



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

Wednesday, 18 October 2023 at 9:30am

Expert Witness:

- **Associate Professor Paul Gray, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney**

Denise Rieniets, Counsel Assisting:

Good morning. I'll ask Commissioner Lawrie to give an acknowledgement of country, please.

Commissioner April Lawrie (Chair):

Good morning, just acknowledging before we go into the formalities. To acknowledge that we are on Aboriginal land, never ceded and acknowledge all the traditional owners around this country and all our children and young people whom we seek to serve and fulfil their lives through a better future. Thank you.

Counsel Assisting:

Dr Gray, I'm just gonna ask you to affirm your evidence, please. I'll ask my associate to.

Carla Ringvall, Assistant to Counsel Assisting:

Good morning. If you could just repeat after me please. I solemnly affirm that the evidence I will give.

A/Prof Paul Gray:

I solemnly affirm that the evidence I will give.

Assistant to Counsel Assisting:

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

A/Prof Paul Gray:

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

Assistant to Counsel Assisting:

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

A/Prof Paul Gray:

My name is Paul Matthew Gray [address provided] at UTS Jumbunna, where I work as an Associate Professor leading their Child Protection Research Hub.

Assistant to Counsel Assisting:

Thank you.

Counsel Assisting:

Thank you, Dr Gray. In respect to, as you're aware, this is a an Inquiry into the South Australian application of the Aboriginal and Torres Strait Islander child placement policies. And we understand that you've done a considerable amount of research in in that area. Is that the case?

A/Prof Paul Gray:

In various roles, I've over a period of time, I've had a long interest in policy, systems policy and practice affecting First Nations children in the child protection system, including about the Aboriginal and Torres Strait Islander Child Placement Policy. Through my role with the Family Matters campaign that has included some looking at what's happening specifically in South Australia. Although I suspect that you already have those numbers in front of you, and so I didn't prepare to kind of repeat those today because they're already published and and so I thought that I would focus on ways that I can add value to the Commission rather than repeating data you already know.

Counsel Assisting:

Thank you and and I understand also that the case is that you're a psychologist by profession.

A/Prof Paul Gray:

Yes.

Counsel Assisting:

So you approach your research from a developmental perspective, is that the case?

A/Prof Paul Gray:

I try to yes, I try to bring some of the developmental science, also some of the rights based literature into how we consider wellbeing of Aboriginal children and young people.

Counsel Assisting:

Can you tell us please, Dr Gray, something about the social and emotional wellbeing framework that how that relates to the child protection arena for Indigenous children?

A/Prof Paul Gray:

I I can. Sorry I'm still getting pop ups, my apologies. I I wonder and and if it's OK, I kind of just prepared some remarks if that would be more helpful.

Counsel Assisting:

Certainly.

A/Prof Paul Gray:

And sorry my my anxiety disorder requires that I actually write things down, because otherwise I get too anxious and so I prepared some remarks. I'm really happy if you just want me to run through those and also if yourself or the Commissioner has any points where they would like me to pause and answer further questions or dig into that in more detail, add some clarity, I'm really happy to pause and do so. Is that ok?

Counsel Assisting:

Certainly. Thank you. That would be great.

A/Prof Paul Gray:

Yeah. So of course, and and as Commissioner Lawrie did, I wanna first acknowledge the First Nations on whose land we meet today and I'm sorry that I wasn't able to attend there in person. I imagine you're on lovely Kurna Country.

Commissioner Lawrie:

Yes.

A/Prof Paul Gray:

And but I'd I wanted to acknowledge and pay my respects both to the Kurna people, but also to the various nations who have interest in this important Inquiry across the south of the continent and their thousands of generations of history raising up their kids, keeping them safe and making them strong. I want to acknowledge I'm joining from Tharawal Country on the east of the continent, and similarly wish to acknowledge and pay my respects to their Elders, past and present, for the ongoing custodianship of this country. I want to thank the Commissioner for the invitation to talk about the importance of the placement principle to the safety, welfare and wellbeing of First Nations children. I understand too that you've heard from other experts on this topic already in this Inquiry and so as I said, I'm hoping that my perspective might add something of value to the knowledge and expertise that you've already gathered. And I particularly want to acknowledge the academic literature that's being developed by people like Jacynta Krakouer, James Beaufils, Leah Bromfield, Fiona Arney and others who have been exploring this area for a long time.

Counsel Assisting:

Thank you.

Commissioner Lawrie:

Thanks.

A/Prof Paul Gray:

So I wanted to I I know you asked about the social emotional wellbeing framework and I promise I will get there but I I thought it might help because of the way that my brain works. I wanted to note briefly that in my experience of child protection systems and practice the concept that we kind of start from and orient around, this concept of best interest, is not well understood or applied with respect to First Nations children. And you know, we know that this concept of best interest is a general principle within the Convention on the Rights of the Child with guidance from the implementation handbook emphasising that best interest is about full enjoyment of all of the articles within the Convention. That it considers both short and long term implications of the enjoyment of rights, pardon me, and recognises the child as a rights holder entitled to full enjoyment of those rights and special protections of the state to enjoy those rights. The Committee on the Rights of the Child has also put forward General Committee comments about the rights of Indigenous children. Noting that Indigenous children require special measures in order to fully enjoy

their rights and that in their view the states like Australia pay insufficient attention to the rights of Indigenous children and to the promotion of their development. So these General Committee comments discuss best interest, noting particularly the cultural rights of Indigenous children and the need to enjoy those rights collectively with other members of their group. It goes on to note that in legislation, policies and programs affecting Indigenous children, their community should be given an opportunity to participate in the process, in the process, of how we determine what is the best interests of a child in a culturally sensitive way and that those processes should also include the participation of Indigenous children. The Committee on the Rights of the Child, I'm sorry, the the Convention on the Rights of the Child, in Article 30 also explicitly emphasises the right of our children to their culture and and their identity. And the handbook going through sort of the background of this article acknowledges that this explicit mention of Indigenous children was warranted because of the overwhelming evidence of discrimination against Indigenous children and to make certain that states pay adequate attention to them, and particularly for our kids, it clarifies that enjoyment of culture includes their special relationship with country. Which is really important to to their, to their wellbeing, as I'll get to. It also emphasises that states have an active obligation that they must take positive measures, both in terms of their own actions but also in preventing the acts of other persons in the country that might impinge on the rights and the cultural identity, so in order to protect the cultural identity of Indigenous children. And I I particularly wanted to highlight in this discussion of best interest, the words of two key leaders in this space. One being the inaugural Aboriginal Children's Commissioner in Victoria, Commissioner Jackomos, who said, the right of our children to their culture, along with other core human rights of children, to life, to family, to protection are non-negotiable. A child's cultural rights, directly impact on their ability to meaningfully enjoy every other human right and freedom. Like all human rights, they are universal, indivisible, and interdependent. Our children's rights as for all children are mandatory and sacred. These are not discretionary rights. They are not debatable, although some rights may be subject to reasonable limitations, they cannot simply be forfeited altogether when a child is removed from home. A child's core human rights cannot be subject to available resources. Unfortunately, this is the case for many of our children. I am regularly told that demand over supply equals the need for flexibility in pursuing our children's rights. The rights to full time education, to a cultural identity and to practice culture, empower our children to build their resilience, strength of character and success are non-negotiable. The protection and promotion of these rights is our children's best interest. And similarly, VACCA CEO, Professor Muriel Bamblett, has likewise emphasised the critical role of culture and cultural identity in the best interests of First Nations children and it reflects an idea that I'll get to a bit later about the child's developmental niche and that denial of culture and identity is detrimental to their development. So Professor Bamblett said cultural identity is not just an add on to the best interests of the child. We would all agree that the safety of the child is paramount. No child should live in fear. No child should starve. No child should live in situations of neglect. No child should be abused. But if a child's identity is denied or denigrated, they are not being looked after. Denying cultural identity is detrimental to their attachment needs, their emotional development, their education and their health. Every area of human development which defines the child's best interests has a cultural component. Your culture helps define how you attach, how you express emotion, how you learn and how you stay healthy. So I wanted to, I suppose start with that concept of best interest because it is such a kind of unspoken, often linchpin of our of our systems and yet it, certainly from my experience when I've observed these determinations being made, they are made outside of our communities and they do not properly, in my view, reflect the cultural rights of children, and this is one of those things that the child placement principle and their connection element is intended to address.

