



# Opening Address Counsel Assisting – Lincoln Crowley QC

## Public hearing 8: The experiences of First Nations people with disability and their families in contact with child protection systems

**Brisbane, 23 November 2020**

My name is Lincoln Crowley QC. In this hearing I appear with Dr Mellifont QC, and Ms Bennett (via AVL from Victoria) and Mr Power of Counsel.

We are instructed by the Office of the Solicitor Assisting the Royal Commission.

We acknowledge and pay our respects to the traditional custodians of the various lands on which we participate in this public hearing. We pay our respects to First Nations elders past, present and emerging as well as to all First Nations people involved in and following this public hearing.

This is the eighth public hearing of the Royal Commission. It is however the first of a series of public hearings that will specifically focus on the experiences of First Nations people with disability. This hearing will be conducted over 5 days, commencing today and concluding on Friday 27 November. This hearing will examine the experiences of First Nations people with disability in contact with child protection systems.

It does so with the terms of Article 23 of the Convention on the Rights of Persons with Disabilities in mind, and, in particular Article 23, Item 4 which provides: States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

As you have heard, this hearing is being held in Brisbane and Sydney, and while the hearing rooms are not open to the general public due to Covid restrictions, the hearing can be followed on web stream on the Disability Royal Commission website.

Some witnesses will give evidence in person from the Brisbane hearing room. Others will give evidence via AVL. And some others by pre-recorded evidence. The manner in which each First Nations witness varies depending on the particular circumstances, and the individual wishes of the witness.

Our Terms of Reference expressly require the Royal Commission to have particular regard to the experiences of First Nations people with disability. It is not surprising that they do so given the observations made by Commissioner Mason in the first public hearing, which were:

First Nations people are already marginalised in the Australian community. Having a disability makes them part of a marginalised group, within a marginalised group. They experience racism and ethnocentrism, like other First Nations brothers and sisters experience. However, they see, hear and feel a greater level of discrimination above what I and other brothers and sisters experience because they have a disability.

Thus, inquiring into issues facing First Nations People with Disability is a specific priority of the Disability Royal Commission.

The issues have come, and continue to come, from our community as we listen to First Nation voices.

To identify the key concerns of community, we have reviewed all material received by the Royal Commission through private sessions, submissions, responses to issues papers, First Nations-specific workshops, all forms of community engagement and through the advice and guidance of the First Nations Peoples Strategic Advisory Group.

We have also engaged in close consultation with the First Nations community. Initially, this involved in-person engagements in urban, rural, remote and very remote areas of Australia. I have had the privilege of being personally involved in direct engagement with First Nations people with disability, their communities, their elders, leaders, and representative bodies. Through these consultations, I was repeatedly told that First Nations people with disability are not getting the supports they need, and that neglect of their needs is occurring on a systemic basis.

The pandemic has had a significant impact on our ability to engage, in person, with the community. However, we have remained committed to the important task of bringing forward the experiences and stories of First Nations people with disability into this inquiry

– to make loud the silenced voice – and we have altered the means and methods of our engagement to permit this work to continue.

The Disability Royal Commission needs to hear the stories of First Nations people told by First Nations people. The Commission acknowledges that understanding those stories comes through listening respectfully and honestly and treating First Nations people who have the courage to tell their stories with dignity. That is what this week is all about – it is a hearing.

But we can only hope to bring about a better future for First Nations People with Disability if First Nations come forward to be heard through giving evidence at public hearings.

The Commission therefore encourages all First Nations people, particularly those with lived experience as First Nations People with Disability, who have something to say about the issues the Commission will examine in later public hearings, to speak up - and they will be heard.

Public hearings are only one aspect of the work of the Disability Royal Commission but they are an important aspect: they provide the chance for the public to hear First Nations voices speak of their experiences with cultural authority and knowledge and they enable those voices to be amplified.

This hearing continues a journey – being the Commission’s 8<sup>th</sup> public hearing – in which issues facing First Nations People with Disability have already been raised.

But, as I observed above, this is the 1<sup>st</sup> First Nations specific public hearing for the Disability Royal Commission – and the beginning of what we hope will be a journey with a purpose.

The ultimate purpose is to bring positive change to the lives of our mob – First Nations People with Disability who experience, or are at risk of, violence, abuse, neglect or exploitation – because they are First Nations People with Disability.

All Commission hearing staff and Counsel Assisting are dedicated to the task of assisting the Commissioners to examine the issues and identify the challenges and concerns of First Nations People with Disability; to understand what needs to change and why it must change; and to have the courage to make the necessary recommendations that will bring change

## **What this hearing is about**

Public Hearing 8 will hear First Nations people tell their stories and share their knowledge of their experiences and interactions of First Nations Parents with Disability in contact with child protection systems.

