



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 2:00pm

Expert Witness:

- **Dr Jacynta Krakouer, UniSA Justice and Society, University of South Australia**

Commissioner April Lawrie (Chair):

Hello, how are you?

Dr Jacynta Krakouer:

Yeah, I'm well. As well, as well as can be.

Commissioner Lawrie:

Yeah, of course. Well, I'd like to...

Dr Krakouer:

Yeah. And you?

Commissioner Lawrie:

Yeah, same sentiments, as well as could be. Yeah. And I guess, it sets the tone, doesn't it? For how we, how we go forward, but I want to give an acknowledgement of country, that we are meeting on the lands of Aboriginal people, land that's never been ceded, and I want to pay my respect to all our elders, all our elders that will be, and to all our children and young people whom we seek to make a better future for. Thank you.

Denise Rieniets, Counsel Assisting:

Dr Krakouer, we'll just ask you to affirm your evidence before we start, if that's all right.

Dr Krakouer:

OK. So, Dr Jacynta Krakouer, I have a PhD in social work from the University of Melbourne. I work at the University of South Australia, [address withheld] and I'm a Minang, Minang Noongar woman, originally from Southern WA.

Carla Ringvall, Assistant to Counsel Assisting:

And Dr Krakouer, can I just ask you to repeat after me please?

Dr Krakouer:

Sure.

Assistant to Counsel Assisting:

I solemnly affirm that the evidence I will give.

Dr Krakouer:

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.

Dr Krakouer:

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

Assistant to Counsel Assisting:

Thank you.

Counsel Assisting:

Dr Krakouer, thank you for, for giving us your time today to speak to the, the Inquiry. What Madam Chair would like to hear from you is some information about the active efforts in South Australia in terms of the placement, the Aboriginal and Torres Strait Islander, the placement policies within the Department Child Protection, for Child Protection.

Dr Krakouer:

Yep.

Counsel Assisting:

And something about the transformation of outcomes, as well as some new models for child protection that you may, may be able to offer from your research and your, your, your knowledge.

Dr Krakouer:

Sure. All right. Well, we'll start with the active efforts. I think, I've looked into it and how it's understood from an academic perspective. The notion of active efforts comes from the, a concept within the Indian Child Welfare Act in the United States of America. Now, within the Indian Child Welfare Act, it's kind of regarded as the gold standard through which efforts should be applied to both prevention of children entering, Indian children entering foster care, and also reunification of an Indian child to an Indian family. It's determined by the judiciary, so the magistrate makes the determination of what constitutes active efforts and whether or not the efforts are at that standard. It's not clearly defined within the Indian Child Welfare Act, so case law has examples of how active efforts has been, have been determined within the United States. It came about as a means to

address the over representation of Indian children within the United States system. So, a similar colonial history to Australia, and I think, I guess, there's one thing that's important when we think about active efforts and why they kind of sit, how they sit alongside reasonable efforts. So in the United States, the standard for all children is that reasonable efforts need to be applied before parental rights are terminated. But that standard is elevated for Indian children to the standard of active efforts, and what that requires, and what the academic literature speaks about in terms of its definition is that it's practice which is affirmative, thorough and timely, so it always tends to have those three elements. And it's always across the intention to prevent the removal of the child and reunification. So it has those two elements as well, prevention of coming into the system and then exiting the system. It's also spoken about in terms of it being around proactive casework and the, I guess, burden of evidence really rests on the state to show to the court that they have done everything across all of the elements of child protection casework from prevention right through to the application for an order, that at every single stage they have actively made those efforts and how they've made those efforts, and then it's at the determination of the magistrate to decide whether or not the state has actually upheld that gold standard of active efforts. So I think that's a little bit interesting to think about how it's then applied in the South Australian context. When we're thinking about how it can be applied in Australia, a lot of work has been done by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, QATSICPP. And they recently released a guide, I think it was in May 2023, around active efforts in practice, and they demonstrated how active efforts could be applied across the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. Their, their work around active efforts really talks about the importance of seeing the child within the context of their family and their community as well. So, the importance of actively working to prevent the removal by working with the family and the community, and tapping into the resources that the community have at their disposal. So, whether that's community, identifying the right people to provide support to family or identifying potential people that the child could be placed with. You can do all of those sorts of things, and that's also, that also comes through in the United States literature as well. The QATSICPP active efforts guides talks about the importance of efforts being tailored to the individual circumstances of each child, so that you can't really apply a blanket standard. It really needs to be determined on a case-by-case basis, and that's also backed up in the United States as well, particularly in the, the case law examples. The QATSICPP example talks about active efforts beginning the moment a family or an individual reaches out to that service, and applying all the way through to exit of that family from the service. So it's the responsibility of the service right from the very beginning, and it gives examples in terms of things like referrals stating say, if a family requires support to access housing, active efforts is not just simply making a referral to a housing service because that's a passive act, that's simply expecting the family to be able to then take up that referral and make up, make those next steps. Active efforts requires you to make a warm referral and potentially take the family to the housing service, connect them in with a person, follow up on the service referral, and see what stage it's at, whether or not it's accepted to do the work of pushing for the referral to be picked up by the housing service. So it, at all steps, requires that proactive casework and for the practitioner to, to work actively with the family and meet the family where they're at. So I think it's also important to think about it in terms of the expectation that the practitioner is not the one that necessarily determines what the family should go through in order to kind of meet their goals. It's about them actually understanding where the family's at, what the family needs, and bringing the family along in partnership. And so when we apply it across the Aboriginal and Torres Strait Islander Child Placement Principle, particularly the partnership element, it's the importance of, I guess, meeting the family and the child on their journey and the, the practitioner taking the time to understand not only the family's needs, but whatever biases they may

hold or what, you know, things like structural racism and how that might be actually impacting the family's life and the child's life. So what's within the control of the family as well, and what, how systems and structures are actually, you know, creating oppressive circumstances for families. And where they can work alongside the family or to challenge those systems. So I think it, it's not only just active efforts in terms of your case work with an individual child and family, but it's also with the community, and then it's also working within the systems and structures that society has, whether that's, you know, complimentary systems to child protection, like health and housing, family violence services. But then also the broader inequalities in society, and how that can actually impose barriers to health and wellbeing, but then also to receiving services or accessing services too.