Counsel Assisting:

Dr Gray, can I just interrupt you? Sorry.

A/Prof Paul Gray:

Yes, of course.

Counsel Assisting:

The South Australian legislation removed the term best interest of the child in 2017. We don't have that reference, the overall the overarching element is safety of the child, without any reference at all to the best interests of the child in our legislation.

A/Prof Paul Gray:

That's a that's a very interesting change because it does raise a question how the State complies with its obligations under the Convention on the Rights of the Child. But nevertheless, like I'd be very interested in understanding what safe, how one defines safety in in that sense. Because if safety is about the the prevention of harm, then those harms may not just be immediate. And I know when we did some work in New South Wales speaking to young people themselves about what contributed to their sense of safety, what helped them feel safe, they didn't just talk about the absence of violence or the absence of risks. They talked about connections to community and family, and the importance of relationships of, that helped keep them safe. And so you know, whilst there may no longer be a direct reference to the concept of best interest, I would argue that a broad understanding of the idea of safety is, as, you know, is an essential part of any child protection system. I can keep a child safe from physical harm by locking them in a protected bedroom, we would all recognise that would be absolutely abhorrent and hugely detrimental to their wellbeing. And so I think you know, whilst that language may not be present, certainly from a developmental perspective, in my view at least, safety should be considered if that is the only overriding concern, then it should be considered broadly in a way that considers both the immediate risks of the child, as Auntie Muriel said, no child should live in circumstances of fear or harm or neglect. But it is not as simple as removing those things, we have a positive obligation to uphold their lifelong wellbeing and failure to do so means that we are also making them unsafe, in my view. And I I hope some of what will follow might explain a little bit more about why that is the case. So I I wanted to I suppose pivot next to the developmental frame that we sort of started with. And we know from developmental psychology the process through which our brains are kind of built over time. We know it's this complex interplay of genes and environment and that chronic, unmitigated stress can undermine healthy development, and that that contributes to challenges of physical health, challenges for mental health, can undermine learning and also give rise to behavioural challenges. So we know that positive and negative experiences contribute to this development, and we know that relationships play a critical role in mediating that, so they scaffold how we develop knowledge and skills but they also buffer the experience of stress. And you know I can give a very easy obvious example of that when, and and I've I've seen this with my own children when they're off playing at the park and they fall over and hurt themselves, that's a distressing experience. But we also see them immediately look up to their caregiver for a cue of how they should respond to this right? And if the caregiver is sitting there paying attention but staying calm, then you'll often see the young person look up, make that sort of relational connection with their caregiver, see that response and then just kind of they might sort of walk over and like, get it brushed off or or what have you, or they might just brush themselves off and keep playing. But they take that cue for how they should respond to that stress from their caregiver. We can contrast that with the caregiver that when their child falls over, you know, sweep swoops out of their seat and runs towards the, the, the child in his this sort of you know very quick action and they're they're kind of emotionally aroused as well and we might see a

higher emotionally aroused response from the child 'cause they're responding to the cues from their caregiver. Likewise, if the caregiver is playing with their phone, then we see the child left to manage that stress themselves, but we also see over time a child who is less likely to look up at their caregiver for a response because there is that disconnection. And so the idea there is very clearly that those relationships buffer our experience of distress and that then changes how our brains lay down those connections between the experiences of the distress and our abilities to regulate it. Whether that requires a flight fight freeze kind of response from the brain stem, or whether we're able to self-regulate that and we see that change over development, right? And so development therefore emerges in and through an environment of relationships, and that resilience is promoted through relationships, the ability to build adaptive skills and self-efficacy and self-regulation and as well as connections to culture, and I really recommend the work of the Harvard Centre on the Developing Child, who have numerous reports linking the developmental science to child protection systems and family supports and and there where a lot of this reference material comes from. It's also important that culture is understood in this developmental context. In, in my experience, child protection systems seem to kind of position culture as something you know about, and and their focus on providing culture for kids can sometimes be reduced to the transfer of information from families to children. But academics Super and Harkness have noted that culture might better be thought of as organising that developmental environment. It structures the relationships, it structures the environments in which children develop and come to know and engage with the world. This includes processes like, you know, as as the quote from Aunty Muriel said, processes like emotional expression or the complex social systems that we that we develop, you know, and how they reinforce cultural world views. So from that perspective, culture shapes that specific developmental niche in which developmental processes occur, and it shapes the internal psychological models and perspectives that that we develop through that, through those processes. That's part of the the being and becoming of childhood, right. It's how we transfer our cultural information across generations. And so that brings us to those First Nations models of social emotional wellbeing. And I promised you I would get there. Which similarly emphasised the relational nature of wellbeing. That that wellbeing is grounded in connections to mind, body and emotions, connections to family and kin, connections to community, connections to culture, connections to country, connections to ancestors and spirituality. They all contribute to wellbeing from, from our perspective. And those fundamental needs that underpin wellbeing are understood to be interconnected and interdependent, and they also operate within a broader context of social, cultural, historical and political determinants of wellbeing, and those are really important as well. The the SEWB model also understands the important role of those determinants and the on those connections that we talked about connections to mind, body, soul, family, community and and, sorry, and and the Indigenous healing frameworks similarly acknowledge the broad historical, social and political context in which healing occurs and the critical role of culture as a foundation for efforts towards healing. And they often take a generational approach, so healing isn't just about how I sit down with a young person and and provide support directly to them. But by recognising that it's relational, our approach to healing is often about things like restoring family networks because if you want to make a difference for kids, you make a difference for the people who care for them. And if you want to make a difference for people, for those people, then you also need to make a difference for the people they rely on, the relationships that they rely on, in their day-to-day for their day-to-day wellbeing.

Commissioner Lawrie:

Yeah.

