



COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

TRANSCRIPT OF PROCEEDINGS

April Lawrie, Commissioner for Aboriginal Children and Young People

Denise Rieniets, Counsel Assisting

Hearing for the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia

Tuesday, 12 October 2023 at 2:00pm

Expert Witness:

- **Commissioner Natalie Lewis**

Denise Rieniets, Counsel Assisting:

Welcome, Ms Lewis. I'll ask the Commissioner to do an acknowledgement of country before we start.

Commissioner Natalie Lewis:

Thank you.

Commissioner April Lawrie (Chair):

Yes, thank you. I'd like to acknowledge that we're meeting on the land of the Kurna people here in the Greater Adelaide region, Kurna Yarta and to also acknowledge where you're meeting on Turrbal and Yuggera people's country and that we pay our respect to those Elders, past and present, and also acknowledge the numerous Aboriginal families from other nations who come to make the Kurna country and the Turrbal and Yuggera country their home. So without further ado, I'd like to now hand over to Counsel. Thank you.

Counsel Assisting:

Thank you. We'll just have, ask you to affirm your evidence. Thank you, Commissioner.

Carla Ringvall, Assistant to Counsel Assisting:

Thank you. I'll just ask you to repeat after me, please. I solemnly affirm that the evidence that I will give.

Commissioner Lewis:

I solemnly confirm that the evidence I will give.

Assistant to Counsel Assisting:

Will be the truth, the whole truth, and nothing but the truth.

Commissioner Lewis:

Will be the truth, the whole truth, and nothing but the truth.

Assistant to Counsel Assisting:

Thank you. And please state your full name, address and occupation.

Commissioner Lewis:

Sure. Natalie Louise Lewis, my role is the Commissioner with the Queensland Family and Child Commission and [Address Provided].

Assistant to Counsel Assisting:

Thank you.

Counsel Assisting:

Thank you, Commissioner, and we discussed previously that this is an Inquiry by Commissioner Lawrie into the Aboriginal Torres Strait Islander Child Placement Principles here in South Australia and I understand that Queensland have done some significant work in looking at that principle, those principles and moving towards Treaty and moving towards delegated authority in Queensland.

Commissioner Lewis:

Yes.

Counsel Assisting:

Would you tell us about how that's come about and what that process is looking like please?

Commissioner Lewis:

Sure. So I guess to sort of go way back, so the concept around the Aboriginal and Torres Strait Islander Child Placement Principle, moving from what had been known in legislation as sort of a one dimensional hierarchy of preferred placement for Aboriginal and Torres Strait Islander children, that transitioned to the concept around the five elements occurred sort of in that last iteration of the previous National Framework for Protecting Australia's Children. So, some work that was being undertaken by Clare Tilbury, in partnership with SNAICC when I commenced at QATSICPP in 2012, I was able to be involved in that work and I guess from that initial paper it was sort of elevated to say, well, hang on, there are, it's not just one element of the child placement principle, it's not just about placement. There are these other concepts that really speak more clearly to the broader intent of the child placement principle as it and I guess part of that critique was based on the fact that just simply having a list of preferred placement options within legislation means that child protection systems are only required to think about an Aboriginal child's right to cultural continuity after they've already made a decision to remove them from their family. So I guess that was really that and sort of a bit of a mismatch, I remember sort of, you know, looking back over some of the Bringing Them Home material and I thought that what we ended up with in terms of terms of that placement hierarchy fell well short of what was envisaged, you know, in that report. So, so

effectively we took the concept around the five elements to the National Framework. I was the representative for SNAICC at the time on that tripartite working group and we sort of, I guess just lobbied around reconceptualising what the child placement principle into these five elements, because our argument was that that then provides a more comprehensive safeguard for the protection and promotion of the rights of Aboriginal children that are in contact with the child protection system, not simply those that have already been removed from their families. So in Queensland, once that was sort of adopted in national policy under the framework, we started lobbying more directly to the Queensland Government who were, you know, party to that agreement under the national framework, to really, I guess, put some pressure on on getting those five elements into our legislative framework in Queensland. So that occurred in 2017, the Child Protection Act was amended, section 5 was amended to incorporate each of the five elements of the child placement principle. Now the intention of that was that those five elements were to be applied for every significant decision in relation to an Aboriginal or Torres Strait Islander child. One of the other, I guess, important changes that happened, it's sort of complementary when we think about the child placement principle, was the change to our best interests principle. So it's still maintained as the paramount principle, but it in the Queensland legislation it is the best interests of a child not just now but for the duration of that child's life. So it creates that sort of understanding around the enduring impacts but also the enduring responsibilities to protect children and young people, so concepts like cultural continuity, connection to country, you know, to family, to language, those things look different when you think about an enduring obligation than they do at a point in time. So those two things interacting as legislative reform in that suite of amendments, I think were fairly significant.