Counsel Assisting:

Thank you.

Dr Krakouer:

You're welcome.

Counsel Assisting:

Is this being seen in practice in South Australia?

Dr Krakouer:

I don't think we are currently at the standard of active efforts in South Australia, no. No. And I think an example of that are things like requirements with family group conferencing for families to meet the bottom line that child protection determines. That's an example of not working in partnership and not working actively to meet the family where they're at, and to understand what the family's needs may be. That's a demonstration, I think, of quite passive casework in that the family is expected to meet whatever requirement the state has set. It's not about the family being able to come together in partnership and work with the state or with, you know, a culturally safe service like an Aboriginal Community Controlled Organisation that's authorised by the community. So, I guess that's one example of the way in which it's an example of passive case work. And I think passive casework is also evident in the ways in which we see referrals provided from child protection to other services such as, you know, Department of Health, we see that in the high-risk birth, the high risk, sorry, the unborn child concern reports. So, there's again that, rather than working actively with other services who also have a role in supporting the entire family, we see that almost delegation of, of responsibility to another service provider. Yeah.

Commissioner Lawrie:

In terms of active efforts and not seeing it to the standard that it ought to be applied here in South Australia, we know that it's not in legislation. Even if it weren't, even if it were in legislation, what do you know is needed to actually support the delivery of active efforts to the standard that you spoke about earlier, as being the gold standard set out in the Indian Child Welfare Act from the United States.

Dr Krakouer:

Yeah, it's interesting because some of the literature in the United States, particularly that written by now retired Judge Leonard Edwards, who wrote a book on, on reasonable efforts, and one of the chapters was on active efforts in the Indian Child Welfare Act. He talked about the fact that active efforts involves greater expenditure of resources by the state than those required by the reasonable effort standard. I interpret that as expenditure of resources, both human and financial. So the human resources that goes into the casework, as well as the personnel, and who I guess, has responsibility, so actually widening the net of people that are there to support the child and the

family, and I think in the case of an Aboriginal child and family, it would be actually widening the net to include their entire family and culturally responsive services, like registered Aboriginal and Torres Strait Islander organisations who have that authority to work with the child from that particular mob, and actually tapping into the cultural knowledge that people have, so ensuring that we've got those resources at our disposal. And then, in terms of financial resources, it's not just around, I guess, the resources that go into providing the service, but the resources that enable the family to be well and thriving. So the importance of anti-poverty measures and looking beyond the child protection system to a sort of public health approach and what other systems actually have a responsibility and impact on family wellbeing and child wellbeing and safety, and cultural connection as well. So how can we actually provide financial resources to the family to ensure that they're able to live in an environment that supports their wellbeing culturally, socially, economically, physically. And I think in South Australia, that's really poignant when you think about remote communities, and the fact that people don't necessarily have access to, to safe drinking water, or a standard of housing that may be in disrepair, but it's no fault of their own. They're still waiting on government or the state to come in and do those repairs or provide access to quality drinking water. So when we think about the standard of active efforts and what resources are required, we also need to think about all of the different government services working together to ensure that they're providing services to Aboriginal families and communities at a level that upholds our human rights and our dignity, and right to self-determination. So our right to actually have a say in our children's lives and to determine how our children should be cared for.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

Thank you.

Dr Krakouer:

Welcome.

Counsel Assisting:

So that moves into the transformation of outcomes, Dr Krakouer, how does that come about?

Dr Krakouer:

OK, so, I think, I just want to go back a little bit, talk a bit more about active efforts. In the Queensland, the QATSICPP active efforts practice guide, they talk about six dimensions across the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. They talk about active efforts being purposeful, so providing focused and in-depth support for the child, family, and then I would add to the community as well. Being thorough, so attentive to the needs of the child and family, I would add community, and genuinely understanding their story. Timely, so responding to needs as soon as possible. Active, so that gives guidance to, they say to strive for best case outcomes, I would say it gives guidance to, it gives guidance to show what level of casework is actually needed to achieve outcomes for Aboriginal and Torres Strait Islander families that are culturally appropriate and effective. In the US, they do talk about active efforts needing to be culturally appropriate, and so the importance of actually working with the tribe, and they call them Indian Social Service Agencies, as well as individual carers and the child and using the available resources of the entire family, the mob, the different organisations that are involved. The importance of effectiveness is, is mentioned in the QATSICPP guide, so measured by outcomes and self-reflection, so I think that's really poignant before we moved into talking about outcomes. And