A/Prof Paul Gray:

And I wanted to touch on one program of research in particular that has emphasised the important role of what they describe as cultural continuity for youth wellbeing. And and this was some work by Professor Michael Chandler and his colleagues over in Canada and and put simply, what they, well, I'll take a step back. They were looking at an epidemic of youth suicide in First Nations communities in Canada and everyone was obviously very concerned about that. But when they looked at the specific data, they found that there were communities that seemed to be protected or buffered from that broader epidemic, that these communities had few or even no suicides over an extended period of time where communities around them were really struggling, and so they wanted to understand what was different about those communities that obviously promoted the wellbeing of their kids. And what they what they found was that the communities that enjoyed greater self-governance, that were able to enjoy ongoing access to to their land, were able to continue their custodianship of country, who had local control over their health services, their education services, policing, child welfare and had better, and who had an opportunity and developed community infrastructure to enjoy their culture, tended to display better youth wellbeing and a lower incidence of youth suicide. And and one of the, they sort of looked at that in a follow up study, sorry, the follow up study, it added governance of child welfare which I already mentioned but also the prevalence of women in their governance, and I think that's an important thing to note for our communities because having strong representation of our aunties and grandmothers in governance has always been a a key part of strong communities, and we see it in the sector even today. You know, most of the people around the table in the leadership group are strong Aboriginal women and so, you know, I wanted to touch on the evidence that supports that as well. So the research observed that adolescence, the period of adolescence, represents a time of particular personal and cultural continuity and that developing one's identity and understanding of their place and future. And the and the research identified that community cultural continuity grounded in collective self-determination and culture, was critical to successfully negotiating that process for adolescents. So the the SEWB model provides important guidance on how the lifelong wellbeing of First Nations children can be promoted, including in the context of child protection interventions. First Nation's children thrive when they enjoy meaningfully, meaningful, enduring connections to their family, their First Nations family, and their kin, their community to their culture, and their country. This broad understanding of wellbeing is consistent with the human rights framework regarding the best interests of the child that we just talked about and this model appreciates that culture is not just one aspect of development, but rather that it fundamentally shapes and organises those social and physical environments that developmental niche in which children grow and learn. It is important, I think, to remember that these developmental processes occur continuously through a reciprocal relationship between the individual and the environment, including those physical and social aspects, and are organised by culture. So limitations in the developmental niche undermine both the short term and longer term developmental outcomes, and this includes, in my view, failure to provide, that is, failure to provide the cultural rights of children represents a kind of poorer quality of the of that developmental niche for First Nations kids, so this emphasises the need for proactive approaches that promote all of those elements of the SEWB model to characterise that developmental niche and that we need to act with urgency to address any identified shortcomings in those elements and in a child's access to those elements. And it is for that reason, in my view, that many placement hierarchies emphasise that if a child cannot be placed in the preferred placement type, there should be ongoing and active efforts to place the child higher on the hierarchy as soon as possible. So that was the, that that was kind of the developmental part. Next, I wanted to move on to the child placement principle, but I'll pause in case there are questions from Counsel or Commissioner?

Commissioner Lawrie:

You have a question? I'm keen to actually hear more from you, if that's ok Dr Gray.

A/Prof Paul Gray:

And I'm also happy to jump around at the end and come back to parts that you would like more clarification on if that helps. I mean, I'm in your hands, but I just, I'm trying to provide as much useful information as possible.

Counsel Assisting:

Dr Gray, just for the transcript, can I get you to explain what the SEWB.

A/Prof Paul Gray:

Oh, ok, so SEWB, sorry, is my poor use of acronyms, S-E-W-B, yeah.

Counsel Assisting:

Thank you. Thank you.

Commissioner Lawrie:

I knew that.

A/Prof Paul Gray:

Sorry, it's just it is and I do appreciate you calling me up on it. 'cause, I shouldn't defer to acronyms because they are they, they aren't good communication. So I appreciate that, I apologise.

Counsel Assisting:

That's alright, thank you. I just wanted to clarify that.

A/Prof Paul Gray:

So I wanted to now move to my perspective of what these foundations mean for the Aboriginal and Torres Strait Islander Child Placement Principle. And I suppose what I want to communicate is that in my view there is a clear alignment between the child placement principle and models of social and emotional wellbeing. Further that we when we look at the rights framework, we see them reflected in the child placement principle as well. Those ideas about being active, like governments having an active obligation to protect the rights of children, to be prevention focused, to partner with First Nations and have them involved in processes in determining things like best interests or how we respond to First Nations kids, in preserving a developmental niche that is shaped by culture in our placements and our connections. So there's a, there's a huge alignment between the principle, the rights, the sort of rights framework and the social emotional wellbeing and the developmental framework. So full implementation of the child placement principle, in my view promotes the conditions for wellbeing across the life course, while failure to do so undermines lifelong wellbeing. And I acknowledge and agree with concerns that have been raised by communities across the country that compliance with the child placement principle by governments, I think in all jurisdictions, is poor and is often oriented towards a tokenistic compliance that is disconnected from the underlying intent of the principle and the aspirations of our communities that is reflected through the principle. This has been flagged, for example, in the NSW Family is Culture Review by Professor Megan Davis and I think Jacynta Krakouer, the Noongar scholar, makes similar points in talking about sort of the the bureaucratic process that underpins the child placement principle. So I wanted to touch on each of the elements of the child placement principle just briefly to provide a bit more perspective of how they might be considered. So, you know, we know that the child placement principle covers 5 different elements, prevention, partnership, placement, participation and connection and then there's kind of associated points around the identification of Aboriginal

children. Because obviously you can only apply the principles if you know the and you know, and also around that concept of active efforts in the application of these principles. So in my view, prevention can be understood quite broadly. It is not merely a reminder to consider alternatives to removal, although I will say, even if it was only implemented in that narrow sense, it would, in my view still be an improvement for most jurisdictions if they were able to consistently apply that concept of even that narrow, narrow concept of prevention where they were working better with our families to reduce the incidence of removal, that would be a good thing. But in my view, prevention goes beyond those, it goes beyond notions of immediate safety, as I said, when we're when we're talking about safety, understanding safety as being both immediate and longer term about the longer term wellbeing of children. So it's about promoting in each environment the circumstances for developmental and lifelong wellbeing. And this should include consideration of the harms of removal and the efforts needed to prevent such intervention wherever possible. It should consider the harms of cultural disconnection and loss of identity and guard against policies, practice and decisions that fail to guarantee meaningful enjoyment of cultural rights in community. For example, the placement element can be considered in terms of prevention of the incidence of harm, resulting in notifications to child protection systems. You know, doing that work of addressing the social determinants of risk. Prevention could be associated with supporting families experiencing those risks to reduce the incidence of removal like I mentioned. Could be about prevention of the associated harms of disconnection and interrupted relationships by when we are, when we do need to move to provide for the immediate safety of kids that we're placing them with someone within their relational network, someone they know within their family, within their community, rather than beyond those networks and communities because we know that those interruptions of developmental relationships are harmful. And and prevention of might also relate to the long-term negative outcomes associated with out-of-home care through the active preservation of relationships and promoting of connections to family and kin, community, culture and country, those cultural identity elements that underpin wellbeing. So in my view, prevention is broadly about upholding the child's best interests, fulfilling our responsibilities to them to consider their rights and their wellbeing both in the near and the long term as a as a life course approach. Partnership, to me, is about the political determinants outlined in the social and emotional wellbeing model. Bringing First Nations communities into decision making. In this way, it's also about recognising the collective cultural rights of First Nations children when we're making decisions about them. You know, if we go to the heart of what our child protection is, it is a community's expression of the of their right, of their interest in the next generation. And and that's a, you know, when when we put it in those terms, it makes it quite clear that there's a a challenge in that where we are having settler society expressing their interest in the futures of First Nation's children. And there was a there was a really interesting exchange in the, and I know this is an international example, but in the US Supreme Court earlier this year, they considered the the Indian Child Welfare Act and whether that was racially discriminatory. Spoiler it's not. And when, when that was being held, when that was being heard a few years ago in the Court of Appeals, the Federal Circuit, I'm going to forget which district, five I think. But when it was going through the appeals process and they had the three judge panel and you had the, they had the representative for the state of Texas saying this system is about our care for these children. That's a sovereign issue. It's so important like a community expression of the and their right to bring up their children is critical to their you know, to to everything, to their ongoing existence, and one of the judges responded, but hold on, aren't these kids children of the tribe before they are your children? Don't they belong to their community, like we're talking about a tribe that existed before the state of Texas, so aren't they their children first, before they are your children? How do you get to assert your interest in securing their futures over the interests of another political group that pre-existed your statehood? Like that sort of conversation, I think that's