This hearing will speak to the importance of culture and First Nations family – and we hope to shine a light on the stark reality over representation of First Nations families and children in child protection systems today.

The Australian Bureau of Statistics reported that 22% of First Nations children have disability, compared to 8% in the general population. In adulthood, that increases to 48% of First Nations adults aged 18, compared to 13% in the general population.

According to the most recent report of the Australian Institute of Health and Welfare issued on child protection in Australia, as at 30 June 2019, First Nations children were almost 8 times as likely as non-Indigenous children to have received child protection services (156 per 1,000 children compared with 21 respectively). First Nations children were nearly 11 times as likely as non-Indigenous children to be living in out of home care.

In the course of preparing this hearing, I had the privilege of speaking to Aunty Jenny Swan and Aunty Sue Ellen Tighe from Grandmothers Against Removal (NSW). I would like to now share one of the powerful messages they shared with me:

What we advocate for is our children to be left with their families in culture because culture is a lived experience, and whether they've got a disability or not, culture is a lived experience and that's what we advocate because too many of our kids are being taken. You know, we've got higher rates than in the Stolen Generation, I think it's 11 times higher than the Stolen Generation, that's never stopped. Names have changed, policies have changed, but that's never stopped.

Despite the overrepresentation of First Nations people in the child protection system, and the prevalence of disability for First Nations adults, the specific experience of First Nations parents with disability who are in contact with child protection systems has, until now, been underexplored.

## **Key question**

A focus of this hearing will be on the question of whether First Nations parents with disability and their families are exposed to a higher likelihood of statutory intervention(s) by child protection systems because they are a First Nations Person with Disability;

This is a difficult and sensitive topic for our community, and at this stage, I wish to advise First Nations people who are watching or listening to this hearing that the evidence will describe removal, and respectfully acknowledge that hearing such evidence may be very difficult. I will later provide the details of support services available. I also note that in the course of this week, you may hear the names of deceased First Nations people.

Related to the question I spoke of a moment ago are the reasons, causes and effects of statutory intervention and child removal for First Nations People with Disability. This hearing will examine those issues individually and systemically.

In doing so, the Commission acknowledges that the immediate factors that are often relied upon to justify the removal of First Nations children from their parents cannot be considered in isolation from other socio-economic factors such as poverty, lack of housing and domestic violence and they cannot be examined without acknowledging the pervasive and damaging effects of historical policies, actions and events, commencing with colonisation, that have caused personal and cultural trauma for past generations and which still continues to be experienced today for First Nations people.

## **Inquiry fatigue**

At this point I would like to confront the real and important issue of inquiry fatigue for First Nations people. During my involvement in direct engagement with First Nations people, I have been repeatedly told by First Nations people that they are fatigued by inquiry. The community is tired of report after report being provided to government that does not translate to action. We know that we are asking First Nations people with disability and their families and their communities to come forward and share their experiences with us is significant.

In evidence you will hear from Commissioner Natalie Lewis, who is a First Nations Commissioner for the Queensland Family and Children's Commission, you will hear of her experience of inquiry fatigue. Commissioner Lewis will say:

As an Aboriginal woman, and professional committed to social justice, the number of recommendations from Commissions of Inquiry, Royal Commissions and reviews about

us, that have remained unimplemented, or implemented in ways that are far removed from the original intent, is both profoundly personal and professionally exhausting.<sup>1</sup>

### **Intersectionality / cumulative discrimination / multi-factorial influences**

The Royal Commission's Interim Report, published on 30 October 2020, describes the experiences of harm across many settings of First Nations People with Disability and the barriers to their safety, wellbeing and inclusion. First Nations People with Disability have told us their experiences are often compounded by multi-layered disadvantage associated with colonisation, poverty, chronic health conditions, racism, intergenerational trauma and a lack of culturally appropriate services.<sup>2</sup>

The Interim Report tells us that many First Nations people do not identify themselves or their children as a person with disability which may reflect their own experiences of stigma and shame, gaps in their knowledge and the inaccessibility of current systems.<sup>3</sup> For many First Nations people, disability may be seen as another issue to manage on the spectrum of disadvantage and so may not receive the attention it needs.

The Interim Report also presents stories First Nations people have shared with the Royal Commission highlighting how caring and cultural obligations are strong in their communities. They have told us these obligations are a key consideration in providing support and responses to experiences of violence and abuse, including to address the limited availability of culturally safe and trauma-informed services to help First Nations People with Disability experiencing domestic and family violence.<sup>4</sup> First Nations people

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<sup>1</sup> Statement of Natalie Lewis, 12 October 2020.