then affirmative, so the, being aware of any bias and genuinely listening to the child and family's story. And I think that's really, really important at the moment, given the results of the referendum, particularly in South Australia, where we think about, OK, what biases are actually impacting the provision of casework to the standard of active efforts across all elements of the Aboriginal and Torres Strait Islander Child Placement Principle, and if we're thinking about prevention in particular, what gets in the way of us actually delivering services to Aboriginal families in South Australia to prevent children from entering the child protection system, and one of them is a failure to listen to Aboriginal people, and to hear our perspectives and our solutions, and to have us drive, drive the agenda forward. I think that's really important in the context of legislative reform because that ultimately sets the standard to which, not only the state is expected to uphold, but over time, given the goals of the Safe and Supported national framework, where we're wanting to move to delegated authority to Aboriginal Community Controlled Organisations, it's also going to set the standard for our own organisations. So it's really important that we're actually involved in the development and the changes to the legislation, and we need to think critically about who is involved. How can community be involved? And we've lost this opportunity to set up new governance structures with the Voice, so we've lost the opportunity to have community determine how they want their views to be put forward. This is now a point we're at where we need to think critically about what, what structures we put in place so that community can have the appropriately authorised people speaking for them. And I can, I'm gonna talk a little bit about that a bit later, just when we're talking about outcomes and new models of self-determ, of child protection around self-determination. But I think the final point I just wanted to talk about with active efforts was that not only should they be provided continuously throughout the life of a case, or for Aboriginal children, throughout the entirety of the Aboriginal and Torres Strait Islander Child Placement Principle. They should also be applied to the child, family and community in a very holistic way, so we're not just looking exclusively at child protection case work and what's required to investigate whether or not child abuse or neglect has happened and how we should, you know, engage with the family. The academic and the grey literature, both in the US and some of the stuff that's come out of Australia as well, talks about the history of Indigenous removals and the importance of actually taking into account the history in order to understand how active efforts should be applied in the contemporary, and why it's needed to this higher degree, this higher standard, because if we don't actually expect a higher standard of practice, the racism of not only the past but the contemporary will continue to negatively influence outcomes. And I'll talk about that a bit when we're talking about models of child protection, how the biases in society are actually evident in the system. And we have a lot of literature that actually showcases those racial biases in child protection systems, including in Australian systems. Also, the differences as well between passive and active efforts, the academic literature talks about that quite intensely as well as the differences between active and reasonable efforts. The importance of working with the whole tribe, not just an individual, individualistic focus on the child. So I think understanding differences between Aboriginal ways of collective child rearing are really important when we're talking about how practitioners need to apply active efforts. It's also about challenging their ethnocentrism and their bias around how child-rearing should look and challenging the notion that our families should uphold this normative middle-class standard of child-rearing, you know, focused on a nuclear family model. The proactive efforts for the entire family and community. The academic literature also talks about how active efforts might be applied for, at the various stages, from prevention through to reunification, and when it talks about prevention, it talks about things like anti-poverty practice, referring families on for trauma treatment and trauma assessment, so that we can actually address things like intergenerational trauma that may be impacting, you know, family wellbeing and functioning, as well

as other things like whether or not family violence is happening, whether or not there's things such as substance use that may be actually a result of the trauma that people are living through, and trauma that's unresolved. And how active efforts, I think, therefore, can and should be applied in accordance with Aboriginal understandings of social and emotional and cultural wellbeing. So we're actually taking a very broad, holistic understanding of active efforts. Not looking at it just exclusively as pertaining to child safety. But we're actually thinking about how can a child be, well, thriving, healthy, culturally connected, what does the community want for this child? What does the family need in order to be well and healthy in accordance with Aboriginal notions of what help our wellness and health is? Because we don't look at it as an individualistic thing. We think about the health of the entire community and the wellbeing of the entire community, so active efforts need to be applied across that standard as well.

Commissioner Lawrie:

I sort of do but I'll probably let you go on a bit. I do have a question in relation to the standard of active efforts for a place like South Australia, and the whole point about creating change and seeking from you, opportunities where we can galvanise the change, and in your mind, and what you've seen, and what you've come across in research. Because I appreciate what you said earlier, part about the application of active efforts from one of the judges reports speaks about how you need a quantum of resources, whether they be human or financial resources, to be able to apply active efforts to the standard that is required to counter Aboriginal child removal rates, to increase reunification, etc. I guess what I'm trying to hear from you, Dr Krakouer is how in a, in a, in a jurisdiction like South Australia, the transformation agenda in reforming outcomes when we see that as being a difficult space in which to deliver services, when there are limitations, with the resources and the like.

Dr Krakouer:

Yep, Yep, Yep. That is an excellent question. And I think a part of it comes down to rethinking how we actually work with children and families, and how we can do so in a way that taps into the informal supports and resources that already exist within communities. So I think, particularly when we're thinking about how we can apply active efforts in the prevention elm, realm. What can we do to ensure that people don't come into contact with child protection in the first place? And I think one of the things that we can potentially do is that rather than wait for children to come into contact with child protection before they can be referred to a service, we can actually open up referral pathways and make it so that not only services, but families are empowered to be able to support one another, so we can open up a range of different informal mechanisms through which to provide support to children and families by their own communities. And it's difficult when communities have limited financial supports as well. But we can think about things as, things like, you know, volunteer groups and special interest groups that are committed to making a difference, being involved in providing, I guess, more informal support, so things that are not necessarily through the regulatory statutory, you know, services of the Department for Child Protection. But we might look at things like self-help groups that are set up by community or, you know, grandmothers' groups and things like that, and actually trying to put in mechanisms for them to be involved more or even referred out to. So if a case is potentially closed by child protection actually referring back to community, for community to then know that, you know, this is something that has actually come to the attention of child protection. But now community has that knowledge and can work with that child and that family to potentially put in place the support that's needed or work on, on solutions. I think that requires in some way almost less regulation of the system. I think when you have a service system that's highly regulated and bureaucratic and has, you know, legislation guiding practice, you know,

