



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

Thursday, 19 October 2023 at 10:00am

Expert Witness:

- **Amy Cleland, Australian Centre for Child Protection, University of South Australia**

Denise Rieniets, Counsel Assisting:

Good morning, Amy.

Amy Cleland:

Good morning, Denise. Hi April. How are you doing?

Commissioner April Lawrie (Chair):

Good morning. How are you?

Amy Cleland:

I'm good.

Commissioner Lawrie:

Yeah, I'm good thank you. Well, good as can be, you know. Anyway, yeah.

Amy Cleland:

Yeah, yeah. No, hear you loud and clear.

Commissioner Lawrie:

Yeah.

Counsel Assisting:

Amy, we'll ask you to affirm your evidence before we get started, after the Commissioner has done an acknowledgement of country.

Commissioner Lawrie:

OK, I'll just like to start the process with acknowledging that this is the land of Aboriginal people, Kurna people on which we're meeting today, and this land has never been ceded, which to acknowledge all our, you know, Elders and emerging leaders, leaders of today, and all our Aboriginal children and young people that we hope for a better future, and acknowledge that right across this country always was, always will be Aboriginal land.

Amy Cleland:

Thank you.

Assistant to Counsel Assisting:

So, if you wouldn't mind repeating after me, Ms Cleland.

Amy Cleland:

Yep.

Assistant to Counsel Assisting:

I swear, solemnly affirm, sorry, I solemnly affirm that the evidence I will give.

Amy Cleland:

I solemnly affirm that the evidence I'll give.

Assistant to Counsel Assisting:

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

Amy Cleland:

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

Assistant to Counsel Assisting:

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

Amy Cleland:

Amy Elizabeth Jane Cleland, [address withheld]. My position is Aboriginal Strategy and Engagement Lead with the Australian Centre for Child Protection at the University of South Australia.

Assistant to Counsel Assisting:

Thank you.

Counsel Assisting:

Thank you. Ms Cleland, I understand that you've been undertaking some research with respect to family tracing. Can you tell us about that research, please? What, what, how that came about and what it is you're researching?

Amy Cleland:

Sure. So the focus isn't on family tracing, it's on the position of the Aboriginal and Torres Strait Islander Child Placement Principle within the legislation and it's a focus on South Australia. It came about as a result of my experience working in youth justice and child protection spaces of South

Australia through my employment as an academic at UniSA teaching in Aboriginal studies of social work, psychology, criminology, and some of the health sciences, which culminated with my own lived experience as an Aboriginal person towards a PhD study. So my information cannot come without acknowledging the immense number of people who have been so generous in sharing their story, sharing their experience. I would like to say that this current study, the PhD study, *Laws that Colonise Aboriginal Children, Child Protection in the Australian Legal System* is the title, spans participant groups, you know, from the age of 18 up to 80. 80 was the eldest or the youngest participant that I have. The research is born from relationships over a couple of decades through my work prior to the university, and then since starting at the university in 2007. And so the findings does include family, like identification, but a whole host of issues came out through the data collection, which is qualitative.

Counsel Assisting:

Thank you. Can I invite you please to, to speak to what you, your findings are with respect to that, that research, in particular the, as you understand this, this Inquiry is about the Aboriginal and Torres Strait Islander Child Placement practices within South Australian context.

Amy Cleland:

Absolutely. I just want to keep referring to some notes to make sure that I...

Counsel Assisting:

Perfectly, yep, perfectly acceptable.

Amy Cleland:

We cover the detail. I have a number of experiences that inform the principle, and we were fortunate to speak with people who were involved in the drafting of the principle, so it's quite a journey. The study certainly starts with acknowledging the question, the legal question that still hasn't been answered of the lawfulness of the child protection system itself, having jurisdiction over Aboriginal and Torres Strait Islander peoples. So that journey, the methodology is centred around a decolonising approach, which is why the design included conversations with both Aboriginal and non-Aboriginal participant groups. And that was done in a roundtable style number of gatherings to do, to have those conversations. We had six roundtables and following a decolonising approach.

Counsel Assisting:

Ms Cleland, just, I'm sorry, can I just interrupt there? Can you just explain to us what a decolonising approach is?

