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TRANSCRIPT OF PROCEEDINGS

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O/N H-784708

**THE HONOURABLE M. WHITE AO, Commissioner**  
**MR M. GOODA, Commissioner**

**IN THE MATTER OF A ROYAL COMMISSION INTO  
THE CHILD PROTECTION AND YOUTH DETENTION  
SYSTEMS OF THE NORTHERN TERRITORY**

**DARWIN**

**8.33 AM, WEDNESDAY, 28 JUNE 2017**

**Continued from 27.6.17**

**DAY 51**

**MR P.J. CALLAGHAN SC appears with MR P. MORRISSEY SC, MR T. McAVOY SC, MR B. DIGHTON, MS V. BOSNJAK, MR T. GOODWIN, MS S. McGEE, MS R. RODGER and MR I. CHATTERJEE as Counsel Assisting**  
**MS S. BROWNHILL appears with MR G. O'MAHONEY for the Northern Territory of Australia**

**DR P. DWYER appears for the North Australian Aboriginal Justice Agency**  
**MS F. GRAHAM appears for the Central Australian Aboriginal Legal Aid Service**  
**MR A.R. HARRIS QC appears for John Elferink**  
**MR J.B. LAWRENCE SC appears for Josie Crawshaw**

MR DIGHTON: Commissioners, we have - - -

COMMISSIONER WHITE: Good morning, Mr Dighton.

5 MR DIGHTON: Thank you. We have with us this morning Magistrate McPherson and Magistrate Bowles of the Children's Court of Victoria.

10 COMMISSIONER WHITE: Thank you. Good morning, Magistrates, and thank you for joining us. In the interests of the protections which you know can be afforded by the Royal Commission Act, we will swear you in as witnesses in the Commission hearing. So Magistrate McPherson, if I could ask you first. I understand you have a Bible with you.

15 MAGISTRATE McPHERSON: I do. Thank you.

COMMISSIONER WHITE: Thank you.

20 <KAY McPHERSON, SWORN [8.34 am]

<JENNIFER BOWLES, SWORN [8.35 am]

25 COMMISSIONER WHITE: Thank you. Mr Dighton is going to be asking you some questions but we tend to – Commissioner Gooda and I tend to intervene quite a lot when people are being asked questions, so I hope you will bear with us. Yes. Thank you.

30 MR DIGHTON: Thank you.

Magistrate McPherson, if I may start on the issue of the Family Drug Treatment Court and ask you: what was the need or rationale that led to the establishment of that court.

35 MAGISTRATE McPHERSON: The need was that we had an extraordinary number of parents suffering from drug and alcohol abuse and that invariably led to their children being removed from their care, and we found that in the general course of the way that family divisions proceedings ran in the Children's Court, there wasn't  
40 enough support for these parents to get off their addiction, to get their children returned to their care. So the whole rationale is for the court to work very closely with the parents, to stop them using whatever their drug of addiction is so that they can achieve reunification with their children.

45 MR DIGHTON: And are there particular eligibility requirements for the parents to participate?

MAGISTRATE McPHERSON: Yes, the eligibility requirements are that they be within the Preston Office of Child Protection, because this court is based at Broadmeadows. So it's only the children in this region, which is somewhat unfortunate, because it's a postcode – obviously it's a post code service, and we would like to see it rolled out to other areas of Victoria. So they have got to be within this region. They have to have a child aged 3 and under. And we recently extended the guidelines a bit to include parents with children who have only just been recently removed from their care within the last six months. And the rationale for that is if children have been out of the parents' care for a long period of time, the chances of reunification are somewhat more difficult and for those two cases that I referred to, there's still a reunification plan by Child Protection.

MR DIGHTON: And in practical terms, how do the parents divert to this program from the substantive child protection proceeding?

MAGISTRATE McPHERSON: There will be a protection application brought to court, and there are a number of ways they can come into the Family Drug Treatment Court. They could be identified by their protective worker. They could be identified by their lawyer or by me or the other magistrate sitting here and we will then refer them – will seek whether or not they want to become part of the court. If they do, they're referred off to our intake and assessment officer for an assessment and if they're suitable, they will be assessed and inducted into the program.

MR DIGHTON: And then could you please briefly describe the stages of the program that they work through?

MAGISTRATE McPHERSON: Alright. Thank you. Well, they start off in stage 1, which is what we call the trust phase, and in that phase they have to attend court to see me once a week every Friday, they have to do urine testings on Monday, Wednesday and Friday, and they have to attend their case manager each week. We have – each participant has their own case managers. We have two clinical case managers. And those clinical case managers arrange for whatever services they need for their rehabilitation. And so it's an intensive wraparound system whereby they're pretty well-engaged with the court on a daily basis.

COMMISSIONER WHITE: And is that a residential facility where they do the intervention, or is it attending at a clinic?

MAGISTRATE McPHERSON: It can be either. We have two beds at Odyssey House in Victoria. Of course we haven't got enough beds for all our participants. Some participants don't want a residential rehab. Some want to do it in the community. So it's a combination of both. Within the first two weeks we have what we call a family recovery plan meeting, and they sit down with a number of people and work out what way they want to build their recovery, because if they don't – it's no good us sending them to resi rehab if they don't want to. So it's a matter of working out what's best for them, and they've got to agree with it, and often it's in the community - - -

COMMISSIONER WHITE: And is it - - -

MAGISTRATE McPHERSON: - - - by utilising community services.

5 COMMISSIONER WHITE: Sorry. Right. Sorry to interrupt you.

MAGISTRATE McPHERSON: That's okay.

10 COMMISSIONER WHITE: Is that family recovery meeting: is that conducted under the auspices of a facilitator?

15 MAGISTRATE McPHERSON: No. It's a meeting here at court. I don't attend it, but it has got the protective worker from Child Protection. It has the clinical case manager. They can bring family members if they want to and also the Department of Human Services representative of the Drug Court. They all attend that meeting.

COMMISSIONER WHITE: Thank you.

20 MAGISTRATE McPHERSON: But, no, there's no outside facilitator.

MR DIGHTON: And you mentioned before the intensive nature of the wraparound service, does that expand past rehabilitation to things like housing, training, other things?

25 MAGISTRATE McPHERSON: Yes. We know that most of these people just don't have a drug and alcohol addiction. They have a number of problems. I think all of our clients have got family violence problems. Many have got a mental disability, intellectual disability, housing problems. The job of the clinical case manager is to assist the participant to deal with all their problems by referring them off to various agencies whereby they can get the help they need.

30 MR DIGHTON: And you mentioned before a member, or a case manager, a child protection practitioner being involved. Is someone from the Department of Human services part of the process throughout?

35 MAGISTRATE McPHERSON: Yes. This person is on our team. He attends all the meetings. He attends court on a Friday. And that person is vital, because he is the human face of the Department of Human Services, who the parents normally hate because they're the people that take their children away, and he is vital in the process.

40 MR DIGHTON: And do you have – you may have mentioned this in part. Do you have meetings along the way with the case manager and the child protection practitioner to review the progress of the parents?

45 MAGISTRATE McPHERSON: Yes. Every Thursday evening I receive a printed document in relation to each participant that's appearing the next day, and that

outlines their test results for the week, what appointments they've attended and any other relevant factors. So I read those on a Thursday night, and at 9 o'clock on Friday morning we all meet. The team all meets to discuss the participant's program during that week. And that includes the clinical case managers, the Department of  
5 Human Services person, and the team manager and we all discuss the person's progress prior to going into court later in the morning. We also have a meeting every Monday morning with the team to discuss other – how Friday went, any other matters in relation to individual participants that need to be discussed.

10 MR DIGHTON: And is it - - -

COMMISSIONER WHITE: That sounds extremely time consuming for a busy magistrate. What sort of load do you carry of people that you are reviewing?

15 MAGISTRATE McPHERSON: There's a maximum of 30 in the program. So it's capped at 30. We actually haven't ever got to 30. I think we've got about 28 at the moment. And that's just one – we just do it on the one day. We just do Drug Court on a Friday.

20 COMMISSIONER WHITE: Yes. Alright. Thank you.

MAGISTRATE McPHERSON: And I'm very fortunate here in that this is a court of innovation and I run this court, and we do docketing, and our numbers aren't so bad that we can't manage what we've got. So I'm very lucky.

25

MR DIGHTON: You mentioned before the first phase. It's the case that there are two phases after that?

MAGISTRATE McPHERSON: Sorry. Yes. I got waylaid. I beg your pardon.

30

MR DIGHTON: No. No. Not at all.

MAGISTRATE McPHERSON: The second phase is they come into court once a fortnight. They test twice a week on Tuesday and Thursdays and they see their case  
35 manager every second week; still have to attend all the various appointments. And then in the third phase, they come in once a month. That's what we call the family phase, and we are hoping by that time reunification with the children is either imminent or has occurred, and they test once a week randomly. So their case worker will ring them up and tell them to go on a certain day. There's no set days in phase  
40 three.

MR DIGHTON: And what is the outcome in terms of the substantive child protection proceeding if a person completes or graduates from the program?

45 MAGISTRATE McPHERSON: We have had 20 graduations from our program and in all cases the children were reunified with their parents. In most cases the department withdrew with no order. In some cases there was what's called – what

we call a family preservation order. But in all cases the children were returned to their parents' care.

5 MR DIGHTON: And in your experience, is there a common reason it may be obvious for why people might exit the program without completing it?

10 MAGISTRATE McPHERSON: Yes, we do have quite a few exits. Often people aren't ready to address their drug addiction. That's the main reason. I found in my years of experience dealing with drug-addicted people, both as a solicitor representing them and as a magistrate, a person has to be ready to address their problem. I don't know why people who have lost their children aren't ready to address their problem, because I would have thought that's the worst thing that could ever happen to them. But some simply aren't, and some reach the realisation that their children are better off where they are and they don't – they decide they don't want their children returned to their care. Others simply just can't do it.

MR DIGHTON: And so if they exit then does the substantive child protection proceeding proceed as per course?

20 MAGISTRATE McPHERSON: That's right. Absolutely.

MR DIGHTON: Right. And in your experience – you mentioned the years you have been doing it – are there any key features to the program that you think are particularly important in encouraging successful completion?

25 MAGISTRATE McPHERSON: I think the constant judicial supervision by the same judicial officer is really important. The quality of the clinical case managers – we have to excellent clinical case managers. And I think that's the most important thing: the services provided to them, the constancy of the people working with them.

30 COMMISSIONER WHITE: That's something we hear a lot here from our witnesses, that telling their story over and over to an ever-changing scenario of people is very trying and they just tend to give up on it, whatever the programs might be.

35 MAGISTRATE McPHERSON: Yes. Yeah. I'm not surprised. I agree with that.

MR DIGHTON: Thank you, Magistrate McPherson. If I may turn to you, Magistrate Bowles, and first look at the area of the Koori court. Could you please describe what the key distinguishing features are between the Children's Koori Court and the usual sentencing process for children?

45 MAGISTRATE BOWLES: So the actual sentencing is the same in terms of the sentencing options and the criteria we have to apply, but the distinction is that the – when I'm sitting in Koori, Children's Koori court, I sit at the bar table. Each of the courts have got a specially-designed bar table; in our case it's a long ovalar shape.

Sitting at the table is an elder or respected person on either side of me. We have a male and a female elder.

5 Around the table there is our Koori court officer, so we have a Koori court officer employed at the court. Then there is the support person for the young person, the accused. Maybe a member of the family or a member of community. Then the young person who has been charged. Then there is their solicitor, then the police prosecutor, and then youth justice. So we all sit around the table, which is very different from a magistrate sitting up on a bench.

10 The proceedings are more informal, if you like. It's a sentencing conversation. So to come into Koori court, the young person must identify as Aboriginal or Aboriginal and Torres Strait Islander and must be accepted by community. The only offences which are excluded from what would be mainstream court are sexual offences. The children must be 10 to 18 at the time of offending and less than 19 when the proceedings commence and they must be pleading guilty or have been found guilty in mainstream court.

20 It's the magistrate who determines the sentence but there is a sentencing conversation that takes place between the presiding magistrate and the elders or respected persons prior to coming down into court. So the proceedings have cultural significance in the courtroom. We have the Aboriginal and Torres Strait Islander flags. There is a welcome to country, an acknowledgement. Our Koori court elders will speak to the young people about their country and where they're from: we have a map of Australia that includes all the Aboriginal countries, and we talk to the young people about where they're from.

30 And that's to varying degrees; some young people know where they're from and some people are not so clear. But one of the benefits of having the elders there is that often they're able to establish links and identify and assist the young people. And in the court we will also have representatives from Aboriginal community agencies with the hope that we can engage and re-engage some of the young people appearing before us, in different cultural programs, whether it be sporting or of some other nature.

35 MR DIGHTON: And what is the dynamic between the presiding magistrate and the elders or the respected persons?

40 MAGISTRATE BOWLES: I'm sorry. What was that? I didn't hear the question.

MR DIGHTON: I'm sorry. What is the dynamic between the presiding magistrate and the elders or the respected persons?

45 MAGISTRATE BOWLES: Well, I think it's a really positive dynamic. I think it has built over time. The first Children's Koori court sat in Melbourne in October 2005, and it's fair to say that when we all started, you know, everyone was a little bit nervous about how it should run. I had sat in the adult court prior to that, and I

remember us having a number of conversations with the elders because some of them were very nervous about what they should or shouldn't be saying.

5 But I think it's fair to say now that we have experienced elders who enjoy coming to court, who take their responsibilities very seriously, and I think the discussions are very open. So, for example, before we start Koori court, the elders will have come to court. The Koori court officer will have prepared a folder that has the summaries of all of the offences for which the young person will be pleading guilty. We discuss those summaries, so they have already been agreed upon between the prosecution  
10 and defence.

And then I will usually indicate to them, "Well, look, I think this is a young person," for example, "that maybe needs to do some work with youth justice. Things are pretty unstable for them at the moment." Or it might be a case where I will say,  
15 "Look, depending on what we hear today, it looks like we might look at diversion for this young person." So the elders are very much included in the conversation that we have. And very importantly, after we finish Koori court, we spend time discussing what has gone on, and I think that's a really fruitful time for both the magistrate and also for the elders and respected persons.

20  
COMMISSIONER WHITE: Could I ask you, Magistrate Bowles, the process of choosing the elders or respected persons: you probably have a panel or something of that kind, but how does that happen?

25 MAGISTRATE BOWLES: That's correct. Under our Act, they're appointed by government. So there are expressions of interest and they have to be appointed. I'm not clear the extent to which there's consultation in the community, but my understanding is that government will consult to make sure that it's going to be someone that's considered that will be respected. There are some criteria in relation  
30 to looking at if there has been a criminal record, and, if there has been, looking at how old that may be. But they're appointed, and then the Koori court officer is responsible for establishing a roster for the two elders or respected persons to be there for each sitting.

35 COMMISSIONER WHITE: And would there be any attempt to make them from – to choose them from either the country or the community from which the young person comes, or is that just a bit too particular?

40 MAGISTRATE BOWLES: Absolutely. It's difficult because I sit in Melbourne and there's only one elder who is from our country. But I know in Shepparton and some of the other regions it's really vital. And one of the strengths of some of the regional Koori courts is that the elders are much more likely to see them around in the community. And so I've heard elders, for example, from Shepparton saying to young people when they appear before them, "Well, look, I'm going to be seeing you  
45 around, whether it's at the footy or down the shops, or wherever it might be, and I'm going to be checking up and saying, 'What are you doing? How are things going?'". I think that's a huge strength, which unfortunately it's very difficult in Melbourne,

because a lot of the young people are not from that area initially. They've come from regional areas, for example, but they're now living in Melbourne.

5 COMMISSIONER WHITE: And I expect Mr Dighton is going to ask you this, but while I'm thinking of it, I will: how many Koori courts have you got in Victoria?

10 MAGISTRATE BOWLES: I've provided some statistics which lists the courts and provides details as to the number of young people that have appeared before the children's Koori court between 2012 and 2017. If I add them up, it's – one, two, three, four, five, six, seven, eight – nine. Nine children's Koori courts as I've listed them here.

15 COMMISSIONER WHITE: And do they all sit in the same format that you've described in the Melbourne court?

20 MAGISTRATE BOWLES: Yes. That's a very similar format. There might be some differences in terms of artefacts or the way the bar table is designed but in terms of the formalities it runs along mainstream lines in the sense of there's an agreement to a consent to jurisdiction, a summary, an agreed summary is read by the prosecutor, any priors are provided. The lawyer for the young person will then provide a plea. And then the elders will – I always get the elders to then speak directly to the young person. Everybody has introduced themselves so I make sure everyone – particularly the young person – knows who is in court, so, if there are people observing, that they know who the people are.

25 But the format is the same and also, as I said, the sentencing options are the same. So when there was criticism when the court was first set up that this was some kind of soft option, it very much isn't a soft option because the young people are required to account. The elders can be very critical. So often you will have one elder who will talk about shame and respect and being proud and wanting to be a leader in the community, and can be critical of the conduct, but then the other elder might be incredibly positive about all the strengths. So it's a very good balance, I think, in my experience, particularly with the elders who have been sitting in the court for some time.

35 COMMISSIONER WHITE: Thanks.

40 MR DIGHTON: Are there any trends on issues like failure to appear or similar that have become apparent to you in your experience?

45 MAGISTRATE BOWLES: Well, there was an evaluation that was conducted in March of 2010 which I forwarded to yourself. And one of the consistently impressive things has been the failure to appear rate has remained very low and you will see that in the statistics that I sent. There's a column as to failure to attend and warrants of apprehension that had to be issued. And then the number of young people who actually didn't attend. So the failure to appear warrants: there might be

the one young person that might have three or four different briefs; that is why that column is so much higher than the last column.

5 And so the last column is the critical column as to how many have actually not appeared. We have also found the breach rate has been low compared to young people appearing in mainstream. And whilst there is recidivism, it's lower than other studies. That's what the evaluation concluded in 2010. And I think anecdotally that has continued with sitting in the Koori court.

10 MR DIGHTON: Thank you. If I could turn to a second topic, and that is that you are also the author of a Churchill Fellowship paper that recommends the establishment of a secure therapeutic residential treatment facility for young people with drug, alcohol, and mental health issues.

15 MAGISTRATE BOWLES: Yes. And so when I am speaking about this it's in my capacity as a Churchill Fellow as distinct from on behalf of the court.

MR DIGHTON: Thank you. Commissioners, perhaps at the outset I will tender the Churchill Fellowship report of Magistrate Jennifer Bowles dated 16 February 2015.

20

COMMISSIONER WHITE: Exhibit 611.

25 **EXHIBIT #611 CHURCHILL FELLOWSHIP REPORT OF MAGISTRATE JENNIFER BOWLES DATED 16/02/2015**

MR DIGHTON: Magistrate Bowles, could you please describe the rationale behind that proposal?

30

MAGISTRATE BOWLES: Yes. The rationale behind the proposal was that I was, as all magistrates sitting in the Children's Court, becoming increasingly frustrated at how many young people had serious substance dependence issues. And as Magistrate McPherson has referred to, we see them graduating with those issues from being children to then becoming parents themselves and then ending up potentially in Magistrate McPherson's court.

35

And I had a mother one day say to me, "What can you do? I'm watching my son die before my eyes." And this was a young person who was prepared to go to detox, but just continued to leave, wouldn't stay. So even with the best will in the world, his dependence on, in his case, vanilla essence with a very high alcohol content, just had to keep leaving. And so his life was imploding. He went from being in a supported family to assaulting his mother when she wouldn't give him money for cannabis or to go out and buy the vanilla essence. Police involvement, intervention order, out of home.

45

And a lot of the young people we see have got intergenerational trauma and abuse behind –in their lives, as the Youth Parole Board statistics reveal, which I have referred to in my report. And I just thought there must be a better way than expecting children with – who are so vulnerable, who have often had experiences of trauma and abuse and what our current model is is that we say to them, “I want you to go and see a drug and alcohol counsellor,” which means maybe attending for one day a week for an hour. It won’t surprise you, I don’t think if I was in their position or even with the stability I have had in my home life that I would be able to do that and deal with the difficult matters that you have to deal with when you are trying understand why you are self-medicating and trying to deal with the trauma and abuse.

So I wanted to know what countries overseas were doing, and so I apply for the Churchill Fellowship and travelled to Sweden, England, Scotland, and New Zealand. And as a result of what I saw in those countries, I cherry-picked what I thought were the best features and applied them in the model that I’ve recommended here. The essential element, I guess, is that, as I said, despite the best will in the world, a lot of these young kids can’t deal with their problems and their drug use.

And so the model I’ve proposed is a model which involves a detailed assessment being conducted by the court after a young person has had an opportunity to engage voluntarily with the drug treatment services and for whatever reason that hasn’t happened, and an assessment being done as to their suitability to be part of a therapeutic community where the initial three to four weeks may involve detox and it may – and it would involve being in a secure facility, which means they would not be able to leave during that period of time.

But as I try to emphasise in the report, I’m not talking about putting them in a draconian prison-type environment. It’s a therapeutic environment, and there were examples of that that I saw overseas. And that the stability – so that they then have a clear head to really have time out of their chaotic lives to see really what is going on with their lives. And it’s a clinical model of a counselling care, where there are expert clinicians working with these young people, experienced in engaging and assisting them deal with trauma, would then work with them in that initial secure facility and then there would be step-down facilities on the same site with schooling and education.

So as Magistrate McPherson said, that idea of having a consistent treatment person involved in their lives is incredibly important, and what my recommendation involves is the clinical team working with the young person initially in the secure facility, then in the step-down facility onsite, and ultimately it’s just as necessary to spend the money transitioning them back into the community. But the idea is to try to build their lives. So that’s why schooling and training facilities that we saw at all of the places we went to overseas are essential.

MR DIGHTON: And in practical terms the – does the – is it the case that if it was a critical proceeding, the child would be bailed there, or what's the statutory basis for the order?

5 MAGISTRATE BOWLES: Yes. The court would have the assessment that would be conducted, would then make a determination that a youth therapeutic order was appropriate, and the young person could be bailed to the facility. That's right. It's important to point out that the key difference to the models I saw overseas is that my recommendation is that it's not a sentence; it's a welfare order that holds off the  
10 sentence.

So effectively it provides the young person with the opportunity to rehabilitate themselves which means the court can place greater weight on rehabilitation. It might mean, for example, that the young person who may have been looking at a  
15 sentence of detention would not now require a sentence of detention because of the progress they've made, and, significantly, if for whatever reason the young person didn't continue in the program, they would not be penalised. It would just be they had had the opportunity to engage therapeutically.

20 COMMISSIONER WHITE: In the Northern Territory, as of course you are well aware, there is a large body in detention, it's up to 97 per cent, of Indigenous young people. So that any model of therapeutic residential care of the kind you are describing would probably need a very specific cultural component into it to make it work. Would you think that would be right? And did you see anything in your  
25 overseas study which was directed to that factor?

MAGISTRATE BOWLES: Yes. I visited Te Waireka, which is an Maori residential rehabilitation facility in New Zealand. I refer to that at pages 50 and 51 of my report. I absolutely agree that there has to be a cultural connectedness to the  
30 program and not only in the way in which the facilities are designed but also community would have to buy in. There would have to be support, otherwise it just wouldn't work. So the homely environment I refer to in the report would have to be modelled with community involvement, as there was with Te Waireka.

35 COMMISSIONER WHITE: Thank you.

MR DIGHTON: What oversight would be applied to the order and the facility to ensure there's some supervision of the child's progress and wellbeing?

40 MAGISTRATE BOWLES: Well, there would be court oversight. So there would be regular reports provided to the court, perhaps fortnightly, as to the progress of the young person. The young person wouldn't be required to come to court because I would want them working in the facility therapeutically. So it would be a case of reports being provided. I've indicated in my report that we don't want to re-  
45 institutionalise children again and the risk of abuse, which we know from the Royal Commission into institutional abuse, has to be guarded against.

So there would need to be either a Children's Commissioner involved, for example, or some other independent oversight to make sure that everything was proceeding as it should be. I note that the Children's Commissioner for Aboriginal children appeared before the parliamentary inquiry into youth justice facilities yesterday and has recommended that the Koori community embrace this report and that the Koori –  
5 that there be a pilot established for Koori children in Victoria. So it would be someone of the ilk of a Children's Commissioner or other independent agency that would have to have oversight in addition to the court.

10 COMMISSIONER WHITE: You say that was yesterday before the parliamentary committee, Magistrate Bowles?

MAGISTRATE BOWLES: In Victoria. Yes, in Victoria yesterday.

15 COMMISSIONER WHITE: So Mr Jackomos?

MAGISTRATE BOWLES: Yes. It was.

COMMISSIONER WHITE: Thank you.

20

MR DIGHTON: You propose in your – in the paper that the therapeutic orders be for a period of six months. Is there a particular reasoning behind that period of time?

25 MAGISTRATE BOWLES: We were told four to six months is the time that is needed to really deal with the very entrenched complex issues that young people have. The – it is important to understand that the individual assessments are tailor-made to the needs of the individual young person, so there might be some young people that would only stay for the detox phase at the initial part. There might be some children that needed, you know, more than six months. But four to six months  
30 is the timeframe that we were told would be needed to effect change.

MR DIGHTON: And may I ask your view on the proposition that is discussed in your paper that forced rehabilitation in a secure facility may be ineffective?

35 MAGISTRATE BOWLES: Well, that was the key thing I wanted to find out when I went overseas, because I thought, well, if it's not going to work, then of course I couldn't recommend it. The research that we found from speaking to the clinicians who have worked in this area for many years was that mandated treatment can be as effective as voluntary treatment. And I think in this space it's important to  
40 understand that voluntary is often in inverted commas. If someone is looking at being sentenced to detention, then they might agree to go to a facility. So voluntary is an unusual word in this context.

45 But what we were told was that provided – and I list in my report, on page 43, the critical features. All of those critical features have to be there or else there would be real concerns as to whether the model would work. So it can work. The critical issues are that it's not in a draconian environment, that it's in a welcoming respectful

environment, and that the young people feel safe and supported. And ultimately the idea is to build up trust which for a lot of these children has been broken over so many years.

5 But absolutely what we were told that, provided you had these key features, then, yes, mandatory can be as effective as voluntary treatment. And particularly when we are talking about children. We are asking them to make informed choices when they're children, affected by substances with often chaotic and poor literacy skills. They have been away from school for a long time. And the risk is the long-term  
10 impact on their health, which we know, with the depletion of dopamine, potentially we are going to have a generation of people with Parkinson's Disease symptoms. So I think there is an obligation to at least give the children an opportunity to engage in appropriate therapy.

15 MR DIGHTON: And picking up some of the factors that are set out at page 43, did you have in mind any particular model as to the design and staffing of the facility?

MAGISTRATE BOWLES: The design, as we just touched on, if it was in the Northern Territory, and for the Aboriginal children, would have to be influenced  
20 very much by what the community considered was appropriate and a model that the children felt safe in and could relate to. In terms of the staffing, it's a clinical model so this is not a model where we've got residential staff babysitting the children, for example. They have to be committed and high-quality staff and may well include staff who have had substance abuse issues themselves.

25 We were told by the children in a lot of the facilities that they were the staff they related to best and also the staff members felt that they presented a great insight. But again there needs to be protocols in place to make sure that those staff have been substance-free for – usually it was for two years. But on page 62 I list the facilities  
30 that I visited and also the nature and qualifications of the staff and the treatment regime, and, as I said, it needs to be staff that have got a commitment to this area and have got experience and are really dedicated to working in that therapeutic model.

35 MR DIGHTON: And circling back again to a point we touched on earlier, would there be a power for an application to be made on behalf of the child or another party for the order to be varied or revoked?

MAGISTRATE BOWLES: Yes, there would be.

40 MR DIGHTON: The – and on page 61, the final of your recommendations is to establish a cross-over list in the Children's Court of Victoria.

MAGISTRATE BOWLES: Yes. Yes.

45 MR DIGHTON: What benefits do you see arising from that proposal?

MAGISTRATE BOWLES: Well, touching on what was spoken about earlier, it's – I think it must be incredibly frustrating for the children who appear in the court who are both in the child protection side and the criminal side that you will frequently have a barrister or a lawyer appearing for them, and say that they're in the criminal  
5 division, the child is in custody, it's a bail application, the parental responsibility is in the Department of Health and Human Services, and I will say to the lawyer appearing for the young person, "Where is it proposed that the young person is going to live if bail was granted?"

10 And they will say, "Well, it will be up to the department. I don't act for the child in the child protection proceedings. I'm not sure where they are up to or who his case worker is," etcetera. And so it's incredibly frustrating that there isn't the one person appearing for the child that can deal with both the criminal matters and the child  
15 protection matters and equally the one magistrate who is dealing with the one child and all of the issues that that young person has.

So my recommendation, having observed the cross-over list in New Zealand, was that we should looking at introducing that here in Victoria. To that end, Associate  
20 Professor Rosemary Sheehan from Monash University and a PhD graduate have – are conducting research and going through the Children's Court files at the moment to identify how many would be involved and whether or not they would recommend the list. So it's essentially that everyone is on the same page and dealing holistically with the one young person, and that the child doesn't have to tell their story to two  
25 different or multiple numbers of different lawyers.

MR DIGHTON: Magistrate Bowles, Magistrate McPherson, I thank you. Those are my questions, Commissioners.

COMMISSIONER WHITE: Yes. Thanks, Mr Dighton. Magistrate McPherson and  
30 Magistrate Bowles, we are very grateful to you for talking with us. We certainly enjoyed our visit to you in Melbourne on a dark winter night, as I recall, and we were all in a bit of rush then. Since then, of course, we have been able to look at lots of different things, and so we thought coming back to you again with the better information that we have about possibilities would be very useful for the  
35 Commission, and it has proved to be so. We are very grateful because we know you are busy and you need to rush off to court again. And we did enjoy our visit to the Koori court set up in Melbourne to see how you had furnished it, and it was a most welcoming and attractive place. Thank you both very much indeed.