on the one hand, you get a system that, you know, is meant to respond equally to all children, is meant to have a, a structured response. But at the same time you do also get people falling through the cracks because it can be very hard to get services, or it could be very hard to get services that are actually funded well enough. So I think, flipping, flipping the focus on just investigating whether or not child abuse and neglect exists to thinking about community wellbeing and communities determining what they need to be well, and having communities decide what the outcome should be for them, and what they can potentially put in place. So I can think of like an example, it's not from South Australia unfortunately, but from Roebourne. The community had an issue with, you know, a lot of their young people getting involved in violence, and the Elders came together and talked about, you know, the problem that their children were facing, the fact that, you know, there's not actually a lot of resources and things for young people to get involved in. And they came up with the solutions that they wanted for their young people and started putting them in place. So I think, you know, for them it involved working more closely with the local police so that they could actually work on the relationships between police and how they actually respond to Aboriginal young people in Roebourne. Looking at ways that their young people can get more involved with culture and actually come out with Elders on country and things like that, and then actually pick up some of those cultural practices again and learn, I guess, the importance of sitting, not only in that space of respect, but you know, the power that cultural connection has in enabling health and wellbeing for children, Aboriginal children and young people. So like, that's just an example of, I guess, how communities can determine what is needed for their own communities, and what actually may be needed to prevent, I guess, children from coming to the attention of child protection systems, because one of the things we know with South Australia's child protection system and all of the child protection systems in Australia is that it operates on this notify-investigate model, so it relies on forensically trying to pick up cases of children or young people that may be experiencing child maltreatment, and it does it by relying on notifications from the outside to the agency. The agency then investigates whether or not child maltreatment exists. And in doing that, what it creates is a higher degree of surveillance of the family and the child. So service systems that are designed to help the family and provide support actually become embroiled in surveilling the family, and then deciding whether or not to report them to child protection. So it kind of misses that opportunity to provide genuine support without families being in fear. And I think if we move into the space of providing services in more of an informal manner that potentially relies on communities building up services, or developing things in a voluntary way, or even just drawing on what resource, resources they've already got, we can actually deliver things not only that are place-based and tailored to that location, but we can also try to avoid this harmful practice of families getting involved with services that then surveil them and monitor them and, you know, are responsible for reporting them on to child protection services.

Commissioner Lawrie:

Hmm.

Dr Krakouer:

So I think that's just one way what we can think about how to do it without being reliant on government increasing expenditure, because the flip side of that is when we need to transform outcomes, we also need to rely on government to spend more money across the board, across health, poverty, poverty reduction, you know, improving service delivery to remote communities so people can live in a adequate standard, you know, that the state doesn't always uphold, you know, in terms of repairs to homes and ensuring that communities are actually resourced effectively. And also, you know, we know that Aboriginal Community Controlled Organisations are not always

resourced well to do the work that they need to do. We've got cases of that in Victoria where that, it then impacts on delegated authority provisions. When there's not enough funding to provide the service that needs to be provided to children and young people, what can then happen and what has happened in the Victorian context, is that sometimes the ACCO does not pick up that particular child or young person for their services under delegated authority because they're feeling like they're being set up to fail.

Commissioner Lawrie:

Mmm. Thank you for that.

Dr Krakouer:

No worries.

Counsel Assisting:

Thank you. So moving from there, the transformation, I mean that leads very nicely into the transformation of outcomes, but it also looks as though, it's not just transformation of outcomes, it's transformation of a whole system and a whole way of even viewing a child protection system.

Dr Krakouer:

Yeah, I think it is. I think for me, thinking about who determines the outcomes initially is really important and that matters. It requires us to flip the balance of power, so that the power doesn't rest solely with the state to determine what outcomes should be achieved for children or young people. Even the naming of the legislation, you know, around safety is something that really shows who holds the power and who determines what outcomes are most important. You know, child protection and determining, you know, the bottom line for families to participate in things like family group conferencing, again, that, that shows who holds the power to determine what outcomes are most important. And we know that that doesn't work for Aboriginal children and families, that we view our children in a different way. We don't view our children as an isolated individual who belongs to, you know, a small, the parents, for example, we see them as a member of an entire community who has a place in this world that has a place in accordance with Aboriginal notions of relationality and is connected with country, with people, with a story, it's a collectivist and far more complicated way of understanding what the child needs in order to be healthy and well. And so when we take that as the base of understanding what the child needs, we then have a different way of determining what outcomes actually are most important. So, communities actually having the power to determine how outcomes are defined and what outcomes should be prioritised is really, really important, and I would say that's a fundamental aspect of self-determination, for community to have that control. It also ties into, like you were saying before Denise, not just looking solely at outcomes, but looking at the system as a whole, and what the function of the system is, and what we want that system to achieve. So we don't have to have a child protection that exists in an individualistic, a formal structure as it currently exists. There are models throughout the world that have child protection systems that are more focused on the, I guess, the collective elements of, of society or have more of a focus on, you know, family in a more broad sense, and community, and have, you know, less degrees of regulation within the system. So the Scandinavian model is one example of that, where they operate in quite a different fashion to Australian child protection systems. Even in New Zealand, even though it's quite a highly regulated system for Māori, they're moving towards a more collectivist focus, so that the focus is not solely on the child in isolation, but it's actually looking at the whānau, hapū and iwi structures. So looking at that kind of broader sense of who's involved in the family and where that child belongs, you know, in accordance with Indigenous notions of relationality. So I think, we need to critically look at Indigenous and Western