Amy Cleland:

Absolutely. So a decolonising approach recognises that the present child protection experience is a direct result of colonialism, so it's resulted in the disproportionate representation of Aboriginal children, young people and families in the system. So a decolonising approach acknowledges that we can't analyse change or the circumstances that we're faced with now without that acknowledgement. The decolonising approach becomes practical when we realise, we need to shift beyond decolonising Aboriginal people. Australia, as a nation, has experienced colonialism in different ways, depending on when people's family arrived, under what circumstances, the existence of their growth of their generations on this continent and the islands, and how those experience relate to the colonial experience for Aboriginal and Torres Strait Islander peoples. Bit of a, we're all in this together kind of way of viewing, but also realising that after generations of attempts to influence and change systems and practices, you know, we don't see much. So it's an attempt to look at the non-Aboriginal experience of colonialism, and how that impacts the ways and

relationships, not just in society, which we've seen last weekend, but how that permeates into policy and practice in child protection.

Counsel Assisting:

Thank you. Sorry, I, I interrupted you when I asked you that question. Can I get you to continue where you were, please?

Amy Cleland:

Sure. And it, that's a perfect segue because the data collection involved spaces that were exclusively Aboriginal spaces, where participants were asked the same questions that were then posed to the non-Aboriginal participants of the study, and then in a decolonising approach, we had two roundtables where both Aboriginal and non-Aboriginal participants came together to further unpack the questions, and to have space together to hear each other. So it was very much a mix of an academic approach but very community and Aboriginal-centred in the way that it was run.

Counsel Assisting:

And what came out of that in terms of your findings?

Amy Cleland:

I think, if I was to summarise overall is majority of the issues we already know and have known about for a very long time. It's certainly the action that's missing. The key aspects that came out from both cohorts was the issues around the confirmation of Aboriginality and identifying children and families at the outset. I've seen for the state South Australian Department for Child Protection considering identification as a precursor element of the principle moving forward, but the issues that were described in practice around identification described what I call a lot of silly business. Really disrespecting family choice, not nurturing a child's or young person's choice around identification, and how its inconsistent, relies on individuals to make decisions, it's an unnatural process and it doesn't engage with the family. It, it's, a travesty because it signifies whether an Aboriginal child receives a service and what type of service that is, and whether the principle is even considered as important and, practitioners described, an ad hoc approach and that the principle and identification was often a barrier for their practice, which is, you know, you have the child at the end of that who suffers those consequences. And people would share, particularly significant community members who were part of the roundtables, would share their community knowledge of being exposed to people leaving the system, who would then be desperately searching for their identity and who they are, being, you know, for some words to use, left by the wayside to find their way after they left the system. One of the other biggest issues was the application of risk and that's versus safety. Obviously, a profound question in child protection is risk, however, the paramount principle of safety was considered and is considered as overriding the principle. So, this is the question of whose law, which is another finding of my research, Aboriginal law and non-Aboriginal law. So again, looking at a decolonising analysis of the law. Also, related to safety and risk was the position of Aboriginal Community Controlled Organisations, which links to another finding around the need to analyse the non-Aboriginal law and approaches to funding of services. There were a number of examples where funding that was given to trial different approaches would often be with funds that were specially sought from Treasury, so they were mapped out in a particular way, were often when there was a surplus that had to be used quickly. So there's no real genuine attempts to map change. There's lots of discussion around the need to build the capacity of ACCOs, which in itself is another deficit approach to the strengths that the Aboriginal community already hold. And similarly, with the family group conferencing, you know, which is a requirement is still very much pilot in the way people are viewing it, is not available to everybody. The power is held with the government around

who gets it and who doesn't, and it is terribly under-resourced. So when I say there's lots of things we already know and has been in a number of reports and commissions and inquiries is self-determination and Aboriginal-led, they're words that come up repeatedly and through the lens of the law, we have a number of instruments and frameworks and declarations that we can draw upon, yet simply are not implemented in any meaningful way. The other key aspect was the law enforcement and legal services connection to child protection work. So law enforcement, often being that first point of contact, there's very little understanding from this study about the principle. And it was interesting to see a few of the examples from SA Police around interventions that would automatically seek other family to care for children, however it's not part, or it relies on which police officers you get at the time of a call. So again inconsistency, ad hoc, relies on personal power of individuals in their respective roles, whether it's law enforcement or within the child protection system. So I probably should have mentioned the participant groups across the Aboriginal and non-Aboriginal, so you know who I've been speaking to. So certainly, in the Aboriginal space, our Elders and significant community members, child protection practitioners in government and non-government, so that could span a number of different roles, but people who are working in child protection services, and that was across Aboriginal and non-Aboriginal. Law enforcement across Aboriginal and non-Aboriginal, and legal representatives from courts, various courts, you know, Federal Circuit, Family Court of Australia, Youth Court, Courts Administration Authority, Nunga Court so, yeah, a number of different approaches that all have a vested interest in a child protection response.