40 COMMISSIONER GOODA: Thank you.

MAGISTRATE BOWLES: Thank you.

MAGISTRATE McPHERSON: Thank you.  
45

**<THE WITNESSES WITHDREW**

**[9.12 am]**

MR DIGHTON: Commissioners, the next item is a personal story. Today's personal story is that of DZ, the grandmother of children in care. DZ tells us about her experiences and those of her children in the care or - - -

5 COMMISSIONER WHITE: You've been listening to our American witnesses too much, haven't you.

MR DIGHTON: I have been ..... the care and protection system in the Northern Territory. She talks about how she has sought help to protect her grandchildren from abuse both in and out of care. DZ recounts how one of her grandsons and her granddaughter have struggled with hearing and speech problems which she says has not been addressed. She also talks about how her grandchildren have responded to the various placements and carers they have been placed with. DZ also tells of her efforts to seek to become a foster carer of her grandchildren and describes the challenges she has faced. If it please the Commissioners, please play DZ's story.

COMMISSIONER WHITE: Thank you.

20 **RECORDING PLAYED**

MR DIGHTON: Mr Callaghan has the next witness.

25 COMMISSIONER WHITE: Thanks, Mr Dighton.

MR CALLAGHAN: If it please the Commission, I call John Elferink.

MR HARRIS: Harris is my name, I appear again for Mr Elferink this morning.

30 COMMISSIONER WHITE: Yes. Thanks, Mr Harris.

MR HARRIS: Commissioners, could I – before my learned friend starts, might I just make a couple of points in relation to a statement that Mr Elferink or those instructing me have provided. There's an error in it in relation to the sequence of Ministers.

COMMISSIONER WHITE: Usually, when there are errors, the witness goes through it. Do you want to do it that way?

40 MR HARRIS: Well, I understand my learned friend will be asking the questions first.

COMMISSIONER WHITE: Yes.

45

MR CALLAGHAN: It's no great matter of moment, but it's an error that we picked up in advance. But I can deal with it in due course. I just wanted to flag it in advance.

5 COMMISSIONER WHITE: Mr Callaghan will probably ask him to identify any errors.

MR CALLAGHAN: Yes. Or if Mr Harris wants to a clarify that sort of thing before we start.

10 COMMISSIONER WHITE: We can do that. Yes, certainly. We will just get settled, thanks, Mr - - -

MR HARRIS: Well, perhaps we will get him sworn, and - - -

15 COMMISSIONER WHITE: Yes. Thank you.

20 <JOHN ELFERINK, SWORN [9.21 am]

COMMISSIONER WHITE: Thank you, Mr Elferink. Kindly be seated.

25 <EXAMINATION-IN-CHIEF BY MR CALLAGHAN [9.21 am]

MR CALLAGHAN: Could you tell the Commission your full name please?---My full name is Johann Wessel Elferink, by the common name John Elferink.

30 Mr Elferink, as we've just heard, you've prepared a further statement. That is, further to the statement that is exhibit 321, a further statement for this Commission dated, I think, 26 June 2017; is that correct?---That's correct.

35 Sorry, it might be dated – anyway. We have just heard from your counsel to the effect that, Mr Elferink, there are some corrections that – or at least one correction. Am I right that it relates to the sequence of Ministers and from whom you took over?---That's correct. The statement says I took over from Robyn Lambley. I believe that I took over from Alison Anderson.

40 Yes, that's correct. Thank you.

COMMISSIONER WHITE: That's the only change, Mr Harris?

45 MR HARRIS: Yes. I should say – and again, I don't want to interrupt my learned friend, but those instructing me made a request 10 days ago for information about what documents might be referred to during the course of Mr Elferink's questioning.

We got notification this morning of what they were. So we have done our best to put them together. Whether or not he is able to deal with those, he will obviously do the best he can, Commissioners, but they've not been addressed in the statement because we weren't aware of which ones were of specific interest at the time the statement  
5 was finished.

COMMISSIONER WHITE: Thank you, Mr Harris.

10 MR CALLAGHAN: Subject to that correction, Mr Elferink, is everything in this statement dated 26 June 2017 true and correct?---To the best of my knowledge, yes.

Yes, I tender that statement.

15 COMMISSIONER WHITE: Exhibit 612.

**EXHIBIT #612 STATEMENT OF JOHN ELFERINK DATED 26/06/2017**

20 MR CALLAGHAN: Mr Elferink, the paragraphs in your statement are not numbered, but it is structured according to responses that you have made to questions posed to you by the Commission; is that right?---Yes.

25 And the questions all relate to the period during which you were Minister for families and children?---They cover the period where I was the Minister but they also -- they relate to other ministerial periods as well.

30 Well, I just confirm, the question are really framed in relation to the period for which you were the Minister?---I accept that.

35 And, to be fair, some of the questions are fairly wide. For example, if we look at question 5, it asks you for any comments you wish to make or wish to raise in relation to the child protection policies priorities or practices of the Government during that period?---That's correct.

40 Would it be fair to say that it may be that there are, in addition to the matters contained in your statement, other comments that you could make or other issues that you might have raised, but can we take it that the matters that you've taken the trouble to include in this exhibit are amongst the ones that you regarded as most important?---Yes. But they, of course, require expansion.

They require expansion?---Well, I will expand on them as I'm questioned on them.

45 Sure?---Yes.

Sure. Understand that heading under question 5, you have raised the issue or an issue relating to some cultural practices involving boys in the Northern Territory; that's correct?---Cultural practice in relation to lawyers? I - - -

5 Boys?---Boys, yes. And girls.

Well, both indeed. Can we stick with – can we start with the issue - - -?---Sure.

- - - relating to boys. And, just for context, can I ask you to recall reports about an  
10 incident near Borroloola in December 2013 an incident in which three teenage boys had to be medically evacuated? It attracted some publicity?---I recall it well.

And you were questioned and quoted by the ABC about that, and I have a copy of the report, but I just want to confirm the accuracy of some of the things that you were  
15 reported as saying. First of all, you confirmed that a fulsome investigation had been done into that incident?---Yes.

You also said that you had lived and worked in remote communities and understood how traditional practices occurred?---Yes.  
20

And you concluded that so long as those practices do not amount to child abuse, there was no role for the state because it's a free country?---That's right.

And the effect of all that was you had no concern about what happened in  
25 Borroloola?---That's not correct. I was concerned.

Sorry, that's not fair. Had you no concern about the practices that were involved in that case?---That's also not correct. What I was reflecting was Government policy of the day. The – the incident in Borroloola highlighted the issue for me, and it has  
30 been a matter of my attention over a number of years. The problem that – or the reason I raise that issue here in the Royal Commission is that I think that there is an important change that even people living in remote and regional areas, people with different cultural backgrounds in remote and regional areas, particularly their leaders, their elders, need to send in terms of child protection issues. There should be a  
35 standard for child protection and that human rights should have ascendancy over cultural rights. The reason I raise them in the statement is that what I'm seeking to achieve is an opportunity for Aboriginal leaders themselves to send a clear signal saying, "We accept that there are changes required in the way that children are cared for and that even certain cultural practices no longer have the value that they should  
40 have." In answer to the questions at the time, we were dealing with a very specific legal issue. There was no complaint of assault. Had there been a complaint of assault, that should have been followed up, but that was not the case.

We will just stop there, because there doesn't have to be a complaint of assault for a  
45 case to amount to child abuse, does there?---In terms of the system – and this is part of the siloing problem we have.

No just answer my question. Does there have to be a complaint of assault in order for the Department that you were administering to be concerned about child abuse?---No.

5 No?---There doesn't have to be.

If information comes to your attention to the effect that there may be a reasonable basis to believe child abuse has occurred, certain obligations kick in?---That's correct.

10

Okay. So coming back to what happened at Borroloola, you were quoted as saying so long as those practices don't amount to child abuse, there is no role for the state. Is that correct?---That's correct.

15 You said that?---Yes.

So did the, were you concerned that what happened at Borroloola amounted to child abuse or not?---I was, and the matter was investigated, and I was told it was not child abuse.

20

Right. And you actually - - -?---I don't agree with that.

Well – so you ordered the investigation, or - - -?---No.

25 Or it happened?---The investigation happened independently of me. I don't order investigations. If I became aware of a situation of child abuse, I would make sure it was reported like anybody else.

30 Well, were you concerned that this was child abuse?---I was. However, the professionals in the Department at the time declared it not to be. My personal opinion is otherwise.

Your personal opinion based on information that you had as Minister - - -?---Yes.

35 - - - was that this was child abuse?---No, that my – yes, actually. Yes.

40 Well, did you report it?---Absolutely. I spoke to the Department about it. I got briefing notes on the issue. The advice I received, from their professional opinion, that it wasn't child abuse. That was the position of the Government policy at the time.

Which you disagreed with?---Yes.

45 You disagreed with government policy on what constituted child abuse; is that right?---Once again, we are bound by the policies that Cabinet agrees to.

Well even if, on something as core to your portfolio as what amend to child abuse, you disagreed with government policy, you didn't feel the need to resign?---I have a choice like any other Cabinet Minister. You determine or you step forward trying to do your job as best you can. Cabinet demands that you either subordinate yourselves to the decisions and policies of Cabinet or alternatively you resign. There were a bunch – there were many other issues that I had in many other portfolios that needed attention, so you compromise.

And you were willing to – you, as Minister for Children, were willing to compromise on what amounted to child abuse in your mind?---I was a - - -

You were willing to forego your principles for the sake of keeping your cabinet position?---I was - - -

MR HARRIS: I object to that question. That is a bridge too far in this line of questioning. One can take the concept of ministerial responsibility too far, and my learned friend attempts to do it. What Mr Elferink has said is that he took advice from the professionals in his Department and they had a view consonant with Government policy. He had a personal view. It is a world away from an obligation on a Minister to resign to keep his Cabinet position, which is the question, and I object to it.

COMMISSIONER WHITE: Well, it's a nice question, Mr Harris and Mr Callaghan, of course, and I think that the issues are laid out and what occurred is quite clear. Mr Harris is correct, I think, that he took the advice of his Department, but didn't personally accept it. There is another step that could have been taken. But, as Mr Elferink has told us, he chose not to take that suggest.

MR CALLAGHAN: Well, this is key to the way in which a portfolio is administered, I would suggest, Mr Elferink. And - - -?---I disagree with that sentiment.

You disagree. Well, let me ask you this question: because, as a multicultural society, we have many different attitudes towards the way in which children might be treated in various circumstances, is the definition of child – I will start all that again. For a Minister responsible for children, is the definition of child abuse a matter of principle?---It's a matter of concern and principle, yes.

Okay. Your definition of child abuse differed from that which was, according to you, the Government policy on child abuse; is that right?---And the professionals in the field.

Which was reflected in Government policy?---Yes. That's – they execute Government policy.

So you've agreed with me that the definition of child abuse was a matter of principle, that it was different from – that yours was different from the Government's, but that

was not a matter of principle of the kind that would cause you to resign?---Because I had so many things to achieve in so many other portfolios. You make compromises.

I understand you had many other portfolios, but - - -

5

COMMISSIONER WHITE: Well, I think that's the answer, isn't it? We can't really make comment upon that answer, Mr Callaghan.

COMMISSIONER GOODA: Mr Elferink, Mr Callaghan said there were two options: you resign, you accept the policy. There is a third option. You're a Cabinet Minister, you could change policy?---That's correct and without – I had conversations outside of Cabinet with other Ministers and, unfortunately, I was unable to convince them to go down this path. The implication of this, of course, is that there would be a substantial increase in child protection cases.

10  
15

But was there a paper prepared by your Department, the experts, if you - - -?---The starting - - -

20

..... discuss it? A discussion paper to - - -?---The starting position is - - -

- - - start a conversation about that?---The starting position is to talk to my fellow Cabinet colleagues to see if I could garner some support in that space. I was unable to do so. So there's not much point producing discussion papers and getting Departmental officials to spend time on issues.

25

Isn't that how ministerial responsibility works? You actually change policy every day. You start from a position of evidence, principle, you might even want to go to human rights conventions that talk about the rights of the child here. And then that's the start of a process?---Sure.

30

You know, it's a process of change?---And the point is, though – is that if I'm not going to get the legs that I need, even before that process has start – why would I commit government resources to something I'm not going to get support for in Cabinet?

35

Because it's something that you believe in?---It's certainly I believe in, which is why it's in the statement here today.

COMMISSIONER WHITE: And also, of course, it might be that your Cabinet colleagues – unpersuaded by you're no doubt eloquent advocacy – might be persuaded by some evidence based material put together by the experts?---I can't speak for what other people – how other people inform themselves. It has been a matter of concern. When I made these comments in the statement I was aware that this line of questioning may well occur. The question I put to myself, "Do I say it or don't I?" I could have remind silent on the issue and it would have gone on. But the fact is that whilst I wasn't able to convince my cabinet colleagues, perhaps I can convince a Royal Commission.

40  
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MR CALLAGHAN: Well, we're concerned with your – interested in your opinion, of course, but also concerned with the administration of your Department and can we just confirm that, as a consequence of the situation you, as Minister for Children, had concerns about child abuse but there was nothing you could do it about  
5 it?---Essentially, I was hamstrung in that position, yes.

Yes. There was nothing you could do about those specific concerns?---Unless the policy changed.

10 And if the Minister in charge of children couldn't do anything about it, then no one could?---Perhaps a Royal Commission can.

But it wasn't around while you were Minister. So - - -?---That's correct.

15 So for the period that you were Minister, you harboured concerns about child abuse, but nothing could be done about it?---Essentially, yes, that is an accurate way to describe it.

20 Thank you. As to the other matter you raised, which is the question relating to girls and the forced marriage of underage children, again you are talking about something that was, to your mind, clearly child abuse?---Yes.

25 And the same situation obtained? That is to say you had concerns about child abuse?---Yes.

What was the basis for those concerns?---A number of court cases in the history of the Northern Territory where people were convicted of having sex with underaged girls based on marriages.

30 How long ago were those court cases?---I think the last one was probably about two years ago.

35 And were there such cases that came to your attention as Minister?---No, because I was rarely briefed on specific issues unless a specific issue was coming through the media. Certainly particular cases, as a general rule, did not find their way to my desk for determination. I don't make those calls.

40 But as Minister, you must have been concerned about it, because these things were coming through?---These things were in the criminal justice system and, once again, the policy of the Government was to charge any person having sex with an underaged child.

45 That must have been coming to the attention of your Department, though. People must - - -?--- ..... was - - -

- - - have been reporting?---I would presume that that might be the case. It may not be as well. Often these matters are exclusively dealt with by the courts. They find

their way into the courts through the NTCAT, which was a Northern Territory Child Assessment Team, I think is the – which was a unite at Peter McAulay Centre which used both child protection workers and police officers, so when these sorts of things came up, they were investigated and prosecuted – pardon me.

5

Just coming back. In your statement you were asked to give accounts of things that were of concern to you while you were Minister. You've identified this as one of the more important aspects of those concerns. Are you saying that these concerns came to your attention as Minister just anecdotally by reading the paper about cases going through court?---Generally, I was not briefed to particular matters. The reason I raised it here for the Royal Commission - - -

15 Sorry, I haven't asked the reason why you've raised it. We understand it's a matter of concern to you. I'm concerned about what you, as Minister, did in the face of information that you had from some source that something that you thought was child abuse was happening on your watch?---That's right. And it was being reported and prosecuted.

20 And was there any concern by you or from you that may be there should be some education or some sort of outreach to prevent this child abuse from occurring?---Absolutely.

Did you do it?---There was a number of conversations I had with - - -

25 Tell me about them?---Well, I had had conversations with one of my ministerial colleagues, which was a senior Aboriginal woman.

Who was that?---That was Alison Anderson.

30 What was the conversation?---It was in relation to these practices.

Well, was it with a view to doing something about them?---I wanted to feel her out at the time to get a sense of what we could do. These issues have all been ventilated, by the way, also in the Northern Territory Parliament, if memory serves me, and debated in the Northern Territory Parliament.

35 Well, sorry, were they debated on your watch by you, as – you were Minister for Children. These of cases of child abuse. Were they being debated by you in the Parliament?---They were certainly being investigated and prosecuted.

40

How did you know that if you say that - - -?---Because you – from time to time, matters would be reported in the press, and you would become aware of them.

45 And were you happy to rely upon that as your source of information, just what you happened to read in the Northern Territory News?---The – if a Department or briefing came up on a particular issue, generally they were the ones being covered by

way of trial in the press. Specific child abuse cases did not come to my desk for particular determination as a general principle.

5 But you've identified this as one of the matters which was of most concern to you during your tenure?---That's – it is - - -

10 What did you do about it?---What I did about it was once again try to explore the notion of making it an issue. I was unsatisfied that I was going to be able to change other people's opinions. And the fact is – is that the Government policy of prosecute was the Government policy that was being pursued. The reason I raise it in this Royal Commission is not to determine whether they're prosecutable offences or not. They are. The reason I raise it in this Royal Commission is that I would like the Royal Commission to turn their mind to this particular issue and perhaps make  
15 recommendations to Aboriginal leaders about traditional practices that no longer have currency.

That's - - -

20 COMMISSIONER WHITE: Mr Elferink, do you have any numbers in mind? Did you go through the prosecutions records - - -?---No, I did not.

- - - when you were Minister, to find out who often this was happening?---I was - - -

25 And how did you know it was based on the proposition of an underage marriage rather than merely a sexual assault?---There have been a number of cases. I certainly spoke to Trevor Riley, the then-Chief Justice of the Supreme Court, who dealt with these cases. And they are not easy cases. There was one in particular that Trevor Riley and I discussed, long after the matter had been settled, in which the victim was actually in the court with her husband, supporting him whilst he went through the  
30 trial process. So that victim had chosen to subordinate herself. Whether or not she was capable of making that decision at her age is at issue.

35 COMMISSIONER GOODA: Can you recall when that was?---That one did get a bit of press at the time, and that was about four or five years ago. It was a trial. So I imagine the marriage would have taken place at around that time that the matter was investigated.

40 So you would be aware that in the Northern Territory National Emergency Response Contact the Federal Government took away – it actually says matters to which court is to have regard when passing sentences:

45 *In determining the sentence to be passed or the order to be made in respect of any person for an offence against the law of the Northern Territory, the court must not take into account any form of cultural law or cultural practices.*

?---That was – that – I was fully aware of that, yes, certainly.

So they couldn't have used that as an excuse?---But the man - - -

..... just like Commissioner White said, a straight out sexual assault?---The man was convicted according to the sexual assault. The reason I raise it here is that I'm  
5 turning to the Royal Commission to recommend to Aboriginal elders that it's time to make certain statements about what the baseline of child protection should be, and that it should be applicable to all children irrespective of cultural background, so that there is a standardised baseline. And Aboriginal elders in leadership have an opportunity to say, "Yes, these practices used to occur, it's now an opportunity - - -"

10 So given that we just treat it as a sexual assault, and sexual abuse, were you aware that last week, Sven Silburn gave us evidence that said only four per cent – and it should be zero – but four per cent of Aboriginal children in care are as a result of sexual abuse?---Yes.

15 Yes. As a matter of fact, it's a smaller percentage than the non-Indigenous community?---This is consistent with what came out of the work done with the Intervention, and you will see it in our annual reports through Children and Families, where sexual abuse formed actually a smaller part, but that was because the counting  
20 system was wrong. But about four or five per cent is right.

The data is wrong?---Sorry?

25 The data is wrong?---The interpretation of the data was wrong at the time. You will check back through the annual reports, you will see it drop down to about one per cent, and then it comes up in recent times back up to about four or five per cent. But the point is - - -

30 The proposition I want to put is, given that it's now treated as sexual assault, and there's such a low rate of sexual abuse as a reason, don't you think leaders might already have changed?---The practice, as I understand it, still continues and that's the message that I want from leaders.

35 You need some evidence of that?---Sorry. Well, there is evidence. I mean it has been occurring. There have been prosecutions. As you say yourself, four per cent of children in care are there as a result of sexual crime.

40 Yes?---I suspect there's a substantial amount of underreporting in this space as well. The differentiation I'm trying to make is that it's – Government can make comments about these sorts of things as much as they like. What I'm urging the Royal Commission to consider is that if they make a determination saying that we call upon Aboriginal leadership to have a benchmark, which is acceptable to all children, then the cultural practices of what was done in the past is no longer acceptable. And I  
45 think that that leadership should come from the Aboriginal leadership.

I would probably argue it already is, given that the figures that we've been told?---My anecdotal experience of my years in the bush indicate or would suggest that it is otherwise. That it is – that there are – there's a higher exposure.

5 MR CALLAGHAN: Is that where we are left? That it's your anecdotal experience that's the source?---That's a substantial amount of my understanding. I expect many - - -

10 And what you read about prosecutions. Anything else?---Bearing in mind that I spent many years in the bush working - - -

15 It's your anecdotal experience, what you read about prosecutions. Is there any source upon which you found this concern?---The source that was just referred to the Commission, the four per cent of children.

Well, that's not – that's sexual abuse, that's not underage – I'm talking about concern about underage marriage, which is what you've raised in your statement?---Which - - -

20 Which is what you've raised in your statement?---Which, of course, has a sexual component - - -

Which .....?--- - - - that amounts to sexual abuse.

25 But it's not – not all of that 4 per cent is going to be - - -?---I don't know.

- - - underage marriage. Well, we don't know if any of it is, do we?---The fact is that it's a practice that I'm aware of, and it's a practice that I don't think should continue.

30 And I'm exploring the source of your awareness. We've got anecdotal, we've got the NT news. Is there anything else?---I would say that the value of my anecdotal evidence is reasonably substantial, considering the amount of time that I spent working in remote and regional areas.

35 All right?---And the experience I had talking to Aboriginal people, both men and women, who told me of the practice.

40 And was that more valuable than anything you learned as Minister through official sources as Minister for Children?---One of the things about being a member of Parliament and a Minister of the Crown is that you bring your life experiences to the job as well as rely on the information .....

45 Of course. Look, we get it. Okay. The anecdotal evidence that you've got through your life experience, we get it. We are concerned about this, Mr Elferink, because – as you identify – if there are cases of child abuse going on, this Commission is concerned about them?---That's right. Which is why I raised them.

Which is why we need to know the sources of the concern?---Which is – and I’m telling you the experiences I had, which were not insubstantial, led me to believe that these practices occur.

5 This is over a longer period?---And I think that there is a space – this is over many years, and there’s – this is – this why I raise it here today.

And on that point, given that this has been such a concern for such a period, can I ask you why you leave it until the last week upon which this Commission is sitting to  
10 draw this to our attention?---I don’t determine the Commission’s schedule.

You were aware, Mr Elferink, that you were in a position to make a submission or provide this Commission with information at any time since its inception, weren’t you?---Yes. However, I’ve sought advice and we have gone through the process and  
15 the timetable set down by the Commission.

COMMISSIONER WHITE: Mr Elferink, it’s the case that with the assistance of CICA  
YDAS, an organisation that has been funded particularly to go into the  
20 communities and go into as many communities as many stories can be gathered, the evidential base from the hundreds of stories that have been recorded and reported doesn’t support your anecdotal evidence. And, of course, it would be something that would be of great importance to the Commission had it been raised. So it is a matter of concern to us that we have missed, in our investigations, this widespread practice to which you’re making reference, and I just wondered if you could assist us by  
25 giving us some geographical pointers, because otherwise anecdotal evidence, of course, is a substitute for just talking?---Sure. I appreciate that, ma’am. And my response is simply this: is that the practices I’m aware of are Central Australian based particularly, because that’s where I had my experience working in the Western Desert country outside of Alice Springs. But I note that a number of the criminal  
30 trials of which I referred have come from other communities as well. As I have said, and I reiterate, what I would hope from this Royal Commission is there’s an opportunity to reach out to Aboriginal leadership saying, where this practice occurs, it should stop.

35 COMMISSIONER GOODA: That’s the point, Mr Elferink. We met – Commissioner White and I, and staff within the Commission, CICA  
YDAS, who is funded to take these statements. I’ve heard Aboriginal people say, “We need to take responsibility here.” I’ve heard people say, “We can’t blame the state any more for this. We’ve got to take responsibility as parents”?---I agree.

40 Not once have they mentioned underage marriage. Now, we have got a population out there willing to take responsibility and be accountable for what – how they’ve contributed to where we are now but not once – and these are meetings in Timber Creek, with the full Northern Council membership, this is meetings outside – in  
45 Timber Creek in the park with mothers, with the mother, these meetings took place with Commissioner White and I, not to mention our community engagement team, not to mention CICA  
YDAS. Not once has this been brought to our

attention?---Without knowing the work that was done, how often was the question asked about cultural marriages specifically – specifically, I should say?

5 We were waiting for people to come and tell us about our concerns. So – but I can say, taking into account the amount of times the community was willing to take responsibility across a whole range of things, not once did they – did women, did young people mention to us this issue of forced marriages, underage marriages?---Well, what I know is what I’ve been told over the years, and what I know is that matters have been brought to trial.

10 So you mention the Central Australia area where you worked. How long ago was that?---When I was working out there as the member for MacDonnell between 1997 and 2005.

15 And since then we have had the Northern Territory Intervention, which – do you think – and I remember a former Chief Minister actually challenging leaders. I remember a conversation between her and Galarrwuy Yunupingu about this. Maybe the Aboriginal community has already addressed this because we are not hearing about it or - - -?---When I spoke to people like Alison Anderson and Bess Price, the answer was no, that hasn’t necessarily gone away. It’s something for the Commission to consider, sir.

20 Absolutely. But at the moment the evidence we have in front of us tells us it’s not such a concern. Now, if you know other people who should come and talk and present evidence, we’re quite happy to receive that but at this stage one – it might be – do you accept it might be that the Aboriginal community has already addressed it?---If that’s the case I would welcome it, but that’s not the impression that I have formed. But if they have, good.

30 Like I say, I remember - - -?---But I would welcome them saying so publicly as well.

COMMISSIONER WHITE: Thanks, Mr Callaghan.

35 MR CALLAGHAN: There’s probably a lot more we could say on that topic, but we will - - -

COMMISSIONER WHITE: There are some other matters to address.

40 MR CALLAGHAN: - - - move on, there are some other matters.

On the final page of your statement, Mr Elferink, you say in the fourth paragraph:

45 *For my whole working life I have watched as one level of government poured millions of dollars every fortnight into the Northern Territory, only to see another level of Government spend millions of dollars every fortnight to clean up the resultant mess.*

By that do we infer you're suggesting the Commonwealth Government is pouring in millions of dollars every fortnight and the Northern Territory Government is cleaning it up, cleaning up the mess that results?---That's right.

5 Was all of the mess the fault of the Commonwealth Government or did you, as a Minister of the Northern Territory Government, take any responsibility for causing any of the mess?---The welfare arrangements to which I refer in that paragraph is indicative of a dislocation between the two tiers of Government. The Intervention is an example of the Commonwealth running independently of the Northern Territory.  
10 We have welfare policies that are operating in this country that see literally millions of dollars being poured into this jurisdiction every fortnight, and the Territory Government having to deal with the health and legal – law enforcement outcomes that flow from that, and there is no marriage between those two levels of expenditure.

15 Can I take you to a specific example of the way in which the Northern Territory Government handled things, and it is a specific one because it arises from your statement in which there aren't many specific examples – and that's not a criticism, it goes back to the general nature of the questions you were asked. But can I take you  
20 to page 3 of your statement, where you talk about the placement program SAF, T – S-A-F, T. You describe it as a massive waste of money?---Mmm.

Can we just take a look at exactly what the problem was with that program. And to be fair, I would suggest you scrapped that at a fairly early stage in your - - -?---Yes.  
25

In your tenure as Minister. So the problems or the issues I'm about to address your attention to probably predate your incumbency. But if we can go to SNT.0005.0007.0190. It's a ministerial brief that you signed to remove SAF, Ts funding. And if we go to first the bottom of page 1 of 3, these issues have been  
30 compounded by variable, and can we go over – variable relationships within senior DCF staff and inconsistent funding by the Northern Territory Government. That's one passage. And can I take you down further.

COMMISSIONER WHITE: The paragraph that is marked is quite - - -  
35

MR CALLAGHAN: Just the whole paragraph is marked, yes. I'm sorry - - -

COMMISSIONER WHITE: Is quite interesting, Mr Callaghan.

40 MR CALLAGHAN: Yes. If I can ask you to read on for the rest of that paragraph?---So the one that is marked?

COMMISSIONER WHITE: Yes.

45 MR CALLAGHAN: Yes?---Yep.

Even on the Department's own advice to you, the major problem for SAF, Ts operations appears to be the way in which the Department had interacted with it?---What I – I don't agree with that. I think the Department's major problem was that this organisation simply hadn't placed a child.

5

Well, it would suggest – the briefing would suggest that its difficulties arose – maybe that was the consequence, but it was a consequence of processes where the Department was behaving inconsistently?---From my perspective, as you've said at the outset, I can't second guess what happened prior to my assuming the ministry beyond what I'm briefed. My concern is simply this: is that if an organisation is being funded by the taxpayer to place children, and they're not placing children, then it's failing.

10

Did it deserve a chance to do that following a period of stability and a lack of inconsistency by the Government?---I understand that the instability was as much inside the organisation of SAF, T as anything else.

15

That's not what it says there?---But I understand there was - - -

MR HARRIS: I rise to object. That question, with respect, is not fair because the preamble on page 1 before the passage that my learned friend has referred to talks about the very thing the witness has just said:

20

*After 20 months the organisation is still unable to demonstrate appropriate governance, unable to retain or manage its senior staff, showing limited business acumen, not being able to demonstrate wide member base, etcetera. These issues have been compounded by variable relationships and inconsistent funding.*

25

So the problem is there. It has been compounded by the inconsistent funding. My learned friend's question suggests that the problem is the inconsistent funding. That's not a fair representation of what this witness says.

