



TRANSCRIPT OF DAY 5 – WURREK TYERRANG

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FRIDAY, 9 DECEMBER 2022 AT 10.03 AM (AEST)

DAY 5

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Yoorrook Justice Commission


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5 CHAIR: Today we continue the final day of the first week of this block of two weeks
hearings on the priority areas of child protection system and the criminal justice system.
Before we start, I'd like to ask Commissioner Hunter to do welcome to country.

10 COMMISSIONER HUNTER: Thanks, Chair. I acknowledge that we are on the lands of the
Wurundjeri and pay my respects to Elders, past and present. I pay my respects to those who
have come before us to enable us to have a voice here today. May Bunjil watch over us as we
conduct Aboriginal business today. Wominjeka.

CHAIR: Thank you, Commissioner Hunter. Counsel, may we have appearances, please.

15 MR McAVOY: Thank you, Chair, Commissioners. This morning, we have a panel
comprised of representatives from organisations engaged in the early years childcare system.
Followed by evidence later today from magistrates, particularly those involved in the
Marram-Ngala Ganbu program. We will proceed by way of panel this morning, and I will
20 have each of the witnesses sworn in. Firstly, Lisa, could you tell the Commissioners your full
name.

LISA THORPE: My name is Lisa Thorpe. I'm a Gunditjmara Gunnai woman and the CEO
of Bubup Wilam Aboriginal Child and Family Centre.

25 <LISA THORPE, AFFIRMED

STACEY BROWN: My name is Stacey Leanne Brown. I'm a proud Yorta Yorta and Dja
Dja Wurrung descendant. I am the CEO of the Yappera Children's Service Cooperative
Limited.

30 <STACEY BROWN, AFFIRMED

MR McAVOY: Next, Kim Do.

35 KIMBERLEY DO: Hi. I'm Kimberley Do. I'm a Yamatji Noongar woman. I work at
Yappera as a family support worker.

<KIMBERLEY DO, AFFIRMED

40 MR McAVOY: Thank you. Next, Tracey.

TRACEY DILLON: Hi. Good morning. Tracey Dillon, CEO of Njernda, Badtjala woman
from the Fraser Island. I'd like to acknowledge country, Elders past, present and emerging.
Thank you.

45 <TRACEY DILLON, AFFIRMED

MR McAVOY: I would ask you to keep your voice up, too, thank you. Aunty Hazel Hudson.

AUNTY HAZEL HUDSON: I'd like to acknowledge that I'm on Wurundjeri county and pay my respects to elders, past and present, and thank you for your welcome to country. It is much appreciated. My name is Hazel Hudson. I'm the director of family services at Njernda Aboriginal Corporation.

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<AUNTY HAZEL HUDSON, AFFIRMED

MR McAVOY: I will just go through your individual outlines of evidence just to confirm you're happy with the content of that document and it's true and correct. Firstly, Lisa, you've provided an outline of evidence to the Commission?

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LISA THORPE: Yes, I have.

MR McAVOY: You've read that recently?

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LISA THORPE: Yes, I have.

MR McAVOY: The contents of that are true and correct?

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LISA THORPE: Yes, they are.

MR McAVOY: Commissioners, the version of Lisa's evidence, which will be tendered, will be a redacted version on the basis that, at the close of this panel session, there will be an application for a restricted hearing in which some confidential evidence will be given by Lisa Thorpe. Stacey and Kimberley, you've got a joint statement, have you both read that document?

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STACEY BROWN: Yes, we have.

MR McAVOY: You're comfortable that the contents of that document are true and correct to the best of your knowledge?

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STACEY BROWN: Yes, they are.

MR McAVOY: Thank you. Tracey and Aunty Hazel, you've provided the Commission with an outline of your evidence?

35

AUNTY HAZEL HUDSON: Yes.

TRACEY DILLON: Yes.

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MR McAVOY: You have had a chance to review that and you're comfortable that the contents are true and correct to the best of your knowledge?

45

TRACEY DILLON: Yes.

MR McAVOY: I note there are additional notes that have been provided by Aunty Hazel and Tracey, which we may give in the form of oral evidence today, or it may be in the form of a follow-up outline of evidence. Thank you. Now, I will follow the same order and just give

you the opportunity to describe for the Commissioners and, for the record, what it is your organisation does. If I might start with you, please, Lisa.

5 LISA THORPE: Bubup Wilam Aboriginal Child and Family Centre was established 10 years ago under the Closing the Gap initiative back in 2009. We started Bubup on the same premises of what the multifunctional Aboriginal children services were and followed that line of along day care, kindergarten wraparound around services.

10 We have - our whole program is based on Aboriginal children and their identity and who they are and we have actually grown for the last 10 years and built up a complete child and family services for our children that we control and we support and we deliver all those services internally at Bubup, including an NDIS ECIS service. We have our own allied health staff, a visiting GP and we do a whole lot of support and identity program and servicing for our children on the ground at Bubup.

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MR McAVOY: I might just get you to talk a little bit about your own qualifications?

20 LISA THORPE: My qualifications are, first, my whole history has been working in the Aboriginal community in various different organisations. My longest history is working in the Aboriginal health service and I had - did do some work at Yappera Children Services in the early days. I then went to Deakin and done my masters in public health and stayed at Deakin University at the Institute for Koorie Education and coordinated the bachelor of early childhood degree, the bachelor degree, and was there for seven years, and then, at that time, we were developing Bubup Wilam on the ground. I was the Chairperson and on the board

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MR McAVOY: Thank you. Stacey.

30 STACEY BROWN: So Yappera was established in 1981. So we've just recently celebrated 40 years as an Aboriginal early years service which has responsive and really grounded holistic education and support services for our children and families. So, as Yappera has evolved over the years, it's important that we remain grounded. We are Aboriginal community controlled so it's important that we remain responsive to what the needs, current and emerging, are for our families and communities as they do change each year.

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40 So we offer a range of education and care services for families around health, education, and wellbeing, and they are holistic. So we provide wraparound services for all of our children and families enrolled throughout the entire service. Some of the programs that we do offer are art, dance and music therapy, which are really important foundational programs within Yappera. Culture forms the foundation of everything that we do. So our philosophy, our vision, our purpose and our values. Always every program that we offer comes back to those and ensuring that culture is the forefront of everything we do.

45 We have a number of Aboriginal staff in the leadership right down to the educators in all the programs that lead the Aboriginal cultural component of the programs as well as mentor and inform the non-Aboriginal staff that are working in our early years service. So we are very particular about the people that we do employ within Yappera knowing what our cohort of families - knowing the cohort of families that we have. We have one hundred per cent Aboriginal enrolments within the service and we currently have over a two-year waiting list

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unable to provide capacity to the number of children that are on the waiting list within our service.

5 MR McAVOY: Thank you very much. Could I just get you to tell the Commissioners about your experience and background in this area?

10 STACEY BROWN: So I have been working at Yappera myself for over 28 years now. I went in as a young mum myself and the finance officer. So I came off maternity leave. Prior to that, I was working at the Aborigines Advancement League as doing - undertaking a traineeship in finance. I then moved on to Yappera. So I went into the finance role back then as a young mum, so working part-time. Then, as we progressed, I moved into more of a leadership role at Yappera. So I undertook my diploma of education, at the time, so that I could move through the service into the CEO role and then I went on to do my bachelor of early childhood education at Deakin University, when Lisa was there, and then got an
15 honours. So furthered my study. So I have been there in the leadership role since 2004. I commenced in 1994 at Yappera. So it's been a long time.

20 MR McAVOY: Thank you very much. Kimberley, would you just like to talk about your experience in the sector?

25 KIMBERLEY DO: So I started off in the primary school education when I was about 16. So from there, at that school that I was working at, there was a lot of children, Aboriginal children, enrolled at that primary school. So I have got my cert III in early years, diploma in education and care, and also my certificate IV in community services. I have also been a kinship carer for my niece.

MR McAVOY: Thank you. Between you, Tracey and Aunty Hazel, who is going to speak about Njernda?

30 TRACEY DILLON: I will. Njernda Aboriginal Corporation has been around for 50 years as of 2024 and is an Aboriginal community controlled health organisation and provides a suite of services to people in the Echuca and surrounding area - Aboriginal people from Echuca, Kyabram and surrounds. We provide social services, justice, medical service, social and emotional wellbeing programs and two residential services, the Baroona Youth Healing
35 Centre and the Berrimba Childcare Centre.

40 The childcare centre was set up because previously there were only two places that were set aside for Aboriginal children in the community. So the community decided that they would set up an Aboriginal childcare centre. The centre now provides - is licensed for 50 childcare places. This includes 35 long day care, 15 kinder, and it also provides a holiday program for children in primary school. At Berrimba we also provide services that - specialist services, such as OTs, audiologists, and speech therapists.

45 MR McAVOY: Thank you very much. Could you just tell the Commissioners a little bit about your background in this sector?

TRACEY DILLON: I have worked in the Aboriginal sector for a long time, whether that be on a board or the CEO of a community controlled service. I have been the CEO of three of those, and they range from medium to large. I have also been the CEO of the Tasmanian

Alcohol, Tobacco and Other Drug Council and the National Aboriginal and Torres Strait Islander Women's Alliance.

5 So children and women are at the heart of what I do. The reason why I went to work at Njernda is because I am interested in the healing space. I sat on the Healing Foundation in 2010/13. So healing centres are very important in our communities because our people have suffered from trauma over the years since colonisation. So healing - that's how I feel that I'm experienced in this area. So I lend my skill set to supporting communities assisting the Njernda community to have a child-safe environment.

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MR McAVOY: Thank you very much. Aunty Hazel, would you just like to speak about your experience in this sector?

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AUNTY HAZEL HUDSON: I've worked - I'm relatively new to this sector. I have worked for years, for more than 20 years, in grassroots organisations and spent the last 10 years in Canberra, which is a totally alien environment to anyone that doesn't belong in that land. I came back to the Department of Health - sorry, Department of Families, Fairness and Housing for three years, and then there became a position at Njernda Aboriginal Corporation with the manager of family services position. So the CEO of the day, Karlene Dwyer asked me to apply for that position despite the fact that I had no life skills in community services.

20

25 But what I had was I worked with New South Wales Aboriginal Land Council who went through regular change. So I had good experience in change management, which has done me well over the last few years because anyone who knows our arena since roadmap to reform, through all the reforms that have occurred in our area, there's been significant changes that have happened within our space.

25

30 I came back to this space because I firmly believed that when we have a privileged lifestyle, we need to pay back to our communities. So I'm working in what is substantially a very difficult space because it challenges who I am every day. It breaks my heart every day but there are days when it fills my heart with joy. Is that good enough?

30

MR McAVOY: Thank you very much. I might note, for the record, that you also hold a bachelor of law and a bachelor of business.

35

AUNTY HAZEL HUDSON: Yes. I don't hold that out for anyone. Thank you.

40

MR McAVOY: I want so start with a bit of a difficult topic and I would like to ask Lisa if you could just explain your experience with matters of identifying children as Aboriginal people and how they come into the service - into your service.

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LISA THORPE: Bubup Wilam, the basis of coming to Bubup Wilam is based on your identity and who you are. We've actually put on our enrolment forms, along with all the other necessary information, is that the child - you know, like, who is your mob. We are not asking for confirmation of Aboriginality. We are asking of blood line connections. 93 per cent of the people that walk through the door know who they are at various levels of being very, very strong to not knowing much, but the people who come to Bubup are aware of their Aboriginality and we either continue to keep on building their strengths or we start to find - we grow that through our programming.

50

We actually have a - I actually think there is one child, and one child previously, who is a non-Aboriginal sibling of Aboriginal children who attend our centre. So we keep a family connection, if it's relevant that we do so. But the children are coming out of the system is the biggest area where we have a lot of the difficulty is when they're not knowing who their
 5 connectedness is to and they don't have any capacity to find that out and sometimes we'll have children sitting there for years and the department does not - whichever part of the department is, does not give back to us and cannot verify or identify the child, which then has an effect, if they are there for years, that they struggle because everyone else knows their identity in the organisation, except for these children.

10

Everything in the organisations, they have blocks with their names, we have maps that they can point to, who their mobs are. Everything is built on the strengths of their identity continually and, by the time they leave Bubup, these children are very grounded knowing where they are on the map, who their mobs are, who other children's mobs are, and they
 15 identify themselves by their mobs. So it's all about their connectedness, their family strengths and who they are and so by the time they go into schools they are walking into schools strong and can identify and actually challenge the system about why you're not raising the flag or why you're not doing acknowledgement to countries.

20

Our whole program is based on the strength of the child. We actually - it's not a cultural program because we are very clear we can't offer that but we offer very strong abilities for these children to be able to connect - their families to connect and identify.

MR McAVOY: Stacey, is there anything that you can add to this topic?

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STACEY BROWN: No. It's very similar. So our policies align with Lisa although we do ask for a confirmation of Aboriginality upon enrolment. There are instances, those who are hard to obtain, because there are only a handful of Aboriginal organisations that will offer a confirmation of Aboriginality. Up until now we have been fortunate. There are a lot of people
 30 within Yappera either on the governance, so the board of management, or myself, or staff within the service that know a family when they enrol in Yappera, and we are very clearly - upon that stage of them engaging with Yappera, and during the waiting list process, we are able to identify where the child is Aboriginal, and who their mobs are. So where their family connections are.

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The issue lays with when we get children from the system, or child protection, that come in and enrol and it's a process where we are not able to identify. So they are sitting within Yappera, identified as an Aboriginal child from the system, and we are working with the carers to then - and/or the system to identify that they are, indeed, Aboriginal.

40

MR McAVOY: That process of identifying them and finding their mob, is that something that your organisation is funded to do?

45

STACEY BROWN: No. We are not funded. We often do the groundwork so we are trying to connect families to mob or assist families with finding - or the carers with finding who their mobs are. It's not funded. It's a lot of groundwork, and us speaking to Elders, or different people in community to try and link this child to mob so that they have a sense of identity and who they are, which is really important for Yappera.

As Lisa said, when our children enrol, we want to give them a strong sense of who their mobs are, who their families are, and that's what we do. We empower children so that they are going into school confident as to who they are, as people, and proud of amplifying who their mobs are and we don't want to give these children a false sense of identity.

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MR McAVOY: Auntie Hazel, is that Njernda's experience as well?

