

CHILD SAFETY COMMISSION OF INQUIRY

Level 5, Courtroom 23, Brisbane Magistrates Court,  
363 George Street, Brisbane

On Thursday, 5 February 2026 at 10.31 am

Before: Mr Paul Anastassiou KC, Commissioner

Counsel Assisting: Ms Robyn Sweet KC  
Mr Nathan Boyd  
Ms Bianca Mendelson

1 COMMISSIONER: Mr Hastie.

2

3 MR HASTIE: Thank you, Commissioner.

4

5 <NIGEL MILLER, CONTINUING

[10.31 am]

6

7 <EXAMINATION BY MR HASTIE, CONTINUING

8

9 MR HASTIE: Mr Miller, can I return to just a couple of  
10 subjects that we briefly canvassed last year.

11 A. Yes.

12

13 Q. One was some form of alternative dispute resolution  
14 process or pre-court procedures or conciliation, and  
15 I think you agreed that something like that would be  
16 beneficial?

17 A. Yes, I did; yeah.

18

19 Q. Can I ask you some specific things about that. One,  
20 and it deals with timing, there's a number of  
21 possibilities, aren't there; and that's all I want to put  
22 to you, possibilities, and get you to comment upon them?

23 A. Yes, okay.

24

25 Q. I'm not putting to you that something should take  
26 place at all during this questioning. But in terms of  
27 timing one possibility which was in fact raised by one  
28 witness was that during the period of a court assessment  
29 order there be a requirement that the parties meet - that  
30 is the Chief Executive and the parents of the - presumably  
31 both parents of the child meet with a view to seeing  
32 whether or not there can be some resolution?

33 A. Yes, I'd say that's possible. It would have to occur  
34 at a point in time where the assessment was complete or  
35 almost complete, subject to the input of that process.

36

37 Q. Yes, that's the difficulty.

38 A. Yes.

39

40 Q. The difficulty about leaving it is obviously the later  
41 you leave it sometimes things - attitudes harden,  
42 particularly from the parents, and you inevitably get  
43 delayed in the court process; would that be so?

44 A. Yes, and it would very much depend on the facts of the  
45 matter, the type of intervention Child Safety was  
46 considering, whether the child was out of home already or  
47 still in home, whether the type of order that was assessed

1 as appropriate was for an in-home order. So we have some  
2 matters where children are in home, and the assessment is  
3 that we need a child protection order that would require  
4 the Chief Executive to supervise certain things in respect  
5 of their care. They're referred to as protective  
6 supervision orders. In those situations the application to  
7 seek one of those types of orders can be before the court  
8 for up to one year, and at times they're agreed in a court  
9 ordered conference that might happen six to nine months  
10 into the proceedings. And so if you could have that  
11 conversation and have the clear understanding of what it is  
12 you'd like to see happen during the assessment part of  
13 the process that would be very beneficial.  
14

15 Q. All right. You could also have a parental agreement,  
16 depending upon, again, the attitude of the Chief Executive  
17 and the attitude of the parents?

18 A. That's so. When you look at Child Safety's data it  
19 suggests that there are many of these matters where the  
20 outcome is a parental agreement. So Child Safety is  
21 working with - I think the currently published data -  
22 somewhere around about 2,000 children and their families  
23 through agreements.  
24

25 Q. And you indicated I think in your evidence yourself  
26 that sometimes these parental agreements are entered into  
27 between the referral to you and an application being filed  
28 for a child protection order?

29 A. Yes, there are some matters where my office may become  
30 seized of the matter yet the situation evolves and an  
31 agreement is reached.  
32

33 Q. And another possibility is that before the Chief  
34 Executive refers a matter to the Director, that is to you,  
35 that the Chief Executive be required to write a letter or  
36 give a notice of the type that you indicated or mentioned  
37 occurred while you observed in England?

38 A. Yes, yeah, actually you're talking about it was like a  
39 pre-proceedings meeting where prior taking that step you  
40 would issue the parents with a letter with the concerns and  
41 invite them to a meeting where you'd seek to reach an  
42 agreement on how those concerns were going to be addressed  
43 without the need of an order.  
44

45 Q. Yes, and before going to you; before going to the  
46 Director?

47 A. If that was implemented here it would be before it

1 came to me, yeah.

2

3 Q. All right. And that would require another amendment  
4 to the Act, as it were, because at the moment if the  
5 Director reached a certain view of the circumstances of the  
6 child, the Director - sorry, the Chief Executive is  
7 required to refer the matter to you and in effect, whilst  
8 you can refer it back, you're required then to bring an  
9 application, aren't you?

10 A. That's so. It all depends again on what type of  
11 matters would be the subject of the process. But, if it  
12 was matters where Child Safety were seeking to work with a  
13 parent or both parents and the children remain in the home,  
14 there would be no need for an amendment. But it's where  
15 they've made that assessment and an out-of-home order is  
16 needed there might be a need for some amendment there.

17

18 Q. All right. Sometimes amendments are made just to  
19 reinforce the process that might be occurring otherwise to  
20 encourage parties and let the public and their  
21 representatives know what's happening; do you agree with  
22 that?

23 A. I agree with that.

24

25 Q. All right. The third alternative obviously is that  
26 once the referral's come to the Director's attention that  
27 the Director is required to call a meeting to see if it can  
28 be resolved prior to an application being filed?

29 A. Yes, that could be another option.

30

31 Q. All right. And obviously all that would depend - the  
32 success would depend on the attitude of the parties, that  
33 is including maybe even the Director and the Chief  
34 Executive and the parents?

35 A. Yes, it would very much depend upon the attitude but  
36 also what it was that Child Safety was wanting to work with  
37 the family in respect of in terms of, if we bring it back  
38 into what currently occurs, the case plan, that will set  
39 out a number of goals and associated actions that they  
40 would like to work on with parents. You would need to have  
41 that clarity as early as possible when engaging with a  
42 parent as to saying, "This is what our intervention would  
43 look like. This is what we would like you to engage in.  
44 This is the help we're going to provide." But at the  
45 moment those case plans aren't coming into effect until  
46 well into the process. And so it would also require a lot  
47 of clarity at the outset on how it was that the child's

1 needs were going to be met through a plan.

2

3 Q. All right. And the ability to have these sorts of  
4 procedures would also no doubt depend upon whether or not  
5 there was an urgent need for either a removal or an order  
6 to be made by the court?

7 A. That's so. It would not be appropriate for all  
8 matters.

9

10 Q. All right.

11 A. And I should add that some in-home orders may still  
12 meet that urgent threshold because we're seeing an order  
13 that would limit one of the parent's contact with the  
14 child, and so although the child might be remaining with  
15 one parent there could be seen urgent need to still seek an  
16 order putting a directive around the other parent's time  
17 with the child.

18

19 Q. All right. Now, one of the reasons do we take from  
20 your answer before and in addition to your evidence about  
21 delays in the proceedings is the delays in getting a case  
22 plan put together?

23 A. Yes.

24

25 Q. And can we take it that that's in part a resources  
26 issue for the department?

27 A. Yeah, I would agree in part.

28

29 Q. And no doubt it also depends on the ability to  
30 conference or to get the parties, that is the parents,  
31 together and maybe even if there's going to be a family  
32 meeting that that family meeting to occur?

33 A. That's right. It's dependent upon whether Child  
34 Safety seeks to engage an external convenor. It could be a  
35 community-controlled organisation to undertake family-led  
36 decision-making which has many steps and seems to involve  
37 many different meetings with people ahead of the family  
38 group meeting and gathering information to support that  
39 process.

40

41 Q. Yes. And you mention the family group meeting as  
42 being one of the reasons for the delays occurring. There's  
43 a fairly stringent process, as you said then, for that to  
44 occur.

45 A. The legislation's quite prescriptive in terms of the  
46 process. But built into that if you're wanting to engage  
47 with the family and anybody else that's significant it

1 would require a lot of work.

2

3 Q. And can you think of anything - it might be unfair to  
4 ask you this, but can you think of any way of making it  
5 less prescriptive and making the process run a bit quicker  
6 than it evidently does at the moment?

7 A. I think if you work through the provisions, the case  
8 planning provisions, on the face of it they're reasonable.

9

10 Q. Yes, that's the problem, isn't it?

11 A. That's right. It's all about procedural fairness.  
12 It's about providing reasonable opportunity. One of  
13 the areas that there could be improvement is, say, the  
14 scheduling of the meeting. So, if I draw a comparison with  
15 a court ordered conference, there was work undertaken in  
16 the early years of the operation of the model - I can't  
17 recall the exact year - really in response to a now  
18 Department of Justice internal audit of the court ordered  
19 conferencing function that involved the participation of  
20 myself and my office, the child protection conferencing  
21 unit and the courts in terms of the administrative part of  
22 the courts. And one of the key outcomes of that audit was  
23 we were able to agree on a process where at the point the  
24 court is ordering a court ordered conference we have the  
25 day and time that the conference is to be held set and it  
26 forms part of the order.

27

28 But prior to that occurring courts were adjourning matters  
29 with a direction that a conference was to be held in the  
30 adjourned period. But the details as to when, what time  
31 and what date, were all worked out after the court event.  
32 Now, you could have a situation where the court is provided  
33 with a range of dates and times that the FGM could be held  
34 and it could form part of the court order. That might be a  
35 way to try and encourage or to ensure all parties are  
36 available and attend the family group meeting when it's  
37 scheduled.

38

39 Q. One of the criticisms that's made of the current  
40 system is precisely as you've stated it, the court not  
41 making a direction as to a date by which events are to be  
42 held. Can I just ask you this: what role does the Director  
43 have in - I'm using the word statutory rather than you, to  
44 personalise it.

45 A. Yes.

46

47 Q. But does the Director - because we're talking about

1           statutorily form. Does the Director have in case  
2 management and case management directions and setting dates  
3 for things to occur?

4           A. So they're things that clearly myself and my lawyers  
5 can seek the court to build into the orders. We have a  
6 role. Now, it will depend upon location and magistrate as  
7 to how prescriptive the orders are. Where you have bigger  
8 locations that have much higher volume and magistrates that  
9 undertake a lot of this work you'll tend to see more  
10 prescription in the adjournment orders in terms of case  
11 management, more directions, more dates, more actions that  
12 the parties need to undertake in the adjourned period.

13

14           Q. You'll have to help me. Does this mostly work - the  
15 directions, are they mostly a case where parents are  
16 represented by lawyers, you would send a draft set of  
17 directions to the lawyers representing them as to what  
18 should take place?

19           A. Yes, there are discussions ahead of court events as to  
20 what the issue is and how it would be resolved through  
21 directions discussed on the day, discussed with parents.  
22 For instance, in locations such as Beenleigh at the moment  
23 there's been a very detailed prescriptive list of  
24 directions that the magistrate there has put together that  
25 all parties, all participants understand will be considered  
26 at the first mention of a proceeding.

27

28           Q. So one way of dealing with this issue might be for the  
29 President of the Childrens Court, for instance, to issue a  
30 practice direction - as they do, you might be familiar, in  
31 the Supreme and District Courts - about what directions  
32 would normally be expected at a management meeting?

33           A. That's so.

34

35           Q. All right. And I take it that it becomes a little bit  
36 more complicated then when the person isn't represented?

37           A. It can, and that's where you need flexibility on the  
38 day and during the court event to tailor those directions  
39 to whatever issue may be raised or issues that are raised  
40 by the parties, including unrepresented parties.

41

42           Q. And is it open to you to send to a magistrate, even if  
43 someone is not represented, a draft set of directions to  
44 indicate to the court what directions you might require and  
45 do your best to send those directions to the parents, or is  
46 that not regarded as something that should be done?

47           A. At the moment it would be location dependent. My

1 lawyers would be providing sometimes in advance of the  
2 direction of the court draft orders which the registry will  
3 then use on the day to provide to the magistrate. There  
4 could be locations where it's very much court-led. But it  
5 really depends on the registry and the magistrate. But  
6 many - I would say many, many of the orders that are  
7 issued, the drafts would generate in my office and be  
8 provided to the registry either before or soon after the  
9 court event.

10  
11 Q. All right. So some uniformity might assist by a  
12 practice direction?

13 A. Yes. And there is a framework within the rules for  
14 case management. The court has a lot of flexibility there  
15 in terms to manage proceedings and issues that are in each  
16 proceeding.

17  
18 Q. Just a matter of making sure they're exercised?

19 A. Yes, yeah.

20  
21 Q. All right. Now, included in those powers is a power  
22 to order a conference to be held. Now, is that power  
23 frequently exercised?

24 A. Is that the power to order a court ordered conference?

25  
26 Q. Yes.

27 A. Well, any time a matter is contested the court should  
28 be considering ordering a court ordered conference. And  
29 there is an exception. I'd have to look at the Act; there  
30 is an exception there. But very rarely is there an  
31 exception. If a matter is contested, the court will  
32 ordered a court order conference. They are happening at  
33 quite large numbers.

34  
35 Q. Can I ask you this: when you say the matter's  
36 contested, your data seem to indicate that it might take  
37 two years before a final order's made or something like  
38 that. So what point do you decide the matter is contested  
39 and the conference needs to be held; is that just before a  
40 matter is set down for a hearing or does it --

41 A. No, in practice what you see is the moment we're able  
42 to file a case plan, so that's when the parties to the  
43 matter can see the type of order that's being sought, the  
44 duration and then seek a plan, that's the first point  
45 really where you can say, "All right. We've met the  
46 requirements in terms of having a case plan. We've got an  
47 application." And if the parents are contesting at that

1 point the court will consider ordering the conference or it  
2 may, depending on the matter, order that the child be  
3 separately represented, and then we wait for the outcome of  
4 the social assessment report before the court ordered  
5 conference is order. And then through the court ordered  
6 conference - and the child protection conferencing unit  
7 would be able to speak to this, but it's somewhere around  
8 about 60 per cent of matters resolve at court ordered  
9 conference. And then where there's a great benefit you may  
10 see a second court ordered conference be ordered just prior  
11 to a hearing in order to try and resolve matters.  
12

13 Q. All right. So you've got at least in a broad way  
14 you've got the delay you mentioned with service, and I'll  
15 come to that in a moment.

16 A. Yep.

17  
18 Q. And then you've got the delay with a case  
19 conference --

20 A. A case plan.

21  
22 Q. Sorry, an assessment plan occurring.

23 A. Yep.

24  
25 Q. But is it right to say then after those two events  
26 have been sorted out that you could have and it generally  
27 is the case that a conference is ordered?

28 A. Yes, it is, unless as I said a separate representative  
29 is appointed. Sometimes the outcome of the court ordered  
30 conference might be to then seek the appointment of a  
31 separate representative. It all depends on the nature of  
32 the matter. Some matters may be adjourned for a report to  
33 be undertaken that's not necessarily a social assessment  
34 report. It might be more aimed at parenting capacity or  
35 someone's legal capacity.  
36

37 Q. That's by an outside expert?

38 A. Yes.

39  
40 Q. All right. So it would seem from what you were  
41 saying, though, and the other evidence that it seems to  
42 take a while before a conference is held or required to be  
43 held?

44 A. Yes, and I've not looked at the data on that point.  
45 I'd have to talk to my case management applications  
46 consultant as to whether or not we could draw data as to  
47 court ordered conferences as compared to when applications

1 were filed, and that would give us an indication as to  
2 exactly how long or what the median point is for court  
3 ordered conferences.  
4

5 Q. All right. Now, those conferences involve at present  
6 the Chief Executive and the parents?

7 A. Yes, any parents or any other parties, any non-parties  
8 that have been granted through an order participation  
9 rights as well and at times the subject children.  
10

11 Q. But not the Director?

12 A. No, no, I'm in the court ordered conferences.  
13

14 Q. You do attend?

15 A. Yes, or my lawyers attend. We're there as the  
16 applicant or the respondent if it's --  
17

18 Q. But at the conference?

19 A. Yes.  
20

21 Q. All right. The Act talks about the Chief Executive  
22 being in attendance.

23 A. The Act is clarifying that, in addition to the parties  
24 or any non-parties, the Chief Executive is also to attend.  
25 So that's the senior team leader and the child safety  
26 officer are also in the conference.  
27

28 Q. All right. And you indicated before that some  
29 60 per cent resolve at the first conference or thereabouts?

30 A. Yeah, but I guess the child protection conferencing  
31 unit would be able to confirm the exact numbers. But it's  
32 been fairly stable, I understand, for years.  
33

34 Q. All right. And it's also true to say that not many  
35 applications end up running to a full hearing, do they?

36 A. No, no, it's fair to say.  
37

38 Q. All right. Your data tells us what orders are made  
39 but doesn't indicate how many are contested in the end?

40 A. Yes, okay. There is data I'd have to try to pull  
41 together. We do capture some data around stage of  
42 proceedings, at what stage they end, and you can make a  
43 comparison. Look, it's somewhere probably around about  
44 10 per cent of matters are listed for final hearing.  
45

46 Q. All right. And they might resolve after the first  
47 hour or two or day as well, I take it?

1 A. That's right. There will be further discussion,  
2 further consultation in the lead-up to the hearing and on  
3 the morning of the hearing.