to me that's what the partnership elements of the child placement principle is about, recognising that political distinction of Aboriginal communities with respect to settler communities and hence the need for Treaty and all of those sorts of things. It's why self-determination is a huge part of the social and emotional wellbeing model of health models in Aboriginal communities, of healing models, of all of those things. If we don't resolve that relational issue, that political determinant, we're only doing half of the job, and partnership is about making sure that it's about the way we work together in the interests of in the best interests of our kids. And that's also about making sure that we centre Aboriginal perspectives and knowledges when we do that. Recognising that some of the work of colonisation has been to delegitimise and destroy Aboriginal social networks, Aboriginal social structures and Aboriginal knowledge systems. And so, for example, conceptualizations of attachment are often used in this space to undermine Aboriginal children's rights in my, in my view, to undermine the rights of Aboriginal children and their developmental need for connection with community despite the application of these models often being framed as being evidence based. But I'll talk a bit later about the fact that often the application of these models goes beyond the developmental science, and there's some recent research, I think from maybe a year or two ago that talks about that in a Western framework. That they don't often appreciate Indigenous views of child rearing and family, that they rely on tools and approaches that lack validity with our kids and families, all while presenting that idea of kind of neutrality and scientific legitimacy. So there's a whole bit of work that needs to be done in that space as well. So placement likewise, if understood broadly reflects this notion of the importance of preserving family relationships and the important role that they have in development. It's consistent with the international evidence, which is quite clear that placements with family and kin is associated with improved outcomes for children removed from their parents. Casey Family Services in the United States has done some work on that and so there's some references there for, for, for that particular claim. I think placement is the element of the principle that gets the most attention, it's often what it's most reduced to. But I think it's also one of one that is most likely to be deployed in ways that are unclear and ritualistic. So I think for example the placement element is often used to imply cultural connection, that if we comply with the placement principle, it means that children will be in a placement that is culturally enriching. In some ways, I do think that is part of the intent of that principle, going back to that idea of if they're being placed with their First Nation's family and kin, they will be in a placement that provides a developmental niche that is organised by culture. But what we see, and certainly what we've talked about in the Family Matters report are concerns about a trend over the last decade or so that suggests that family placements are increasingly not First Nations placements, they're placements with non-Indigenous family members. And that's that's not to disagree with or criticise those placements, that that's not what I mean, but it is to make clear that there is a distinction between placement and the connection element, they are interrelated, certainly, but they are distinct and we need to be clear about how the whole implementation, how all elements are combined to provide an optimal developmental environment for First Nations children. One that upholds their cultural rights, that underpins strong social and emotional wellbeing, regardless of their placement. But I do think that often we like, we'll see it presented in official reports as this is our level of compliance with placements with the child's family or with other Aboriginal people as though placement is about cultural connection, but then it kind of renders invisible the the portion that are not with First Nations people. And as I say, I'm all, I'm certainly in favour of family placements, that's not what I mean, it's about making clear when we are talking, not to conflate the cultural elements with with those placement elements. And I think that also relates to observations from Gundungurra and Kanak scholar, James Beaufils, who's sort of talked about the way that child protection systems can co-opt and kind of usurp First Nations language. So you know, he he talks about how Aboriginal conceptualizations of kin and kinship get kind of adopted by child

protection systems, they are intended as a as describing a cultural relationship, but then are applied by child protection system in ways that don't properly capture what is meant by that. So participation refers to the need to ensure First Nations children, parents and families are involved in decisions that affect them. You know, it's quite a simple concept and when we think about participation, we almost, we we must also consider how systems and practice set the context for that participation, how they define the scope of the conversation, what's considered, how views and voices will be reflected in decisions. So for First Nations children, families and communities, too often this remains framed by non-Indigenous systems and authority. They are they, they are the, they set the context and make the decisions following the involvement of community and for this reason I I think it's really important to emphasise the interrelationship between participation, how individual children and families part are heard in decisions that affect them, and partnership whereby First Nations communities collectively determine through their own processes and governance how community, how families might best be supported to participate in decisions about their children and young people about their families. So you've got this sort of enabling context set by community in which individual families exercise their, exercise their individual agency. So in, I also wanted to note, I suppose that in my experience practice around the views of children and young people requires more consideration. It's one of those areas that I feel like there's this trend of valuing and and elevating the voices of children, but only when their voice is in alignment with the views of decision makers and and that there are when it is not, particularly around, for example, if young people are expressing their desire to remain with family or to return to family, we see their views being set aside for one reason or another. And I've also noted in other jurisdictions a failure to recognise the developmental context of children's participation. So for example, I have seen, I've seen child protection practice exclude cultural connections on the grounds that it is contrary to the views of the child. However, they have failed to consider how the child's care context has communicated to that child whether such connections should be valued or even if such connections are things that they should be scared of, you know. So, to give an analogy, when a when a child comes home from school and says they are sick of school and don't want to go back, responsible adults don't just say, oh, ok, stay at home, no worries. Responsible adults have a conversation and they try to understand what's the source of worry, what's going on, how do we work to address it. But the idea that a 10 year old could withdraw from education is not entertained, and what that does is makes it clearly communicates to that young person the importance of education, that it's highly valued within that family and within within that community. And we build those values for young people by how we exercise our care and custodianship about of them. That's our responsibility, that's what Adulting is, right? That's that's how that's what caregiving is about. It's about how we communicate values. And and too often I see values about connection to Aboriginal families is considered of low value. Those connections to to birth families aren't properly valued and to broader communities aren't properly valued. You know, it goes back to that idea that Commissioner Jackomos, the quote from Commissioner Jackomos about, you know, they're subject to other other, subject to available resources there logistical considerations, all of those sorts of things, which communicate what their relative value is in that child's life. So we see that developmental context of how children are able to participate often not considered and and in fact, in some cases I've seen, and I don't know if this is in, this is the case in South Australia, but I've seen it in other jurisdictions so I wanted to flag it, this kind of passive positioning of child protection practice that's almost as though their role is simply to chronicle the child's life and not play an active role in guiding development. Which is what family and community is supposed to do right? It's what family and community does. So I want to be clear, the voices of children are important, they must be afforded the space to share their views, space that is safe and that is supported but this does not absolve adults of our obligations to them, and how our engagement with them helps them shape