AUNTY HAZEL HUDSON: I can talk from both sides. So Njernda require confirmation of Aboriginality but, on those rare occasions when the kids don't, or if we know the family members, so quite often most of our kids are known by community. The children that are referred by child protection, they come via me, and I have a look at their - I require a genogram if they don't have confirmation of Aboriginality and I look at that genogram to see if I can identify potential Aboriginal families within that genogram and we look at our genogram. So we have a genogram for all our children that can cover that back wall with their family details quite often.

15

The reason we do that is a couple of reasons: kids in child protection are traumatised from the very beginning, we can't afford to take on children that can't identify where their Aboriginality connection is in the event that they turn up because, if we do that, we are working with children, we're accepting that they are Aboriginal, and then at some stage historically there has been occasions when it's been identified that those children aren't Aboriginal at all. So they got to go through the whole process of deidentification and they are being traumatised a second time.

20

It's not our role to traumatise children; it's our role to support and heal them. So we are very strict with child protection in regards to the fact that if they can't give us the confirmation of Aboriginality, or they can't tell us where that child's Aboriginality is, we tell them to go to the Finding Families, which is held by VACCA, and Link Up, to start doing that work around connecting those children back for us.

25

Things like - we have had children referred to us with a German name, you know, and most people would laugh at the fact that he's an Aboriginal child with a German name coming to us, and they are supposedly Aboriginal. When I got their genogram, I didn't recognise anyone, except there was one family that I recognised as being Aboriginal from Melbourne. I went and confirmed that with our historians. We are lucky to have Auntie Vickie Mitchell who has worked with children all her life. So she understands a lot of the families. And Auntie Karlene Dwyer and said, "Do you recognise this person?" And they said, yes, "That's Auntie such and such." So we were able to take those families on.

30

Those families now have connected to some of our biggest Aboriginal families in Swan Hill, Echuca/Moama area. So it is critical, given the level of trauma that they already have, and to ensure we don't impose other traumas, it is critical they understand that they are not accepted by Aboriginal agencies until they understand where their connection is because we can do further damage to these kids if we accept them on face value.

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The other aspect is that our services are small. We know that there's lots of Aboriginal kids out there that need those services. So we have to be ruthless, to some degree, to ensure that the kids that we do know are Aboriginal are getting that service that they need. I don't know if I articulated that well for you.

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MR McAVOY: Thank you. I think you explained it well. What I hear from the answers is that the biggest problem is the kids coming from the system. Is there a responsibility, do you think, on the department to do better in respect of identification; does anybody have a view?

5 LISA THORPE: The view that I actually have is that actually that - I'm not sure because we also get all the stuff you have said there about the department bringing children to us already identified, or they have identified, but with no evidence about that, and they are never questioned along the way about how they got that information or actually where it's come from, and we are finding there's a lot of times that they are getting from the non-Aboriginal component of the families and there's never any reach into the Aboriginal - the Aboriginal families that are saying who they are connected with and so it just gets left.

15 We've actually - I think what we need to be saying is how can people identify them without making that contact with the bloodline connection. That's why we don't accept - if people have got a confirmation of Aboriginality, fine, but there is so much, there is so much wrong with a lot of them in the organisation, they are not doing them, or accessibility to them. We know organisations that are writing them, based on what, I don't know what. So we actually don't ask that, we actually just ask who is your bloodline connection, because they are not coming to us with that information. The department walks away and leaves it.

20 Once they get the children into care or a support system, they walk away and don't come back. I think the biggest part of anything, they do need to make that connection straight up, or they shouldn't be approaching us, or they are not equipped to follow that through.

25 MR McAVOY: In your view, is it just the department or is it some of the community agencies as well?

LISA THORPE: The community agencies as in the non-Aboriginal ones?

30 MR McAVOY: The Aboriginal ones.

35 TRACEY DILLON: I don't really receive children from Aboriginal organisations or Aboriginal families who don't know who they are. It is mainly whether they are in the system, whether they're falling under VACCA, which is, I suppose, it's a big organisation, yes, or whether they're children in the system and they could be coming from child protection or VACCA or these other agencies that sit outside of both of them, like, Anglicare or Uniting Care.

40 MR McAVOY: Is that your experience, Stacey and Kimberley?

45 STACEY BROWN: Yes. So very similar. Where often the children are coming in with a tick of the box. So it's just basically what the mother has said at the time of birth. So there's no links being made. There is no genealogy being tracked when the child has - at birth when the mother has stated that the child is Aboriginal. So whether it needs to be done at that prenatal level, with maternal and child - you know, prior to mum even having babies there needs to be some sort of linkages made once mum has stated who dad is.

50 So, at birth, if it's the mother or the father that is Aboriginal there needs to be the links and there needs to be very strong evidence of what mobs that child is linked to at birth rather than presenting at the service and then, as Lisa said, when we put it back on department about

doing the ground work, it's just left, so it's left up to our organisations to then conduct the research with Elders in community and go back to finding how this child may be Aboriginal and/or Torres Strait Islander.

5 MR McAVOY: I noticed both you and Lisa nodding when Aunty Hazel was talking about the need to be a little bit ruthless because of the limits upon your resources and not being able to spread them around. That's your experience as well?

10 STACEY BROWN: Absolutely. So, for us, it's about identifying early, and we have to be ruthless because we don't want a process - these children are traumatised already coming into Yappera. So we don't want to further traumatise. Yappera is a safe space and we are there to nurture children and raise them strong. We don't want to do that giving them a false sense of who they are or not even being able to know who they are, or what mob they come from.

15 KIMBERLEY DO: We have had requests from the department for enrolment and it is upon that initial conversation of us going, okay, who are their mobs? Is it from the mother's side, the father's side, and then the child protection workers are going, "Oh, we don't know." So it's us asking them initial questions, keeping the department accountable for them to do their own work as well because we are finding that, in some instances, parents are saying, "Yes,
20 we are Aboriginal", but so many times, they are just not following up or asking them questions.

MR McAVOY: Thank you.

25 LISA THORPE: Can I just add to that? There's mothers having babies - I mean young mums who are actually - are traumatised having their own - in their own lives who actually might be having their second and third babies but the assumption will go maybe the first child was an Aboriginal child and so having after that follows. That causes a lot of grief for us. They are coming in saying they are part of a family, when you look at it, and we actually question
30 them back again, they are finding out that, you know, we have actually got one child currently who has had four paternity tests, a two-year-old child, who doesn't look like it's an Aboriginal child, who has a sibling, and actually has another child being born, who they want to put into Bubup next year, and there's a good chance we are going to say we have to stop all the enrolments for these children while they're young enough so we don't retraumatise
35 them saying that they're Aboriginal.

Also at risk is that what can happen in the course of coming to Aboriginal organisation is adding to that, or if they went to Bubup, Yappera or Berrimba, they must be Aboriginal people. How do we put it clearly if you don't have that proof of who you are, there's lots of
40 things wrong with why we can't take that enrolment. But it's still that same thing about the pressure that gets put on you from the system and all the stories they'll tell you about why you need to take this child immediately and rush it in. Then they leave you hanging waiting for responses. Some children that are put into Bubup, we don't see a worker again for another six months, 12 months or any follow-up.

45 MR McAVOY: Is there something you want to add?

TRACEY DILLON: Yes, I do. It's Njernda's practice to push it back to the department to look at Aboriginality - confirmation of Aboriginality and I'm assuming that that's due to
50 resources because it's resource-intensive. However, I don't agree to the department coming

back to us and looking at people's Aboriginality. I think that's for families, and family groups to decide that, rather than our departments who may provide us with inaccurate information because they don't - haven't got all the information.

5 I can give you quite a good example of that. I worked here in Geelong and on one of the people in Geelong was an Aboriginal family and they adopted a young woman, and that person was then assumed to be Aboriginal. It has to be done by the families, the families have to know the linkages, however, we need to be resourced to be able to do that job because it can be very intensive, especially if they are not Yorta Yorta where we come from, where
10 we're working in, the space we are working in, if they come from another area, then we need to know the people who come from that area or they may come from another State or Territory.

15 MR McAVOY: I want to move on, being conscious of time, one of the things that the Commission has heard a lot about this week is the increasing and sustained numbers of children going into the child protection system and I would just like to invite each of you to express some view about how effective the community based early childhood care systems are ensuring that kids aren't entering the child protection system. Would any of you like to open on that sort of discussion?

20 LISA THORPE: We actually receive children from six months onwards, so they are not newborns. So when they are coming to Bubup they are already six months, but we don't - we've actually build up a group of people who have actually been talking about this whole process of maternal and child health in the Whittlesea area and, you know, it's very
25 well identified that when children are born in the hospitals the people who get the notification of the child being born, just the birth notifications, is an MCH nurse who actually has no connection or - in the 10 years we have been at Bubup, we don't have any children referred back to Bubup from an MCH nurse, and we are - Whittlesea it is a fast-growing Aboriginal community. It is also one of the highest areas of child removal. So I don't know where the
30 children are going after seen by the maternal child health nurse or what's happening with them. But, yes, we don't receive them from birth, but the ones who gets notification of every birth is an MCH nurse.

35 There's no connectedness there between us - between the Aboriginal community and the MCH program. I know the hospitals try and I know the hospitals put up - the northern hospitals put a whole lot of work into play about how they protect these children and actually have stopped child protection going into the hospitals and doing notifications on newborns. But there is a definite lack of what's happening from a child being born - the mother being pregnant, actually, and then that whole process of having the baby and then how people are
40 moving in and making assessments there.

MR McAVOY: So that period, before six months of age, your organisation's not funded to provide any services in that area?

45 LISA THORPE: No. We're actually regulated. We don't take under six months. It is six months upwards. That's just our boundaries.

MR McAVOY: Once they come into the care of your organisation, if I can put it that way, how well equipped is your organisation to give the sort of wraparound services that a

growing child needs and a family needs to ensure that they don't end up in trouble with the department?

5 LISA THORPE: Once they are enrolled in our centre they get every support that we can possibly offer them and one is the - in the rooms where they have got above ratio educators, across the rooms, we also have an on-site health and wellbeing centre where we monitor the children. We actually do two health checks a year and we support the children moving through, so monitoring, picking up and supporting our children, you know, there is even - the early childhood world does not get enough supports or attention that - they see these children every single day when they're coming into the early centres. So they've got the best eyes on 10 these children than anybody else out there, besides their families, if they are with their families, but there's no recognition given to our early years educators that actually they are well equipped to support and watch and see the development of these children and actually how can they move forward with that.

15 So that's why we have become our own health and wellbeing centre. So we can actually then follow that through when we are seeing if there are issues - if there are issues, or delays happening. So from the time that they are at Bubup they are monitored and support not only through developmental stages of growing, it's also about their health and wellbeing at the 20 same time.

MR McAVOY: If you do notice things that might alert you to some problems, is your organisation then able to act on that quickly, or --

25 LISA THORPE: If we are talking about it - in the child protection process there's actually risks that we can see. The first thing we'll do is actually approach the parent, is actually not jumping to conclusions straight away, talking to the families or talking to the people about the situation, what's going on, and then working out from there and actually there's a lot of times that we can work with families to actually change a behaviour or process or actually 30 make people very aware that family violence - the children will come to us and they - whether they are babies and they are traumatised or they are upset. It's very telling that there's something else going on. If babies are coming with marks, or whatever, you can tell but we actually go back and talk to the families first, if that doesn't work - we also let them know we are going to notify, we are mandated to do so, and the family is aware of it, we tell 35 the department, if we have to make a notification, we are going to tell the family we done that.

40 So they know there is a complete link and, in some situations, we have been able to work it out as far as what the family needs to do, make changes. It settles down and they know we are their support base and they stay with us and we have actually had children go right through Bubup and we keep the families out of the system by providing that service because, you know, they know they are safe with you at Bubup, than actually having a notification in the system. That's worked a lot of times for us.

45 MR McAVOY: Is that a similar - can similar observations be made about children at Yappera?

50 STACEY BROWN: At Yappera, definitely. So families come to Yappera because they have that connection and they feel a sense of belonging. We are an Aboriginal community controlled organisation. So straightaway families feel safe. Not just that - we have a high

level of Aboriginal staff working within the organisation. So we find that, you know, if there is a challenge that a parent or a carer is facing, that they have that confidence and they have developed that relationship, and that's really important, the relationship our educators have with families. So they are developing that relationship with the families. So that they do build up that sense of trust.

The families have informal conversations and they may then disclose or share things that they are experiencing. We have got Kim onboard, who is the family support role, that families will come in, if it's not Kim or the educators, it might be myself, the families can come in and talk about a challenge that they are going through and that we have worked really hard to develop our own internal list of resources or services that we know that we can then link families to but there is that early intervention and prevention.

There have been a lot of issues that have emerged as a result of COVID and we are aware of that. There was an increase in incidents of family violence and removal of children. So it's for Yappera, us looking at what we can do more broadly to support our families. So our programs change each year to support those families and we look at what the current and emerging issues are.

But one of the things we do pride ourselves on is those relationships that we do have with our families and community that they can come to us and they can talk to us about the challenges that they are facing. We will implement strategies straightaway to support that family thus reducing child protection intervention because we know what's happening. We also have the staff on the ground that are community members.

They may know information about the family, something that's happened on the weekend or something that's going on with that family that may give us a broader understanding of what's happening, or why that child's distressed on that particular day. So it's all of that, you know, that groundwork that we are doing, and the work that we are doing with families, but that trust, that families have to come to us, that we feel really does contribute to the prevention.

We also know the informal arrangements that exist with our kinship, within our families, where mob do go in and assist mum or dad. It might be the grandmother or an Auntie or an Uncle that go in and do some respite so that mum can have that weekend. So that they can recoup and then work with Yappera, and that for us keeps kids with family.

MR McAVOY: Thank you. The Commissioners have heard evidence this week to the effect that, in some cases, people are fearful of raising matters with the department because that triggers a child protection response. Is it fair to say that from the support and trust your organisation develops with the parents and families, that it's a different relationship to the one that Aboriginal families can have with the department?

KIMBERLEY DO: In what sense, sorry?

MR McAVOY: People can come to you and say, "I'm having trouble with something" without risk of intervention from the department?

