundle Part E, Tab 6. I seek to tender that
statement into evidence as Exhibit 8.30.

35 CHAIR: Yes, thank you.

EXHIBIT #8.30 - STATEMENT OF MR SHANE WILSON

40

MR POWER: Finally for this part, the statement of Ms Michelle Andrews of
Western Australia's Department of Communities, which is at Tender Bundle Part E,
Tab 7, I ask that this be tendered into evidence as Exhibit 8.31, along with six
45 annexures to the statement which are Part E, Tabs 8 to 14, and I ask that those also
be received and marked as Exhibits 8.31.1 to 8.31.7.

CHAIR: Yes.

EXHIBIT #8.31 - STATEMENT OF MS MICHELLE JANE ANDREWS

5

EXHIBITS #8.31.1 TO #8.31.7 - ANNEXURES TO STATEMENT OF MS MICHELLE JANE ANDREWS

10

MR POWER: The next documents are documents that were not correctly or fully tendered. These related to three witnesses and I seek to correct the exhibit record in relation to each of them.

15 First, Ms Thelma Schwartz. Ms Schwartz has annexures to her statement at Tender Bundle Part B, Tabs 8 to 10. I ask that those be received into evidence and marked as Exhibits 8.6.1 to 8.6.3.

CHAIR: Yes.

20

EXHIBITS #8.6.1 to #8.6.3 - ANNEXURES TO STATEMENT OF MS THELMA CAROLINE SCHWARTZ

25

MR POWER: Ms Catherine Taylor had an annexure to her statement. It's at Tender Bundle D, Tab 164. May I ask that that be tendered into evidence and marked as Exhibit 8.19.84.

30 CHAIR: Yes.

EXHIBIT #8.19.84 - ANNEXURE TO STATEMENT OF MS CATHERINE MAREE TAYLOR

35

MR POWER: Ms Candice Butler had an annexure to her statement. It is found at Tender Bundle B, Tab 4, and I ask that that annexure be marked as an exhibit 8.21.1.

40 CHAIR: Yes.

EXHIBIT #8.21.1 - ANNEXURE TO STATEMENT OF MS CANDICE BUTLER

45

MR POWER: Moving then to the supplementary tender of materials. This is in

Tender Bundle Part G, and this relates to material that has been outstanding or have been provided to the Royal Commission over the course of this week.

5 Dr Tracey Westerman has a witness statement at Tender Bundle Part G, Tab 1. A transcript of Dr Westerman's evidence was tendered on Tuesday, and that transcript was marked as Exhibit 8.4. I seek to amend the exhibits in relation to Dr Westerman by tendering her statement and two additional documents into evidence. They are found at Tabs 2 to 3 of Tender Bundle Part G. Could those documents be marked as Exhibits 8.4.1 to 8.4.3.

10

CHAIR: Yes.

15 **EXHIBITS #8.4.1 TO #8.4.3 - ANNEXURES TO STATEMENT OF DR TRACEY WESTERMAN**

MR POWER: There have been some further documents provided to the Royal Commission or identified by the Royal Commission during the course of the week. 20 These documents are at Tender Bundle Part G, Tabs 4 to 6, and I seek that those be tendered into evidence and marked as Exhibits 8.32.1 to 8.32.3.

CHAIR: Yes. What are those documents, Mr Power? Just a general description.

25 MR POWER: Those are documents that were for the purpose of asking questions of witnesses this week, and I will have to take that question on notice in order to identify precisely those, if I may. I will get that information, but if I could presently move to materials provided by Commissioner Natalie Lewis in her evidence. This was a graph of substantiation data, and that is Tab 7 of Tender Bundle G. I ask that 30 that document be tendered into evidence and marked as Exhibit 8.33.

35 **EXHIBIT #8.33 - ANNEXURE TO STATEMENT OF COMMISSIONER NATALIE LEWIS**

CHAIR: Yes.