4

5 Q. All right. Not much different from other parts of the  
6 law?

7 A. M'hmm.

8

9 Q. All right. Which leads to the --

10

11 COMMISSIONER: Do you have data about the percentage of  
12 cases that involve a final hearing and proceed to final  
13 determination by the court?

14 A. Yes. Yes, we capture that type of data.

15

16 COMMISSIONER: And is it presently within the material you  
17 have provided?

18 A. I don't believe so, Your Honour. I'd have to check my  
19 statement. I don't believe any of the data provided goes  
20 to that point.

21

22 COMMISSIONER: It would be useful, I think, to have that  
23 if you are able to interrogate your database --

24 A. Yes, Your Honour.

25

26 COMMISSIONER: -- and extract that. That would be  
27 helpful. Thanks.

28

29 MR HASTIE: There are a number of tables in the evidence  
30 that deal with the consistency or otherwise between  
31 applications and the final order but not as to time - and  
32 as to the time taken between applications and the final  
33 order being made. But, probably like most courts, I don't  
34 think there are too many courts that are able to give you  
35 data about when a matter would settle, and this would seem  
36 to be no different to that. But there is an estimate in  
37 the Victorian Law Reform Commission report which puts the  
38 figure - this is off the top of my head - at 70 per cent or  
39 something like that.

40 A. And I should note I've provided some data in response  
41 to notice to produce I think it's 144, and I'll have to  
42 check as to whether or not in any way that type of data is  
43 included in the spreadsheets. If not, we'll seek to try  
44 and compile some data around what stage proceedings are  
45 ending.

46

47 COMMISSIONER: Thank you, Director.

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MR HASTIE: Which leads me to the next question or area, and that this issue of the nature of the material or evidence that is put on or required at the present time to go with an application for a protection order. We both spoke briefly about your suggestion I think that there should be as an exhibit 1 an assessment report which would be the - attached to an affidavit rather than a whole lot of other material?

A. Yes, it's more about - that concept is about having the child safety officer set out their assessment in a standard, I'm going to use the word, tool or a standard report rather than a child safety officer trying to set out their assessment in a narrative form within an affidavit.

Q. All right. And it wasn't clear - was it your suggestion that this take place before or be used after an application has been filed and whilst the matter is ongoing?

A. Yes, because - and I probably went through this last year. There is a current established practice within Child Safety's now Unify system and previously their ICMS system that - I'm going to refer to it as a workflow where the child safety officer will have a number of stages that they work through in terms of the system. They will enter any details as to interviews they've conducted, information they've gathered, and then it will be a part of where they can set out their assessment. So we currently get those for the matters that are coming through that investigation that's in response to a notification. However, I'm proposing then from thereon if there was a change in assessment or the assessment was updated they would use this to update it or maintain it, and they would also use this to set out their assessment in respect of matters that don't come through that investigation process.

Q. All right. So that really is a recommendation that relates to the - when matters are adjourned from time to time?

A. That's so, or it's those matters where children have been on a custody order for two years and the assessment is that a further type of order is needed that they would use this report template to set out what their current assessment is. At the moment that occurs through the narrative affidavit.

Q. All right. What I wanted to ask you about was to go

1 back to the beginning --  
2 A. Yes.  
3  
4 Q. -- and to look at what's to be filed initially. You'd  
5 be familiar with rule 13 of the Childrens Court Rules?  
6 A. Yes, I am.  
7  
8 Q. Would you like a copy?  
9 A. Yeah. I've got an Act here available but not --  
10  
11 Q. Have you? Have you got the rules? Commissioner, can  
12 I hand up - give one to the Commissioner and one to the  
13 witness.  
14  
15 COMMISSIONER: I think I've been shown these previously,  
16 but it's helpful to have them.  
17  
18 MR HASTIE: So if you go to rule 12 it requires that an  
19 originating application must contain a number of things,  
20 and one of those is (j), statement of material facts?  
21 A. Yes.  
22  
23 Q. And (f), the grounds of the application, probably the  
24 substantive matters. Then it provides that in rule 13  
25 there has to be an affidavit exhibiting a number of  
26 documents?  
27 A. Yes.  
28  
29 Q. All right. So it ends up - even that affidavit ends  
30 up being fairly voluminous at times; is that correct?  
31 A. It can be, depending on the matter, and I think I gave  
32 evidence about the affidavits quickly get to a large size  
33 when there's a number of siblings. Each have had a case  
34 plan, each have had a review of that plan prior, each has  
35 their own strengths and needs assessment. Very quickly you  
36 get into hundreds of pages of sort of departmental  
37 material.  
38  
39 Q. All right. And the Act also requires the Chief  
40 Executive on a referral to provide material to you  
41 consistent with that rule?  
42 A. It does.  
43  
44 Q. And your manual sets out not only that rule again - if  
45 you'd like to look at your manual. Do you have that with  
46 you?  
47 A. Yeah, I do have a copy of that with me.

1  
2 MR HASTIE: I don't have a spare copy of the manual,  
3 Commissioner, but --  
4  
5 COMMISSIONER: That's all right.  
6  
7 MR HASTIE: And I can't remember what exhibit it is.  
8  
9 COMMISSIONER: It's all right, Mr Hastie, I'll --  
10  
11 MR HASTIE: It might be useful if you --  
12  
13 COMMISSIONER: Okay. Thank you.  
14  
15 MR HASTIE: I'll borrow Counsel Assisting's, which means  
16 they don't have one.  
17  
18 But what I wanted to ask you about was paragraph 94?  
19 A. Yes.  
20  
21 Q. So you will see in part 94(a) that there's a - you set  
22 out again what's been required by rule 13, and in 94 itself  
23 you've indicated a significant amount of material that's  
24 required in a draft affidavit?  
25 A. Yes.  
26  
27 Q. And all this adds, obviously - so this is work that  
28 has to be done prior to an application even being filed?  
29 A. I would say - yes, like, many of these - and I've not  
30 read through guideline 94 just now, but it's information  
31 that would be held by Child Safety, but you've got to then  
32 also - and I probably make the point or I made this point  
33 in December. Rule 13 functions in a way where the starting  
34 point is, "Yes, I should be filing this affidavit with the  
35 application." However, then under rule 13(4)(b) there is,  
36 depending on the circumstances - and this happens in  
37 matters where these affidavits are not filed until at times  
38 well past the first mention date.  
39  
40 Q. All right. Going back then to the manual --  
41 A. Yes.  
42  
43 Q. -- you, just to make it clear - so paragraph 25 of  
44 your manual refers to the brief of evidence that's required  
45 from Child Safety?  
46 A. Yes.  
47

1 Q. And paragraph 26 requires a draft affidavit?

2 A. That's right.

3

4 Q. All right. So the advantage of that is then you're in  
5 a position to provide legal advice to the department about  
6 the sufficiency of the evidence required to bring an  
7 application for a child protection order?

8 A. Yes. Yeah, I'd agree with that.

9

10 Q. All right. So the disadvantage is that it requires  
11 and consumes a great deal of time to actually put an  
12 affidavit together with all that material?

13 A. Well, that's - yeah, in practice, yeah, when we get a  
14 brief of evidence sent to us it will include a draft  
15 initial affidavit, and depending on the matter there could  
16 be 20 proposed exhibits, there could be 100 proposed  
17 exhibits of all different types of information that Child  
18 Safety has held and had regard to.

19

20 Q. All right. Regardless of the number of exhibits --

21 A. Yep.

22

23 Q. -- you'd agree with me that an affidavit in narrative  
24 form takes a lot longer to produce than a note of the  
25 relevant considerations on the facts?

26 A. Yes, and that's why I'm proposing that - I think it -  
27 if you look at guideline 94, paragraph 94, where I talk  
28 about it should contain information about the needs of the  
29 child, like, we're really wanting to provide the child  
30 safety officer with a way for them to set out and then  
31 maintain their assessment so it doesn't require them to  
32 spend a day or days with a narrative affidavit.

33

34 Q. But you are requiring them to do a draft affidavit?

35 A. That's so at the moment. That's what would be set out  
36 at 94, and it attaches anything that underpins that  
37 information, and so what we see is lengthy affidavits often  
38 restating information that appears in those source  
39 documents.

40

41 Q. Yes.

42 A. Where what my view is, and I'd like to try and  
43 implement this, is a more streamlined child protection  
44 assessment, that that's exhibit 1, really attached to quite  
45 a short affidavit that's simply a means of putting the  
46 source documents before the court.

47

1 Q. So even for the originating application?

2 A. So you'd have the originating application --

3

4 Q. Sorry --

5 A. -- and then you'd have an initial affidavit that might  
6 only be a couple of pages that is really the vehicle to put  
7 before the court the exhibits that would include the  
8 current assessment.

9

10 Q. All right. So you remove the obligation of putting  
11 forward what might be an affidavit in narrative form, which  
12 we agree takes time to prepare?

13 A. M'hmm.

14

15 Q. All right. I hadn't understood that you were  
16 advocating that even in the initial stage, but you are?

17 A. All of the information that's currently set out in  
18 narrative form could be incorporated into that assessment  
19 document. We're really wanting to move to a point where  
20 the child safety officer in their own way, using their own  
21 language consistently in their own assessment report can  
22 set out what their assessment is and what they've had  
23 regard to.

24

25 MR HASTIE: All right.

26

27 COMMISSIONER: Presumably, Director, distinguishing  
28 between the facts upon which their assessment is based and  
29 the assessment itself?

30 A. That's so, Your Honour, where ideally they then be  
31 very clear as to the source of those facts, what document  
32 they have considered or what conversation they're talking  
33 about, what - yes.

34

35 COMMISSIONER: What I had understood from your evidence  
36 last year was that you had proposed a reform of this kind  
37 and had some discussions with the department about it. But  
38 just so I'm clear about what it is you propose --

39 A. Yes.

40

41 COMMISSIONER: -- as I understand it, your contention is  
42 that the work that is done internally by the department by  
43 child safety officers to assess the need of the child,  
44 needs both in terms of protection and care, and what is  
45 appropriate in the circumstances is work that is  
46 unavoidably done in the ordinary course of their duties as  
47 the child safety officer or the team leader, as the case

1 may be, and, rather than replicate that work in a separate  
2 affidavit, if that work were recorded in some orderly  
3 standard form document. That document which would  
4 necessarily be kept in the ordinary course of the business  
5 of the department could be appended to an affidavit which  
6 would effectively say, "See annexed assessment"?

7 A. Yes.

8  
9 COMMISSIONER: And that would avoid a lot of the  
10 unnecessary duplication involved in the narrative  
11 explanation in an affidavit and presumably would include  
12 reference to particular documents where those documents  
13 were relevant to the assessment, so, for example, a report  
14 by a third party in relation to the nature of the concerns  
15 for the child or planning for the child's care. If that  
16 proposal were to be adopted it would require, would it not,  
17 the amendment to rule 13, which is presently quite  
18 prescriptive, as I read it. Do you suggest that rule 13  
19 ought be substituted or varied in some way to accommodate  
20 this more streamlined process that you're talking about?

21 A. Your Honour, I would answer that in this way, to say  
22 rule 13(2)(a) is probably a reflection of what it is I'm  
23 talking about, an assessment. Now, the key to  
24 understanding rule 13 and how it's to be implemented then  
25 appears in rule 13(3)(b), and that is that these documents  
26 are only required to be put before the court in a  
27 proceeding if they are relevant.

28  
29 So there was - in the earlier years of the current model an  
30 approach was taken where there was an initial narrative  
31 affidavit completely separate to what was then referred to  
32 as a rule 13 affidavit. The narrative affidavit would make  
33 reference to the rule 13 affidavit that was to come into  
34 existence during the proceeding. But what we were seeing  
35 is the rule 13 affidavits were very large because it seemed  
36 to be any document of the nature mentioned within rule 13  
37 was simply being exhibited to an affidavit.

38  
39 So as part of the changes that were implemented in July '19  
40 we went back to just having one initial affidavit file,  
41 with the hope that, if you only mention it in a document -  
42 in your narrative affidavit for the sole purpose of  
43 exhibiting it, that's a good indication that you didn't  
44 think it was relevant and it's not relevant to your  
45 assessment.

46  
47 COMMISSIONER: Well, quite, and you draw attention to the

1 qualification, I suppose, of relevance --

2 A. Yes.

3

4 COMMISSIONER: -- in rule 13(3)(b). Unfortunately,  
5 relevance is many times in the eyes of the beholder and  
6 there are arguments about relevance.

7 A. Yes.

8

9 COMMISSIONER: But on your proposal if the initial - the  
10 affidavit in support of the initiation of the proceeding  
11 were to refer to your suggested report that is really the  
12 output of the work of the department in the ordinary course  
13 of its business, if I can put it that way --

14 A. Yes.

15

16 COMMISSIONER: -- and provided that that report is  
17 sufficient for your staff to form an assessment of the  
18 nature of the application, whether it's warranted and  
19 whether the order that is being proposed is supported by  
20 the assessment contained in this report, that would  
21 truncate the process quite significantly, would it not?  
22 And if when the matter comes before the court an interested  
23 party were to say, hypothetically, "That report does not,  
24 however, cover matters of relevance," any such contest  
25 could be considered. If the court were to form the view  
26 that on the material it wasn't satisfied with the  
27 assessment there's nothing to stop the court requiring  
28 further explanation, a further affidavit.

29

30 But rule 13 on its face does seem to be prescriptive in a  
31 way that seems to be aimed at covering the field of all  
32 possible relevant material in a variety of different cases  
33 where all of that material, though potentially relevant -  
34 or bits of it - in individual cases, won't be relevant in  
35 all cases. Is that a fair summary?

36 A. It is, Your Honour. It is. The context of rule 13 is  
37 that it appeared at a point in time in response to what had  
38 been the practice prior to the model, prior to the new  
39 rules commencing on 1 July 2016, where there was no  
40 disclosure, where the parties were unable to obtain  
41 information from Child Safety unless they were prepared to  
42 put before the court, otherwise your only resource to  
43 access the information was through subpoena. Now, that was  
44 the context. The rule was made within that context and --

45

46 COMMISSIONER: And is it also correct that that context  
47 was a matter to which attention was drawn by the Carmody

1 Inquiry?

2 A. Yes, Your Honour.

3

4 COMMISSIONER: And rule 13 is a bona fide attempt, no  
5 doubt, to resolve problems that were perceived to exist at  
6 that time?

7 A. Yes, and so where you would see - what you're  
8 proposing, Your Honour, is that - we now have and we have  
9 had an established disclosure regime. In the early days  
10 what you would see is in the rule 13 affidavit you would  
11 have multiple case plans, multiple review reports  
12 stretching over the period of intervention. So if a child  
13 has been the subject of, say, a two-year custody order you  
14 might have had four or five case plans for that child  
15 included and four or five reviews all part of what was a  
16 very large rule 13 affidavit; where the approach now that  
17 is in practice is that the current case plan is put before  
18 the court and if there has been a review prior to that  
19 current case plan, a 51X report under the Act, that will  
20 also be put before the court. But if in proceeding a  
21 parent or another interested party was to raise concerns in  
22 respect of whether reasonable efforts have been made, well,  
23 that's when we would then seek to disclose those earlier  
24 plans, disclose those earlier review reports, and then, if  
25 needed, they would be put before the court. So that  
26 approach could be taken to a number of the things mentioned  
27 in rule 13.

28

29 COMMISSIONER: Should, in your view, rule 13 be  
30 effectively abolished? I understand this is a matter for  
31 the court, but if good and rational reasons are advanced  
32 for some alternative approach it doesn't mean that the  
33 court wouldn't consider such - well, consider  
34 representations about that and how the legal process might  
35 be improved and enhanced?

36 A. Part of that consideration, Your Honour, would need to  
37 be, again, looking at the structure of some of these source  
38 documents. If I'm looking at rule 13(2), it's referring to  
39 an assessment with the most recent strengths and needs of  
40 the child and the child's parents. This is a departmental  
41 form - no doubt Your Honour has seen some of these in  
42 practice - where in terms of the child's strengths and  
43 needs it will have something like 11 different domains  
44 stretching across multiple pages where the person  
45 completing the assessment used, my words, a radio button to  
46 indicate which one of the four options they think, and then  
47 you will get in practice one, maybe two sentences in the

1 assessment to explain why what option has been picked. It  
2 may be that the current assessment of the strengths and  
3 needs just could be incorporated into that initial  
4 assessment document where suddenly you're starting to cut  
5 down on that.

6  
7 COMMISSIONER: Well, I have observed that quite a number  
8 of significant departmental documents that bear upon  
9 evaluation of risk and need are long in listing the matters  
10 to be considered as it were as a checklist but short in  
11 explanation as to the conclusions in relation to that  
12 particular matter, and as you say - I think what you're  
13 saying is often there's a box marked with a cross  
14 indicating yes or no to the particular matter for  
15 interrogation, which doesn't tell you very much about what  
16 the reasoning is.

17  
18 What I take you to be saying is that, if a report, however  
19 described, of the kind you contemplate were routinely  
20 prepared as part of the ordinary course of the child safety  
21 officer's work, and I think it must be a report which is  
22 sort of self-speaking so that somebody reading the report  
23 can understand what the reasoning is for the assessment,  
24 then that report is potentially a substitute for voluminous  
25 narrative affidavits, and if further material is required,  
26 well, that can be dealt with as and when the issue - an  
27 issue - is raised either by the court or by an interested  
28 party. Now, last year you indicated that there had been  
29 some discussions with the department about this --  
30 A. Yes.