KIMBERLEY DO: In that case, like Lisa already touched on, we are mandatory reporters. So if - you know, it's always good to have that open trusting conversation and, again, support

with referrals or advice on where to next but also having that trusting relationship to say, “Look, this is a reportable sort of instance as well.” At the end of the day, we do have legal requirements, but we will always be honest with the families, and if we receive phone calls, we are always honest with the families as well. So both ways.

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STACEY BROWN: We do also have families that come to us with challenges where they may be fearful to go to the department because it does start that process when a notification is made. For our services, we can access money or families to access childcare at no cost but often families are fearful to go through that process. So getting a referral letter from an agency so they can get free childcare. They don’t want to go through that process because they are scared that it’s going to start a process of intervention from a child protection agency. So they would rather not have access to free resources for fear of that.

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MR McAVOY: Thank you. Tracey and Aunty Hazel --

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TRACEY DILLON: Can I respond to that question?

MR McAVOY: Yes. Certainly.

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TRACEY DILLON: We collaborated with the University of Melbourne and the Loddon Mallee Aboriginal Reference Group, as part of the Department of Families, Fairness and Housing, to do an evaluation on the services that Njernda provides to our children. It was to look at - it was to look at how they - how our services enabled our communities to take part in our programs to support our children who are at risk of entering into the system. So there was interviews that happened. There were over 100 interviews. We also looked at our existing data that we have throughout our services and how Berrimba and our health services operate to support our children and our families.

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The purpose for that was to examine the health, the developmental, the education and child protection outcomes and the wellbeing of those children that utilised our services. It was also to look at - to have an understanding about the early childhood programs that are offered within our communities and how those programs assist our families to keep our children out of the child protection system.

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We did have some preliminary findings around that. So one of the - some of those - and, sorry, because I’ve only been there for a very short time so I do need to refer to my notes - the preliminary findings were that our services were effective, efficient, accessible, and acceptable to - and provided a culturally and physically safe space for Aboriginal families and children. The interviewee stated that Njernda services were enabling positive developmental outcomes in Aboriginal children accessing our services, that the data that we collect needs to have some improvements because we have integrated service delivery and so the delivery around those services, or the data, is not captured so that we can demonstrate how well we provide services to our children and our mothers because it looked at maternal child health as well. It also looked at our Cradle to Kinder program as well because that’s our favourite program. So we did do a study and that was just the preliminary findings for now and we’re still to realise those.

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Some of the things that, at a practical level, that our organisation does in terms of working with our vulnerable families is how we support our communities and empower them, how we give them the knowledge base and the understanding of how to keep a child safe, how to

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provide them with those life skills of understanding what abuse is, how this affects our children, and what are the consequences.

5 We also provide training opportunities for our parents and our staff, and one of our staff members went through some - recently went through some training and said, as an Aboriginal person on staff and said, "I wished I had gone through that training because I would have been able to understand what abuse was in my family."

10 MR McAVOY: Thank you, Tracey. I just want to ask you, Aunty Hazel, about the nature of trauma in the families the kids are coming from. Stacey mentioned that there's a real aspect of respite for some families, to be able to have their kids in an appropriate learning space. Is there any observation you can make for the Commissioners about that?

15 AUNTY HAZEL HUDSON: There are a couple, but I also want to talk to that other issue.

MR McAVOY: Of course.

20 AUNTY HAZEL HUDSON: I think I spoke a little bit towards this on Monday. There isn't an Aboriginal person in this room or in this State that hasn't been affected by trauma, and we call it intergenerational trauma, or DNA trauma. So when stories are passed down from family to family about, you know, police coming onto reserves for the sole purpose of removing children and Elders telling the children to run, and having a field of kids running like little rabbits, you see their heads bob up and down, and those children being picked up by white people and put into the back of a car and driven away while their parents and their
25 grandparents are chasing after them, screaming out for the right to raise their own children.

30 Sorry, but I have a tendency to cry when I'm talking about these things. It is one of the foundational forms of trauma that we have experienced over the years. You know, I have friends that were part of the Stolen Generation. I have an older man that tells me that as a kid he would be made to go down the gauntlet. Now, the gauntlet, if you don't know what that means, is where all the kids in that home, were asked to - all the boys in that home were asked to line up on either side and the young person that did something wrong, like might and went have got a biscuit because they were hungry, or something else, were told to run down that group of boys and those group of boys had to have a stick, they weren't allowed to pick a
35 little stick, it had to be a big solid stick that would cause them damage and every single child, as that boy ran down that thing, had to hit that child over the back or his body with their stick. That's running the gauntlet. If they didn't hit, or if they didn't hit hard enough, then they had to run the gauntlet and the same process kept going.

40 So that's the type of trauma that we experience as well as, you know, other types of trauma around losing your home and not being able to practice culture, to be told that your culture is bad and you can no longer speak your language, and you can no longer practice your lore. You know, that all impacts on us on a daily basis on how we perceive things.

45 To walk down a street and to have a white person walk across the other side of the street because you're walking down the street and going to come up close to them. You know, a few years ago there was a story about a young mum who was on the train and singing in country, in language, to her daughter, and she was accosted by a few - do you remember this story, Lisa? It was on Facebook. She had a group of young men come up to her and tell her
50 to - sorry for the colourful language, "Fucking speak Australian language here, you don't

5 speak that language, you're Australian, we speak English." You know, to be told that our culture isn't valued within society, that is trauma apart from the trauma that our children experience because there's been intergenerational trauma, there has been families that have been involved in the child protection system from one generation to another.

5 They haven't been taught how to connect with each other, how to bond, you know. They have been put into homes where they are fed, but they have been treated as slaves, you know, "You've got to do this." You might be fed, but you are not part of this and if you're going to misbehave, we are going to give you up. Constantly being rejected forms trauma.

10 Yesterday - I always do a little practice with - or I have started to do a little practice with some people. You see Aboriginal kids, or you see Aboriginal people in a strange environment, they are always tight and always on alert looking for where they can escape.

15 When they are in that reptilian brain mode they can't heal. Our people live in that mode most of their life and that's trauma because they have never been told or they've never experienced what it's like to exhale. I call it exhale. But it's when the body relaxes, we take a big breath in, and it's okay to be you. Our kids do that on country. That's why it's important for our kids to go back to country all the time. That's why it's important for them to run wild as our kids aren't made to be contained. That's not where they learn. So I'm sorry, did I get a bit off track there?

20 MR McAVOY: A little bit but it's very valuable evidence, nevertheless. The point that I was trying to expand on is that for some parents and children there is some respite and relief in the kids coming into the childcare environment.

25 AUNTY HAZEL HUDSON: Yes. Childcare centres are an extended part of our community and they are usually the jewel in the crown of any community that is privileged to have a good culturally appropriate childcare centre because what's happening in the home, there's lots of factors, you know, there could be violence in the home, they could have mum who has got anxiety and, you know, so becomes heightened at the least little thing. When they go into
30 a childcare centre, the children, as well as the parents, get an opportunity to heal.

In that childcare centre they are surrounded by the extended family, they come into contact with cousins and Uncles and Aunties all the time, and in there they are told on a daily basis,
35 "You're beautiful, you're intelligent, you're smart, can you do anything you want in this world." And they heal and become resilient. That's what the child centre does for our kids is that they give it a sense of identity. They go out bush and they learn what it's like to be in bush. Young men in - some of our kids start to play the didg, they sing in language. Our kids do their own Welcome to Country when they have visitors come in.

40 They just have this sense of identity that's infused into their every being when they are in the childcare centre and it gives them - and there is nothing stressful happening in there other than the fact that they might have got nuggets and they wanted fish fingers, you know, they got a curry. In there they are surrounded by beautiful women and men that are there to shows
45 them what attachment's like, it's okay what respectful contact is and, at the same time, then families, parents, have an opportunity to relax, they are not having to be switched on all the time. They can spend some time with their own healing.

50 You know, they can - we call it pampering, hey, but to sit down and read a book or, you know, to watch telly or to sit down and have a cup of tea without a child yapping at your

ankles. That's what it feels like, doesn't it, sometimes, when the kids are constantly, "Mum, mum, dad, can I do this, can I do that?" And they don't get a break when they have anxiety or they don't get a break from it. So childcare not only offers the child an opportunity to heal but it also offers the parents or the grandparents an opportunity to heal and to have some pleasure time for themselves, which is really important that we pamper ourselves, isn't it?

LISA THORPE: Can I just add to the question: we actually - we're highly regulated in the western concepts of an early year centre. But coming into Bubup has completely changed. It is a community organisation, our families are comfortable. The organisation is - it follows on from the early - the MACS and from the Aboriginal health and growing in a space of Aboriginal community control, it is about who we are, how we look after each other. The centre itself, you know, not only are the children enrolled, it's their families as well and when we leave we still have contact with our families. We created our own transition school program where we follow through and then we invite the families to keep coming back and keep growing and keep growing and coming back. We have some family members that come in and do bits and pieces.

The whole place, although it's highly regulated, that's all behind the scenes. What we do is have a complete open space where there's an opportunity for us to all come together, look after the children, and there is no identification in the organisation about whether a child struggling, a child's in the department, a child's this, a child's that, they are all together, they all learn together. So it's coming into the space and sharing in what Bubup does.

We don't let the department in the door. They come in - if a child does need to go and do a visit, you do it at the end of the day, you don't disrupt the child's day and you don't do the visit on site in case it's not a great visit, or even if it's a great visit, the child can be quite distressed after having to go back. So we've actually gone back to the department and said, "If you want to do anything with a child, you come at a certain time, you inform us that you're coming in", and actually then sometimes or most of the times if the child's going to see their parents, take them home. Don't bring them back. We have very clearly told people, "This is a child safe space, not your easy access to our children." We have done our best to try and build up a strong working relationship with the department to actually respect these children's spaces and respect how we work with our families.

AUNTY HAZEL HUDSON: I do have something to your question around early intervention, whether the childcare centres have the opportunity. Njernda's been - we have a wraparound service and we are privileged enough to have what - and Tracey's already alerted to - is called Cradle to Kinder. So Cradle to Kinder was an intensive program that was put into the early childhood centre, or Berrimba in this instance, when it was funded. It was funded for three years. It was a pilot program and it was extended for a little bit longer after that.

The program actually worked with families and it worked with the early childhood - the maternal child health nurse both at Njernda and at the Echuca Regional Health Service. So it took on families, young women, that were pregnant right through to kindergarten and they had those partnerships with the maternal child health and the Echuca Regional Health Services. So they identified these young mothers that were pregnant, potentially at risk of child protection notification under the unborn reports, at a later stage. So unborn ready reports happen around - I think they happen around 26 weeks with child protection but these women, young women, were being worked with a lot earlier than that.

A couple of years ago there was a review of funding and DFFH - it was under a different name but it was essentially DFFH - as part of that review determined that they wanted to get into early intervention programs that prevented families or children from coming into the out-of-home care space. So what they did there, rather than investing or getting the government to commit to new funding, they collapsed existing programs. So they collapsed the Stronger Families programs, the 200 hours programs, and the Cradle to Kinder programs into the Aboriginal Family Preservation and Reunification Response program and Intensive Family Services program.

What that meant was that Cradle to Kinder was no longer there, because the funding for it was pushed into another program. The criteria for that other program required child protection to already be notified and the child already to go into the notification - already to go into the child protection system. So it was already there. Whereas Cradle to Kinder took kids on before they were born, a lot earlier before, and took those women on, gave them an opportunity to address any concerns that might be an issue for child protection so that when the baby was born - and it worked alongside those young mothers - so that they never got notification to child protection.

So collapsing that program then into a program that required notification to child protection before the referral was made, or required notification, or referrals through the orange door places and the community-based care child protection workers. So, at some stage, the programs are there now, there's only one program where it doesn't require - we can accept walk-ins, which is the integrated family services. So the entry point has been decreased and the expansion of child protection referrals was increased. That was a very successful program where it worked with young mothers.

One of the criterias for at risk children is, if their mother was part of child protection, they are likely to come under notification, unborn notification, or if their parents were, and they are likely to come under an unborn notification. This was a program that decreased those unborn notifications or the risk of those unborn notifications. It's now been lost to community.

MR McAVOY: Thank you. I just want to move on to a different topic. We have heard some evidence about the transfer of some decision-making responsibilities through the section 18 process, and I just wanted to give each of you the opportunity to make observations from your organisation's perspective as to the way in which the section 18 function has assisted or changed or not the child protection intervention, and removal of children into out-of-home care. Does anybody want to go first?

LISA THORPE: I can speak to the knowledge I have, I don't have much knowledge about what section 18 is. I do know what it is but from what - and we are not engaged in anything that child protection does, they don't include us, we don't know what's happening, we don't even - the only time we know when the court order changes is when the worker has changed if we actually have to contact them again.

But from the time a notification is done on a child to the time it gets to the point where it comes under the secretary order there's not a lot of work done and we don't know much about what's happening and then by the time it hits that, and the section 18 decisions are made, we don't play any part of that. We just - what I can say in the whole process is that from the time that they are at Bubup to the time where that order has happened, there's not a

lot of work done, there's not a lot of contact with the children, we will get a phone call two days before a court case to say has the child been attending and is the child presenting well. That's as much as the child gets.

5 There is no active engagement to engage in any of the programs that are supposed to be happening for this child to be reunified with their families. They can't reunify them if they don't know who the families are but there is nothing done in that time period, or very little done in that time period, until it gets to the end where it comes under the secretary's order and the decision has been made what happens to the child. It's really, really vacant of processes in --

10 MR McAVOY: That's regardless of whether it's the department or a section 18 organisation?

15 LISA THORPE: Yes. We don't see a lot of work done in that period of time to make change to reunify or to do any work with the families. That's what we are experiencing in Bubup.

MR McAVOY: Does Yappera have any observations that it might like to make?

20 STACEY BROWN: Very similar circumstance under section 18 where we really don't hear until there's a court order variance about the child, or two days before, two or three days, in some instances, 24 hours before an order being made. So we don't have a lot of involvement in the process. When it comes to reunification with families, so when a child is in a non-Aboriginal foster care placement, we look at what work the department are doing or how we are working with agencies or the department around reunification with different family members. So we see the experiences of children sitting in the system and bouncing from carer to carer while this process happens.

30 So short-term arrangements where, in one instance, we had seen a child who was put - placed with Yappera at six months old with various attachment issues and went into several care arrangements while agencies were looking for family members who would take on this child. We have also got a child who has gone - who is in our kindergarten - second year of kindergarten where they have exhausted all avenues of this child being able to be placed with family. So this child, in particular, has had numerous placements that have been set up.