40 MR POWER: Thank you. And if I can take a step back. The documents that I asked to be tendered into evidence and marked as Exhibits 8.32.1 to 8.32.3 were documents identified --- sorry, that is material that was provided by leave to appear parties in cross-examination of the witnesses. So it's documents that are identified in the transcript and which were used in the cross-examination of parties during this week --- sorry, of witnesses during this week.

45

CHAIR: All right.

**EXHIBITS #8.32.1 TO #8.32.3 - DOCUMENTS USED IN
CROSS-EXAMINATION OF WITNESSES IN PUBLIC HEARING 8**

5

MR POWER: Thank you. Moving to Richard Weston, there were further annexures to the statement of Mr Weston who we have just heard from. The initial documents tendered in relation to Mr Weston were marked as Exhibits 8.24 and 8.24.1. The additional annexures are at Tender Bundle Part G, Tabs 8 to 11, and I seek to tender those additional annexures into evidence to be marked as Exhibits 8.24.2 to 8.24.5.

10

**EXHIBITS #8.24.2 TO #8.24.5 - ANNEXURES TO STATEMENT OF MR
RICHARD WESTON**

15

CHAIR: Yes.

MR POWER: Thank you. Materials were provided by the State of NSW. These are in addition to the documents provided with the statements of Mr Coutts-Trotter and Ms Alexander prior to the hearing. These additional documents are at Tender Bundle G, Tabs 12 to 35. I ask that those further documents be tendered into evidence and marked 8.33.1 to 8.33.24.

20

25

Chair, that concludes the administrative matters relating to the tendering of additional documents.

CHAIR: Yes, thank you, all those documents then have been admitted into evidence. Thank you, Mr Power.

30

**EXHIBITS #8.33.1 TO #8.33.24 - FURTHER ANNEXURES TO STATEMENT
OF MR MICHAEL COUTTS-TROTTER**

35

CHAIR: Yes, Mr Crowley.

MR CROWLEY: Chair, I will now proceed to give a closing address for Public Hearing Number 8.

40

CHAIR: Yes. Please go ahead.

CLOSING STATEMENT BY MR CROWLEY

45

MR CROWLEY: In closing this hearing, we want to thank all the witnesses who

have given their time and expertise and have given oral evidence over the past five days. We particularly want to thank the three proud and strong First Nations women who spoke of their own experiences: Ann, Kate, Shontaya.

5 The evidence given to the Royal Commission in this hearing confirms that First Nations children are still being removed from their parents at a far higher rate than non-First Nations children. We knew this at the commencement of our inquiries. However, the focus of this hearing is not so much about confirming what is
10 happening but attempting to understanding why it continues to happen. The evidence we have heard enables the Royal Commission to know, to understand the compounding complex factors that makes it more likely that First Nations parents with disability are disproportionately 'streamed in' to child protection systems - triggering, and invariably perpetuating, a life cycle of traumatic impacts on their lives and the lives of their children, families and communities.

15 More importantly, the evidence will provide a foundation for the Commission to consider recommendations to address, amongst other things, systemic neglect of First Nations people with disability and the contribution that that makes to the over-representation of First Nations children in out-of-home care and in child
20 protection systems.

Some of the main themes that emerged from this hearing were:

25 Statutory systems of child protection continue to fail First Nations parents with disability and their children and families.

Early supports and primary prevention, rather than statutory interventions, are broadly acknowledged as being critical to ensuring that First Nations families are provided with appropriate and accessible supports and adjustments.

30 Child Protection Departments are not capturing data about the disability status of parents in a way that can be reported and evaluated.

35 Whilst legislation and policy frameworks acknowledge the Aboriginal and Torres Strait Islander Child Placement Principle, further active efforts are required to ensure that all core elements of the Principle are actually being operationalised into practice --- superficial and passive efforts do not fulfil the purpose and intent of the Principle.