Counsel Assisting:

Thank you. In terms of the active efforts that have been embedded in your legislation, could you speak to that please? Because I understand that's also something that's occurred in, in Queensland legislation.

Commissioner Lewis:

Yep, certainly. So the concept of active efforts, so I know that both SNAICC and QATSICPP have done a lot of work in that space, and are probably, you know, of more of their recent work really well placed I think to describe where they're up to with that in supporting implementation. However, fundamentally, the importance of introducing active efforts was to shift the legislative standard beyond what's reasonable or what was practicable, to making sure that that the standard was about being purposeful, timely and thorough. That's a very different test than just what's practicable or what's reasonable, because I think what we would see a lot when we would do reviews of cases, for example, or we would, you know, really interrogate the data, what we would see is that a lot of the decisions, a lot of the evidence that showed us the child placement principle hadn't been adhered to, was justifiable under a standard of reasonableness or what was practicable because, you know the the department could talk about oh well, you know, we had staff shortages or we didn't have an Aboriginal or Torres Strait Islander person to engage with or, you know, we had staff issues in terms of people hadn't done training in understanding the child placement principle. So there was always an ability to use operational challenges like workforce or business hours or, you know, service performance to justify non-compliance with the child placement principle. Now I can't tell you that that was the inner workings or the motivation of the department to accept that recommendation and progressive active efforts, but from my point of view, the advocacy that was done to incorporate it was for that very purpose.

Counsel Assisting:

And could you, can you speak to how that's now working in the in the application of the principles in across Queensland?

Commissioner Lewis:

Yep. Sure. So if I can, you know, start on a positive and say look, you know I think that Queensland has a pretty strong legislative framework. I think there's a number of aspects like with the child placement principle, with active efforts, with the the changes to the paramount principle, those things make for a great legislative framework. I think what we've seen in terms of application is I, I guess an under appreciation of the fact that the child placement principle is also an exceptional practice framework. So what we've seen is some of the intent of the policy of of the legislation not be evident in our observations around when we're reviewing particular decisions or observing it in practise. So what we're seeing is that there's sort of this sort of dissolving, I guess, of the intent as you move from legislation into practise into practice. So I think one of the remedies for that, which which again I think is probably just been overlooked or underdone here in Queensland, is that when the work was published by SNAICC about implementation of the child placement principle, one of the really important aspects of that was to acknowledge that to safeguard that intent, you needed to observe the child placement principle across five different system elements and that that was about saying yes, you need to have, you know, a strong policy position which reflects all five elements, you also need to support that in legislation. But as you move through the other elements, when we talk about the processes of government, you know, and of departments and the programs that are offered and you know that, are developed and offered and operated, but also in the practice. So what we're saying is that to actually deliver the intended benefit for Aboriginal and Torres Strait Islander children, you need to make sure that the child placement principle is observed, you know in in policy, in legislation, in the programs, the processes and the practice of departments and of funded services. So I don't think that we've seen consistent translation of that through to practise in every part of Queensland, and that's probably the area that requires the most work. So when we did, as part of our oversight function, we did a review last year of I think 30 cases. So we reviewed the decisions to place Aboriginal and Torres Strait Islander children in residential care, so it was one point in time decision that we reviewed. So our staff, you know, had honorary officer status and were able to look at the files and really understand what was at play in the in the process of making those decisions and to the findings of that was that we effectively couldn't identify any examples of application of the child placement principle of any of the five elements to the standard of active efforts. So it sort of shows you that that that translation into practice, there's, there's still a lot of work for people to understand that the child placement principle isn't an optional extra, it's not a tack on to whatever your professional framework happens to be. It is the law and it needs to be applied at every single decision that impacts the lives of an Aboriginal child.