and helps them develop their understanding, helps them develop their values. So connection refers to the need consistent with the SEWB, social, emotional wellbeing framework and the holistic view of the children's best interest to actively support Aboriginal children affected by child protection systems to enjoy their right to remain, to remain meaningfully connected to their family, community, culture and country. As we have described, connection is multifaceted and it's a cornerstone to wellbeing. Connection is central to how we understand their lifelong wellbeing and the Family is Culture review, for example, noted that Jacyntha Krakouer, writing with her non-Indigenous colleague Sarah Wise and Melissa Connolly, remarking that cultural connection is just as important as placement stability and the consequent in, in their view, they they went on to say, consequently, permanent care orders cannot necessarily achieve the connection to family, community and culture that Indigenous children need to feel safe and well. The Family is Culture report also quoted the previous president of the NSW Children's Court, Judge Johnstone, who described the connection from cultural identity as quote, one of the most significant causal factors for Aboriginal disadvantage generally, and the drift from care to crime more specifically. So Judge Johnstone emphasised the critical role of identity, of cultural identity, for future wellbeing, stating that it is clear that a fundamental understanding and positive association with Aboriginal cultural identity manifests in positive life course outcomes. Aboriginal children do better if they remain connected to their culture. And I think Commissioner Jackomos summed up this point really clearly, he said, culture is not a perk for an Aboriginal child, it's a lifeline. So in short, the child placement principle can be thought of as a healing focused framework to meet the individual needs of Aboriginal children affected by child protection systems and to promote broader healing across families and communities in response to the ongoing harms of colonisation and enduring cycles and ongoing cycles of forced removals. They are critical, the principles are critical to safeguarding the rights and wellbeing of individual Aboriginal children and families, as well as the broader interests and wellbeing of Aboriginal communities. The alignment between the Aboriginal child placement principle, Aboriginal models of social emotional wellbeing and the international evidence regarding healing, culture and self-determination, demonstrate that implementation of the child placement principle is consistent with efforts to promote the immediate and lifelong wellbeing of Aboriginal children and young people. It's also consistent with evidence that cultural connections are associated with resilience in the face of adversity. Further, it is my view that the child placement principle is consistent with seeking to centre Aboriginal perspectives about the interests and the wellbeing of Aboriginal children and efforts to address the harms that have that have characterised colonial processes that are widely acknowledged as underpinning the current disparities in wellbeing for Aboriginal children and young people. So if we want to turn that table of, you know, if we all acknowledge that colonialism has been a contributing factor in existing over representation of Aboriginal children in out-of-home care, for example, then surely the solution isn't to further perpetuate the structures that colonialism has established, but to actually start chipping away at those, reasserting Aboriginal models of authority, Aboriginal ways of being and doing, Aboriginal knowledge systems as part of that response. Failure to adequately uphold the child placement principle represents a significant concern for Aboriginal children, families and communities. Numerous reports and reviews nationally have focused on the child placement principle, issues of ongoing poor compliance by statutory child protection agencies and and some reviews have even organised their analysis of those systems in terms of the child placement principles. You know the Family is Culture report had entire chapters dedicated to each element of the of the child placement principle, I think in part because if we do better about implementing each element, we will do better for children and we will address the overrepresent, we'll we'll contribute to addressing the overrepresentation that Aboriginal children make up in the child protection system. So I feel like there is significant consensus across Aboriginal communities and governments that the child

placement principle is essential to safeguarding the wellbeing of Aboriginal children as reflected through shared commitments within the national framework, Safe and Supported, which includes a specific action to implement the child placement principle to the standard of active efforts and and explicitly recognises that reunification and restoration is a key part of that implementation. I'm sorry I talk too much.

Commissioner Lawrie:

Fabulous.

A/Prof Paul Gray:

Were there any questions or areas that you wanted to clarify on that?

Commissioner Lawrie:

Not from me no.

Counsel Assisting:

I think that's that's been a very thorough and and excellent presentation. Thank you, Dr Gray.

Commissioner Lawrie:

Did you have more to speak to?

A/Prof Paul Gray:

If you would like me to.

Commissioner Lawrie:

Yeah, I feel like you have a bit more to to provide us and I'm I'm really excited to know that you've got further parts of your work that you wish to share.

A/Prof Paul Gray:

So I'll touch briefly on the active efforts as the relevant standard and I commend SNAICC's work in this space and about the child placement principles generally. They they do really good work and publish really good information, both through the Family Matters campaign, but also through some of their their annual report cards on the child placement principle. So I I commend those to the, to the Commission. So active efforts is a concept of practice, that has particularly developed in the United States as part of the gold standard, Indian Child Welfare Act, which has been in place there since the late 1970s and was put in place after a congressional hearing that heard about the harms associated with both the sort of historical as well as ongoing settler colonial interventions in the lives of Indigenous children, their families and communities by missions and by non-Indigenous child protection authorities. So SNAICC describes the active efforts concept as as follows, active efforts are purposeful, thorough and timely efforts that are supported by legislation and policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children. In my view, the key feature of active efforts as a standard is to deliberately position responsibility for supporting and achieving change with governments and with the service systems they administer, rather than that more passive stance that I described earlier. So for example it it says it includes within their guidance and the Bureau of Indian Affairs, is that right? Yes, Bureau of Indian Affairs releases guidance about the Indian Child Welfare Act that that you can access and look at. But it includes things like, so if you're making a referral for a family to a, to a service that you think would help them, you don't just go, oh go and ring this service, that's not an active effort, I would argue that's not even effort. And it's not just OK, I'll drive you there. Well, that that's better but to me, that still doesn't reach the effort of active efforts because it's a it recognises it's a process, not just a handing off of responsibility where that responsibility is still carried by the family. I'm not talking about absolving families of