viewpoints of what child protection systems should look like and what they should achieve. We know for, history tells us for Aboriginal children in South Australia that the system has really been based on wanting to assimilate Aboriginal children and it has focused quite narrowly on this idea of safety to the exclusion of things such as best interests, to the exclusion of things such as cultural connection, and that it, in many ways trades off, you know, one form of harm for another and creates the harm of cultural disconnection. I think, the starting point is really important. So what question do we ask about the system? And if we want the system to achieve child safety? Māori Legal Scholar Dr Luke Fitzmaurice, he asked the question if it's child safety then partnering with government may suffice, but if the starting point is to reverse the impacts of colonisation, to ensure that families and communities can be well, healthy and functioning, and to look after their children, then government control and partnership will not be OK. So he, he asked, what do we want? And if we want a decolonisation framework, if we want something that is genuinely about self-determination, then we have to realise the limits of partnership and reconciliation, because the referendum outcome has shown that reconciliation has failed in Australia. Anti-racism is now absolutely fundamental. And self-determination and Indigenous communities determining what the outcomes are, how those outcomes should be defined, what does the system even want to achieve, and how do we want that system to achieve it for our families? Those need to be radically, they need to radically reshape the way we even think about child protection in South Australia now. And I would say thinking about self-determination and community genuinely having that power and autonomy and, and self-governance is really critical. So with self-determination, there's this idea from Western moral philosophy, which is about the capacity of the self for free will. It then takes this idea and transposes it to the collective, so the individual has their free will and puts that into the collective and determines that the collective can, I guess, speak for them, can govern them, it gives that consent of the individual to the collective. If we apply that then to Aboriginal people, we need to think about the individual authorising whatever particular body they've authorised to speak for them. What we've seen in Australia, because our efforts around self-determination have required an approach where government maintains near invincible sovereignty and power in, in you know, their understanding of what they consider sovereignty to be. It's required that organisations then speak to government and government have, in some ways, taken those organisations as, as the authorised people who community want to speak for them. Professor, Associate Professor Sana Nakata, who's a political theorist at James Cook University, she talks about this process beginning in the 1970s with the establishment of Aboriginal Community Controlled Organisations, and that Aboriginal Community Controlled Organisations have become the, I guess, the governance mechanism that Australian Governments now kind of go to in these relationships where they negotiate things with Aboriginal communities. But the reality is that community has changed drastically since the 1970s. And you know, we have, particularly, in urban places, we have communities where we've got migration and things like people finding identity later in life, which has kind of changed the fabric of Aboriginal communities compared to the 1970s. So I would say that we need to at new ways to ensure that organisations are actually authorised by their community to speak for them, and that community needs to have a, a role to play, a huge role to play in making sure that that's done appropriately. Again, with missed outcome with the, with the Voice that, sorry, missed opportunity with the Voice referendum because that could have enabled communities to establish new governance arrangements and have people who are actually authorised to speak for them. But I think just on that point of organisations, it's really picking up this Western understanding of governance and applying it to Aboriginal people, you know, within Western ways of understanding governance we look at, yeah, we look at which organisations can speak for its members, where we have our own ways of governance in line with, you know, community law. So there needs to be a

different way of determining who has a seat at the policy table, and who speaks for community in those settings, or who is speaking to even the child protection practitioner regarding a family. So looking at things like the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan, it lists off, you know, a whole stack of outcomes that it wants to see over the period. It has reference to an Aboriginal and Torres Strait Islander Leadership Group and then government working together. It's little things like who's authorised to be, to be there negotiating with government for South Australia, and how many people are there, how they're representative of all the different diverse communities, how much control and power does government actually have in those processes in determining what the outcomes are going to be on those policies on paper, and how can we again try to flip that balance of power? So I think when we're wanting to transform outcomes, we need to dramatically re-shift the balance of power and go back to Aboriginal ways of determining what works for our children, and what systems are going to work for our children, and Aboriginal ways of determining who has the authority to speak and when they have that authority, and who they're speaking for.

Commissioner Lawrie:

Thank you. It certainly does shine a light on South Australia with regard to the governance that sits behind some of the national reforms.

Dr Krakouer:

Mhmm.

Commissioner Lawrie:

Like Safe and Supported and the National Aboriginal and Torres Strait Islander Action Plan. And when we shine the light on South Australia in that regard, we do have an inherent problem with the way in which the national leadership group is constructed with the South Australian representation. I'm just wondering, though from what you've provided us with the, I guess, the, who gets to create the authorising environment, if you could share some of your, I guess, learnings about that, like how does that actually happen for the purposes of, of the principle and the, you know, the vision for active efforts here in South Australia. How does the system, then how does the community work in partnership or not, to put forward the agenda for change, in transforming outcomes for Aboriginal children and young people here in South Australia.

