

*Martin Hinton**

ANOTHER BAIL REVIEW

‘All stand.’

I check my agitation at the door to the courtroom before entering. I make my way to the centre of the bench, turn to the bar table, bow and sit.

I glance at the large flat screen fixed to the courtroom wall. There can be seen a small, skinny, twelve-year-old Aboriginal boy in a light blue polo shirt, sitting at a large table with his knees up, clutching them to his chest. Next to him sits a fifty-something, overweight, fair haired, white fella with glasses. The contrast is striking.

My associate calls the matter on; ‘In the matter of the Police and Thomas James’.

Appearances are taken. Thomas is represented by a lawyer from the Aboriginal Legal Rights Movement (‘ALRM’); the police by a prosecutor from the Office of the Director of Public Prosecutions. There is no-one else in the courtroom.

This is an application for the review of the decision of a Magistrate sitting in the Youth Court refusing to grant Thomas bail.¹

In advance of the application I had read the supporting affidavits filed. They were the cause of my agitation. Thomas had been charged with two offences — property damage and breaching a bail agreement. The property damage was said to consist of his having kicked the door of a display vehicle at a car yard, denting it. At the time, Thomas was in the company of two mates, both youths, both Aboriginal, both a few years older than him and both having themselves damaged different cars in a similar manner. The offending was captured by the CCTV security system installed at the car yard.

A month before, Thomas had been arrested for the illegal use of a different car. He was, in fact, the passenger in a stolen car driven by a mate. That mate was one of the youths in whose company Thomas was one month later when he damaged the car at the car yard. Thomas had been bailed by the Youth Court on the condition that he not have contact with that mate. By associating with his mate on the occasion of committing the property damage offence for which he was now in court, Thomas had breached his bail agreement.

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¹ *Bail Act 1985* (SA) s 14. Thomas James was not the applicant’s real name. I have changed it and all other names for the obvious reason.

It occurred to me that the charges were hardly the stuff that warrants the state keeping a 12-year-old boy in custody. I recalled the UN *Convention on the Rights of the Child* as saying somewhere, something, about the detention of a child being used only as a measure of last resort.² My gaze returned to the flat screen — he’s just a kid. Perhaps he is a bit of a handful, but still, locking him up seems extreme. I hope there is a good reason. I am conscious of the systematic racism and ethnocentrism that sadly is the broad experience of Aboriginal people. I am also reminded of the recent report of the Office of the Guardian for Children and Young People which states:

[T]he average rate of 10 to 17 year olds in detention per 10,000 young people in South Australia was 32.8 for Aboriginal compared with 0.8 for non-Aboriginal children and young people in 2017-18. This means that Aboriginal children and young people are 41 times more likely to be in detention than non-Aboriginal children and young people.³

The *Uluru Statement from the Heart* invades my thinking.

We are not an innately criminal people.⁴

I am tempted to launch into cross-examining the prosecutor.

I check my agitation.

The papers disclosed that Thomas was, in the old language, a ward of the State. Orders had been made some nine months ago that Thomas be placed in the care of the Chief Executive of the Department for Child Protection. Why that occurred, I did not know, but the Chief Executive had found him a ‘kinship placement’ with his aunt. My agitation is little soothed:

[In South Australia] of the 3,695 children and young people in out of home care at 30 June 2018, 33 per cent were Aboriginal.⁵

² *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b). See also *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* GA Res 40/33, UN Doc A/RES/40/33 (29 November 1985) r 17, 19–20.

³ Office of the Guardian for Children and Young People & Training Centre Visitor, *Snapshot of South Australian Aboriginal Children and Young People in Care/and or Detention from the Report on Government Services 2019* (Report, April 2019) 7.

⁴ Referendum Council, *Uluru Statement from the Heart* (Statement, 26 May 2017) <<https://www.referendumcouncil.org.au/final-report.html#toc-anchor-uluru-statement-from-the-heart>> (*‘Uluru Statement’*).

⁵ Office of the Guardian for Children and Young People & Training Centre Visitor (n 3) 6.