31  
32 COMMISSIONER: -- suggested alteration to practice. Can  
33 you just remind me where those discussions have got to?  
34 A. Yes, Your Honour. What I would also like to say too  
35 is that I'm not proposing that this document would be  
36 something that on a day-to-day basis a child safety officer  
37 would be completing or adding to. It's more where there's  
38 been really substantial change in the casework where their  
39 assessment has been - something happened that means their  
40 assessment's changed or there's been something significant  
41 that really goes to the current assessment that they would  
42 update that document.

43  
44 COMMISSIONER: But would that document be the - on your  
45 sort of proposal, if I can put it loosely as that, would  
46 that need to be populated in advance of a referral to you  
47 so that that is the source from which you are then able to

1 make an assessment of whether a child protection order  
2 ought be sought?

3 A. Yes, so I would - my view is that the document would  
4 be used to set out whatever the current assessment is. So  
5 if the child safety officer's considering an assessment -  
6 and, again, if we go - there is that workflow that's  
7 currently implemented. So, if I talk about a child that's  
8 coming to an end of a substantive order and the assessment  
9 is that I think a further order is required, that document  
10 would have been completed, would have been maintained and  
11 then sent to me as part of the referral. Then six, seven  
12 months into a proceeding if there's been some change, if  
13 there's been progress made by the family, either myself or  
14 the court would call for the assessment document to be  
15 considered and updated and put before the court.

16  
17 COMMISSIONER: How would it work at the outset, though?  
18 Let's assume there's been an emergent order three days'  
19 duration and the matter is referred to your office for  
20 consideration of some form of ongoing custodial order in  
21 the sense that the department should have custody of the  
22 child. You need to make an assessment as to whether a  
23 child protection order should be sought at that point in  
24 time, and then of course because things don't stay the  
25 same --

26 A. Yes.

27  
28 COMMISSIONER: -- the matter has to be reviewed over the  
29 life of the proceeding until one gets to a point where  
30 effectively a final order is sought if reunification can't  
31 be achieved. So how do you envisage this process working  
32 at the outset?

33 A. It depends on - at the moment there is that existing,  
34 I'm going to refer to it as an investigation and outcome  
35 document that sets out - at the moment if a child has been  
36 the subject of a notification and an investigation has been  
37 undertaken, at the moment Child Safety has a mechanism to  
38 set out their assessment, the steps that they've undertaken  
39 in their investigation, what they've gathered, what  
40 information they've considered, and it sets out their  
41 assessment.

42  
43 I'm not proposing at this stage that that would change, but  
44 you'd want to have - there be a lot of - you'd want that  
45 what I'm proposing to be consistent, and so it fits in an  
46 ongoing way. So that would then become the basis of what  
47 is the initial assessment, and then as you go through,

1 through the proceeding, where needed it would be updated.  
2 After any final order's made, it would then be routinely  
3 updated in line with the review of the case plan.  
4

5 COMMISSIONER: Just going back to the outset of your  
6 office's involvement, at present the assessment that you've  
7 described has to be, as I understand it, translated into an  
8 affidavit?

9 A. Yes, what you tend to see is they will seek to exhibit  
10 it, but pull large parts of it still into an initial  
11 affidavit.  
12

13 COMMISSIONER: And if it were sufficiently self-speaking,  
14 that assessment, then the affidavit could in substance say,  
15 "See assessment"?

16 A. That's right. It should say that, "I'm the  
17 allocated" --  
18

19 COMMISSIONER: So could be a one-line affidavit?

20 A. Yes. It'd be, "I'm the allocated child safety  
21 officer. These are my qualifications. I've been working  
22 with the family, or involved, and exhibit 1 is my current  
23 assessment," or the assessment, and it might then be a  
24 series of other exhibits that feature prominently in their  
25 assessment that they've had and placed weight on. Whether  
26 they're --  
27

28 COMMISSIONER: In the particular case?

29 A. In the particular case.  
30

31 COMMISSIONER: Yes.

32 A. So, in response to Your Honour's question about where  
33 the current work is up to, I had had further contact with  
34 the then Acting Official Solicitor of Child Safety in  
35 December around the current template, and I understand that  
36 was to then be taken to an internal Child Safety committee  
37 of all of their regional directors. I'm not sure if that  
38 meeting went ahead.  
39

40 COMMISSIONER: Thank you.  
41

42 MR HASTIE: But that's been going on for some time, hasn't  
43 it?

44 A. It has, yes.  
45

46 Q. Years?

47 A. Yes, efforts were made to initially try to implement

1 something like this some years ago and then were stalled,  
2 and then at some point last year that recommenced again.

3  
4 Q. Can I ask you one other question arising out of all of  
5 that was that one of the other responses in 2016 to the  
6 perceived issues with the way the system worked was to  
7 place upon the Director an onus to provide disclosure and  
8 to sign off on the disclosure?

9 A. Yes.

10  
11 Q. All right. And that's in rule 51, Commissioner, and  
12 following.

13  
14 Can I ask you this about that. That procedure, is that  
15 another onerous obligation that the rules impose upon the  
16 Director's office in terms of your staff and time?

17 A. It can be, but there is a whole division within the  
18 rules dealing with disclosure and then dovetailing with  
19 these rules. I've then issued the relevant disclosure  
20 forms through my guidelines. So you have an initial form  
21 that's personally served with the application. We then  
22 will provide a further copy of the first form with the  
23 first letter, so the first order that's issued, the first  
24 interim order. That sets out what it is, what disclosure  
25 is. It's a very detailed form. We again provide the  
26 parties with a form that they can use to request  
27 disclosure, and then there's a third form that we then file  
28 with the court ahead of any determination in respect of the  
29 disclosure obligations being met.

30  
31 In practice, disclosure of documents can be sought orally,  
32 by email. We see that. You'll have unrepresented parents  
33 at court saying, "I don't agree with this. I'd like to see  
34 this," and we'll make those enquiries with Child Safety and  
35 seek to disclose. But, you're right, there are times where  
36 then the disclosure of documents can become a major part of  
37 the litigation, if we then need to withhold parts or some  
38 of the documents.

39  
40 Q. Similar problem in civil litigation which has been  
41 answered by not requiring big lists and requiring parties  
42 to identify documents that they want from the opposing  
43 party. Would you see that as a means of going forward?

44 A. Yeah, and so we don't have a situation where we're  
45 putting together long lists of documents that are held, but  
46 it's more documents that go to or information that goes to,  
47 really, the safety of either the child or one of the

1 parties can be at times a contention of the litigation  
2 where that is withheld, not necessarily just by - from a  
3 party but also from a court because we've taken that it was  
4 not relevant.

5  
6 Q. So you've got to go through it first, obviously, and  
7 then you - for two reasons, to see whether they're  
8 relevant, not directly relevant, but relevant, and then see  
9 whether or not you should claim some sort privilege --

10 A. To withhold it, yes.

11  
12 Q. -- public interest privilege. All right. And when  
13 you said there wasn't a long list do you mean was the  
14 emphasis on long rather than list? In other words, you  
15 still have to list each document, or do you list each  
16 document, all classes of documents, or how does it operate?  
17 I'm just looking at rule 51.

18 A. So what I'd refer you to, Mr Hastie, is the form D  
19 disclosure form which appears at page 99 of the guidelines  
20 I've issued, and in this form an attempt is made to set  
21 out - you'll see on the second page of the form in box A a  
22 list of the types of documents that are normally in the  
23 possession or control of Child Safety. So we're trying to  
24 provide parties or non-parties that have the particular  
25 status with a list of the types of documents that they  
26 could request, but we're not particularising in each  
27 matter, well, there's 13 case plans or there's four. It's  
28 more saying that in any general matter these are the types  
29 of documents you would expect to be held by Child Safety,  
30 and then a parent can look at this and say, "Well, I want  
31 to see this," or, "I want to see that."

32  
33 Q. I see.

34 A. Yeah.

35  
36 COMMISSIONER: And in practice does that then - if  
37 particular documents are sought by, say, the parents, does  
38 that then cause you to make an enquiry of the department  
39 and ask them to produce the document if it exists?

40 A. Yes.

41  
42 COMMISSIONER: So does the disclosure regime impinge in  
43 your view on the suggested streamlining of the process that  
44 we discussed a little while ago?

45 A. No, Your Honour, it could support that where - if we  
46 go back to rule 13, if there's been, say, an independent  
47 assessment or a number of independent assessments made of,

1 say, a child's medical need, it might be initially that  
2 that document's not needed before the court, but if there  
3 was some reference to the assessment, the independent  
4 assessment, in the child safety assessment document, well,  
5 the party, the mother or the father could just seek  
6 disclosure of that outside of the court process. So it  
7 might not go to a relevant matter in the proceeding, but it  
8 may be that they work together, if I've answered your  
9 question.

10  
11 COMMISSIONER: I mean, there is a balance here to be  
12 achieved, isn't there --

13 A. Yes, there is.

14  
15 COMMISSIONER: -- because, given the consequential nature  
16 of an order of this - of any kind of child protection  
17 order, the parents and other interested parties have a  
18 right to look at the material upon which - which is germane  
19 to the assessment, the need for the order. So in the  
20 example that you gave of, let's say, an external assessment  
21 of the child's needs, if that is referred to by the child  
22 safety officer as important to the evaluation of the  
23 child's needs, then it's likely, isn't it, that that  
24 document, that assessment, would be relevant to be put  
25 before the court? Would you contemplate that occurring in  
26 your suggested sort of amended process?

27 A. Yes. So the key part of the matter might be that a  
28 child's medical needs have been neglected. Well, clearly  
29 any independent report about the child's needs and what  
30 they are and whether or not or how they've been met would  
31 need to be put before the court.

32  
33 COMMISSIONER: Yes. Thank you.

34  
35 MR HASTIE: Can I put or ask you about another possible  
36 scenario and if I could go to the New South Wales  
37 jurisdiction. Could you have a look at these, please. If  
38 the witness could see this, if I could tender,  
39 Commissioner, a copy of the Childrens Court Rules 2000 from  
40 New South Wales.

41  
42 COMMISSIONER: Yes. That will be exhibit CL-86.

43  
44 **EXHIBIT #CL-86 - CHILDRENS COURT RULES 2000 FROM NEW SOUTH**  
45 **WALES**

46  
47 MR HASTIE: Now, if you go to rule 20, or maybe it's

1 clause 20 - I've only given you part of the rules,  
2 Commissioner, hopefully the relevant parts. Sorry, 21 is  
3 what I meant to refer to. There's a reference there to  
4 section 61(2) of the New South Wales Act, Mr Miller?

5 A. Yes.

6  
7 Q. That simply requires that a care application must be  
8 accompanied by a written report specifying such information  
9 as may be prescribed for the purposes of the section by  
10 rules made under the Act. So can I - you take that as  
11 given; all right? I'm happy to provide a copy --

12 A. No, no.

13  
14 Q. -- my copy of the section, but that's all it states?

15 A. Yes.

16  
17 Q. So, in other words, by legislation the parliament in  
18 New South Wales has prescribed what's to be put before the  
19 Childrens Court, that is an application and the written  
20 report. Then rule 21 prescribes what is required in the  
21 report, and you'll see there that it's a very simple form  
22 of report, not that much different in effect from at least  
23 one of the requirements of an application, that is to  
24 provide a summary of the facts, matters and circumstances  
25 upon which the applicant intends to rely. That's really  
26 the converse of a lengthy, and sometimes very lengthy,  
27 affidavit and exhibits which accompany it?

28 A. Yes, and I don't have good - a good understanding of  
29 the New South Wales approach, but I did understand that  
30 there is a tender bundle of documents also put forward  
31 alongside the report. But I don't see that referenced in  
32 this rule.

33  
34 Q. No, and I can't remember if it was through you or not,  
35 but if it was through you your recollection is very good.  
36 Exhibit CL-68, which I'll provide you another copy of if  
37 you like --

38 A. Yeah, I don't think I've talked about New South Wales  
39 at all before, so.

40  
41 Q. Sorry.

42  
43 Commissioner, can I just remind you of that?

44  
45 COMMISSIONER: Yes, thank you.

46  
47 MR HASTIE: My apologies.

1  
2  
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COMMISSIONER: Not at all.

MR HASTIE: It then goes on to - if you look at the practice note in paragraph 2 it indicates what the secretary, that is the equivalent of the Chief Executive, is required to serve, that is the application and the report, but must otherwise serve as soon as possible but no later than the first occasion of the return date the documents which are listed on the following page?

A. In 2.2, yes.

Q. Which are not that dissimilar - I mean, there's a difference in wording, but they're not that dissimilar from the ones in rule 13?

A. Yes. So I would say on the face of this that it's similar to what or the same as what I'm proposing, that you'd have an application supported by a report and whatever source documents are relevant. This is put before the court I think as a tender bundle, but whether the report's filed I'm not clear. But I did understand that there was a - yeah, I didn't appreciate it was through a practice direction, and I understood the general process.

Q. If you go to the notes, note B, they're only required to be served in a form in which they exist on the file, it's not required to convert information into a different format, and documents are not required to be supported by an affidavit?

A. I see that.

Q. All right.

A. So I would just expect in practice that they would just be marked as an exhibit and away they'd go.

Q. Yes.

COMMISSIONER: Director, there wouldn't be a need to have an affidavit simply for the purpose of listing the documents? Provided the documents are created in the ordinary course of business, they should be able to be tendered in the proceeding, if relevant; do you agree with that, and, if you do --

A. Yes, Your Honour.

COMMISSIONER: -- what's the present process that the affidavit has to sort of narratively describe the

1 documents?

2 A. Yes, the affidavits set out what the document is and  
3 it becomes an exhibit. In just viewing this that type of  
4 information under this process I would imagine then  
5 possibly forms the content of an affidavit of service.  
6 It'd just be that the parent's been served with the  
7 proposed tender bundle and it identified - in some way that  
8 sets out the types of - or the documents that were in the  
9 bundle that was provided. If I'm looking at paragraph 2 of  
10 this practice note, where it places the obligation and  
11 service on the New South Wales secretary, reasonable  
12 efforts to serve the specified documents. I'm not sure.  
13 In practice here in Queensland we routinely will file  
14 affidavits of service as well.

15

16 MR HASTIE: Of course that could be shortened as well, you  
17 swear that you've served the documents contained in a list?

18 A. Yeah, it is - there's a bundle of documents that  
19 included just a list identifying each document rather than  
20 document by document.

21

22 Q. And attaching it to an affidavit of service?

23 A. Yes, yeah, if it was an application with a report and  
24 then a bundle of what are the relevant documents.

25

26 COMMISSIONER: So, Mr Hastie, under the New South Wales  
27 practice is it rule 21 that governs the position? You  
28 mentioned something I didn't quite catch about specific  
29 documents prescribed by the Act that need to be served or  
30 produced to the court. So rule 21 --

31

32 MR HASTIE: No, it's only this practice direction that  
33 deals with - exhibit 68 deals with additional documents,  
34 Commissioner.

35

36 COMMISSIONER: Yes, no, I was talking about, I'm sorry,  
37 the Childrens Court Rules in exhibit 86 that you've just  
38 tendered.

39

40 MR HASTIE: Yes, Commissioner.

41

42 COMMISSIONER: The report to accompany care applications,  
43 that's the only prescription, as you understand it?

44

45 MR HASTIE: Yes, yes. I'm sorry, yes. I misunderstood,  
46 Commissioner. Yes.

47

1 If I can go onto another topic then. Obviously these sorts  
2 of things would make the life of a - your life as well as  
3 the child service officer and the courts a lot simpler?  
4 A. Yes, and anyone involved in the litigation.  
5  
6 Q. And the parties?  
7 A. And the parties.  
8  
9 Q. I should say the parents; yes?  
10 A. Yes.  
11  
12 Q. All right. Thank you. We briefly touched on this  
13 last year. Section 61 limits the number of orders that  
14 have - I shouldn't put it "limits", but sets out the orders  
15 that can be made?  
16 A. Yes.  
17  
18 Q. And you indicated that there'd been the practice of  
19 some magistrates to combine orders in a way that has the  
20 effect - sorry, combine orders in that - set out in that  
21 section which has the effect of putting conditions on what  
22 might otherwise be a very sensible order under one  
23 subsection?  
24 A. Yes, we're seeing different combinations of orders  
25 being made targeting different issues.  
26  
27 Q. Do I understand you to say there would be benefit in  
28 the legislation setting out that the Childrens Court could  
29 make an order subject to conditions?  
30 A. Yes, I think clarification could be used. It's - at  
31 the moment through an appeal that I brought - this is an  
32 example - I brought just really seeking guidance. We had a  
33 matter where not just concurrent orders had been made but  
34 consecutive child protection orders had been made. I was  
35 concerned about that, but on appeal the approach taken was  
36 that the Act and 61 and how it operates supported  
37 consecutive orders. So in that matter the court had made a  
38 supervision order for six months and at that point in time  
39 then a custody order commenced for a further duration.  
40  
41 Q. This was an appeal to the District Court?  
42 A. Yeah, the Childrens Court by a judge, yeah, but then  
43 because of the nature of the appeal was heard by the  
44 President.  
45  
46 Q. Thank you.  
47

1 COMMISSIONER: And, just remind me, was the outcome of  
2 that appeal that it was found that the court could not  
3 impose conditions to the orders that are described in  
4 section 61?