<sup>2</sup> Queensland Aboriginal and Islander Health Council, Submission in response to *Health care for people with cognitive disability issues paper*, 4 April 2020, ISS.001.00136; National Health Leadership Forum, Submission, 9 March 2020, SUB.100.00575; Speaker (name withheld), Royal Commission workshop, Sydney, August 2019

<sup>3</sup> Rozanna Lilley, Mikala Sedgwick & Elizabeth Pellicano, *We look after our own mob: Aboriginal and Torres Strait Islander experiences of autism*, Research report, Macquarie University, Sydney, Australia, February 2019, p 34; *Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation, Tjitji Atunymankupai Walytja Tjutangku: Children with disability in the NPY lands*, Final project report, June 2019, pp 16–17, 25.

<sup>4</sup> Central Australian Aboriginal Family Legal Unit, Royal Commission community engagement, February 2020, Sisters Inside Inc, Submission in response to *Criminal justice system issues paper*, 14 April 2020, ISS.001.00102

have also said they do not feel comfortable raising these matters with the police or child protection services.<sup>5</sup>

In developing this hearing, our intention is to consider whether disability status may be a silent causal factor increasing the likelihood of child removal from First Nations parents and contributing to the over-representation of First Nations children in out of home care in Australia.

## Issues

Some of the issues we will be considering in the course of this hearing are:

- a. Whether there is recording and data for FNPWD in contact with CP systems across the country;
- b. Whether early intervention exists/is practiced – and if so, how, when and why that happens. This was one of the issues that GMAR (NSW) shared their thoughts about with me. Their concern was that of the services available, they seem only to become available once you are in the system – in the Department’s system – Aunty Suellyn expressed it in these words:

we talk about the gate. ....the gate only swings one way in the sense that it prevents you from being proactive. You cannot walk off the street, walk through a door to a service, one that is identified or acknowledged by the department. You can't walk into a service unless you're on the books. You can't be proactive.

Other issues we will consider include:

- c. Assessment and identification of disability in First Nations parents;
- d. Supports and services available for First Nations People with Disability – are they provided - when/how and by whom are they provided;
- e. How disability and First Nation status may affect risk assessment/decision making by child safety workers;
- f. Cultural competency in decision making;
- g. The Aboriginal Child Placement Principle – in practice

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<sup>5</sup> Queensland Aboriginal and Island Health Council, Submission in response to *Health care for people with cognitive disability issues paper*, 6 April 2020, ISS.001.00136; Dr Scott Avery, *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia, 2018, pp 43, 169; Speaker (name withheld), Royal Commission workshop, Darwin, August 2019

## Unconscious bias

Relevant to these topics, in particular to decision making, is the concept of unconscious bias. Analysis from The Australian National University (ANU) published in the [\*Journal of Australian Indigenous Issues\*](#) in December 2019 shows most Australians tested for unconscious bias hold a negative view of First Nations people which can lead to widespread racism. Bias was regardless of gender, age, ethnicity, occupation, religion, education level, geography or political leanings.

75 per cent of Australians tested using the Implicit Association Test, a joint initiative of universities including Harvard, Yale and the University of Sydney hold a negative implicit or unconscious bias against First Nations people.

The researchers analysed the "implicit bias" of over 11,000 Australian participants over a 10-year period, and how this may lead to racist attitudes or behaviour. **The results show there may be an implicit negative bias against Indigenous Australians across the board, which is likely the cause of the racism that many First Nations people experience.**

The results show it is likely that many people who hold these views have no awareness of their prejudice. As it is often unconscious, implicit bias that can seep seamlessly (and sometimes perniciously) into the everyday decisions at all levels of society.

## Further observations about data

First Nations people have long claimed sovereignty over their culture and lands, and extend this claim over data about them.<sup>6</sup>

The concept of Indigenous Data Sovereignty refers to the right of First Nations people to exercise authority over the collection, access, analysis and use of data that relates to them.<sup>7</sup> This is exercised through Indigenous Data Governance which is an important mechanism for ensuring that First Nations peoples, perspectives, priorities and

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<sup>6</sup> Jennifer Walker, Ray Lovett, Tahu Kukutai, Carmen Jones and David Henry, 'Indigenous health data and the path to healing', *The Lancet*, Vol 390, November 4 2017, pp 2022–2023.

<sup>7</sup> Ray Lovett, Vanessa Lee, Tahu Kukutai, Stephanie Carroll Rainie and Jennifer Walker, 'Good Data Practices for Indigenous Data Sovereignty,' in Angela Daly, Kate Devitt and Monique Mann (eds) *Good Data*, Amsterdam: Institute of Network Cultures, p 26-36.



knowledges are centred.<sup>8</sup> High quality data empowers First Nations people to make informed decisions about their own development.