Commissioner Lawrie:

So what were some of the barriers that, that were talked about in terms of implementing the principle?

Amy Cleland:

It's a very interesting question because there was obviously a lot of work, particularly by statutory organisations like SA DCP, to understand and unpack at the high levels their responsibility under the principle. How much that involved Aboriginal people, the assumption that I drew from what people were telling me is that the interpretation had very little to do with Aboriginal practitioners. Therefore, the interpretation is through a non-Aboriginal lens. It's very much again around risk aversion. So in itself, those policies become a barrier to practice. Another barrier is the availability of Aboriginal staff to be across a number of functions as decisions are made. So if I was to put an emphasis on one aspect, its workforce, Aboriginal and non-Aboriginal. I draw upon my experience teaching in the social work program for over a decade, and the demographic of students who go on to work in child protection and question whether they're adequately screened for employment in those roles. And some of the examples shared from participants is the personal power that is held by particular individuals, that there are simply games played with Aboriginal practitioners within the department and outside of the department in making statutory decisions. So a real sense of helplessness in being able to influence decisions, regardless of the fact that the policies are really clear, the resourcing is not there to enable people to do the work they need to do. The reliance on residential care, which results in the criminalisation of children and young people, was also a very significant finding described as not fit for purpose, as causing harm, and certainly a recommendation should be the abolishment of residential care. Looking at the workforce, the impact of colonial history that we can track and trace continuing in the statistics now of removals of Aboriginal children, the relationships, particularly between professions like social work and Aboriginal peoples, is damaged. Attempts over the last 15 years that I've been witnessing have fallen well short of the reconciliation that's required, and in thinking about change and a real attempt at change, is engaging

a new specific child protection workforce. Because there are a number of extremely exceptional practitioners who want to be in that space, who keep up their own development, education and training to be a better practitioner, but there just aren't enough of those people. There are too many people falling into this work because they can't get work anywhere else. There's too much turnover because people aren't prepared. There's lots of burnout. Practitioners across law enforcement and the CP system described moving around the workforce was to give themselves respite from the trauma of the work that they had to do. And it wasn't the trauma of working with families, it was the trauma of working within the system.

Commissioner Lawrie:

Is that both, is that both for Aboriginal and non-Aboriginal staff or for?

Amy Cleland:

No, just Aboriginal.

Commissioner Lawrie:

Yep.

Amy Cleland:

The non-Aboriginal staff really tended to stay in the same place, particularly, in the same organisation, they would do stints in other teams, but they're predominantly, and we're talking, I mean, one of the participants has been with the department in its different iterations for 40 years. So this is what I'm saying, people are able to sustain and have this interest and, you know, develop up their own knowledge and approach, but there just aren't enough people like that. If we keep having these reports that say Aboriginal peoples have a mistrust due to history with child protection services, and we have the same professional body doing the work, we're gonna have the same outcomes. Megan Davis has written in her report around acknowledging that the practice is still embedded of viewing Aboriginal families differently, it's almost like it's become an automatic response. And then, certainly my experience working in the system, doing lots of collaborative work with non-Aboriginal district centres, like predominantly non-Aboriginal district centres. They just simply don't have the capacity. They don't understand. They don't have the time to understand.

Commissioner Lawrie:

Mhmm.

Amy Cleland:

And therefore wouldn't act, wouldn't do things. Sorry, the Act can change, but the actions don't.

Counsel Assisting:

I mean, I just, sorry, can I just clarify with you? You said, said that the practice of viewing Aboriginal people differently is embedded. We've heard from other expert witnesses that, and it's in the, across the board that Aboriginality itself is seen as a risk factor. Is that your, is that what you're referring to there?

Amy Cleland:

Yes, yeah, we, we absolutely unpacked it because it used to be part of policy. And participants I spoke with believe it has now been removed as a risk factor. Like as a a little risk factor. However, when you look at another risk factor of previous child protection involvement, if that disproportionately affects Aboriginal people, it maintains that risk factor.

Counsel Assisting:

Thank you.