5 A. No, Your Honour, you're referring to a different  
6 appeal. The appeal you are referring to is perhaps  
7 20 years of age where it related to, as I recall, a  
8 condition placed on an order that either granted custody or  
9 guardianship of a child to the Chief Executive, that the  
10 child was to remain in what was referred to as a safe  
11 house, and on appeal the outcome was that that couldn't  
12 occur, that type of condition. But the matter I'm  
13 referring to was more where, rather than concurrent orders,  
14 the court had made consecutive orders - so made an order  
15 which then ended and then a new order started at a future  
16 date - and on appeal it was found that that was lawful  
17 under the Act.

18  
19 COMMISSIONER: Not allowed?

20 A. Lawful. It was allowed.

21  
22 COMMISSIONER: Was allowed?

23 A. Was allowed, yes.

24  
25 COMMISSIONER: So the court could at a point in time make  
26 an order for a duration of six months, say, and at the  
27 expiration of that a further order but made it the same  
28 time --

29 A. Yes.

30  
31 COMMISSIONER: -- to take effect from the expiration of  
32 the initial order?

33 A. Yes.

34  
35 COMMISSIONER: That's what you mean?

36 A. That's - yes.

37  
38 COMMISSIONER: Right. But --

39 A. So through the appeal guidance there has been  
40 developments in sort of consecutive orders or other things,  
41 but to answer - back to the question, it would be of  
42 benefit to get clarity on what conditions could be made  
43 under what order and for what purpose.

44  
45 MR HASTIE: Do you happen to remember the name of the case  
46 to which you're referring?

47 A. No, but I'll be able to provide it. I don't know the

1 name of it as it's been published. I know the name that  
2 would identify the family.  
3  
4 Q. Thank you. All right. And the case --  
5  
6 COMMISSIONER: And --  
7  
8 MR HASTIE: Sorry, Commissioner.  
9  
10 COMMISSIONER: Sorry, no, I was going to ask - perhaps you  
11 were about to ask it - and likewise the earlier appeal that  
12 rejected the ability for a court to impose conditions on  
13 the order?  
14 A. Yes, I'll be able to identify that one, Your Honour.  
15  
16 MS GREENWOOD: Commissioner, I --  
17  
18 MR HASTIE: Brian Harrison, is that --  
19  
20 MS GREENWOOD: -- in fact have copies of that and intend  
21 to do it, and we will get the new case as well.  
22  
23 COMMISSIONER: All right.  
24  
25 MR HASTIE: Yeah, it's been referred to in someone else's  
26 evidence.  
27  
28 COMMISSIONER: Yes.  
29  
30 MR HASTIE: It's Department of Communities v LE and  
31 Others.  
32  
33 COMMISSIONER: All right.  
34  
35 MR HASTIE: It's [2011] QChC 4.  
36  
37 COMMISSIONER: All right. Thank you.  
38  
39 MR HASTIE: It was an appeal by the department.  
40  
41 MS GREENWOOD: If it would assist the court, I'm more than  
42 happy to make my copies available.  
43  
44 COMMISSIONER: That's very kind. I don't want to deprive  
45 you of your copy, but if after lunch you can hand up a copy  
46 that would be great. If not, somebody will find a copy.  
47

1 MS GREENWOOD: I've got 10 copies, Commissioner.  
2  
3 COMMISSIONER: Then by all means. Thank you. I do recall  
4 there was reference to it, but I couldn't recall the name  
5 of it. Thank you very much.  
6  
7 MR HASTIE: Can I ask you about a different topic, and  
8 that is the question of revocation of orders?  
9 A. Yes.  
10  
11 Q. The power that you've - one of the powers that you  
12 have is to apply for revocation of a child protection  
13 order?  
14 A. Yes.  
15  
16 Q. And the power is also capable of being exercised by a  
17 parent or a child?  
18 A. Yes, yeah, in general, unless --  
19  
20 Q. All right. Well, subject to limitations?  
21 A. That's right. Yeah.  
22  
23 Q. All right. Now, I just want you to - I don't want to  
24 discuss any specific cases or anything like that. These  
25 are cases - when this occurs or might occur it would be a  
26 case where the Chief Executive or perhaps the parent comes  
27 to you and says, "We want to revoke the order"?  
28 A. Yes, or the child.  
29  
30 Q. Or the child. It wouldn't be something you'd initiate  
31 yourself?  
32 A. No, no, I need to be sent a matter where the  
33 assessment is it should be revoked or I'll be served with  
34 an application if it's by a parent or a child.  
35  
36 Q. All right. Are there many applications by parents or  
37 children?  
38 A. Yes. Yeah, there have been.  
39  
40 Q. All right.  
41 A. I set them out in my annual report, yeah, that there  
42 are matters to - applications to revoke.  
43  
44 Q. In the scheme of things, there don't seem to be many.  
45 I'm just going to ask you whether or not it's - in the  
46 environment that we're talking about with children - sorry,  
47 with parents or maybe even children who are fairly

1 vulnerable and not necessarily articulate or able to be -  
2 afford representation, that's a matter that - sort of an  
3 application that might be hard for them to do?  
4 A. Yes. In practice what you see where a parent is, say,  
5 unrepresented and has not had the benefit of legal advice  
6 or assistance the applications will be very brief but they  
7 enable the jurisdiction, so that we might be talking a  
8 matter of one or two paragraphs.  
9  
10 Q. All right. But then you would be able to respond  
11 and --  
12 A. Yeah, and then in response we then seek current  
13 assessment from Child Safety and what their position is in  
14 terms of the application, and then that's dealt with in the  
15 ordinary way.  
16  
17 Q. And ultimately whether or not the Director applies for  
18 a revocation depends upon the exercise of the discretion of  
19 the Director or - perhaps I'm putting it too highly - the  
20 exercise of the powers of the Director subject to whether  
21 or not the revocation's legally justifiable?  
22 A. Yes.  
23  
24 Q. Would that be a better way of describing it rather  
25 than as a matter of discretion?  
26 A. Yes, it's a referred matter that we then give regard  
27 to in line with the legislation and the principles.  
28  
29 Q. All right. I'll come to that in a moment.  
30 A. Yes.  
31  
32 Q. It's said, by one witness anyway, that the Chief  
33 Executive might be more willing to sit with more risk than  
34 the Litigation Director or lawyers. Do you have any view  
35 about that?  
36 A. As with everything, Mr Hastie, I'd say it's matter  
37 dependent. There are times where - matters where a lawyer  
38 in my office may be more risk averse or times where the  
39 allocated child safety officer and senior team leader are  
40 more risk averse. I don't think it's one or the other.  
41 And I point to sort of the stats where there are many times  
42 where different types of orders are sought, either less or  
43 more intrusive, depending on the combination of all the  
44 facts of the matter.  
45  
46 Q. Thank you. Do you have the Act there?  
47 A. Yes, there is an Act here, yeah.

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Q. If you go to section 65, and that's where subsection (1) refers to the powers for people to apply for a revocation?

A. Yes.

Q. And in subsection (6) it sets out that the court may only make an order if satisfied the order is no longer appropriate and desirable for the child's protection?

A. Yes.

Q. That would seem to be the only limitation on the power to exercise the discretion?

A. Yes, and, depending on the type of matter, some other parts of this section might then interplay with that.

Q. Yes, it's odd, isn't it, that it tells you then when section 59 applies - on the face of it, it's hard to see why it bothers, but at the moment --

A. So, yeah, in response to that what I'd say is that this provision was amended with the intent of making the variation of a long-term order or the revocation of a long-term order and making a permanent care order more streamlined without the need to consider various parts of section 59.

Q. I see.

A. So it 's those scenarios where you've had a child on a long-term guardianship order to the Chief Executive for many years and the assessment then is that their carer may be able to become their guardian or even their permanent guardian. The intent of the provision is not to go back and relitigate the child protection concerns from many years ago. It's more forward looking. But the way the provision is drafted it then has an interplay where it's just a straight revocation.

COMMISSIONER: Director, this provision I find somewhat curious and curious also when read together with subsection 5B, which expressly removes the requirement to consider the criteria in section 59(1)(a), which is the question of whether the child is in need of protection, and the order is appropriate and desirable, and that of course is the predicate of the entire jurisdiction, which is found in section 10. And then one is to read the entirety of the Act by reference to the principles that are set out in section 5, and including of course the paramount principle

1 in section 5A, given priority by virtue of section 5(2).

2

3 So when one comes to subsection 65(6), subsection (6), the  
4 section that Mr Hastie has taken you to, how would one  
5 evaluate - that is a court - whether to revoke a child  
6 protection order subject to the requirement of being  
7 satisfied that the order is no longer appropriate and  
8 desirable for the child's protection without, albeit  
9 prospectively, considering the question of whether the  
10 revocation or variation - because it applies to a  
11 variation - is appropriate in the current and prospective  
12 context without considering whether - impliedly,  
13 unavoidably - whether the child is to any extent still in  
14 need of protection? I don't understand, frankly, how you  
15 disaggregate the consideration of the risk to the child  
16 when the court is asked to consider whether or not the  
17 order is desirable for the child's protection?

18 A. And, Commissioner, I would agree, I don't think you  
19 do.

20

21 COMMISSIONER: So I wonder what work it has to do, but the  
22 suggestion I think that was - or the contention advanced at  
23 least as a matter of argument by another witness was that  
24 it would be wrong by reason of section 5B, which excludes  
25 section 59(1)(a), to embark upon an evaluation of whether  
26 the child was still a child in need of protection when a  
27 matter is before the court - well, an application is before  
28 the court to revoke the order or vary it. Intellectually  
29 I struggle with seeing how one unscrambles those issues.

30 A. And I share that view, Commissioner, in that in  
31 practice you see consideration as to whether or not the  
32 child is still in need of protection. I did have the  
33 benefit of watching Ms Martin's evidence. What I can say  
34 when I looked at this point - and I think the point was  
35 made that my guidelines are inconsistent with the Act --

36

37 MR HASTIE: Page 64, Commissioner.

38

39 COMMISSIONER: Yes, I'm just going to find it.

40

41 WITNESS: Yeah, I've marked this. So, Commissioner, I'm  
42 looking at guideline 320(c)(i), where I'm asking for when  
43 I get a referral from Child Safety that the assessment sets  
44 out the reasons why the child is no longer in need of  
45 protection. Now --

46

47 COMMISSIONER: So that guideline - correct me if I'm

1 wrong - would suggest that you've taken the view that  
2 embedded within or implicit within the question expressed  
3 in section 65(6) of whether the order is no longer  
4 appropriate and desirable for the child's protection  
5 involves the question of whether the child is no longer in  
6 need of protection, impliedly involves that?

7 A. Yes, and it could be that there is still a need but  
8 that need could be met through an agreement or it could be  
9 met through another type of order. I did look at - this is  
10 yesterday - data I have provided to the Commission in  
11 response to notice 144, part 3, where the Commission sought  
12 data of how matters have been determined between  
13 the years - I think it was 1 July '22 through to 30 June  
14 '25, and that data shows that there have been 78 matters  
15 that I've had referred to me for revocations. Of those 78,  
16 71 applications were made to seek a revocation of an order  
17 or orders, and the other seven were referred back and out  
18 of those seven only one is without agreement, and this was  
19 the matter that's been the subject of evidence. It 's  
20 something prior to the evidence I'd not really had a lot of  
21 regard to in terms of the issue or the - the identified  
22 issue with the operation of the Act.

23  
24 COMMISSIONER: So the matter that has been the subject of  
25 evidence --

26 A. Yes.

27  
28 COMMISSIONER: -- was the only matter that has been  
29 referred back --

30 A. Without agreement, Commissioner.

31  
32 COMMISSIONER: -- without agreement on the part of - well,  
33 in this case directly the - I think it's the delegate of  
34 the Chief Executive?

35 A. So - and, Your Honour, I can - I've looked at that  
36 matter in some detail. One of the complications of that  
37 matter is you do have --

38  
39 COMMISSIONER: But that's the only one, just to get  
40 that --

41 A. That's the only one. There were six others --

42  
43 MR HASTIE: I don't wish to pursue that. I was just going  
44 to really ask this, unless you feel --

45  
46 COMMISSIONER: I would like to hear what the Director says  
47 about --

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MR HASTIE: Sorry, Commissioner.

MS SWEET: I will pick it up if --

COMMISSIONER: We're at that point, so let's hear what the Director has to say about it.

WITNESS: The only point I was going to make, Commissioner, is that, as I understand it, authority was delegated to a community-controlled organisation in respect of contact and placement, and through that the delegated authority had placed formally the child back at home with the mother. That decision is separate to the decision to seek a revocation. So the delegated authority did not hold that delegation; that still sat and still sits with the Chief Executive. So in the matter was the interplay between those two decisions, where I don't think - clearly the delegated authority had formalised the placement with the mother, and then it was many months later that a referral was sent to my office seeking to revoke the matter. The decision to seek the revocation, although supported by the delegated authority and the family, was very much still sitting with the Chief Executive.

COMMISSIONER: Yes, I see. So where's the referral power in relation to applications for revocation?

A. If it's one sent to my office, Your Honour, it's set out in the Director of Child Protection Litigation Act.

COMMISSIONER: I see.

A. Your Honour, it's section 15 of the Director of Child Protection Litigation Act 2016.

COMMISSIONER: Yes, thank you.

A. And it places an obligation on the Chief Executive in 15(b), that is if a child protection order other than an interim child protection order is in force and the Chief Executive is satisfied the order is no longer appropriate and desirable for the child's protection they are to refer the matter to my office. So the data indicated there's been 78 of those matters over that three-year period. What I did not look at, Your Honour, in any detail was the other six revocation matters that were referred back, albeit with agreement.

COMMISSIONER: Yes, I see.

1 A. Then if I go to that, the particular matter that's  
2 been the focus of evidence, on my looking at the matter,  
3 the assessment of the Chief Executive was that the mother  
4 had addressed the child protection concerns and that she  
5 was able and willing. It's not a matter where in any way  
6 it was suggested that intervention was going to occur  
7 through an agreement or intervention could be ongoing, say,  
8 through a less intrusive order. It was simply the concerns  
9 had been addressed.

10  
11 COMMISSIONER: And I take it you weren't satisfied that  
12 was the case?

13 A. No, on review of my file yesterday I could clearly see  
14 that what I refer to as my applicant lawyer had raised  
15 concerns around some of the facts underpinning that  
16 assessment. It really went to really a lack of evidence in  
17 respect to ongoing police involvement, and also my summary  
18 is that that issue and also issues in respect to how the  
19 child's needs were being met through the support of an NDIS  
20 plan and also how their educational needs were being met.

21  
22 COMMISSIONER: Yes. Thank you.

23  
24 MR HASTIE: So, Mr Miller, do I take it from your evidence  
25 that you accept that the revocation of an order may be  
26 appropriate if there was a - if the child was in need of  
27 protection but there was a parental agreement entered into  
28 between the Chief Executive and the parent?

29 A. Yeah, and so - yeah, on the issue of revocation, so,  
30 you know, to say that the point that was raised has never  
31 been raised with me directly, I didn't appreciate there  
32 might be a different view taken, very happy to engage with  
33 the Chief Executive or the delegates around exactly what  
34 type of evidence we should be seeking to put forward in  
35 what type of matters. But if the assessment is the child  
36 is still in need of protection but that could be met  
37 through agreement --

38  
39 Q. Or another way?

40 A. -- or another way, yes - we would bring that  
41 revocation.

42  
43 Q. All right. That might either require some  
44 consideration being given to this section - in the way  
45 described it sounds as if it's been any number of times and  
46 it's made it more complicated rather than less?

47 A. Yes.

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Q. Or some other means, through the manual or something?  
A. Yeah, it could be myself giving more prescription in terms of the guidelines.

Q. All right. Now, can I just ask you another topic, and that is this question of service. The Act requires the Chief Executive to serve the initiating application and to tell the parents about it. Now, there would be, can we take it, some benefit in Child Safety being responsible for advising a parent of the implications of the order being sought?

A. Yes, and I think - look, that's an area that, as I understand, there was active consideration given to who would undertake the personal service of applications on the implementation of the model, and, really, the idea is that the child safety officer that knows the family is the one that's going to provide them with the application and talk them through it.

Q. The downside of that, though, is that the child safety officer - well, there's two downsides - instead of dealing with the family as a way of facilitating the relations between the family and the like, is placed in the position of serving a legal document which would have the effect ultimately of some order being made with respect to the children of the parents; that's clearly a downside in that approach, isn't it?

A. Look, yes, Mr Hastie, there's been - this is an issue that's been highlighted ever since I've practised in the area, that pre the current model the allocated child safety officer had the three hats they were wearing and they were charged with investigating and assessing, but also then litigating, whilst at the same time when they completed their assessment undertaking the therapeutic casework and wearing the three different hats. It's challenging and, yeah, it's difficult too in that we see - it's complicated by the fact that at times it's hard to locate parents, yeah.