And:

Research suggests that the relationship between the child protection system, juvenile justice and adult incarceration is so strong that child removal into out-of-home care and juvenile detention could be considered key drivers of adult incarceration.⁶

Further:

The rate of Aboriginal 0–17 year olds in out of home care per 1,000 children increased from 49.2 to 72.9 compared to 4.7 to 7 for non-Aboriginal 0–17 year olds between 2013–14 and 2017–18.⁷

The offending took place in Ceduna on South Australia's west coast where Thomas lived with his aunt. Since being remanded in custody, Thomas had been brought to Adelaide to be housed in the Youth Training Centre. Thomas had never been in custody before. Now he found himself the best part of 800 km from home. My gaze returned to the small boy on the screen. He must be anxious if not frightened, I thought. This whole experience cannot be positive. I hoped it was truly necessary.

I recalled the observations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*:

Children and young people also come into contact with the criminal justice system due to offending committed as a result of 'lack of maturity, the propensity to take risks and a susceptibility to peer influence, combined often with intellectual disability, mental illness and victimisation'. It is not unusual for children and young people to commit minor criminal offences, and most grow out of offending behaviour.

However, contact with the formal criminal justice system increases the likelihood that children and young people may reoffend in the future. Once a child or young person enters the criminal justice system, they may be labelled as an offender or criminal, which can affect their future behaviour. Punishment through detention may contribute to further engagement in criminal behaviour due to influence from 'deviant' peers, and they gain a criminal record which can limit their future prospects. There is also evidence that incarceration in a youth detention facility can 'interrupt and delay the normal pattern of "aging out" of criminal behaviour'.⁸

⁶ Australian Law Reform Commission, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal People and Torres Strait Islander Peoples* (Report No 133, December 2017) 34.

⁷ Office of the Guardian for Children and Young People & Training Centre Visitor (n 3) 6.

⁸ *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (Final Report, 2017) vol 2B, 210 (emphasis in original) (citations omitted).

The papers told me nothing of Thomas' immediate family, save that his mother was on parole. Was this another example of the frequent experience of Aboriginal people? A generation in custody and the next generation bereft of their love, support and nurturing. I do not mean to attribute blame here. The issues are large and complex, but the consequences for a 12-year-old Aboriginal boy are profound. The statistics betray the story. My mind travels to the Change the Record, Free to be Kids, National Action Plan:

There are many reasons why Aboriginal and Torres Strait Islander children are so over-imprisoned. The disadvantage experienced by many Aboriginal and Torres Strait Islander children means that, by no fault of their own, they are more likely to end up in prison. Further, research has pointed to bias by police against diverting or cautioning Aboriginal and Torres Strait Islander people, particularly children.

To give children the best chance to thrive, more needs to be done to support and strengthen families to stay together, keeping kids in their communities.⁹

Is that this case?

As he sat in the audio-visual suite at the Training Centre, I knew Thomas had a view of the bench and bar table. Not a friendly face in sight. Not an Aboriginal face in sight, just sombre looking non-Aboriginal lawyers in robes with books and papers talking about him.

I asked the gentleman sitting with Thomas for his name — Michael. I asked Michael his role. He performed a support function for children at the Training Centre. I know nothing of Michael's expertise or abilities, and I mean him no disrespect, but I wondered nonetheless why the state could not arrange for an Aboriginal support worker.

Counsel for Thomas stands to begin his submission. I interrupt before he can start. What's the Crown's attitude to the application? The prosecutor is caught off guard. She stumbles to her feet. 'The Crown acknowledges that the applicant has the benefit of the presumption of *doli incapax* and that custody should be the last place for a 12-year-old child ... but there is an unresolved legitimate concern about suitable accommodation.' I brushed aside the reference to *doli incapax*. It did not concern me immediately. I understood that the UN Committee on the Rights of the Child had determined that a minimum age for criminal responsibility of less than 12 was internationally unacceptable,¹⁰ and had very recently urged Australia to increase the age

⁹ Change the Record, 'Free to be Kids, National Plan of Action' (Media Release, 27 November 2017) 1 <<https://changetherecord.org.au/blog/news/a-plan-to-transform-the-justice-system-for-aboriginal-and-torres-strait-islander-children>> (citations omitted).

¹⁰ Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 44th sess, UN Doc CRC/C/GC/10 (25 April 2005).

of criminal responsibility in this country,¹¹ but the presumption would likely feature little in my decision whether to grant Thomas bail. Gone are the days when charging a child and the presumption of criminal irresponsibility kept the child from receiving assistance.¹² We now know much more as a community and know, in particular, the importance of maintaining the family unit and the negative consequences of incarcerating children. Whatever one made of the power to prosecute 10–14 year-olds, bail for one so young should overwhelmingly be the norm.