Amy Cleland:

But also looking at things like personal racism, prejudice, values, viewing situations through a different lens. You know, I worked in an all Aboriginal team in child protection, and we just had different glasses on when we were looking at families compared to our non-Aboriginal counterparts. So those conversations were really interesting. And I think it has to do with predominantly non-Aboriginal people do not have a relationship with Aboriginal people. We still experience that, that's in a number of social surveys. There was lots of discussion around that with the Voice as well. And that's the majority we're dealing with. I should just also mention, the roundtables that we had, we had 41 participants. 24 were Aboriginal and 17 were non-Aboriginal. And there was also follow-up personal interviews offered and 26 participants took up that offer, 13 Aboriginal, 13 non-Aboriginal. So we had a number of different ways of speaking as a group and then having opportunities to have the quiet personal yarn. The prevention piece, which is part, an element of the principle, is absolutely missing in practice, and again, we know, we know the benefits economically of ensuring what people call a public health approach, but it's really also prevention and early intervention. And we, we know the resourcing is just not going there, it's still going to a, you know, the tertiary response of the system. So again, thinking really differently about what this notion of child protection is and where the resources need to go. The, the principle as designed by Aboriginal grassroots really should mean that no child is removed because that's what the principle aims to do, but we still have the statistically high removals. Therefore, it's very clear they're not being implemented. If they were, we wouldn't be seeing these numbers. But further to that, it's the further harm that's created. Children are simply not being removed to better circumstances, and that's why I'll be calling for abolishment of residential care. Cost benefit is, is really clear. I draw upon the justice reinvestment idea and the possibilities for a similar way of viewing child protection. And again, it's the redirection of resources.

Counsel Assisting:

Can you just elaborate a bit on that, please, Amy?

Amy Cleland:

Sure. So similar to looking at the cost of incarcerating a young person versus providing a community response that will, you know, build a new direction for a young person who could possibly enter the, the justice system. And again, we all know about the link to graduation to the adult system. So similarly, and that's an approach that's, you know, nationally becoming broader and accepted certainly in this state. So yeah, just a number of other people like Robyn Layton QC, who I've been speaking to, it's really made me consider that similar approach to child protection. I know there's someone in the department who has actually done his own calculations on the cost of care. But to make that a very clear public argument is another piece of work that I think should progress. You know, what if the funding went to the family and doing things differently? Rather than the cost of putting a child in residential care who's going to run away, possibly vandalise within, you know, these are the examples, vandalise within the residential care, then become criminalised. You know, that's causing more harm. What about the redirection to a different approach, a family approach, community approach.

Commissioner Lawrie:

Amy, when you talked about the further harm being created when kids go into the system and calling for the abolishment of residential care, from that process and landing on that recommendation for then, your work, what, what was brought forward as the alternative?

Amy Cleland:

Absolutely redirecting those funds to family and community, implementing the principle in the way that it was intended. It's just, it seems, beyond a system's ability to consider funding a family rather than a system. So again, breaking through the approaches that have been around for such a long time, and keeping in mind that child protection and the removals of children in colonial law, whilst it was explicit, the practices in the law now is, is still based on those ideas. They're outdated ideas. So this idea of what child protection is, is outdated. And certainly the families and communities that I work with and have always worked with, there is so much love and strength and beauty that's available. It is so sad to see when a system impedes that, it stops that. And then the child ends up worse than if they'd stayed with the original source of the issue.

Commissioner Lawrie:

Mhmm.

Amy Cleland:

But again, with residential care, kids are running away and running back to family, and we know this, this is, this is told, these are stories that are told. That the reason why it's not changing and that's why the decolonising analysis is important to understand the non-Aboriginal, because that holds the purse strings, holds the, the legal power, and is the majority of the workforce. So in a number of ways, I try to understand that through my work, but I'm also getting to a point where I think enough is enough.

Commissioner Lawrie:

Yep.

Amy Cleland:

It is about power and resourcing the right Aboriginal spaces, which is, is a tricky space. We don't have many ACCOs, particularly that are functioning in connections well with the community. The ACCHOs are working really well, you know, maybe that's an alternative space. But I certainly feel that a new workforce is needed. A clean slate is needed. People that Aboriginal peoples do trust, will trust, because trying to repair those relationships, it hasn't worked, and I can't see it working in the near future.

Commissioner Lawrie:

Can you talk a bit more about what you see from your work, that new workforce is?

Amy Cleland:

Absolutely. I've had a couple of discussions in the Department of Health as well, just with some ideas around where the workforce could be situated, similar in Education. So I've spoken with DHS around some research there of positioning that support within schools. But an absolute clean slate, people, it's a little bit like teaching in Aboriginal studies in, in undergraduate and postgraduate, they're people choose to be there. People that are passionate about work but gives a real nuanced and detailed opportunity to work with people on understanding multiple and complex needs, unpacking their own identity within the space of working with families and, and children, you know, so accrediting a new body, not a self-subscribed body like the AASW, the Australian Association of Social Workers, to do what is the most important work with our children. The detail is, is nowhere near mapped, but it's a concept, it's an idea, it's, it is like drawing a line in the sand on the social work approach. The government's high standing of social work as being a criteria for employment in child protection. Again, just simply because it's not working. So the universities could absolutely, positively develop and negotiate a new qualification that is specific to child protection. It may not be

called child protection, it might have something that's a little bit more empowering, strength-based, that normalises families working with people to support their own children, you know, rather than it being a scary, oppressive interaction. Because anyone would respond in the same way that a lot of families do to that, the current approaches.