Good data is critical for setting goals, measuring success against these goals, and holding governments, organisations and others accountable for delivering on these goals. Without good data, it is not possible to know whether the double discrimination that First Nations People with Disability experience in other aspects of their lives is also reflected in the child protection system. Without good data, it is difficult for systems and services to care for and better support vulnerable parents.

And yet, our work to date tends to indicate a lack of high quality data. We have observed this too, in other hearings: Public Hearing 6, which looked at the experiences of people with disability during COVID, and Public Hearing 7, which considered educational neglect of children with disability.

Preparation for this hearing included undertaking investigations as to whether child protection departments of state and territory governments capture, record and publicly report on the disability status of parents whose children they are providing services to. A purpose of these investigations was to obtain information as to whether the children of First Nations parents with disability are over-represented in the child protection system and are more likely to be placed in out of home care in comparison with the children of other parents.

Under request or compulsory notice, we sought statements from all state and territory child protection departments about whether data is collected, recorded and reported about the First Nations and disability status of parents whose children are in contact with the child protection system. We will tender those statements into evidence at this hearing.

From the information provided to the Royal Commission from all jurisdictions, we observed that the First Nations status of parents is generally captured by state and territory child protection systems, with the apparent exception of Tasmania.

However, there does not appear to be a consistent capture of collection, recording and reporting of the disability status of parents.

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<sup>8</sup> Productivity Commission 2020, *Indigenous Evaluation Strategy, Background Paper*, Canberra, pp 338-345.

As a starting point, our analysis of the statements provided to the Royal Commission indicates that across Australian jurisdictions, there is no common definition used for 'disability' for the purpose of capturing data on disability status in child protection systems.<sup>9</sup>

We understand that no jurisdiction currently mandates in law or policy that the child protection system collect and record data on parental disability status.

In response to a question about whether the child protection departments collect and record information on the disability status, or disability indicators, of parents in contact with the child protection system, the statements provided to the Royal Commission indicate that jurisdictions may capture information about the disability status of parents within their client records. No jurisdiction positively confirmed that they publicly report on the disability status of parents.

All jurisdictions explained that where information on parental disability status is collected and recorded, it may be for the primary purpose of conducting risk of harm assessments on a child's safety and to assess parents' capacity to care for and protect their children. Only some jurisdictions referred to that information being used to provide supports to parents and families.

Only the ACT Community Services Directorate expressly indicated that information about a parent's disability status is used to inform 'reasonable adjustments' for parents with disability to access available services and supports. The Directorate also referred to work underway to ensure there is effective two-way communication, understanding and participation on an equal basis in its practices in respect of parents with disability.

Some jurisdictions explained that the data available on parental disability is of poor quality or is incomplete.

Most jurisdictions identified that they are operating with information recording systems that require updating. They reported the limitations of these systems impact on the capacity to record and report on data on parental disability status.

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<sup>9</sup> For example, the ACT Community Services Directorate applies a definition of disability drawn from the Convention on the Rights of People with Disability. For the purpose of its child protection and care data capture, the Victorian Department of Health and Human Services defines a person with disability as a person with an NDIS plan or Disability Support Planning in place.

It would seem, therefore, on the information currently known to the Commission, that States and Territories are not presently able to say, on a statistical basis, whether the children of parents with disability, including First Nations parents, are more likely to be subject to intervention by their child protection system and whether they are over-represented in particular stages of the child protection system, such as out of home care.

If we are correct in that analysis, then this begs the question of how States and Territories are able to direct resources towards parenting and family support services, on the basis of evidence and need, which are appropriate and accessible for parents with disability, and culturally appropriate and safe for First Nations parents with disability. This question will be addressed to the various government witnesses who will be giving evidence this week.

## **LIVED EXPERIENCE WITNESSES AND WITNESSES IN CONNECTION TO THEIR EVIDENCE**

### **“Ann” [Qld] [pseudonym]**

We will hear from a Wakka Wakka woman and mother with direct experience of interactions with the child protection system in Queensland. She will give evidence under the pseudonym “Ann”.

Ann has been diagnosed with schizophrenia, a form of psychosocial disability.

She was first diagnosed with her illness when admitted to hospital after experiencing a psychotic episode. At that time she was a young single mother. The Department removed her son from her care under a short term order. Over the next several years her son was the subject of further short term orders. After a further psychotic episode the Department sought an order for long term guardianship until her son would be 18. This despite the fact that since her further episode Ann had become a mother to a second child, a daughter, who was not removed from her care.