30

MR CALLAGHAN: The point is well taken. The document has to be read as a whole. I don't suggest otherwise, but the question holds good: whether it doesn't deserve and opportunity after some period of stability within its relationship with the Northern Territory Government to demonstrate that it was capable of doing what it was meant to do. But anyway, you would say - - -?---No.

35

No. Alright.

40

COMMISSIONER GOODA: Mr Callaghan, can I go back to that first page of that. Mr Harris. The paragraph above it, it says a peak body and an Aboriginal child care agency. There were two – you understand there were two recommendations there. One was for a peak body, and one was for two child care agencies, as I understand it. One Top End, one central. And like I said ..... from the Commonwealth agreed the other day that the health area is really great. It has got a series of agencies out there

45

that are on the ground, that it's community controlled, it has got a peak body called AMSANT that actually does the peak body role. AMSANT doesn't see one patient, one client, because it's a peak body. It's an advocacy body. So using the argument they never placed one child really doesn't understand the role of a peak body?---My  
5 understanding of the organisation, and certainly what I think I was briefed on at the time, was that its function was to place children. The reference to a peak – I don't know who drafted the document - - -

10 It's in the brief that you were given.

COMMISSIONER WHITE: It was also – it was a two pronged organisation and certainly from the evidence that we have heard, Mr Elferink, its original purpose was as a peak body and then the delivery of services was folded in underneath it subsequent to its original start up?---Yes. I can – the only thing I can add to that,  
15 ma'am, is that I had spoken – subsequent to the decision, not before the decision, to a number of people who were in the industry, and I can't remember who they were, but they were Aboriginal people who said that there were internecine problems behind the scenes, even with the representation of Aboriginal interests. The consequence of that, as a peak, I think its breadth was perhaps limited.

20 COMMISSIONER GOODA: I just want to make the point: the fact that you say they didn't place one child isn't really holding water here, because they didn't – they weren't meant to set up – they weren't set up to place children?---My understanding is that is what its function was – was, amongst other things, was to place children.  
25 But in any interest – in any instance, when the determination was made, my take – the – there was almost no noise about it in the public domain. In fact, most people said it had to happen. That was my recollection of the events: it underperformed.

MR CALLAGHAN: Alright. We certainly don't have time to review every  
30 decision you made as Minister. Can I move to the broader picture and I'm going to – at the risk of incurring your counsel's wrath – attempt to summarise your position of the overall picture of DCF, as I infer it, from your statement. You say if you look at the notifications, the investigations, and the substantiations as a whole, the overall inference to be drawn is an improved Government response on the issue of child  
35 protection. Or they support that inference?---The – depends on how you have defined improved. A more assertive Government response, yes.

40 Alright. And you point to the increased level of Government expenditure as evidence of that?---Yes, I always think it's a clumsy yardstick, but it's one of the vehicles that demonstrates Government activity.

45 Alright. Well, let's look at that yardstick. Can we take a look at the statement of Kim Charles, get up table 4 on page 6. And if we look at the bottom line, which Ms Charles has calculated as the annual expenditure adjusted for certain accounting metrics, we can see that during your period as Minister the expenditure by DCF, as it then was, remains fairly constant. Would you agree with that?---No, there's a dip in – during my period of Minister, I took up in late 2013.

Yes?---That budget was already set by that stage. So it came up by \$20 million and then retained that position in the 15/16 budget.

5 In broad terms, though, we're talking – all of those figures begin with 17. The bottom line, the expenditure adjusted for impact?---I see, yes. I was looking at the actual expenditure. Yes.

10 So my suggestion to you was that the expenditure by the Department remained fairly constant during your period?---Yes. However, the 16/17 budget I think saw an substantial increase, about 10 million, from memory.

15 Alright. Nevertheless, with the figures that we have, there was no great change during that period?---From the figures you have. The 16/17 budget, I'm pretty certain, went up fairly sharply.

To what, do you know?---About \$10 million from memory, is what I took into the budget Cabinet and I think that that it was pretty much approved and it was a direct result of the increase of out-of-home care and expenditure in that space.

20 Alright. Well, let's look at the increase in out-of-home care services. Actually, we can go to table 3 on page - - -?---For what year?

25 We will go to table 3 on page 5. And even though that may not include the increase that you're talking about, I think if we look at those figures we can see a trend. That is to say, if you look at out-of-home care, 2012/13, a total of 85,449?---Yes, that's correct.

But if you go down to 2015/16 it's up to 106?---That's correct.

30 And you would say that trend continued as a result of your initiatives, if you like?---From memory, yes. I haven't seen the budget papers since we did budget ..... where the budget was brought down.

35 Alright. But let's work with that as a working proposition that that figure kept going up?---Mmm.

40 And just to make it clear, what's involved in that figure, can we take a look at paragraph 17 of that same statement where the definitions are contained. And I would suggest that's a fairly uncontroversial definition of what's involved under these headings?---Yes. Without reading them, I will accept that.

Well - - -

45 COMMISSIONER WHITE: They're on – they're next to you on the screen?---Yes, I understand that do you want me to take the time to read them?

MR CALLAGHAN: A and B at least. They're not long?---Certainly.

Okay. So if we go back to table 3 and look at the breakdown and accepting what the figures demonstrate and what you say about an increase in out-of-home care services, if we look at the figure for child protection, which are the costs associated with responding to notifications of harm and undertaking investigations into it, we can see  
5 that the figure goes down from 55,322, to 26,733. If we are to go back to your statement and look at the increase in notifications and investigations, on the first page of your statement, in the same period the increases in notifications and investigations went up really quite markedly, didn't it?---Yes. Can I pause briefly here, though. When you see such a large change in a bottom line on a budget figure,  
10 as you've just indicated there is generally another reason for it. A change of accounting practices and that sort of thing. I would be very surprised that we cut by half, or more than half the amount of child investigations – investigators in the field during that period. I would be looking in the first instance to the accounting practices that were used at the time, and often the devil is in the detail. There are a  
15 number of charts in that statement, as I understand it, and there are references to footnotes in other parts of that statement which deal with those sorts of issues.

Alright?---So I'm very disinclined to accept those numbers on face value, simply because of some administrative change rather than necessarily that there is a cut of  
20 that much.

Okay. Well, let's look at it another way, because to come back to your point it would be – you would be concerned about increasing the amount of services that were required whilst decreasing the budget?---The overall budget certainly wasn't  
25 decreased.

Under that heading of child protection?---And once again, I would be very dubious about the way those numbers are presented. I think there's something else operating than a simple cut.  
30

Alright?---There are footnotes, there are other – that statement I was shown at the last moment this morning, there are footnotes under one of the other charts, which I think from memory – I only glanced at them – actually explained that there are changes in the accounting systems.  
35

Alright. Well, you - - -?---Or the acquittals.

You suggest that we examine the accounting - - -?---Yes.

- - - methods before we read too much into that?---One of the great pitfalls, I've learned over the years of reading budgets, is when you get a substantial shift it's because something other than what appears is actually happening, and it's usually an accounting standard that changes or one of the way – the line items are disposed of  
40 by the Department.

45 Can we come at this another way, then. Can we look at the Territory Family reports, and let's look at the actual number of employees that the DCF had over the period in

which you were Minister. I don't know if we have those on the screen but the 2012/13 report says on page 8 DCF had 652 employees?---Yes.

And if we can look at the 2015/16 report, page 9. 2015/16, 622 - - -?---Yes.

5

- - - employees. Essentially unchanged?---Once again, essentially unchanged on face value. But one of the things I know, with administrative changes over time, sections are moved in and out of Departments, those sorts of things. They can hide an underlying change of figures to simply look at two annual reports without – over a  
10 four year period without looking at the department structures in the meantime I think would be brave.

Well - - -

15 COMMISSIONER WHITE: Well, I thought annual reports were meant to indicate to the reading public that they were accurate?---They are, but on their own annual reporting basis. So every year they will report the condition of their Department. For argument's sake, since the change of Government, the new government has now brought the departments back in together. As a consequence there will be substantial  
20 changes in numbers of people in the department .....

This is during your period in Government, Mr Elferink, if you can reach back that far. It's not all that far?---Yes.

25 To see whether you can recall any changes in the machinery of Government which might suggest we should look under the layers of those constant figures?---One of the footnotes that I referred to earlier, in relation to how the budgeting was being put together, and how allocations budgets were being put together, would inform employment numbers as well, inside the system. If I had had more notice than 9  
30 o'clock this morning on this particular issue I may have been able to explore it a bit more fulsomely for you, ma'am.

Alright. So – but your recollection now is you can't put your fig on any change that you moved out some front line workers into the Department of Health, for example,  
35 or anything of that kind?---It doesn't ring a bell, but often those things are a result of a budget – a change in budget processes and those people move as a consequence of that budgetary process. I'm not necessarily disagreeing with the line of questioning, all I'm trying to indicate is that we must be cautious taking those numbers on face value without actually knowing what has occurred in the meantime.

40

Thank you.

MR CALLAGHAN: Well, let's look at what those staff were doing, however many there were, and one way to assess that is by reference to their caseload ratio. If we  
45 could see the review of the DCF ratio current caseload, current targets, and resources table. And we are looking at table 2, if we can, please. That's chart 2. I'm after table 2. That's it, thank you. It may not show there but can you recall, or at least

accept, that the target case load was 20 cases during this period?---I'm sorry, you have to draw me to it.

5 That's why I asked you to accept it, but I will find it?---Well, is it written somewhere that the Commission can refer to? Then I will accept it.

10 COMMISSIONER WHITE: I think those desired caseloads are littered through the various statements that we have had from those people working in the field and bureaucrats?---Sure.

15 MR CALLAGHAN: You can infer it from the table the maximum case load – new positions to meet maximum caseload, 14 out of 20. If you accept that the maximum case load, or the target case load was 20, it's on – for the record, it's on page 9 of the document?---Thank you. I accept it. Go on.

20 Okay. But then if you look at the case load as at current staffing which was 31 January 2014, if you take out the situation at East Arnhem, then in no case was anyone doing other than carrying more than their target case load?---That's correct.

25 And look, to cut to the point Mr Elferink, this Commission has heard a consistent narrative from all participants in the child protection system that staff were overwhelmed by their workloads and that it led to chronic staff burnout, investigation backlogs, turnover of staff?---I - - -

30 Do you – sorry?---I would accept that.

35 I was just going to ask: you accept that many of the staff in your Department were grossly overworked?---Yes, I think that the staff in my Department were overworked and had been for years. Many years.

40 And during the period in which we're talking about, I would suggest to you that the Northern Territory government's budget position went from, in 2012/2013, a case where revenue was expected to be 4.55 billion – I can put up page 5 of the NTGs budget overview to substantiate that figure?---I will take your word for it without - - -

45 Alright. Okay. And will you also take my word that for 2015/16 the budget overview suggested that the territory revenue was expected to be 6.5 billion?---Alright. Now, I would like to look at the document simply because if you once again see such a substantial shift. Over what period of time are we talking about? What years - - -

50 That's between 2012/2013 and 2015/2016?---Once again if you're talking about changes to the amounts available to the budgets, I would have to go back through the budget documents but for the sake of this, for getting on with it, will accept the numbers. But I do it with caution.

5 Alright. Well, on those numbers though, which come from – they both come from a budget overview – there’s an increase of some 35 per cent, just under \$2 billion?---It doesn’t ring true, through my budget experience, of experience with the budget Cabinet. But we had certainly difficulties in maintaining our debt situation at the time. There’s no doubt about that.

10 I guess the ultimate point is this: we’ve looked at the Department’s expenditure and you’ve agreed that was fairly constant?---No. I – what I said is in the last year it went up substantially. That’s just – that’s the most recent year. So no, I don’t agree with that assertion.

Well, it might have gone up by 10 million?---Yes.

15 That’s your ballpark - - -?---From memory through that process, yes.

Yes. Okay. You sound caution about the amount of money that was spent on child protection, that it may not have reduced as substantially as those figures might have suggested?---I would go so far as to say I would be surprised if they were.

20 But would allow that those figures do suggest a trajectory in the out-of-home care costs?---There was certainly an increase in the out-of-home care costs.

25 Which continued?---Yes. Which is, of course, indicative of increased activity in many respects in the investigations environment, not decreased in their – in activity.

30 Well, that’s right. Again, we have pointed to the fact that investigations and – well notifications and investigations, we drew attention to that figure, that they increased markedly?---Which is one of the reasons that I am sounding serious caution about relying on that \$26 million figure without knowing what’s underneath it.

Sure?---Because halving the funding would have expected a halving or a response in halving the amount of activity and that’s not the case.

35 Or doubling the case load of workers, who are meant to be having 20 cases, but who had 40?---My understanding is that went over a number of years. My experience of the budgeting process is we always put money aside to recruit new staff. I think the haemorrhage of staff was about 30 per cent very single year.

40 And that’s – in due no part to burnout – in no small part to burnout because of high workload?---That would be one of the factors. That people also move on. There’s a high cyclic effect in that, in a number of other professions, across jurisdictions. We are – it’s particularly pronounced in this jurisdiction because people come here, they do a couple of years, they go.

45 If those figures were right and that overall revenue increased by that sort of percentage - - -?---Can I – I would really like to refer to the budget papers rather than relying on the overview document, because I know – I just question it.

Fair enough. We will leave it, you're right?---I'm – it doesn't sound right to me from my experiences.

5 Okay. Finally, can we go back to your statement and to question 1, in which you were asked to outline the priorities of your Government during the period in which you were the Minister for families and children?---Yep.

10 I don't want you to give me an ex tempore answer about what you now say those priorities were. I want you to point to me, in this statement, where you identify those priorities?---What I was trying to get across - - -

15 No, please, I'm not interested in what you were trying to do, what you would like to do, I want you to take me to a paragraph or a line or to part of that statement in which you do as you were asked to do and identify the priorities of your Government in relation to child protection?---I think that if you look to paragraph 3 of my answer, Ms Anne Bradford then took over the Department and we attended to the morale and management issues that still plagued the Department. Those – that's where my priority thinking was.

20 COMMISSIONER WHITE: Was that – would you describe that as a policy?---It was – it was – it would – it's an interesting question. The reason that it's an interesting question is because, before you pursue policy, you've got to have the mechanics of the system capable of dealing with policy outcomes. The Department did have morale issues. I think the Commission has received information of that.  
25 Part of that, having spoken to a number of staff, was the environment of almost fear about making a mistake, was creating a system by which people were sort of bunkering down. I referred to it as putting little tin hats on and staying in their foxholes doing what was necessary, because they were scared of the consequences of taking a risk. And the last time I was here, ma'am, I gave evidence in other  
30 departments – but also particularly in this Department – I suggested to staff that they should take a risk. And I'm not talking about absurd risks, I'm talking about trusting their judgment based on what they've known over the years and pursuing their job with passion.

35 Is that what you were referring to when you were saying provided they stayed on this side of criminality and negligence?---Precisely right. It's that notion that – you know, people get into social work because they want to make a difference. And then they join the bureaucracy and it's not what they expect. One of the things that has concerned me over the years in the child protection space is that when there are  
40 inquiries of this nature, the bureaucratic response is necessarily to lock it down even tighter and to create bigger manuals and those sorts of things. At the moment I think the operations manual – or certainly was when I was the Minister was over 1000 pages long about what you can and can't do. And it's very, very difficult for a child protection worker to make decisions when this document hangs over them. One of  
45 the problems is that because there's a fear, and there's always these issues of noise around child protection issues, it invariably leads to inquiries such as this one, and the bureaucratic response often then to becomes to lock it down even tighter, and

that's one of the challenges – or that's structural changes I wanted to create inside the Department, so that - - -

5 Well, I can – I think I understand that point that you're making, Mr Elferink. What I am a little concerned about, however, is to ascertain whether you were prepared to accept the policies of the predecessor Government before you, because they seemed appropriate and good ones for your ministry relating to child protection. Did you go into the election with any policies relating to child protection? Did you develop any in your first three months?---In terms of the going into the election, of course, I  
10 wasn't the shadow minister. I was – so - - -

I understand that?---The policy of the CLP going to the last election was pretty much - - -

15 I'm not talking the last election, I'm talking about the one in which you came into office?---Yes, the 2012.

20 Yes?---The 2012 election, that's the one I meant, was to make sure that child protection services were available. I don't know if it was particularly detailed beyond that. I'm sure there will be a policy document that can be referred to. I mean, that was four years ago. Subsequent to me becoming the Minister, I wanted the Department to focus on its core function which is the protection of children and making sure that it could do so effectively. The numbers to which – to which, in terms of caseload numbers, have always been a problem. They were a problem for  
25 as long as the Department has existed in its variant forms. One of the problems is that we often budgeted for staff and never spent the budget because we couldn't recruit them.

30 Yes. Well, we have heard a lot of evidence about that?---Yes.

MR CALLAGHAN: I'm conscious of the time, Commissioners. There are others who have questions of Mr Elferink, so I might leave it there.

35 COMMISSIONER WHITE: Yes. Thank you. Mr Lawrence – now, I know that you have probably been watching this. I saw you just came into the hearing room, but you're well aware of the issue in which you have got leave to ask Mr Elferink questions has been canvassed about SAF,T. You may have specific questions you wish to ask, but can I urge you not to canvass what has already been covered.

40 MR LAWRENCE: Of course.

COMMISSIONER WHITE: Thank you.

45 <CROSS-EXAMINATION BY MR LAWRENCE [10.28 am]

MR LAWRENCE: My name is Lawrence.

I'm here representing, as counsel, Josie Crawshaw, who was the chief executive officer of SAFT, T?---Mmm.

5

I'm also engaged as counsel to represent Olga Havnen, the chief executive officer of Danila Dilba, and Danila Dilba itself?---Certainly.

10 Can I take you to your statement please, Mr Elferink, and I want to ask you some questions about the SAFT component. Have you got a copy of that or is it front of you on the screen?---No, I don't, and no it's not.

COMMISSIONER WHITE: It will be on the screen. We need to know which paragraph. Do you want to go to paragraph 4?

15

MR LAWRENCE: Yes, page 1, paragraph 1. Can I ask you: how much time did you take to prepare this statement?---I prepared the first draft about three weeks ago, and left it untouched until I received the summons last Friday to be here today. So I was still waiting for a start date and time with my counsel to prepare a more fulsome statement. But, unfortunately, as I only received the summons at 5 o'clock on Friday afternoon, the statement is not as comprehensive as I would wish it to be.

20

How much did you take to prepare it?---I took a number of hours to research the material that's in there now and to – to type it out.

25

Did you have sufficient access to the materials you required to make sure it's accurate?---No.

30

Can I take you to paragraph 1, please. You say in your statement, "I became Minister for Children and Families on 10 September 2013", is that accurate?---No. Well, I believe so actually. I'm not entirely sure. That was - - -

Thank you. It goes on to say "succeeding Robyn Lambley in that role".

35

COMMISSIONER WHITE: That has been corrected, Mr Lawrence.

MR LAWRENCE: Sorry?

40

COMMISSIONER WHITE: At the beginning of Mr Elferink's evidence he corrected to that Minister Alison Anderson.

MR LAWRENCE: Sorry. Okay. Alright.

45

So she was the Minister for a period of months before you took over?---That's Alison Anderson?

Yes?---Yes.

Now, you go on at paragraph 4 to make a statement concerning SAF, T, and I will read it out if I may:

5           *Aboriginal placement program, SAF,T, was scrapped as a massive waste of money. I think it spent 1.2 million and didn't place a child.*

Correct?---Yes.

10       COMMISSIONER WHITE: Don't read the rest out thanks, Mr Lawrence, because you are going to run out of time.

15       MR LAWRENCE: No, I'm not – I'm not interested in the rest of it. You say "I think". Was it based on evidence before you before you made that statement about being scrapped as a massive waste of money?---No, it wasn't, because the – once again I didn't have much time to prepare or finalise the statement between Friday and now.

20       Well, were you aware for instance, that Ms Crawshaw was appointed the chief executive officer in July 2011?---I wasn't, but I will accept that being correct.

25       And were you aware that her appointment, and indeed the establishment of SAF,T, was from the ground up, it wasn't taking over from any similar or equivalent organisation, it was starting from the ground up?---Yes, I – I remember the press that was done at the time when the former Labor Party, I think it was the Henderson Labor Government, established the organisation.

30       And your Government was in support of the creation of that organisation, which was pursuant to recommendations 3 and 5 of the Board of Inquiry?---I don't recall the shadow minister at the time making any particular comment one way or the other. We took over SAF,T when we took over Government.

Did you support it from the beginning?---If it was going to place Aboriginal children, all children but particularly Aboriginal children, yes, I would have supported it.

35       So when you made your statement about being a massive waste of money were you aware that they had held their first board meeting in September 2011?---No.

Were you aware they held the second board meeting in December 2011?---No.

40       Were you aware they had to create a board before they even had a board meeting?---I would have imagine they would have had to, if they were being built from the ground up.

45       Were you aware they had to do research aspects to obtain evidence and information as required from the Board of Inquiry, including interstate equivalents?---Yes.

And you were aware they did all that during this initial period?---No, I wasn't aware that they had done all of that.

5 Were you aware they, also consistent with the Board of Inquiry recommendations, developed, as a peak body, partnerships with other Aboriginal controlled bodies?---I was aware they were attempting to make partnerships. I don't think that they were particularly successful.

10 Were you aware that, in these early months, they became incorporated and they moved into new premises?---I imagine they would have done, yes.

Were you aware that they created a constitution and a governance structure?---They would have had to have done.

15 Were you aware that, pursuant to the recommendations they also created, or availed themselves, of an expert panel?---No.

20 Were you aware that they produced, pursuant to the Board of Inquiry recommendations, a manifesto?---No. But I would have expected them to pursue those board of recommendation inquiries.

25 Were you aware that, again within this first 12 months of Josie Crawshaw being the chief executive officer, they created a circle of care strategic plan?---I was aware of the circle of care plan.

And were you aware that by April - - -?---Existence

Sorry?--- Of its existence.

30 ..... were you aware that by April the next year they've had their third board meeting?---No.

35 You are aware that it was a peak body - - -?---I was aware at the time that it was a peak body, but I was - also understood that part of its function was to place children, which wasn't happening.

Alright. Did you appreciate the difference between their work as a peak body starting from the ground up?---I understand what a peak body does, yes.

40 Right. And you would concede that that's no small amount of work to do from the ground up?---It would require work like any other peak, yes.

45 Is it your evidence that, really, because there was no children placed in foster or out-of-home care by SAF, T, that that was why you describe it as a massive waste of money?---Yes.

Do you think that the endeavours and the industry and the stuff they did to establish themselves as a peak body was a massive waste of money?---I formed the opinion that it wasn't doing what was required to protect children.

5 Would you concede that that establishment requires time, resources, effort?---I think that they had sufficient time.

To do all of these things?---Yes.

10 Did you judge it – did you actually analyse it?---I took – I sought advice from my Department.

Right?---And by the way I also spoke to Ms Crawshaw, if memory serves me correctly.

15 Well, did you look at the evidence as to what they had done from July 2011?---I asked Ms Crawshaw to describe to me what had been done – had been done, and she described there were a number of governance issues and she conceded there were problems.

20 When did you meet her?---At about the time that the decision was taken to defund it.

Whereabouts did you meet her?---My office.

25 When? What was the time?---The time of day?

What date was it?---I can't recall the date specifically.

30 What year was it?---When is this briefing note dated? The briefing note that I was shown before? At about the time that briefing note I was shown before, which is I think late 2013, November 2013. She was the CEO, yeah? Just to make sure we're talking about the same person.

35 COMMISSIONER WHITE: Yes, Mr Elferink?---Thank you.

MR LAWRENCE: Yes, she was. I'm not sure on the date of this?---It will be on my – it will be at my signature block. If there's a signature on it, there will be – I will date it, time and date it.

40 Dated December 2013?---Okay. Well, that's about the time that I met her.

Alright. Now, did you actually obtain evidence from your Department as to everything that had been done by Josie Crawshaw?---I spoke to my CEO, as well as received the briefing note that you have at your fingertips.

45 Alright. You understand what evidence is, Mr Elferink, don't you?---Yes.

You are a practising lawyer, are you not?---Yes.

You've studied evidence?---Yes.

5 And you know it's quite different from anecdotes?---Yes. However, that's for the purposes of a court of law. In the normal passage of things, the rules of evidence don't necessarily apply to ministerial decisions.

10 Well, I'm asking you now questions about your comments that you've given us at point 5 and you say you come here to assist this Royal Commission called by the Prime Minister of Australia no less?---Yes.

15 And you make these comments based on anecdotes?---My personal experiences, the information that I've received in my experiences working in remote and regional areas of the Northern Territory.

Right. And what about evidence?---I consider that to be evidence that informs me of my opinions.

20 Alright?---It's not the rules of evidence – as I said the rules of evidence in a courtroom don't apply necessarily to the day-to-day processes of decision-making and opinion forming.

25 But this isn't a driving under the influence court case, is it Mr Elferink? This is you now giving evidence to a Royal Commission of Inquiry called by the Prime Minister of Australia and you have given comments about mutilation and underage marriages and you haven't come up with one piece of evidence other than what you would say is anecdotes; correct?---Well, the advice that I have received over the years from senior Aboriginal people is that these practices still continue.

30 Look, you've had ample time – not just ..... putting this statement together but as former Minister of the Crown, former first law officer, former Minister of children and families, to gather direct evidence – if there is such a thing – and place it before the Prime Minister of Australia through your evidence here, haven't you?---Yes.

35 And you haven't brought any direct evidence, have you?---I have brought my experiences to a Royal Commission which is seeking to look at child abuse matters in the Northern Territory. That's what I'm doing here today.

40 Your direct experience being the receipt of anecdotes?---Being the receipt of information from senior Aboriginal people who I have spoken to over the years.

45 And you know the difference between that being here saying anecdotes compared with direct evidence as a practising lawyer, don't you?---I'm not bound by the - - -

COMMISSIONER WHITE: Mr Lawrence, you might just need to cede your place for a moment. You have two objectors on their feet. Thank you. I think I shall let Mr Harris, who is Mr Elferink's counsel, have the floor.

5 MR HARRIS: I think my friend might have beaten me to the punch, but thank you very much, Commissioner.

COMMISSIONER WHITE: Yes. You go first.

10 MR HARRIS: Might I raise an objection on three bases. The first is relevance. The second, more fundamentally is that evidence that this Commission has taken across very many weeks and months has been peppered with opinion, anecdote, etcetera. None of that makes it unhelpful. It might be a matter of weight, and a matter of how the Commission takes it on board across the panoply of material that it has received,  
15 but to now attempt to dust off Cross on Evidence and have some cross-examination based on hearsay evidence or direct evidence is not only unhelpful, it's a waste of time.

COMMISSIONER WHITE: Yes, Mr Harris.

20 MR O'MAHONEY: My objection was a little more simple, Commissioner. Unless my friend has picked up an amicus brief overnight, I can't see how this wide ranging line of questioning – I've let the last four or five questions go, but it just doesn't seem to intersect what he has leave to ask questions on or indeed his client's  
25 interests.

COMMISSIONER WHITE: Yes. Thank you. Do you want to be heard on these objections, or do - - -

30 MR CALLAGHAN: I just want to keep moving in the interests of time.

COMMISSIONER WHITE: Yes. Well, I thought that might be your answer. Thank you. Now, Mr Lawrence, a lot of this has been explored with Mr Callaghan on these topics.

35 MR LAWRENCE: Certainly.

COMMISSIONER WHITE: As you probably saw when you were watching the live stream, and because we have a number of other counsel who wish to question on this  
40 matter, I really can't see haranguing Mr Elferink about his wont of any kind of hard evidence, but just anecdotal opinion, advances the matter any.

MR LAWRENCE: Well, I don't want to harangue him. I'm not in the business of haranguing him; I'm in the business - - -

45 COMMISSIONER WHITE: Well, call it what you will.

COMMISSIONER WHITE: - - - of cross-examining him on behalf of my client.

COMMISSIONER WHITE: Call it what you will, it is still not advancing it any further from we were when Mr Callaghan finished on the topic.

5

MR LAWRENCE: Well, the reason I'm placing these questions is because I want to put to him a proposition, which will be ultimately our submission, which goes to the weight of any evidence this witness has put to this Commission.

10 COMMISSIONER WHITE: Well, why not put that straight to him?

MR LAWRENCE: I will.

COMMISSIONER WHITE: Thank you.

15

MR LAWRENCE: I put to you, Mr Elferink, that the way you have given this material, as opposed to evidence, is reckless and of no worth whatsoever?---And I reject that assertion.

20 Now, just going back to your statement. I'm conscious of the time. On that aspect of forced and underage marriages and genital mutilation, you've given your evidence and told us about the basis of it. What did you do as the responsible Minister to effect any education - - -

25 COMMISSIONER WHITE: Mr Lawrence, those questions have been put.

MR LAWRENCE: I don't know if it has been put as direct as that. The word education was certainly used in a question. Can I ask him exactly if they did anything. That's all I'm asking. Has that been answered? If it has been, I won't - - -

30

COMMISSIONER WHITE: I think it has.

MR LAWRENCE: Can I remind me what his answer was while I'm here.

35 COMMISSIONER WHITE: Nothing.

MR LAWRENCE: Thank you. That shut me up.

40 Finally, sexual assault investigations unit, you tell us that you learnt about something in Phoenix. I take it that's Arizona in the United States of America?---Yeah, that's correct.

When was that?---When I was there, I think in about January 2014.

45 Right. And it's some kind of - I will just go to your statement, if you've got it. Could it please be placed there before him. You've got that. You say there's a number of facilities around the world?---Yes, including in Perth.