responsibility but recognising that a service system also has responsibilities. There's a really good, yeah anyway, we'll get to that. It, so it's about, encouraging a shift that is a that from the surveillance of families and a compliance focused approach to how we support families, you will do this, you will do that, jump through this hoop, jump through that hoop, to a frame that is about active support of families in recognition of our collective responsibility to children, that if we want as a community our children to thrive, then we need to look after their parents and families. You know as much as I challenge the the way attachment theory is used in this space, John Bowlby, one of the founders of attachment theory, one of the fathers of attachment theory, said very clearly if a society cherishes its children, if a society cares about its children, it will cherish their parents. And and I think that's to me that's what active efforts is about shifting that responsibility, making clear that the state and our service system have has a responsibility to support parents as well. So if you, you know, don't just refer, take them. If you take them, have a conversation with how they felt about that service. If they disengage, you don't just write the family disengaged and cross them off as being non-compliant. You go back to the family and say, well, what happened there? Help, help, help us. Was that not the right service for you? Is there another service we could try? Is there were there barriers for, like geographical barriers to access or transport barriers to access to great? What was it that got in the way of you accessing that service and how can we address it? Rather than just saying, well the family didn't engage with the service, so they're just, you know, our job's done, you know, on to the next escalation point. Yeah, I think I also wanted to touch briefly 'cause I think it applies to the child placement principle and that idea of the the voice and the position of the child within that. Just that I've seen and and again I don't know to what extent because I haven't practiced in SA, so I don't know to what extent this is a challenge for your jurisdiction or is it in the culture of practice in your jurisdiction. But promoting and maintaining family and cultural connections can be difficult and it can be confusing and distressing for young people, and so we often hear carers report, for example, and I'm I'm not criticising, that carers reporting about the distress of, and dysregulation of young people when they return home from those placements. And often our response to protect children, is to limit their exposure to that. And and I think what I want to say there is that we need to take a more sensitive approach to that, a more considered approach. So that we're actually, rather than taking an avoidance stance to those experiences, that we're actually supporting children to process them and come to understand their story and their family's story and where it fits in. Because I think that reaction of limiting or terminating contact, and I'm not talking about where contact is harmful, if children are being harmed at contact, you know, obviously we do something about that. Again though, I would argue that our responsibility is to find ways that we can make contact safe and meaningful and and with what people within the child's family. But certainly we don't expose children to unsafe situations. But let let me just provide like a simplified analogy, right, so when we're teaching kids to ride a bike, when they fall off, we don't just respond to that distress and pain and frustration by throwing the bike away and saying look well, we tried, that hurt you so we're not going to do it. We also don't encourage them to continue developing that skill by insisting that they only ever ride their bike if we're holding onto it. Because sure, that might make the child safe from falling, but they'll never actually grow to master the skill of riding a bike or enjoy everything that can come with, with that. The the additional freedom of being able to move around their town or community and visit their friends and all of those sorts of things. We will always impose limitations on the child around that and there will be this underlying sense of fear and anxiety about cycling. And so likewise, I think our efforts to protect children in out of home care from that distress and confusion that can come with that disconnection and trying to navigate those family spaces. If if we do it in that way of just cutting it off or holding it too tightly, I think we can sort of interrupt their opportunity to process and to heal and to move forward with that within their families. And so I want to reiterate, I suppose from that developmental section that we talked about,

caring adults and caregivers can help children scaffold their understanding of their environment and their relationships in age appropriate ways. We can support emotion, emotion regulation and strengthen those skills of emotion regulation during, before, during and after those experiences. And we can put better support into place to make sure that those experiences are safe and and and that we are buffering those experiences of stress and de-stress. And that when we fail to do so, we actually transfer the work of navigating and processing that onto those young people themselves. Because that challenge doesn't go away but now they have to manage it as young adults or new parents without any support. So by deflecting the risk, we actually make them continue to carry it. And and that that really worries me about how we do that, you know, I know it's a really fraught space. I know that children, young people in out-of-home care can feel multiple pressures in that space. You know, they they feel like they can't speak up that that perhaps speaking up to say I want a better relationship with my parent, with my family and my community, you know, but that doesn't mean that I care for my aunty who's looking after me any less or any more. You know what I mean? Like, so I know that it's difficult and it's important that we actually support all people around that to be able to navigate that and support the child to navigate that, what are our supports that we're providing to parents and birth families and communities around contact so that they can make that a positive experience for children. What support are we providing to carers around contact to make sure that they're best equipped before, during and after that contact. So that it, we can do it in a developmental way that supports children to navigate it, that builds their emotion regulation and helps them to process it and to heal and to move forward. And I think you know the, what we would really like to prevent with that is sometimes what we see older children eventually because their needs aren't being met, and again, I'm not saying that to criticise, but their relational needs are so are really important, their cultural and identity needs through adolescence are really important. But what we sometimes see is older children leaving their placement and that they self-place back with family sometimes or sometimes they move into alternate placements that might be unsafe, they might be unhoused, for example, for a period and this presents its own issues, its own risks for children and young people. And often our systems don't respond well when children self-place, the support that we provide is poorly directed to the networks around them, which can create circumstances of significant strain and instability for children. In my view, this is both foreseeable and able to be prevented or mitigated, if we do that active casework aligned to the child placement principles throughout the time the children are in care. We're promoting relationships in an active way, we're working with communities, we're partnering, working in partnership with families and doing all of those things. Then we can reduce the risk of some of those unplanned exits in that way.

Commissioner Lawrie:

This has been awesome.

A/Prof Paul Gray:

Well the final part that I have here is about attachment. If you'd like me to take a run at attachment?

Commissioner Lawrie:

Please do

Counsel Assisting:

Very much so, thank you.

A/Prof Paul Gray:

And I want to acknowledge Ash Wright and Belle Selkirk and others who have who, who who've sort of who have worked within developing up some of this, some of this critique of attachment theory.

And I know that other Indigenous psychologists like Tracy Westerman, who've also written on this topic, for example in her review of the cultural competence, I think it is, but the her the review that Tracy Westerman did, Dr Westerman did of the WA child protection system that was released last year or made public last year, I think the paper itself was from 2019, but it wasn't made public until a bit later. I think you know we would all acknowledge that attachment theory has been influential in child protection policy and decision making. The attachment discourse is either tacitly or explicitly invoked in child protection decisions. So we'll refer to either attachment directly or to things like enduring bonds. And and but I think as I said, recent international research has argued that quote, misinformation about attachment theory and research is widespread and sometimes results in misapplications with potentially serious negative consequences. So this is work by a whole, I think there were like 50 plus authors on this paper, it's Forslund et al 2021, it's a paper called 'Attachment goes to court: child protection and custody issues'. And so they talk about misunderstandings about the nature of attachment and the nature of multiple attachment relationships. As well as implications arising from classifications or misclassifications of attachment quality, and those authors argue that applications in individual cases can be particularly challenging and inappropriate connections to attachment discourse can contribute to overconfidence in the prognostic value of attachment classifications in individual cases. The authors note that professionals quote may make predictive claims that cannot be justified by social science research, and judges may show misplaced faith in these claims. Indeed, judges can face difficulty evaluating the scientific merits of psychological methods, and courts may admit evidence with poor or unknown scientific value. So the authors identify 3 principles of attachment relevant to court practice, and they're talking both about like the family law jurisdiction, divorces and family separations, as well as the child protection jurisdiction. So first, the child's need for familiar non abusive and non neglecting caregivers, basic principle of evidence. Second, the value of continuity of good enough care, including that decisions to remove children from their families are supported by persuasive evidence that the child cannot reasonably be supported to remain with their family. And third, that a network of attachment relationships is an asset for children. So these researchers note, and I quote, that they are in full consensus that the ultimate establishment of a network of attachment relationships is generally a protective factor in the long term and thus a desirable outcome in child development. They were also in full agreement that losses of and permanent separations from attachment figures are in themselves risk factors that should be prevented wherever possible in child development. They also acknowledge, though, that attachment is but one consideration and should not in itself should not be the sole basis for decisions. So they say kinship care, decisions to place siblings together, these sorts of decisions can be justified on multiple grounds besides attachment, for example, and this is their example, retaining a child's cultural identity. And so in my view, this makes clear that attachment is an important consideration, but not the only consideration in decision-making about how we safeguard a child's wellbeing and that we have to include the context of, and that decision-making must reflect these broader considerations. So we must take a holistic view of how we safeguard and promote the wellbeing of children. And I think the social and emotional wellbeing model captures some of this broader context for First Nations kids, emphasising that relational connections, you know, yes, those networks of attachment figures in our families, and I know you know you would thin you would see this in your own families, Commissioner Lawrie, those networks include family, extended family, other community members. In in my view, First Nations conceptions of attachment might also include ancestors, might also include country, given our relationship with country and how we consider our position and custodianship of country, you know that, our our relationship with those things is, is a is a is a critical relationship. So White and colleagues, and this is from a a 2019 book that explores the role of attachment in in child welfare, they similarly note the overextension of attachment science in child