40 Structured Decision Making tools used by child protection departments may operate in a biased way that identifies a higher risk for First Nations parents with a disability because it is inherent in their status as First Nations people with a disability that they may be more likely to experience poverty, homelessness and overcrowding, family violence and other symptoms of intergenerational trauma which in his evidence this morning Richard Weston described as systemic racism.

45 The critical importance of Aboriginal Community Controlled Organisations has been fundamental to the solution for over-representation of First Nations families in

contact with child protection systems, and to providing truly holistic, and to providing truly holistic and appropriate supports to First Nations people with disability has been acknowledged.

5 Also, true informed involvement of parents with disabilities and decisions that are made about their children requires independent, legal and non-legal support and personal advocacy for those parents.

10 And, finally, it is critical that child protection systems recognise the ability of disabled parents to be parents to their children, and to provide them with the appropriate supports they need at an early stage to ensure they are not denied the fundamental right to parent, and the right of their children to live with their family.

15 In the opening of this hearing, I spoke about having had the privilege of speaking Auntie Jenny Swan and Auntie Suellyn Tighe of Grandmothers Against Removal in NSW during preparation for the hearing. In the opening I shared a message from Auntie Jenny Swan. I would like now to share message from Auntie Suellyn Tighe about her recommendations for the Royal Commission to improve the experiences of First Nation parents with disability when they are in contact with child protections.

20

Auntie Suellyn Tighe said.

25 *.... the optimum thing would be for their children not to enter into the care and protection system. That is the ultimate. But for those who would be and currently are in the system, I think that there needs to be a huge, huge, huge substantive shift in addressing case workers with their knowledge of disabilities, so training.*

30 The evidence in this hearing has raised significant and difficult issues that confront First Nations parents with disability. These include the lived experiences of Ann, Kate, and Shontaya. Ann told the hearing that she felt that her schizophrenia was used against her by the Child Protection system. She said that in keeping her daughter and in regaining the care of her son she was greatly assisted by culturally appropriate services from the Cultural Healing Program provided by Queensland Health and the Aboriginal and Torres Strait Islander Legal Service on the Sunshine Coast. When she spoke of her experience with Cultural Healing, Ann said:

40 *Cultural Healing was reliable, really supporting. They knew our family, they knew our story from the start.*

45 Kate told the hearing that from her experience it was very difficult for her to keep her children after one of her babies was removed. She said that the justification for removal wasn't explained to her. In her words, "They just said because one baby was removed, the other is removed." Early in her pregnancy with her fourth child, Kate reached out to Julia Wren from the IDRS for help, because she was scared again her baby would again be taken from her. With Kate's consent, IDRS made contact with the Department and with Julia's advocacy and assistance successfully built up a

support system which has meant Kate's youngest child has not taken from her and she was allowed to be a parent.

5 Shontaya told the hearing that the statutory child protection system needs to change its approach to disability. She said that the system should assist parents with disability to get specialist support and to gain access to NDIS and other supports, and that the system should "not make disability as the biggest threat for kids". The Department should look to the strengths of parents with disability --- in her case her culture was her strength for her and her kids. She said that disability is not her fault, 10 she can't change it, she should not be discriminated against as a parent because of it.

In addition to that evidence, we want to highlight and acknowledge the important voices we have heard from First Nations people and other people who are committed to the advocacy and support of First Nations parents with disability. 15

As I said in my opening, we understand and appreciate the heavy weight carried by First Nations people who have advocated for systemic reforms to multiple inquiries over time. We therefore particularly thank all of our witnesses for placing their trust in us, that their evidence will assist the Royal Commission to develop 20 recommendations that translate into real outcomes for First Nations people.

We thank all of our witnesses for their suggestions for change. I would like to mention just a couple.