Ann fought to have her son returned to her. She proactively sought supports to help her with her parenting and her mental health condition. Ann will speak of her efforts, and will describe how, with the assistance of culturally appropriate mental health supports and through the advocacy of her lawyer, she was able to successfully challenge the application by the Department for a long term guardianship order. Earlier this year, more than five years after he was first removed, Ann was finally able to be reunited with her son and she and her partner now all live together as a family again.

## **Ms Christine May**

We will hear from **Christine May**<sup>10</sup> who is an Aboriginal and Torres Strait Islander Mental Health Worker within the Cultural Healing Program provided by Queensland Health on the Sunshine Coast.

Christine is the case worker who works alongside Ann.

Christine will give evidence about the unique support provided to First Nations people through the Cultural Healing Program and of the assistance she was able to provide to Ann to help her be reunited with her son. She will speak of her observations of the way the Department interacted with Ann and her concerns about the insufficiency of timely provision of culturally appropriate and safe supports for First Nations parents with disability.

## **Kate [NSW] [pseudonym]**

We will also hear from a First Nations woman and mother with disability, living on Dharug and Gundungurra people's country, who will speak of her interactions with the child protection system in NSW. She will give evidence under the pseudonym "Kate".

At the age of 2, Kate was removed from her mother, and placed in foster care with an Aboriginal Foster mother – a respected Aunty, who Kate calls "Mum". She grew up with many foster siblings in a large Aboriginal foster family. Although Kate identifies as a First Nations person and her culture is important to her, because of her early own removal at a young age she is unsure which side of her family is the origin of her First Nations heritage.

Kate has variously been diagnosed with ADHD, low borderline autism and Aspergers and intellectual disability. She was subjected to sexual abuse while in primary and high school. When aged 16, her foster mother became unwell, and Kate left home and lived on the streets for a time. She eventually secured accommodation through a Youth Service where she then lived with her ex-partner, who had also been a child in foster care. That relationship lasted for several years but was marked by episodes of domestic violence inflicted upon Kate by her partner.

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<sup>10</sup> Connected with lived experience witness Ann

Not long after securing stable accommodation Kate became pregnant with her first child. Late in her pregnancy a serious incident occurred – a gas bottle exploded and fire destroyed the home and all their possessions. Her partner was left seriously injured and hospitalised and was left Kate homeless. Two weeks after her baby was born, the Department took the child, citing homelessness.

Kate's second child was removed a few months after birth. By this time, Kate had separated from her ex-partner because of repeated acts of domestic violence. However, the Department determined that Kate was not capable of parenting her baby alone without her ex-partner. Her third child was removed straight after birth and Kate had no opportunity to show that she could be a capable parent.

Kate will tell us the experience with her fourth child was different. With the help of her disability case worker she proactively contacted the Department as soon as she found out she was pregnant and pleaded with them to provide her with support so she could keep the baby. In effect, the Department was coaxed and compelled to help Kate keep her child through early intervention, rather than again following a pathway to removal. Kate's fourth child has not been removed and they currently live together, with Kate's new partner, as a family. Although Kate will talk of how she was able to successfully keep her youngest child, Kate will describe the trauma of the removal of her first three children and the burden of feeling that things could have been different for her and her other children had they been similarly supported.

### **Ms Julia Wren**

We will hear from **Julia Wren**<sup>11</sup> who is a Disability Case Worker for the Intellectual Disability Rights Service (IDRS) which provides legal help, justice support, NDIS appeals and training for people with a cognitive impairment across New South Wales.

Julia is the Disability Case Worker for Kate. Julia was with Kate, when Kate's second baby was removed from her and later, with Kate's consent, advocated for the Department to get involved and provide support for Kate so she could keep her fourth child.

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<sup>11</sup> Connected with lived experience witness Kate

Julia will give evidence about her advocacy role, her experience of engaging in pre-natal work and her views of the importance of early engagement, coordination and navigation with support services such as the NDIS and community supports.

**“Shontaya” [SA] [pseudonym]**

We will hear from a Ngarrindjeri woman and mother with direct experience of interactions with the child protection system in South Australia. She will give evidence under the pseudonym “Shontaya”.

Shontaya is the mother of three children. After her youngest child was born in 2018 she was assessed and diagnosed with a chromosomal abnormality – a genetic abnormality that results in developmental and language delays. Much later, after the Department became involved, she was formally diagnosed with a mild intellectual disability.

Although she was never aware of it – over the years various notifications had been made to the Department about child safety concerns in relation to the children, in the context of recurring family violence. Shontaya was the victim of significant and prolonged violence by her ex-partner – the father of her two youngest children. He would verbally abuse her and beat her. She would flee with the children – but would eventually return and the cycle of violence would continue.