Dr Krakouer:

Yep. I would say that, at the moment, what we have is the government determining who gets to decide, and it's the government who is creating the authorising environment by picking who it chooses to be, who it chooses to work with, and who it chooses to have a seat at the table. I think, in part, governments rely on going to Aboriginal Community Controlled Organisations to find the right people to sit at the table and to provide the perspectives, because there, you know, is the narrative that Aboriginal Community Controlled Organisations are controlled by the community and they have a board structure, which means that community should actually be feeding to the board, the board should be responsive to community, the organisation should therefore be acting in the interests of the community. But unlike the 1970s, we have now, over time, moved into a governance like arrangement where Western ideas of governance have really been enforced on our Community Controlled Organisations, I would say, because there isn't really economic self-determination underpinning our organisations, they're heavily reliant on government funding. And so, it's hard to advocate in that environment, particularly when the power really ultimately rests with government to decide who's going to be funded and how much and so forth, and the history of Aboriginal affairs shows us that government is willing to withdraw funding from organisations when it decides that, on

a political whim, you know, you can name a whole bunch of organisations beginning with ATSIC and even more recently going to AbSec in New South Wales with government deciding to withdraw funding. So I think, that's one challenge but in terms of Western governance and how it's enforced on our Aboriginal Community Controlled Organisations now, there is an idea that, that organisation is not, is accountable to government because government is the funder. So government think about accountability in terms of the organisation being accountable to them, being accountable to their funding requirements, having to report back on how they've spent the funding, in what ways and so forth. Aboriginal communities see accountability for our organisations differently. We think fundamentally about the organisation being accountable to community first and foremost. So government, I think, create the authorising environment in that they choose the organisations they seek to work with. The organisations may then decide who they want to have that seat at the table with government. Government may also decide that they want certain people that perhaps have a voice that isn't as confronting, doesn't disrupt too much, doesn't invert the, the power too much, isn't too challenging. And governance, we've seen it a lot, government are the ones that send out the invitations for people to join committees and so forth, and they decide who's going to be there. So, in terms of partnership, I would say that working solely with Aboriginal Community Controlled Organisations is not partnership because it's not enabling you to partner and work with the entire community.

Commissioner Lawrie:

Thank you.

Dr Krakouer:

You're welcome.

Counsel Assisting:

So how is that addressed, Dr Krakouer? How, what, what's required to address that power imbalance and, and bring about a power shift?

Dr Krakouer:

I would say, first and foremost, I think that existing Aboriginal Community Controlled Organisations need to go through a process of being re-authorised by community, and community determining whether or not that organisation actually does have the authority, whether or not that's around, like establishing recognised Aboriginal and Torres Strait Islander organisations, like your work has referred to Commissioner Lawrie. I mean, I, I personally think that's an excellent idea because community's not the same as it was in the 1970s, so there needs to be a new process for determining which, well, determining who is authorised and why they're authorised, making sure that we've got those checks and balances in place. The other thing that I think that's really necessary for the balance of power to be flipped is that when, when government, I suppose, fund organisations to deliver particular services, we need transparency around those funding arrangements, and I think that this office in particular really should have access to those financials to see who's being funded and how much they're being funded for those audits to be made available because you can't have good governance without transparency. And I think there's, there's probably not enough that has actually been made public or accessible that enables us to actually look at how services are being delivered and who's being funded and so forth, to actually determine whether or not things are being done in a way that's actually accountable to community and legitimate. And then I think in terms of accountability, we need to then think about how government can, can focus on its own accountability to addressing the problems that it has power to address. And on the one hand, it has the power to, to fund services differently, to provide more resources and so forth. But it also has the

power to look at who's within their government, what anti-racism measures they're actually taking on in, on board. To look at things like reconciliation action plans and replace them with Indigenous rights frameworks. To look at things like self-determination and how it sits as a fundamental human right under the United Nations Declaration on the Rights of Indigenous Peoples, and how we can actually look at upholding our rights to international covenants which have been signed, United Nations Convention on the Rights of the Child, you know, the child's rights to culture and cultural connection, their right to be raised with their family unless, you know, circumstances dictate that the child has to be removed. What does the government need to demonstrate that it's doing to prevent the most intensive interventionist thing that it can do, which is remove a child from their family. So...

Commissioner Lawrie:

Mhmm.

Dr Krakouer:

Yeah, if, if the South Australian Government genuinely wanted to see Aboriginal and Torres Strait Islander people have, recognised in the Constitution and have a voice to Parliament, if it genuinely wanted that, and it knows now it's not a possibility, what is it gonna do instead? And how is it going to centre anti-racism efforts? How is it going to centre Indigenous rights, first and foremost, not reconciliation, but justice and rights? And how is it going to then uphold its obligations under UNDRIP and UNCROC and look at those as, as the measures which we need to aspire to.

Counsel Assisting:

Thank you.

Dr Krakouer:

You're welcome.

Commissioner Lawrie:

Mmm. I mean, it does get me thinking 'cause right now in South Australia, the, the pressure is on with regard to our South Australian governments legislating of the Voice, and it is embedded in our South Australian constitution as a consequence of the, the legislative requirements, and it does, at this minute, it is being challenged. Whether or not it gets undone is yet to be seen, but at this point in time reconciliation is a huge agenda for South Australia as around the, the country and we have seen, as you so eloquently put in your earlier remarks about what the outcome of the referendum has yielded, yielded across the continent. So this, this need to actually focus on accountability from, from within the throngs of, of government is such an important way in which to approach reform. Can you tell us of any examples of where those efforts to bring about reform have been through the efforts of government? So we, we know we've heard from you about getting the reforms through the way in which Aboriginal Community Controlled Organisations and the efficacy of creating or recreating the self-authorising environments about who gets to do what and why, in regards to our Aboriginal children and young people. You've talked about the, the fact that the, that governments, at the present, do a lot of the driving, of the decision-making about that authorising environment. I guess, what I'm trying to hear from you is examples of where that happens in government, but it's also the strength of our Aboriginal communities, and our Aboriginal Community Controlled Organisations that have been able to counter that power imbalance to bring about the change.