Commissioner Lawrie:

Commissioner Lewis was there anything, I guess, systemically in relation to accountability for, I guess, issues with not applying the principle to the standard of active efforts?

Commissioner Lewis:

Yep. Well, we certainly, so we're in being, you know, being that our oversight powers are somewhat limited, however, we're able to conduct those reviews with the cooperation of the department and publish those findings. There is then, unfortunately, no accountability or no requirement of the department to accept those findings and then tell us that these are the things we're going to do to remedy, you know, to remedy this situation. So I think there's a couple of, I think a couple of the things that we imagine will be done in response to that, to try and improve compliance, is leaning on

the implementation of delegated authority where some of those decisions start to become within the scope of community controlled organisations. So we would, you know, make some I think pretty well based assumptions that there's a much better chance of consistent regard to the child placement principles when the decision is being made by local community controlled organisations in the child protection space. I think in the in the meantime, prior to those delegations being moved over and consistently applied across the state, there is still, you know, the opportunity and the obligation within the child placement principle themselves around the partnership with community controlled organisations and Aboriginal communities in making decisions. That is, I think, seeing a big improvement in that would make a massive difference in overall compliance with the child placement principle for all decisions and also one of, I guess for me, the most critical one would be supported by probably the most recent amendments, which there was some amendments, I might have to come back to you and confirm the exact timeframe for the amendments, I believe was about 12 months ago, but there was there some significant amendments that emphasised the participatory rate rights of children and families within the Act so a bit of an increased focus or more clarity provided around the obligations for the rights of the child, including their participation put into the legislation. So I guess that's one of, you know, one of the key premises, you know that sort of underpins the child placement principle so you know, if those things are happening in isolation from children and their families, then that's not self-determination. It's not self-determination by proxy if an Aboriginal organisation occupies the seat at the table by displacing children and families from that process. So we have to figure out a way to make sure that that primacy of the right of families and children to participate in decisions about their lives does not get lost in the excitement and the fever of, you know, things like delegated authority.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

What do you see as the roadblocks to delegated authority occurring in Queensland?

Commissioner Lewis:

So I think that there's probably a couple of roadblocks and one and I just want to just put in context that. you know, this is sort of my observations and my, I guess this is really drawn from my understanding of what was the purpose of delegated authority when it was introduced in, in, in the legislation. Sorry, let me just make my office light back on. So the way that it's worded within the legislation with delegated authority is that the paramount principle is still very, very clear and that the determination about who makes a decision or who is best placed to make a particular decision for a particular child is subject to that being in the best interests of that particular child. So, so I guess I think that that's a reasonable approach within the legislation because I think it would be dangerous to approach delegated authority in a way that moves it away from the paramount principle. When things that happen under an Act are no longer directly focused on the paramount principle, then my question is, whose needs are being met? So if that if that Act exists for the safety and wellbeing of children then changes in how we interpret things like delegated authority, I am concerned about those different interpretations being more about meeting the need of the system or meeting the need even of a sector rather than upholding the rights of a child. So I don't know if I'm that sounds too cryptic but I think that it's easy, I think in a lot of the interpretation now, you know, around the transition of delegations, for me I think there's a really clear distinction between powers and functions, and we see the approach around, and delegation of authority can apply to either, but I think the real focus that we're seeing at the moment is a focus on delegation of functions and my concern about that is what motivates that? So is it that we pick a function that

either the department doesn't do well or doesn't like to do, or you know, and that is what gets handed over to the community controlled organisation. I think that that removes it from the test of is that transition of authority still in the best interests of this child? Do you know what I mean? So I understand that it takes, it makes it mean that the delegations move more slowly, maybe, but I think the wholesale transition of functions from a system that we have said over and over again is not fit for purpose, is incongruent with how, you know, we operate as a community of care, you know, for our children to actually just transport those and their frailties into a community controlled context does not meet the tests of best interest for children.

Counsel Assisting:

So what's the answer to that, in terms of preparing the Aboriginal controlled organisations to deliver a different service?