35 None of them are Aboriginal care placements. So they have not been able to successfully find any kinship arrangement for this child. The carers have been identifying, since the child was born, that they are too elderly, the child has a number of needs because they have a diagnosed disability. All of the placements up until now have fallen through for this child. So identified foster carers have backed out at the last minute, which has placed further distress on the carers, as well as the child that's attending our service. So the experiences for us have been limited into seeing any successful links to family in the children we have had at Yappera.

40 AUNTY HAZEL HUDSON: What role does your service play in regards to ensuring the emotional wellbeing of that child during that turbulent time?

45 STACEY BROWN: Absolutely. So our role, we are working with the carers. So, in these instances, we have got amazing carers that are working with this child. So our role, as an Aboriginal early year service, is to nurture these children and we know what mobs that they are linked to. So we are able to do that groundwork around identity and making sure that the

child's strong, and they are. This little girl's very strong and she's going into school strong and confident. So, in this instance, the child has got a link to who their mobs are.

5 AUNTY HAZEL HUDSON: Can I say, from what I hear from your story, is that you are actually provide them with a stabilising during a time when they are not stabilised. Everything else around them is disruptive. Your service is solid.

10 STACEY BROWN: Absolutely. So it's that consistency. It's like you are saying that, amongst the chaos - and it's not just children in care, it's all children where there may be risk - amongst the chaos, our early year service is providing stability for these children and the nurturing and the care and genuine love. That Aunty connection. So everyone that goes into Yappera, the children refer to them as Aunty or Uncle. It's bigger than that but they get that stability throughout the day that they need.

15 MR McAVOY: It may sound like the answer is obvious but is a child likely to get that level of care and support in a non-Aboriginal service?

20 KIMBERLEY DO: I was going to say, in this instance, the carers have actually - they were originally at another service, closer to where they live, and this child started at Yappera one day a week. It started as a tick your box, that cultural connection, the family connection. But these carers, from their own observation pushed us to send that child to Yappera five days a week because they felt the connection - the child felt the connection to the service, to the educators, to the children.

25 The carers also noticed that the other children treated this child no different. They treated this child the same and as part of their own community. So, yes, in this instance - sorry, I have gotten side-tracked.

30 STACEY BROWN: We support the carers because they are amazing carers but they initiate it themselves to have this child visit with siblings or they will come on it. So Yappera have - one of the things we identified is the need to bring mob together so that there is that sense of connection to others. So we've have hosted three camps over the last 12 months on country. Our last one was on Yorta Yorta country. We have had a camp in Healesville. Our last camp had 232 participants. So families come along. It's important that our kids that are
35 part of the system are coming along and able to connect with cousins and Aunties and so forth. On this camp our carers are coming along and they're forging connections with who those kids' families are.

40 So these carers now take the child to visit their siblings and that's initiated by the carers, not by child protection, unfortunately. They don't see the importance on this child visiting siblings, which is really sad. These carers do it themselves and Yappera make sure that happens. It's really important that our kids are maintaining their connections. So what Kim was saying, child protection ordering this child to come to an Aboriginal early years service so that they have that connection to family, extended onto the carers seeing the change in the
45 child. So they sought themselves.

MR McAVOY: I just want to come back to the section 18 issue and ask whether there is any observations that Njernda can make about the effectiveness or otherwise of this section 18?

AUNTY HAZEL HUDSON: We have a pre-authorisation section 18, which we call Wala Yarka. That's a Yorta Yorta word, it means water children. We are on the river, and all our children are little water dogs, and a water dog is a story from my own culture, where my grandfather used to tell me, "Don't go near the water otherwise the water dogs will come up and get you." So we all have those sort of safety stories that kept our children away from the water's edge.

Our practitioners in this section 18 process work very closely with the early years process in Berrimba. So if we do a referral into Berrimba for our children - and we quite often fight very hard to get the maximum amount of hours that we can because there's only, what, 50 places that our childcare centre has. The demand far outstrips the number of placements that we have got.

We as a program understand how significant and how important it is to have our kids going through our early childcare centre. So we fight for those referrals to occur every time that we get a child within the kindergarten or bush kinder age, or even through our after school program, they go through Berrimba.

There is regular contact with our practitioners and the child protection - sorry, the childcare workers, so they are constantly contacting the manager of the services or the team leader of the services to see how the children are travelling, if there is anything that they need, are there any issues that they are observing with their development and what other services do they need.

We hold regular professional meetings where the manager or the team leader are invited to those meetings, to discuss the development of the child, and we also hold care team meetings, so the difference between professional and care team meetings is the professional meetings are all the professionals that are involved in the care of the child, they attend that meeting and we discuss the development of the child and make sure that we hit our milestones as far as that child's development is concerned.

Then the care team meeting, we bring the carers and the parents and the families in and they talk about any issues that they may have, as carers, or as family members, that they might need support with, and we identify any issues that we might believe still need to be addressed as far as the child's concerned.

So there's constant, if not weekly, daily, interaction between our practitioners and our childcare workers. I understand these ladies because they are in metro, it's a lot harder with Nugel, but I won't get into that section. Certainly at a local level where - in the regional areas, it's a lot different, the practice of section 18, with our childcare centres, and our other services at Njernda. When we talk about integrated practice, we take that very seriously, so that's making sure that all the services that are available, and that are needed by that child, are wrapped around that child to give them the best possible - sorry, I keep - it's hard, isn't it - to give them the best possible outcomes in life, you know, we want them to achieve and section 18 aims for that.

We want them to grow up in culture because we know that culture is fundamental to their social and emotional wellbeing and their identity. If they have their identity, they are the richest kids in the world. So we push for that every opportunity that we can get and we know

that our early childhood centre is the foundation of that building. So, you know, they set the concrete that everything else is built on for our kids.

5 CHAIR: Counsel, I'm concerned about the time and I do have a question I want to ask as well.

MR McAVOY: I can indicate, Chair, that I have two more questions that I wish to ask, and I'm intending that we will finish with this panel by midday, including the restricted evidence, if that's suitable to the Commissioners. The evidence from these witnesses has been
10 voluminous, a single question can have a lengthy answer, Chair.

CHAIR: Exactly.

15 COMMISSIONER BELL: We are not complaining.

MR McAVOY: If you would like to ask the question now, Chair, I'm comfortable with the questions being asked as we go.

20 CHAIR: Okay. Thank you very much for the information you have given us. So many things are all mixed up. I note that some of you are early childhood educated trained and use that term. I notice it's mixed with care and protection and all of those things. I note that state-wide bodies are funded at a different level and, indeed, legislated into part of how programs work. I'm referring, Lisa, I think it is your statement, where you talk about two state-wide bodies, Aboriginal childcare and education.
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Do you think a state-wide body can represent early childhood education properly to the State in the context of the way organisations are moving to operate and, indeed, you know, hearing the culture wrap that you have, the cultural programs with early childhood centres now. I mean, they seem to be linked a lot to the welfare era and I'm just wondering if we are losing something, are we not valuing the potential in the space that you've enriched now culturally, in the context of early childhood education, and whether that's being represented to the State, or do you have an early childhood rep when we're talking about Aboriginal frameworks to government?
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35 LISA THORPE: My experience is actually between - VACCA is a child protection agency, and it cannot represent the early childhood world. It's a very different world and VAEIA is only there to - it's three and four-year-old kindergarten programming. I know they have some people around the State who are early childhood reps but they actually - and I don't believe they are able to represent what we do in our organisations about the value-add that we can have to support whatever's going on and actually we don't sit at any State table because early
40 childhood is not funded by the State. It funds three and four-year-old kindergarten only and any of the representation across the State does not include the early childhood area.

We are trying to make that change and, hopefully, just now because of the Closing the Gap processes, which is also bound up in so much things that are going on with that is actually
45 now we actually have a State rep sitting on there in the early childhood development. That's still fresh, happening. But the State does not fund early years education as how we're registered. It's a Commonwealth program. At a Commonwealth level, Bubup is not even considered an Aboriginal organisation as far as the funding is concerned.
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CHAIR: Do you network state-wide as early childhood centres or not?

LISA THORPE: It's getting stronger because SNAICC has actually started up the THRYVE program. We have been talking about, as a collective group, early childhood education centres and there's about six or seven of them out there, some are old, some of the - sorry, 5 Bubup and Djillay Ngalu, which is Bairnsdale, they came out in the last Closing the Gap program in 2009 and there are a whole lot of other new services, I think Ballarat has one, and we are trying to build a stronger network of early years educational centres and how we can support each other because there is no representation for us as a collective out there.

CHAIR: I'm aware of the Commonwealth responsibility. The reason I ask the question is that when there was a national committee on Aboriginal education, early childhood education had a seat at the table and that meant every national meeting, there was something discussed of relevance to the States. But thank you very much. I was heartened by hearing the cultural richness that you offer to the young children that come through your care and challenges that you face. Thank you all for what you do in that space, it's very challenging and it just goes on and on. 10 15

COMMISSIONER BELL: Chair, can I ask a follow-up question arising out of that. Can you tell me whether your federal funding for early child development is special funding for Aboriginal people, or is it a slice of the pie of a general program? 20

LISA THORPE: We get funding from the Commonwealth and the older centres, as in the budget-based centres, or the earlier MACS centres, they get funding as Aboriginal organisations. The newer centres, like Bubup and Djillay Ngalu and anything forward is not getting any identified Aboriginal funding, and the processes you are seeing is mainstream, assimilated into the mainstream process. You are sitting on transitional money now at the moment. 25

STACEY BROWN: Yes. Yappera and all of the MACS previously referred to is the Multifunctional Aboriginal Children Services have been transitioned across over a five year cycle, this being the fifth year, or next year it is, to the same model of funding that Bubup Wilam is on, which is the standard childcare subsidy. There was a pool of funds through the Commonwealth that was identified as community childcare funds, and it was transitional money and what it was for was all of the gaps, all of those extra services that we offer. 30 35

So above education and kindergarten, all of those wraparounds, whether it be health, wellbeing, or any other sort of services that we offer to families. We didn't all get the same money and it was a slice of the pie. So it was identified as - there was a component of CCCF, which is mainstream, and there is a component which is Aboriginal identified. As I understand it, the mainstream and the Aboriginal money is very different and it's very different how it is reported against but it tapered down over five years. 40

So it was up to - back then I think it was Pricewaterhouse that worked with us all to develop a business plan of how we wanted to see it and what we wanted to offer our services moving forward five years. They determined the amount of money that we got, which was very small. So it didn't actually put any value on what we were actually doing. Then in the fifth year, it tapered down to almost nothing, so it didn't even fund a bus service for Yappera by the fifth year. 45 50

We have just been offered another two years of that funding, but it really doesn't contribute to the essence of what we actually do. I believe our services, all of our Aboriginal earlier services, and the child family centres, it takes us as managers to be resourceful and go out and find the money ourselves. We know what our families and communities need and we
 5 work hard to write the small submissions to get some State money, to then incorporate the programs that we need for our children and families.

The only Commonwealth streams that we receive are the same streams that all childcare centres receive in Australia, which is childcare subsidy, additional childcare subsidy and
 10 Bubup and Yappera have just recently got the tender for Connected Beginnings, which just complements what we are already doing. We made sure we were already doing the work. So we didn't want that to create anything new for us. We wanted it to complement what we were already doing.

15 COMMISSIONER BELL: Then the other question I had is that your evidence proves to me the imperative nature of the services you provide, but it's not clear to me whether there is a coherent pattern of services across Victoria which all Aboriginal children can access, or whether there are the individual services operated by you presenting here today. So is it a coherent state-wide program or is it rather depending so much on local community effort and
 20 so on?

LISA THORPE: I think, on the ground, the programs are all strong in identity and strength on the grounds. How they are funded are very different and very fractured and actually it is a hit and miss and early years are not supported. Early years is not supported in Aboriginal
 25 contexts and definitely not in the non-Aboriginal context. It's not a good area to work in for sustainability and your longevity in that space is five to seven years.

So, you know, there is the strength in these services, we have actually maintained our staff and we look after our children and there's something to be said about Aboriginal people in
 30 the workforce to be built up, we look after our own. We are up against it at every single level in what we do in our organisation because it's just been stripped bare. You will hear that on the outside world, what's happening in the early childhood world as well.

If that bigger world keeps falling over it's going to be even more difficult in the Aboriginal
 35 early child word, how do we survive in this and how do we sustain and maintain these centres when it is so fractured out there about how we are funded and actually how we are recognised that we add value to what actually is needed out there especially in the child protection system.

40 COMMISSIONER BELL: There seemed to be a number of structural and systemic issues, funding and organisational, which are quite pressing. I don't want to raise those here. I think we have run out of time and I'm happy to come back to those at some later time.

45 MR McAVOY: Thank you, Commissioner. Are there any other questions?

COMMISSIONER HUNTER: Just around funding, particularly Stacey and Lisa, because I know you have that wraparound service at Njernda. When you - an Aboriginal child that's in the department or has department involvement is enrolled, do you receive any extra funding
 50 for that child?

LISA THORPE: No.

COMMISSIONER HUNTER: Are you involved at any decision-making point, or even case conferences, with child protection around decisions on that child and what's going on?

5

LISA THORPE: We actually call them - when we need to know information we'll call them. Not necessarily we are involved in every one of them actually happens within the system side of it. But when it affects Bubup, and what's happening there, we become involved then, but not technically and legally involved.

10

COMMISSIONER HUNTER: Do you - correct me if I am wrong, you see the child every day, basically?

LISA THORPE: Yes.

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COMMISSIONER HUNTER: And you're not asked your view regularly on a child. Do you see a child protection worker regularly?

LISA THORPE: No.

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COMMISSIONER HUNTER: Do you see an ACCO?

LISA THORPE: No.

25

COMMISSIONER WALTER: I've just got one small question. I really like what you've been talking about, I guess, this sort of like Aunty-ing on the frontline with kids, and bringing that all together. You said you are all - demand is out-stripping your capacity. Would you take more children if you were funded to do so?

30

LISA THORPE: If we had the space, for sure.

STACEY BROWN: If we had the recourses and capacity, absolutely.