Q. And that was the cause for some of the delay which you've mentioned?

A. It is, and we've had now there's been a number of directions given through the court that the courts then called upon me to engage process servers to try and serve parents, more so through identifying and locating them through social media, and that's really in response to the

1 policy position that Child Safety has that they won't seek  
2 to contact or serve parents through social media.

3  
4 Q. There's an obvious problem with both service by post  
5 and service by social media, and that is the possibility  
6 and real risk of the application coming to the notice of  
7 persons other than the parent; do you agree with that?

8 A. Yes. So in the instances that I can think of where  
9 I have engaged a process server it's through social media  
10 they're identifying parents and then using that information  
11 to then locate them at a physical address. So they're not  
12 in any way posting; they're just using various techniques  
13 to try and locate through searches that's then lead us to  
14 find parents.

15  
16 Q. I see. That's what you meant by social media, not --

17 A. Not --

18  
19 Q. Looking at social media rather than using it as a  
20 mechanism for service?

21 A. That's right, yeah.

22  
23 Q. All right. So you recognise that problem. It's also  
24 a problem with service by post or any time you don't serve  
25 the parent directly concerned?

26 A. M'hmm. And so, yeah, there are issues in respect of  
27 personal service and locating parents and the parents that  
28 are not in location. Then there's issues around the  
29 currency of the address that might be held by Child Safety  
30 with the Act. The Act provides after - there's a test, but  
31 provided you meet the test then you can serve a parent at  
32 the last known address on the system, which at times is  
33 many years old, and that material invariably turns back up  
34 at my office where the people who live there open it up and  
35 find my name and my address and it comes back to me. So  
36 there are issues, ongoing issues, with service.

37  
38 One of the things that I've done is that as part of my  
39 initial letter that I send out I invite the parties,  
40 knowing there are risks, to agree to have material served  
41 through email, at their email address, and we seek to try  
42 and validate that, but that's not without risks either.

43  
44 Q. And sometimes the email address just seems to go into  
45 cyberspace, make an error of the address or they change  
46 email address?

47 A. That's so. We'll have parents provide their address

1 at first mention and so on, but, yeah, it's not without  
2 problems either.

3  
4 Q. All right. So I just want to ask you this is a  
5 problem during the course of a hearing as well - sorry,  
6 after an application has been filed, not just an initiating  
7 application, I take it?

8 A. Yeah, through proceedings in terms of ongoing efforts  
9 it might be many months of efforts are made to try and  
10 locate a parent to serve, and then you do get to a point  
11 where you've been unable to effect service, and I've had to  
12 really set out a position through the Act as to what we  
13 then do and how the court can proceed in the absence of  
14 service.

15  
16 COMMISSIONER: What happens where, despite best  
17 endeavours, service can't be effected?

18 A. That we would put that before the court in evidence,  
19 Your Honour. I can provide to the Commission - I have set  
20 out a written legal basis as to then how we proceed, making  
21 reliance upon I think section 195 of the Act to proceed in  
22 the absence of service.

23  
24 COMMISSIONER: So it proceeds effectively undefended - it  
25 might be undefended in any case but is unserved?

26 A. Often, Your Honour, it will be one parent that's not  
27 been able to be served. But there is a - very much a real  
28 example of the efforts this takes, Your Honour, is a more  
29 recent appeal that was heard by Judge Rafter in the end of  
30 2025 that I undertook. It's a matter where there had been  
31 no contact with the mother after many, many months, no  
32 father identified, yet Child Safety were proactively  
33 contacted by a man identifying himself as the father and  
34 seeking to do a DNA test.

35  
36 The subject of that appeal was whether or not the court had  
37 the authority to order a DNA test for the purposes of  
38 establishing paternity. The court at first instance took  
39 the view it didn't have that power. I took that on appeal  
40 and it was found on appeal it did have the power through  
41 those case management rules. But all through that process  
42 we were unable to effect service on the mother. So that  
43 was a matter where the only person on appeal that was  
44 active was myself. There hadn't been a separate  
45 representative appointed, the mother had not been served,  
46 and we were seeking the authority to have the child go  
47 through a DNA test to establish paternity.

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COMMISSIONER: Even though the father or the person claiming to be the father volunteered to have that test?  
A. Yes, yes. So we had no authority, we didn't have the consent of the guardian for the child to go through the DNA test. So we were seeking that to be done through a court order in the absence of any other active party.

COMMISSIONER: In the circumstance where despite best endeavours no parent has been able to be served, is that not a case for the court to appoint a representative of the child to represent the child?  
A. And that's how that appeal was resolved. An error was found and it was remitted back. Rather than the court ordering the DNA on appeal, very much remit it back for a separate representative to be appointed to be almost the contradicter prior to then the application being considered again for the DNA test, whilst efforts were still ongoing to try and serve the mother, and that involved myself even engaging a process server numerous times to try and serve the mother.

COMMISSIONER: Perhaps you could just explain the circumstances in your experience where the court appoints a representative for the child?  
A. So, Your Honour, it's the court must have regard to whether to appoint a separate representative if a matter was contested, and then there's extra prescription provided through the rules, Your Honour, that if you give me a second I might be able to locate.

COMMISSIONER: So in any contested case the child is separately represented; is that what you're saying?  
A. The court must have regard, Your Honour, as to whether or not to appoint a separate representative.

COMMISSIONER: I see.  
A. And I just can't see in here, locate the exact rule, Your Honour.

COMMISSIONER: That's all right.  
A. But, look, there are - over the years this issue has been considered and looked at. We don't have something similar to, say, a Re K case that you have in the family law jurisdiction that sets out a number of criteria through case law that you would consider when seeking the appointment of an independent children's lawyer, because

1 what I would say is every one of these matters would meet  
2 the family law criteria as one of the key criteria in the  
3 family law jurisdiction is that there's allegations of  
4 child abuse or neglect. Well, that's all of these matters.

5  
6 In practice it seems - depending on the matter, but really  
7 it's after the case plan's been developed that if a matter  
8 is contested the court will consider the appointment of a  
9 separate representative, albeit there's always those  
10 matters where at the outset the court may order it,  
11 depending on the nature of the matter.

12  
13 COMMISSIONER: In your view, having regard to what you  
14 just said about the practice in the Family Court, Re K,  
15 should it be the case that in all child protection matters,  
16 unless good reason, I suppose, is shown to the contrary,  
17 that a separate and independent child's lawyer ought to be  
18 appointed?

19 A. Yes, Your Honour. And I probably gave this evidence  
20 in December by reference to my experience in the UK. In  
21 the UK every child has a lawyer assigned to them and every  
22 child then has a second social worker, a guardian, also  
23 appointed to them.

24  
25 COMMISSIONER: If such a separate lawyer were appointed,  
26 do you think that that might have the potential to  
27 streamline the court processes, enable perhaps acceleration  
28 of case conferences, the acceleration of the development of  
29 case plans, and potentially also the ongoing mediation of  
30 matters that can be resolved in the course of the court  
31 process that are presently not resolved as readily because  
32 of the absence of lawyers representing the child and/or the  
33 family's interests?

34 A. Your Honour, it may do. But, as with everything, it'd  
35 would be subject to resources. Currently we have matters  
36 where the court has appointed a separate representative,  
37 been allocated through Legal Aid Queensland as separate  
38 representatives that are well out of the region because  
39 there are issues in terms of recruitment and retaining  
40 numbers of separate representatives on their preferred  
41 supplier panel. So we will have separate representatives  
42 in the south-east taking matters in the north or far north  
43 because of capacity issues, I understand.

44  
45 And then separate to that, Your Honour, the real issue that  
46 would need to be considered is in practice often separate  
47 representatives will engage an independent expert to

1 prepare a social assessment report. That at the moment is  
2 another big driver of delays because there are few of these  
3 practitioners that undertake this work on behalf of the  
4 separate representative through grants of legal aid.

5  
6 COMMISSIONER: In the context of a child protection order  
7 or litigation what, as you understand it, is the position  
8 in relation to the availability of legal aid to fund the  
9 separate representative of the child and/or to fund the  
10 representation of the parents?

11 A. It's been some years since I've looked at the relevant  
12 guidelines. So Legal Aid Queensland no doubt will have put  
13 a submission in or will put a submission in about their  
14 guidelines around funding. I am not aware of any matter  
15 that Legal Aid Queensland has not allocated a separate  
16 representative that's been ordered. I've not heard of a  
17 matter - in all of my years at Legal Aid that had never  
18 occurred.

19  
20 Then in terms of funding for other parties it's very much a  
21 consideration of, firstly, means, whether they meet the  
22 means test, and then separate to that as the matter  
23 progresses through the proceeding there becomes a merit  
24 component of the funding. There are exceptions in terms of  
25 particularly vulnerable people may have their funding  
26 through hearing regardless of the merit.

27  
28 COMMISSIONER: On one view what's important is that there  
29 is a contending voice?

30 A. Yes.

31  
32 COMMISSIONER: So if there were a separate representative  
33 for the child then you would have a contradictor?

34 A. Yes.

35  
36 COMMISSIONER: And that may ameliorate the effects of not  
37 having a separate representative also for the parents if  
38 that's not available for whatever reason to do with  
39 resources. If the child's interests are represented  
40 separately, then the court would have a contradictor?

41 A. That's so, Your Honour. I undertook separate  
42 representative work for many years, and I've also - an  
43 accredited independent children's lawyer in the family  
44 jurisdiction, but, yeah, often in my experience prior to  
45 taking on this role I was in many matters the only other  
46 representative in the matter other than the department and  
47 in time of hearings Crown Law.

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COMMISSIONER: Yes. Thank you. Mr Hastie.

MR HASTIE: Thank you, Commissioner.

One thing I did want to ask you about, if you could go to your statement, page 35?

A. I've brought my own copy, Your Honour. I can find it --

Q. I'm happy for you to use your statement.

A. Thank you.

Q. Or your own copy. Just a short question about --

A. So which page, sorry?

Q. Sorry, it's page 35, it's paragraph 142 and it's table 7. The table sets out existing interventions in place for new matters you receive within a particular period of time?

A. Yes.

Q. And the ones I want to ask you about are all fairly simple except child protection order - so there's an existing child protection order in place. What sort of circumstances are we concerned with there? Is that when a short-term order has expired or there's a revocation being applied for or --

A. So this is the final entry in table 7?

Q. Yes, please.

A. Yeah, so that includes any matter where there's an existing child protection order in place and in force at the time I receive the matter, everything from the lowest level of order, being a directive that a parent do something or not do something, right through to a permanent care order.

Q. The question I was interested in is you describe them as "new matters"?

A. Yes.

Q. What's caused them to become new?

A. It's just a new child protection matter that's referred to me. So it's on point of me receiving the matter we capture what intervention is in place on that matter, and at the point the matter's been dealt with in

1 terms of the child protection matter my involvement ends.  
2 So it's really just a way of describing the number of  
3 matters, or, you know, rather than new - I may not have  
4 explained that well.

5  
6 Q. Well, it says "new" - that's why I'm asking the  
7 question - which suggests --

8 A. Yeah. So new matters in, yeah, so --

9

10 Q. Could it be new matters that have come in from the  
11 Chief Executive?

12 A. Yes.

13

14 Q. I'm just trying to - that's how I should read it?

15 A. Yes, it is, yes.

16

17 Q. What's caused them to come in?

18 A. Yeah, so --

19

20 Q. What sort of matters does it cover?

21 A. So within that last category it will be everything  
22 from revocation at the bottom through to revoke and vary or  
23 revoke and make another order or just we need another  
24 order, if that explains that.

25

26 Q. And what about short-term orders?

27 A. Yeah, so there'll be numbers of short-term orders  
28 included here, long-term orders. It includes every type of  
29 child protection order.

30

31 Q. That for some reason an order has already been made  
32 and then it's referred back to you from Child Safety?

33 A. Yeah. So if I take you to table 8 here on table 8 on  
34 page 38 I then give a breakdown of the types of order that  
35 are in force at the point we receive the new matter. So  
36 you'll see in the year of 2024/25 one of the matters we  
37 received was a child that was on a directive order other -  
38 so that would be to do with the parent doing something or  
39 not doing something - right through to two of the matters  
40 concern children that are on permanent care orders, that  
41 there would have been an assessment seeking some change to  
42 that, those orders.

43

44 And you'll see 213 of these matters were long-term  
45 guardianship to the Chief Executive, where it may have  
46 been - could have been a revocation or they were seeking a  
47 revoke and vary or a completely new order.

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Q. So in a sense you thought your work had been done, an order made, but it's come back to you for whatever reason?

A. Yes, and that fits - you can see that the overwhelming majority of these matters are kids that are on an existing order that grants custody of them to the Chief Executive. So, in the year 2024/25, 71.8 per cent of the matters concerned children who were on orders granting custody, and those orders, when you look at them, would be ending, they'd be near the end point of the order, and Child Safety will be seeking a further order.

Q. All right. Just one other aspect of your statement that I wanted to ask you about, and that's on page 57. It's table 26.

A. Yes.

Q. Now, you're no doubt aware of the principles upon which the Act is to apply and the hierarchy of preferences for how care is to be undertaken for a child. I wanted to ask you in that context that that would be something that your office would be conscious of?

A. Sorry, can you - probably give me more context --

Q. Well, you'd be conscious of the - if you've got the Act there, why don't we go to that.

COMMISSIONER: Is it section 5BA that you're going to?

MR HASTIE: That's one of them, yes, Commissioner.

There's obviously the paramountcy principle, but, as the Commissioner indicated, the area that I wanted to take you to is 5BA, and you need be conscious of 5C. But the one I wanted to ask you about was 5BA. The preferences are there set out in subsection (4) for permanency on how that's to be achieved?

A. Yes.

Q. And obviously adoption is not something that you in this context need to be concerned about?

A. But, yeah, very much - I think if your question was if we taking into account the child's living arrangements and their needs; is that the question?

Q. Yes.

A. Yes.

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Q. And where the evidence allows it, and not only the evidence, I suppose, but people in a position to, the preferences would be as expressed in there, leaving aside the family for the moment because they're - perhaps, but in any event the question I wanted to ask you about was guardianship in (b) and (d) of subsection (4)?

A. Yes.

Q. If we go then to your table 26, there was a significant number of orders for long-term guardianship to the Chief Executive?

A. Yes.

Q. In terms of long-term orders. Now, can we take it that your office would have been doing its best to see whether or not the orders that were made were consistent with the priorities set out in subsection (4)?

A. Yes.

Q. Are you able to give any evidence as to the difficulty of achieving, for instance, a greater percentage for long-term guardianship to, say, a suitable family member or a suitable other person?

A. Yeah, look, I probably referred to this in my evidence last year. One thing that needs to be considered is that I can't seek a long-term guardianship order to another suitable person and the court can't make that order unless the person's been nominated. So that's one of the - it's part of the context. Separate to that, I can seek and the court can make orders granting guardianship to suitable family members at times, even if that's not the assessment of Child Safety. But, really, it's the evidence about people's suitability which at times is not available or assessments have been done and there is nobody that's suitable. I'm not sure if I'm answering your question, Mr Hastie.

Q. You probably are, aren't you; there'd be occasions when there's no-one suitable?

A. And, look, I am aware that through proceedings we will have non-parties participate, they will seek party status, and at times the purpose of their engagement in a proceeding is to seek long-term guardianship to them and to seek through the court even under directions that suitability assessments occur in order - but still long-term guardianship to suitable family or suitable

1 others are happening at very low levels.

2

3 Q. It's just a hard thing to achieve; is that correct?

4 A. It can. Part of the - and I know there's evidence,  
5 I've heard evidence around the interplay between whether a  
6 child is Aboriginal and Torres Strait Islander and whether  
7 or not their carer identifies, whether they're going to be  
8 nominated. I mean, right now - I don't want to go into any  
9 details, but right now - I think it's still before the  
10 court - we have a current application that's been brought  
11 by a young person as the applicant seeking a variation in  
12 his long-term guardianship to the Chief Executive to his  
13 carers. Part of that is that - in order for the court to  
14 make that order Child Safety will need to consider that and  
15 whether or not they're going to nominate that person.

16

17 Q. Whether or not that person is suitable?

18 A. M'hmm. So we have --

19

20 COMMISSIONER: Is it the case, Director, that your office  
21 is subject in relation to the nomination and assessment as  
22 to suitability of a long-term guardian other than the Chief  
23 Executive upon the efforts, enquiries, investigations and  
24 assessments made by the department?

25 A. Yes, Your Honour, or in proceedings it might be that a  
26 family member can come forward and through their engagement  
27 with the process, separate to a formal assessment, the  
28 court can reach a decision that they're suitable. But, in  
29 answer, it's very much the starting point is dependent upon  
30 the assessment or lack of it from Child Safety.

31

32 COMMISSIONER: So when you're called upon to determine  
33 what long-term order should be sought, and having regard to  
34 the priorities set out in subsection (4) of section 5BA, do  
35 you ask the department to explain to you what it is they've  
36 done to try first to satisfy the permanency principle in  
37 the order of priority the Act requires before making an  
38 application for long-term guardianship to the Chief  
39 Executive?