Commissioner Lewis:

So I think that if we separate out the concepts of powers and functions. If we looked at functions like, for example, assessment of kinship carers you know that is you know that that would be, I imagine, for a lot of the organisations that are interested in taking on delegated authority, that would be one that that would see would they could make a big difference in. But it's about being able to say you don't make the decision or give the approval to delegate that wholesale function when the department, when the community controlled organisation, is deemed to have enough capacity to operate that function in the way that the department operates it. I think that's just, I'm trying to think how best to explain that, but it's like, I think the real test should actually be about community controlled organisations saying in order to safeguard the safety and wellbeing and uphold the rights of our children, this is the type of function that we believe we are best placed to deliver and on our terms, in this way, so that it's not just a translation. We don't want our sector to become the arbiters of a system that has failed our children for generations so it is about actually saying that the delegation is not just about the readiness of the sector from the perspective of the system, it's actually about flipping that dynamic and saying when the sector has actually determined which of the functions they feel they're better placed to deliver and that they're in a space where they can deliver it in a meaning in a in a way that is meaningfully different than the experience for children and families in the existing child protection system. So and and I guess the other thing too is that some of the functions literally don't require a delegation of authority, it's a service agreement that gets resourced, it's not a legislative power to make decisions. Do you know what I mean? So if you're separating out powers and functions, that looks really different, you know?

Commissioner Lawrie:

For the functions.

Commissioner Lewis:

And I think the other thing too is that the transition of authority, I think you know it's always is often, you know, framed in you know in the in the construct of self-determination and I think that it's really important to recognise that if an if a community does not want to take on that system or take on those functions, their rejection of that is self-determination. Do you know what I mean? It's and I don't know that it's valued in that same way. So I think that there are a number of organisations that are asserting that, you know, that resistance because they do not want to inherit, they don't want to inherit the system that has harmed children in their community. So they want to be able to say no what we might want to negotiate is that delegation of authority for particular decisions, as opposed to taking on, yeah, taking on functions. I just think that it's important to recognise that when a

community says no, that's as much a valid act of self-determination as putting your hand up or signing a service agreement to say, OK, we'll take on cultural support planning, you know? Yeah.

Counsel Assisting:

Thank you. How willing is the department in Queensland to moving towards delegation of power, from what you've seen?

Commissioner Lewis:

Look, I think that there's certainly a commitment. I think, you know, we've got a generational strategy, so the Our Way strategy that was launched as the partnership with Family Matters, you know, a few years ago has been very clear about the commitment to transition authority and, you know, and to delegate, delegations of authority. It's been, I think it's been a little bit slower than some people might like and I think that, for me, I was disappointed to not see early progress that was centred around individual children, that it was sort of almost like building to scale till, you know, to be able to transition a block of, you know what I mean, a block of cases all together to perform one particular function. Whereas you know I think the approach that in in, you know, in in some communities where if I, you know, if I maybe think about, like Palm Island for example, we have a service that is largely staffed by local people that have clear relationships and, you know, cultural obligations to the children whom they're providing supports to and so applying that idea about the delegation of authority for decisions back in 2017, there was probably a number of children in that community for whom it would have been much better that those people in Palm Island started taking on decision making for those particular children and five years down the track, their outcomes might be really different and so I think that applying that test around for this particular child is this decision best made continue to be made by the department or by this community who know who care for and who are going to be here, you know, for a long time for this child? And I think that that decision approaching it like that enables the transfer of real meaningful authority under the Act but provides a much more immediate benefit for the children for whom that Act is supposed to be, you know, promoting and protecting the rights, yeah. Is that, sorry, was that clear?

Counsel Assisting:

So that, that ties in with what you said earlier about the prevention being lifelong.

Commissioner Lewis:

Yeah.

Counsel Assisting:

Not just a spot in time decision that's being made about those children.