One place that the child goes, treated, interviewed, forensically tested. Did this lead to any change in the legislation?---No. What I was trying to do was policy change, and it may not have required changes to the legislation. How these systems work – this is one of the problems I had with being told that I needed to get the statement in  
5 by Monday, on Friday afternoon, was because I wanted to go back and check my documents that I had tabled in Hansard in relation to the – particularly the Phoenix visit. What we do at the moment in terms of investigating child sexual offences is that if the child ends up at hospital then there’s the questions from the nurse, the triage nurse, then there’s a further investigation and the SARC investigation which is  
10 then done by different people. Then the child is spoken to by child protection teams and then ultimately the police are involved. The police do their investigation. So the child ends up repeating the story of their trauma maybe four or five times. I have reservations about the wisdom of putting a child through – of sexual trauma through that process four or five times, and so I looked for other options. I noted there was  
15 one in Phoenix, I happened to in the United States at the time, so I made it part of my tour – as well as looking at the institution in Perth – and in both instances what occurs is that the child is taken - - -

COMMISSIONER WHITE: Perhaps if we don’t go into the detail of that, because I  
20 think a responsive question is what did you do. We’ve got - - -?---Well in that case I then started talking to my Department about – and various departments, I had a number of meetings with my CEOs about how we could advance this – advance this process and this idea. And I understand that work was done somewhere in the departments but, unfortunately, it was already late in the piece, late in the  
25 Government, and so it never was advanced. I would urge the current government of the Northern Territory to revisit this notion and perhaps this Royal Commission would cast an eye on this particular process because I think it’s important.

MR LAWRENCE: Thank you.  
30

COMMISSIONER WHITE: Thanks, Mr Lawrence. Dr Dwyer, I think you might be next.

35 <CROSS-EXAMINATION BY DR DWYER [10.46 am]

DR DWYER: Would you just excuse me for a moment to organise myself.

40 So my name is Peggy Dwyer and I appear for NAAJA?---Ms Dwyer.

COMMISSIONER WHITE: It’s actually Dr Dwyer, Mr Elferink. We try to be scrupulous about these things?---My apologies, Dr Dwyer.

45 DR DWYER: Sir, your statement that you prepared dated 26 June, you refer to an increase in the number of children in out-of-home care. Your stats are from 700 in

2011, for example, to 1120 in 2015/16?---They're – yeah, they're Department stats, but they appear in my statement.

And an increase in the number of children in residential care facilities?---Mmm.

5

And you know, of course, that there was a substantial increase in the number of Aboriginal children in out-of-home care and non-kinship care?---Sadly, Aboriginal children are overrepresented in the care system in the Northern Territory generally, yes.

10

And you use the term “sadly”. I suggest to you that it's in fact a national disgrace the number of Aboriginal children who are in out-of-home care non-kinship placements. Do you agree with that?---It is very sad and it disappoints me deeply that that happens.

15

So while you were the relevant Minister, did you set targets to reduce the number of Aboriginal children in non-kinship care placements?---No, I didn't.

Why not?---Because a target system would require a result. I would prefer – and I think the correct policy position is, that if you have a child that is in need of care, then that child is given the support that is required. To set a target would be to be artificially either over or underinflation that position, and I think that that would be bad public policy.

Mr Elferink, doesn't a target give you something by you can measure whether or not the Government strategies are successful?---Once again, it depends on how you define targets. You have objective targets and subjective targets. They are reflected in various public policy documents, but if you're talking about numbers I think that would be bad public policy.

30

What I'm asking you: was it part of your strategy to reduce the number of Aboriginal children in non-kinship placements or did you not care about that as a strategy?---The structure of the preferred placement system was kinship care before general care, but if the kinship care wasn't available then general care was the answer.

35

Let me go back to my question. Was it part of your strategy to reduce the number of Aboriginal children in non-kinship placements?---No.

COMMISSIONER WHITE: I think that was actually turned around from the first - - -

40

THE WITNESS: No, no.

COMMISSIONER WHITE: ..... question – why don't you have a third go.

45

DR DWYER: I will make sure you are clear about it, Mr Elferink. So it wasn't part of your strategy, while you were the relevant Minister, to reduce the number of Aboriginal children in non-kinship care placements?---My policy position was that the placement of a child should be where that child is best protected.

5

So is the answer to my question, the one you gave earlier?---There isn't – there was - - -

10 No, it was not part of your strategy to set a target?---There was no – there was no specific strategy to remove children from kinship care environments. What my attitude always was, was that a child's fundamental protections should be provided wherever they can be found.

15 I just want to go back to my question, Mr Elferink. Was it part of your strategy, when you were the Minister to reduce the number of Aboriginal children in non-kinship care placements?---It was not part of my strategy. However, I always inserted that it should be about the best outcomes for the child. If that happened to be in a non-kinship environment, then so be it.

20 Okay. But it wasn't a priority for you, was it?---What was the priority for me was the protection of children.

25 So the reason you didn't set a target to reduce the numbers of Aboriginal children in out-of-home care placements that were non-kinship was that it wasn't a priority for you?---Protection of children was the priority, and that's what I did and maintained at all points.

30 You are familiar with the work of Professor Silburn, of course?---Not intimately, but I've heard the name.

And you are familiar with the recommendations from the Growing Them Strong Report?---Mmm.

35 Sorry, you need to answer responsively?---Yes.

40 You know that the thrust of the Growing Them Strong Report is primary prevention and early intervention are the ways in which you will successfully reduce the number of children in non-kinship placements; you agree?---I agree and I urge parents to bring those interventions to their children, so we never come to – they never to the attention of the state.

45 But when your – and under your stewardship the recommendations from the Growing Them Strong Report that related to primary prevention and early intervention were watered down. Funding was reduced for them, wasn't it?---Once again, I note that the Department's funding remained consistent, except for the last year when it went up sharply.

Was it – but your – under your Government, funding for the recommendations of the Growing them strong report was drastically reduced, wasn't it?---The funding for the Department was consistent and increased in the last year. In relation to the recommendations of the Growing them strong report, you will note that previous  
5 Ministers and previous CEOs had disposed of those matters before I came to the role.

And do you accept that many of the recommendations that were jettisoned related to primary prevention and early intervention?---Where previous Ministers and previous CEOs had been operating, I understand that the focus had been on the investigation  
10 and out-of-home care roles.

Was it one of your concerns to empower the Aboriginal community to be able to tackle its own issues in relation to welfare?---I want Aboriginal people, like any citizens of this country, to live full and productive lives and bring up their children  
15 and love their children, that's what I aimed for at all times.

I will read to you something from – you are familiar with Kon Vatskalis the Minister of – several ministers prior to you taking control?---Yes.

20 He said that part of his strategy in implementing reforms was to develop the role of communities and Aboriginal organisations in the care and protection of the community at the community level. Was that part of your strategy too?---We had a number of programs which were aimed specifically at Aboriginal people, but what I wanted the Department to focus on was particularly the care and protection of  
25 children, and - - -

But, Mr Elferink, one of the key strategies – I'm going to cut you off. That's – I'm going to cut you off. One of the key strategies was to create an Aboriginal child care agency and an Aboriginal peak body on child protection, child and family safety and  
30 wellbeing. Do you agree that those strategies are essential in terms of empowering the Aboriginal community?---In terms of empowering the Aboriginal community, such an organisation would be preferred, yes.

And not just an Aboriginal peak body, but also Aboriginal child care agency. That's preferred?---That's certainly was the policy that was maintained while I was  
35 Minister.

But under your Government those two key strategies, Aboriginal child care agencies and an Aboriginal peak body, were defunded, weren't they?---Because – well if  
40 you're referring particularly to SAF, T, it wasn't achieving its outcomes.

SAF,T was defunded and Aboriginal child care agencies were not pursued; correct?---There were a number of agencies that were underperforming, but they weren't defunding because they were Aboriginal. They were defunded because they  
45 weren't performing up to the expectations of Government.

When you were Minister you didn't fund any Aboriginal child care agency, did you?---We – we certainly funded a number of programs but, once again, if we defunded something it wasn't because of any other reason they weren't meeting government's expectations.

5

Minister, do you know the – sorry, Mr Elferink, do you know the answer to my question, whether or not an Aboriginal child care agency was funded while you were the Minister?---It – it wasn't funded while I was the Minister but there were a number of other programs which were specifically targeted at Aboriginal people.

10

Why didn't you – I withdraw that. You accept, then, that no Aboriginal child care agency was funded while you were a Minister and you accept that that was a key recommendation from the Growing them strong report?---It was – SAF, T was defunded while I was a Minister, because it wasn't performing.

15

On the last – I suggest to you, Mr Elferink, that while you were Minister you made a number of statements about your Government's policies that in effect demonised Aboriginal people rather than empowering them. What do you say to that?---What I would say to that is my position has always been I would seek Aboriginal people, like any other person, to have particular standards in relation to the protection of children.

20

On the last occasion you were asked about a particular document. I'm not going to go through it again, it's exhibit 324.004. Do you recall being asked about line 20 of that? You know that's a document you prepared for the Chief Minister; do you recall that?---Yes, I remember that. It was the – the brain storming session he asked me to have on potential policies going forward.

25

Yes. And you've already given evidence to this. I want it to take you to line 20, one of your strategies was:

30

*Substantially enhance juvenile squad to target known rat bag families.*

Do you see that?---Yes.

35

And you gave evidence in relation to this at page 3148. Can you have a look at line 33. You were asked by Mr Morrissey – you took issue with the word rat bag. You say:

40

*Well, at the time that was an iPhone text between myself and Mr Baldwin. Certainly not a term I've ever used publicly that I can recall.*

?---That's right.

45

Is that correct, that evidence you gave?---To the best of my recollection. It doesn't mean it's necessarily wrong, because - - -

Did you check it after you gave evidence to the Royal Commission on the last occasion?---No, I didn't.

5 MR HARRIS: I object. How could the premise of that question possibly be - - -

DR DWYER: I withdraw the question.

10 Can I show you a transcript of an interview. Do you recall going live on radio with Ben Fordham in January 2013?---No. I have done thousands of interviews over the years. I don't recall a particular view.

15 That's on the screen now, to enable you to refresh your memory. Can you have a look at the last entry on that transcript. Sorry. Last entry, first page. Beginning with "it certainly is". And you are talking about boot camps. I will allow you to read it, sorry?---Yes – yes.

And you say:

20 *The idea is to challenge these kids to be better than what they are currently, I mean unfortunately all too obvious these little rat bags have had no standards for themselves.*

?---Sure.

25 Did you forget that when you gave evidence to the Royal Commission on the last occasion?---Yes, I did.

30 You wouldn't deliberately mislead the Commission, would you?---I certainly would not.

MR .....: I object.

COMMISSIONER WHITE: Yes. There's no – that comment is - - -

35 THE WITNESS: I – I have - - -

DR DWYER: I withdraw the comment.

40 COMMISSIONER WHITE: Thank you.

DR DWYER: Do you agree that comment has the effect of demonising children who might be in the care of the Department?---The reference is to the conduct of children, and the commentary reflects the attitude of many Territorians who were sick of having their houses broken into, their cars stolen, those sorts of things.

45

.....

COMMISSIONER WHITE: Well, I thought we were talking about children under the care of the Minister - - -?---This was - - -

- - - rather than young offenders?---This was about the boot camps, ma'am.

5

I see, yes, sorry?---And this was – interview was in relation to the boot camps that we had established, which were interventions.

Yes, I'm sorry?---Not exclusively, but substantially targeted at Aboriginal people.

10

DR DWYER: Mr Elferink, you just gave evidence - - -

COMMISSIONER WHITE: I take that up.

15

DR DWYER: I'm sorry, your Honour.

COMMISSIONER WHITE: No. I'm just saying I accept that I've slipped up there.

20

DR DWYER: Mr Elferink, you accept don't you, that the boot camps – I think the evidence you just gave, not exclusively, but they were targeted at Aboriginal people?---They were – substantially Aboriginal people went through the boot camps, yeah.

25

And you know that a number of Aboriginal children who found themselves in Don Dale or being asked to consider boot camps were children in the care of the Department?---Once again, I don't track particular individual children through the system.

30

You know Mr Elferink, don't you, that there is a substantial cross over between children in the care of the Department and children who tragically - - -?---Yes.

- - - end up charged with criminal offences?---Sure, yes.

35

And that would concern you – doesn't it – as a Minister and as a human being?---It concerns me that these kids come into the system by whatever mechanism, either the criminal system or the child protection system.

40

And so let me return to my original question. The comment you made about boot camps was that:

*The idea is to challenge these kids to be better than what they currently are, I mean, unfortunately, all too often these little rat bags have had no standards for themselves.*

45

Do you accept now, sitting there, having had time to reflect on it, that that comment has the effect of demonising children who have got into trouble?---What it does is

reflect the opinions of many, many people who have their property stolen, their cars stolen, and who are the victims of assaults.

5 So what's the answer inform my question? Do you accept it has the effect of demonising or not?---It sends a signal to the public that I understand their frustration.

10 Okay. And in doing so, you might demonise the child, do you accept that?---I don't accept it. It's an epithet and it's a piece of language used which reflects the attitude of the vast majority of the Territory public. I would suggest that there are many, many other forces in these children's lives which are detrimental to them than a radio interview in 2013.

15 Do you accept that the language that you used there was deliberately designed to send a message to your electorate and to play into the idea of tough on kids, tough on crime?---When you see that in the context of that interview, "the idea is to challenge these kids to be better than they currently are". That's hardly tough on crime.

20 Just move to another comment in relation to – on that interview. Can you have a look at the comment that begins, "Well, what we're looking at is boot camps", earlier in the page at 1.35. Could you just read that paragraph to yourself?---Yes.

The bottom line is:

25 *Unfortunately, all too often the parents are indifferent to the welfare of their children, so unfortunately the Government steps in.*

30 Do you agree that that comment, that parents are indifferent to the welfare of their children, has the effect of demonising the families?---No, I think it's simply articulating truth. We have a thousand kids – there would be over a thousand kids in out-of-home services, or in the care of the Department right now, because unfortunately too many parents are indifferent to the care of their children.

35 So you talk about – in that interview, about trying to engender respect, self-respect and dignity?---That's right.

40 Do you think you achieve that by referring to the kids as rat bags and the parents as indifferent to their welfare?---I suggest that a child – or any person, but even a young adolescent child or older child, can make a decision to stop behaving like – in some sort of miscreant fashion and improve on themselves and I have always encouraged them to do so.

45 At paragraph 5 of your statement you were asked a specific question. This is the one you were being referred to earlier – I'm only going to touch on this briefly, your Honour. Can I say that, in doing so, I apologise for any cultural disrespect that I might cause in tackling this subject. In paragraph 5 you were asked for any comments you wish to make or issues you wish to raise in relation to child protection policies priorities or practices of the Government in relation to child protection

during the period. Did you read that question properly before you answered it?---Yes.

5 You agree that it relates to protection policies priorities or practices of the Government. And you know, don't you, that since you were Minister there's still a substantial number of Aboriginal children in out-of-home care. The trend is not decreasing?---No. I would be surprised if it has sadly.

10 And you know there are still substantial concerns about the overrepresentation of Aboriginal children in custody?---Yes.

15 But the two issues you refer to are Aboriginal cultural practices that have nothing to do with the protection policies, priorities, or practices of the Government?---The reason I raised the issue – I thought about raising these issues long and hard, and it would have been easy for me not to talk about them. But I thought, and I hoped, that the Royal Commission might turn their minds to it and Aboriginal elders turn their mind to it, because it gives them an opportunity to set a benchmark of acceptable and non-acceptable behaviour.

20 I will just remind you – I'm going to stop you there because my question was different. You were asked about policies priorities or practices of the Government. Do you agree?---Yes. Well - - -

25 And you read that question before you answered it?---Yes.

And you didn't refer to any policies, practices, or priorities of the Government, did you?---No. What I referred to was policy changes that should occur beyond – within Government and beyond it.

30 You know, don't you, that empowering Aboriginal communities with strong culture, connections is the way in which children are best kept safe in the Northern Territory?---I don't know if that's true. And I will tell you why.

35 No, I didn't ask you that question.

MR HARRIS: Well, I object .....

DR DWYER: Well, you can - - -

40 MR HARRIS: No, no.

DR DWYER: My learned friend can deal with it in re-examination.

45 MR HARRIS: ..... please let me make my objection. What was put as an assertion without a question mark in any event. It was responded to, and then the reason is given, it is not for the cross-examiner to chop off a witness who is trying to give some context.

COMMISSIONER WHITE: That's correct, Mr Harris. These days we don't do that.

5 DR DWYER: The answer to the question that I asked, your Honour, was no. Mr Elferink has said that he doesn't believe that keeping Aboriginal communities strong with culture – safe strong cultural practices keeps community safe. That is his answer.

10 COMMISSIONER WHITE: But it is a negative that, if he wishes to add to it, I think should be permitted rather than wait for Mr Harris to pick it up again.

15 Thank you?---The answer is I don't know if it is true by virtue of the fact that the vast majority of children that come into our system come from these remote areas and regional areas, and Aboriginal families in the urban areas. If I'm going to be guided by the evidence of numbers alone, then the fact that so many Aboriginal children are in the custodial environment in terms of protection environment is indicative that those cultural practices are not succeeding.

20 DR DWYER: Mr Elferink, were you guided by numbers alone in determining that there were problems for Aboriginal children in communities?---No, I have a broad experience of working in remote and regional areas both as a representative of Aboriginal people as well as a police officer.

25 You know that the weight of evidence from Professor Silburn and others is that the reason that so many Aboriginal – the primary reason for the removal of Aboriginal children are issues of neglect and poverty. Agreed?---The primary reason is neglect.

30 And your Government - - -?---The child protection system does not measure poverty. It measures neglect.

35 Did you think that it was part of your priorities as Minister to address issues of poverty that lead to the overrepresentation of Aboriginal people in out-of-home care?---This enlivens the comments I made about the welfare system. The welfare system is run by the Commonwealth Government. Poverty in remote regional areas were supposed to be addressed as far back as the 1970s with the Aboriginal land rights Act. Minister Viner, in relation to issues of poverty, released a statement or a pamphlet back in 1979 saying that land rights would be a wellspring of economic development. It didn't happen, sadly. And we won't go into the reasons for that otherwise we will be here for hours. But the fact is – is that enormous resources are committed by governments, plural. They are not well married up at all, between the various tiers of government.

40 Mr Elferink, you've made that point. I'm sorry, your Honour, I'm going to - - -

45 COMMISSIONER WHITE: Yes. You do need to go on.

THE WITNESS: I'm pressed on the issue of poverty, ma'am, and I'm stuck in this situation that I cannot give a short answer on something so complex.

5 COMMISSIONER WHITE: Well, perhaps – we understand the answer is there is a lot of financial resources going into the Northern Territory, into remote communities and you would say the results haven't alleviated the numbers children going into care?---No.

10 That is the short answer?---That would be the short answer, with one addendum is that even the former Labor Party government, which was under Syd Stirling at the time, did a measure of the amount of money that was being spend on Aboriginal and non-Aboriginal people at a ratio of two to one. Government can't spend its way out of poverty.

15 DR DWYER: So it wasn't your priority as a Government to address poverty in indigenous communities?---I had no tools to do that.

20 Finally, can I have on the screen – just going back to the comments you made in paragraph 5, an ABC article about circumcision reports that flowed from the Borroloola incident. That is the last circumcision case that gave you any concern that was reported in the media?---That was the last one that I was aware.

25 And were you aware – of this ABC report that earlier reports had been culturally insensitive?---Well, I can't speak for the ABC.

Did you read that report that's on the screen, Mr Elferink? Did you become aware of the controversy surrounding earlier reporting about the circumcision?---There has always been controversy about this particular issue.

30 Could you answer my question, Mr Elferink. Did you become aware of that ABC article relating to the controversy about the reporting?---Well, you will have to give me a moment to read the article to remember and see if it jogs my memory.

35 I will just hand you a hardcopy, if that's easier.?---I wasn't aware of the article, but I'm aware of the sentiments that surround that particular discussion, having read the first paragraph.

40 You are aware, are you, that a particular statement was published – it's over on the second page – from the people of Borroloola to communicate that they were deeply hurt and disappointed at the recent story. That the ceremony has existed in their culture for thousands of years and is very sacred?---Yes.

And the sacredness strictly forbids viewing and comment by the public?---Mmm.

45 But that didn't – were you aware of the sentiment about those sacred rituals?---I'm aware that they were sacred rituals, yes.

But when you – that can come off. Were you aware of the particular community statement released after the incident?---I wasn't aware of the statement. It doesn't jog my memory, but I'm not surprised because a great deal of secrecy has always surrounded these practices.

5

That's the last known case. In 2014 that was reported?---But this is the point – the issue: the secrecy has always surrounded these practices and they – Commissioner Gooda raised the fact that nobody has raised it with him or the Commission. That secrecy is actually captured by the sentiments, at least, of the Borroloola statement.

10

But you don't feel any compunction, do you about coming out with culturally insensitive comments about circumcision, do you?---No. And I will tell you why: because there has got to be a baseline of what is acceptable child protection. There is a battle here between cultural rights and the human rights of the child. And I will always prefer, in those instances, the human rights of the child, irrespective of which culture we're talking about.

15

But Mr Elferink, you feel free to comment to this Royal Commission about cultural practices, I suggest to you, that you know nothing about. What do you say to that?---I know – I know that the outcome of those cultural practices amounts to what is genital mutilation of boys.

20

The other issue you raised the forced and underage marriages. You know full well the last case in the Northern Territory to deal with a significant age disparity was GJ, well over 10 years ago. You know that, don't you?---But I have – I have concern that the practice continues under a veil of secrecy.

25

You know full well you have no evidence to say that to the Royal Commission. It is based on your own gut or speculation; correct?---No, that's not correct. You have just named a case where those practices were revealed.

30

Well over a decade ago, Mr Elferink?---So what prevents Aboriginal leadership saying that, "We stopped that practice decades ago"? Or, for that matter, won't they take the opportunity now to say, "We have stopped that and if it occurs we do not condone it."

35

You've got no evidence that that has ever occurred - - -?---That's not true.

- - - over the last 10 years in terms of a significant age disparity. Do you?---I was – I was aware – hang on that's an interesting qualification. I don't think there should necessarily be an issue of age disparity brought into this. If a child is under the age of 16 years of age, and they are a girl, then they should have the rights to make a determination who they marry.

40

Let me phrase it in a different way: Mr Elferink, you've got no evidence that, over the last decade, any Aboriginal young person or child has been forced into a relationship that they do not want to be in, do you?---Beyond knowing that the

45

practice has been present in the Northern Territory for tens of thousands of years, the assumption that I make is that the practice has continued up and beyond the point of the last trial held in relation to this matter.

5 And on the basis of that assumption, you are prepared to make a statement to this Royal Commission that has the effect of demonising an Aboriginal cultural practice; correct?---No. What this statement is about is saying that children are subjected, in my opinion, to certain practices which in the modern context no longer have  
10 currency.

For which you have no evidence to have occurred over the last 10 years.

MR HARRIS: I object. That question has been asked three times and answered.

15 COMMISSIONER WHITE: That is so, Mr Harris. Last question.

THE WITNESS: The test here is quite simple. Does the human rights of the child or the cultural right have the superior position?

20 DR DWYER: And, Mr Elferink, you agreed earlier at paragraph 5 you were asked for issues in relation to child protection policies priorities or practices of the Government; correct?---Yes. Yes.

25 But nothing in there relates to any practice, policy or priority of the Government?---Because the Government's current policy in relation to - - -

30 COMMISSIONER WHITE: Well, I don't think that's the issue because it's while you were the Minister. So it was just during your time, Mr Elferink?---I took the opportunity in answering that question to raise issues that were of concern to me and that I would hope would be of concern to the Royal Commission.

35 DR DWYER: Finally, Mr Elferink, I suggest to you that you took the opportunity to demonise the Aboriginal community, like you did on so many other occasions when you were Minister for juvenile justice and children and families?---And I reject - - -

MR HARRIS: I object. That is not a question that has any forensic utility.

COMMISSIONER WHITE: Very little.

40 MR HARRIS: And I object to it.

COMMISSIONER WHITE: Yes, thank you. Thank you Dr Dwyer, we might bring that to an end. Ms Graham, are there any questions still left for you to ask?

45 MS GRAHAM: Of course, Commissioners.

COMMISSIONER WHITE: ..... think otherwise.

5 MS GRAHAM: Mr Elferink, my name is Felicity Graham. As you know, I appear for CAALAS?---Ms Graham.

10 Mr Elferink, you've given evidence that you didn't set a target in relation to Aboriginal children being kept with kinship carers. You recall giving that evidence?---Yes.

15 Were you aware that during your time as Minister the proportion of Aboriginal children held with an Aboriginal carer got worse? That is, the numbers went down?---I don't know by how much and I couldn't tell you one way or the other, so no, I wasn't aware.

20 What was your understanding, during your time as Minister, of the elements of the Aboriginal Child Placement Principle?---My understanding was that there was a hierarchy of placement which used kinship carers in the first instance where they could be found.

25 Is that the extent of your understanding of all of the elements of the principle?---If you want me to quote a public document, I can't do it off the top of my head, but the principles were that you would place a child into the care of a kinship arrangement where that was possible, in the first instance.

30 Do you agree that, as Minister for Children and Families, the Department which dealt with predominantly Aboriginal children and families, you should have had a detailed understanding of all of the elements of the Aboriginal Child Placement Principle?---What I should have understood was the policy that we had in place, which was consistent with the notion of placing Aboriginal kids with their family in the first instance. Mind you, I would have preferred that notion to extend, wherever possible to all children, if it was possible to place a child closer to family members better than not.

35 It was incumbent on you as Minister to listen to experts like the peak body SNAICC on these issues. Do you agree with that?---Yes. And I had received information from SNAICC on a number of occasions.

40 And so were you - - -?---I forget the fellow who was in charge, but I do recall him.

The Commissioner has heard evidence from Professors Arney and Bromfield earlier this week. Did you listen to their evidence?---No, I did not.

45 They gave evidence that, inbuilt into the Northern Territory, is an escalation of the problem. Were you aware of that part of the evidence?---I would dispute that assertion, but I wasn't aware that they gave that evidence.

The Commission also heard from former Child Commissioner Howard Bath about your time in Government, that you were explicit about the role of the statutory child protection body sitting there at the tertiary end, and just at the tertiary end. In other words, the ambulance at the bottom of the cliff. That's a transcript 4217?---Yes, I  
5 remember having this discussion with Dr Bath on a couple of occasions.

Do you accept that analysis of your approach as Minister and your Government to the child protection system?---No, I don't.

10 In early 2014 you scrapped funding for an Alice Springs youth street outreach service?---Yes.

And that happened relatively early in your time as the Minister responsible - - -?---That's correct.

15 - - - is that right?---Yes.

The context in which those funds were cut were that, as you said at the time, that you didn't want to duplicate services that were provided by the non-government  
20 organisations and it was for non-government organisations to provide programs to at-risk youth. Do you recall that?---We funded, as I recall, a number of youth organisations to cover that field or similar services.

If we could have on the screen the article from the Alice Springs News, please. This  
25 is an article written by Ms Donna Ah Chee, the CEO of Congress. You know who that is?---Yes. I've met with her on a number of occasions.

And you accept, don't you, what Ms Ah Chee says, that the real context about the cut to funding for this service to at-risk youth was that 12 months earlier funding had  
30 been cut to Congress for their youth patrol service at night on the basis there was a duplication between the Government service, YSOS, and what Congress was providing; do you accept that?---Without having read the article, yes.

And so what happened when YSOS was cut by the Government was that there was  
35 now no service being provided by government or non-government organisations in Alice Springs to deal with at-risk youth at night time. Do you agree with that?---As far as I recall, when this issue came up, is that we funded a number of youth organisations that provided similar types services of a nature to youth in Alice Springs. The rationale for the decision was simple: was that the staff that were  
40 being used were trained child protection officers. We had a problem with caseloads, and so I was anxious to direct our resources of child protection officers into the child protection area, which is exactly what happened.

You formed a very narrow view about what the purpose of the child protection  
45 system was, and that was effectively to respond after any abuse or neglect had already occurred is that right?---Not entirely. I need to expand on that answer to explain it.

Do you accept that that was predominantly your view of what the child protection system was designed for? To respond after the fact to abuse or neglect?---At the fundamental core of the child protection system, its ability to respond to cases or allegations of neglect was what its primary purpose was, yes.

5

Mr Elferink, in your statement, you note that the Royal Commission has received evidence from people in remote and regional areas in which they decry the loss of culture as a result of the removal of children, and there you were meaning the loss of Aboriginal cultures; is that right?---Yes. I – that’s right.

10

Do you feel any sense of responsibility for the loss of Aboriginal culture as a result of the removal of children during your time as Minister?---It’s not my job to speak for Aboriginal culture. It’s my job – it is my job – it was my job – it was my job as Minister to make sure that there was protection for children who were not being looked after by their parents.

15

So, Mr Elferink, do I take your answer to mean that you take no responsibility or feel no sense of responsibility for the loss of Aboriginal cultures as a result of the removal of children during your time as Minister?---No, I don’t.

20

Is that correct?---No, I don’t.

Thank you, Commissioners.

25 COMMISSIONER WHITE: Thank you. Mr Harris, do you have some questions for your client?

MR HARRIS: I have none, Commissioner.

30 COMMISSIONER WHITE: Mr Callaghan, do you have any other questions for Mr Elferink.

35

**<RE-EXAMINATION BY MR CALLAGHAN**

**[11.23 am]**

MR CALLAGHAN: Just a couple, yes, Commissioners.

40 Because, Mr Elferink, you’ve invoked a couple of responses, more than once in your evidence. One was to do with the amount of time that you had to prepare your statement. You accept that a formal request for a statement issued to you on 23 May?---Yes. And I prepared, shortly thereafter, pretty much the document you have now. Waiting for my lawyers to be properly supported and, as a consequence, I was under the impression that more time would be given to get from draft to final  
45 position. My counsel contacted me on Friday afternoon to inform me, as quickly as he could, that I had been subpoenaed and I would be required, I think, for early this week and that he would seek to try and push it out. And the response from the Royal

Commission, as I understand it, was you can do it – you’ve got until Thursday. The statement had to be - - -

5 Well, you knew we were the concluding hearing is on Friday?---The statement had to be in on Monday.

10 The statement could have been in at any time .....?---That’s correct, but I was under the belief that there would be a lag time between Friday afternoon at 5 o’clock and Monday morning, which would be – or there would be a more substantial lead time, so that we could make a more comprehensive statement. That wasn’t the case.