40 A. Yeah, so there would be - that would be and is  
41 something that my applicant lawyers very much focus on,  
42 very much seek information from Child Safety about, what  
43 has been undertaken in terms of identifying family,  
44 identifying other suitable people, what assessments have  
45 been undertaken and what the outcome of that is. What you  
46 do see at times, though, is that that work has not been  
47 undertaken during the short-term order.

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COMMISSIONER: Which can extend for a period of two years?  
A. Yes, Your Honour.

COMMISSIONER: So throughout the two-year period work hasn't been done to find out if --  
A. To progress really with a parallel plan as to if we don't get this child home to a parent or parents then we're going to need to then seek an order that provides permanency.

COMMISSIONER: Isn't the question allied to the endeavours made to reunify the child, and the Act - I just can't remember precisely now where it's referred to, but there have to be real efforts made to reunify the child before a permanent order can or should be sought; is that not the case?

A. What I would say, Your Honour, in relation to that is there is a provision of the Act - so I'm looking at section 73(2) - that talks about the Chief Executive needing to take steps that are reasonable and practical to help the child's family meet the child's protection and care needs. That's one part of the Act. Then separate to that as part of the principles in respect of Aboriginal and Torres Strait Islander children there's reference made to active efforts.

COMMISSIONER: That's the provision I was looking for. It's section 5C somewhere --  
A. It's in section 5F(6) where it's defined, and there's reference made to it in section 5F. But there is no just clear provision applying to all matters requiring reasonable efforts I think in a way you're suggesting, Your Honour, or that the court needs to make those findings. That's not part of - prescribed by section 59. But in the context of the overarching principles of the Act it sets out like a framework for approaching this in the general principles that, look, family's got primary responsibility - I'm looking at section 5B(b) - and the preferred way under subsection (c) is that we're going to - the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family, and then you get down to - it's only where in (f), 5B(f), if a child is removed from their family, support should be given to the child and the child's family with the purpose of allowing the child to return to the child's family if that return is in their best interests. But there's not -

1 I know that was the subject of the previous inquiry, the  
2 Carmody Inquiry, and whether there needed to be - a  
3 recommendation need to be whether that "reasonable efforts"  
4 needed to be inserted into the Act, and that hasn't  
5 occurred.

6  
7 COMMISSIONER: Taking the context of Aboriginal and Torres  
8 Strait Islander children --

9 A. Yes.

10  
11 COMMISSIONER: -- and particularly in the context of  
12 section 5F(2) - subsection (2):

13  
14 *When making a significant decision about an*  
15 *Aboriginal or Torres Strait Islander child,*  
16 *a relevant authority must make active*  
17 *efforts to apply the Aboriginal and Torres*  
18 *Strait Islander child placement principle*  
19 *in relation to the child...*

20  
21 Now, what's the relevant authority there? Oh, it's the  
22 Chief Executive. Of course.

23 A. It's defined. It's --

24  
25 COMMISSIONER: And the Litigation Director, and an  
26 authorised officer. So everybody?

27 A. Yes.

28  
29 COMMISSIONER: Now, my proposition is this: if the  
30 department - because in practical terms this obligation has  
31 to be discharged by the department - makes those active  
32 efforts, then one would expect that if they are made and if  
33 there were a person - just coming back to the hierarchy of  
34 the placement principles or the permanency principle in  
35 section 5AB, that if there was another person other than  
36 the Chief Executive such a person should be revealed in the  
37 process of taking those active steps or making those active  
38 efforts?

39 A. Yes.

40  
41 COMMISSIONER: So the one action would be involved, that  
42 is to say the making of active efforts to find another  
43 person, and, if they were made and if it were possible in  
44 the circumstances to identify such a person, that one  
45 effort would be - or course of action would satisfy both  
46 section 5F and lead if possible in the circumstances to the  
47 satisfaction of the hierarchy in section 5BA?

1 A. Yes.

2

3 COMMISSIONER: And in your experience are those active  
4 efforts made by the department?

5 A. Your Honour, it would be matter dependent and location  
6 dependent. I know that Child Safety have finding kin teams  
7 or in some locations they outsource the finding and mapping  
8 of kin to a community-controlled agency, and when we get  
9 those reports they're very helpful. But it's really matter  
10 dependent, and what we're able to evidence in material,  
11 there are other matters where there's not a lot of material  
12 around that's happened, there's not a lot of evidence of  
13 active efforts.

14

15 COMMISSIONER: All right. Thank you. Mr Hastie.

16

17 MR HASTIE: In relation to this I might have asked you  
18 about blue card, but - so to the extent we had a - the  
19 question about whether or not a blue card was required for  
20 a suitable person, there's nothing that suggests that, and,  
21 as you said, they required for a person who's been placed  
22 in the position of a carer but the assessment of a suitable  
23 person is independent of that?

24 A. Yes. I would say it all depends upon whether you have  
25 a carer that's going through the process of being  
26 nominated, there is an element there of blue card, separate  
27 to the court being satisfied of a family member as being  
28 suitable where they or perhaps somebody that might spend  
29 the requisite amount of time in their house each fortnight  
30 doesn't have a blue card or has a negative - the court has  
31 more flexibility in terms of considering suitability of  
32 family members. Whilst having regard to any recommendation  
33 made or evidence of the blue card, there is not that  
34 restriction there.

35

36 Q. It might be difficult in those circumstances for a  
37 person to be nominated as a suitable person if they didn't  
38 have a blue card --

39 A. That's so, that --

40

41 Q. -- or they had a negative blue card --

42 A. That's it, and so Child Safety under the current  
43 regime, and I know there's work being done, I understand,  
44 that impacts on their ability to even place the child with  
45 somebody they're considering as suitable.

46

47 Q. Just one final topic. The recommendation in the

1 Carmody report for the establishment of OCFOS and the  
2 Director's office was driven by considerations and  
3 criticisms which - you'd probably be aware of the  
4 criticisms and no doubt might have experienced the issue  
5 yourself of sometimes poor quality material being submitted  
6 to the court in applications for protection orders?

7 A. M'hmm, and even at times unclear as to who made what  
8 decision and when. Yeah.

9  
10 Q. And that there was - it would seem there was a lack of  
11 lawyers involved in general from the applicant's side;  
12 that's correct?

13 A. Yes, up until the contested final hearing. From my  
14 experience there were some matters - it would be less than  
15 a handful - because of the nature of them and the  
16 complexity of an interim hearing Crown Law may have been  
17 briefed, but on the whole it was week or weeks before a  
18 final hearing that Crown Law would be engaged.

19  
20 Q. And the affidavits that were prepared, or in those  
21 days it was statements, wasn't it, seemed to be with little  
22 understanding of some of the normal rules of - even if not  
23 strict rules of evidence or what was necessary for a court  
24 proceeding?

25 A. At least under the Child Protection Act it's been -  
26 the current Act it's been affidavits, but prior to the  
27 change the affidavits then could and at times would just be  
28 voluminous as well. But there was no clear process even in  
29 terms of applications. You would have the child safety  
30 officer would copy the summary of their narrative affidavit  
31 into the application and that was the application, and then  
32 through the proceeding if they changed their assessment as  
33 to what type of order or orders they sought appropriate  
34 that would just be set out at a random paragraph in a  
35 random affidavit. So you'd start reading the matter, then  
36 you'd get seven or eight affidavits in to paragraph 50 and  
37 suddenly, "Oh, hang on, we're talking about a completely  
38 different type of matter now." Yeah.

39  
40 Q. So that system, such as we can call it, or practice,  
41 that's all changed significantly since 2016, hasn't it?

42 A. Yes, it has, yeah.

43  
44 Q. That's in a sense because you've now got a greater  
45 involvement, I suppose like the rest of society and  
46 government, with lawyers involved in the process; would  
47 that be correct?

1 A. Yes. From my experience pre the model ahead of  
2 the hearing I'd have to set out my own - I'd make a list of  
3 all the information I had. I would then send that to Child  
4 Safety. Invariably it would result in me getting more  
5 affidavits that I didn't have, and then on the morning of  
6 the court again doing a triangulation as to who's got what  
7 material and further copies needing to be made. Yeah, it  
8 was such as it was then.

9  
10 Q. All right. So in one sense looking at it as  
11 objectively as you can - that might be a hard ask - whether  
12 or not you had one or two offices, OCFOS and the Director's  
13 office, it's the participation of the lawyers on the  
14 applicant's side which has made a significant difference to  
15 the way in which the applications are made; do you agree  
16 with that?

17 A. Yes, I do.

18  
19 Q. And it's said by some that that has increased the  
20 adversarial process. Do you have any view about that?

21 A. Yeah, I know that has been said, but it's an  
22 adversarial area. Children - look, it's the most  
23 fundamental intervention in terms of human rights that the  
24 State can take. Children are being removed from their  
25 families.

26  
27 Q. So it's a matter of finding ways that would reduce  
28 that by early --

29 A. Early advice and earlier assistance.

30  
31 Q. And early resolution if you can?

32 A. Yeah, and very early trying to articulate what it is  
33 that you want the family to do to address the concerns.

34  
35 Q. All right. The other criticism that's made is that -  
36 regardless probably of which system you have in terms of  
37 Director's - in terms of offices, is that the  
38 evidence-gathering process has lengthened, but rather  
39 than - and child safety officers spending less time with  
40 working with families. But if some of the - is it your -  
41 would you accept that as a possible criticism?

42 A. I know that's a criticism that's made, but this has  
43 always been the tension in the model and I think - I've  
44 made a note here in my statement, and I think I referred to  
45 it in December, that Child Safety put before Carmody, the  
46 Carmody Inquiry, what was referred to as a workload  
47 analysis project that they had undertaken in 2008, and at

1 that point in time that analysis was showing that  
2 47 per cent of the total work undertaken by the child  
3 safety officers at that point in time was focused on  
4 seeking child protection orders. It's been a consistent  
5 criticism made that there's this focus on gathering  
6 evidence.

7  
8 One of the great advancements that has been made in recent  
9 times is Child Safety working with the Queensland Police to  
10 make it more streamlined, where now through, subject to  
11 certain controls, they're able to access a person's  
12 criminal and domestic violence history through a portal.  
13 So they're not needing to make voluminous requests under  
14 section 159 for forms. It's a process where, provided that  
15 it's a senior team leader, I understand, it's quite quick  
16 in order to obtain a current criminal history of somebody  
17 they're worried about.

18  
19 Q. All right. If some of the efforts or some of the  
20 possibilities that we've discussed or you've given evidence  
21 about to have reduced material provided to the court and to  
22 have early resolution or conciliation conferences would no  
23 doubt assist in reducing --

24 A. Yeah, and it's really trying to utilise what the child  
25 safety officers are doing day to day in their job,  
26 utilising that work and how they're documenting that work,  
27 not for the purpose of court, but making that as easy as  
28 possible then to be incorporated into their current  
29 assessment where there's been some substantive change. So  
30 really the lack of the current report template for them to  
31 use to map out their assessment or to set it out, I should  
32 use that language, in their mind the fact that they're  
33 needing to set out their assessment by way of a narrative  
34 affidavit, for them it's court work and it's like, "Well,  
35 we need to give you another way to manage your assessment  
36 in your system," just as good practice.

37  
38 Q. Just cut out the affidavit?

39 A. Yeah, give them something that just assists them to  
40 capture the work they are doing.

41  
42 COMMISSIONER: Can I ask you in relation to that, as  
43 I understand it, the way in which the department organises  
44 itself into divisions there is, for want of a better  
45 description, a division called intake and assessment and,  
46 again as I understand it, it is the work of that division  
47 to respond to notifications, make an assessment, which may

1 or may not lead to action presently undertaken by OCFOS,  
2 and then the next step, if required, is for a referral to  
3 your office. At that point in time internally within the  
4 department the ongoing intervention team takes over. So at  
5 least at the initial stage it is germane to the work of the  
6 child safety officer to make an assessment of the risk and  
7 whether that risk requires action of some kind.

8  
9 In terms of your suggested streamlining of the process, on  
10 the assumption that the department continues to be  
11 organised in the way that it presently is, this document  
12 that you have in mind being created as part and parcel of  
13 the daily work of the CSO could be handed over or  
14 accessible to the incoming child safety officer who is  
15 involved in the ongoing intervention --

16 A. Yes. Yeah, it's really that ongoing --

17  
18 COMMISSIONER: -- rather than starting again?

19 A. That's right. It's providing the ongoing intervention  
20 workers with a way to manage their assessment. They're the  
21 matters that you see have - they have the most challenges  
22 in terms of setting out because they haven't come through  
23 the regional intake service allocated to an investigation  
24 team, and that's what they do, they investigate and they  
25 make assessments. It's then when it's handed over there's  
26 no formal way other than through the case planning process,  
27 case plan, review report, of managing your assessment. And  
28 so for the half of the matters we have or there will be a  
29 particular percentage where they're children the subject of  
30 ongoing intervention and then every matter we file, even if  
31 they come through that initial phase, will get to a point  
32 where the assessment will change.

33  
34 COMMISSIONER: Yes. And when one looks at the role of the  
35 CSOs in the intake and assessment stage or division they  
36 are not conflicted in the same way in terms of prioritising  
37 their role as between building the relationships with  
38 the family and the child concerned in the same way that  
39 that conflict presents itself to those engaged in the  
40 ongoing intervention division of the department.

41 A. Yes.

42  
43 COMMISSIONER: So the problems that are identified in  
44 terms of the opportunity costs that it imposes on child  
45 safety officers should be understood, I think, as applying  
46 more acutely to the ongoing intervention division of the  
47 department.

1 A. Yes.

2

3 COMMISSIONER: And so that's what your suggested changes  
4 to the process are more directly aimed at; is that right?

5 A. That's right. And that was the initial focus. It's  
6 got to be something that's consistent with the current  
7 initial assessment that's undertaken by the specialist  
8 teams.

9

10 COMMISSIONER: Of course. Is that a convenient --

11

12 MR HASTIE: They are my questions anyway, Commissioner.  
13 It's probably a convenient time.

14

15 COMMISSIONER: It is a convenient time, Mr Hastie. Thank  
16 you very much. We'll adjourn until 2.15.

17

18 **LUNCHEON ADJOURNMENT** [1.03 pm]

19

20 **<EXAMINATION BY MS SWEET** [2.17 pm]

21

22 MS SWEET: Yes, thank you, Your Honour. I just have a  
23 couple of questions for this witness. Can I also indicate  
24 I have spoken to my learned friends and their estimates  
25 provide me with great hope that we will be able to complete  
26 the Director's evidence today.

27

28 COMMISSIONER: Excellent.

29

30 MS SWEET: I'm going to start with just handing to the  
31 Director a statement that he made on 2 December in response  
32 to a notice to produce.

33

34 COMMISSIONER: Thank you.

35

36 MS SWEET: Do you recognise that as a statement of yours,  
37 four pages long, with the date 2 December 2025?

38 A. Yes, I do.

39

40 Q. Yes. And are you satisfied that is true and correct?

41 A. I am.

42

43 MS SWEET: Yes. I tender that, Your Honour.

44

45 COMMISSIONER: Thank you. Statement of the Director will  
46 be exhibit CA-54

47

1           **EXHIBIT #CA-54 - STATEMENT OF THE DIRECTOR**

2  
3           MS SWEET:   Thank you, Your Honour.  Now, the second issue  
4           I wish to take the Director to is a document that was  
5           recently provided in response I think to that notice to  
6           produce.  I've handed a copy to the Director.  Can I hand  
7           one now up to Your Honour, and my learned friends all have  
8           a copy.  It is a document entitled "Support Coordination  
9           Progress Report".

10  
11          COMMISSIONER:   That document will be CA-55

12  
13          **EXHIBIT #CA-55 - DOCUMENT ENTITLED "SUPPORT COORDINATION**  
14          **PROGRESS REPORT"**

15  
16          MS SWEET:   Now, Director, it's correct to say this  
17          document was produced by you to the Commission in respect  
18          of the specific revocation matter that has been the subject  
19          of evidence this week?

20          A.    Yes.

21  
22          Q.    Yes.  And this is a report, is it, made in respect of  
23          that young person; we see the participant name on page 2?

24          A.    Yes.

25  
26          Q.    And it is a report by a particular provider which is  
27          the delegated authority who was given powers in respect of  
28          that young person?

29          A.    Yes.

30  
31          Q.    Yes.  And can you tell His Honour in what way this  
32          document was responsive to the request for information  
33          about that revocation proceeding?

34          A.    Look, I located this document yesterday.

35  
36          Q.    Yes.