Shontaya will describe how her world fell apart in late 2019. She and her family, with whom she is close, were mourning after several close family members passed away. The family support that Shontaya usually had was reduced as the family attended to sorry business. Shontaya had physical health issues which included serious injuries inflicted upon her by her ex-partner around Christmas time that year.

It was at this point that the Department got involved – initially seeking a short-term three month order. During that process, Shontaya was assessed as having low intellectual functioning, following a parenting capacity assessment. As a result of the Department’s assessment, the Department changed their approach from working towards reunification and instead sought a long term guardianship order in respect of the three children on the basis that Shontaya lacked the capacity to parent or the capacity to learn to parent.

This matter is currently before the court and the subject of a reserved decision and thus there are some limitations on the evidence which will be given here.

However, her evidence here will speak of what it is was like, for her, as a proud First Nations woman with disability, through this journey.

## STATUTORY OFFICERS

This week, the Commission will also receive evidence from:

- Commissioner June Oscar<sup>12</sup> - the Aboriginal and Torres Strait Islander Social Justice Commissioner,
- Commissioner Natalie Lewis,<sup>13</sup> - from the Queensland Family and Child Commission (QFCC);
- Commissioner April Lawrie,<sup>14</sup> - the Commissioner for Aboriginal Children and Young People (SA);
- Assistant Commissioner Hucks – the Assistant Children’s Commissioner, Office of the Children’s Commissioner (NT)

Each of Commissioners Oscar, Lewis and Lawrie are First Nations women.

### Commissioner Oscar

Commissioner Oscar will speak to key challenges facing First Nations parents with disability from a national perspective. Her evidence includes her insights into:

- The concept of “disability” in First Nations cultures and communities
- The impact of factors such as intergenerational trauma, colonisation, mistrust of government agencies, poverty and housing on the experience of First Nations people with disability and their families in contact with child protection systems
- The need for accessible and culturally appropriate supports
- Staff working within child protection systems
- The extent to which recommendations of past inquiries have been implemented.

### Commissioners Lewis, Lawrie and Assistant Commissioner Hucks

The evidence of Commissioners Lewis and Lawrie and Assistant Commissioner Hucks will address some of the key challenges facing First Nations parents with disability in contact with child protection systems in their respective jurisdictions.

Their evidence will include their perspectives on:

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<sup>12</sup> A Bunuba woman from the remote town of Fitzroy Crossing in Western Australia’s Kimberley region

<sup>13</sup> A GKatelaraay (KKatelaroi) yinar woman

<sup>14</sup> Mirning and Kokatha peoples from the Far West Coast of South Australia

- Departmental practices for capturing First Nations and/or disability status of parents;
- How well child protection system engage with First Nations parents with disability in decision making processes, including through the use of structured decision making tools;
- The availability of accessible and culturally appropriate supports and the sufficiency of current complaint mechanisms;
- The adequacy of responses to known systemic issues, including how well recommendations from previous inquiries have been implemented.

The evidence from Assistant Commissioner Nicole Hucks is by written statement. The evidence of Commissioners Lewis and Lawrie will be by written and oral evidence.

## CONTEXT WITNESSES

The Commissioner will hear from a number of witnesses who will provide evidence of their experiences as advocates or support service providers and their interactions within the context of child protection systems.

### **Thelma Schwartz – QIFVLS [QLD]**

Ms Thelma Schwartz is a Torres Strait Islander, First Nations woman and the Principal Legal Officer of the Queensland Indigenous Family Violence Legal Service (**QIFVLS**) which is a not-for-profit family law and prevention legal service.

Ms Schwartz has over 30 years' experience in criminal and care and protection matters. She will give evidence of the relevant department<sup>15</sup> need for the Department of Child Safety, Youth and Women to make investment in front-end engagement, and to ensure there are active efforts to assist families of parents with disabilities, in order to attempt to reduce the incidence of children ending up in out-of-home care.

### **Kenn CLIFFT - IDRS [NSW]**

Mr Clift is a solicitor from the Intellectual Disability Rights Service (**IDRS**) and is the co-convenor of the New South Wales Care and Protection Network. IDRS are an independent advocacy service that provide support services to people with intellectual

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<sup>15</sup> In Queensland, this is the Department of Child Safety, Youth and Women



disability or cognitive impairment. They have a particular focus on assisting parents with intellectual disability in their engagement with the child protection system in NSW.

Mr Clift's evidence speaks to the issue that arises when his First Nations clients are not provided with support to enable them to comprehend and meaningfully participate in court proceedings, comply with court orders and participate in mainstream parenting programs.