Alright. A couple of times you’ve invoked the refrain that you will always prefer the human rights of the child?---Yes.

15 And this is in the context of the cultural matters that you raised and response to question 5 in your statement?---Yes.

20 It has been well covered, but you do accept – I believe – that you said, with the authority of a Minister, to the ABC in respect of the Borroloola incident, that there was no role for the State in that incident. First of all, just accept that you said that?---Yes.

25 Do you further accept that – or sorry, and you – but you say you raise it now, as I understand it, because you want those who might be in a position to do something about it, to do something about it?---Yes.

30 But for the last three years at least, or more, since you made that statement, you would accept that nothing you’ve said or done would cause anyone to consider that this was a subject that needed to be visited because you had declared, publicly, that there was no role for the state in these matters?---The paragraphs in my statement are much – is as much a call to Aboriginal leadership to change their position on these practices than necessarily Government.

35 But you would accept that Aboriginal leadership would have heard what you had to say about the Borroloola incident? That is, there’s no role for the state in this?---And – which is why I’m saying that the role for Aboriginal leadership needs to be in this space. As I said before, I’ve got nothing to gain by raising this issue other than the fact that I believe it needs to be raised.

40 And we have been through the reasons why you didn’t raise it, while you were in Government, and my question leads to this: given your persistent invocation of your concern for the human rights of the child, what about the moment you left office? Did you do anything or say anything?---Yes. I got on with my life, which unfortunately because of a – which I consider a very poorly presented Four Corners program was at that stage in tatters.

45

5 Alright. Well, is the answer to my question that in relation to children who might have been suffering what you defined as child abuse - - -?---I had to make sure that there was food in my own children's stomach first and that there was a job so that I could afford to pay for a roof over my children's head. My position is that the family should look after their children in the first instance, and that is precisely what I did when I left office, and I would urge all families to take the same attitude.

10 You did nothing to address the concerns you had about the human rights of children who were suffering child abuse as you defined it?---When I left office, I was concerned about the - - -

That's a yes or no answer, actually?---Well, then I would disagree with the proposition, because it would be an inaccurate answer.

15 I won't take it any further.

20 COMMISSIONER WHITE: Thank you. Are there some documents that need to be tendered arising out of Mr Elferink's evidence? I thought there were some disparate ones that may not have been - - -

MR CALLAGHAN: No. There are.

25 COMMISSIONER WHITE: We will let Mr Elferink go then, and we will deal with - we will attend to that. Thank you Mr Elferink for travelling up from South Australia, where I believe you have come, and to assist us. It may have been spirited at times, but it was useful for the Commission to hear a different point of view?---Ma'am, the reason that I raise it because I believe it needs to be ventilated.

30 Thank you?---And I've taken this opportunity to do so. Thank you, ma'am.

You are released now from your summons. Thank you Mr Harris and Mr Bonig for being here.

35 <THE WITNESS WITHDREW

40 COMMISSIONER WHITE: We now need to adjourn so that we can go into closed court for the next session. So we will be adjourned for 15 minutes after Mr Callaghan has dealt with his exhibits.

MR HARRIS: Thank you, Commissioner. I will wait while those documents come into evidence, if that's .....

45 COMMISSIONER WHITE: Yes. Certainly, Mr Harris.

MR CALLAGHAN: I tender the statement of Kim Charles dated 12 May 2017 and annexures.

5

COMMISSIONER WHITE: Thank you. That is exhibit 613.

**EXHIBIT #613 STATEMENT OF KIM CHARLES WITH ANNEXURES  
DATED 12/05/2017**

10

MR CALLAGHAN: I tender the ministerial brief that concerned SAF, T.

COMMISSIONER WHITE: Exhibit 614.

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**EXHIBIT #614 MINISTERIAL BRIEF CONCERNING SAF, T**

MR CALLAGHAN: I tender the 2012/2013 Northern Territory Government budget overview.

20

COMMISSIONER WHITE: Exhibit 615.

**EXHIBIT #615 2012/2013 NORTHERN TERRITORY GOVERNMENT  
BUDGET OVERVIEW**

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MR CALLAGHAN: The 2015/2016 Northern Territory Government Budget Overview.

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COMMISSIONER WHITE: Exhibit 616.

**EXHIBIT #616 2015/2016 NORTHERN TERRITORY GOVERNMENT  
BUDGET OVERVIEW**

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MR CALLAGHAN: DCF 2012/2013 annual report.

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COMMISSIONER WHITE: Exhibit 617.

**EXHIBIT #617 DCF 2012/2013 ANNUAL REPORT**

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MR CALLAGHAN: The DCF 2015/2016 annual report.

COMMISSIONER WHITE: 618.

**EXHIBIT #618 DCF 2012/2013 ANNUAL REPORT**

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MR CALLAGHAN: The review of the DCF caseload ration current targets and staff resources.

10 COMMISSIONER WHITE: Exhibit 619.

**EXHIBIT #619 REVIEW OF THE DCF CASELOAD RATION CURRENT TARGETS AND STAFF RESOURCES**

15

MR CALLAGHAN: And Dr Dwyer showed the former Minister - - -

COMMISSIONER WHITE: I think that was the Drum article.

20

MR CALLAGHAN: I tender that.

COMMISSIONER WHITE: Exhibit 620.

25

**EXHIBIT #620 DRUM ARTICLE**

MR CALLAGHAN: And also the transcript of the interview with Mr Fordham.

30

COMMISSIONER WHITE: 621.

**EXHIBIT #621 TRANSCRIPT OF MR FORDHAM INTERVIEW**

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MR CALLAGHAN: And Ms Graham's article entitled Minister has no plans for replacing youth services from the Alice Springs News.

40 COMMISSIONER WHITE: Exhibit 622.

**EXHIBIT #622 ALICE SPRINGS NEWS ARTICLE**

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MR HARRIS: Commissioners, might I just rise because it just occurs to me, to be clear, I understand from the – as much as I wanted to be following the proceedings every day since I was last here, I haven't been able to.

5 COMMISSIONER WHITE: I think there might be something else in your life, Mr Harris, apart from this Commission.

MR HARRIS: But one of the things that the statement that was prepared for Mr Elferink did was, in effect, adopt and not only not contest but effectively adopt the  
10 statements of former Minister Lambley, Mr Twyford and Ms Carney and it's not clear to me, and I'm really seeking guidance. I understand former Minister Lambley and Mr Twyford have both given evidence and their statements have been received as exhibits, but I'm not sure whether that's the same in relation to Ms Carney.

15 COMMISSIONER WHITE: No. We actually haven't heard from Mr Twyford yet, but his statements have been regularly referred to and I suspect it's going to be tendered.

MR HARRIS: I'm much obliged to my friend Mr Callaghan. He indicates it is  
20 intended Ms Carney's statement be tendered.

COMMISSIONER WHITE: Yes.

MR HARRIS: So in that way it will be possible to make sense of those paragraphs  
25 in Mr Elferink's statement.

COMMISSIONER WHITE: Yes, that – yes, it will. It will be happening sometime in a tidying up way.

30 MR HARRIS: Thank you.

COMMISSIONER WHITE: Anything else then, Mr Callaghan before we adjourn?

MR CALLAGHAN: Not before we adjourn, no.  
35

COMMISSIONER WHITE: Alright. Well, we will adjourn then for 15 minutes until quarter to 12. Thank you.

40 **ADJOURNED**

**[11.32 am]**

**CLOSED SESSION ENSUED**

45

[REDACTED INFORMATION]

**PUBLIC SESSION RESUMED**

**RESUMED**

**[1.39 pm]**

5

MS BOSNJAK: Commissioners, I call Ms Mandy Loundar.

10 <MANDY LOUNDAR, AFFIRMED

**[1.39 pm]**

<EXAMINATION-IN-CHIEF BY MS BOSNJAK

15

MS BOSNJAK: Ms Loundar, have you prepared a statement for this Royal Commission?---I have.

And is that dated 16 May 2017?---Yes, that is.

20

And is that your signature at the bottom of the first page?---Yes, it is.

And on the final page?---Yes. Yes, that is.

25

And that statement contains annexures A to H?---Correct, yes.

Commissioners, I tender that statement and annexures.

COMMISSIONER WHITE: Exhibit 626.

30

MS BOSNJAK: Ms Loundar, you have been the principle project officer for Youth on Track since September 2013. Can you tell the Commissioners in general terms what that program is?---Yes. So very broadly, it's an early intervention scheme that the Department of Justice in New South Wales developed in 2013 to target young offenders who were 10 to 17 years old and who were at risk of longer term involvement with the criminal justice system. Police and schools can refer to the program without a mandate. So it is a voluntary program. And the department funds non-government organisations to deliver the service in six sites. And they work with the young person and the family - - -

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COMMISSIONER WHITE: Can I stop you right there?---Yes.

Those six sites, are they scattered around New South Wales or are they more focused in the highly populous areas?---No, they are all around New South Wales. We have a map.

45

MS BOSNJAK: Commissioners, if it assists, I will just ask for the map to be brought up on the screen.

5 COMMISSIONER WHITE: Thank you?---So majority of the sites are in regional New South Wales. There's only one site that is in a metro area, in Blacktown, and that was based on the areas that have the largest number of eligible young people for Youth on Track. We wait for the - - -

10 MS BOSNJAK: We were going to have your map. I believe it's .....?---So in – we wait for the map. But the NGOs work with the young people and their families to deliver one-on-one case management as well as some intense focused interventions around behaviour and family interventions and they also support the young people to address other underlying causes of their offending, such as drug and alcohol, education and employment and family functioning. And they do that by referring to  
15 other support services in the local area.

COMMISSIONER WHITE: It has been going for some little time now, hasn't it?---So it's now been running almost for four years. And we started in 2013 just with three locations and one provider, and the department found the funding for that.  
20 And then we were able to expand to three new sites with some initial promising results.

Alright. Perhaps we could go back to the map then.

25 MS BOSNJAK: Yes, I will take you to that map. In terms of the map and the locations of where the sites of the programs are, I understand that the locations are largely informed by some data analysis that was undertake. Could you explain to the Commissioners that process and who was involved?---Yes. So we have another map that covers all of the local area commands in New South Wales and how many  
30 eligible Youth on Track young people are in each police local area command. How we did that was the Bureau of Crime Statistics and Research developed a tool called the gram tool which is an actuarial tool where we enter in the young person's age, gender, Aboriginality, number of prior cautions, and number of prior charges, and it comes out with a percentage likelihood of having further formal contact with police.  
35 So they looked at all the young people in 2015 and identified how many young people had a 60 per cent or higher gram score, so 60 per cent or higher likelihood of having formal contact with police. And we added an extra 20 per cent for police youth liaison officer discretionary referrals and that's how we got the numbers in each local area command. And then we pulled out the key sites based on the local  
40 area commands with the higher number of eligible young people.

COMMISSIONER WHITE: So for the assessments, presumably for that initial assessment which can be opting in, you would need to have youth on track well established in the minds of the likely referrers, wouldn't you, so that would mostly  
45 be police?---So, yes. We have three referral processes. One is automatic process where we have a screening officer that's based at New South Wales police, and every day she screens the police cops database to identify young people who have had two

or more formal contacts with police, and then she puts them through that gram screening tool, and for anybody 60 per cent or higher, they automatically get to referred to Youth on Track, as long as they haven't had a previous juvenile justice supervised or custody order, so then we are saying they're no longer early  
5 intervention. So we're trying to get them before - - -

COMMISSIONER GOODA: I was going to ask that question?---Yes.

10 I saw that in your statement?---Yes.

..... because of that - - -?---So we are trying to get to them before they have juvenile justice supervision.

15 COMMISSIONER WHITE: You get one chance, effectively?---Yes. Well - - -

At your system?---Yes. We get – so the automatic cops are two, sometimes they might have three or four formal contacts before they're eligible under that gram screening. Then we have discretionary referrals which is about 25 per cent of our referrals from police and about 3 per cent from schools. So the police youth liaison  
20 officers can make referrals and the schools, when a young person has one formal contact. So it might be their first caution, youth justice conference or charge, and if the YLO knows that there's a range of risk factors, then they can make that referral to youth on track at the first contact. So the gram tool doesn't come into play there, because they believe – you know, we know that YLOs in schools know a range of  
25 information about the young people.

MS BOSNJAK: You've mentioned the data that's driven the location of these sites. Have there been any broader consultations about the location of where those sites ought to be?---Yes. So when we did the data analysis, we then consulted with key  
30 government agencies in those local areas to find out whether there were any other new programs coming in to those areas or whether there was any challenges in regards to, you know, community services or education in those areas. So for the pilot sites we wanted to make sure that, I guess, there were enough young people but also there was support from the key agencies.

35 And before the program got off the ground, there was quite a significant amount of research into what works?---Yes.

40 Are you able to inform the Commissioners of what some of the conclusions were in relation to that review?---Yes. So following a New South Wales Commission audit final report in 2012 where they recommended that the government start to respond in a whole of government approach and focus on early intervention, the Department of Justice starting looking at a solution to that, and the development of the Youth on Track model was based on a lot of research that talks about – well, there's evidence  
45 that only a small proportion of young people go on to reoffend. We know 60 per cent, roughly 60 per cent of kids don't go on and offend after their first caution and another 20 per cent don't go on after their second caution, so we are trying to target

that 20 per cent of kids that will keep going on, but identify them at the earliest point. Also, the evidence shows that you need to do a targeted individualised response to young people and at the earliest point. Also working with the family and the young person has a bigger impact on the young person's behaviour than just individually  
5 working with the young person. And the What Works principles in regard to criminal justice or juvenile justice is focusing on the Risks, Needs, Responsivity principles. You may have heard of those during the Commission. So the risk principle, that's where we're trying to identify the higher risk young people and put our resources and focus towards the higher risk young people. There's evidence that  
10 if you focus on the low risk young people, you can actually increase their likelihood of reoffending. So we have a number of measures where we're assessing their level of risk. So we make sure we're addressing the higher risk young people. The needs principle is about addressing the criminogenic needs of the young people. So there's eight, they call them the central eight criminogenic needs, and that's what the  
15 caseworkers will focus on. And then the last R is responsivity. So that's about really what is the issues for that young person? What's that individual's motivation? What's their disability? You know, if they've got a disability, how can you respond to them? So it's about responding to the individual's needs to be able to deliver that program.

20

COMMISSIONER GOODA: When you say criminogenic needs, what's that?---So it's the needs that lead to their offending and it's – the central eight are the key risk factors that evidence shows that if you address those factors, you have a bigger impact on reoffending.

25

COMMISSIONER WHITE: When you refer to that tool in B of paragraph 15, we've heard a little bit about such risk assessment tools - - -?---Yes.

30

- - - in order to target the specific young and what the predictability is, the risk measure, from some American witnesses, from the Casey Foundation in particular?---Yes.

35

And it's – from them it seemed to be very important as to who was around the table when the risk factors were being identified and the threshold tests. So who, if you can answer, who was involved in the development of your assessment tool that you talk about?---Okay. So the Youth Level Service Case Management Inventory was developed by some people in Canada. It is a licensed tool that we, or the non-government organisations pay the agency in Canada to use that tool. And it was also created – an Australian adaptation was created within Australia for juvenile justice,  
40 probably five years ago, I think it was. So it was validated against juvenile justice clients in Australia.

45

COMMISSIONER GOODA: Does it take into account the peculiarities of Australia, like a high Indigenous - - -?---Yes.

- - - cohort?---I believe the way it was - - -

It was not just sort of plop – picked up in Canada and plonked here?---That’s how it was, initially, yes, and through this adaptation, some of the items were changed, and the Canadian people gave us the rights, I guess, to change it, based on the validation.

5 I was just thinking, even in that map you had there before, the risks would change in different areas?---In regards to the criminogenic risks, it doesn’t change - - -

10 Look, maybe I shouldn’t comment until I have a look at it?---The key things that it looks at are the eight domains of criminogenic needs, which is attitudes and thinking, so pro – or antisocial attitudes, antisocial thinking, antisocial behaviour, antisocial peer relations, family and living circumstances, education and employment, leisure and recreation, and substance use. So those eight domains - - -

15 COMMISSIONER WHITE: They’re pretty broad, aren’t they?---Yeah. But they are the key criminogenic offending risk factors.

20 COMMISSIONER GOODA: But I’m thinking – I’m thinking, if I could take families, would you take into account the different construct of Aboriginal families in that?---The actual tool doesn’t specifically differ between non-Aboriginal and Aboriginal kids, but that is part of the skill of the caseworker when they’re developing the case plan to consider cultural needs.

Okay. But not even cultural needs; this is straight out different structures?---Sure.

25 You know, we have talked to child protection workers - - -?---Yes.

30 - - - about a nuclear family concept, and we have had experts come in and talk about a kinship network that’s entirely different to anything a nuclear family would cover?---Yes. And the caseworkers and the service providers definitely look at that.

Should know that?---That sort of aspect, yes.

Okay.

35 MS BOSNJAK: I might take you to paragraph 15 of your statement and we will go through what actually happens during the program. The first step is the referral and screening, and on the third paragraph, you refer to it taking up to four weeks for a caseworker to develop a rapport with a young person. Is that something that is usual or seen within the literature, or is this unusual?---No. I guess it’s based on  
40 experience in how long it can take to engage a young person. Four weeks in itself is probably not that long for some young people. Other, the non-government organisations suggest that some young people will sign up fairly quickly. They’re happy to consent, yes, we need help. Part of the aspect of youth on track is to  
45 identify them quickly. So within three days they should be getting a phone call after their offence. So therefore the family is at a point of risk.

COMMISSIONER GOODA: I was just looking at the principle here, one on one case management. Does that mean every caseworker has one youth to deal with it?---No. No. It just means the caseworker is working directly with the young person. It's not a group program. It's – yeah – individualised case management.

5

So that could take – like, that seems like a good thing it could take four weeks to establish a rapport?---That rapport, definitely. And with the family. And sometimes the family might say, “We don't want to be a part of it,” but when they see the caseworker consistently working with the young person, then the family might sort of say, “Okay, you know, they've been seeing them regularly,” so they then come on board, but that can take longer than four weeks.

10

MS BOSNJAK: In subparagraph B, you refer in the second paragraph of that subparagraph to a child and adolescent intellectual disability screening questionnaire?---Yep.

15

One thing that this Commission has heard about is the prevalence of foetal alcohol spectrum disorder. Is that something that would be picked up at that stage? How would that sort of disorder be identified?---So that question yeah we call the CAIDS-Q. It is a seven point screening tool. So it's not to identify whether somebody does have an intellectual disability; it's to identify whether they possibly have an intellectual disability. And then the caseworkers would then need to refer them to specialist services for those assessments. In regards to the case worker's skill to respond then, if the young person might have an intellectual disability, there's mandatory training requirements for them to participate in working with young offenders who have an intellectual disability and part of that would be foetal alcohol syndrome and learning how to respond to the young person who has that.

20

25

And the case management and engagement – you've already mentioned the YLS/CMI tool. How much time is spent with the young person with the caseworker to develop their case plans?---Look, that, again, is individualised. Depending on how well the young person is engaging. It could take longer. They – what they will do in regards to developing the case plan, the YLS/CMI will come out with a result whether the young person is at a low, medium, medium-high, or high risk of reoffending. And the low risk young people need to be basically just referred to other support services and be on the program for no longer than three months. The medium-high young people are on the program for up to six months, but we aim to keep them on for a minimum of three months. And they would receive about two hours of intervention a week. The medium-high and high kids would – we would aim to keep them on the program for at least six months but anywhere up to 12 months or more, if required. And the results of that YLS in regard to each the domains that I mentioned before, if they have a high risk in that domain, the caseworkers will make sure there's a case plan to focus on those higher risks as part of their case, the young person's case plan.

30

35

40

45

Now many of these young people who are involved in juvenile justice will often have some contact with the care and protection system?---Yes.

Which will often have its own caseworker. How does the caseworker from Youth on Track deal with the caseworkers that might otherwise be in the lives of these young people?---Yes, so at the point of referral, back at that point, we actually email community services and ask them whether the young person has an existing case manager with community services or in out-of-home care. And then we provide that to the caseworkers. So before they contact the young person, they're to contact the existing case manager and to ask them, you know, what are you doing with the young person. This is what we can offer. Often the existing case manager will continue with the case, lead the case work but Youth on Track might do just the behaviour intervention with the young person and focus on their offending, thinking and behaviour. And in regard to juvenile justice as well, when they get referred to Youth on Track, they won't have had juvenile justice supervision, but while they're with Youth on Track, their court matter might end and they might end up with supervised order with juvenile justice. What we have negotiated juvenile justice is that they meet with the non-government organisation and the young person and if the young person is engaging well with Youth on Track, juvenile justice can say, "You keep the lead case management. We don't want to upset that; you are working well with them. Just provide us with reports regularly." So if anything does happen they've got information about what support was happening for that young person.

The next sub-heading is Interventions, and it's a brief paragraph, but I would actually like you to expand on it by referring to how much time a caseworker might take with a young person per week and what are the sorts of things that a young person might experience doing with that caseworker?---Yes. So the majority of the young people that are referred end up with a medium-high YLS/CMI, which means generally the caseworkers would work with them for about four hours a week. And in that time, they are working on the chart behaviour intervention, which is a lot about their offending thinking and behaviour. And sometimes a young person might not even know they're working on this chart program. The caseworker will be creative about how they talk to the young person to get them to think about things like mapping your offence, what are the triggers for you, what are the flags, and then learning some problem-solving skills. And they might do that, for example, while they're driving the young person to their mental health appointment, which might be an hour's drive away to the closest Headspace, and while they're doing that, they're sitting there one-on-one, talking through with the young person. And it's not just chat. It might be to the young person, but they're trying to work through those structured things as part of the behaviour intervention. You know, there's also some examples of a young person who really loved the beach in Newcastle and they would take them to the beach to map their offence in the sand. And they would sort of talk through it and take a photo of it. So they try and work out what is of interest to the young person and fit the interventions in around that.

One of the areas where Youth on Track seeks to intervene is re-engaging young people into education. Are there any examples you can point to about how this has been successfully implemented through the program?---Yes. I recently emailed one of our providers to ask this specific question, and they've provided some great points on how they do that. By unpacking activities, hobbies, sport that the young person

enjoys, such as fishing, skating, football and looking at ways that further knowledge would enhance their goals, so trying to talk to the young person about if you – you know, “If you go to school and you get a bit smarter, you would be able to do that even better.” Advocating with schools for partial attendance when reintegrating a young person into school after school refusals. Caseworkers attending the schools to support young people and build familiarity – I was going to cross that one out. So the caseworkers are actually going to the school with the young person, advocating for them, but they’re also sometimes sitting in class with them to support their behaviour and that helps schools sort of be happier to have them come back in and once they see that they’re okay, then the caseworkers comes out of that process. Also caseworkers might turn up at lunchtime and kick the footy around with the young person at lunch time, because that’s the key risk time where normally they dive out because they’ve had enough. They do, you know, practical support with purchasing uniforms and resources; helping them establish key relationships with certain teachers that they like in the school, and building that kind of mentoring support within the school; and as part of case work they also unpack the reasons for why the young person is not attending school and help them put in some strategies to build resilience about remaining in school.

20 COMMISSIONER WHITE: That’s fairly intensive work which presumably is at the front-end when they get the trust of the young person?---Yes.

But it would suggest that they couldn’t carry a very big case load to be doing that kind of intervention?---So they’ve been funded for approximately seven to nine young people at a time per caseworker. And that would be 12 young people over a 12-month period that each caseworker can work with. So that ends up, in regard to the funding, about \$15,000 per young person that participates.

30 MS BOSNJAK: And what about the retention rates of those caseworkers? Is there a high turnover of the caseworkers, or is there continuity?---So, initially there was a high turnover of caseworkers. We – the Department – kind of scraping some money together to fund this initial pilot, and therefore we had some troubles with shorter term contracts and not knowing whether we were having further funding quite close to the end of the contract, so staff were uncertain and there was staff turnover. So, having said that, now since we got further funding from the government last year, we’ve got three-year contracts with NGOs and there hasn’t been, they’ve only been running for six months, or seven months now, the new NGOs, but there hasn’t been much staff turnover in that time.

40 You have since - - -

45 COMMISSIONER WHITE: It would be so important for these young people not to lose their caseworker, wouldn’t it?---Correct, yes. And one of the other issues that we have is still being able to be clear on your role clarification because, yes, a lot of these young people have attachment issues and have people that have come in and out of their life. So it’s really critical for the caseworkers. They have to build a good relationship, but they also have to be clear that they’re only around for six months,

12 months. So the young person is kind of prepared that, “This is what I’m here in your life to do but I’m not going to be here forever.” So it’s very critical to have that role clarification.

5 MS BOSNJAK: And does that also tie into the need to have a clear exit  
plan?---Yes. So the exit planning realistically should be part of the caseworkers, in  
their head all the time about how long I’m working with this young person. But  
generally they start to plan and actually develop an exit plan with the young person  
10 and the family to connect them into community longer-term services and whether it’s  
sporting groups, the local police youth citizens club or different counsellors, medical  
support, just so they have those longer-term contacts within the community.

COMMISSIONER GOODA: Is there any – on both sides, I think, the caseworker  
15 and the youth, about that separation. Like, people – it’s easy to build dependencies  
or relationships even?---Yes. Particularly in regional areas where they walk down  
the street and they see their clients.

Yes. Do caseworkers talk about how to handle that?---Yes, look, and I think that’s  
20 one of the key mandatory training requirements is effective practice skills, and one of  
those is about role clarification. But also prosocial modelling. So it is about being  
this prosocial connected person. And it is hard for the caseworkers to, you know,  
they are developing relationships with the young people too.

You probably, I don’t know, but from what we have seen, there has been lots of  
25 people through these kids’ lives. So suddenly they’ve got someone who is there for  
12 months?---Yes.

It’s probably one of the most stable relationships they’ve had?---Yes. And we did  
30 have two young people in the mid north coast regional area say they wanted to  
reoffend so they could keep working with the caseworker, and that’s where we  
realised we needed to put the training in place about having really clear role  
clarification by the caseworker throughout the whole process. So it’s not just when  
you’re two weeks before exiting. It’s the whole way through the process, being able  
35 to clarify, “This is what we’re here to do, and this is what my role is.”

MS BOSNJAK: The program is looking at engaging with Aboriginal young people.  
How do you ensure that it’s culturally appropriate for both the participates and get  
the local community involved?---Yes, so from our perspective, as the department  
40 who are funding non-government organisations to deliver the program we make sure  
there’s tender requirements and criteria where the providers have to provide evidence  
and examples of how they will engage Aboriginal communities and Aboriginal  
young people. We also ensure that there’s cultural training as part of the mandatory  
training requirements. We ask them about how they engage and maintain or retain  
45 Aboriginal caseworkers. One of the parts of the contract is that they have to provide  
us with an Aboriginal participation and outcome plan and show us how they involve  
Aboriginal communities in the process. And I will just give you some examples that  
they have in those plans: they have an Aboriginal recruitment strategy plan;

Aboriginal staff retention strategy, which is looking at mentoring and leadership opportunities for Aboriginal staff and Aboriginal network within the organisation; they collaborate with community services in events like NAIDOC week events; they promote the service through Aboriginal media; they have culturally specific forms and manuals, brochures. So - - -

So it's a bit more than just getting a reference?---Yes.

10 We have been told?---Definitely.

You know, most contact a lot of Aboriginal organisations have these other service providers when they ring up for a reference from when they're applying for funding. So it's a bit more than that?---Yes, it is a bit more than that.

15 .....?---And then for young people they will develop cultural support plans where they use an assessment to, or a tool to help the young person kind of map their family history, work out where the young person's place is in the family and within their community and culture. Help them increase connection with Aboriginal services and community networks. They also do things like their office environment is culturally appropriate. And they also employ local Aboriginal people to deliver cultural programs like art programs, music programs, history, language, story-telling. So that's just - - -

25 COMMISSIONER WHITE: What about other minority groups in the community? You've got big migrant population and I think some of these centres that you've identified in the map would include them?---Yes. Particularly in the Blacktown area has a lot of African refugees and other cultural groups, and the Blacktown provider has subcontracted a caseworker from a multicultural service within that location; that is very strong in the Blacktown area. So they can work specifically with young people from other cultures.

30 Do you – when you are entering into the contracts with the non-government organisations, do you rely on them to do the actual training of their caseworkers, provided they meet the criteria that you've more or less set out - - -?---Yes.

35 - - - in that paragraph and what you've just told us?---Yes. And there is also – one of my attachments had the – we have 14 mandatory training requirements. That is very – it has been very time consuming for the new providers. But I believe the caseworkers have already also really enjoyed that learning and are excited about being able to use the tools and the knowledge they have. So that's in the training requirements, that they can do that.

45 MS BOSNJAK: And you refer to this program involving multiple agencies. One of the areas in which that's prevalent is in the implementation committee where I understand it involves youth justice, police, Aboriginal Affairs, Department of Family and Community Services, Education, but also Premier and Cabinet and Treasury?---Yes.

How important is it to have someone from Premier and Cabinet and Treasury present in terms of the longevity of this program?---Yes. So that implementation committee has been running since the commencement of Youth on Track every quarter.

5 Sometimes it is just reporting about how the program is going. But when we get closer to key decision times like having to report back to Cabinet about the progress, and the last time when we made recommendations to expand, Department of Premier and Cabinet and Treasury had been involved in developing that Cabinet submission and the business case for expansion beforehand. So that advice and, I guess, the connection with those two agencies was really critical.

10 And in terms of any ongoing involvement with police after they have forwarded on a referral to the program, do they have any other role in communicating with caseworkers?---Yes. The police are a big part of the program in regard to the referral but also once the referral is made usually the caseworker will contact the police youth liaison officer and ask for more details about the risks of going to visit the house, the risks of working with the young person. They also sometimes help them find the young person. And then the NGOs will provide the police with weekly updates about the progress. So the police have an understanding of whether the young person is still engaged or not.