Commissioner Lawrie:

So what is your view then, if you've had the opportunity to examine what the Aboriginal Family Practitioner role is like within the Department for Child Protection here in South Australia?

Amy Cleland:

Mhmm. The...

Commissioner Lawrie:

Does that meet your criteria in terms of what you've gleaned from your studies? Or, yeah, so I'd be interested to hear from you about that.

Amy Cleland:

Absolutely. And again, the issues with a position like that is the downsizing that's occurred with Aboriginal Family Practitioner roles, the pressure for the AFPs to study social work alongside their existing role, not to mention their community and family obligations. So that pressure has really changed over the last 10 years. But also, that people who join and, you know, AFPs are often in non-government as well, so I'm talking across the board, or Principal Aboriginal Consultants is another role. But speaking about the AFPs, particularly, because they're service delivery, and if that gets removed, and this is what a lot of the research found as well, where are the people working in homes? Working with families? Supporting, you know, getting kids to school and looking at budgeting and, you know, all of those sorts of human things that used to occur have all gone or downsized. The AFP role, if changed, should always be in consultation with the people who have been in the role, and the changes should reflect what those people have said. I'm aware the Principal Aboriginal Consultant role has just changed, it's no longer that name and it's doing different functions and it's more aligned to the mainstream level.

Commissioner Lawrie:

Hmm, I wasn't aware of that. Yeah.

Amy Cleland:

Yes. I should probably be really careful about what I say. I'm at a point where I just don't care anymore. Because people in those roles were not consulted, people who were put up to review those roles weren't engaged, and so, what it is now is a bit of a mess. So, some of the responsibilities were not what people had said were needed. And I think with the change in CE, that's kind of been left in a bit of a limbo and that's unfair to the workforce, and they're very likely to lose a number of people again. So workforce is just vital, looking after the people who are prepared to do this work, but also, to do the work that they want to do, and they know that we need to do. They can't be behind desks and just being asked a question here or there, you know. They need to be out working with people in homes, on the ground, in the community, and we used to do that.

Commissioner Lawrie:

Hmm.

Amy Cleland:

We used to do that.

Counsel Assisting:

Amy, can, are you able to elaborate a bit on what that change to the, the Principal Aboriginal Consultant is and when that, when that occurred and what it now looks like?

Amy Cleland:

Yeah. So it occurred a few months ago. They're now called Aboriginal Practice Lead. So there's Practice Leads as non-Aboriginal people, predominantly. And so, my understanding from people who weren't involved in the design but are affected by it, is that they are now elevated to an equal status as the Aboriginal, as the Practice Lead, sorry, and will have decision-making around removals.

Commissioner Lawrie:

Which role is that?

Amy Cleland:

Principal Aboriginal Consultant role. But hasn't played out yet.

Commissioner Lawrie:

So ultimately, being given responsibility to make decisions around a removal.

Amy Cleland:

Which is worrying people.

Counsel Assisting:

And sorry, can I just clarify, did you say they're predominantly non-Aboriginal people...

Amy Cleland:

The Practice Leads.

Counsel Assisting:

In that role?

Amy Cleland 41:24

No, in the Aboriginal Practice Leads, they are all Aboriginal people. So that role used to be Principal Aboriginal Consultant, they've just been rebadged. The Practice Lead is the predominantly non-Aboriginal practitioner's role.

Commissioner Lawrie:

So what we know as PACs and our Practice Leads, and will have, will have decision-making within their duties in regards to removals.

Amy Cleland:

However, with the same very few number that we have across the state, sitting on the sidelines, I, I can tell you, no one's thought that one through. There are people that will avoid that role like the plague. So it's a worry but this literally is the last few months that this has happened. So we don't know how it's playing out yet. And changing Chief Executive, I think, has just set it back a bit like in terms of its attention.

Commissioner Lawrie:

So what you're saying are these, these changes were instituted prior to the introduction of the new leadership to the department.

Amy Cleland:

At exactly the same time. So it was not ideal timing.