35

MR McAVOY: Thank you, Commissioners. Earlier in the evidence, Stacey, I think, you said there was a two-year waiting list for your enrolment in your organisation. So there's clearly a large demand, and is that the experience of the other organisations?

STACEY BROWN: Yes.

40

MR McAVOY: I'm not sure whether you can answer this, but if there was a strong investment in early childhood services, in terms of coverage and supporting the existing organisations, in your views, would that have an impact on the - is it likely to have an impact on the numbers of children ultimately going into out-of-home care?

45

LISA THORPE: I think I missed that question.

MR McAVOY: We know that there's a very large number of children going into out-of-home care each year, Aboriginal children. If the early childhood services that your organisations provide were funded to a greater degree, and there was greater coverage from

other similar sorts of organisations across the State, would that have an effect on the overall number of kids going into care?

5 LISA THORPE: I think if the early year services were funded and supported, and recognised for the work that they do and support, they actually would support children to stay out of the system and we already have evidence of that happening at Bubup - and I'm sure the others do as well - is that how we work and support our children, our families, and even the family members connected to that child to stay out of the system and I think the more strength that we get the better we can do that, for sure. We can hold children out of the system.

10

MR McAVOY: Is that Yappera's experience?

15 STACEY BROWN: Based on - yes. I believe that if we were properly resourced and working with the child and family earlier. So when they're actually engaging with the service and entering the waiting list and it may be before the child's even born. It comes down to information sharing with our other Aboriginal community controlled organisations. Being able to have all of that background information and knowing the child and the circumstance when the child enrolls, I believe very strongly that we would play a role in limited or no child protection intervention if we were properly resourced.

20

Because at the moment we are doing the work at no - with no funding attached. We are doing it because we want that child to grow up strong and we want them to be nurtured and we want Yappera to be a safe space for the child and the family. So we do the work regardless of getting the funding or not. So we can only imagine the potential if we actually had the funding and resources to do so.

25

MR McAVOY: Is it a similar situation at Njernda?

30 TRACEY DILLON: Yes. Look, I think that, based on that study that we conducted just recently, that demonstrated that our early childhood programs are very important in this space, and if it looks at - looking at those coping mechanisms, supporting our families to be empowered to understand what child abuse is, how to put in place different mechanisms to help support them in parenting, understanding what it looks like at an early stage, yes, it would go a long way.

35

MR McAVOY: Thank you.

TRACEY DILLON: And to include trauma as well, looking at trauma. Sorry, I meant to add that.

40

MR McAVOY: I will add that each of your outlines covers a range of other matters, and the Commissioners have the benefit of your outlines of evidence being tendered, and will take those matters into account. We may not have covered all the issues today, but they are before the Commissioners. If there is any further comment you would like to make before we close, I can give you that opportunity now, or otherwise we can rely upon your statements.

45

AUNTY HAZEL HUDSON: I have a statement that doesn't necessarily relate to this. On Monday we were asked what could be put in place to actually decrease the number of kids that are coming in to out-of-home care. From what we have seen, there is a significant substantiation after investigation and response. I think that there potentially - you know, there

50

was discussion around the grandmother who was threatened because her house was untidy, and the child protection worker believed that it was dirty, and that that placed the child at risk.

5 I think that there's provision there at intake, or investigation and response before they go to the court, to have a panel of Aboriginal people where they take their evidence to that panel and say, "This is the evidence that we've got, we are going to rely on within the court system to place an order against family members", and for that panel then to determine whether or not that evidence is sufficiently strong enough for that to happen because that would certainly
10 block grandmothers being taken because their house is untidy, and other what we might consider low risk factors, that are now putting kids in out-of-home care. I don't know if this is the forum for that, but it can certainly prevent the number of kids being substantiated.

MR McAVOY: Thank you for that suggestion. It is something that the Commissioners can
15 consider. Thank you very much.

AUNTY HAZEL HUDSON: Thank you.

MR McAVOY: Any other closing comments? Commissioners, I tender the witness outline
20 of Lisa Thorpe, in its redacted form, which is 5.1, the witness outline of Stacey Brown and Kimberley Do, which is 5.2, and the witness outline of Tracey Dillon and Aunty Hazel Hudson, which is 5.3. I indicate we will now move into a short closed session, and I seek orders for that purpose. Chair, do you have a copy of the proposed order of the Commission?

25 CHAIR: Yes.

MR McAVOY: The order that's proposed is that the hearing of the matters be led in a closed hearing, whereby all members of the public and parties will leave and non-essential staff are requested to leave the hearing room and Yoorrook's livestream is paused and the relevant
30 evidence omitted from published video recordings and that a copy of the order is to be placed on the door and published on Yoorrook's website and there's a restricted publication order that the oral evidence and the part of the outline of evidence, which is confidential, be subject to non-publication orders. If you are able to make those orders, Chair, we can move into that closed session now.

35 CHAIR: Thank you, counsel. I make those orders in the terms sought.

MR McAVOY: Thank you, witnesses, for attending and we ask you to leave. Thank you.

40 <THE WITNESSES WITHDREW

<ADJOURNED 11:57 AM.

<CLOSED SESSION 11:58 AM

45

<OPEN SESSION 12:30 AM

MS FITZGERALD: If the Commission pleases.

50 CHAIR: Thank you, counsel.

Yoorrook Justice Commission

MS FITZGERALD: I now call today's next witnesses, Magistrate Kay MacPherson and Ashley Morris.

5 <MAGISTRATE KAY MACPHERSON, AFFIRMED

<ASHLEY MORRIS, AFFIRMED

10 MS FITZGERALD: Your Honour, will you introduce yourself to the Commissioners and explain your professional background and the current roles you hold at the court?

15 MAGISTRATE KAY MACPHERSON: Good afternoon. My name's Kay MacPherson. I am a magistrate and I was appointed a magistrate in 1991. So I've been a magistrate now for 31 years. Initially I sat at the Dandenong Magistrates Court in crime for 15 years but for the last 16 I have been in the Children's Court. Prior to that I was a criminal lawyer at Legal Aid, Victoria Legal Aid.

20 I commenced at the Children's Court in 2008 and I am very fortunate to be the Regional Coordinating Magistrate at the Broadmeadows Children's Court and that court was set up in 2015 as a court of innovation. The features of innovation are Marram-Ngala Ganbu, the family drug treatment court, docketing and a less adversarial way of dealing with parents that come into our court.

25 I'm the head of the family drug treatment court and head of the Koori family hearing day, Marram-Ngala Ganbu, which I believe we are talking about today. Thank you. I might say I'm not an Aboriginal woman. So sometimes I feel shame that I'm not because I think that we white people have treated Aboriginal people in a very terrible way. But really that's me in a nutshell. Thank you.

30 MS FITZGERALD: Mr Morris, will you introduce yourself and explain your background and the current role you hold at the court.

35 ASHLEY MORRIS: Thank you. My name's Ash Morris, I'm a Gunditjmara man through my father and my mum's from Ireland. My father is Ricky Morris and my nan is Aunty Min, you may remember Aunty Min from down in Heywood. That's my family. I currently work at the Children's Court as the manager of Koori services and programs where I look at making sure the court are delivering culturally appropriate service, where we can, and look after our Koori family hearing day, which we know as Marram-Ngala Ganbu.

40 My role has evolved over the years. I initially started in 2016 where my role was to develop and implement Koori hearing day, which we now know as Marram-Ngala Ganbu, which Ms MacPherson and I are here to talk about today. That's my current role. Like I said, I'm a Gunditjmara man, I was born in Traralgon. I went from Traralgon to Brisbane to Perth to Wodonga to Melbourne and I now live in Kyneton. I've got three little girls and I guess the
45 reason we moved around a lot was because my old man was in the army. But growing up dad was always involved in community and was chairs of RAJACs and Koori - you know, Mungabareena Co-op up in Wodonga growing up. So I suppose my personal and professional life sort of was built well before me with people before me.

MS FITZGERALD: Your Honour, would you explain where the impetus for the establishment of Marram-Ngala Ganbu came from?

5 MAGISTRATE KAY MACPHERSON: There are a number of reasons why Marram-Ngala Ganbu was set up. It had been recommended by a number of Commissions, the Commission Into Vulnerable Children recommended a Koori family hearing day, and a number of other - and the Aboriginal Justice Forum had recommended it and it had long been considered to be unnecessary adjunct to the Children's Court.

10 From my point of view, as a magistrate, I believed that Aboriginal children were not being dealt with properly in the Children's Court and the main reason for that was parents weren't coming to court because of the injustices of the past to Aboriginal people. They didn't want to come to court. Their experience had been that their children were taken away from them or they were sent to jail. They were also distrustful of child protection. So they simply didn't
15 come to court.

So if child protection had taken their children from their care, I was left with a case where all I had was the information from child protection. I didn't have any information from the parents, and I assumed, incorrectly, that what child protection told me was correct. I'm not
20 saying that child protection deliberately misled the court but they weren't aware, for example, that some of these families and parents were dealing with and addressing their problems through Aboriginal organisations and I simply wasn't in receipt of that information.

So I'd make - and my colleagues would make - orders placing children or keeping children
25 out parental care when they should have been able to go home because they had been addressing concerns through Aboriginal-based services. So that was my great reason for wanting to support Marram-Ngala Ganbu and I think the results have shown that it's made a big difference to Aboriginal children.

30 MS FITZGERALD: Mr Morris, what locations does the day, or the part of the family division now operate out of, and why were they chosen?

ASHLEY MORRIS: So our first location was Broadmeadows purely because there was
35 funding attached to the new build to try new things and it was an environment where we could do things differently. We launched that in August 2016 and then 2018 we received some funding through the Aboriginal Justice Agreement Phase 4 to evaluate the program, which, I think, you have been provided with that evaluation, and an expansion for one rural location. We chose Shepparton for a number of reasons.

40 It kills me to put it this way but there was the need for it. We did know that Shepparton, in terms of data, was behind other areas of the State in the amount of children in out-of-home care. But it coincided with the recent build of a new multijurisdictional building. So we had thought that it would be easier to adapt what we learnt from Broady, we could take it to Shepparton, but there was some barriers in delivering it in Shepparton just due to - the way
45 the Children's Court is set up in the regional locations. It's generally a Magistrates Court dominated location.

So we kind of fight pretty hard to hear our voices and we ended up employing Tina King, who is here today with us, who really put in the hard yards to be the community's voice,
50 saying we want this here and this is how we want it, and making it happen. So a decision was

made by our senior leadership to staff the family division centrally. So we have a circuit - a magistrate who circuits that weekly to run the family division of the Children's Court in Shepparton from Melbourne in Magistrate Langdon. That's our two locations. Our only two locations.

5

MS FITZGERALD: When you were first establishing Broadmeadows, Mr Morris, could you explain, at the very beginning, how Marram-Ngala Ganbu was designed and how decisions were made about how it would operate?

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ASHLEY MORRIS: Thank you. So I had come from the Magistrates Court where I'd worked in the Koori Court, the criminal division. My role there: I led the expansion with the team, with Travis Lovett and Robin Young, to expand the Children's Koori Court to all existing Magistrates Court locations. I guess that's where I learnt my craft. I learnt how to do things differently within a legislative boundary.

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So I came across to the Children's Court thinking I'll just do what I have been doing for the last eight years and just do it in a new court and, you know, I've got a pay rise, I'm happy, but I was pretty quick to learn that the family division child protection was a complete different landscape. The Koori Court is a sentencing court, you know, it's post-proof, it's plead guilty and get into a situation, whereas child protection, if we waited for proof, it would be too far in the child's life to focus on the importance of connection to family and culture.

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So I spent a lot of time with families, lawyers, local Koori orgs, and just really heard from them what we could do better - what we could do better as a court to get people in the door because it was clear that the magistrates were making decisions on a one-sided story. The three things every family said was get rid of the magistrates, get rid of the lawyers and get rid of the department. They were our three non-negotiables. So we had a fair task ahead of us, Magistrate MacPherson and I, but we pulled together a steering committee, which was made up of representatives of the local Koori orgs, local lawyers, legal aids, bails, juror, and importantly we had two community members there as community members to really guide us. I was the voice for community backed up by them two that sat on our steering committee.

25

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We took what we learnt from Koori Court and adopted it into the family division and came up with the adapted case, the adapted court setting, and the case management approach. We had to get cracking. We had too many families coming through the doors. I don't mind bending a few rules, and it probably wasn't the best project management in terms of the project, just because we had to get it done, I just didn't have mob coming through the door and it was resulting in bad outcomes.

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We said to the steering committee, "Thank you, everybody, we're just going to roll with it based on what we have heard", and see how we went. That's really how we got it up and running. The same thing in Shepparton, Tina put together a steering committee and we taught the community up there what we were able to achieve at Broady and said, "This is your space, what can we do?" That's how we got it going. I should say, prior to me starting and starting the steering committee, there was some work done by some people before me, it was requested through Aboriginal Justice Forum in 2009 in Geelong that a Koori hearing day be made. So we did have a little bit of a model there but it was 10 years after the fact. So we did have to modernise it and off we went.

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MS FITZGERALD: Your Honour has decades of experience with mainstream courts. What is different about a hearing and you conducting a hearing in Marram-Ngala Ganbu from mainstream court hearings?

5 MAGISTRATE KAY MACPHERSON: It's very different from mainstream, although the principles are still the same, and the law's still the same. There is no special - there's no different outcomes. But we all sit around a Bar table - have we got some photos of it?

MS FITZGERALD: Yes. If the operator could display the last page of the outline of
10 evidence which has pictures of how the courtroom is set up.

MAGISTRATE KAY MACPHERSON: We all sit at the Bar table, including me, and I think that's really important. If you can see the top one --

15 MS FITZGERALD: And if we could zoom in maybe on the top one for the moment.

MAGISTRATE KAY MACPHERSON: The court is set up in what we consider to be a culturally appropriate way. The artwork is done by local artists. The possum skin cloak was done by a community weekend that Ash organised. The Coolum was made by a kid in resi
20 care. So it makes people feel more comfortable, so they say, which is good. So I sit somewhere around that roundtable. All the families sit at the table, including any support people they have with them. They don't have to be joined as parties. In the Magistrates Court you have to be joined as a party to actually sit at the table.

25 So we have Elders, any family members that want to come along to support the family members in court. So they'll sit next to their lawyer although sometimes I don't even talk to the lawyer, I talk directly to the parent, which I find more effective. We start by - I start by introducing myself and then we go around the table and everyone at the table introduces themselves. If there is anyone in the back of the court, I will get them to introduce themselves
30 too, just so that the parents know who is sitting in court listening.