37          A.    I had responded to a notice seeking all documentation  
38          about this matter.  Then in preparation for today I then -  
39          it must have been on Tuesday evening I had read through the  
40          material that was on our file that I provided to the  
41          Commission and noted in some of the correspondence between  
42          my office and my lawyers and Child Safety there was  
43          reference to a further draft of an affidavit and also to  
44          two other documents, one of which we already had in our  
45          file but this document wasn't in our file.  So I obtained  
46          it through a portal in the Child Safety's Unify system  
47          I think it was yesterday morning.  And --

1  
2 Q. Yes. Sorry, go on, Director.  
3 A. Now, what it seems to me, although it's undated --  
4  
5 Q. Sorry, it's un?  
6 A. On review of it yesterday morning I couldn't find a  
7 date on the document. But, when I looked at the contents  
8 of it, it seems to have been created by the representative  
9 of the delegated authority as a - I'm assuming as almost  
10 like a progress report back to the NDIS or the NDIA about  
11 the NDIS plan.  
12  
13 Q. Yes.  
14 A. But I wasn't able to - but there's no date. I can't  
15 date when it was created.  
16  
17 Q. That's fine. Yes.  
18 A. But it has a plan end date and a plan start date. But  
19 at what point this progress report was completed is not  
20 clear. But I think, from my review of it, the contents  
21 suggest that it was completed after the child had been  
22 placed back home with his mother by the delegated  
23 authority.  
24  
25 Q. Yes. And you'll see under "Participant goals" there  
26 are goals that the participant is said to have --  
27 A. Yes.  
28  
29 Q. -- like "to support my independence when I'm at school  
30 and in community to increase my participation in  
31 education". The participant is said to rate how he feels  
32 the progress is, and the support coordinator comments which  
33 tends to suggest, am I correct, is this your reading, that  
34 there has been at times minimum engagement with the  
35 authority and minimum engagement with schools and  
36 difficulty contacting the child?  
37 A. Yes. So what I took from this document, and it then  
38 corresponded with comments I saw that my lawyer had made,  
39 was there being a lack of evidence around really the  
40 child's engagement and, through the child, the family's  
41 engagement with the NDIS plan in terms of addressing the  
42 issues that the plan was meant to help him with.  
43  
44 Q. And because this is a report of the delegated  
45 authority is your reading that the delegated authority's  
46 having difficulty engaging the young person?  
47 A. Yes, if you --

1  
2 COMMISSIONER: Is it a report of the delegated authority?  
3 It's emblazoned with NDIS on it.  
4 A. Sorry, Your Honour?  
5  
6 COMMISSIONER: The document has the logo of the NDIS on  
7 it.  
8 A. Yes, Your Honour. I take it --  
9  
10 COMMISSIONER: Whose report is it, do you know?  
11 A. If you look at page 2, Your Honour, the person  
12 providing the service I read it as on behalf or brokering  
13 the service on behalf of the NDIA through the NDIS appears  
14 on page 2 as the delegated authority in the middle table.  
15  
16 COMMISSIONER: Yes, I see that. But they do so on  
17 stationery with the NDIS logo?  
18 A. Yes, I think it's probably an attempt to have some  
19 sort of standard reporting template back to them on the  
20 progress of the matter.  
21  
22 COMMISSIONER: I see; yes.  
23 A. Back to the question, I know when I read through this  
24 matter - for instance, there's a goal here around - I'm  
25 looking at page 4, "I would like support from allied health  
26 professionals to develop my skills with managing my  
27 emotional regulation behaviours." That's got a number 3 on  
28 it. And in terms of progress towards those goals it's  
29 entered here with a number 1, "No real progress for them."  
30 And then there's a bit of narrative in the third column  
31 that the child advised that he didn't want to work with any  
32 allied health specialist, even with other support providers  
33 encouraging and wanted this to happen.  
34  
35 MS SWEET: Yes.  
36 A. And that, "The support coordinator would continue to  
37 try and engage the child. However, he has shown little  
38 interest in using the NDIS supports."  
39  
40 Q. So is it your reading that the third column rather  
41 suggests that the first column's goal is really a goal that  
42 other people have for the child but not the child's actual  
43 goal for himself?  
44 A. I read this as that goal as perhaps being developed in  
45 consultation with the child and whoever set up the plan.  
46 But very clearly at the point that this report has been  
47 completed in terms of progress it's showing that that's now

1 no longer a goal for the young person, the child.

2

3 Q. Yes. And, despite what looks like serious attempts to  
4 engage the child, to contact the child and to work with  
5 the child, there's just been significant difficulties in  
6 being able to achieve those matters?

7 A. Yes. And then if I refer you to page 5.

8

9 Q. Yes.

10 A. There's a box that's headed, "Celebrations,  
11 achievements or progress," and refers to the support  
12 coordinator, which was the person from the delegated  
13 authority, I understand was their title, provided details.  
14 They refer to meeting with the child and the family in  
15 December of '24 where the family plan was created and,  
16 since that meeting, the support coordinator's been unable  
17 to complete risk assessments and support for the child.  
18 "However, the child moves between family homes. Engaging  
19 him directly has been difficult. There have been numerous  
20 meetings around how to progress support for the child.  
21 However, there's been minimal options to progress with any  
22 of the supports." It goes on to say, "It's been difficult  
23 to maintain regular contact with the child as he goes to  
24 other family members for periods of time where they are  
25 located away from the family home, and only in the last few  
26 weeks the support coordinator's had direct contact with  
27 the child and again attempted to encourage him to utilise  
28 the supports. However, his response was he'd think about  
29 it."

30

31 COMMISSIONER: Director, do you infer that the information  
32 contained within this document was available to your staff  
33 member at the time consideration was being given to whether  
34 the order should be revoked --

35 A. Yes.

36

37 COMMISSIONER: -- even though there wasn't a copy of  
38 the document, as I understood your evidence, on the file?

39 A. That's so. It was only reading through the emails  
40 there was a clear email from an OCFOS legal officer that  
41 stated that they had placed an updated version of the  
42 affidavit, draft affidavit, and two documents into their  
43 Unify portal, and then further in the email chain on  
44 looking at this, but then I think from memory my lawyer  
45 then said they would need a further consult to discuss the  
46 contents of the updating draft and these two documents.

47

1 MS SWEET: And just finally, Director, if one looks at  
2 page 3, goal 2?

3 A. Yes.

4

5 Q. "Increase my participation in education." The initial  
6 family meeting, which we looked at, was at December '24.  
7 So there's a meeting with the child and the mother. The  
8 child was enrolled in a particular school. Engagement at  
9 the school has been minimal for the child.

10 A. That's so. Without dating when this plan was  
11 completed, but I can say it was uploaded to the Unify  
12 system I think on 6 June, when I looked at the matter this  
13 young person hadn't been engaged in schooling in any  
14 consistent way for at least a couple of years, and there  
15 seemed to be a lot of goodwill at a family meeting in  
16 December of 2024 that led to the child being re-enrolled or  
17 enrolled in the school that's mentioned on the bottom right  
18 of page 3. But it seems even that that hadn't managed to  
19 result in the child being engaged again with school.

20

21 COMMISSIONER: Uploaded on 6 June 2025?

22 A. Sorry, 6 June 2025, Your Honour.

23

24 COMMISSIONER: That's all right.

25 A. That's my recollection of the date.

26

27 MS SWEET: And the evidence of the I think OCFOS Principal  
28 Lawyer was that she was not aware of any referral back to  
29 your office in respect of revocation of the orders. Is  
30 that consistent with your record?

31 A. That's my - consistent. I think Ms Martin gave the  
32 evidence that she didn't seek to internally review this  
33 matter, and no further information has been received.  
34 There's been no new child protection matter referred to my  
35 office about this matter.

36

37 MS SWEET: Thank you, Director. Your Honour, those are my  
38 questions.

39

40 COMMISSIONER: Thank you. Yes.

41

42 MS GREENWOOD: Thank you, Commissioner.

43

44 COMMISSIONER: Thank you

45

46 <EXAMINATION BY MS GREENWOOD

[2.30 pm]

47

1 MS GREENWOOD: Director, at table 14 at paragraph 183 of  
2 your statement, which is now CA-54 --  
3 A. Sorry, what table was that again?  
4  
5 Q. Table 14.  
6 A. Yes.  
7  
8 Q. You refer to the number of times that DCPL has to  
9 request further evidence or information --  
10 A. Yes.  
11  
12 Q. -- in over 73 per cent of matters?  
13 A. Yes.  
14  
15 Q. And this number is growing?  
16 A. Yes. Well, I agree the table suggests. You can see  
17 across the three-year period it's increased in both number  
18 and percentage.  
19  
20 Q. You have already spoken towards things that can work  
21 to improve the material that gets put before the court.  
22 Well --  
23 A. I can give even a concrete example that would be  
24 familiar to this revocation matter, that even on my review  
25 of the matter Tuesday and then yesterday there were  
26 proposed exhibits such as the earlier child protection  
27 orders that were never provided to my office. So these are  
28 the sorts of things we're going back and saying, "Well, you  
29 mention in an earlier child protection order or two earlier  
30 orders that haven't been - can you please upload those, can  
31 you provide us this?" It can be quite broad in the sorts  
32 of information we're seeking.  
33  
34 Q. And is it fair criticism to say, reflecting our  
35 experience of the emergent orders, that there's often a lot  
36 of narrative and assertions but it takes a while to drill  
37 down to the actual particulars of what it is that --  
38 A. Yes, and again I refer you to that example I just  
39 gave. In trying to understand the history of this matter  
40 cross-referencing with a document that was provided, which  
41 is often referred to as a departmental child protection  
42 history table, it was even hard to actually discern from  
43 the table exactly what date what order was made and what  
44 date it was ending. And, without seeing the source orders,  
45 it's hard to understand exactly what has occurred.  
46  
47 Q. And that makes your life very difficult and also for

1 the respondent's.  
2 A. And even in the draft affidavit there was no clarity  
3 when I read through to try to understand at what point what  
4 order was made when, and there seemed to be gaps. Yeah, so  
5 you couldn't discern that from the narrative draft  
6 affidavit at the point it was.

7  
8 Q. And it's fair to say, isn't it, that sometimes  
9 organisations who are told that there's no rules of  
10 evidence tend to respond as if there's no rules at all?

11 A. Yes. Look, the Act provides the court with  
12 flexibility in terms of the rules of evidence, but it  
13 shouldn't mean we divert from them unless there's good  
14 reason. And there's some appellant authority around,  
15 although the Act provides that flexibility, there are real  
16 limitations on it.

17  
18 Q. If I may show you a fairly fundamental case.  
19 Commissioner, this is the War Pensions Entitlement Appeal  
20 Tribunal against another ex parte - sorry, The King v The  
21 War Pensions Entitlement Appeal Tribunal and Another Ex  
22 Parte Bott, a decision of the High Court of Australia  
23 (1933) 50 CLR 228 at 256. And if I can basically take you  
24 to the second last page of that, page 256. Halfway down is  
25 a statement of principle when they talk about a tribunal  
26 not being bound by any rules of evidence:

27  
28 *But this does not mean that all rules of*  
29 *evidence may be ignored as of no account.*  
30 *After all, they represent the attempt made,*  
31 *through many generations, to evolve a*  
32 *method of inquiry best calculated to*  
33 *prevent error and elicit truth. No tribunal*  
34 *can, without grave danger of injustice, set*  
35 *them on one side and resort to methods of*  
36 *inquiry which necessarily advantage one*  
37 *party and necessarily disadvantage the*  
38 *opposing party.*

39  
40 And then a little bit further:

41  
42 *Every attempt must be made to administer*  
43 *substantial justice.*

44 A. Yes.

45  
46 Q. Those, in your views, are still the important guiding  
47 principles?

1 A. Yes, and I'm sure this is referenced in a couple of  
2 the child protection appeal authorities, this passage  
3 you're referring to.

4  
5 MS GREENWOOD: Commissioner, just for convenience, I know  
6 it's a decision, but if I may tender it.

7  
8 COMMISSIONER: It's convenient. The decision will be  
9 exhibit AT-10.

10  
11 **EXHIBIT #AT-10 - THE KING V THE WAR PENSIONS ENTITLEMENT**  
12 **APPEAL TRIBUNAL AND ANOTHER EX PARTE BOTT, (1933) 50 CLR**  
13 **228**

14  
15 MS GREENWOOD: And ultimately I'm going to ask you a  
16 number of questions about the bifurcation model, and from  
17 the perspective I represent ATSILS. And this is more -  
18 this is in relation to the emergent orders often being the  
19 first reality tester of a lot of allegations as they come  
20 along. We've heard a lot about the instructional model  
21 that OCFOS uses. Can you explain to us how that's any  
22 different from the standard government lawyer model?

23  
24 COMMISSIONER: Well, just to be fair to this witness, as  
25 I understand that model it is a model that operates intra  
26 the department and its relationship with OCFOS. To the  
27 extent, Director, that you feel you're able based on your  
28 own knowledge or perhaps what you've been told by an  
29 authoritative source to answer that question, please do.  
30 But, if you can't, please indicate.

31  
32 MS GREENWOOD: Commissioner, I do ask the question because  
33 there was a passing reference by the witness at page 3481  
34 from the December hearing,

35  
36 COMMISSIONER: Certainly.

37 A. And whether that was my own evidence, yes,  
38 I understand it's a model where individual senior team  
39 leaders can retain OCFOS for legal advice on matters. So  
40 I understand they're obtaining instructions from team  
41 leaders. Without instructions, they're not engaged.

42  
43 MS GREENWOOD: Right. So that's just a selective model.  
44 Okay. That's makes more sense.

45 A. That's my understanding of it, for instance, in  
46 matters where we may need an issue dealt with or there are  
47 matters that - where it comes up is there is a temporary

1 custody order that my office receives. If a matter's  
2 referred, say, today, now, where a child's on a temporary  
3 custody order that ends today, it puts us in the situation  
4 that we need to consider the brief, all of the material,  
5 make an application and lodge it by 4.30 today. So in that  
6 situation we would then seek the Chief Executive to  
7 consider bringing an application to extend the temporary  
8 custody order. What happens in practice is the OCFOS  
9 officer that my lawyer is dealing with then heads off to  
10 find a team leader to give them instructions about that  
11 point.  
12

13 Q. That sounds somewhat cumbersome. Is there a better  
14 way of doing it?

15 A. One of the things I think should need to be considered  
16 or the Commission will no doubt consider what's referred to  
17 as the bifurcation. In any event in the current model as  
18 it is where I represent the State, I'm seized of the  
19 matter, I should be empowered to seek a temporary custody  
20 order or to extend it or, you know, where the other issue  
21 will come up at times is if, say, a child's removed from  
22 their carer and a warrant is called for, we will need to  
23 seek a team leader to give those instructions to OCFOS to  
24 then seek a warrant. It's something that we can't do  
25 ourselves.  
26

27 Q. And this possibly leads on to my next question talking  
28 about this bifurcation model. It's possible that while  
29 your office is seized of an application for an interim or  
30 final order the Chief Executive could be seeking emergent  
31 orders?

32 A. Yes, and that happens rarely but it does happen. It  
33 might be an emergent situation on a weekend or, yeah, it  
34 could be during business hours, yeah, an emergent order may  
35 be sought.  
36

37 Q. Would it make more sense for your office to have  
38 oversight of everything to do around that matter that  
39 you're seized of?

40 A. Yes, if I'm seized of the matter I should be able to  
41 seek any orders that are necessary. So at times in  
42 substantive proceedings the court will make reference to  
43 the rules of service and not be prepared to dispense with  
44 the three-day service of seeking a matter to be relisted  
45 but will make reference to the fact that there are emergent  
46 powers available under the Act; it's just that I can't  
47 access those.

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Q. Those in the emergent applications and for the more long-term and especially in that sort of situation I mentioned just then should there be more consideration of the impact that a removal of a child - impact on the child that a removal would have?

A. Yes, and I think I touched on this in my evidence last year around what consideration or what the Act requires in terms of considering the impact on the child of the removal. There should be very much consideration of that.

Q. You would be familiar with - and tell me if you're not - a matter in Mount Isa, the Department of Children, Youth Justice and Multicultural Affairs v Natalie Ward, a pseudonym, 2022, Queensland's Childrens Court?

A. Yes, is this the matter that concerned a young person that the plan was to have them placed with family in community; is that this matter - or maybe if you want me to have a look at it.

MS GREENWOOD: Yes. And maybe, Commissioner - Commissioner, I think I handed this up last year but it never went into the exhibits.

COMMISSIONER: All right.

MS GREENWOOD: So if I may seek --

COMMISSIONER: It would be good to have it again. Do you want to --

MS GREENWOOD: I think it's cleaner and neater if I --

COMMISSIONER: Should you tender it as AT-11?

MS GREENWOOD: Yes, thank you, Commissioner.

**EXHIBIT #AT-11 - DEPARTMENT OF CHILDREN, YOUTH JUSTICE AND MULTICULTURAL AFFAIRS v NATALIE WARD (A PSEUDONYM) [2022] QChCM 4**

WITNESS: Yes, I may have made reference to this in my evidence last year.

MS GREENWOOD: You could well have.

A. I'm fairly certain. If I didn't, I'd refer you to

1 references to the affidavit of Dr Megan Crawford from  
2 paragraph 26 on page 8 where at paragraph 30 on page 9 it  
3 says:

4  
5 *Ultimately Dr Crawford acknowledged that*  
6 *the removal causes trauma for children but*  
7 *did not assist me to understand the lack of*  
8 *consequences of that trauma.*

9  
10 And then he inferred, the magistrate, in any event that:

11  
12 *Any evidence on this point could only be*  
13 *general in nature and responses to removal*  
14 *and placement on children would be highly*  
15 *individualised.*

16  
17 So, yeah, the magistrate in this matter was really seeking  
18 any evidence that could be provided - you see this, sorry,  
19 at paragraph 27; I'm jumping around - in response to a  
20 question he had about any harm that might arise in the  
21 removal of a child from the mother and placement in foster  
22 care.