What is the problem with finding Thomas suitable accommodation, I ask. The prosecutor has been in contact with the departmental caseworker responsible for Thomas. The caseworker has advised that the kinship placement previously available to Thomas is no longer available. In explaining further, the prosecutor tells me that the aunt with whom Thomas had been living had three children of her own and cared for two others in addition to Thomas, that Thomas had been ‘playing up’, affecting the behaviour of the other kids, and that the aunt no longer had the assistance of her partner in caring for the children on account of domestic violence issues requiring police attendance. In short, Thomas’ aunt could no longer care for him or control him. The prosecutor adds that Thomas’ aunt had asked for an alternate placement to be found for Thomas prior to his recent offending. The prosecutor continues: Thomas has not been attending school and has often stayed away from home until late at night.

I pipe up. ‘Where is the representative from the Office of the Chief Executive?’ The prosecutor looks perplexed. My agitation is revealed. I press on snappily, ‘If Thomas has been placed into the care of the Chief Executive of the Department of Child Protection, shouldn’t the Chief Executive or his or her representative be here? What is the Chief Executive doing to find Thomas suitable accommodation?’

The prosecutor advises that her information has been obtained from the caseworker appointed by the Chief Executive to deal with Thomas’ case. The caseworker is in Ceduna. The Department is doing all that it can to find Thomas a placement but it is unlikely anything will become available before he next appears in court.

Thomas is next due to appear in the Youth Court in 10 days’ time. I have no intention of leaving him in custody for 10 more days.

‘Do you know anything more about his family?’ I ask. Nothing. I am perplexed that the Crown cannot give me a complete run down on this boy’s family. Surely his caseworker has obtained details of his family. What was it that the Royal Commissioner into Aboriginal Deaths in Custody said, ‘The official record keepers saw all,

¹¹ Committee on the Rights of the Child, *Concluding Observations on the Combined 5th and 6th Periodic Reports of Australia*, 82nd sess, UN Doc CRC/C/AUS/CO/5-6/ (27 September 2019).

¹² G Williams, ‘The Criminal Responsibility of Children’ [1954] *Criminal Law Review* 493.

recorded all, and rarely knew well or at all the people they wrote about'.¹³ Perhaps it is simply a matter of questions not being asked. Perhaps the prosecutor does not see it as part of her role to provide the Court with possible bail options. I do not stay to debate the issue. I check my growing agitation. 'Do I understand you to say, if suitable accommodation can be found for Thomas, there is no objection to him being granted bail?' 'Yes', she says.

I turn immediately to defence counsel. What do you know about Thomas' family? He does not answer, rather he tells me that he arranged for an Aboriginal Liaison Officer attached to ALRM to visit Thomas' aunt and that, according to the liaison officer, she is happy for him to return to her care.

A quick volley of questions ascertains that the liaison officer has spoken to the very same aunt that asked Thomas' caseworker to place him somewhere else and does not want him back. The liaison officer is not in court. I pause to think. I am in no position to decide the factual dispute. Thomas' counsel tells me he has the aunt's phone number and that she is with ALRM's liaison officer as we speak, expecting the Court to call. I decline the invitation. It occurs to me that my telephoning the aunt may put her under considerable pressure, pressure she no doubt already feels to help her family. I also considered that it was highly unlikely that the caseworker's relayed report was without foundation. I needed to hear from Thomas' aunt and from his caseworker in person and yet, I did not want to delay things. I turn back to the bar table. 'Where are his parents?' The question is an open invitation to either counsel. The prosecutor has no information on Thomas' parents. Defence counsel says that Thomas' mother is somewhere in Adelaide, and so is his Nanna, but he does not have any contact details.

I turn to the flat screen. I ask Michael if he has any information that might assist. None, he says. The Department is in the process of arranging for an internal Aboriginal support worker to be assigned to Thomas who will liaise with his caseworker. That should occur within the next 24 hours. That is good, but I cannot wait.

I take matters into my own hands.

'Thomas, can you hear me?' 'Yep.'

'What's your Mum's name?' 'Michelle.'

'Do you know where she is?' 'No.'

'How long since you last lived with your Mum?' 'Dunno.'

'What year are you in at school?' 'Year seven.'

¹³ *Royal Commission into Aboriginal Deaths in Custody* (National Report, April 1991) vol 1, 5.

‘When you started year seven were you living with Mum?’ ‘No.’

‘What about when you were in year six, were you living with Mum when you were in year six?’ ‘I don’t know.’