protection settings. They make the observation that attachment theory quote, seems to be used with an evangelical enthusiasm in the diagnosis of damaging or abusive parenting, but it's radical and primal focus on enduring love is not informing the way the system routinely operates for children living away from home. And you know, I I include that quote because to me that really gets to the heart of the inconsistency in child protection issues. We often see it deployed to preserve placements out-of-home, but we don't see attachment raised in how we preserve relationships with family and community when when we do have safety concerns. It doesn't mobilise us to action to preserve and make and try to support families, to become safe. And in my mind too it in some ways invokes that idea, that trope, racist trope that we saw through history of, that that Aboriginal families and communities will soon forget their stolen children. You know we there was that sort of sense presented in the historical record and and I I love the focus that White and colleagues bring to that idea of attachment theory is about enduring love, enduring relationships, even in the most inauspicious of circumstances. So White and colleagues note that contemporary policies around permanency, for example, this pursuit of a forever family, reflects an oversimplification of the nuance and complexity of attachment theory, and often in ways that entrench cultural biases. And they say, quote, this aspect of the child welfare system persistently disregards attachment theory's version of wondrous hydraulic, enduring love, love brought forth even in the most inauspicious of circumstances. I knew that quote was from someone. In which the complexities and nuances of the concepts are hidden behind simple, are hidden by simplification, and the moral components are subsumed into political and organisational priorities. So First Nation scholars have criticised the application of attachment theory with Aboriginal children and families. Consistent with the above discussion of the development and the role of culture, how it organises the developmental niche, Dr Westerman notes cultural differences in child rearing and parenting, as well as differing aims and attachment outcomes, reflecting the difference between individualist and collectivist societies, for example, and and raises concerns, as others have, about the validity of existing constructions of attachment being applied to Aboriginal populations particularly given the significantly limited evidence base exploring Aboriginal cultural frameworks of attachment. And I think so, there there was also some work in Manitoba and Philip Burge and colleagues have a 2020 paper, actually, no that was just Phillip Burge, exploring the challenges present in existing definitions of permanency that, in their view, are overly narrow. They draw on other research of Indigenous youth in Canada, quote, the many limitations of permanency definitions that focus solely on finding forever families or attachment to a caregiver for those in care. They argue that the all too frequent impacts of intergenerational breakdown and trauma have resulted in youth in care being largely disconnected from family, kin, community, culture, ancestral relations and language. Given the historical and ongoing context of these impacts, their study highlighted a range of areas outlined by youth who were Indigenous and in care. These contributions, similar to some reported in other studies with youth, could expand notions of permanence and stressed a focus on the importance of relational and cultural permanency, which I think links very much to that social and emotional wellbeing model that we talked about. So Burge criticises contemporary child welfare systems for understanding permanency through what is kind of a a legal orders first lens, and notes scholarship that indicates that this primacy of legal orders may contribute to instability or impermanence for youth due to disconnection from important relationships and cultural connections. He outlines an expanded notion of permanency that includes lifelong connections, certainty of responsibility, knowing knowing one's story, which I touched on earlier and safe and stable home. And while certainty of responsibility includes reunification and legal permanence, it is understood in a way that reflects agreement of the child's family, kin and community, which it notes is important to Manitoba's Indigenous population because of the historical use of legal permanence to sever relationships between Indigenous children and their families, communities and cultures of origin. And I think that

phrasing that quote very much aligns to the experiences and the sentiments of First Nations communities here, noting that historical context. So consistent with this argument, Burge urges the development of expanded notions of permanency which incorporate Indigenous perspectives and world views. Which I think aligns with what we've been talking about in terms of social and emotional wellbeing, healing and the child placement principle. The evidence suggests that the present uncritical application of attachment by child protection systems with respect to Aboriginal children represents a significant risk. As I said, Dr Westerman argues, quote, a great risk in uncritically applying non-Indigenous paradigms such as attachment is that we colonise the knowledge systems around child rearing already present within Aboriginal cultures and and so there's this sense that there's a need for greater scrutiny of child protection systems and their decision-making structures as part of recognising them as a broader set of colonising structures. And as you know, I touched earlier on that issue of identifying the harms of colonisation, not just as the destruction of family life or the dispossession of land, but also in the dismantling and devaluing of Aboriginal knowledges and world views. And I think that's some of what Dr Westerman is pointing towards there. I also, I suppose, wanted to touch on that there is some research to suggest that socioeconomic factors are implicated in affecting developing attachment relationships. We know this is, if this is the case, this is a challenge where socioeconomic disadvantage is disproportionately experienced by First Nations families. However, child protection systems in my view do not seem as concerned about their role in addressing those structural risks, and particularly the disproportionate burden of poverty experienced by Aboriginal communities. So Forslund and colleagues note, and I touched on this earlier, attachment pioneer John Bowlby emphasised the importance of providing adequate supports to parents and families to meet their care responsibilities. This seems consistent with Bringing them Home's recommendation, it seems long since forgotten, for a social justice package to address the social determinants of risk that disproportionately affect Aboriginal communities, including particularly those in regional and remote areas. This need for action on social determinants has been picked up in Safe and Supported the national framework, and I know that we are watching with interest and certainly including that in our conversations with governments about how they take action on addressing some of those social determinants. And just to finish off, Forslund and colleagues note that where removal of a child from their family is being considered, there should be immediate and ongoing support to the child and family to promote and preserve relationships with pre-existing attachment figures. In my view, that's entirely consistent with the child placement principle, it's about preventing harm, it's about connection, structural factors should also be considered, as well as financial and other supports necessary to support their ability to provide good enough care. Any questions on attachment?

Commissioner Lawrie:

You've been absolutely thorough from my view.

Counsel Assisting:

Fantastic, thank you Dr Gray. It's been an absolutely wonderful presentation.

A/Prof Paul Gray:

If you'll indulge me yet further, I have two more paragraphs, if that's ok.

Commissioner Lawrie:

Please do.

A/Prof Paul Gray:

Sorry, sorry Commissioner.

Commissioner Lawrie:

No, it's been fantastic. Go ahead.