Dr Krakouer:

Hmm. It's interesting. I guess internationally, we can look at a lot of examples of reform throughout international child protection systems, and Emily Cadell in Aotearoa, New Zealand, she's a Pākehā

scholar. She talks about these sentinel events, so these events, which usually trigger a reform reaction, and they're often, and historically, have been in the case of child deaths situations, and then inquiries that follow, and then quite often reactive reform that government put in place to respond to, I guess, the reasons why the death occurred. But often these reforms result in a more interventionist system that actually scales up its level of surveillance of families and provides more power, I guess, to those who remove children and less power to families. In Aotearoa, New Zealand, there was the case, the Hawke's Base, Hawke's Bay case it's known as now, where a Māori baby was attempted to be uplifted, which actually resulted because of, I guess, community awareness, and protest and resistance to the removals, it resulted in a government response that involved an inquiry and then the suspension of court, I think it was court orders for infants, so it was actually temporary, temporarily suspended, that infants couldn't be removed within a certain time period after birth. So, it made it harder for the state to actually apply for orders to remove infants as a result of this inquiry. I guess that's one example where the opposite has been true, where there's been a sentinel event, and then there's been, in this case, community protests and community outcry against a system that was overly interventionist. And it's resulted in the system becoming somewhat less interventionist for a limited time period. It was really Māori that were at the forefront of that resistance. So Māori who were driving the, the need for the system to stop taking babies as easily as it was taking babies, and actually to put in place more checks and balances. And then the Waitangi Tribunal went through its inquiry process and, you know, considered ways that they can actually, I guess, try to create a system by Māori for Māori. So they're looking at, you know, what devolution of services or decolonisation of the system looks like for them, and they've recommended a transitions authority that actually has it's, as it's fundamental role, determining what that by Māori for Māori system should look like but deciding over time, so it's not something that is a, a knee-jerk reaction but something that's thought through very carefully, and considers deeply all of the different options that are at our disposal. Whether that's, you know, partnership with government for services and devolution of services or delegated authority or is it, you know, abolition of the system, and is it transferring some of the services to say traditional owner groups to deliver some services instead or, or use some of that funding in ways that they think it should be used. I would say, again, in the Australian, in the Australian example, what we're seeing now with delegated authority and even what we saw in the past with the application of the Aboriginal Child Placement Principle, that was Aboriginal Community Controlled Organisations who are at the forefront in making that happen. So, when the Aboriginal Child Placement Principle got developed in the 1980s, that was the efforts of Aunty Mollie Dyer and other Aboriginal women at VACCA, and other organisations who actually took learnings internationally, and then pushed government for change. With delegated authority we've seen, things like, even the Aboriginal and Torres Strait Islander Leadership Group under the Safe and Supported national framework, pushing for these changes, or we've seen, you know, QATSICPP and Commissioner Lewis in Queensland pushing for delegated authority, or in Victoria, we've seen, you know, places like VACCA pushing government for these changes. So, and I think, in part, this is a function of governance, government, my belief is that they don't change things unless the legitimate, legitimacy of child protection systems are challenged in some way. And when we have these sentinel events, the legitimacy is challenged because the system's either not done enough to protect a child, or it's doing way too much and is actually, you know, breaching families' human rights by coming in and intervening too hastily, when it shouldn't, for example. And that government rests on the public actually giving it the legitimacy it needs to intervene into the private realm of family life, like the community needs to give them some level of trust and authorisation and legitimacy in order to do and undertake such a, you know, a really, a heinous act to intervene into someone's private home and to take their child is one of the most, you know, punitive things that a

government can do to its citizens, so it requires that legitimacy. But my point is that with Aboriginal children in South Australia, the child protection system has never been a legitimate system in the eyes of Aboriginal people. It's been a system that has not functioned to serve the interests of Aboriginal people, to really serve the interests of Aboriginal families and communities, it's been a system that's been created to serve the interests of the white society, and what the white society wants, and what they want is, you know, the assimilation of the Aboriginal child. That system's morphed into a contemporary system, which is still not seen as legitimate by Aboriginal people. That is still seen as a system that's overly interventionist, a system that doesn't truly understand and work with Aboriginal people in determining how best to ensure that our children are well, safe and thriving. And what that means for us as Aboriginal people, and what that means, say, in the APY lands versus on Kurna country could be very different. So I think, yeah, community, I think has always been pushing for that change, for governments to do something differently, and to reform in ways that we want them to reform in. The balance of power is not with Aboriginal peoples though, because of the, you know, the small numbers that we constitute in the population. So unlike with the sentinel event, where generally the mainstream media gets involved, and the entire community has kind of a, a shock reaction to this case, and then you get your everyday citizen who hears of the case because it's, you know, come into their living through, living room through the television and they're hearing about the story and they get, you know, this emotive reaction, and they want this cry, this change. We don't have that, those numbers behind us. And, you know, the referendum's really proved that as well that we don't have the numbers behind us. And, in order for the government to actually commit to reform that will serve the interests of Aboriginal people, it needs to stop and listen to Aboriginal people, because at the moment, it's developed a system that, I guess, is legitimate in the eyes of the, the majority of the South Australian population, but it's not listening to the minority of the population that's always seen the system as illegitimate, illegitimate for Aboriginal families.

Commissioner Lawrie:

Wow. Thank you so much, Dr Krakouer.

Dr Krakouer:

You're welcome.