25 Thelma Schwartz from the Queensland Indigenous Family Violence Legal Service told us that although the system had improved its treatment of women who were the victims of domestic violence, those same women were treated very differently by the child protection system. The same features of these women's lives were relied on adversely by the child protection system. Thelma said:

30 *.... by coming forward and making a disclosure that you are a victim, which is all of this advertising and the whole genesis of the Not Now, Not Ever report, this is now used as a catch-22 for this mother and used against her to remove her kids.*

35 Julia Wren, disability case worker from the Intellectual Disability Rights Service, the IDRS, who provided support and worked with Kate, told us from her experience, that First Nations parents with disability need to have a fair go. She said:

40 *I think it is very important to have somebody as a non-legal advocate for these parents because they can stand by and they can support the parents to speak for themselves, advocate for themselves. And it keeps the DCJ workers accountable, and they have to listen to what parents have to say.*

45 In carrying out the work of the Royal Commission we have a strong commitment to hearing the voices of people with disability, to understand their experience of violence, abuse, neglect and exploitation as well as their proposals always for

change. That has meant that we have listened to confronting stories from witnesses during this hearing.

5 The Royal Commission encourages those involved in or following public hearings to seek support if they feel they need to in response to this hearing.

I remind everyone connected to this public hearing of the support structures which are available.

10 The Royal Commission has an internal counselling and support services team made up of social workers and councillors who can provide counselling and support to people engaging with the Commission.

15 The Australian Government has also funded the Blue Knot Foundation, a specialist counselling support and referral service for people with disability, their families and carers and anyone affected by the Commission. Their hotline number is 1800 421 468.

20 A range of legal and advocacy services have also been funded by the Australian Government. There is a legal financial assistance scheme to assist with meeting the cost of legal representation associated with formal engagement with the Commission. National Legal Aid, the National Aboriginal and Torres Strait Islander Legal Services also deliver free legal advisory services to people engaging with the Commission. Further information about these services can be found on the
25 Commission's website or by contacting the information line which is 1800 517 199.

30 As I've said, this is the first of a number of First Nations-specific public hearings to be held by the Royal Commission. This hearing commenced our inquiry with the starting point of the life course for First Nations people with disability in the context of family. Future First Nations public hearings will continue our examination of the life course experiences for First Nations people with disability and their experiences of violence, abuse, neglect and exploitation, including cumulative systemic abuse and neglect by multiple systems over time.

35 The next public hearing of the Royal Commission will examine the barriers to open employment for people with disability and it will be the first public hearing of the Royal Commission concerning economic participation of people with disability.

40 People with disability will tell the Royal Commission about their experiences in finding and keeping jobs, in open employment and transitions into and out of the workforce, and their experience of discrimination and exploitation.

Thank you, Commissioners.

45

CLOSING

CHAIR: Thank you very much, Mr Crowley.

5 I would like to echo the appreciation that has been expressed by Mr Crowley to all
the witnesses who have given evidence at this hearing during the week. I especially
wish to thank all First Nations people who have shared their knowledge, their
experiences and their wisdom with us, and have done so with great passion. In
particular, I wish to thank Ann, Kate and Shontaya who have been generous enough
10 to share their stories with us. They have provided us with a depth of understanding
that would not be possible without hearing from First Nations people with disability
who have had the experience of having their children taken into care.

I also wish to thank the Royal Commission staff who have worked so hard to prepare
and conduct the hearing. As I have remarked at previous hearings, an enormous
15 amount of dedication and skilled work is required to plan a hearing of such wide
scope and complexity and to ensure that it is conducted smoothly. If the difficulties
and burdens created by COVID-19 were not enough, the preparations for this hearing
were disrupted at virtually the last moment by a cyber-attack on our online court
platform. Staff worked extremely long hours and under great pressure to ensure that
20 the hearing could proceed.

The Commissioners are grateful to each and everyone of you. This was not a
problem that could have been anticipated any more than we could have anticipated
25 COVID-19. We hope we don't have any more problems that we haven't anticipated.

This hearing has been concerned with issues of great practical and symbolic
significance to First Nations people. The removal of children from their parents,
families and communities inevitably has a profound effect on everyone --- a
profound impact on everyone who is affected. When First Nations children are
30 removed from their parents, their families, their communities, it may mean not only a
loss of extended family and community, but the severance of ties to culture, heritage
and knowledge.