Then I will often say to the department what they are seeking, and if they are not seeking for the child to be returned to the parent, I will say, "Well, what does this mother or this father or these parents have to do to get their child returned to their care." So a plan is often made. We
35 have a lot of support services on hand. They don't necessarily sit at the Bar table. We used to try to have them come every week but it was too time-consuming for them if they didn't get any referrals. The Koori support officers are there at the table with them and they help get them into court. They'll speak to them between that court hearing and the next court hearing, and the Koori support officers are vital in the process, because they encourage the parents to come and they support them once they are at court. They greet them at the door and that's
40 really important.

So the hearing just proceeds, really, in the normal way except that it's a culturally appropriate setting for them. I'm hoping that they would feel comfortable in that setting and the
45 evaluation that we have had says that they do.

MS FITZGERALD: Mr Morris, just talking about what's culturally appropriate, what do you think makes that space and Marram-Ngala Ganbu generally a culturally safer place, accepting that the child protection system might not ever be able to be completely culturally safe, but
50 for people than the mainstream court is?

ASHLEY MORRIS: It's just the top to bottom service we deliver at Broadmeadows. You can be yourself and your voice can be heard. My team: our role is to get people in the door and get rid of all your anxieties before you get up to the Bar table and be able to truly engage in the process. We also have Lakidjeka, which is the ACSASS program that the department must consult with in any major case decision or the decision to remove a child. They are at the Bar table with us. That extra support in, you know, with the mob, through the cultural lens, that's where it comes from, everyone's there to have that conversation.

10 The art and things, it's all local. It's all people with first-hand experience with the child protection system. So you walk in and you see your Auntie's painting, you just go, "Oh, thank you, thank you." The paintings alone. I mean, for some people it's art on the walls but the stories really talk about what we are doing in this courtroom. Aboriginal people that walk into the building, they know that, they see the pictures and know that, "Okay. We are safe here", because me and the team have either met you at the train station and walked all the way through security or ringing you every day for the two months leading up to it, because that's what you've asked for, just to keep you across what's going to happen in the court.

We also really, really focus on the process with families. They know exactly what's going on. I suppose we kind of act as interpreters. This is what a subs is, this is what an FPO is, this is what - you know, the families from the initial sitting to finalisation, they know the court process so well that they come back to support their family because they are the voice for the community to stand up and say, "This is my cousin, she's got some things going on, but we are going to get her through it."

Whereas the old court was: sit in the foyer, be ignored for three hours, go sit in the first row while two people talk about you as a family to someone sitting up on a wall who just ignores you. Being able to walk through them two doors there and be able to sit up at the Bar table before the decision maker and say, "I'm Ashley Morris and I'm the father", is more than enough to get things moving.

MS FITZGERALD: Your Honour, did you or any other magistrates, who were aware of the proposal, have any concerns about being down at the table with the parties before you tried it?

MAGISTRATE KAY MACPHERSON: I never had any concerns, and my colleague, Ms Hawkins, who sits with - we alternate the weeks that we do, we have never had concern. Some of our colleagues were concerned about the lack of gravitas of not sitting up on the Bench. I don't believe in gravitas. I believe if you treat people with respect you'll get it back 16-fold. They were also concerned about safety. I've never had anything happen in Marram-Ngala Ganbu to cause me any concern whatsoever. So I don't think that they are concerns that I'm concerned about.

If my colleagues are concerned about it, well, I respect them and they wouldn't be people that would be appropriate to sit in Marram-Ngala Ganbu. I'm very mindful of that, if I ever go on leave, to make sure that we have a relieving magistrate that can, that does believe in this process because I don't want anyone to come into that court. I'm quite proprietorial about it. I don't want anyone to come in and scare the people away.

MS FITZGERALD: Mr Morris, anecdotally, you've said that families are moving houses to get access to Marram-Ngala Ganbu. Do you think there is enough demand to run more lists like this in other locations?

5 ASHLEY MORRIS: Yes. I don't know how to answer that. Victoria has the highest number of children in out-of-home care which I'm sure you have all heard this week. We often get asked why is Victoria - we have all these great things, yes, it only in two locations, why do we have more kids in out-of-home care. I think it's just because the applications come to us and unless it's this approach, where the true story is told for the decision-maker, you know,
10 that's where we - that's the gap in - I have got confused myself with the question, it was like --

MS FITZGERALD: Do you think there's a need for a list like this in everyone kids' court or just some of them?

15 ASHLEY MORRIS: Definitely. 100 per cent. You read the evaluation, you hear the stories, we've got - you know, my team - just this morning, on the way in, I had a call from a parent who accessed Marram-Ngala Ganbu four years ago, who is, unfortunately, back involved in court proceedings, not at Marram-Ngala Ganbu, at either Shepparton or Broadmeadows, and
20 just the stress at the start of the call to the end of the call, when I said, "It's okay. Don't stress, your case is being transferred to Shepparton, we have Marram-Ngala Ganbu there", was just from up here all the way down to the bottom knowing that they would be treated fairly as an Aboriginal mother in that court was just phenomenal. It is the court's aspiration. We do want to deliver this state-wide. It's just how do we get there.

25 MS FITZGERALD: Your Honour, in 2019 you mentioned there was an evaluation of Marram-Ngala Ganbu undertaken, and it found that the court experience for Koori families has been transformed. One the biggest things you've mention is families are more likely to attend court. The evaluation also found that families were more likely to follow the court
30 orders that you and your colleagues have made. Why do you think that is the case and how does families' compliance with your orders affect the outcomes?

MAGISTRATE KAY MACPHERSON: Well, I think there's greater compliance, because they are part of the decision-making process. They sit around the table and, for example, if
35 the parents have got, say, drug and alcohol problems, we'll say, "Well, let's try and address the drug and alcohol problems", we might refer them to family drug treatment court, which is another of our programs, and if they are not able to address those concerns, it may be that we can't return the children to their care. But we have given them the opportunity and sometimes parents know that they are not going to have their children returned. But they have had the
40 opportunity to be part of the process and they've had the opportunity to know that their children are going to be placed in a safe place culturally and I think the very fact that they are part of the decision-making - well, not the decision-making process but part of the discussion and whatever's going on around the table makes them feel, "Well, yes, that's the decision, it seems fair, I'm going to comply with it." That's my experience of it.

45 MS FITZGERALD: Is your sense that, for example, if those orders require them to do certain things, go to rehab, undertake drug screening, is your sense that they feel that if they do those things, it might even make a difference?

MAGISTRATE KAY MACPHERSON: Yes. The other thing I think is important to note that we docket at Broadmeadows, which means once a parent comes to court they'll get me every time they come back, or Ms Hawkins, which is really important, because if I say to the department, and I might say to the department, "Well, if the mother does this, this and this,

5 will you return the child home?" So that puts pressure on the department, puts pressure on the mother or accountability, so it's not the case any more where the mother might come back to court and has done this, comes before a different magistrate, and the department will change the rules and want the mother to do something practice. So the docketing is really important.

10 I think the fact that they see me the whole time and gain trust in me, and Ms Hawkins respectively, I think that makes an enormous difference because they're not getting a different magistrate each team, they are not being told different things. The other thing I wanted to mention in that regard was Nugel and I don't know whether you have been told

15 about Nugel but they make an enormous difference to our court. Nugel are a part of VACCA that have been, under section 18 of our Act, assigned the duties - the responsibility of the department. So it's an Aboriginal organisation in charge of Aboriginal children and they are fantastic. The great results we get in Marram-Ngala Ganbu are more often than not cases that are managed by Nugel.

20 It would be terrific to see state-wide a whole lot of Marram-Ngala Ganbus, a whole lot of Nugels, which means that Aboriginal people are dealing with Aboriginal children, apart from the magistrates, and I would like to think there might be some more magistrates coming through that are Aboriginal men or women.

25 ASHLEY MORRIS: Can I just add to that too in the case plan decisions through section 18: the Aboriginal people making them decisions about connection to culture and weighing up the risk of no connection to family and community versus the risk of harm and the section 18 stuff - the cases we made, care by secretary orders in 2016/17, are now returning to court

30 under case management of section 18 to be converted to either family preservation orders, so children return to a parent, or to straight withdrawals from any engagement.

So we have made, in Marram-Ngala Ganbu, with parents the decision to make a care by secretary order. The family have been not happy but accept that that's where they are at. Case management is transferred to an Aboriginal organisation who work with them in the

35 short-term, assess the risk as acceptable, and they are returning children home and because the mob know they are going to get supported through court they are more than happy to pop back up, even if the case plan is non-reunification, they know their voices are going to be heard and they rock up to court. We go through the process and we are able to return children home. I just wanted to really highlight that.

40 MS FITZGERALD: Mr Morris, the evaluation found that, with Marram-Ngala Ganbu, there was greater compliance with the Aboriginal Child Placement Principle, which is otherwise not being well adhered to in courts across Victoria, what results have you had with that?

45 ASHLEY MORRIS: I think it is really important for you to hear about identification of matters involving Aboriginal children. Marram-Ngala Ganbu isn't a specialist court or a division of the court, like the Koori court or family drug treatment court, it is just the way we want to deal with Aboriginal families because of the Koori-centred approach and the case management, that comes with the court with docketing. So before we started Marram-Ngala

50 Ganbu in both Shepparton and Broadmeadows, we had a high number of children who the

court just didn't know whether they were Aboriginal or not. When the application was brought to court, there was no information that said this is an Aboriginal child, a Torres Strait Islander child, both or neither. We had a big number of unknowns. In Shepparton, particular, we had 57 per cent unknown, not entered whether or not the child was Aboriginal. Our magistrates are getting the file with no trigger point to ask the question: does this placement comply with the Aboriginal Child Placement Principle?

Since we employed Tina up there in Shepparton, the last two years we have had that number below one per cent. We have worked with our registrars to accept applications with it unfilled out but not call it until we know. So our registrars, non-Aboriginal people are asking the department while initiating, "is this an Aboriginal child, if not, can you find out, if not, I'll call the parent to the counter and ask myself". Put it on there, note it on the file so the decision-maker knows it is an Aboriginal child and the placement principles apply. Without Marram-Ngala Ganbu, that early identification in the court process wouldn't be there.

MS FITZGERALD: Does that mean that those children were also not being identified as Aboriginal by the department?

ASHLEY MORRIS. Yes. The applications are brought by the department. If they are not putting it on the form to initiate it, it is pretty safe to guess that.

MS FITZGERALD: But they don't know as well?

ASHLEY MORRIS: Yes. I do want to add, though, matters aren't coming to court for good reasons. There is time pressures on the department, you know, in the middle of the night the parents may not be around, the child may be too young to answer. I do want to acknowledge that. But, I mean, if it's coming to court, because in our Act the Child Placement Principle applies.

MS FITZGERALD: So all the protections that the Parliament intended apply to Aboriginal children are not being provided if steps aren't taken to identify children as Aboriginal?

ASHLEY MORRIS: I think it goes beyond Parliament too. Our community fought pretty hard for the Child Placement Principle to fit into their law system and it just gets ignored.

MS FITZGERALD: Your Honour, Marram-Ngala Ganbu, as I understand it, can only deal with uncontested matters; why is it limited in that way?

MAGISTRATE KAY MACPHERSON: I don't know why it's limited in that way. We don't have many contests. At Broadmeadows we do have this less adversarial approach of doing things, and we don't have many contested hearings, unlike the other Children's Courts. I think if it is a contested hearing, it was thought - I can't really remember, Ash, why we - I think we thought that given a contested hearing was more adversarial, it wasn't appropriate to have it at the Bar table, like it is. But, as I said, I can only remember one contested hearing we have had for an Aboriginal family in the last two or three years. So most of them settle.

ASHLEY MORRIS: Can I add to that too, sorry, another reason we don't want contested matters in this space is because we want it to be family-led. We want the family to come up with reunification plans and reasons for adjournment to better support family. That's another

reason why we don't hear the contested matters and, as Ms MacPherson said, we rarely hear contested matters and, when we do, they don't run for the full period. Yes.

5 MS FITZGERALD: Mr Morris, there are five case studies in the outline of evidence that you've provided. I wonder if you would step through those, and feel free to refer to that outline, just to give the Commissioners a sense of the work you're doing?

10 ASHLEY MORRIS: Thank you. Coming up with case studies is really easy because we have really good outcomes. So I'm going to talk about five and Ms MacPherson is going to give you two bonus ones. But we have supported, you know, over 800 families and every one of them could be a good practice study regardless of outcome. So the first one - and I will just read from my notes, if that's okay otherwise I will say something wrong - so after a period in out-of-home care, three of four children return to their mother's care. However, one of the other siblings remained in out-of-home care.

15 The parent had wonderful regular meaningful contact with the child and it was heading down the contest route. Through Marram-Ngala Ganbu, the parent was supported by the whole team, magistrate, the department practice leader, and the Marram-Ngala Ganbu Koori family support team to get the parent in at the Bar table and have their voice heard. It was quite emotional in court and things weren't going anywhere in the court so we stood it down.

20 We went into a breakout room with the department and the parent and we said this, you know, "We need to hear your voice, what is your issue? If you need a minute, let us know and we'll give you that minute." So we ended up adjourning it and we went to a care team meeting with mum. Mum was supported by a VACCA support worker and the Marram-Ngala Ganbu team, as well as the child protection practice leader. Mum was empowered to ask the question, "Why do I have three but not my fourth home? What is the issue?" To which the department responded, "There is no protective concern. It's the young person's health needs that are being met in his current placement so we don't want to remove him." This kid was in non-Aboriginal placement and quite a distance from mum.

25 At the next court event, we were able to give mum's voice the stage before the decision-maker to say, "I have got the department telling me there are no protective concerns but why is my child in out-of-home care when I have my other three?" It came out through the process that the NDIS package was attached to the carer, not the mother. The question was asked of, I think it was her Honour, you know, "Please explain", basically, "What is going on right now, why are we in this court with no protective concern but for it being the child's medical needs?" So we adjourned it and asked the NDIS to come to court with a briefing as to why we couldn't support the mum.