‘What’s the names of your Nannas?’ ‘It was year six.’

‘What, you last lived with your Mum when you were in year six?’ ‘Yep.’

‘Tell me about your Nannas, what are their names?’ ‘There’s Nanna Tracey ... and Nanna Joyce’.

‘Do you know where Nanna Joyce lives?’ ‘No.’

‘What about Nanna Tracey?’ ‘She lives in Adelaide’.

‘Do you know where?’ ‘No.’

‘What about your Dad, what’s his name?’ ‘Jordan.’

‘Do you know where he is?’ ‘Nope. Locked up somewhere.’

I had recently had some involvement with the Office of the Guardian and knew that the Guardian had social workers frequently in and out of the Training Centre. I also knew that the Guardian had three or four Aboriginal social workers on staff. I was concerned that as he sat there, all Thomas heard was strange white people talking about him. Distantly I was also concerned that Thomas be exposed to a positive cultural influence as soon as possible. Sadly, the number of Aboriginal children in detention means that many become comfortable, particularly because they are often locked up with family. Detention becomes part of life for the family. It becomes the norm.

I wondered if the Guardian’s social workers had visited Thomas. I asked him.

‘Thomas have you met my mate Jim and his mate Brenton?’ ‘No.’

‘You sure? They’re a couple of Nunga fellas that come into the Centre to help kids out? You seen them?’ ‘Nup.’

‘Would it be ok if I get Jim, he’s a big bloke, and his mate Brenton to come and see you? Just to make sure you’re ok?’ ‘Yep’.

‘Just hang on a minute Thomas, I’m going to speak to the lawyers.’

I turn back to the bar table. It is now close to 11am. I tell counsel I will adjourn until 2pm. In the meantime I expect them both, working together, to do all they can to find Thomas’ mother and Nanna Tracey. If possible I want them both in court at 2. I also want to speak to the caseworker at 2; if there is any reason why Thomas cannot go

home with his Mum or Nanna, I want to know. I add that I will ring the Office of the Guardian and see if they can offer any assistance. I don't forget Michael; he is asked to provide whatever assistance he can to the lawyers to find Thomas' Mother and Nanna.

I turn back to Thomas and explain to him what I am going to do.

'I'm going to get Mum and Nanna Tracey here and see what we can do, ok?' 'Yep.'

'I'll see you after lunch, ok?' 'At 2!'

'Yes, that's right, at 2.'

He seems to understand.

I adjourn.

As I walk from the bench I glance one last time at the screen. The child's best interests are to be afforded paramountcy, I think to myself. That aspiration is no doubt correct, but as the system grinds away, all Thomas has heard in the police station, in the Magistrates Court and now here, is that he is a problem. Lots of people, all supposedly working in his interests, and all he hears is no-one wants him, and all he knows is that he is locked up like his mum and dad. How is it that the system so easily risks this becoming his norm?

My agitation simmers.

Contact is made with the Office of the Guardian. An Aboriginal social worker is immediately despatched to the Training Centre. I do not know what went wrong for Thomas and his family, but I wonder, would the outcome be different if the resources now being marshalled were available when problems first arose?

We resume promptly at 2pm. I make my way to the centre of the bench as my associate calls the matter back on. I notice there is an Aboriginal woman in court sitting in the gallery and no-one else. The audio-visual link is established. I watch as her face lights up when Thomas appears sitting next to Michael; hope, I think to myself.

I immediately ask defence counsel if it is Michelle or Nanna Tracey I see sitting in court. It is Michelle. First things first; I turn to the flat screen, 'Thomas can you see your Mum?' 'Nup.'

I ask Michelle to move to a position in the courtroom within the field of vision of the cameras. She does so.

'What about now?' 'Yep.'

Mum waves, smiling, and Thomas waves back. For the first time he looks interested.

I ask counsel if they have any objection to me speaking directly to Michelle. Neither counsel objects.

‘Is it Michelle?’ ‘Yes.’

‘Are you Thomas’ Mum?’ ‘Yes, your Honour.’

‘Can you tell me, do you have other children?’ ‘Yes, I have six children.’

‘And where are they?’ ‘Since I was locked up, two were placed with Tracey and the other four with my sisters in Ceduna.’

‘Are they your sisters in the Aboriginal way?’ ‘Yes, yep, you would call them cousins.’

‘How old are your children?’ ‘Thomas is the eldest.’