As we have heard, the practice of removing First Nations children into the child
35 protection system necessarily invokes uncomfortable reminders of the terrible trauma
inflicted on the Stolen Generation.

The starting point for this hearing is the documented and well known gross
over-representation of First Nations people in the child protection systems of the
40 states and the territories. However, this Royal Commission has been directed to
investigate violence against and abuse, neglect and exploitation of people with
disability. Thus, our focus has to be on the impact of child protection systems on
First Nations parents and children with disability.

45 While the data is limited, as we have heard, it is clear enough that First Nations
people with disability, parents, children and extended families are forced to interact
with the child protection systems at even higher rates than First Nations people

without disability. There is obviously a close link between the over-representation in the system of First Nations people generally and First Nations people with disability.

5 Indeed, as the evidence indicates, a very large proportion of First Nations parents in contact with the child protection system have a disability, often an intellectual disability. Much of the evidence of the hearing has addressed the causes and drivers of over-representation of First Nations people in the child protection systems.

10 While these are generally well understood by those who are familiar with child protection systems and by First Nations people themselves, they do bear repetition and widespread dissemination through the broader community. They include the impact of colonisation including dispossession, forced assimilation, marginalisation, removal of children and intergenerational trauma. The social and economic disadvantages experienced by First Nations people with disability including
15 inadequate housing, core health, physical and mental, and poverty.

The historical failure of child protection agencies to understand the culture, parenting practices and sensitivities of the First Nations people. The impact of conscious and unconscious bias within child protection systems. Policies that are perceived, with
20 justification, to be punitive rather than supportive of families experiencing difficulty. And the wholly understandable fears and suspicions held by First Nations people about child protection agencies and the threats of intervention in their lives and the lives of their families. The over-representation of people with disability in the child protection systems is associated with additional factors. These include the limited
25 understanding of disability held by child protection agencies, the historical tendency to conflate disability of First Nations people, particularly intellectual disability or mental illness with poor parenting capacity and a risk of harm to the child. Assessment criteria allow case workers considerable discretion to attribute undue
30 significance to characteristics associated with disability when First Nations people are involved. The concentration by child protection agencies on tertiary rather than primary intervention for First Nations families. And the imposition by agencies of inappropriate requirements on First Nations parents with disability as prerequisites to prove parental capacity.

35 Mr Crowley has identified some of the main themes that have emerged in the evidence. I do not propose to repeat what he has said. I wish to make only three additional points. First, we should not underestimate the difficulty and complexity about bringing about the changes that are generally recognised to be necessary to
40 minimise, if not entirely eliminate the over-representation of First Nations people in the child protection systems.

Whatever criticisms might be directed at the child protection agencies themselves, it would seem from the evidence that they are making genuine efforts to correct the
45 pernicious legacies of the past. Examples include the Family Wellbeing Service and Family Participation Program in Queensland and the targeted family intervention involving First Nations community-controlled organisations in New South Wales. The Royal Commission must propose recommendations that can advance this

process recognising that it is not going to be achieved or completed overnight.

5 A second point is related. We need to be careful not to assume the changes in legislation or formal policies will be self-implementing. We also need to be careful about the unintended consequences that can flow from well-intentioned innovations. It is undoubtedly important, for example, for states and territories to legislate to incorporate the Aboriginal and Torres Strait Islander Child Protection Principle as Queensland has done and South Australia is apparently about to do.

10 But, as we heard today, the enactment of the principle does not guarantee its implementation by case workers. The implementation requires changes in the culture, practices and interactions of child protection agencies and that can be a very challenging and protracted process. Without reaching any final conclusion Queensland may provide an example of the gap between the enactment of legislation
15 and implementation of the principles enshrined in the legislation.