Commissioner Lewis

Yeah. I'm sorry, yes, sorry, I think you asked me just about, sorry about the just the commitment, the willingness and so look, I think that the commitment is there on paper I think that there are a number of you know leaders within the organisation and you know people across different regions that are wholeheartedly committed to the concept of, you know, delegated authority. I think some of the barriers to that happening, I think is because we've remained for a while tangled up in that, that sticking point about the perceived capacity, or lack of capability, within the community controlled sector and so without a clear end point or definition about what capacity or capability we're talking about, that's been able to be used as an excuse for inaction for a really long time. So it's stalled you know, I think some of the progress. There was, you know, QATSICPP did work with the department on developing, you know, a 10 year blueprint, I'm sure that they'll speak to you about that, but like a blueprint for the transition of authority, you know, across Queensland. So, you

know, to forecast that out and say yes across the next 10 years, we're committed to, you know these things within the department no longer being the responsibility of the department, but the responsibility of communities and I, you know, and I think that's good to have, you know, to have a plan. But while that while the Act enables the transition of authority for individual children to people who are better placed to make decisions now, that will affect the longevity, you know, of that, then I don't think that that should having a having markers in a 10 year plan should not impede the ability to transition that individual decision making authority now.

Counsel Assisting:

Commissioner, can you speak a bit about the changes in the culture within the department that the, that Queensland has seen?

Commissioner Lewis:

Yeah. I think there's been, OK, I think that there's been, there has been definitely a shift, particularly and, in my previous role and in my role now, my point of interaction in terms of you know the leadership or the executive of the department there's certainly much more willingness, I think now to you know, own the mistakes of the department to identify what the limitations are and to, you know, and to be very public and direct about the need to, you know, transition to community control. I think, you know, I think that's a fairly common narrative like that that we hear now whereas you know, you know, five or ten years ago, that was certainly not the case and in different parts of Queensland we certainly see those words being turned into action and that is absolutely a cultural shift that. The biggest shift in culture that needed to happen with the department was their willingness to release power, to relinquish power. It was never about making them, you know, quasi experts about Aboriginal culture, because then that would make it even harder, you know, less likely that that would relinquish power. So the emphasis about understanding the department's resistance to let go of power and to share decision making and those types of things, I think have been organisationally the biggest challenge in terms of culture for that organisation. So where that's happened in places like the Sunshine Coast, I think, you know, that's always sort of thrown up as a as an example and it's, you know, no coincidence that that was one of the early adopter sites, you know, for delegated authority. So there you have, you know, really strong and honest and legitimate, you know, relationships between the community controlled organisation there, REFOCUS, and the department in terms of their regional office and some individual service centres. There was sort of a willingness to test things, you know, and to jump in and share things like, you know, bringing people together to share decision making about, you know, assessments and, you know, at intake. Those things were happening even before those types of initiatives were really happening even before the formal roll out of delegated authority. So I think that the ability to test and establish really, really trusting relationships there actually made that a clearer passage. So where we see that trust has been built, there's not so much an issue about relinquishing, you know, control for things and so, you know, we're seeing decisions made by the community controlled organisation, you know, around reunification, family restoration, finding, finding family and, you know, lo and behold, they're sort of leading in terms of, you know, the highest proportion of reunifications across the state. So where, where those things are in place, where the conditions are right, you know, where there is trust in relationships, where there is irrefutable like capacity, you can't argue the capacity of that organisation, what they do, they do well, you know, there's there is no resistance to, you know, to delegated authority. There are parts of Queensland where there is still resistance and I imagine will be resistance for a long time and I think for me that that just reinforces the power imbalance because what other part of the legislation is voluntary. Do you know what I mean? It's like, why do we have to wait for for the comfort level of a regional director for the

prospect of delegated authority to become viable in a particular location, just because they have a particular opinion of an organisation, or because their observations of an organisation might be different, you know? And I think that that's that the part, the part for me that keeps sticking and dragging us back to that capacity argument is really really frustrating because, you know, do we get to question the capacity of the department to continue to perform functions that they have performed poorly for a very, very long time? Well, no, we don't. But in terms of the other side of the equation in terms of delegation, that is the basis of a lack of progress, you know, so I just think that's probably, yeah, I think that's a little bit frustrating that where it's it, some of it seems to be at the level of comfort or discretion to some extent, at the discretion of individual, you know, leadership in particular parts of Queensland or within particular, you know, service centres, you know, that where they may have dug their heels in and, you know, not be embracing and moving towards, you know, actual implementation of their legislation so.

Counsel Assisting:

And what accountability is there for those regions in terms of the problems that you're identifying?