### **Cathy Pereira, ATSIWLS NQ [QLD]**

Ms Pereira is the Principal Solicitor/Co-ordinator for the Aboriginal and Torres Strait Islander Women's Legal Service, North Queensland. She has represented First Nations women with disability for many years.

Ms Pereira will provide her perspectives on the need to reorient the system around prevention and support, and the importance of cultural competency of, and understanding of human rights obligations by, departmental staff.

Ms Schwartz, Mr Clift and Ms Pereira will all speak of recurring themes which occur in the course of their work with First Nations parents with disability, including:

- The inadequacy of legal and non-legal supports for First Nations families in their interactions with child protection departments
- The disproportionate impact of emergency/interim/immediate orders on First Nations families
- The lack of opportunity for First Nations parents with disability to respond to processes connected with the investigation of notifications, including to comply with obligations imposed by the child protection departments and/or courts

### **Ms Leigh-Anne Pokino [QLD]**

We will hear from Ms Leigh-Anne Pokino who is a social worker who works for the Inala Indigenous Health Service. Ms Pokino will give evidence about her work as a case worker, where she provides support to First Nation's mothers with disability who are in contact with the child protection system. Ms Pokino will speak of the importance of wraparound services in supporting First Nations mothers with disability, and her concerns about the influence of stereotypes on decision-making with respect to First Nations mothers with disability.

## **First Nations Child Protection Peak Bodies: Richard Weston, Candice Butler, Dana Clarke and Olivia King**

First Nation Child Protection Peak bodies provide support and services to First Nations parents, children and young people, and advocate for the community. Information received by the Commission indicates that some First Nations parents with disability are confronted with the difficulty that sometimes those working within and for government and government services have pre-existing views about them.

The Commission will hear from the following representatives of peak bodies:

- a. **Richard Weston**, who is a descendant of the Meriam people and is the CEO of the Secretariat of National Aboriginal and Islander Child Care (**SNAICC**);
- b. **Candice Butler**, a First Nation's woman who is the Director of Innovation and Practice at the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (**QATSICPP**);
- c. **Dana Clarke**, a First Nations woman who is the CEO of Burrun Dalai Aboriginal Corporation and the Chairperson of **AbSec**, the New South Wales Child, Family and Community Services Peak Aboriginal Corporation; and
- d. **Olivia King** – Manager NDIS & Residential Care, Aboriginal Family Support Services (**AFSS**) based in South Australia.

These witnesses will speak to the issues which are commonly brought to their attention from their clients and membership which relate to this hearing. They include:

- a. The structural and systemic drivers of over-representation of First Nations families, children and young people and the intersection with the experiences of First Nations parents with disability.
- b. The intergenerational trauma that is experienced amongst First Nations parents with disability and their contact experience with child protection systems.
- c. Insight into the practices and decision-making process within the statutory child protection system and the intersection with First Nations parents with disability.
- d. The supports that are available and the impact of the lack of prevention and early intervention supports for First Nations parents with disability when children have been removed.

## **ACADEMIC WITNESSES**

The Commission will also hear evidence from several academic witnesses who have particular experience and knowledge in areas of research and practice relevant to this hearing.

### **Professor Daryl Higgins**

Professor Daryl Higgins is a registered psychologist and the Director of the Institute of Child Protection Studies at the Australian Catholic University. Prior to his current position, he was the Deputy Director (Research) at the Australian Institute of Family Studies. His 25 year research career has focused on child abuse impacts and prevention, family violence and functioning.

His evidence will address:

- The fact that Australia's child protection system is focused on tertiary child protection; that is - reactive intervention by child protection authorities (including the removal of children) based on reported risk, in comparison to other international models with greater emphasis on provision of prevention and early intervention;
- That that this reactive orientation is reflected in the much lower funding for universal and targeted prevention and early intervention programs and services compared with the funding for tertiary child protection;
- The impact of this model on First Nations parents with disability in light of experiences of structural disadvantage, intergenerational trauma and unequal access to services;
- The limitations in research on the experiences of First Nations parents with disability in contact with child protection; and
- The importance of culturally appropriate and disability accessible supports to First Nations parents with disability in parenting. In a study of First Nations children in out-of-home care, Professor Higgins reports that, unprompted by the questions asked, he and the other researchers were told by those children that what they most wanted was for their parents to be provided with the help they needed so that the children could be reunited with their family and their community.

## **Dr Tracy Westerman**

Dr Westerman is a First Nations woman from the Njamal people and a practising psychologist who has created culturally and psychometrically validated tools which enable the reliable assessment and diagnosis of psychosocial disability for First Nations people. She has also conducted significant research on assessing the cultural competence of child protection staff, and has developed tools for evaluating the cultural competence of Aboriginal mental health workers and child protection workers.