A/Prof Paul Gray:

So I just wanted to, I suppose, wrap a bit, I guess wrap up, I'm definitely not rapping. The Aboriginal and Torres Strait Islander Child Placement Principle represents a policy framework that, in part seeks to centre the rights and wellbeing of Aboriginal children in child protection decision making. This should be understood in terms of resistance to ongoing harms of contemporary systems and their disproportionate impact on Aboriginal children, families and communities. And as I said, Jacyнта Krakouer and colleagues have written on that, it's a fantastic paper, I I really encourage the Inquiry to engage with it if they haven't already. Collectively the interrelated elements of the child placement principle outlines a child protection system led by Aboriginal communities, oriented towards prevention and early intervention so that Aboriginal children can remain at home or return home as soon as it is safe to do so, and where they are not at any time deprived of important connections to family, kin or culture, or a developmental niche that is organised according to their culture. Broadly, there is strong consensus in my view, within Aboriginal communities across Aboriginal communities, and the relevant literature, that faithful implementation of the child placement principle to the standard of active efforts is aligned to the long-term safety and wellbeing and the best interests of Aboriginal children. There is an opportunity I think, to rethink child protection decision making in a way that promotes the holistic engagement of the rights of Aboriginal children, rather than having their enjoyment subject to compromise or available resources, as Commissioner Jackomos noted. That is developmental science, including attachment, can inform with a critical and cultural lens and improved practice framework that recognises the importance of children enjoying networks of attachments and enduring connections that promote their identity and their belonging, including their cultural rights. It appears clear that relying on constructs like attachment to justify the permanent severing of legal relationships between children and parents but also extended family, kin and community, likely represents a misapplication of attachment science. This is particularly concerning when considered as part of ongoing colonising structures, as, as Tracy Westerman mentioned, and and where relationships that replace them have been constructed and prioritised through practice that neglects policy frameworks intended to safeguard their rights and their wellbeing. I think there's also some interesting stuff, Commissioner, in in thinking about that reassertion of community world views. I'm really interested in exploring this idea of, you know, child protection systems reflect a a nuclear view of families and so when the state moves to act and and take a child into care, they sever the legal relationship between a child and its parents because that is how in Western societies, those legal relationships are constructed. Our communities see those those legal relationships differently. In in our ways, grandparents have a legal relationship to their grandkids that is independent of their relationship with their, with the the the generation in between the child's immediate parents. My brothers have important responsibilities that that, in my view, could be described as legal relationships with my kids. And and certainly if I pass, those obligations and responsibilities become very clear. They take my place. But that you know, that's not the case just only in the circumstances where I pass, they are in effect, surrogate fathers. But the child protection system doesn't see those legal relationships at all. And I think part of how we can think about this differently and part of partnering with Aboriginal communities, could be to think about how we recognise and value those legal, as I say, I'm framing them as legal relationships in our ways, how we recognise them in our child protection decision making. You know, that that those inalien or you know, as I say, we we often see child protection systems grandparents feeling completely sidelined when their responsibilities and grandmother's law is so critical.

Commissioner Lawrie:

Yes.

A/Prof Paul Gray:

So I'm I'm really interested in how we look at those and and deliberately and and Val Napoleon is a First Nations scholar in Canada who has done some of this sort of work with the Gitksan Nation over there. But recognising those cultural relationships as that they are legal relationships in our way. And and how do we help settler child protection systems understand and grapple with those relationships, I think can change the nature of how child protection systems work.

Commissioner Lawrie:

And I and I have heard from people refer to the way in which pieces of the legislation refer to people who are part of your processes with that very argument about the legal relationship is seen very differently and not accommodated in the legislation with regard to the way in which Aboriginal families are constructed.

A/Prof Paul Gray:

Yeah, it's not even recognised as a legal relationship, and I don't, I don't think there's a lot of scholarship that describes it in those terms. As I say, I think the some of the work coming out of Canada is part of that and we're looking at starting to do some of that in, in, in my research hub. But really starting like, those relationships have always been the case, in, in and certainly in all of my conversations across numerous communities nationally, they all talk about those relationships, that that authority, and the way that it flows through families. But our existing child protection systems don't see those connections at all. They sometimes pay attention to families when they are looking for a placement, but I think this understanding can be so much richer than that.

Commissioner Lawrie:

Yep.

Counsel Assisting:

Thank you.

A/Prof Paul Gray:

I'm sorry I've just ranted at you for an hour and a half though, I do apologise.

Commissioner Lawrie:

It hasn't been a rant, believe you me, it hasn't.

Counsel Assisting:

It's been wonderful. Thank you very much Dr Gray, for your your insights and very, very valuable information that you've provided today.

A/Prof Paul Gray:

I'm, I'm sorry Counsel, were there other specific questions that I haven't covered in in all of that? And certainly if you would prefer sort of take that on notice and get back to me, I'm happy to, if there are additional points of clarity or areas that I've not touched on that you would have liked me to touch on, I'm happy to provide that information in future as well.

Counsel Assisting:

Thank you. No, I think we, well I think you've covered everything we could have possibly hoped you to cover today. What I will ask of you, Dr Gray, is if you can provide us with the references that you've referred to throughout, if that's possible please.

A/Prof Paul Gray:

Yeah, I've got a little.

Counsel Assisting:

Because some of your quotes have been fantastic and they would be wonderful to include in our report.

A/Prof Paul Gray:

I've got a little document here. I don't know that I've been academically rigorous, with making sure that every single reference is in there. But I'll send you through the document.

Counsel Assisting:

That would be fantastic. Thank you.

A/Prof Paul Gray:

I would, I would prefer if it at this stage wasn't a public document just because we're publishing the attachment stuff and they might get upset if I've already published it elsewhere.

Commissioner Lawrie:

Yes.

A/Prof Paul Gray:

But I'm happy to provide you that and it does have some of the references in there.

Counsel Assisting:

That would be fantastic. Thank you.

A/Prof Paul Gray:

I'll go through a second time and add any additional that I notice are missing.

Counsel Assisting:

Great, thank you very much for that. Thank you so much for your time this morning. It's been absolutely invaluable.

Commissioner Lawrie:

Thank you, Dr Gray

Counsel Assisting:

Thanks, Dr Gray.

A/Prof Paul Gray:

No, thank you. Always a pleasure, Commissioner Lawrie, really appreciate it.

Commissioner Lawrie:

No worries. Thank you.

A/Prof Paul Gray:

And and I wanna say too just to close, as someone from New South Wales, I just wanna reiterate for the Inquiry how important it is to have an empowered Commissioner because we can't do stuff like this in New South Wales. We we don't, we don't have someone that can summons people and particularly summon government to come and answer questions about what they're doing and hold their feet to the fire, and then make that publicly available to our community so that they understand what's going on. And so I just really wanted to acknowledge both your work Commissioner Lawrie, but also the community's advocacy more generally, that has put you in this

position where you actually have probably one of the best models in in the country, yourself and the ACT, so really appreciate that.

Commissioner Lawrie:

Thank you. Thank you very much.

Counsel Assisting:

Thanks, Dr Gray.

A/Prof Paul Gray:

Thanks guys.

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