‘He’s the eldest!’ I butt in deliberately, ‘so he should be setting an example for the little ones!’ All said for Thomas’ benefit. His mother nods.

‘Tell me, where are you living?’ ‘I’m on parole and living at Port Adelaide.’

‘What are your plans?’ ‘When I finish parole, I want to get a house here in Adelaide and get my kids back.’

‘So you can’t have your kids on parole?’ ‘I’m in a hostel waiting for a house.’

‘Where’s your country?’ ‘West of Ceduna, near the border.’

‘You won’t go back?’ ‘My two little ones are in primary school here in Adelaide and they’re doing really well. I want them to keep going and the others as well.’

A dozen or so questions later and I had discovered that Michelle’s youngest had been placed with Nanna Tracey, that every day Michelle spent time with Tracey and her two youngest before returning each night to the hostel. She spoke quietly but respectfully. She had done time for assaulting her partner. Drink and domestic violence were a problem for them both, but she thought those days were behind her. They had been separated since before he was locked up. She did not think they would get back together. I am heartened and disheartened. I thank Michelle and let her know that I need to speak to the lawyers.

I then ask her, ‘Incidentally, when was the last time you spoke to your boy?’ ‘It’s been nine months,’ she says.

‘In a moment I will arrange for you to come and sit here in my seat and we will keep Thomas on the screen for five minutes so you can catch up, would that be ok?’ ‘Yes.’

Her smile is wide. Moments when a judge gets to feel that he or she has done a good thing are rare. This is one.

I turn to the lawyers. Clearly I cannot send Thomas home with his mother. ‘Any luck in finding Nanna Tracey?’ None yet. Nanna Tracey is clearly known to the Department; she already has two of Thomas’ siblings. Discussion ensues. It is resolved that the Court reconvene in the morning by which time it is hoped that Nanna Tracey is located and the Department will have had the opportunity to review her suitability as carer for Thomas.

I turn to Thomas. I explain to him that we haven’t been able to find his Nanna but we hope to do so overnight. I tell him I need him to stay one more night in the Centre. I ask him, is that ok? ‘Yep.’ I remind him of ‘my Nunga mates’ Jim and Brenton and tell him that they will drop in on him today sometime or get a friend to do so to make sure he is ok.

I then ask, ‘Would you like to speak to your Mum?’ ‘Yep.’

I formally adjourn to 10 am the following morning. As I get up I motion to Michelle to come forward and take my seat. I then make my way off the bench.

As the door to the ante-room closes I hear, ‘Hello my big man.’ ‘Hello Mum.’

A rare moment.

We reconvene at 10am the following morning. Everyone is in place, counsel, Thomas and Michael. Michelle is in the public gallery sitting next to another Aboriginal woman. My agitation is dissipating, but it is not gone.

Thomas had a criminal record. In 2017 as a 10 year old he had been dealt with at a Family Conference for two counts of being unlawfully on premises and two counts of damaging property. He attended a Family Conference again in 2018 for a series of offences committed between February and December of that year. Those offences included property damage and interfering with motor vehicles, in addition to numerous charges of breaching bail. This is not the place to assay the benefits or otherwise of family conferences, diversionary programs and specialist courts for youth and other vulnerable or unfortunate offenders, but a downside to these approaches is that those operating within the system may be less vigilant for injustice arising from charging practices because of the likely outcome associated with these alternative approaches. This is particularly concerning where, as in Thomas’ case, the youth has no watchful parent available to protect their interests. The Royal Commission observed:

The consequences [of] criminalising all breach of bail can be counterproductive. It criminalises conduct that is not, of itself, criminal, such as not residing at a prescribed address. It can also lead to the entrenchment of children and young people in the youth justice and detention systems if they are detained as a result. A child may be detained for breach of bail, and subsequently found not guilty of the original charge. The Commission understands that there is no evidence that making breach of bail a crime deters young people from offending. The Northern Territory Police has noted that it has not reduced offending.¹⁴

¹⁴ *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (n 8) 293 (citations omitted).

I had no doubt that Thomas was old enough to understand and appreciate that he should not damage or interfere with another person's property. But I wondered whether he was able to appreciate, for example, the seriousness of the promise he made in entering a bail agreement. My agitation grew as I wondered what benefit or advantage to the community was to be gained from charging him a number of times with breaching bail. All such charges did was add to a list that would be available to be used against him later in life. Potentially used to justify greater and longer periods of detention whether on remand or upon sentence. A list that would paint a distorted picture of who he is, used without any real understanding of his story.