Commissioner Lawrie:

Mmm. I'm keen to just explore your earlier remarks in regard to a new qualification in working in this space with vulnerable Aboriginal children and their families. And I'm keen to know whether you've been able to garner anything in your studies as to what other jurisdictions might be thinking about in this regard. I'm personally aware of what, some of the things are internationally with Indigenous communities in social work practice, but I'm really keen at a local level to know what you may have come across in your in your studies.

Amy Cleland:

Mmm. I haven't come across anything.

Commissioner Lawrie:

OK. Yeah.

Amy Cleland:

There is still so much of a reliance on obtaining a social work qualification in order to work in the statutory child protection space. And I mentioned before, the pressure on Aboriginal staff to also obtain that qualification despite being employed without it and under the equal opportunity legislation. There's still so much of reliance on it. There isn't people talking about social work no longer having a role.

Commissioner Lawrie:

Mhmm. So you would be aware of, I mean, you mentioned ACCHOs before, Aboriginal Community Controlled Health Organisations. You would be aware of the development of the professional role of the Aboriginal Health Practitioner?

Amy Cleland:

Yes. Yep.

Commissioner Lawrie:

Being a regulated profession like all other clinical or non-clinical roles in the health setting. Are you aware of the parallels in the health setting with what could be applied to in, in this particular space, of working with vulnerable, you know, families and their children?

Amy Cleland:

Absolutely. And again, it has to do with that existing relationship and trust with ACCHOs and with health workers, Aboriginal health workers especially, which sounds like the AHP growth. That it, to me, what you're describing just in that, that description is exactly the type of new approach. The question about non-Aboriginal people's role is one to be had because we don't have enough Aboriginal people in the workforce. However, if we were to counter statistics, then we would. We would have enough people.

Commissioner Lawrie:

Hmm.

Amy Cleland:

The health space is absolutely one, particularly the ACCHOs, that could hit the ground running with additional material, perhaps for the practitioner training and registration. It could even be, you know, a postgraduate or short course micro credential, you know, it depends on the content as to what level and, and how long of study, but could also very much be work integrated. 'Cause this is another challenge, is people being able to step away from their roles to be able to upskill. But when being led down a qualification like social work, it almost becomes a waste of time because people

are already functioning better in the Aboriginal child protection space than their non-Aboriginal counterparts. So it's almost a waste. But that example for AHPs is exactly along the lines of what I'd be looking at beyond this study. Like, where are Aboriginal families already? And where are people feeling safe? Where do they have the trust? And that's where the workforce should be.

Commissioner Lawrie:

You, you also said earlier in relation to three key points about the, the system, about the law, the workforce, I'm trying to refer to, and the purse strings in your decolonising analysis of, of the system. What, in your view with the work that you've undertaken, is the alternative system? I know we talked about abolishing residential care. What have you found so far with all the work that you've undertaken as to the alternative system with regard to the workforce that you've just spoken about. What is it that you've come up with?

Amy Cleland:

It's unpacking delegated, yeah, delegated authority, which we are seeing in other jurisdictions. The national, the new national framework, Safe and Supported has working groups and one of them is specifically looking at that. However, I mean, SNAICC is at that table as decision makers, but it is a wait and see situation as to how that's interpreted. But until that true authority, along with the resourcing, is in the hands of Aboriginal Community Control, we won't see any difference. Because there's pseudo examples of that happening now, and, and nothing's happening, nothing's changing or it's very micro. Again, the inconsistency is what's so, so difficult in the system, but it does relate to just little pieces of monies that are across the place, nothing really dedicated. So I think the conclusion from this study is if delegated authority is true, it starts to tick some boxes across self-determination and Aboriginal-led. You know there are great Aboriginal models of working with families but they're not funded for any longer than a pilot. So that sustained power handing over. There's been discussion about Aboriginal specific child protection law, certainly overseas, but there's been discussions in Australia about proposals for that. My opinion, however, is that that's still buying into a non-Aboriginal way of doing things in a non-Aboriginal law. However, if the law relates to resourcing and responsibility being handed over to Aboriginal peoples, then that has a possibility of working. And I say that because the principle as an Aboriginal idea and grassroots has simply been absorbed by non-Aboriginal law to almost become ineffective. So it's difficult to ascertain and I think we're going to continue to have this issue about how far into the non-Aboriginal space do we need to go to get our self-determination.

Commissioner Lawrie:

So, the other day we heard from Dr Paul Gray who spoke about, just as part of his submission, about Grandmother's Lore. So hearing from yourself about how the current structure of putting child protection law in, I guess, what you referred to as the colonial law, which is the Western law to do, to do the next thing, which is to develop an Aboriginal child protection law, isn't appropriate when we think of Grandmother's Lore, I'm talking about L-O-R-E, not law, as in the legalistic sense. Are you referring to that approach or talking about something that might be a bit different to that?