20 And just briefly, if I can bring up annexure D to your statement. Thank you. Page 1, at the bottom right-hand graph, can you just explain to the Commissioners what that shows?---Yes. So this shows, I guess, that it is difficult to engage young people in a voluntary program. The red section of that graph is showing the people who have declined. The green section are the people who have declined because they were unable to be contacted. So there are a number of young people – generally about 10 to 15 per cent of the young people who are referred aren't able to be contacted. Either the address is out of date or they're hiding behind their curtain when they see somebody walk up to their front door. The caseworkers do try and link in with the courts and the police and other agencies to be able to try and the young person, but if they can't or they decline, it's a voluntary program. So – and then once they engage, at the moment with the new providers, most of the young people are staying on the program and committing to the program.

35 And if I can just take you to page 3, the top chart?---Yes. So this is showing, for the young people who complete the program, when they first start, their first YLS/CMI, the majority of them are medium-high risk, medium or medium-high risk, and then by the time they complete, the majority of them have a low or medium risk in regards to the YLS. So their risk level is reducing fairly significantly by the time they complete.

40 And in terms of the bottom graph on that a page?---Yes, so this is showing, for the 12 months before they get referred to Youth on Track, this is the rate of offending of the group of participants who do get referred to Youth on Track and engage with Youth on Track. Their rate of offending the 12 months before is quite significantly increasing, and then the 12 months after referral to Youth on Track, it comes back down to only an average of 0.5 offences per young person.

And the effectiveness of this program, in leading to these results, I understand that's about to be evaluated further. Can you just explain to the Commission what will be undertaken?---Yeah. So these results are our initial results that we develop within the Department of Justice. And obviously to be able to go forward and ask for more money we need to have some independent evaluations. We have had a social outcome evaluation completed by CIRCA. The Centre for Indigenous Research – I've forgotten. That's terrible. CIRCA. I will find out their acronym. There it is. Cultural - - -

10 COMMISSIONER GOODA: Centre Australia?---Cultural and Indigenous Research Centre, Australia. My apologies, CIRCA. So they looked at the impact of the scheme on the clients and the family's wellbeing around those criminogenic risk factors and they did that looking at quantitative data and also talking to families and young people. And the key outcomes from that is that the risks for overall risk, education and employment and the leisure and recreation domain significantly reduced after just three months on the program. And then in addition to those three, after six months on the program, peer relations had also significantly improved in regards to who they were spending time with. So that's the social outcome evaluation. And then following that up with a reoffending evaluation that the bureau of crime statistics and research will undertake. And we are proposing to do a randomised controlled trial which is done very rarely in youth justice, and there's a lot of challenges to this type of evaluation. We are currently – or ..... is currently in the middle of trying to get ethics approval for it. But what we are proposing is young people consent to a support service and then they will be randomly allocated once they have consented to either Youth on Track as I've explained it today, or what we are calling fast track, which is a brief intervention where they get four weeks of support from the caseworker and referral to other support services. So the aim is to see whether Youth on Track has a larger and significant impact on reoffending compared to the shorter intervention.

30 COMMISSIONER WHITE: Well, it's a very highly intensive resource, Youth on Track, isn't it?---Yes, it is, but compared to some other community services programs, it's quite cheap, with 15,000 per young person, and that includes covering the costs of trying to engage the 50 per cent of kids that decline. That is quite cost effective for what it provides.

It is, in dollar terms. I was thinking as much as anything that you've got to use your case managers very wisely because it's an intense use of that resource, and it probably requires the most skilled of them to be doing that kind of work as well?---Yes. And that's the benefit of having a longer contract, is that the NGOs can engage staff that are – they get well-trained through the mandatory requirements and are committed to the program and know they're got a longer term employment.

45 Yes. We are certainly told that's one of the down sides of this sort of work, that they're such short-term contracts with government of six months, 12 months, very rarely above that?---Yes. You really need a decent amount of funding and time to be able to implement it, have it, you know, iron out some of the issues to start with, and

then be able to have it settled and working well for you to then to evaluate it properly.

5 MS BOSNJAK: Whilst reflecting on the program, are there any other matters that  
you wish to draw to the Commissioners' attention about this program?---Yes, I guess  
one of the things that we learnt with the Department is that capacity building of non-  
government organisations is really important. A lot of the NGOs are very skilled at  
child protection and welfare focus work, and they obviously work with young  
10 offenders, but to bring it within the criminal justice framework and some of those,  
that research, that Risk Needs Responsivity, to have them deliver a service in that  
focus takes a bit of time. So what we have learnt is, you know, we have  
implemented the mandatory training requirements, which really focus on the  
criminogenic, the offending sort of focus of the work. We have developed guidelines  
15 on what works in juvenile justice and so that supports their knowledge. We also  
have monthly contract governance meetings with the NGOs to constantly see how  
it's going. We also developed a performance framework which outlines our quality  
assurance processes and key performance indicators to make sure that they're  
meeting the requirements that we've set out.

20 Commissioners, unless you have any further questions, that concludes the evidence  
of Ms Loundar.

COMMISSIONER WHITE: I think we have probably interrogated you on the way,  
25 Ms Loundar. It's very heartening to see this program really being underway in New  
South Wales, and the rigour with which it's being assessed and addressed. I think  
that seems to be what comes through. Strong oversight is essential to keep these  
things on track too?---Yes.

30 We are very grateful to you for coming up to Darwin to talk to us about it?---It's my  
pleasure. Much warmer than Sydney.

I hope it has got more attraction than just the weather. Thank you, Ms  
Loundar?---Thank you.

35

<THE WITNESS WITHDREW

[2.22 pm]

40 MS BOSNJAK: Thank you, Commissioners.

COMMISSIONER WHITE: Thank you, Ms Bosnjak.

MS BOSNJAK: Mr Goodwin will take the next witnesses.

45 MR GOODWIN: Thank you, Commissioners. I call Dr Jill Guthrie, Mr Michael  
Levy, and Mr Alistair Ferguson.

COMMISSIONER WHITE: Alright. We might need to do the geography a little bit, Mr Goodwin, first. Mr Goodwin, are they all affirmation or a mixture?

5 MR GOODWIN: Mr Ferguson is an oath, otherwise affirmation.

<MICHAEL LEVY, AFFIRMED [2.24 pm]

10 <JILL GUTHRIE, AFFIRMED [2.24 pm]

<ALISTAIR FERGUSON, SWORN [2.24 pm]

15 COMMISSIONER WHITE: Dr Guthrie and Mr Ferguson, I think you are sharing one microphone, so you might – to the extent you can, centre it between you. So things need to come up on to the screen. You might have to stretch your eyes a bit to see them. Alright. Thanks, Mr Goodwin.

20 MR GOODWIN: Thank you, Commissioner. Perhaps I will start with you Professor Levy, you've provided a précis to the Royal Commission; that's correct?

25 PROF LEVY: That's correct.

MR GOODWIN: And that's signed on 22 May 2017? I tender that.

COMMISSIONER WHITE: Exhibit 627.

30 **EXHIBIT #627 PRÉCIS OF EVIDENCE OF MICHAEL LEVY DATED  
22/05/2017**

35 MR GOODWIN: Dr Guthrie, you also provided a précis of evidence, that's correct, and that is dated 12 May 2017?

DR GUTHRIE: Yes.

40 MR GOODWIN: I tender that.

COMMISSIONER WHITE: Exhibit 628.

45 **EXHIBIT #628 PRÉCIS OF EVIDENCE OF JILL GUTHRIE DATED  
12/05/2017**

MR GOODWIN: Finally, Mr Ferguson, you've provided a joint précis of evidence with Ms Sarah Hopkins, and that précis is signed by you on 20 June 2017; that's correct?

5 MR FERGUSON: That's correct, yes.

MR GOODWIN: I tender that, Commissioner.

10 COMMISSIONER WHITE: 629.

**EXHIBIT #629 PRÉCIS OF EVIDENCE OF ALISTAIR FERGUSON DATED  
20/06/2017**

15 MR GOODWIN: If I could briefly introduce each of you, Professor Levy, you are a public health and clinical forensic health physician, that's right, and you are currently complain director of Justice Health Services with the ACT Health department.

20 PROF LEVY: That's correct.

MR GOODWIN: And also a professor of medicine at the ANU medical school. And Dr Guthrie, you are a research fellow at the National Centre for Epidemiology & Population Health at the Australian National University?

25 DR GUTHRIE: That's correct.

MR GOODWIN: And Mr Ferguson, you are currently executive director of the Maranguka Justice Reinvestment organisation in Bourke.

30 MR FERGUSON: Yes.

MR GOODWIN: Now, each of you has been involved in two justice reinvestment projects. Professor Levy and Dr Guthrie, you've been involved in a project in  
35 Cowra, and Mr Ferguson you've been involved in a project in Bourke. Before discussing directly what those projects are, could I just ask you, Dr Guthrie, what do you define justice reinvestment as? I might ask if each of you can speak up in the microphones when you give answers.

40 DR GUTHRIE: I see justice reinvestment as the political will of governments not to spend money on new prison beds but, instead, to spend that money on services back in the communities from where people may have come, that might have been imprisoned for say low-level criminal activities. So – and for JR to operate as a policy, I guess, it requires all levels of government to be involved. So  
45 Commonwealth, state and local levels of government and including Indigenous governance structures at all those levels as well.

MR GOODWIN: And, Mr Ferguson, would you use a similar definition or has the Bourke project put a bit of a different spin on the definition of justice reinvestment?

MR FERGUSON: Of course there's multiple connotations, but just before I go any  
5 further, I would just like to acknowledge the traditional owners and pay my – send  
my respects to elders past and present. But, look, just picking up on your – sort of  
opening that – in referring to as a project, I guess from my perspective and our  
community of – and small community of Bourke in western New South Wales, it's  
10 so much more. It's the – it's more of a survival strategy, I guess, is that – is where  
we're really coming from. And it means a lot more to us to ensure that this has a  
longer-term effect, particularly with future generations. So we're in the sort of  
incubator stages now, sort of building that as part of the successional planning as  
well, which is quite important, that certainly at this stage has not been sort of more –  
15 sort of drilled into the detail of our submission. But hopefully we can sort of cover  
off on some of that if we have time today.

MR GOODWIN: And so what, to you, does justice reinvestment look like in  
Bourke? What would be important for you to see in Bourke in terms of justice  
reinvestment?  
20

MR FERGUSON: I think overall it's just changing – re-educating people and  
changing the whole dynamics and certainly raising awareness that most of us, as  
humans, have empathy towards particular situations and – but I think it's dealing  
with the underlying – the sort of undercurrents is what is really happening and what  
25 has occurred, sadly, dealing with the legacy issues, I think. We look at Bourke as a  
small community. Just below 3000 people, but I'm mindful is that the majority or a  
third of the population is Aboriginal, Indigenous or first people of this nation. But  
being mindful that Bourke has been a small community that has been, as past  
government policy, where a lot of groups and tribal have been sadly brought to and  
30 expected to call Bourke their home, so – which has been the case. I think this goes  
into a lot more in depth, what the submission doesn't tell you, what's the – what has  
been promoted now for the last, particularly over the last two years, is that what's  
happening in the background is it's the nation building, is the peace building that's  
really going on. And it's our interpretation of reconciliation amongst each other as  
35 Aboriginal people or First Nations people. So it means a lot more in terms of – to us,  
as the first people of this nation, I guess, is that – is where I'm trying to land on that.

MR GOODWIN: So would it be right for me to say that for you it is – justice  
reinvestment is a community development and community empowerment process?  
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MR FERGUSON: Absolutely. Well, I think in terms of justice reinvestment this is  
our interpretation of what justice reinvestment could potentially look like. Going  
forward as the interest – and as it intrigues other communities and more on a state  
and national level, I guess, in terms of what we have experienced to date. And it  
45 hasn't been easy.

MR GOODWIN: Now, I might return to that journey that Bourke has gone to in my later questions. Professor Levy, you mentioned in your précis that in fact justice reinvestment is a bit of a misnomer and what is actually is justice disinvestment. Can you just explain to the Commissioners what you mean by that?

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PROF LEVY: Institutional ..... level systems, institutions, juvenile justice - - -

MR GOODWIN: We might need you to speak up a bit, sorry, Professor Levy.

10 PROF LEVY: High level institutions are very expensive. The experience in the Northern Territory is that they also abuse human rights, and they take away resources from communities which need – that process needs to be redressed, and I actually detect a readiness within juvenile justice authorities nationally. They would be willing to explore evidence-based disinvestment from institutional, high level,  
15 responses to crime and go back to the bases, the causes of those dysfunction in young people, the disengagement with education, the lack of support for education providers, the teachers and the other children in the playground. The support that they need to reintegrate or retain ostensibly dysfunctional troublesome young people. Keep them in the community longer; address the causes of their dysfunction, their  
20 dislocation; return resources to the community, and actively turn funds out of the juvenile justice centres; a greater emphasis on community justice, restorative justice. There's a whole lot of processes which this can feed into. But ultimately, it returns resources – much needed resources to communities so that they can better retain their children.

25

MR GOODWIN: Albeit in a theoretical sense, Dr Guthrie, that's essentially what the Cowra project did over a three-year process. Could you explain to the Commissioners exactly what that three-year process entailed?

30 DR GUTHRIE: Thank you. The Cowra project was a research project funded by the Australian Research Council, where from 2013 until 2016 a group of researchers that included myself and Dr Levy worked with the Cowra community on exploring the theory and the research methodology of JR as it has come out of the US. So – and in – even when we started that research project in 2013, we were successful with  
35 ARC funding, there was something like a two year lead up to it being even successful. So throughout all of that period, in developing the application and then in the three years, it was very much about working with the community to develop the trust and the rapport to explore JR, and what that meant theoretically, and also then what it meant to the community. Does that - - -

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MR GOODWIN: Yes. And so a number of community forums were held over a period of time to discuss justice reinvestment?

COMMISSIONER WHITE: Where did the – can I just - - -

45

MR GOODWIN: No, please do.

COMMISSIONER WHITE: While you are talking about origins, how did you come to choose Cowra? Or did Cowra choose you?

5 DR GUTHRIE: No, we chose Cowra for very specific reasons, and that included that it didn't have a prison as part of its economic base. It's a discrete community, of about 10,000 people, of which around seven per cent is Indigenous, which was higher than the national average. And that Indigenous community, it has a historical background through Erambie mission, which is very much a part of the Cowra history and community. It has got a stable population; there's not a lot of movement in and out. It wasn't featuring high in terms of a crime profile. It wasn't precipitated by any crime spike or anything like that. It doesn't – it wasn't featuring as a hotspot in the media. So for those reasons, mostly – I can't think of any others at the moment – it was a good case study site.

15 COMMISSIONER WHITE: And did you, having chosen Cowra, before you went to your next level, did you have to ascertain the appetite for a project such as yours in the town itself?

20 DR GUTHRIE: We did and, as I said, that was part of – like the two year lead up to the ARC funding being successful. So we got letters of support from what was called the Erambie advancement league, I think, in Cowra at the time and also from the Shire council. And we also have a colleague who is ANU based but lives in Cowra and commutes between ANU and Cowra, and that person was also a conduit in this process for us. So we were able to gauge the appetite of the town in putting in this ARC application.

30 COMMISSIONER WHITE: And perhaps my last question before I let Mr Goodwin get on with his job: in looking for a project of this kind, were you influenced by the Bourke project?

35 DR GUTHRIE: I think they were happening – they were both starting off pretty much at the same time, even though I think Bourke was a little bit further down the track. But this was also a little bit different from Bourke in that this was a research project, where we were exploring the research methodology with the town, and I think Bourke had a slightly different genesis.

COMMISSIONER WHITE: Yes. Alright. Thank you. Thanks, Mr Goodwin.

40 MR GOODWIN: Perhaps that's the perfect opportunity for you, Mr Ferguson, to say – to essentially answer the question, "Why Bourke?" Was there in particular a partnership developed by Just Reinvest New South Wales and the Bourke community, particularly the Bourke Aboriginal, to do a justice reinvestment project, notwithstanding the limitations of that word?

45 MR FERGUSON: Of course, and I think it really – really derived from the readiness of the community which was building some capacity for years. And certainly the case of – we broke away from essentially relying on Government to

provide the resources and tools to support our community to assist in getting us to the next level. So we consciously broke away from that, not waiting on Government. So as part of the next steps we actually went and engaged with corporate Australia, with the philanthropic sector, to support in that whole process and it wasn't just  
5 financially, it was certainly more focused on the expertise and skill sets that we – well, to gain access to that skill set and expertise that we really, well, highly required at that time.

10 But we were quite fortunate to experience the best of both worlds, if I could explain it that way, in terms of the expertise, of course, and the various skillsets that we now have ..... having access to. And that's certainly – it has certainly been a bonus, I think, and an advantage for funding to come with it, but longer term funding as well. So I think that has been certainly a dilemma – certainly from – through my lens that  
15 I've been working with now, for quite some time, is convincing Government that they certainly have a critical role to play in this. So I think the point I'm alluding to is that we have all the key ingredients now in some shape or form, in terms of the goodwill of the philanthropic sector and the corporate sector, of course, but now Government is now finding their place, where they fit.

20 And so we've actually designed an engagement process that allows, particularly Government, their readiness as well. And I referred to earlier – so there's multiple connotations, and – but I think it's where people – actually where they want to fit in this process, has been the key. And we are certainly taking very small steps, and small bites, has being the key to the success to date. That's becoming more clearer.  
25 And I think certainly I'm confident that we're on the right path, and we do have the right mix now to take out to the next phase, which we're doing in other shapes and forms as well, in terms of having more specific strategies to overcome the systemic disadvantage. Certainly, I think we have our – the signs, symptoms and causes, but now we're also sitting down talking about the – I guess, the solutions to addressing  
30 most of those signs, symptoms and causes.

MR GOODWIN: And you've talked about the discussions that have had to happen between the community and Government about what the community wants to achieve in terms of justice reinvestment. Was that the first step in Bourke? To  
35 discuss, as a community, what you wanted to see happen in Bourke, in terms of the justice reinvestment project?

MR FERGUSON: Absolutely. Well, in terms of the justice reinvestment component, it has been certainly our really strong emphasis on the shameful  
40 overrepresentation of particularly our younger people, going in and out of the justice system, and the – or the challenges has been – is changing the mindset of that whole sort of – with the stronger focus on systems reform and a shift in policy, not to take a softer approach, because I think the dangerous precedents that has been set in the past is that often it's referred to as rewarding bad behaviour, but we want to turn that  
45 around and look at rewarding good behaviour. And we're certainly – as a community is something we're not proud of is that being dubbed as one of the most dangerous communities in the – in the – in the world.

So I think, you know, that really gives us something now to work towards, is to overcome that and change the mindsets and perceptions of small communities like Bourke, is to as I'm sort of often – well, I guess more known as – not being overly too ambitious to become one of the safest communities in the world. So I think, you  
5 know, given the underlying issues and what we have been experiencing over many years, and – but I certainly feel that – and rather confident that we are on the road to recovery, even though it's early days.

MR GOODWIN: Dr Guthrie, if we can talk about that community discussion  
10 element of the Cowra project, you've made the point – and the community report makes the point – that it was important that it was a whole of community discussion, rather than just about one section of the community or the other. Could you explain how that worked in practice in those community discussions?

DR GUTHRIE: Yes. Thank you. From the outset of this research project, as  
15 you've mentioned, it was stressed that this was to be whole of community exploring the issues for the whole of community, by which we sort of meant whole being Indigenous and non-Indigenous community, exploring the issues for the Indigenous and non-Indigenous community, as opposed to what is often the case of, like, whole  
20 of community looking at Indigenous issues. So from the outset, from – particularly from the representatives from the Indigenous community, that was stressed. In terms of, you know, “We're sick of the gaze being on us.”

So we want this to be, you know, whole of community looking at whole of  
25 community. And it was also emphasised that this is about our youth. So that, in a way, the idea of the community looking at issues for all of its young people unlocked a bit of that resistance too, I think. So we did have – during those three years, we did have a number of community forums that were representatives from each of the stakeholder groups - - -

30 MR GOODWIN: Who were those stakeholder groups?

DR GUTHRIE: The sectors, like education, judiciary, police, mental health,  
35 community services, Commonwealth Government agencies, state government agencies, and obviously Indigenous and non-Indigenous representatives through those sectors as well.

MR GOODWIN: And what did they discuss? In particular, can you talk us through  
40 the process of what you've highlighted in terms of setting out what are JR amenable crimes in particular?

DR GUTHRIE: That part of the discussion that was taking place in the community  
45 where we were exploring these issues came later in the three years; in fact, in around year – you know, the end of year 2, two and a half, something like that.

MR GOODWIN: What discussions had to happen before you reached that point?

DR GUTHRIE: In leading up to that point, it was very much bringing the community into a conversation about what JR is and what it means to them because, as I mentioned, this research project started off for us in around the year 2012 and JR was pretty much a bit of a new notion, really, in Australia at that point, even though  
5 now it has, you know, developed a bit more understanding. It was a fairly new notion and a particularly new notion, I think, to people living in the town who are just going about their business, really on a daily basis.

10 COMMISSIONER WHITE: I can imagine they were somewhat astonished at the notion.

DR GUTHRIE: Yes. So it was to introduce it as a concept and then we were exploring the research methodology around it as well. So it – that required some unpacking. And I might mention that at one of the first community forums there  
15 was, you know, astonishment, I think, at the idea that people outside – people from outside the town had come to town to talk to them about something and they, as a community, weren't expected to spend a bucket of money. This was always hypothetical and we had to make – you know, help them to understand this is hypothetical. There may be – there are no promises, no buckets of money behind  
20 this.

And that came as a little bit of a – something to step through in one of the consultations that we had. However, at that consultation, we had the mayor, who had been brought along in the conversation, in the process, a local doctor who works very  
25 closely and is highly respected by the Indigenous community in town, and the president of the children's magistrate in New South Wales. So these three people were at that first community forum, where it did stall a little bit because those in the community didn't really know what we wanted them to do, but the intersection of those three people in particular turned the discussion around and really took it  
30 forward.

I think, in particular, the mayor and that local doctor helped the community understand that this is a real opportunity for us to explore what these issues are for us as a town and as a community, and for our young people. We're actually liberated  
35 by the fact that there's no bucket of money to spend, because we can just look at all the issues.

MR GOODWIN: And so it was important to have that local leadership on the ground endorse the idea behind the project?  
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DR GUTHRIE: Yes, it was.

PROF LEVY: The local newspaper consistently reflected those discussions. It didn't amplify a law and order agenda. Or – it just took on the – in fact, very often  
45 Jill would write the piece, but it was a good way to get through to the whole community the evolution of the program – the project.

COMMISSIONER WHITE: How important do you think having the media on side with a project that's so much a community oriented project is?

PROF LEVY: Essential. Essential. They can play – they can - - -

5

COMMISSIONER WHITE: And did you educate the editor?

PROF LEVY: Sorry?

10 COMMISSIONER WHITE: Did you educate the editor, did you bring him into the tent?

DR GUTHRIE: We didn't deal with the editor, per se. We dealt with the local journalist, but never had any problem with our articles going into the paper at all.

15

PROF LEVY: They can play a positive role to just inform, but they can play a terribly dangerous role if they misinform, and that's where the balance of information is at the moment. The power is with the negative messages. It's so good to have been able to have sustained neutral – in effect, neutral message getting out to community, informing.

20

COMMISSIONER WHITE: Was that the experience in Bourke, Mr Ferguson, the role of your local paper, if you have one?

25 MR FERGUSON: Well, our local paper is the Western Herald and – but certainly they have been making attempts to, I guess, promote the more positive aspects to our work more locally. And I suspect that's also – that will improve over time as well. And so – but certainly back to the question, it has been quite essential to have a positive communication strategy as being the key. And now – we're to the point  
30 now that we're coming a little bit more strategic in terms of bringing the right training and skills to that now, particularly with our backbone team and cohort of sort of partners. They're involved in that process as well.

30

35 COMMISSIONER GOODA: Mr Ferguson was – you had a different relationship to Cowra with the council for instance. They took a little bit of time to come on board.

MR FERGUSON: Absolutely, Commissioner. As you may recall in your former role, is that attempts to – just to have the conversation around the concept was quite difficult and – but, in fairness to Bourke Shire Council, I think the early work that we  
40 had done – to their credit, I think they're starting to understand that their role that they have in the next phase and sort of going forward.

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MR GOODWIN: We heard evidence from Mr Nate Balis from the Annie E. Casey Foundation on Monday regarding a – the Juvenile Detention Alternatives Initiative  
45 which works with sites in order to encourage community discussions around, in particular, what crimes should lead to a young person being detained and what crimes should actually lead to either a diversion to – no detention, or to an alternative

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program, a community-led program. And he mentioned that the most important thing first was collaboration and ensuring that a community discussion occurred between all key stakeholders regarding the actual aims and purposes of detention and what funds could be diverted to community programs. Would you agree with that type of process occurring and was that one that Bourke undertook?

MR FERGUSON: Absolutely. We provided the platform. We established three key working groups, being the early childhood working group, the eight to 18 year old working group and the role of men working group. But in the background of that, often people ask me where is the women in this? Well, they're certainly there as well, we do have a journey to healing women's group as well, that sits under our framework. And they certainly have a critical role that they have sort of assisting in the whole process. But with the addition of a Maranguka youth council as well, which has just recently been, I guess, established to allow young people now to have a voice.

And – but I think in terms of how – with our approach is that allowing people to fit where they feel that they're most sort of comfortable, in terms of what they actually bring to this process. So as opposed to – traditionally we would have one big meeting per month and expect everyone to – through our strategic relationship to attend on the day and once they report, well, your day is gone. There's no room or scope to sit down and actually be strategic on a one-on-one basis, unless it's outside of those monthly meetings. So in terms of how we establish the working groups, we can do that as a collective.

MR GOODWIN: And was that why it was important to have what Bourke refers to as the backbone organisation of Maranguka that you're the executive director of? Is that important in terms of keeping that momentum of that community discussion and community development process ongoing?

MR FERGUSON: Absolutely. And the backbone team, consisting of a backbone coordinator, as well as a senior project officer, which has been quite key to maintaining those day-to-day conversations that we need to keep the momentum with the various stakeholders and constantly keeping up to date as well as simultaneously – as well as the community, keeping them informed of every step and every development.

MR GOODWIN: And so if I can summarise it this way: the three working groups that you mentioned have themselves developed some ideas of what type of projects they believe are needed in the community in terms of justice reinvestment. So, for example, in terms of eight to 18 year olds, an important part has been the development of the Maranguka support model, which is a co-design process between community, government and social services to provide wrap-around support to families. Is it the desire of Maranguka to further develop and work with government to ensure that these types of programs, community-led programs, exist in the community?

MR FERGUSON: Absolutely. And with a strong emphasis on the system reforms as well in terms of what we're currently working with a formula, working with several referral forms or destinations that we're now – we're amalgamating that to a point that we will have one, one referral process. Which is going to be quite key for the next steps, is that – because often – traditionally that we would have more than several referral destinations. And then, by the time you sort of touch base with each of those service providers, and they're all different stories, so I think with – in terms of where the family or particularly the young person, where they're – each destination where they're ending up.

10 So I think that's – part of the objective is to improve that whole process so it's more user friendly for particularly our people. And because the other thing is that we don't discriminate against the non-Aboriginal community too. We are there to assist non-Aboriginal families as well. But – so this is, you know, it has been, I guess the key objective is to improve the whole system for our community and it needs to fit with, I guess, the aspirations of our – as we see it in our own community.

MR GOODWIN: Something that allowed Maranguka to identify the particular needs in the community was preparing a data snapshot, and in order to understand the actual needs of the community and particularly what was happening for young people in Bourke – I might actually switch to you, Dr Guthrie in terms of the importance of data, which was also central to the Cowra project. Can you just please explain what data you got from, I think it was the Bureau of Crime Statistics and Research in New South Wales and how you used that with the community to develop the project.

DR GUTHRIE: At – as I mentioned earlier, at around the two year or two and a half year point in the research project, one of the community forums was used to have a deliberative process that we took the community through – where we had obtained from BOCSR the data for that postcode for the previous 10 years of both adults and juveniles that had been imprisoned in the previous 10 years and the high level crime categories that they had been imprisoned for. We took the community through a deliberative process of deciding – I think it's 12 high level crime categories, I think, from memory. Which of those high level crime categories would they, as a community, prefer to be spent within a JR framework?

That is, you know, if a JR policy was in place, the people who committed particular crimes wouldn't be sent away, but there would be alternatives for. Of those high level crime categories, the community decided that eight were amenable to them as JR – well, JR amenable. So they would prefer to see that money not spent – or prefer to see those people not sent away, and to have the money that was spent on them reinvested back into the community.

MR GOODWIN: Perhaps I can pull up on the screen – I think it's annexure three to your précis, which is the community report, and it's page 16 of that document.

COMMISSIONER WHITE: I may have missed it, but of course you're talking about money saved to Government on the whole. And, of course, if that happens they don't really like to give it away again as a present in any way. So did you have someone from Treasury on board with you when you were exploring these ideas?

5 Was there any sense that this amount of money that might have been spent on keeping some of the Cowra young people in detention might be in fact be directed back to the community?

DR GUTHRIE: Sorry, I missed the last bit of you said. Might be - - -

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COMMISSIONER WHITE: Directed back to the community. That is at the heart, really, of the articulation of justice reinvestment.

DR GUTHRIE: The answer is no, we didn't have anyone from Treasury there. The - we were working with a daily cost of imprisonment for an adult and a daily cost for juveniles that's available in the Productivity Commission report.

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COMMISSIONER WHITE: Yes.

20 DR GUTHRIE: So it was very - it's a fairly blunt, I guess, estimate that we've made and these were direct costs.

COMMISSIONER WHITE: Yes. Alright. At least it was an amount that you could demonstrate, if you were looking to fund something else coming into your community, that you had saved the Government; is that really the strategy?