Incomplete adoption of the Child Protection Principle also illustrates the possibility of unintended consequences. The policy of placing First Nations children with a family member, other than parent, apparently may be accompanied by a condition
20 that restricts contact, between the parent and the family member. Paradoxically, this may reduce the supports available to the parent and perpetuate a cycle of involvement with child protection agencies.

25 Similarly, while it may seem self-evident that child prevention services should collect comprehensive data on the proportion of First Nations parents and children with a disability, doing so may carry some risks. Several witnesses have pointed out the information could be used by decision makers to further the disadvantages and discrimination already experienced by First Nations people with disability. This is not a reason to avoid collecting data. It is a reason to ensure data is not misused.

30 Thirdly, while the structural obstacles to genuine reform are formidable, that does not justify reticence or timidity in proposing further changes. For example, on the basis of the evidence of this hearing, it is difficult to resist the conclusion that the tools used by child protection agencies to assess parenting capacity or the risk of the
35 harm to the child are poorly adapted to the circumstances of First Nations people with disability.

40 There therefore seems to be a strong case for amending the assessment tools to remove the de facto presumption that disability or mental health problems are themselves risk factors or factors indicating parental deficiency; to recognise expressly cultural differences that express themselves in differing parenting styles for First Nations parents and in different ways of communicating such as the phenomenon within First Nations communities of gratuitous concurrence; to
45 encourage First Nations people with disability; to have support people, including advocates present at all interactions with child protection agencies; to remove the presumption that a parent who has been exposed to the child protection system is by that fact alone a risk to their child or the fact is an indication of parental deficiency

and to recognise the strength of parents and families alongside risk factors in order to provide a more balanced approach to determining parental capacity or risk of harm to the child.

5 As was said at the outset of this hearing, we understand that scepticism of First Nations people about the prospect of yet another Royal Commission or inquiry seeking to bring about the systemic changes needed to redress the trauma of the past. As I hope this hearing demonstrates, we sincerely hope that the Royal Commission will be instrumental in achieving change. With the guidance of Commissioner
10 Mason, we certainly intend to try.

Now, I think, Mr Crowley, there are some directions to be made and I take it they are in the draft that has been provided to me?

15 MR CROWLEY: Yes. That's so, Chair.

DIRECTIONS

20

CHAIR: All right. Thank you. Then the directions that are to be made are as follows:

25 1. So far as questions on notice are concerned by Friday, 11 December 2020, any witnesses who took questions on notice during this hearing should provide their answers in writing to the Office of the Solicitor Assisting the Royal Commission. These answers should be targeted and concise. And, I add, as all communications by the Royal Commission are.

30 2. Submissions from parties in receipt of procedural fairness letters, by Friday, 11 December 2020, those parties should provide concise submissions in response along with any additional material for the Commissioners' consideration to the Office of the Solicitor Assisting the Royal Commission.

35 3. Counsel Assisting the Royal Commission will consider any additional material produced and determined if any additional steps need to be taken. By Monday, 21 December 2020, counsel assisting will tender into evidence whatever additional materials are considered appropriate.

40 4. Counsel Assisting will then prepare written submissions for the Royal Commission setting out a number of key themes and issues that have emerged from the evidence during the hearing, including additional material that has been tendered. Counsel Assisting the Commission will be [audio distorted] made available on a confidential basis to those parties with leave to appear at the hearing by Friday,
45 March 2021.

5. Parties with leave to appear who wish to make submissions in response should do

so by 6 April 2021, noting that the submissions in response should be concise and should not include any additional proposed evidence.

5 6. Finally, following consideration of Counsel Assisting's Submissions, along with any submissions received in response, the four Royal Commissioners who have sat at this hearing will prepare a short report on the hearing. That report will be made public in due course.

10 Mr Crowley, do they conclude the directions that should be made?

MR CROWLEY: Yes, it does. Thank you, Chair.

15 CHAIR: In that case, it remains only once again to thank everybody, including counsel who have contributed to this hearing, and to adjourn the hearing.