Commissioner Lewis:

Look, I think that the first step in in trying to address that, was the, you know, was the development and the publication of the 10 year road map because it kind of sets some things in place and said look, this is going to happen by this timeframe and you don't actually have much of a choice about it. But where we position different parts of Queensland or different organisations across that 10 year road map you know, still I think need some external oversight, you know, to make sure that it is not just about the discretion of individuals, that it is actually following an agreed process and that it is based around objective decisions about the readiness of an organisation to take things on rather than the personal opinion of individuals.

Counsel Assisting:

And who would you say is the appropriate external oversight body? Is there one?

Commissioner Lewis:

Well, I think that, well, the Queensland Family and Child Commission, you know, where I am is the existing oversight body around systemic reform and we are in a process at the moment of awaiting the outcome of some proposed, you know, legislative reform. We do have very limited power, in terms of the power we don't have powers to intervene. We do not have own motion powers, we have a responsibility for reporting annually around the performance of the system against national goals or against state goals. Now the challenge of that is that the system sets those goals themselves, or a part of the process of setting those goals, and sometimes those goals are at odds with the needs and aspirations of Aboriginal and Torres Strait Islander children. So the more appropriate mandate and frame for an oversight body to be able to effectively look at things like delegated authority or other aspects of the system, should fundamentally, always be through the capacity of that system to promote and protect the rights of Aboriginal children, not the performance of goals that have that have been agreed by all jurisdictions that are simply about, you know, you know particular targets or you know, particular measures. So that's a limitation that we have currently that we're hoping will be resolved through legislative reform and if that occurs, then I think that it is absolutely appropriate that the that the Commission, particularly more a dedicated Commissioner for Aboriginal and Torres Strait Islander Children should be able to inquire into and provide independent oversight of things like the delegation of authority. But in saying that, the other, I mean that I think the first level and the thing that exists now under the you know the road map is the partnership between the peak body here in Queensland and the department, and that

being, you know, an equal relation, you know an equal partnership. There is at that level an opportunity for accountability and you know, between those partners, you know, so for QATSICPP to be able to both hold the department accountable for the parts that they're responsible for under the blueprint, but also to be accountable themselves for, you know, moving you know, moving the sector through each of the phases. So I think that, but in any of those large scale things, I think that it is having external and independent oversight is not an unreasonable community expectation.

Counsel Assisting:

Do you in Queensland not have a designated Commissioner for Aboriginal and Children Young People?

Commissioner Lewis:

No.

Counsel Assisting:

OK.

Commissioner Lewis:

No, we have we have a different arrangement in that we have a Principal Commissioner and an other Commissioner, and it within our legislation, at one of those positions must be held by an Aboriginal or Torres Strait Islander person and so you know, I'm a Gamilaroi Yinarr, you know, as I am, I'm the Aboriginal person who holds the office of the other Commissioner, so and within that arrangement there is there is not equality in terms of roles, powers and functions of the of the Act. So my title is Commissioner, it is of the Queensland Family and Child Commission, it is, it is not Commissioner for Aboriginal and Torres Strait Islander Children and there is no prescribed mandate within our legislation to have an explicit focus on Aboriginal and Torres Strait Islander children. We, you know, in performance of the broader functions of the QFCC, we must have regard you know, for the, you know, perspectives of Aboriginal and Torres Strait Islander people but that is one of the other critical things that I think needs to be addressed through legislative reform in Queensland is when you are approaching 50% of your out of home population, out of home care population, being Aboriginal and Torres Strait Islander children, not having an explicit mandate within legislation to safeguard and promote their rights within those statutory systems is a significant failing.

Counsel Assisting:

Thank you. Madame Chair, do you have any questions or?

Commissioner Lawrie:

Yeah, I do, I do have a question for Commissioner Lewis. It is the role of the Aboriginal community controlled sector in, I guess, in regards to receiving delegated authority. What has been, I guess, one of the key areas of functions that the Aboriginal community controlled sector has received from the state with delegations?