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DR GUTHRIE: I think it was more to just get to the evidence of what this community would deem, you know, JR amenable crime categories. It was merely that. And then we put the dollar figure around it based on those daily - - -

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COMMISSIONER GOODA: But I think it struck me the other day, when we saw Mr Balis talk about the tool they use to determine detention, no detention, detention with conditions. And it struck me the process you went through out at Cowra would almost fit that category. One of the ..... one of the important crimes, if you like, or offences that wouldn't lend itself to alternatives. And I think what you've got there is almost - I thought about that process you went through immediately when I saw that tool, and it's actually the same sort of thing. What shouldn't be - what does the community think about where kids should be detained? And Dr Balis also said that - I think that's where Mr Goodwin said the journey is as important of getting to that point, because you get the community on side. I could see Dr Levy.

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PROF LEVY: So the local paper generated a headline something along the lines of, "Crime costs Cowra \$46 million in the last 10 years." And then underpinning that was an explanation of what that was, and it was the whole process that we had been through. It was a startling revelation to the participants at that meeting, but I suspect equally to the citizens of Cowra to see that there's actually a quantifiable cost. It's a

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substantial cost. It's not insurmountable, but – you know, \$46 million speaks to a community, what you could do with \$46 million.

5 DR GUTHRIE: And I might add, just following that, that even though – as my colleague said, that I usually wrote the press releases that the local paper did, that was not the heading I gave it, so that was a local heading that they put on.

10 MR GOODWIN: And you can see in table 1, which is up on the screen, that the community itself determined the particular – what you've termed JR amenable crimes to be the first eight crimes which involved around 50 per cent of sentenced New South Wales juvenile – the juveniles. And so the idea being that those people would – was the idea that people, young people who committed those crimes would not be imprisoned or incarcerated but, instead, the amount of money that was – would have been spent on their incarceration, so half of that 46 million, would be  
15 then reinvested back in the community?

DR GUTHRIE: Yes. And I should add that this wasn't just young people; we had adults and juveniles for that postcode.

20 MR GOODWIN: And were you surprised by the types of crimes that the community themselves determined should not necessarily involve incarceration?

DR GUTHRIE: I personally, no. I mean, they make sense to me as well, that they should be the JR amenable crimes. There was deliberation around some of the  
25 categories, including that one that's prohibited and regulated weapons offences, which as you can see got a 47 per cent vote, so it was – and we made the cut-off say 51 per cent. So that was getting, you know, high in the votes. So there was some deliberation around that.

30 COMMISSIONER WHITE: And, of course, it's a rural community too - - -

DR GUTHRIE: That was – that was - - -

35 COMMISSIONER WHITE: - - - which is big factor, isn't it?

DR GUTHRIE: That was the point, yes. So – yes. Yes.

40 MR GOODWIN: And, Professor Levy, you were involved in a number of these community discussions. Do you have any observations about the nature of community discussions about determining these crimes and what the community would do if the money was back in the community?

45 PROF LEVY: It goes to the what's next. If Cowra has said this profile of crimes would be amenable to restitution, return to community, then perhaps the process is some negotiation goes on in the town courthouse. If a person were a repeat offender or a very high level offender in terms of theft – theft finds its way in the JR amenable crime category. But a particularly disruptive high level offender, Cowra may not

wish to negotiate to return to community and may be quite happy, in terms of community safety, for that particular person to go to a juvenile justice centre, or to Bathurst.

5 COMMISSIONER WHITE: I think that's what Mr Balis called the override; that you depart from your screening tool when you bring that judgment to bear on the particular case.

10 PROF LEVY: Yeah. And as a community becomes more experienced and has more confidence in the process, both that negotiation was conducted in good faith, and the resources followed, the person returned to community, but so did the resources, then you would expect the criteria to change and more thieves would return to Cowra, hypothetically. Or people will steal less. Who knows. You know, there's community development.

15 There's a whole – there's new resources. It's not just money. It's skills. Ideally, it's skills. It's psychologists and social workers. It supports teachers so that teachers are more fulfilled, and kids feel safer in the school yards, so there's less exclusions from school. Police are doing more preventive work. You know, community building.  
20 It's potentially – is great. Our hopes are great. The message I take away from Cowra is that every time there was a development with the support from the Shire councillor – the Shire president, sorry, his deputy president, the administrator, every time that was built, it was sustained and built upon.

25 There was never any going back. They were steady steps forward, but they were always sustained the interest developed, and the confidence that this was going to move to a useful outcome. Given all the caveats that Jill, that Dr Guthrie has given from the very, very beginning, we never went back. We always went forward and the community grew with it. And the confidence that they learned over that three,  
30 five-year period, was sustained and valued.

MR GOODWIN: And if I can throw to you, Mr Ferguson, something you mentioned earlier was the importance of nation-building to the process in Bourke and I think you mentioned in your précis the importance of community healing and the  
35 diversity of the Aboriginal community itself in Bourke. Can you tell the Commissioners why the Maranguka journey has been, what it has achieved for community for the Aboriginal community, and in particular the role that the tribal council has played in that.

40 MR FERGUSON: I think going back to a stronger focus on that traditional governance, that has been more sort of customary, I guess, that has fallen by the wayside particularly over the last couple of hundred years. So I think it's re-establishing that for many reasons, is that it allows us to get a little bit more closer and more personal, I guess, or intimate to the issues at hand. So we can talk with  
45 individual tribal groups and their families through this structure, where traditionally other structures didn't allow us to do that, or it came with its limitations.

So I think the importance of the Bourke tribal council concept – and, again, it isn't new; we've been doing it for well in excess of 60,000 years. So I think it's how we are applying that to a more modern and contemporary setting now. And it's just unfortunate that it has to be always on the deficit of the issues at hand, that really sort  
5 of challenges us more locally. But I certainly – back to your question, is that that's going to be quite important and quite key in terms of the next steps as well, and how we nurture that, so we don't burn people out with, again, the ..... that are being reactive to day-to-day issues as they occur, or unfold.

10 So I think it's positioning now and – but the key to the – what I call the success or what could be the success of sort of going forward is that the future is really in the hands of Aboriginal people for the very first time, from, as opposed to – I referred to not sitting around and waiting for government. And I say that most – with the utmost respect. But it's now we have the vehicle that's – with a stronger focus and emphasis  
15 on complete empowerment. It's giving some substance and definition and it's redefining the definition of self-determination.

MR GOODWIN: And so you're hoping that government supports the community's own aspirations in terms of the programs it wants to see delivered in Bourke; is that  
20 right?

MR FERGUSON: Absolutely. Absolutely. And I just – if I can just expand on our journey to date from the experience of pulling together the data that helped our process in terms of now having a document, quite a comprehensive document, as  
25 well as a summarised version with less detail, and it really depicts and tells the story. Technically now we have a visual on that and I often refer to when offences are most likely – when they're occurring. Now, that's between 6 pm and 6 am. And 48 per cent of that, I think, is often on the weekends. So I think it's not rocket science to work out where the resources need to shift to.

30 MR GOODWIN: And has Maranguka started to create programs to be reactive to that data?

MR FERGUSON: Absolutely. Well, that has been our sort of platform, is that it's  
35 based on, sadly, the stark reality of, you know, life course of a young person living in Bourke. But I think in terms of at least we're aware and have the knowledge now as well as the skill sets to get us to the next point to start addressing that. But in most – in recent times as well that, we're bringing on board additional services in that space that, based on needs and the demands of community. So it aligns with those  
40 demands as well.

MR GOODWIN: And so you mentioned in the précis that because you noted an increase in crime during school holidays for young people, the town just started having more school holiday projects to attempt to keep kids and families engaged; is  
45 that right?

MR FERGUSON: Absolutely. And I think – I just want to acknowledge particularly family and community services and the Darling River area command in terms of the police: they've been quite proactive and responsive and becoming more approachable too with new and fresh sort of innovative ideas that the Bourke Tribal Council sets. And so it's how we harness that and put that across to articulate what we need in terms of some of the gaps, in terms of the service delivery as well. So that has been working quite well, and they've certainly been the last man standing, if I can describe it that way.

10 COMMISSIONER GOODA: You might want to tell the Commission – I've seen that data and we know how great it is. How long did it take to get it out of government?

MR FERGUSON: It took an extremely long time and it was quite frustrating, Commissioners. And – but I think with our patience and tolerance and resilience, I think we've been waiting long enough just to be a little bit more patient, I think. But there's other key aspects to that as well as that. It's the first time that, in reality, that we've had government – we've instigated, I think, other government agencies are talking to each other about it, because, you know, these guys have been sitting in the same building on the same floor for the last 10 or 15, 20 years and they've never spoken to each other. But all have – you know, since we have sort of instigated this process, now there's more of a dialogue and more – it has created, prompted communication around that to be more effective. And - - -

25 MR GOODWIN: And there is a structure around that, isn't there, in terms of the cross-sector working group that Maranguka is involved and facilitates; is that right?

MR FERGUSON: Absolutely. And the key to that, as well as with our unique situation, is that we are fortunate enough to have a now in-government champion, in this case being the Minister for Health, the honourable Brad Hazzard. So we started off that relationship as the former Minister and Attorney-General and then that continued with the portfolios, Minister for Family and Community Services and again we are quite fortunate now to – for him to be reappointed as our in-government champion for the Maranguka justice reinvestment issue.

35 MR GOODWIN: I could ask many more questions, but we've come to time. If I can ask the final question to you, Dr Guthrie and Professor Levy. In terms – you've noted in terms of the Cowra project that it is important that it be a place-based project, any justice reinvestment project. What do you – what are your opinions on the replicability of justice reinvestment across the country, including in the Northern Territory, and what are the type of principles that would have to be adhered to for a successful process?

45 DR GUTHRIE: I think the abiding message that came out of this research project for us and for the community was to hasten slowly. I mean, as I said, you know, it was three years of research project, two years in the lead-up to that, and it took all of that time to really get to the point where we are now and now we're in like the

research translation phase, really. And we're in discussions with New South Wales government, which we hope will be positive. But even if they do, you know, turn out to be positive, we – we're almost back to square one in terms of bringing the community as it is now back into the JR space that has been created. So, I mean, I  
5 think the message is it takes time. It really does take time to bring the community along.

MR GOODWIN: And that that's an essential ingredient for any successful project.

10 DR GUTHRIE: That's an essential ingredient. Yep.

PROF LEVY: Can I - - -

MR GOODWIN: Yes. Please .....

15 PROF LEVY: - - - because I will offer a counter point. Recognising the tentative early steps and how sometimes painfully slow that was, but absolutely I'm in respect of that process, at the other extreme, if there's a whole of government acceptance that we can have, you know, community protection both by protecting young people  
20 and their human rights, their safety, at the same time as protecting the community, in the end there comes a point where legislation has to support that, and that won't be tolerant of geographic interpretive behaviours by communities.

25 So the underpinning legislation will, at some point, necessarily kick in and demand some standardisation of approach. It's nice that we offered evidence base to the progress and monitoring of progress to give the legislators confidence and then support, should they choose to. But I can see a point where local interpretation will be less tolerated.

30 And one other point: the overarching issue of investment, reinvestment, disinvestment, is what decision is going to be made about the institution that's currently called Don Dale. Will it be rebuilt? And kind of a plea: don't. Don't  
35 rebuild it. Have local – local, secure facilities which support young people, support the courts in their need to secure evidence and to progress the, you know, the criminal investigation. But ultimately return the young person to their community. Re-engage them with school. And much safer to everyone.

COMMISSIONER WHITE: Professor Levy, I wanted to finish up with the topic that you've introduced because, in fact, you've had enormous amount of experience  
40 in that interface between the criminal justice system and medicine, and you've visited many prisons and been involved in lots of issues around them and, indeed, were a co-author of a report here in the Northern Territory in 2007 which just creeps into our terms of reference period, into detention, including juvenile detention facilities here in the Northern Territory. Can I ask you about the effect of  
45 incarceration on juveniles, particularly of the kind which you saw in the facilities in the Northern Territory when you did that report, I know, 10 years ago.

PROF LEVY: So, a lot of them have health issues, serious health issues. And it doesn't go to the provision of health services in the Northern Territory, because they're very good and remote health care in the Northern Territory is exemplary. However, there aren't sufficient mental health practitioners in the Northern Territory.  
5 There's very few psychiatrists. There's very few options to safely house people with enduring mental illness and, regrettably, too easily they regress to accommodation in prisons and in the juvenile detention centres.

10 That's what Professor Harding and I, secondary author, said: these institutions are not fit for purpose. They're being asked to do tasks that they are not meant to do. Custodial officers are not very good mental health practitioners. They are not very good addictions counsellors. It's not their skill base. Yet that's the task that they were being asked to provide, day in day out, as best they could, filling a void in services. And it's unfortunate that the abuses that were described at Don Dale, the  
15 Old Don Dale, occurred.

But there's another point that says it was inevitable. There was no oversight. There was no health competence of the authority. And the authority was so powerful over the lives of these young people, that those abuses occurred. It didn't, in the end,  
20 deliver safety to the community. It didn't deliver dignity to the young people. And it did bring the Royal Commission, thankfully.

COMMISSIONER WHITE: Yes, thank you. And you say that that report that you did in 2007, that's still available, is it?  
25

PROF LEVY: Well, it should be.

COMMISSIONER WHITE: Yes.

30 PROF LEVY: Yeah.

COMMISSIONER WHITE: I will ask the many useful people that I have to get it.

PROF LEVY: Yes. It has been referenced. I don't have a copy of it.  
35

COMMISSIONER WHITE: I know. It will be online, I'm sure.

COMMISSIONER GOODA: We will find it. Can I ask a question of Mr Ferguson. It's a very specific thing about the strategy you had and just very briefly about the warrant clinic.  
40

MR FERGUSON: Well, the warrant clinic, we looked at the underlying issues of – and the effects of someone, particularly a young person, having a warrant and the pressures that it applies to existing family structures and their wider network. So we  
45 looked at creating the avenue in this case when, unfortunately, there is an existing warrant in place that we have a space where, particularly the young person can come to and it's consensual as well that they opt in, they volunteer as part of the process.

Then we – as the young people consent, is that then we look at wrapping a complete support service network around the individual as well. And that has been – it's proven to be quite successful to the point now is that, which is one of the – certainly one of the great outcomes is that we're getting less warrants being issued. But can I  
5 just expand a little bit further, Commissioner – is that we are fortunate enough to convince the magistrate to allow those warrants to sit in, he or she's chamber for a 14-day period. Then that allows us to go and locate the young person and explain and offer what's available during that 14-day window period.

10 So, again, it was another option to provide that support and the assistance to the young person to get them back on – to be more sort of functional, re-engage with school and, you know, in this case, if they're a job seeker, sort of re-engage attending their responsibilities and obligations as a job seeker as well, a work for the dole participant in this case also. So that has been quite a breakthrough. It's certainly – I  
15 think it's new, but I think there's a practical sort of – component that's so important, at least it's an option for people, and they can opt in. So they're not forced into it.

COMMISSIONER GOODA: Has there been a reduction in young people leaving Bourke with the justice system?

20 MR FERGUSON: There has, when it comes to warrants. Sadly, when it comes to the offences – because we're still in that phase, I guess, providing the alternatives for magistrates to keep young people in the community. So we're still in that phase. And – but certainly I'm confident, Commissioners, that over time that those options  
25 will become available.

COMMISSIONER GOODA: Thank you.

30 MR GOODWIN: Thank you, Commissioners. Those were my questions.

COMMISSIONER WHITE: Thank you. Professor Levy, Dr Guthrie, and Mr Ferguson, thank you very much for assisting the Commission. Of course, in many of the bigger community forums in the bigger centres there are lots of reference to justice reinvestment and it's something I think that, you know, a community of  
35 comparable size to Cowra and Bourke in the Northern Territory are actively thinking about, and I'm sure that they will have found this evidence, if any of them are watching, and I think they are, will have been terrific use to them, and it has been to us too. Thank you for troubling to coming here.

40 COMMISSIONER GOODA: Thank you.

MR FERGUSON: Thank you.

45 COMMISSIONER WHITE: We are going to take a brief – we are going to hear from Mr Cole just before, then we have to cross over to our UK link.

MR GOODWIN: Yes.

COMMISSIONER WHITE: So we might have Mr Cole in, if he is here.

5 MR GOODWIN: Yes. He is. And Mr Dighton will take his evidence.

COMMISSIONER WHITE: Yes. Thank you. We release you from your summonses.

10

**<THE WITNESSES WITHDREW**

**[3.36 pm]**

15 MR DIGHTON: In terms of timing, Commissioners, if it suits, we can finish Mr Cole by approximately 4 pm, have a break and then Mr McGuire will be ready to go, if that is convenient.

COMMISSIONER WHITE: Mr McGuire is coming at 4, I think he is scheduled, is that right.

20

MR DIGHTON: We have got some leeway in that he can come slightly later to accommodate a break, if that suits.

25 COMMISSIONER WHITE: So, what, will you go until – you will go till 4, is that your plan?

MR DIGHTON: Or just before, yes. Commissioners, I call Mr David Cole.

30 **<DAVID COLE, AFFIRMED**

**[3.37 pm]**

35 COMMISSIONER WHITE: Thank you. Would you kindly be seated. We may have surplus microphones to our requirements. Do we need to have one taken away? Is it alright? It's not going to interfere? Right. Thanks, Mr Dighton.

**<EXAMINATION-IN-CHIEF BY MR DIGHTON**

**[3.37 pm]**

40

MR DIGHTON: Thank you.

Mr Cole, you provided a statement to the Royal Commission dated 24 May 2017?---Yes, I did.

45

And if you look at the screen, the front page of it should appear. Does that look like it?---Yes.

Thank you. Commissioners, I tender that statement.

COMMISSIONER WHITE: Mr Cole's statement is exhibit 630.

5

**EXHIBIT #630 STATEMENT OF DAVID COLE DATED 24/05/2017**

10 MR DIGHTON: Could I please ask you to describe what work Balunu currently does?---Currently, we deliver therapeutic programs in the schools around Darwin. So working with suicide prevention and substance abuse primarily, but working with overall issues that the youth face.

15 And previously you've done other work including camps?---Yes – yeah. We initially set up Balunu to deliver therapeutic cultural healing programs.

And what form did they take, how did the process run?---In terms of the program delivery?

20 Yes?---Taking kids away from Darwin, getting them out of – you know, all the distractions in their lives, whether it's family, community, and their peers, get them to an isolated location across the harbour and working with them around cultural reconnection. So building the youth self, you know, their identity through the cultural reconnection programs. Also, doing a lot of work around therapeutic work.  
25 So dealing with a lot of the underlying trauma and issues that the youth are dealing with on their day-to-day lives. A lot of one-on-one counselling, a lot of group sessions. You know, being out on country, doing a lot of healing work with the kids, giving them a safe place to be able to let go of a lot of stuff that they're dealing with and helping them map out a pathway forward in life where they can – you know, the  
30 goals and aspirations they have, giving them the tools to make the strong choices to walk that pathway. We do a lot of life planning out there, so working with the kids around – you know, their individual goals and how they can get there with our support, other services, family and community. And a great deal of our time is spent just sitting and listening, and that's the problem: too many people don't listen to the  
35 kids. So - - -

On that point since 2005, when Balunu started, what has been – what have you observed as being some of the most serious and the most common issues that children or the young people presented with to the program?---Well, it's ..... because  
40 a lot of the issues come from intergenerational trauma, which has been inflicted on Indigenous people in 230 years in this – in this country. So a lot of the issues are complex, but they're directly linked to the past suffering that that's occurred to Indigenous people. That passed through the families and, unaddressed, has resulted in the kids we deal with today. I often look at the Stolen Generation, we talk about  
45 the Stolen Generation, but after that we have what I call the forgotten generation. And what we are dealing with now is what I call the lost generation, the children who don't understand the trauma, the pain and the issues that they confront, why they

have to endure it, and amongst all that pain and suffering far too many are turning to substance abuse to escape and self-medicate and far too many are turning to suicide to escape that pain once and for all. So it's a combination of all these issues. So – you know, the drugs and alcohol are just self-medication. They're not the cause. It's the underlying trauma and issues and the family disruptions and problems that are resulting in most of the kids ending up in the space that they're in.

Given that underlying factor, and the consequences of it, you mentioned what happens physically during the camps, but in terms of methodology or approach, what's the – what has been adopted in Balunu?---Well, Balunu is a – it's an Indigenous developed and delivered service that's a local solution to a local problem. It's developed by Indigenous people who understand the issues intimately and, through that understanding we have been able to – you know, through trial and error, is start a program that – we had no idea whether it would work or not but over time it's evolved through feedback from kids' families, NGOs, government services and so forth. We have been able to develop and evolve it, so that we're really targeting the cause roots of why these kids are ending up in the situations that they're ending up in.

COMMISSIONER WHITE: Mr Cole, can I just ask you – intervene here, I think from your statement it is not an exclusive Aboriginal and Torres Strait Islander program, other young people .....?---No, it's not. Suffering doesn't discriminate, and we acknowledge that. However, we are 100 per cent of the juvenile detention, and we are over 90 per cent of the adult prison population and we are overrepresented in all the social risk factors that are slowly but surely killing our people. So our program, although we work with non-Indigenous kids we are targeting our children to reduce – because we have seen the – you know, growing up through the issues and understanding everything intimately, you know, we identified the gaps in services. And how everything that exists has been missing the mark forever. So Balunu was developed so that we can start to fill that gap, so that we can start to capture our Indigenous kids that weren't receiving the appropriate support they needed to overcome the challenges they face. But, in saying that, we have taken out non-Indigenous kids and had just as much success with them as we have with our Indigenous kids, because trauma is trauma, and it does benefit all kids, yes.

MR DIGHTON: You mention in your statement the hopelessness and lack of purpose that some of these young people have expressed to you. How common a theme is that and where do you go with it in the course of the program? What is the path forward for children in that position?---Well, because of our lack of resources what we have always done is identify the highest risk area. So looking at – starting with suicide, working down through to substance abuse and violence and homelessness and all the risk factors that lead kids to suicide. So over 85 per cent of the kids that have attended our program have either attempted or wanted to suicide at the time that we've met them. And I can comfortably say that we haven't been to one funeral in over eight years working with over a thousand kids, not just on the camp but outside of the camps. And I'm not saying that we are solely responsible for those suicide reductions, but we know that we've had a big impact in being able to

address some of the underlying issues that the kids deal with. So suicide is a massive issue amongst our young ones. Most of them just don't want to be here, because of the – because of the challenges they face. Then it's the issues they face at home. You know, a large majority of the kids we work with come from broken families.

5 You know, single mother environments, and they're doing it tough. And a lot of the kids are trying to deal with the trauma that confronts them every day in their life, while they're trying to still participate in school and still become an active member of society, so the challenges are very, very broad. We tend to focus on each individual's underlying triggers. So what – and that's what our program does

10 because – you know, because it's an Indigenous program developed for our kids, it creates a connection with the kids that allows us to get in deep. Within a week we know more about these kids than most services will work out in five years. And that's not to say that we're good and other services aren't. It's purely because of the way we have structured the program, and the relationships that we build with the kids

15 allows for the barriers to drop, which allows and informs us to see the issue. When you can see the issue you can then implement the solution, but unless you can – unless you can see the issue, you're just bouncing around – you know, sort of blindly trying to help out these kids. But we get pretty intimate with them within our program, in terms of an understanding of the challenges that they face, and that

20 allows us to deliberately target the cause roots of each individual's challenge what they're going through. Unfortunately, because of lack of funding, we don't have the ability to do long-term follow up. So we tend to spend a great deal of our time equipping the kids with the tools to manage the challenges on day-to-day so that they can cope, building their resilience, and giving them the vision that they can see, for

25 the hope that they want, allows for them to have something to strive towards.

You mentioned that period of a week, and then the difficulty with the follow-up, and the importance of it. You make the point at paragraph 33 of your statement that it is difficult to tell a child they must be accountable and take responsibility for their

30 actions when they have endured a life of pain and trauma in which others do not take responsibility for their actions. Realistically, and talking in terms of bare minimum across the cross-section of children you dealt with, what is the minimum time that it takes to meaningfully engage with children like this?---You know, each individual is different. We tend to find that through the process of how we deliver our program

35 that we open up a good dialogue and close relationship with these kids from the outset. You know – and like I said before, it really comes down to the relationships. You know, I was lucky enough to meet Dr Bruce Perry, who is one of the world's most renowned child psychologists, and we had a good discussion and I said to him, “Look, Bruce I've got a problem. I've got a circle, and the Government has square

40 boxes. They don't understand our circle, but it works. Do I need to reshape our circle into a box so that we can get adequate resourcing, so we can do the work we've got to do?” And Bruce got in my face and said very, very clearly, “David, listen to me, whatever you do, do not change your circle into a box. Keep the circle, because the circle works.” And he made it very, very clear to me that it's taken him

45 30-plus years, through science and the chemistry of the brain to work out what the American Indian elders were telling him 30, 40 years ago, and I asked him, “What is that?” And he said, “It's very, very simple: it's relationships, and that's all it is.”

The problem we have with everything today is everything that services these kids doesn't build a relationship. It's just a job. It's just a pay pack. A lot of people in this area are passionate and care about these children, there's no doubt about that, but at the end of the day if you can't build the relationship with the kids and build that  
5 connection, the barriers remain in place that you can't help them. What we do is we build a relationship from the outset and kids who come in our programs see us as uncles and aunties who care. They don't see us as a service delivery, they don't see us as a government department or anything else. They just see us as Aboriginal men and women who care about them. Not only that, but because most of our people who  
10 work with these kids have walked through this journey and come out the other end, we understand where they're coming from. So through that relationship building and that understanding, that's 80 per cent of the work done. The rest is sharing the tools and giving the kids the knowledge that they can become the leaders that they need to become in order to break the cycles that we need to break amongst our community.

15 How is your – as a particular subset – how is your program and your work complicated by the children presenting with substance abuse issues?---Well – well, given that we are under resourced on average we have been funded 30 per cent of what we need to do our program properly. So what that means is out on our  
20 program, when you're going 24 hours with kids whose body clocks are used to being, like, 8 pm to 5 am and suddenly we get them out there, we say, "Mate, wind down at 10 o'clock, then we're getting up at 7." It's tiring on the staff, and the burn out rate is very, very high. The problem we have is so many of the kids – I mean something – it's close to 90 per cent of the kids who have come on our program  
25 drink alcohol on a regular basis – over - - -

Sorry, across what ages is that?---From 11 through to 17. And in excess of 75 per cent of the kids smoke cigarettes. And 80 per cent – over 80 per cent of the kids take drugs, use drugs. So when we take them out on a program where we are only giving  
30 them water, food and we are taking kids through severe detox while we are trying to help them, so it's very, very difficult. We do need programs that are going to start to deal with the substance abuse, and then be able to help the kids through therapeutic programs. Right now, it's very difficult taking them out detoxing them while we're trying to help them. It's a big challenge.

35 And to the extent possible, in what ways does Balunu join in with other services for issues like that, and others, where you may have the camp in the middle, but either before or after you are trying to link in with people who can assist with other issues?---Yes. So, early days we identified what are the issues? We – through  
40 conversations with all the children we identified how many kids are drinking, smoking, what are the issues, homelessness, violence, and so forth. So through that we have deliberately targeted government and NGO services that regularly attend our camps. It's very hard to get these kids to attend many services that want to sit down and talk to them about drug and alcohol, so what we do is we bring the services out  
45 to our camp. So we get the services in front of kids that they had never ever get any other day of the week, and it's great because they're coming into the kids' environment, and the kids welcome them, the kids look after them, make them cups

of tea, do the workshops. So we have, like ..... come out and do drug and alcohol discussions. We have NAAJA come out and do legal education with the kids. Ruby Gaea attends our girls' programs and runs workshops around abuse, sexual abuse. We also have, you know, various government departments come out and do, you

5 know, tobacco and drug and alcohol counselling sessions. So we tap into a lot of services, but we don't get them out there for the sake of getting them there. We get them there because the issues and the problems that the kids are dealing with, we get the services in that are directly addressing those issues or giving the kids the

10 knowledge that they need to make stronger choices around those issues.

Looking forward, you refer in your statement to the notion of healing farms and how that can be a possible model for children and young people who might otherwise end up in Don Dale, for instance. Can you please describe a bit more how you envisage that model working?---Well, firstly I would like to say I think Don Dale should be

15 shut down. I think it achieves nothing. The resources spent there could provide a better and more culturally appropriate care facility. Something that I've been lobbying government for many, many years has been something of a healing farm or a healing retreat. Similar to what we do now but on a more intense scale with longer-term, you know, care of children. And, you know, the alternatives to Don

20 Dale – it's great to say shut Don Dale down, but that's why I'm privileged to be here today to lay out some alternatives. Is – firstly I think we need an intensive early intervention diversionary program that gets these kids at the earliest stages, I'm talking primary school, and starts to work with kids in that space. Starting to change attitudes and give the kids the tools to be able to manage stuff they're dealing with to

25 make stronger choices. Because the reality is that a lot of kids that are stealing are stealing to survive. You know, a very high percentage of the kids that I talk to, and I say, "Why? Why did you steal it, why did you do it?" And most of the time it's either to eat, or to exchange it for food, or to get substance abuse – substances so that they can escape the reality of what's in front of them and what they're dealing with.

30 So something that works earlier with the kids, looks at the underlying factors resulting in offending, provides youth and family support, targeting those underlying issues. Because, you know, we have got a lot of kids who are stealing and it might be something as simple as getting mum to sit down with an agency, they can help do – you know, budget management which ensures there's always kids in the house and

35 then the kids aren't roaming.