Counsel Assisting:

That was wonderful. Thank you Dr Krakouer, it's been very, very helpful and very enlightening.

Dr Krakouer:

You're welcome.

Counsel Assisting:

Very grateful for your time and, and what you've put into preparation for this presentation today. Thank you.

Dr Krakouer:

No, you're most welcome. I think I've gone through everything I had listed. Probably, one thing I'll just mention in terms of new, new models of child protection and ways which we can think about what we can potentially do to transform the system. There's some work by Marie Connolly and Ilan Katz. Marie Connolly's now retired, but Ilan Katz still works as an academic in Australia, both Australian academics, who looked at typologies of child protection systems, which is a way to essentially capture the values and beliefs of the, that underpin and drive child protection systems. And they came up with these four quadrants typology models where they look at, really two

dimensions of child protection systems, whether it's more oriented towards an individual or a community focus. So, whether it's got that individualism versus collectivism continuum, and then whether a, whether the system is more or less regulated. So, across a formal-informal continuum which looks at the degree of regulation of the system. And their work looks internationally at diverse child protection systems, and they put sort of four quadrants along these continuums in place, so you have the individual formal quadrant, you have a community formal quadrant, you then have an individual informal quadrant, and a informal community quadrant. And so we can see actually there's degrees of movement through which we can have our child protection systems more or less focused on the individual, so we can actually shift the focus from the individual to focusing more on the community orientation. And similarly, we can shift the degree of regulation of the system. So we can have these highly regulated systems, and we can also shift towards more sort of family service provision community unregulated volunteer kind of style arrangement sort of provision of services. So I think, that's really helpful to keep in mind what we can put in place across the different levels, and that we can actually shift and provide services within a kind of public health model approach as well. So we might have more, we might have some formal responses when there are cases of child protection, abuse and neglect. But when there are perhaps issues that relate more to poverty, we might have a less regulated response. The other thing that I think is really helpful to think about is when we're thinking about, I guess, a public health model approach to child protection, we're thinking about how we can get the different parts of government to work more effectively together, so that we're not necessarily having this really siloed approach. And how we can enable, I guess, structural transformation in ways that take some of the lessons from other countries that have gone, that are going through kind of reform or even other jurisdictions in Australia that are going through reform processes, and what we can sort of pick and choose from other contexts and where we can learn from those ideas. I think the US is really interesting at the moment, because there's a lot of discussion around abolition, and the community actually determining what they envision for a future child protection system. And I think that's quite a powerful notion because abolition is not about just getting rid of the child protection system, it's actually about a new imagining and hope for new possibilities. So when I think about, like an abolition approach for Aboriginal families, I think of how we've always cared for children and how we've always kept children well and safe, and I think about the value of our kinship system, and the fact that we had in place and still have in place, ways in which to ensure that children are safe and cared for within kinship structures and within community. So that means collective child-rearing, it could mean, in some parts, in some Aboriginal communities, customary adoption not to, you know, just to ensure child safety but wellbeing in general or wellbeing of, you know, family strengthening and so forth. But I think we've always had our ways of doing child protection. We haven't called it child protection, but we have had our ways of keeping our children safe. So it's about going back to what community want and what community see as solutions, and actually trying to generate new visions based, you know, potentially on old knowledge. There's an example in New South Wales, James Beaufile, who's doing his PhD at the University of Technology in Sydney, has worked with the community in Menindee, who were left to their own devices somewhat in a case where a large sibling group had come into contact with the out-of-home care system. And they came up with their own model of ensuring that the siblings were cared for in a collective child-rearing model, that's traditional in Aboriginal communities. So the siblings were placed with different members of the same family group, because they couldn't overburden individual family members by having, you know, six kids in the one household. But because those carers were all from the same family group, sibling connection naturally occurred. There were respite carers put in place as part of the model because one person is not solely responsible for the child, so they embedded community kinship caring within the system so that

they had, I think it was four or five respite carers registered, so that the children could move in and out with different carers that were part of the same family group, and provide the care to the children. And it's been some time since they started that model and they have seen excellent outcomes for this sibling group. Improved cultural connections, school attendance, sibling contact, feeling connection with the community, better contact with their family, they're, they're placed with family as well. So I think, that shows the power of Indigenous self-determination, and when community has the power to come up with the solutions that are going to work for community, we can enable new possibilities and new, new ways of working, you know, that really draw on the insights and knowledges of Indigenous cultures, but also, the strength of community in knowing what community, the strength of community in knowing what community needs for their kids, and what's gonna work for their kids.

Commissioner Lawrie:

Awesome. Thank you.

Dr Krakouer:

You're welcome. No worries at all.

Counsel Assisting:

Good example, beautiful. Thank you.

Dr Krakouer:

Yep. Awesome.

Counsel Assisting:

Do you have any questions?

Commissioner Lawrie:

No, I've got no more questions. It's been an absolute pleasure to hear from you, Dr Krakouer.

Dr Krakouer:

Thank you, Commissioner Lawrie.

Counsel Assisting:

Thank you very much, Dr Krakouer, for your time and for your absolutely invaluable input here to the, to the Inquiry. Very grateful.

Dr Krakouer:

You're most welcome. Thank you so much. And thank you, Commissioner Lawrie, for inviting me to provide this evidence. I really appreciate it.

Commissioner Lawrie:

Not a problem. Thank you.

Dr Krakouer:

Thank you. Bye bye.

Commissioner Lawrie:

Bye.

Counsel Assisting:

Bye bye.

END