40 When we came back to court, the matter was mentioned regularly to keep things on foot whilst giving mum the venue, or the voice to say "I'm mum, literally please explain." And we were able to make a family preservation order and return that child home through the case management approach at Marram-Ngala Ganbu. Had we not had Marram-Ngala Ganbu, I'm not sure that child would have ever returned home. There was no accountability held to mum, the department, or the support sector, to having the child returned home. We were able to return that child home with his siblings and mum.

45 Case study 2: this is a large sibling group of six children. Now, in the family division, there is a protection application by emergency care, which is immediate removal and straight to

court within the 48 hours, or something, or there's a protection application by notice, which is, you know, "We've got some concerns, there is no need to remove but we want it get it on the hop, basically."

5 So the department at the Preston office worked with the Marram-Ngala Ganbu team to make
 sure the return of the protection application notice was in Marram-Ngala Ganbu. So the first
 mention was in a culturally appropriate space where the case management of the file knew
 what to expect. They were experiencing homelessness and been couch surfing with friends,
 living in their car, and unconfirmed reports of family violence. All while this was happening,
 10 all six children were attending school - I think actually one of them wasn't in school because
 they weren't of age, which was pretty phenomenal, the strength that that family had to get
 through that, living out of a car with six kids, to be able to get kids to school with no other
 concerns than unproven reports.

15 The department wanted to withdraw on this case because homelessness isn't a protective
 concern but due to the nature of Marram-Ngala Ganbu, we just didn't allow them and we
 kept adjourning it monthly to see wait until these kids had a home.

MAGISTRATE KAY MACPHERSON: Well, the problem was the department were paying
 20 for accommodation in a motel and they didn't want to fund it anymore. I wouldn't let them
 withdraw until such time as the family found housing. I wasn't going to have them being
 turfed out on the street.

ASHLEY MORRIS: Thank you. We dragged it out for 13 months through Marram-Ngala
 25 Ganbu. Once we found accommodation, a family preservation order was made, the kids were
 in the parents' care for a short period of time and we never saw them come back to court. Had
 that have been in the mainstream, I don't even want to think about what could have
 happened.

30 The next one talks about Koori designed, Koori-led and Koori delivered services in the court
 environment. A young couple had recently relocated from New South Wales and 36 weeks
 pregnant. There was an extensive list of protective concerns and that's what brought the
 application to court. What the department didn't know is the family had been actively
 engaged in a local ACCO since returning to Melbourne who offered a much more holistic
 35 and comprehensive level of support which was detailed to the court through support letters,
 verbal updates and attendance in court.

The local ACCO knew the family from previous involvement as the parents were involved in
 child protection themselves. Some of the staff in the Koori orgs had worked with the family
 40 for over five years intergenerationally. So they had a well-rounded view. That's what Koori
 orgs bring to this space. We know how to support our families and give them the voice.

When we come to Marram-Ngala Ganbu, we heard the stories of what support was on offer
 to the family and how we could keep the mob together. The beauty of Marram-Ngala Ganbu,
 45 we have Lakidjeka access at the table who heard this. We stood it down, a consult was done,
 and Lakidjeka, you know, reassessed their position and reassessed their position and
 supported reunification. The baby was returned to the parents' care after spending a short
 time in out-of-home care, thanks to Koori-led, Koori designed and Koori delivered services.

The next one is about section 18. Again, the Bar table was full of Aboriginal people from Aboriginal services, Aboriginal family, the only non-Aboriginal person in the case was the lawyers and the magistrate. This child had been in non-Aboriginal kinship placement for a period of six years, which broke down to the father's heightened risk when he moved into the kinship placement with the child.

During this time, the child was placed in a care by secretary order. So in the care of department with a non-reunification case plan. The case was then transferred to Nugel - this has been rewritten, so I'm just trying to re-read it, sorry - the case was transferred to the Nugel program and the parents were reassessed, given the concerns of the kinship placement where it was just unsafe for that young child.

The parents were found to be suitable and intensive supports were put in place by a number of VACCA programs under the reunification case plan decisions by an Aboriginal person in section 18. The matter was finalised on a family preservation order which has since expired and the matter has not returned to court. I know I've jumbled that up, sorry, Commissioners, but the importance I'm trying to highlight is if Aboriginal family looked after Aboriginal people in an Aboriginal court, we get Aboriginal outcomes, and kids are returned home.

The final case study is a really quick one and it looks like this one isn't too far from what I did want to present to you guys today: August 3 2021, Marram-Ngala Ganbu in Broadmeadows, we had four care by secretary orders, so kids in the care of the department, all converted to family preservation orders. That's children returned home. Three of these matters were case managed by VACCAs Nugel program, section 18. Again, Aboriginal mob looking after Aboriginal mob.

One of the cases, a 15-year-old boy, being placed in a care by secretary order in 2009 and then, again, a long-term care order in a2015. The family preservation order was made for him to return to live with his father. The reason I wanted to highlight this one is that, for some reason, section 18 view fathers in a different light to the department. The amount of kids who have returned home to parental care on the father's side is seen nowhere else other than section 18.

The other one was a 15-year-old boy placed in a care by secretary - sorry, I'm reading the same one. Another case was a 12-year-old boy placed on a care by secretary order in 2017. That care by secretary order was made in Marram-Ngala Ganbu. I remember that day because the mum thanked us for putting her kid on a care by secretary order. We were all in tears. "Why are you saying thank you?" She said it's because we give her a fair go and we helped her make that decision. She was happy with where the child was placed. She was able to work with the department in Marram-Ngala Ganbu to assure her that that child wouldn't be removed and put in resi care and that's how we got her to agree - that's how she formulated the view to agree to care by secretary order.

Now, a couple of years later on that day in 2012, a family preservation order was made back to the mother who agreed to the care by secretary order in our court a couple of years earlier. The reason this happened is because case management transferred from the department to VACCAs Nugel program. Their view on family forever is different to a care by secretary order that is renewed every two years. Even though it's a case - a non-reunification case plan, like I said, section 18 still view it as family forever and must maintain that connection regardless of where the placement or parental care lies, section 18 tied up with Marram-Ngala

Ganbu are making sure that kids know who they are, where they are from, where they fit in, where they belong.

5 MAGISTRATE KAY MACPHERSON: Can I just add there that, when a child's on a care by secretary order, which means the parents lose all parental rights, in my experience, the department don't ever reconsider reunification. Once a child is on a care by secretary order, unless something extraordinary happens, they will just apply for an extension after the two years. Nugel, on the other hand, will work with the parents and try and get the child home and that's a really big difference.

10 That's why we have children being returned home on care by - after being on care by secretary orders with Nugel. I don't want to criticise the department, because I know they are very busy, they are short-staffed, etcetera, etcetera, but it makes such a difference for Aboriginal children to be under Nugel's banner.

15 ASHLEY MORRIS: The last two, sorry, two children, 10 and eight, on care by secretary orders which were made in 2019, again, in Marram-Ngala Ganbu, since the making of that care by secretary order, the Marram-Ngala Ganbu team still supported that mother and were able to get her into Odyssey House, which is a residential rehab. That mother is also a member of the Stolen Generation. She was forcibly removed herself. She spent the hard yards in Odyssey House and were able to have her children live with her in Odyssey House to complete her recovery. She was the first Aboriginal mother to reach the Leavers program at Odyssey House, something she was very proud of, and through her healing journey with her children, supporting her, yes, they were young, but having them close and access, you know, 20 reachable, she was able to do well in her recovery and a care by secretary order was withdrawn and a family preservation order made. That, again, was a Nugel case.

25 The last one on that day was a department case where we had supported the mum through the process to continue showing up. Even though the care by secretary orders were made mum still rocked up because she wanted her voice heard. It wasn't called active, but she popped up to the support team in Marram Ngala-Ganbu to ask, "What do I need to do, what have I got to do?" Prior to Marram-Ngala Ganbu, that mum would have been told, "It's on a care by secretary order, wait two years and you can have your say when it's extended or not." Through Marram-Ngala Ganbu, we were able to support that mum even while it wasn't court 30 active to get her kids returned home. And over to Ms MacPherson for her two.

35 MAGISTRATE KAY MACPHERSON: Thank you. My colleague typed this out but I know this woman very well, in fact, she came to our Drug Court Christmas party yesterday and is looking a million dollars. She was the mother of three children. She had a 19-year history of alcohol and drug use and she had two older children removed from her care years ago and hadn't had them in her care. In February of 2021 she gave birth to a little baby girl and this little girl was born testing positive for cannabis and ice.

40 The department attempted to assist her on a voluntary basis to remain with her baby in a rehab facility but brought the matter back to court when that didn't work. The matter then came into Marram-Ngala Ganbu and, together, Marram-Ngala Ganbu and the Family Drug Treatment Court, she was referred to the Family Drug Treatment Court and she did absolutely brilliantly in that court. She participated in Drug Court as well as hearings in Marram-Ngala Ganbu. Her attendance record was exemplary and she shared her experiences and journey through recovery with others on the program.

5 She had an enormous lengthy history of substance abuse but she graduated from the Family Drug Treatment Court and she got this little baby girl back just before her first birthday. The court made a family preservation order and, not only that, but she's now got frequent overnight contacts with her two older children. In fact, one of her older children is in her care and the other one is likely to return soon.

10 This reunification was due to the mother's strong commitment to her children but also was assisted by the very supportive environment of both Marram-Ngala Ganbu and the Drug Court at Broadmeadows. As I said, I saw her yesterday and she looked so well and so happy. She had her little baby with her and one of her older boys with her and it's just wonderful to see.

15 This is another Aboriginal woman, the mother of two children, and she also had a lengthy history of substance abuse issues. Her oldest child was removed from her care about 17 years ago and placed with family members. Her youngest was placed - came to court when he was two and a half years by emergency care as a result of her substance use and other issues. He was placed with suitable people over the next two years on interim orders and then a family reunification order which obviously meant he wasn't in her care. This woman was also encouraged to participate in Family Drug Treatment Court but, ultimately, didn't.

25 A care by secretary order was made in mid-2009 removing her parental rights as she seemed to be going nowhere with her recovery. In July 2021 a case plan meeting was held and it was determined that a permanent care assessment would commence. The case plan was non-reunification and for this little boy to be in the permanent care of his carer. Soon after that, and with the support of VACCA and her care team, as well as the child's carer, she made a decision to make a concerted effort to get this little boy back in her care. She attended almost all meetings and court hearings from there on and she had been drug free for some time but continued to do screens to prove that. Little by little and with support she was able to have unsupervised contact and in November 2002, over five years after he was removed, this child was returned to her care.

35 We magistrates in Marram-Ngala Ganbu were thrilled to be able to make a family preservation order for them to be in her mother's care. My colleague writes here that there was not a dry eye in the court that day, including all of her support workers, Marram-Ngala Ganbu staff and the magistrate, who was Ms Hawkins, obviously. On leaving the court Ms Hawkins wished the mother and child the very best and said that it had been one of the greatest pleasures to meet her and watch her determination to stay drug free and be the wonderful mother that she is.

40 This mother thanked the court and said that she would miss coming to Marram-Ngala Ganbu. Ms Hawkins has written this is why we get up and come to court every day. She's quite right. This court and Drug Court are the reason why I'm still a magistrate because they mean such a lot to me because we can do such good work with these parents.

45 MS FITZGERALD: Your Honour, I'm loath to ask my next question because it is an incredibly dry eye question. I just wanted to move very briefly and just talk about some of the practical issues with child protection proceedings generally, and I have undertaken not to ask your opinion about the law, that you need to apply every day, because obviously, as a member of the judiciary, you apply the laws that the Parliament sees fit to write. But I

thought I could use your practical experience just to touch on some of the - how these laws are applied in practice.

5 One of the tests you need to apply is that of unacceptable risk. Obviously the word “unacceptable” does a lot of work. The Act does not provide any criteria by which what is acceptable and what is not acceptable is to be judged, does it?

MAGISTRATE KAY MACPHERSON: No, it doesn't.

10 MS FITZGERALD: Some of the case law on unacceptable risk in, for example, the bail context, indicates that where a particular risk is acceptable must be viewed in light of all the circumstances and that those circumstances could render acceptable a level of risk which, in other circumstances, would be unacceptable. Is that also the way that phrase is understood in your court, that what is acceptable in one context may be unacceptable in another, that it's not
15 an objective issue?

MAGISTRATE KAY MACPHERSON: Well, I think it's a very subjective issue as to what an unacceptable risk or not. But often unacceptable risk can be ameliorated by things happening. For example, if parents have got problems, sometimes the risk can be ameliorated
20 by a family member living with them to make sure that the children are looked after. But, at the end of the day, it is a subjective thing and we're all people and we all look at things in a different way.

25 The one thing I will say about Marram-Ngala Ganbu is that sometimes I have been criticised for finding that the risk is acceptable taking into account a child's Aboriginality. I accept that criticism but I will still continue to do things the way I do because I think what some people don't consider is the risk of a child losing their identity by going to a non-Aboriginal family. There simply aren't enough Aboriginal carers. So if you don't send a child home, that is part of the assessment of risk in determining whether or not there is risk.
30

You also have to take into account the risk of the child being placed in a non-Aboriginal family. My experience is, once they are placed in a non-Aboriginal family, that can go on for years and if a child loses his or her cultural identity that is a real risk and that's something that needs to be taken into account.
35

MS FITZGERALD: Your Honour, although you take that into account, there is no requirement in the legislation, when considering unacceptable risk, for a magistrate to consider that removal may result in loss of culture, connection to community.

40 MAGISTRATE KAY MACPHERSON: No. There is nothing in the Act in relation to acceptable risk. I mean, there are the Aboriginal placement principles and we have to take those into account. But there is no specific legislation in relation to the definition of “unacceptable risk.”

45 MS FITZGERALD: I'm thinking of, for example --

COMMISSIONER BELL: Can I ask: do you think the approach you've explained, as the preferred approach, is strongly enough supported in the legislation to give you comfort as a judge doing the right thing?
50

MAGISTRATE KAY MACPHERSON: I think it is. I don't believe that I'm going outside the Act in doing what I do. But I think it's a little bit racist for people that criticise me to say I take a child's cultural identity too much into account because I think a lot of the time the department don't take that into account. They don't consider it important. That's why I say
5 they are a little bit racist, not intentionally, of course, but that's my view. I don't think I'm doing anything illegal or contrary to the legislation.