And just on that point, before you go on, how do you identify at the early stage, then? At the requisite early stage that these people might be vulnerable?---The – I find that the schools – the schools are amazing. Especially the Aboriginal Islander

40 Education Workers, these are the workers that sit between the teachers and the students. They know the families intimately, they understand the kids' background, they know what's going on. We get so many referrals from the AIEWs, they are a great source of referral because they know the kids that need it at the earliest point. And you would be guaranteed that, if they don't, the schools do. So I think the

45 education system and the schools play a big part in identifying those kids at risk and having that early intervention. And then there's obviously – you know, the police and the justice system when kids are coming into contact. So – so - - -

I interrupted you before. Please keep going?---Yeah – yep. So providing a holistic service support for those families, through that early intervention program, would provide support for a lot of single mothers out there who are doing it really tough trying to raise especially young men, it’s very, very difficult. So a service that can  
5 come – you know, can come and identify the different risk factors and provide that support, mentoring support for the youth, having positive mentors for the youth is critical. So getting them earlier, and having those positive role models, and we find that on the camp not just with the boys, but with the girls, having positive role  
10 models – be they male or female – has such a massive impact in those kids. Because if they haven’t had that in their life they get hungry for it, so if we can provide that at an earlier stage that would make be – that would be – that would make a big difference. The youth healing retreat or the farm, this type of facility that I’ve been proposing to government for years is something that works on – provides therapeutic support, dealing with a lot of the underlying trauma, because if you don’t deal with  
15 the underlying trauma you’re never going to change the behaviour of the kids because, without addressing the underlying trauma, they still turn to substance abuse to escape that reality. And in that process they need to get it however they can. Cultural reconnection activities, which is what we do on our camp, but such a facility would have intense cultural reconnection programs delivered by elders, that would  
20 be about building the youth’s identity and their self-worth, because so many kids don’t know who they are. They stand lost in two worlds, walking in the middle confused about who they are, where they stand. And that’s what we spent a lot of time in our program is getting them – getting them to understand who they are through the cultural programs and the pride and the self-dignity in who they are and  
25 being able to walk in both worlds to become the warriors they need to become to break the cycles. Education and training, that’s about the self-belief, you know, the amount of young kids who turn to substances because they feel they have no future is incredible. They feel they’ve got no worth. Life skills, independence and self-confidence, building that in the young people, pathways to education and  
30 employment. If they can see hope, all the kids want it. They all want goodness. I can tell you now, a few activities we do in the program, one of the questions we ask is: what do you want for your future? And I can tell you that over 90, probably over 95, per cent of the kids all say, “I just want a good job, a happy family, and to be a good father or a good mother.” And that’s what most of them want. So providing  
35 those pathways where they can work towards that and become – become those strong individuals that they deserve to become.

COMMISSIONER WHITE: Where do you see the main source of the young people that come to you? I mean – I know historically, had a slightly different role because  
40 you were able to be funded for longer and more frequent camps. But would you expect – could you continue to be doing that kind of longer term camping work, you would get them from schools or police referrals or through the courts or all of those?---Yes, it’s all the above, from – from government services to NGOs, to the schools and then the community. When we’re running programs a large – see that’s  
45 the thing. When we talk about early intervention because the community know about us, and they know who we are and what we do, we often get calls from grandmothers who will say, “Can you help my grandson? He’s starting to go down

that pathway. He's hanging with them boys, but he's not drinking or smoking yet, he's not doing any crime, but they all are, and we know where he's going. Can you grab him now?" That is the earliest intervention you can have, so family – family are the greatest referrals we get, but we have kids referring kids. I can't walk through a shopping centre without kids telling me to, "Take this kid out, because he needs to go with you, uncle." Kids referring kids, to the point where our most successful referrals are self-referrals. The amount of times kids approach us, "Uncle, can I please come out to the program?" That's our most successful referral, because that's 80 per cent of the work done. They want help. So kids who self-refer, kids referring kids, is our proudest referrals but we get it across the board from government to NGOs to community. So - - -

MR DIGHTON: On that, as a final point – unfortunately we have only got a couple of minutes left, but the – are these facilities that you see on a smaller localised level, rather than urban centres, or how would they be planned or designed?---Well, you could almost have a regionalised centre up north dealing with your saltwater region and something more down in the centre dealing with your central region. That – no different to the facilities now, that are achieving zero outcome, but have something where you have community involved in the implementation and delivery of those centres with language speaking people, with culturally appropriate people there to ensure that the kids are getting the right care, not only from a policy and service delivery perspective but also from a cultural perspective. So you could base those centre regionally so that kids in that region aren't coming from the centre to the north and from the north to the centre, and it's probably emotionally lot better for the kids. But if we have only got a couple of minutes left I would just like to also add that the issues I see with DCF. That also needs to be shut down. If it doesn't need to be shut down, it needs an absolute overhaul, because the manner in which the kids are being removed and the abuse that kids are being subjected to through that whole process is sometimes worse than the trauma they've been subjected to in the home. Now, I'm not saying they shouldn't be protected. We should protect all children and we should ensure they're safe at all times, but an alternative to what is currently in place now is also setting up cultural care centres, where if a child is at risk that child can be removed and put into a care centre that is run by Indigenous people, that is also regionalised so we are not bringing the kids from the centre up north and vice versa, and centres that ensure that the kids are kept safe but not traumatised through the process of removing them, while the issues at home are either addressed or the problems are addressed, so reunification can happen, or while kinship care is put in place or while a culturally appropriate care service is – you know, foster care service is provided for the kids because the system at the moment is traumatising the kids more than the reasons they're being removed for. And I'm well aware of a study in America, 20 year study, that highlighted that kids taken into care of the state turn out worse than kids that are left in traumatic situations. So we need to – we need to address that. That's why a lot of kids – most of the kids that are in detention are involved with DCF.

COMMISSIONER GOODA: We are running out of time, but just that issue about the actual act of removal, we have heard very traumatic stories, did the kids talk to you about - - -?---Absolutely.

5 - - - the particular act of being taken away from family?---Absolutely. The trauma. The trauma of that is – you know I just have to add why Balunu got defunded, because I know we’re running out of time. For years starting this up, I never thought – we never thought, “Will this work, is there even any purpose in doing this?” And we set out blindly, just trying to do something. The success we were getting out of  
10 the kids was great, but what I started to highlight over the years was the kids telling us everything. They tell us what goes on at home. They tell us all the problems. They tell us what happens in school and in society and things. The problem is the amount of abuse that the kids have been subjected to within the DCF, the police and corrections, like I said, is worse than the abuse that they’re suffering at home, and  
15 that sort of abuse is driving these kids to the point of suicide. And I’m yet to find a child who has come on our program that has said their removal has not injured them. It’s – and I’m not saying that kids shouldn’t be removed. If they’re in a bad situation we have to protect them, but we need to look at something better that doesn’t traumatise them on top of the trauma. We need to provide something that actually  
20 keeps them safe, but ensures that we don’t hurt them further than they’ve already been hurt, and that’s the problem we face.

COMMISSIONER GOODA: Maybe do no harm could be a good place to start?---Yeah – yeah, treat them as you treat your own kid. Look – please, continue,  
25 sorry.

MR DIGHTON: Sorry. Commissioners, I’m mindful of the time. Those were my questions, but if there is anything further the Commissioners wanted to add on top.

30 COMMISSIONER WHITE: Well, we have got your extensive statement of course and we have had the opportunity of hearing from numbers of people who have had the experience your program at Balunu, people whose children have been through it and have had only the most glowing and positive things to say about it, so we are very pleased to share with us more directly your experiences and your thoughts in  
35 this area?---You’re welcome. And the sad reality of that is we have been underfunded, but we have achieved great success. If we were adequately resourced, and Government were to put in – you know, good evaluation processes, we could truly show what programs like ours can achieve, because we are one of many solutions that are out there in the community. You know, Balunu is not the solution,  
40 we are one of many. The problem we have is the Indigenous solutions, at the grass roots, are never resourced or supported to be implemented properly. Most of the time the ideas are taken and put into practice through either government services or other NGOs, and still misses the mark because the relationships aren’t there. So what we need to see is more culturally appropriate services supported adequately,  
45 and put in the appropriate measurements and evaluations to ensure that we keep improving what we’re doing because, quite frankly, our children just can’t wait any

longer. We're losing too many, and we have to take serious action to fix this broken system.

5 COMMISSIONER GOODA: Mr Cole, thank you for coming along. Commissioner White and I have talked about your kind invitation and we are really hopeful of taking up that invitation to go and visit your place?---It's always open.

Maybe we need a bit of respite somewhere down the track?---Yeah, absolutely.

10 The information you've given us, and like Commissioner White said, the information other young people have given about the effects – the positive effects of your program and your place has had on them is really gives us a lot of fodder for when we start thinking about where do we recommend we go with this Royal Commission. So thank you for coming and thank you for the work you do out in the community as well?---Yep. Thank you.  
15

**<THE WITNESS WITHDREW [4.08 pm]**

20 COMMISSIONER WHITE: We will take a brief adjournment because we are doing a video link to – I think it's the UK, it's not as ..... driven as all that. Perhaps if we resume at quarter past 4.

25 MR DIGHTON: Yes. Thank you, Commissioners.

**ADJOURNED [4.08 pm]**

30 **RESUMED [4.28 pm]**

35 MR CALLAGHAN: Commissioners, I'm going to invite Mr David McGuire to present some information to the Commission.

**<DAVID McGUIRE, CALLED [4.28 pm]**

40 **<EXAMINATION-IN-CHIEF BY MR CALLAGHAN**

45 COMMISSIONER WHITE: Yes. Thanks, Mr Callaghan. Mr McGuire, I'm Commissioner White, and next to me is Commissioner Gooda. Can you see us on your screen?---Yes, I can see you very well.

Thank you?---Glad to see you.

Can I apologise, I know we kept you waiting, we did have a small meeting that we needed to attend to just then, and we have been going all day, so we do regret that we  
5 had to keep you waiting. We also thank you very much - - -?---No worries at all.

- - - for accepting the invitation of the Commission to give us the benefit of your experience dealing with your particular program for young people?---No worries. No trouble, and I'm more than happy to – a pleasure to be involved.

10 Thank you. Mr Callaghan?

MR CALLAGHAN: Thank you.

15 Just for the record, could you state your full name, please?---David Romero McGuire.

You've provided us with a précis of evidence signed on 9 June; is that correct?---That's correct, yes.

20 Commissioners, I tender that précis and annexures.

COMMISSIONER WHITE: Thank you. Mr McGuire's précis and those annexures are exhibit 631.

25

**EXHIBIT #631 PRECIS OF EVIDENCE OF DAVID MCGUIRE WITH ANNEXURES DATED 09/06/2017**

30

MR CALLAGHAN: Mr McGuire, you are the chief executive for the Diagrama foundation in the United Kingdom; is that correct?---Yes, correct.

35 You've been involved with Diagrama for the last 16 years in both Spain and the UK?---Yes, correct.

And a significant aspect of the work of Diagrama international is running re-education centres; that's right, isn't it?---Yes. That's right, yes.

40 What are re-education centres?---Re-educational centres are all the places where young offenders, when they are sentenced or on remand, they've committed a crime and they are re-educated to try to be integrated into the community. They, in other words, in other countries, would be prisons or secure establishment for children who has committed offences.

45

Except, unlike prisons, these places might have a different sort of physical appearance. What do they look like?---Well, it's more than their appearance,

because some of them, I have to say that they are very ugly establishment, who the public sector build with the fear of the public. But more than – the difference between a prison and our re-educational centres are basically the members of staff. Members of staff, they are committed to re-educate kids and that is the key difference, is that the way that we run those establishments.

Well, the staff there, am I right, are those people that you refer to as, or include, at least, social educators; is that correct?---That's correct, yes.

10 And the term – these aren't teachers, as such?---Nope. No. They are not teachers.

What is a social educator?---A social educator is the professional, is the person who deals with the day-to-day life of the centre. They are the one actually running the day-to-day of the kids. They – they are qualified professional. When I say qualified, they have to have – 100 per cent of them, they have a university degree. Most common degrees in this sector in the social educator are social educator, as such, it's a degree, but also they are a social worker, psychologist, teacher, but they don't work as a social worker or as a teacher or as a psychologist. What they do is – in some places they are called residential worker, but what they do is to – they parent. They are the model for the kids in the custodial centres.

More like a big brother or a big sister, I think you've said; is that right?---That's correct, yes. We – what I define the role is they're parenting. They are putting what is key in these field, that ..... we put their relationship - - -

25 Can I just ask you to pause. Mr McGuire, can I just ask you to pause for one moment, please?---Yep.

We just had an intruder?---Charlie Taylor. I see Charlie Taylor. I know.

30 COMMISSIONER WHITE: He has come a day early?---Yes. I know. I think he's testing.

MR CALLAGHAN: Maybe. Maybe. It works. We can move on, I think. How does Diagrama ensure that you can retain, that you can keep these social educators working?---I was – with some people, they suggested in some of our establishment, in every single of the establishment that went I ask what was the outreach of the member of staff, how long they been working in the ..... and the average is between eight and 10 years. Why? Is because the project. It's because they are committed and it's because they – they belong to an idea, a vision, that is, to work in certain ways and make them – make the kids be integrated. How we do this? It's about development. Diagrama has the opportunity. In Diagrama they have the opportunity to develop themselves, I think. I've been social educator myself, and now I'm the chief executive. .... we don't look for expertise outside or – they can be a consultant, but in Diagrama we start from scratch and we build ourself as a professional person and as a person.

But the social educators are part of a team that form part of the case management for the young people who are detained, is that right? What other professionals are involved?---That's right. The difference – sorry, I'm going to compare because I know the two systems in terms of the UK and Spain, being involved in the two of them.

Yes?---There is a very key thing that this – we have in Spain, we have the responsibility of the case management. While in the UK the case management is with the local authority, the local government. That is key, because we know the kid. That is the reason we are responsible for the case management. We always inform, and we agree some things that need to be agreed with the public sector, with the public – local government. But this team, the technical team who are in charge of the case management, is shared by the deputy director of the centre. If there is three deputy directors, there will be three technical teams. Those are with social worker, psychologist, teacher, their lawyer, if he's needed, the doctor if he's needed there, and a social educator to inform how they are progressing in the day-to-day life. Then you have people that know about the needs psychologically, people that know the needs in the community, the social worker, and they work together. All the team together around the kid is what makes everything work.

And how do you ensure consistency in that situation where you've got such a multidisciplinary team all doing their own team? How do you ensure consistency in the case management of any one individual?---It's around meetings. We have three hand-overs per day, where we speak about every single one of the kid, every single – what is their situation. Information is very fluid. It goes to every single part of the centre. The key people – I will say that the glue, let's say the glue for keeping everything very consistent is a role that we have which is called coordinator, and is a figure that is between the educators and the management team. They are in the field, but they are feeding the – they are feeding the information to the management team, because they are also part of the management team. And they are the one who make sure that everything is consistent. Then we might have 16 or 18 educators in any time. And we will have three coordinators. There is not going to be anything – I mean everything, all information, are going to go to the coordinator, and they will decide what is needed to be fed to the deputy director or if it's more serious or more needed to inform the director. But these are the way that we keep consistency. Another thing is we – apart from the three meetings we have daily, we have meetings on a monthly basis with all the management team and the educators. And we put there all together, all the issues, concerns, what is working and what is not working. And that happens every month.

Okay. Can I turn to the question of the physical – well, to the issue of security, because you have - - -?---Yes.

- - - mentioned in your précis, I think, in paragraph 13, that re-education has minimal physical restraints, security seems to be addressed very differently from the way it might be addressed in the sorts of detention centres that we might conventionally be used to looking at. How is security addressed in practice at the Diagrama

centres?---Well, security – I have to say that security is very – is needed. I like to speak about security, like the airbag that is in the car, that you never want to use it, but you really want to have it. Literally, if you don't have any accident – and yesterday in the centre, we had – there was between three and five incident per year, that means that security is not really used. But we need it. How we address the security? The thing is that we separate – again I'm going to compare with the UK. We separate the role in residential. We separate – we don't have prison officer or custody officer, but our – mainly focus is security. Our main focus as the – of the name of the centre is there, is re-education. Our main focus is education and rehabilitation. Security is addressed with the relationship that we have with the kids, plus if – security as boundaries. If the kids they have the boundaries and the security, sorry, the boundaries and the relationship, very clear boundaries and relationship, they feel safe themselves. They don't think they're going to be bullied because if it's peer security, my experience that peer security is peer violence and they feel unsafe and they react with violence. We don't need such amount of security. For giving you an example, 90 bed unit in the UK, they will have 250 member of staff. In the UK. In Spain it will have 150 member of staff. The 250 member of staff in the UK will be mainly security. In the 150 member staff, it will be one-fourth will be security. Then basically we have 21 educators, we will have seven security guards. That is how we work.

And just to put it in some context, though, you do allow, I think, in your précis, that this sort of structure or some of these practices might be too risky from day one in a brand new centre. It relies upon, as you say, the building up of relationships and the building up of activities and that sort of thing to get to that point. Is that right?---Yes. I mean, to go from A to B, to see what we are doing now, or the centre we are running, to see exactly the same, in any new establishment it will take around two, two years.

Yes. Okay?---Why is that? I will say the children, kids, are very easy and they will change very easily. In two weeks they will re-adapt to any model. The difficulty is the culture of the member of staff. Changing member of staff cultures are very difficult.

Yes. And the point, I think, is that you work it up to the stage where security is not an issue because the children don't want to abscond. Can you just explain to us some of the reasons why that's the case, what sort of activities they do, why and how they're kept busy; that sort of thing?---Okay. Then I'm going to speak about the journey of a kid in any centre, in any part of the world. And is – and this is exactly the same in the UK, in Spain, and everywhere. Any kid coming to any secure establishment, they are scared. They are – they don't know what they're going to have. They've been listening to some bad stories about all these centres, and the first thing they do when they come is, "How can I escape from here? I don't like this." And, "I want my freedom back and I want to go with either my friends, either my family, but I don't want to be in this establishment." That happens everywhere. Then, when they – now, focusing in my – in our establishment, when they come to Diagrama we do a very good induction where we show them what this – "This is the

expectation we have from you, this is your rights, and these are all your duties, and you are responsible to move.” And they will see kids doing a lot of activities in the centre. They will see kids going outside of the centre to do activities, and the idea of “I’m going to escape” change to the idea of, “Why I’m going to escape from here?”

5 It’s better if I abscond from here, because is less risky. If I go – I can try to behave very well, have the opportunity to go outside and as soon as I’m outside, I can abscond.” But because the process is a process, and a progression, they still – they start from scratch. They don’t have activity. They – we are doing the assessment. They are not going to use tools and they start to get – little by little, they start to get

10 responsibilities and they start to get more freedom, in a way, in the centre. When they’ve been working so hard for achieving all this, and they’re so proud that now anyone could be trust, and they can – and they can be on their own in the centre, now they have the opportunity to go outside of the centre and then all of them they start to think, “Should I abscond? Because if I abscond I’m going to go to the same place

15 before, I’m going to go with my family or my friends so the police is going to come ..... I have a very good relationship with, I’m going to fail. I mean, I don’t want to fail now that I’m achieving, no way.” They come back and I have to say that – some figures, from over 85 per cent of our kids in custody, they do activities outside in one time of the centres, and we have – that ..... from every single centre, the kids go

20 outside, all the kids go outside over 5000 times and we have around five absconding per year, and from those five absconding, half of them are because they are late, they are flirting with other girls, or they are normal things of teenager, and they’re late. They have their consequences. “Sorry, you are late.” Exactly the same we will react with our own kids, “Now you are going to – you cannot watch TV.” I mean,

25 something very, very normal. And we don’t make a big case of absconding. And 100 per cent of them, if they are not coming on their own because they’ve done – I don’t know, they – they went to their home because they’re scared or they want to see their grandma is in hospital, thousands of things that can happen, they’re going to go to the beach with other kids, anything can happen. As an educator, we go to the

30 homes and collect them and we bring them back to the home. That’s the journey of these kids.

Okay. Thank you. You’re aware of this Commission, and the work that it’s doing, and the place it’s doing it in, and one of the factors that affects the work of this

35 Commission is the overrepresentation of a disadvantaged ethnic group, namely the Australian Aboriginal people, within the detention system. Is there an overrepresentation of a disadvantaged ethnic group in the European systems that facilities have to cope with?---Yes. The profile of the kids is changing all the time. These – I would say that that situation about deprivation and poor families and so on,

40 we used to have it like 10 years ago, and we – it was more gypsies. In Spain, there are – there were a lot of gypsies in our centres. I would say that 85, 90 per cent of them were in our centres. Now, in Spain everything is changing to a more normalised family and they’re not that – the deprivation is not that – I mean, they still have poverty, but is not the one that I started to work with. In the UK, I will say

45 that, yes, the background is quite similar in terms of deprivation in the UK. But every country – every county of every country is quite different, and they have different issues, but what I have read from there, from Northern Territory, is very

similar what I – we’ve faced in 2000 – between 2000, 2004, and I can see how everything is replicating.

5 So were there special aspects in what you did to address that  
overrepresentation?---Yes. It was special, because the needs were totally different.  
The needs in that case, it was – we needed to fulfil their needs and their needs were  
they needed to be fed properly, they needed to have healthy life because they were  
unhealthy. They needed – we needed to focus in having a shower because some of  
10 them, they didn’t have a shower in their whole life. I mean, that are the needs we  
were fulfilling those time. In this – now, their needs are – is different. Violence are  
– has increased. Mental health problem is more – more an issue now, there are more  
mental health problems in the kids that we are working with today. Then their needs  
– we need to adapt to the type of ..... the profile of the kids that are coming. And,  
15 yes, the needs in those time and because the culture of the kids were totally different.  
I mean the culture of the gypsy, comparing with the others, are very strong but on the  
other hand knowing what is their culture, is make us to work very well with them  
because we knew the family ethos, they were stronger than the rest. Or the things  
like that, okay, then – then we start to work with the family and when the family was  
engaged and we all work together it was very successful.

20 There does seem to be some parallels there. Can I ask you this: the involvement of  
judges in the process in Spain is very different from the role played in Australia. Can  
you just give us a brief account of the role played by judges and prosecutors beyond  
the sentencing process?---Yes. Starting with a point that all the centre are quite  
25 local. Then we are not going to have kids from far, far away, from Spain, for  
instance. It’s going to be from the same region. Then the judge, after sentence any  
kid, they are going to go – once every three months they are going to go and speak to  
– interview all the kids, knowing how everything is going. But it’s not just that,  
because also in a daily basis I will say they speak with – there is ..... incident or if  
30 there is something, positive or negative, that they need to be involved, they have  
daily interaction with the director of the centre and they speak about every single kid.  
Imagine that one kid is entitled to go and do activities outside, then we are going to  
inform them about this kid, this is the progression of this kid, we are going to ask for  
– for doing some activities with an educator. After that they’re going to go, we are  
35 going to go with the family to some – some activities. And we inform about all the  
progression of every single kid that they have with the – to the judges. The  
prosecutors came – or comes once every five, six months and they are the one  
making sure that – basically that the taxpayer money are well used and making sure  
or informing to the government, the national government, that we are fulfilling all  
40 their law, all their rules and everything. And we are working in the legal framework  
that we should – we should be working. Because at the end of the day, we are  
outsourced by public sector. We are not for profit company, but we are not the  
public sector. They need to make sure that everything we do is in the legal  
framework.

45 So it’s the prosecutors who are guarding the public interest?---Yes.

Okay?---Exactly. And the - - -

It – sorry?---And the work between the judges and the prosecutor is very, very close.

5 Yes. You introduced that, or you made reference in the course of that answer to the fact that everything was very local and that the – it's the case that regionalisation of these facilities is something that's pretty important to the Diagrama method. Is that right?---That's right. And for three reasons. The first reason is having the family nearby.

10

Yes?---The second reason, if you want to integrate them in the community, they need to be close to the community. And the third reason is the professionals are around. Their relationship with social worker from the community, maybe probation officer, or also with the judges and prosecutor. These are the three things that I think makes everything key for being local.

15

Alright. The – at annexure 2 of your précis, we don't have to look at it but the short point is recidivism rates have significantly reduced in Spain where the Diagrama method has been engaged; is that right?---That's right. We have been doing some research and I also have evidence because I went one month ago to a local prison, other prison from 1200 prisoner, other prisoner. I just knew one from our centre.

20

Alright. That's an obvious indicator of success. Are there other things to which you would point that indicate the success of the Diagrama process?---Yes. We assess them when they come and they achieve a lot of qualification in our centres. They go through a lot of special and general interventions. They come in – they come in one way and they go in a different way. You can see very obvious changes, just the achievement of people that 100 per cent of our kids, they – they fail in school, and when they go with qualification, with vocational training, with some schooling they know how to read, how to write. It's a huge achievement. And welfare, health, they do – they – we teach them. We show them how to spend the leisure time instead of being drunk or having drugs, is doing some sport or do some sort of activities that are going to be healthier for them, and you can see one kid coming and a different kid going.

30

35

Can I ask you a question that arises from paragraph 27 of your précis, where you discuss the combination of justice, welfare and psychiatric placements, and you refer to the centre where children are there through the justice system and the care and protection system; is that right?---Yes. We have one centre – in fact, I was there yesterday with some, in a – in a visit. And it's two units, basically. One of them, they have eight young people in welfare. And they are separated from the other unit that is 12 young people in justice. They share the common areas; they are separated in the unit. But they – 100 per cent of them they will do activities outside. They do also activities – I mean, they can share activities in the centre. They can do things together. But it's a very specialised – I mean, the profile of the kids is very special. And - - -

40

45

What's the profile of the – what's the profile of the kids from the justice system?---Basically, they are more in – they have like an order that is called – well, they are there basically because they are facing domestic violence normally against the families. That is the difference. There are people – they are not – they haven't  
5 committed a crime like, I don't know, theft or they are not murderers, they are not rapists. They're basically ..... of not knowing how to socialise or how to react with – how to react to conflict and basically 100 per cent of the kids, they are there because of domestic violence.

10 So for that smaller category of children, there's scope for collocation of people who are involved in the justice system and the child protection system. But even then it's not total collocation, they don't have the same sleeping arrangements; is that right?---That's right. They are not in the same unit, never.

15 Okay. Look, finally, you have recently partnered with the University of Canterbury to create a specialist agree for staff working in your centres; is that right?---Yeah. In the UK, yes.

20 Has that commenced?---Well, no, because the situation in the UK is that there was a tendering process. Nearly all the centres in the UK are run by for profit companies ..... Serco ..... different companies, both adult and young people. We were in – we were the only charity involved in this tendering process, and because the – we know what's going on in the centres and again it's too much security, too much prison officer, the culture is more about punishment than rehabilitation. There is – there is a  
25 scandal – there was a scandal in December two years ago about, in one of the centre, prison officer abusing kids. And the one thing we were shifting the profile of the member of staff over there, we design our own degree, that is more pedagogic, and some – because we agree that some of the staff – we recognise some of the staff would be able to educator, some of the staff will be able to read security, and a lot of  
30 the staff we will need to be – to get rid of them because they are not good people, basically.

Thank you. But we haven't – we didn't – sorry, we didn't – we were not awarded with this contract. It was G4S, and later this centre has been taking over from them.  
35 They have it – now, it is the public sector. But we couldn't – we didn't have the opportunity to start doing this degree.

Thank you. Mr McGuire, I'm going to conclude by referring to a matter that's not before the Commission, but there was a BBC story done in which you appear. It's  
40 available on YouTube and you can be heard saying, in the course of that video, that what we're talking about here is not rocket science, that you believe that you are administering a fairly simple philosophy; is that right?---100 per cent. There is no – I think more simple, a more basic, that what we do, because we are all doing with our own families. To be honest, it's not rocket science. It's so easy to – the difficulty is  
45 to change the culture of how these kids are perceived. If they are perceived as young offenders, that they need to be punished, that is very difficult to change. But what we are doing is something that can be replicated all over, with the support of the

public sector, the support of the legal framework and everything, it can be easily replicated all over the world. Easy.

5 And on that note, Commissioners, I have nothing further, but I see you are poised to enter the fray in any event.

COMMISSIONER WHITE: Yes. Mr McGuire, I just wanted to ask you about this extraordinary retention rate of eight to 10 years for your educators in your centres. One of the major problems in the Northern Territory, partly because it hosts a lot of transient people who come here just for a short time, but one of the major problems is retention of staff. So that – recruitment and retention?---Yes.

15 What do you think are the things that the government should be looking for in those who would seek to work in this sector?---Well, I would say that the retention – we had the problem. I mean no one wants to be in a war, and if you go to a shelter that the relationship is broken, that they are – they don't know what to expect every single day when they go to work, they know that they're going to be – to be having fight, trouble in the centre. They will be looking for a – they are not enjoying their – their job and they will be looking for a different job, easily. Is – no one wants to be in a war. When everything is settled and you are in – and you are motivating and you can see that the kids are improving in the system, you start to retain people. And if they are valid member of staff, they can see that they are valued and they're not just people that just restrain kids and they lock doors and so on, they are part of a – they belong to a philosophy and value – a foundation of a value system, they stay.

20 They stay because they enjoy what they are doing.

25

I suppose that's the answer for most work, isn't it?---Yes, exactly.

30 Thank you very much, Mr McGuire. Commissioner Gooda and I, and all the Commission staff, are grateful to you for troubling to prepare a précis and to give us the benefit of your very interesting work in Spain and we wish you every success in setting it up in the United Kingdom. We will watch that with some interest. Thank you?---Thank you so much. Thank you.

35

**<THE WITNESS WITHDREW**

**[5.06 pm]**

40 COMMISSIONER WHITE: Is that us for the day, Mr Callaghan?

MR CALLAGHAN: Yes, that is all, Commissioners. I believe 9 o'clock tomorrow is the suggested starting time.

45 COMMISSIONER WHITE: 9. Is that – and that's in open court?

MR CALLAGHAN: I believe so.

COMMISSIONER WHITE: Alright, then thank you. Would you adjourn until 9 o'clock tomorrow, in open court, please.

**5 MATTER ADJOURNED at 5.07 pm UNTIL THURSDAY, 28 JUNE 2017**

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