Commissioner Lewis:

I think, is QATSICPP appearing? Like it is if QATSICPP is appearing, I think that they're probably better placed to give you the specifics of the existing delegations that have moved. I'm aware of some general delegations that have been that have been shared so there are, you know, in Central Queensland, for example, contact family contact has been, you know, has been delegated across to the organisation in Rockhampton, Central Queensland, Indigenous Development Corporation, so and in the Sunshine Coast there's been work around the identification of kin, the assessment of support needs of kinship and supporting transition into kinship care placements and reunification as a practice, you know, that of managing reunification has been has been taken on in the Sunshine

Coast and, for my mind, is probably one of the strongest examples of what can be done when we remember what the intent of that of that provision is and when you had children who had been in care for a number of years with apparently no known family, no prospects around the maintenance of their connection, to family and country and culture, the decision making and the functions of doing that mapping and that identification, the results that that organisation was able to achieve in a matter of weeks to actually put very clearly back on the table the very real prospect of reunification and restoration of a child's connection to country is, I mean, that is that is remarkable, and that is probably from my, you know, my opinion the best example of where our organisations are much better placed. Because for children to have been in care with no connection and no prospect of reconnection for a number of years, for that to transform in an in a couple of weeks for Aboriginal children, is that is transformational, that is the very reason that the idea of delegated authority came into that act in the first place.

Commissioner Lawrie:

Excellent. Thank you.

Counsel Assisting:

I think Commissioner you've covered off just about everything we wanted to hear. Can you tell us how many well-established Aboriginal community control organisations are there across Queensland?

Commissioner Lewis:

Mm hmm. I believe there are 31 unless there's been a couple of new members of QATSICPP in the last, you know, in the in the last 12 months. But yeah that so the last time that I looked at it, there were 31 community controlled organisations in Queensland, distinct organisations, that were providing at least one of the funded services through the child protection system. So that could be foster, you know, fostering kinship care, that could be the family participation programs, which is the family led decision making programs. It could be the Aboriginal and Torres Strait Islander family wellbeing services or all of them. You know, there are organisations that are providing all of those functions and yeah so and they're a mix of, you know, small organisations and larger AMS's [Aboriginal Medical Services], but all of them are members of the peak body. There's, you know, recognition of, you know, the definition of community control and recognition of membership of the peak body which is very much linked to eligibility for government funding in the child protection space for Aboriginal and Torres Strait Islander children, so yeah. So for all of those organisations that are that are funded, that are members of the peak body, there is, you know, there is power in that in that, you know, are able to focus on, you know, practice consistency, you know, building capability of the sector, that collective advocacy, that's a very powerful to have a big network like that of and a big infrastructure of community controlled organisation, you know, within, you know, and operating with a very strong peak body, that positions the state very well, you know, in terms of implementation of reforms.

Counsel Assisting:

And when you, when you speak about funding, are you able to speak about the adequacy of the funding that the government provides to the services?

Commissioner Lewis:

I think I can, I certainly have some observations, but I think that the services themselves will probably give you a, you know, a sort of more nuanced kind of assessment of the, you know, the sufficiency of the of the funding, but certainly, hang on, from my time at QATSICPP and then even now looking at, you know, indicators around investment like the, you know, comparative investment

in community control and in the mainstream service system, there is certainly, there is certainly still an imbalance around the amount of investment that is placed not just in community control, but more generally in the prevention and early intervention space, and I think Queensland is sort of right up there in terms of by comparison to other jurisdictions. But I think that while that's the way that it's reported every year, and that comparison is made to other jurisdictions, I think it's more helpful to actually look at it in comparison to the need that exists in Queensland and I think that in that regard it falls quite short. So I think that if we've got the child placement principle in that legislation and there is an expectation that for every single decision, significant decision, for that child that the child and their family will participate, that it will be done in partnership with the community controlled organisation, you know, that there will be a focus on connection. All of those elements being applied for every decision there is certainly not sufficient funding capacity within the organisations to meet that demand. So, you know when we're, you know, I think from memory around you know 5000, or slightly over, Aboriginal and Torres Strait Islander children in out of home care, that big number of 31 or 30, it ends up being 33 services service sites because some operate into places, that doesn't look so big when you look at a the quantum of 5000 children, you know, and their families. So trying to ensure that those organisations can be actively engaged and as partners in the work that is undertaken with our families and our children needs to be sufficient to occur for every significant decision across the child protection continuum, not just at one point on, you know, at one point on the continuum. So I think when we look at capacity, it's not do they know what they're doing? Do they have the skills? Do they know the business or the families? Like that is not the capacity we're talking about. It is the capacity to respond effectively to the need and demand like of, you know, the numbers of Aboriginal and Torres Strait Islander children in contact with the system, but it's also to meet that legislative obligation that that principle is applied at every significant decision. And at the moment that that's not the case.