Amy Cleland:

It, it, Grandmother's Lore has been thrown around a lot lately.

Commissioner Lawrie:

Yep.

Amy Cleland:

And I'm wondering whether people really understand what that means.

Commissioner Lawrie:

Responsibilities and where it sits, yeah.

Amy Cleland:

Yes, yeah. We're also in, like we're very diverse populations. So the extent to which lore can become embedded, perhaps in urbanised environments, with where it's very much monitored under a non-Aboriginal legal space, that's constantly going to have a push and a pull. Self-determination means not having to explain Grandmother's Lore to a system that is incompatible. It just doesn't understand it, won't understand it, can't understand it. I have lost a bit of hope from last week. However, I do think it is a time to think of some, not think of something new, it's already there, but to demand what is already principles that the Australian Government and jurisdictions have signed up for. There's too much leadership having the desire to do this, but it's often for economic reasons. It's not filtering down to the people who interact. Speaking about Paul Grey as well, the national space is a national problem. The local is where the knowledge, the lore as you're saying, in its nuanced senses, has its tangibility, and when, again, a national approach is a non-Aboriginal concept. So, if we keep putting our efforts into convincing the national space to do X, Y and Z, we get through yet another framework, another decade of another framework where it hasn't trickled down on the ground in the local areas. And you see this in, and you would see April in the consultations that you do around the state, everything is different. So if a national body, which is terribly organised, like disorganised, I would say non-functional. You know we're 2023 and we don't have the relationships right, we are not going to see that change by 2031. So, I'm a big advocate for the local solutions. How the lore interacts with that is the, as I said, the unanswered question in Australian law. I've, I've heard that Judge Eldridge is, is appointing a couple of Elders to the Youth Court in a model similar to the Nunga Court. So they'll be interesting spaces to watch.

Commissioner Lawrie:

Yes.

Amy Cleland:

But again, you know, that's just because of that judge. It's not something that's been put on her to do, and I think that's the things that you see around the place, when good things happen or change happens, it's just because someone's just decided to do it. And someone like Judge Eldridge has the, the power to do that. But where it matters most in the relationships and interactions with families who are needing help, that's where it's not. No one's got power there or resources. Their work is still guided by the policies.

Commissioner Lawrie:

Thank you.

Amy Cleland:

So the studies that I'd like to do is the articulation of things like, you know, Grandmother's Lore, but also in a world that we live today, of ensuring that the interpretation relates to the roles in kinship for, for men, for grandfathers, you know, for uncles, dads, it, it's all of that and for young people. You know, we've been criticised for putting responsibilities on young people at a young age. You know research needs to articulate that for future generations. The documenting of what our lore is in safe ways.

Commissioner Lawrie:

Mhmm.

Counsel Assisting:

Has that been done anywhere, Amy, that you know of?

Amy Cleland:

It's really in literary studies where people are writing their own books or in sharing pieces of life and lore that they can. So it's more in that space. This is a, you know, relates to whose knowledge is considered true and who, who produces knowledge, how it's translated, and who holds it. So that's a big part of Aboriginal methodologies, is ensuring the interpretation is by Aboriginal peoples, but again, we don't have enough of us in this space, in the research and academic space.

Commissioner Lawrie:

Yeah.

Amy Cleland:

It is changing but there is, there's so much work we could do. But yeah, that people are certainly writing their stories.

Commissioner Lawrie:

Mmm.

Counsel Assisting:

Thank you. Do you have any further questions for Amy?

Commissioner Lawrie:

No, I, I don't have any more questions. But do you have anything more you wanna offer Amy as we?

Amy Cleland:

I do want to acknowledge Professor Irene Watson's work around raw law, so international law and Indigenous peoples. Just in terms of that influence of being able to look at the power of law that exists on this continent and has for a very long time, and the need to explore its interaction and its existence with the introduction of non-Aboriginal law ways. So I've certainly taken that inspiration to look at it specifically in child protection. I am very pragmatic though, the theoretical is exceptionally important to give us a bit of a, an idea on how to go practically about things. There is one more thing that I wanted to say around the intersection of child protection and family, so state-based child protection and family law, which April, I did see was in your preliminary report that was also raised through the research. Again, problematic for staff in that space because there's lots of education needed in that space. However, it was posed as a very good solution to avoiding entry into the system. So that was one other point.

Commissioner Lawrie:

Yep.