I turned to Nanna Tracey. She had had the two little ones since Michelle went into custody. They were doing well. I notice her smile as she tells me this with evident pride. She confirmed Michelle visited every day. She was Jordan's mother. She and Michelle got on well and she enjoyed having the little ones. She tells me without prompting that she has room for Thomas and will happily have him.

I ask her some more questions designed to satisfy myself that she has room, has time, has the energy and has the financial and familial support to take on a third grandchild.

'Thomas hasn't been going to school everyday ...' Before I can finish Tracey makes plain that if he lives with her, he will be going to school and there will be no mucking about.

'I can't have him upsetting his little brothers and sisters, he should set an example for them, do you think he will?' Again, all said for Thomas' benefit.

'He's a good boy, your Honour, and a good brother. It'll be alright.' It was the answer I had hoped he would hear.

I was impressed by Michelle and Nanna Tracey. They struck me as two warm, loving women, with their family's best interests at heart. Life had been difficult for them at times and there had been wrongdoing, but I felt they clearly loved and cared for the children.

I asked Nanna Tracey about Michelle's and Jordan's past. There had been trouble. Drink, no job, no money and there had been fighting. 'It was hard for the young ones, especially with six kids.' Jordan has 12 more months to serve. 'He's very sorry.' Michelle and Jordan have been apart for some time, since before he was locked up. I thank the ladies for coming to court.

The family's background probably went a long way to explaining Thomas' offending, I thought. The Change the Record 'National Action Plan' re-enters my thinking. Was it really necessary to charge Thomas with all those offences?

I turn back to the bar table. I am inclined to send Thomas home with Nanna Tracey. I ask the Prosecutor, 'have you been able to speak to Thomas' case worker?' 'Yes, the Chief Executive is happy for Thomas to be placed with his grandmother.' The Prosecutor adds, 'and the police have no objection.'

I turn back to Michelle and Tracey. ‘Ladies, do you have transport?’ ‘Yes, your Honour.’

‘I am going to release Thomas on bail to live with you Tracey.’ ‘Yes, your Honour.’

‘The Department may have other conditions that you will need to meet, is that ok?’ ‘Same as the other children, no problem.’

A few questions to Michael and I am able to tell Michelle and Tracey that they will be able to pick Thomas up from the Training Centre in an hour or so.

I turn to Thomas.

‘Thomas do you understand what’s happened?’ ‘Uh-huh.’

‘Your Mum and your Nanna are going to come and get you and you are going to live with your Nanna here in Adelaide. Is that ok?’ ‘Yep.’

‘Now we have to talk a bit about you annoying people and getting into trouble. Look at me.’

He looks up. ‘Why haven’t you been going to school?’ Silence. I wait. His gaze moves to his shoes.

‘Look at me.’ He looks up. ‘Can you tell me why you haven’t been going to school and why you’ve been getting into trouble?’ ‘Shame.’ He says it ever so quietly and looks down. I begin to feel out of my depth.

I take a punt. ‘No shame from Mum or Nanna?’ ‘No.’ Phew.

‘You live with your Nanna. You show those little ones what they have to do. Is your reading good?’ ‘Yep.’

‘And your writing?’ ‘Bit messy.’

‘You can fix that.’ ‘Yep.’

‘Do you promise me you’ll do your best to go to school and look after your brothers and sisters and your mum and Nanna?’ ‘Yep.’

‘Look at me. Promise?’ ‘Yep.’

‘Because courts and the Training Centre aren’t good for kids, are they?’ ‘No.’

‘And your brothers and sisters and your Mum and Nanna need you, ok.’ ‘Yep.’

‘So you’ll do your best?’ ‘Yep.’

‘Ok, it might take an hour or two, but your Mum and your Nanna are coming to pick you up.’

I turn to the bar table and ask counsel if there is anything I missed. The prosecutor seeks a no contact clause with Thomas’ co-accused. My agitation gets the better of me. ‘Forget it. He’s 12’, I bark. His bail agreement will contain no condition other than that he is required to live with his grandmother. The prosecutor senses there is no point in battling on.

I turn back to Michelle and Nanna Tracey. I wish them luck.

The Court is adjourned. As I walk from the bench my mind travels back to the *Uluru Statement from the Heart*:

Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.¹⁵

Today I am pleased for Thomas, but my agitation remains.

Perhaps that is a good thing.

¹⁵ *Uluru Statement* (n 4).