Her pre-recorded evidence will be played for the Commission. It addresses:

- The use of inappropriate assessment tools in respect of psychological assessment of First Nations people
- Gaps in the availability of culturally appropriate assessment tools for First Nations people and the need for culturally competent assessors
- Cultural competence of services systems in respect of First Nations people, including child protection

## **Professor Clare Tilbury**

We will tender a statement of Professor Tilbury, a Professor in the School of Human Services and Social Work at Griffith University since 2011. Professor Tilbury has a long career in research-informed policy and practices in the family support and child protection fields in Queensland. Her work focuses on child protection systems and racial disparities in child welfare.

Her evidence speaks to the:

- Overrepresentation of First Nations children in Out of Home Care (**OOHC**) and the structural drivers for this in the child protection system, including its forensic orientation and limited availability of support services;
- The need to look beyond child protection systems for solutions to child maltreatment – to health, housing, employment, mental health, education and domestic violence services – in order to develop more comprehensive responses for children and their families. This being particularly the case for First Nation families and communities, where needs are significantly higher due to multi-generations of disadvantage;

- That over the last thirty years Australia’s child protection system has become more forensically oriented and that relative spending on investigation and OOHC has increased compared to spending on preventative support services;
- The present limitations on the available data on parental disability status in the child protection system, as well as the concerns about the potential for the misuse of that information depending on how it is collected and for what purpose;
- The need for the recognition by child protection authorities that disability in itself does not mean a lack of parenting capacity;
- The use of structured decision-making tools by child protection authorities and their implications. These structured decision-making tools correlate prior investigations of the family with risk of harm rather than only relying on prior substantiated maltreatment of children. This can lead to inaccurate and inequitable risk assessments for First Nations children; and
- Research shows that parents whose children are removed may experience disempowerment, intense grief and psychological distress. Such experiences are compounded for First Nations parents who have been in out of home care as children themselves. There is a need for pre- and post-removal counselling and support for those parents to enable them to deal with those issues and to support their ongoing relationships with their children aiming towards reunification.

## **GOVERNMENT WITNESSES**

The Royal Commission has issued notices to a number of government witnesses who you will hear from this week. Topics these witnesses may be examined about include:

- Division of responsibilities between Departments for the provision of supports, and the consideration of removal.
- Decision making tools, training and issues related to unconscious bias.
- Responses to past reports and inquiries
- The capacity of Departments to measure changes in practice or to measure the efficacy of their practice.
- Whether, and how, the needs of First Nations Parents with Disability are identified, and then supported.

The government witnesses to be called are:

## **NEW SOUTH WALES**

### **Michael Coutts-Trotter**

Mr Coutts-Trotter is the Secretary of the Department of Community and Justice, NSW, a position he has held since 1 July 2019.

### **Katherine Alexander**

Ms Alexander is the Senior Practitioner, Office of the Senior Practitioner, Department of Communities and Justice, NSW, a position she has held since January 2013.

## **QUEENSLAND**

### **Meegan Crawford**

Meegan Crawford, is the Chief Practitioner, Department of Child Safety, Youth and Women, Queensland. She has held that position since September 2020. Prior to that, she was Executive Director, Child and Family Operations.

### **Carina Muller**

Carina Muller, Executive Director, Strategy and Performance, Child Safety, Youth and Women, Queensland. She has held that position since August 2016.

## **SOUTH AUSTRALIA**

### **Catherine Maree Taylor**

Catherine Maree Taylor, is the Chief Executive, Department of Child Protection, SA. She has held that position since October 2016.

## **NON-PUBLICATION ORDERS/PSEUDONYM DIRECTIONS**

Chair, as you are aware, the Commission has made a number of non-publication orders and pseudonym orders in respect of this hearing.

In this respect, we particularly note that that an order has been made prohibiting the names, identifying information, contact details and images of:

- a. the witnesses who will be giving evidence under the pseudonyms Ann, Kate and Shontaya
- b. their partners, former partners and children.

## **CONTENT WARNING & SERVICES AVAILABLE FOR HELP**

This hearing will include evidence that may bring about different responses for people.

The hearing will include accounts of violence, abuse, neglect and exploitation of First Nations people with disability and their experiences with Child Safety across Australia.

First Nations viewers please note that the evidence will describe removal.

Support services are available if the evidence raises concerns for you, please contact the:

- National Counselling and Referral Service on 1800 421 468.
- Lifeline on 13 11 14
- Beyond Blue on 1300 224 636
- or your local Aboriginal Medical Services for social and emotional wellbeing support.