The Royal Commission will resume on Monday week at the hearing on employment, as Mr Crowley has indicated. Thank you.

20 **ADJOURNED AT 12.44 PM UNTIL MONDAY, 7 DECEMBER 2020 AT 10.00 AM (AEST)**

Index of Witness Events

MS CANDICE BUTLER, AFFIRMED	P-394
MS DANA CLARKE, AFFIRMED	P-394
MS OLIVIA KING, AFFIRMED	P-394
EXAMINATION-IN-CHIEF BY MR CROWLEY	P-394
QUESTIONS BY THE COMMISSION	P-417
THE WITNESSES WITHDREW	P-417
MR RICHARD WESTON, SWORN	P-419
EXAMINATION-IN-CHIEF BY MR CROWLEY	P-419
QUESTIONS BY THE COMMISSION	P-433
THE WITNESS WITHDREW	P-435
CLOSING STATEMENT BY MR CROWLEY	P-440
CLOSING	P-444
DIRECTIONS	P-448

Index of Exhibits and MFIs

EXHIBIT #8.21 - STATEMENT OF MS CANDICE BUTLER	P-396
EXHIBIT #8.22 - STATEMENT OF MS DANA CLARKE	P-397
EXHIBIT #8.23 - STATEMENT OF MS OLIVIA KING	P-397
EXHIBIT #8.24 - STATEMENT OF MR RICHARD WESTON	P-420
EXHIBITS #8.24.1 - ANNEXURE TO STATEMENT OF MR RICHARD WESTON	P-420
EXHIBIT #8.25 - STATEMENT OF ASSISTANT COMMISSIONER NICOLE HUCKS	P-436
EXHIBIT #8.26 - STATEMENT OF PROFESSOR CLARE TILBURY	P-436
EXHIBITS #8.26.1 to #8.26.16 - ANNEXURES TO STATEMENT OF PROFESSOR CLARE TILBURY	P-436
EXHIBIT #8.27 - STATEMENT OF MS JO WOOD	P-437
EXHIBIT #8.28 - STATEMENT OF MS LEONIE WARBURTON	P-437
EXHIBITS #8.28.1 to #8.28.2 - ANNEXURES TO STATEMENT OF MS LEONIE WARBURTON	P-437
EXHIBIT #8.29 - STATEMENT OF MR MICHAEL PERVAN	P-437
EXHIBIT #8.30 - STATEMENT OF MR SHANE WILSON	P-437
EXHIBIT #8.31 - STATEMENT OF MS MICHELLE JANE ANDREWS	P-438

EXHIBITS #8.31.1 TO #8.31.7 - ANNEXURES TO STATEMENT OF MS MICHELLE JANE ANDREWS	P-438
EXHIBITS #8.6.1 to #8.6.3 - ANNEXURES TO STATEMENT OF MS THELMA CAROLINE SCHWARTZ	P-438
EXHIBIT #8.19.84 - ANNEXURE TO STATEMENT OF MS CATHERINE MAREE TAYLOR	P-438
EXHIBIT #8.21.1 - ANNEXURE TO STATEMENT OF MS CANDICE BUTLER	P-438
EXHIBITS #8.4.1 TO #8.4.3 - ANNEXURES TO STATEMENT OF DR TRACEY WESTERMAN	P-439
EXHIBIT #8.33 - ANNEXURE TO STATEMENT OF COMMISSIONER NATALIE LEWIS	P-439
EXHIBITS #8.32.1 TO #8.32.3 - DOCUMENTS USED IN CROSS-EXAMINATION OF WITNESSES IN PUBLIC HEARING 8	P-440
EXHIBITS #8.24.2 TO #8.24.5 - ANNEXURES TO STATEMENT OF MR RICHARD WESTON	P-440
EXHIBITS #8.33.1 TO #8.33.24 - FURTHER ANNEXURES TO STATEMENT OF MR MICHAEL COUTTS-TROTTER	P-440