MS FITZGERALD: Yes. I was thinking, when you were speaking about the Bail Act, in particular, there are those requirements in the Bail Act, section 3A, to require consideration of culture expressly in making bail decisions. Next week we will be hearing about those bail laws.
10

MAGISTRATE KAY MACPHERSON: That's a great provision. That's all I'll say about that.
15

MS FITZGERALD: Yes. I think it is within the separation of powers for you to speak with approval of the laws that are in existence. To the extent - to what extent are Children's Court magistrates talking about this risk assessment or assessment of what's acceptable and unacceptable and the nature of the risk for a child, to what extent are you presented with
20 detailed information about the risks associated with child removal, the ability of the secretary to be a good parent to that child, or the likelihood of them ending up in juvenile justice if they go into out-of-home care, or the rates of suicide and self-harm amongst children who are removed? So when you have to apply this test of unacceptable risk, are you given information on both sides of that ledger?
25

MAGISTRATE KAY MACPHERSON: No. Generally not. Generally not.

MS FITZGERALD: Is it fair to say magistrates are being asked to assess unacceptable risk when they are being given a lot of information about the risks in the home but not on the
30 other side of the ledger?

MAGISTRATE KAY MACPHERSON: Yes. Very rarely do we get any information about risks on the other side of the ledger.

MS FITZGERALD: I have no further questions for these witnesses. Are there additional matters the Commissioners wish to raise?
35

COMMISSIONER BELL: I've got one at least. We heard evidence this morning from Aboriginal people working in organisations providing early childhood development services of various kinds, including childcare, but much wider than that, who know the kids really well and who probably know the kids better than anybody, other than their parents and immediate family, certainly better than the department. Yet they have - they are not called upon by the department to provide information about the child and how they are going and I'm wondering about whether you have any interaction at the court with such people, the
40 early childhood development sector.
45

ASHLEY MORRIS: So the whole sort of ethos of Marram-Ngala Ganbu is get the right people in the room. So that falls on my team to get them into the courtroom. If we can't get them there, because they are very busy people, we'll get them to submit letters of support or get their lawyers in contact with them and they can make submissions from the Bar table.
50

So we really want - we run out of chairs all the time in Marram-Ngala Ganbu, particularly pre-COVID, because we had everyone in the courtroom there to provide that update, and often if we couldn't get them there, and we couldn't get support letters, we would do a short
 5 adjournment - an adjournment for two weeks, to get that person in on a date that suits them. So we do in Marram-Ngala Ganbu hear from them and it sort of, you know, then opens up a bunch of other short adjournments because the department need to reassess because we are just hearing this information now and that's what we set up Marram-Ngala Ganbu for, to get the whole story and the whole picture.

10

MAGISTRATE KAY MACPHERSON: We have been to Bubup Wilam and it's an absolutely fantastic kindergarten. When we had our official opening - can I have that photo again of the court - there's a beautiful picture done by the Bubup Wilam children of the Aboriginal flag done with buttons. That's on the wall and I love looking at that. The children
 15 came along on the day and did a dance for the opening of the court. No, you can't see it unfortunately. But, yes, they - we do value their voice.

15

COMMISSIONER HUNTER: I'm just wondering, you may not know the figures at all, but with Shepparton and now that Rumbalara is transitioning over to section 18, or their half
 20 authorised, I can't remember the correct word, have you seen a difference up there of the engagement?

20

ASHLEY MORRIS: Like Broadmeadows, we get Rumbalara to the court and we've had countless cases where we have avoided children going into out-of-home care or residential
 25 placements, thanks to Rumbalara and their knowledge of community. That's all in court at the Bar table. So they are not necessarily engaged with the family but they can see us from the gallery, fumbling to avoid having to order this child to go to out-of-home care or residential placement and because of the nature of court, Rumbalara are able to just stick their hand up and say, "Can you give me a minute, can we stand down?" They'll say g'day to mum
 30 and dad out the front, "I know this, I know that", because we are all community people, run it by the department, get it back in, and we have been able to avoid kids going to out-of-home care thanks to Rumbalara. I forget their names, but Tina King is here today from Shepparton, who I know isn't a witness, but is well across the support that Rumbalara offer.

25

30

Like Ms MacPherson said, we are really hanging out for section 18 to be at that location because we know, through VACCAs work with section 18 and what Rumbalara already offer, the court in decision-making without being a case decision-planner is unreal. So really
 35 hoping for that.

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COMMISSIONER HUNTER: Can I ask either of you: do you feel that you are holding the department to account?

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MAGISTRATE KAY MACPHERSON: Very much so.

ASHLEY MORRIS: I think, to add, we hold the family to account as well. I think it's really important to know that our best cases are when we've said nothing and we've had the Elders come in and just rip their mob and say, "I didn't fight for you to be doing this to your kids." You know, we've got nans and grandparents in court saying, "I raised you because your mum
 45 couldn't and we want you to be a strong Aboriginal person and this is your opportunity,

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you've got the decision maker in front of you, the support of your family, let's get you through this."

5 COMMISSIONER HUNTER: We have heard from previous witnesses about racist reports or reports that aren't accurate, I guess, that's probably a better way to put it, and see those reports, are they questioned and gone through with the family? Are those gone through at the table with the department and the family?

10 MAGISTRATE KAY MACPHERSON: We don't actually go through the reports but if the family say that a matter has been misreported, well, we'll say to them, "What's your side of the story, what do you say in relation to this?" I'm not going to accept what the department says willy-nilly because, as I said initially, they don't always have all the information. That's why it's important that the parents be there to be able to tell me that so I know there is another side to the story, whereas before I was just in a void.

15 ASHLEY MORRIS: In the lead-up to court it's my team's role to make sure that the court reports are handed in on time, that they're provided to the lawyers, that the parents have it and that they're aware of what's written in it. I think, for this whole session, we have not really touched on our child protection practice leaders who are there to do what we do with
20 the family but with the department. They are in the background checking up, you know, "Hey, this is due next week, I see you haven't started the report, make sure it's due on this date and, if not, we can reach out to the Marram-Ngala Ganbu team and see if we can do a shortform update so we can still progress the matter as opposed to adjourning for three weeks just for a report." The department's practice leaders' extensive knowledge in the field are just
25 as important to the process as what my team is.

COMMISSIONER HUNTER: Can I just ask how many workers are in the program?

30 ASHLEY MORRIS: So in Broadmeadows we are lucky enough to have a Koori service coordinator whose role is to manage the list. So they're making sure that we can hear what we've got listed on that day, you know, there's no point putting 10 cases that need two hours, you know, in a day where we only have court for four, as well as dragging the services in and building that relationship to get them in the door. In Broadmeadows we have a Koori family support officer whose role is purely just to support them through the process.

35 Generally, we will - you know, if there is no referrals in place and they are coming unsupported, we will hold their hand until we find the most appropriate service and send them off to them. Unfortunately, we didn't receive the funding we would have liked for Shepparton. So we only have one Koori service coordinator up there and a Koori family
40 support officer and that's because our data was so unreliable. We had 57 unknown and 23 per cent we knew were Aboriginal but once we bring that down to zero, it actually put our numbers up to about 42 per cent of the list up in Shepparton to be of Aboriginal children.

45 Then the practice leaders in both locations and they are shared across both the Family Drug Treatment Court and Marram-Ngala Ganbu. Lakidjeka are like, you know, a foster brother to the court. They provide us a worker when they can. Victorian Aboriginal Legal Service and Djirra used to provide us a duty legal service and I'm sure you have heard this week and next week about how poorly resourced they are for the most jailed and removed moved children in the world. We just couldn't chew up their time without them getting referrals. So, you know,
50 again, to talk in terms of the business we deal with, they are our foster brothers and sisters,

they're part of the team but not crucial, you know, crucial to it. You will see in our evaluation one of the key recommendations in expansion is that the local service providers be adequately funded to deliver the Marram-Ngala Ganbu in their area, which is really tricky for us as a team, to support.

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But we hope that when we do get expansion, it's not just for the court, it's for section 18s and supporting the local ACCOs to be ready for that as well as access programs and support services.

10 COMMISSIONER WALTER: Is expansion on the cards?

MAGISTRATE KAY MACPHERSON: If we can get funding.

COMMISSIONER WALTER: Where is the funding located?

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ASHLEY MORRIS: At the moment, half of Broadmeadows is funded by the Children's Court, and Shepparton and Broadmeadows are funded under the Aboriginal Justice Agreement. And the department self-fund their practice leaders. I'm not --

20 COMMISSIONER WALTER: Is funding precarious?

ASHLEY MORRIS: That's too big a word for me, sorry, Commissioner.

COMMISSIONER WALTER: Is it shaky?

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ASHLEY MORRIS: No, it's not shaky, it's just not there.

MAGISTRATE KAY MACPHERSON: We have got funding for Broadmeadows and Shepparton but we'd like Marram-Ngala Ganbu in every court around the State and that we haven't got funding.

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ASHLEY MORRIS: The court don't see it as a specialist program. It's just the way we deal with Aboriginal families. Pre-COVID, Ms MacPherson and Ms Hawkins ran Marram-Ngala Ganbu for all matters. I don't know if I'm allowed to say this: it is just how a Koori-led process becomes the new way of doing things because it's achieving better outcomes for all Victorians but, importantly, you know, reflecting back on Koori ways of doing things. We have been around for far longer than any child protection system and, you know, I'd love to see what we set up, us two and others in the early days, being the way we deal with child protection matters across the board because we know it works for everyone starting with an Aboriginal-led, Aboriginal-designed process.

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COMMISSIONER HUNTER: I've just got one more question, sorry, Ashley, it's just come up as I was thinking about funding. You can get funding - can you replicate, Ms MacPherson and Ms Hawkins, like, can you find - can you find that - those qualities?

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MAGISTRATE KAY MACPHERSON: I think so. I think we will be able to. We need to bottle Ash because - and put him in every - another Ash in every region. But, yes, I think we will be able to find enough people that are interested in doing things a different way and getting these better outcomes. I do think we will be able to do that.

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ASHLEY MORRIS: It's in our evaluation that the successes of the program have been the people in it. I often get, you know, the accolades because I was there first but we've had some really fantastic people around us, and if I can name them, we had Alyssa Buggy, who basically opened the door for Ms MacPherson and I to do what needed to be done, who was replaced by Pete Lamb, again, who doesn't get involved unless I can't get it done myself.

We had Marie Seghal, she's here today, she was our first Koori family support officer. You know, without Marie's input in the early days, it wouldn't be what it is today just with her experience in the child protection sector. Who else? Matt Wilson, our first child protection practice leader, and even Nathan Chapman, from the department, I mean, we've had some fun times with Nathan but without him we wouldn't have been able to get Matt for the initial six weeks and then Matt set up, from the department's perspective, what that practice leader should look like, which led to the employment of Karen Lloyd and Kaylene up in Shepparton as practice leaders.

In Broady we're currently running a vacancy but we've got - we had Ash Moffit and Kristen Bell, you know, two Koori - two strong Koori women that really advocated for their community to get the best outcome. So it's - like, it's nice to be acknowledged as - you know, the running joke is that I'm the founder and they call me the founder but really it's them doing the work and I wanted to acknowledge them through this, everyone that's been involved here.

COMMISSIONER BELL: Can I ask one quick question: you referred to the involvement of Elders at the table before. Is this like the Koori Court where that always happens or was that because of the family setting?

ASHLEY MORRIS: Yes. Because it's pre-proof we couldn't have non-party members influencing the outcome. So we quickly come up with the bring your own Elders. So it's my team's role to be ringing everyone, with the permission of parents, to say, "Hey, if you can, we'd love to have you here to have input to your family's life." We recently had Auntie Pam Pedersen, who was on our steering committee up in Shepparton. She popped out to give us hints and tips on how to get Elders involved, but it is a really tricky situation in the pre-proof space. We don't want to prevent natural justice.

So it's one of the many to do things on my list. We are comfortable with the way we involve Elders at the moment but some parents remove themselves and don't have that connection to their Elder and it would be great to link them back up to their identity through this process that was taken from them through this process prior.

MAGISTRATE KAY MACPHERSON: Could I say one more thing, I know time is getting on, I don't know whether you have a copy of our evaluation, but, if you have, I'd really like you to read it - it's a matter for you, of course - but, as a non-Aboriginal person, when Ash and I set up this court, I was very mindful of the fact that I didn't want it to be paternalistic. I didn't want it to be seen as we white people, again, telling Aboriginal people what to do.

When I read this report that's with the comments made by people that had come to the court, I was absolutely blown away because all I wanted was for Aboriginal people to feel comfortable coming into our court and to get better outcomes for Aboriginal children. I mean, this is one quote:

"I feel confident every single time I walk in there. I can say what I feel in Koori Court. You have an opportunity to sit around and get a chance to get to the bottom."

Another person said:

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"You walk through that door and your spirits just lift up basically and a smile comes to your teeth."

10 For me to read that an Aboriginal person says that about coming into court was just fabulous. It was as a result of this evaluation that Ms Hawkins and I decided to try and do the same model with all cases at Broadmeadows. Unfortunately, COVID intervened and we haven't been able to get back to it. But we will in due course. I'm so proud of what has been set up, and the outcomes that we are achieving.

15 MS FITZGERALD: That is annexure 1.

COMMISSIONER BELL: By, "All cases", you mean all cases Aboriginal and other, across the board?

20 MAGISTRATE KAY MACPHERSON: Yes. Across the board.

COMMISSIONER BELL: Yes.

25 MAGISTRATE KAY MACPHERSON: Because the fact that the parents get to have a say is, I think, important for all people, whether they are Aboriginal or not. Thank you very much for listening to me.

30 MS FITZGERALD: I will now, Chair, tender into evidence the outline of evidence of Magistrate Kay MacPherson and Ashley Morris, and annexure 1 to that is the evaluation, and annexure 2 are the photos that we saw.

CHAIR: They will be entered into the next exhibit numbers. Thank you, counsel.

35 **<EXHIBIT 2.5 MAGISTRATE KAY MacPHERSON AND ASHLEY MORRIS
OUTLINE OF EVIDENCE WITH ANNEXURES**

MS FITZGERALD: Thank you. Thank you, your Honour and Mr Morris. It was wonderful to hear about the work you're doing. We have now concluded today's evidence.

40 CHAIR: Thank you very much. A nice note to end on. Thank you.

<THE WITNESSES WITHDREW

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