Amy Cleland:

The other was the vision of, domestic and family violence as child protection issue, but who is the, but children are the most affected by that situation, so when children become a victim of those circumstances and enter a child protection system, that is creating more harm, simply unfair and there needs to be a better way, a different way to respond to children in those situations.

Counsel Assisting:

In what, Amy, sorry, can you just elaborate on what you would be looking at in terms of that? Are you talking about scaffolding the family to address that?

Amy Cleland:

It's, it's really a bit of a rhetorical, or a way of, that domestic violence is viewed as a child protection issue. So, you know, it really is an issue, you know, family violence, if it's not inflicted against a child in terms of the physical violence, see there's grey area there. But the child will be affected by being removed from the home. So there needs to be a different response, not the usual statutory child protection response. Something that is more conducive to the fact that child's, you know, the victim of that circumstance. The, the long and short of what I'm getting to is that domestic violence requires something different, just as drug and alcohol, mental illness, poverty. So it's, it's like, they need different responses for each circumstance, but it's just that domestic and family violence is one of the biggest reasons why families will come into the eyes of the system. So looking at ways of reducing those statistics, starting with something like a discrete issue that is, could be dealt with in a different way. Does that make sense?

Commissioner Lawrie:

Yep, yep. Are you aware of the Australian maltreatment study?

Amy Cleland:

Yeah, Leah's across it. I've asked her just to keep me briefed. Is there anything you can tell me?

Commissioner Lawrie:

Oh no, just with your comments around domestic violence, family violence and that children are victim. One of the, I guess, outcomes of that national survey or study was that what adults reported as being something that significantly affected them in their experience throughout their childhood was emotional abuse linked back to domestic violence, family violence. And for a lot of those people who've participated in that survey, I believe who reported that, were not necessarily removed. It was their lived experience about their trauma and the impact on them as a child growing up and now being a person as an adult, being able to participate in a process, and speak of their childhood experience. And there were a considerable amount of people participating in that survey, I think about 1000 people participated in total, but a significant proportion of those participants talked about emotional abuse as in the experience of domestic violence and family violence.

Amy Cleland:

I think you've articulated...

Commissioner Lawrie:

So we have to think about, yeah.

Amy Cleland:

Yes. I think you've articulated it better than I did. So I didn't mean that, you know, if a child's not physically hit, 'cause the emotional psychological trauma is absolutely part and parcel of it. It's just that that journey then into child protection is the punishment for them not, yeah. So that was more.

Commissioner Lawrie:

That's what I heard you say, yeah.

Amy Cleland:

Yeah. Yeah. So it's, it's absolutely acknowledging like something needs to happen. And that's what was interesting with some of the police responses is it that seems natural to some police to find alternative family, whereas others will just call DCP and get the child removed straight away, and you know, it might not happen 'til the following Monday that they even start looking at where that child really should have gone. So we just can't have those inconsistencies. The number of peoples,

over the journey of time and continuing today, where the removal just should not have happened and everyone acknowledges that at the end of the day, but that child's already experienced it, it's too late, it's done. So that, you know, personal, professional accountability. This is what's interesting with social work striving to become registered profession is it could drive some accountability on individuals for their practice, we could see a number of lawsuits, I think in terms of, of, you know, if we had any legal resourcing and power in that space. But yeah, just the unlawfulness of a number of the practices, everyone just kinda goes, oh yeah, that happened, and moves on. The number of people I've said, go and get a lawyer, do you know. They don't have capacity to learn the resources, so you just kind of, you have to get on with it and move on. It's too many of those stories.

Commissioner Lawrie:

Hmm. Yep. Thank you, Amy.

Counsel Assisting:

Thank you very much, Amy. Is there anything else you would like to, to add?

Amy Cleland:

Oh, look, I could talk all day. I just really want to thank you for this privilege, this opportunity to speak. I really am concerned about the harm that's created to children, whether or not they are already experiencing harm within their family, the system is absolutely creating more and it's creating the intergenerational experiences that we will continue to see. We have to break the cycle. We need to stop and do something differently. And it needs to be led by Aboriginal people. I'm so pleased to see your role April, to see Shona Reid in the Guardian position. I do feel the landscape's different, and I really do. I want us all to work together.

Commissioner Lawrie:

Yes.

Amy Cleland:

Whatever you need.

Commissioner Lawrie:

Yes.

Amy Cleland:

See some changes for our families.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

Thank you very much, Amy. Thank you for your presentation.

Amy Cleland:

Thank you. Have a good day.

Commissioner Lawrie:

And you too, Amy.

Counsel Assisting:

Thanks a lot. Bye bye.

Commissioner Lawrie:

Bye.

Amy Cleland:

Bye.

END