Counsel Assisting:

Thank you.

Commissioner Lawrie:

I've got one more question Commissioner Lewis. We're hearing about systems that are forever failing our Aboriginal children and young people and the system is continuing to deliver the child protection service system in a way that continues to not make the improvements that we expect, when there is a wealth of evidence about things not getting any better. What do you say about systems that continually do that but make no changes?

Commissioner Lewis:

If an Aboriginal organisation was to take on those functions and demonstrated such a high tolerance for failure, they would be defunded within a reporting cycle. And so what I would like, you know, to see, is that where those frailties and those values, those things that persist within a system that produce poor outcomes for our children, for whom nobody is ever accountable. We know what those things are, and so I would like rather than making promises for 10, 20 years down the track to finally get that right, I would like to see other avenues for accountability introduced around system performance and I would like to see and I, and I, believe that the most effective way to do that is for more binding application or introduction of the Convention on the Rights of the Child into our domestic law, particularly in the space of child protection. So I think because there is a, there is a measure of account, there's an opportunity for accountability there around a rights, by using a rights frame, that doesn't currently exist within legislation really in any jurisdiction and so I think the reason why that it enables greater accountability is because nationally it is one of the only commitments we've made to children that is, you know, at international law that we have willingly

ratified that we are held to account, at least through, you know, periodic review. And I think that the absence in legislation across all jurisdictions for the UNCRC [United Nations Convention on the Rights of the Child] in its entirety, limits the level of accountability for child protection systems beyond just a select few rights that they have chosen to incorporate into their charter. But for a system that has taken on who, who has seen fit to intervene in the lives of family and to take on parental responsibility for that child, they should also be accountable for the provision of, or the meeting of children of children's basic rights so there should be no negotiation around the quality of healthcare that is provided, there should be no excuse for poor access to quality education and supports that kids need to actively engage. Those things for what a child is lost by that removal, is at least providing the best possible care and access to all of their fundamental basic human rights, is the least that the state could offer. And I think that when we look at the trajectories for children who exit care, there have been fundamental failings in the protection and promotion of the most basic rights for our children. And this, I guess the thing that is most tragic about that is that there is no recourse and there is no opportunity for anybody to ever have to be held to account for that. So yeah, so I think then having some of that built in would be you know would be particularly helpful and would avoid some of that flick passing that happens between government departments about whose responsibility it is, you know, to make sure, you know, children are at school and learning and you know, feeling achievement, a sense of achievement and like those types of things that the state too too often fails to provide in its capacity as corporate parent, just one of those instances would be justification to remove that child from their black parents. So I think that it's, you know, I think that, you know, there needs to be some type of accountability. I guess the sorry I'm know I'm paddling on but I think the other thing I think is that, when we've got we've got things that happen there are limitations of the system or think parts of the operation of child protection systems that routinely promote or that produce bad outcomes or poor outcomes. I think that there is merit in when a decision is being made about removing a child from their family, that the risk assessment should go in both directions. So there are known failings and frailties of systems and there are known harms that are going to occur simply by virtue of that removal and so I think that it is, if we are truly making decisions about the best interests of a child now and for the duration of that child's life, then we owe it to that child to also do an objective risk of the action that is proposed to be taken by a statutory system. So we should be looking at the risk of, you know assessing the risk of action and intervention by the state not based on an ideal or what we, what we hope will happen, but what we have seen produced in fact, you know, as very real outcomes for very many children, we actually we should be weighing up those things as part of a risk assessment, not just assessing the risk that's presented by the child's current circumstances within family.

Commissioner Lawrie:

Yes. Thank you.

Counsel Assisting:

Thank you, Commissioner I think that was a very profound way to finish up. Thank you.

Commissioner Lewis:

Alright, deadly alright.

Counsel Assisting:

Thank you so much for your evidence, very grateful.

Commissioner Lawrie:

Thank you so much.

Commissioner Lewis:

No worries at all. I'll catch you guys soon. Thank you.

Counsel Assisting:

Thank you. Bye

Commissioner Lawrie:

Bye Natalie. Thank you.

END