23  
24 Q. And it's not explicitly mentioned here, but one  
25 example for a child who's taken from the gulf area could be  
26 to go to the east coast of Australia.

27 A. Yes. And, sorry, the point I think I may have  
28 mentioned - if I didn't, I will here - it's paragraph 29  
29 where Dr Crawford provided evidence that she was unaware of  
30 any research on the impact of forcibly removing a child  
31 from its mother or family with or without police  
32 assistance, but she did acknowledge - you see at 29(b) -  
33 that it would be distressing and traumatic. But I take  
34 your question that if the court was to grant custody to a  
35 child, even on an emergent order, the placement of that  
36 child might be some distance from their community or  
37 family.

38  
39 COMMISSIONER: Director, is this question really one of  
40 whether a balance of harm analysis should be undertaken?

41 A. Yes, Your Honour. This is what it seems the  
42 magistrate in this matter was attempting to do.

43  
44 COMMISSIONER: One difficulty I think is that the  
45 criterion for the removal of the child is expressed in  
46 section 10, which is that the child is in need of  
47 protection. There are two elements to it, as I know you

1 know. It's at least arguably embedded within that test in  
2 reaching a conclusion that the child is in need of  
3 protection consideration should be given to the  
4 counterfactual; that is, what position the child will be in  
5 when removed. One should assume, presumably, that the  
6 child when removed will be safe. But, even if one makes  
7 that assumption, it doesn't mean that there isn't some harm  
8 caused by fact of removal, the separation of the child, the  
9 matters that are acknowledged in paragraph 29(b) by  
10 Dr Crawford.

11  
12 I think the question is whether or not there ought be in  
13 the test for removal - the legal test for removing the  
14 child - a requirement that an analysis of balancing harm in  
15 the circumstances should be express because, depending on  
16 where the child's going relative to where the child is, it  
17 may be a finely balanced evaluation. At present the Act  
18 really sets a test which, if proven, leads logically to the  
19 decision that the child, if removal is required to protect  
20 the child, should be removed --

21 A. Yes.

22  
23 COMMISSIONER: -- but doesn't require any sort of  
24 comparative analysis of the harm caused by removal as  
25 opposed to the harm that is sought to be avoided by  
26 removal.

27 A. And you will see, Your Honour, that the magistrate's  
28 attempted to do such an exercise without a clear provision  
29 at paragraph 58 across pages 14 and 15 where he sets out in  
30 a table form the various principles, but only principles,  
31 and then his assessment of the evidence against each  
32 principle in order to try to perform the task.

33  
34 COMMISSIONER: Yes, thank you.

35  
36 MS GREENWOOD: And then I'll just make a comment,  
37 Commissioner, and come back to a question. Part of the  
38 terms of reference of this Commission include the impact of  
39 multiple placements upon a child and simply to highlight  
40 that this case was very much about a placement while  
41 waiting for another placement. So it falls - again, what  
42 the magistrate was attempting to do was look at multiple  
43 placements.

44  
45 Director, in your view would it be useful to expand the  
46 language of section 10 enough so that this could be  
47 explicitly looked at?

1 A. Yeah, or to make it a requirement there be a direct  
2 consideration of the impact of removal.

3  
4 Q. Thank you. Moving on to again the bifurcation model  
5 your office sees - this is not as nice as your diagram.  
6 You had set out in tab 63 and tab 64 of your statement, you  
7 set out the various stages. If I may show you --

8 A. I say at 63, at least in the bundle I have --  
9

10 Q. I'll show you this diagram which is a bit more concise  
11 in terms of the sorts of steps that we see. So the first  
12 page shows the first steps leading up to what will be a  
13 DCPL application. And simply in terms of this, if there  
14 has been an emergent order, is it true or is it not that  
15 there will have been some lapse of time and not a short  
16 lapse of time between when the child is removed and when  
17 your office is seized of an application?

18 A. Yes, well, looking at the diagram, if the matter was  
19 to be a section 18 removal and a temporary custody order  
20 sought, which appears on page 1 of this diagram at the very  
21 top line, yeah, it may be that this would be a matter that  
22 would arrive at my office on the third business day.  
23 However, if it was to then be a temporary assessment order  
24 that then lead into a court assessment order, which is on  
25 the bottom left - on reading this, usually it refers to  
26 usually one to four weeks. I take that as a reference  
27 before the first mention of the court assessment order  
28 application. And then, if a court assessment order was  
29 made, up to four weeks, and even continued for another four  
30 weeks, yeah, there are matters that don't arrive at my  
31 office until some, you know, two-plus months after the  
32 section 18 removal as per the diagram here.

33  
34 Q. Look, essentially that is the point that I was trying  
35 to bring out.

36 A. And there's some data that, if this was to happen,  
37 taking into account the sort of Christmas holiday period it  
38 could even be longer.

39  
40 MS GREENWOOD: Commissioner, if I may --

41  
42 COMMISSIONER: That's a diagram that you've produced, is  
43 it?

44  
45 MS GREENWOOD: Yes, it is. And if I may tender that.

46  
47 COMMISSIONER: Yes, of course. That will be AT-12.

1  
2 **EXHIBIT #AT-12 - CHILD PROTECTION LITIGATION PATHWAY**  
3 **DIAGRAM**  
4

5 MS GREENWOOD: Director, at paragraph 243 of your  
6 statement you provided a table, and in that table you  
7 identified that between lodgment of a child protection  
8 order and determination it took 357 days in I think  
9 1924/1925 - sorry, 2024.

10 A. Yes, I see that. Table 27.

11  
12 Q. I'm copying the habits from across the table. And  
13 then from - I'll put it from the family's perspective you  
14 can add another one/two months on that timeframe taking  
15 into consideration the emergent orders that we just  
16 discussed earlier?

17 A. Yes, and, look, this is average number of days. Some  
18 matters will take many years; some matters are far quicker.  
19 But, yes, if you're talking in averages, on average, yeah,  
20 it would be, if it involved an emergent order, yes, a  
21 period of time before day 1 starts in this count.  
22

23 Q. If I can show you - this is exhibit AT-8, which was  
24 tendered yesterday. But, Commissioner, I have three fresh  
25 copies for the witness and Your Honour.  
26

27 COMMISSIONER: Thank you. Thank you very much.  
28

29 MS GREENWOOD: So have you heard of the South Australian  
30 reunification court?

31 A. No, I have not. I heard reference to this yesterday,  
32 but I've not heard of this.  
33

34 Q. And so the main - so this is an article written by  
35 Her Honour Judge Eldridge of the South Australian Youth  
36 Court and essentially describes the process where matters  
37 can be sent to the reunification court and there would be  
38 some level of court scrutiny over the progress that was  
39 being made towards the reunification court. I believe you  
40 gave evidence earlier saying that the case plan isn't  
41 necessarily filed with the order, it's not made part of  
42 the order; it's simply --

43 A. For the court to make a child protection order it  
44 needs to have - there needs to be a current case plan  
45 developed in accordance with the part of the Act and the  
46 court needs to have made a finding that it's appropriate  
47 and desirable. But, no, it doesn't form part of the order.

1 So there's nothing on the face of the order in a general  
2 sense that reflects key parts of the case plan in terms of  
3 things that need to occur.  
4

5 Q. So in terms of if parts of the case plan fall away and  
6 aren't pursued what remedies are available for bringing  
7 those back on track?

8 A. Yes, other than - a parent could seek to have a new  
9 family group meeting held to review what was the plan and  
10 seek a revised plan. But, other than that, a parent could  
11 bring an application to put the matter back before the  
12 court. But that happens rarely, if it's issues to do with  
13 case planning.  
14

15 Q. So has your office looked at or this is more the  
16 department's responsibility to look at the possibility of a  
17 reunification court?

18 A. I had not heard of it prior to yesterday, that these  
19 efforts were going on. But I'm familiar with the concept  
20 that's referred to on page 1 of therapeutic jurisprudence  
21 and familiar with the approach of trying to utilise the  
22 court, the authority of the court, to keep matters on track  
23 and then to keep people engaged.  
24

25 MS GREENWOOD: Commissioner, in the course I had also  
26 handed up a practice direction.  
27

28 COMMISSIONER: Yes, you did, of which I think revealed  
29 that the reunification court is the invention of this judge  
30 - and I don't mean that pejoratively - an initiative of  
31 this judge using her powers to set procedures for matters  
32 coming before her court.  
33

34 MS GREENWOOD: So, yes, Commissioner, it is a more  
35 procedural arrangement than anything set in legislation as  
36 yet.  
37

38 COMMISSIONER: Yes.  
39

40 MS GREENWOOD: I will simply refer to this and tender it.  
41 But I thought this case might be useful, Commissioner. It  
42 is essentially a costs argument in the Court of Appeal, but  
43 the subject matter of this is on referrals to the  
44 reunification court and it gives quite a useful description  
45 of how these referrals work.  
46

47 COMMISSIONER: That's very helpful. Thank you. So you

1 tender that. That will be AT-13, I think, that decision of  
2 NL v Chief Executive of the Department for Child Protection  
3 and Others [2023] SASCA 20.

4  
5 **EXHIBIT #AT-13 - NL V CHIEF EXECUTIVE OF THE DEPARTMENT FOR**  
6 **CHILD PROTECTION AND OTHERS [2023] SASCA 20**

7  
8 MS GREENWOOD: I'll come back to the bifurcation model  
9 again, this time in respect of the impact on court powers.  
10 So we currently have a bifurcated model where - well, maybe  
11 if I can ask you what happens when a contact matter is  
12 being appealed in QCAT and the substantive matter is still  
13 before the Childrens Court. How does that work itself out  
14 with two aspects going off to two different courts?

15 A. Okay. So there's provision in the Act for where it's  
16 a contact decision that is reviewable, which you've  
17 referred to, a person aggrieved by that decision can seek  
18 to review that decision in QCAT. One of the amendments  
19 after Carmody sought to try and - where there was a  
20 current, as you referred to, child protection proceeding on  
21 foot sought to try and bring those two distinct matters  
22 together. So what happens is the contact decision in QCAT  
23 is suspended and the issue is referred to the Childrens  
24 Court to consider as to whether it will be dealt with as  
25 part of the child protection proceeding judicially rather  
26 than administratively in terms of an administrative review.

27  
28 COMMISSIONER: Is there an overlap also in the context of  
29 the content of the case plan? If the case plan includes  
30 placement arrangements - placement arrangements, as  
31 I understand it, are reviewable under - or a placement  
32 decision is reviewable as part of the suite of decisions  
33 that are reviewable. I think it's schedule 2 to the Child  
34 Protection Act. So is there not conceivably the potential  
35 for overlapping and decisions that rub up against each  
36 other, if I can put it that way, as between the contents of  
37 a case plan in certain respects and the jurisdiction of  
38 QCAT?

39 A. Yes, so there are - in terms of that referral of a  
40 matter from QCAT back to the Childrens Court, I'm just  
41 looking at the provision, but it is in the context of  
42 contact decisions where at the moment if a placement  
43 decision that had been made was being reviewed by an  
44 aggrieved person that will continue through QCAT and be  
45 dealt with in parallel to any child protection proceeding.

46  
47 COMMISSIONER: Is that because the placement decision is

1 not made under and pursuant to the case plan or the case  
2 plan doesn't refer to the placement decision?  
3 A. No, placement decisions can occur at any point along  
4 the way from the initial point. So the initial placement  
5 decision will be made well ahead of any case plan having  
6 been developed.

7  
8 COMMISSIONER: But wouldn't one expect to find recited in  
9 the case plan somewhere the placement decision?

10 A. In time, once the case plan is developed, it should  
11 include where the child is placed.

12  
13 COMMISSIONER: And so that might be the only evidence of a  
14 placement decision in the absence of some letter containing  
15 reasons explaining the placement decision?

16 A. Yes.

17  
18 COMMISSIONER: So presumably the placement decision as  
19 manifest in the case plan would be subject to review in  
20 QCAT, presumably also with an entitlement on the part of  
21 the person seeking to review it to have some reasons given  
22 for the placement?

23 A. If that, Commissioner, was the first reference to the  
24 placement it would - yeah, in practice you will see  
25 evidence of a placement decision through a letter that  
26 you've referred to. There might be a paragraph that would  
27 set out or seek to set out the reasons on an application  
28 being made to QCAT. What then happens in practice is that  
29 it will generate a statement of reasons then being prepared  
30 to actually explain the placement decision or a statement  
31 of reasons being generated to explain the contact decision.  
32 But, yeah, in terms of practice, the placement reviews  
33 would just proceed in QCAT and are not something - unless  
34 the court in a matter in parallel was to consider granting  
35 custody or guardianship to a named person, which would then  
36 alter the trajectory of the QCAT review proceeding.

37  
38 COMMISSIONER: So it's not hard to conceive of  
39 circumstances where there would be a tension between an  
40 application to review a placement decision in QCAT and the  
41 pending application in the court, in the Childrens Court,  
42 in the example you give which would then presumably result  
43 in the suspension of the QCAT proceeding and a referral of  
44 the issue to the --

45 A. Only if it was contact, Your Honour, a contact  
46 decision. And that in itself is a challenging at times  
47 intersection between the review jurisdiction and the

1 judicial jurisdiction. So someone seeking to review a  
2 contact decision through QCAT merits review has at times  
3 greater flexibility in terms of the outcome at QCAT than  
4 what they can achieve judicially. If I can explain what  
5 I mean by that.

6  
7 COMMISSIONER: Of course.

8 A. If a decision's made that somebody's contact should be  
9 supervised and so somebody's provided a decision that says,  
10 "You're going to have two hours contact a fortnight that  
11 are supervised," and that's an administrative decision,  
12 they can seek to have that reviewed in QCAT. In QCAT the  
13 tribunal will be standing in the shoes of the team leader  
14 or manager that made that decision, and so has a degree --

15  
16 COMMISSIONER: A merit's review.

17 A. And so has a degree of flexibility in terms of the  
18 supervisory aspect of that; yet when you come to the  
19 Childrens Court if the Childrens Court is considering  
20 making a contact decision - and if just give me a moment,  
21 Your Honour, I'll draw your attention to it. If I refer  
22 you to section 68, it's one of the - it's the substantive  
23 provision on the powers of adjournment of a proceeding for  
24 child protection orders. The court under 68(1)(c) can make  
25 an order - so this is an interim order - around a child's  
26 contact with their family during the adjournment, but it's  
27 subject to subsection (5). So what that does then is it  
28 places a limitation on the court ordering any supervised  
29 time unless the Chief Executive agrees to supervise that  
30 contact.

31  
32 COMMISSIONER: What in principle is to prevent the  
33 particulars as to contact and as to placement forming part  
34 of an order, not as per the present Act but in principle  
35 why shouldn't those matters be included in the order,  
36 subject to variation upon application or as needed?

37 A. So that could be done in some cases, Your Honour. By  
38 granting the Chief Executive custody and through that  
39 custody - if we talk about a custody scenario where the  
40 court was to make a child protection order granting custody  
41 of a child to the Chief Executive for two years, invariably  
42 through that two-year period you'd want to see an increase  
43 in the amount of time the child is spending with the parent  
44 or parents and a changing of any restrictions that might be  
45 on that time. So we don't have any sort of formal  
46 reunification plans but what you generally see at times  
47 where that's the focus of parties in, say, court ordered

1 conferences parties will map out, "Well, okay, under the  
2 first three months what does contact look like? And,  
3 provided these things occur, does contact increase? Yes.  
4 What does that look like?" And you can try to step the  
5 matter through with the best intent in the world, but if  
6 somebody doesn't complete some type of condition to move it  
7 from what will be in the first 12 weeks to the second set  
8 of 12 weeks it can become quite hard then to manage that on  
9 the face of an order.

10  
11 So if you imagine a family law order is very prescriptive  
12 around the child will live with this person and spend time  
13 with this person, and it will map it right up and even down  
14 to what happens on particular holidays and times. There in  
15 matters needs to be flexibility to have that contact change  
16 in line with the progress of the matter or the family  
17 against the concerns.

18  
19 COMMISSIONER: But that latitude could be built into the  
20 order conferring discretion upon the Chief Executive to  
21 adjust where it's necessary practically to do so?

22 A. You could, Commissioner, design a system where there  
23 is a routine report back to the court where, you know,  
24 we're making a two-year order and this has got to be  
25 achieved in the first six months, and maybe a report be  
26 filed with the court and, if needed, the matter be  
27 rementioned.

28  
29 COMMISSIONER: And on that premise the potential for  
30 conflict in the legal sense between the rights of the  
31 parties to review a decision at QCAT and the impact that  
32 such a review might have on ongoing matters before the  
33 Childrens Court that would be avoided, wouldn't it?

34 A. If the court was empowered to deal with more of these  
35 issues.

36  
37 COMMISSIONER: Yes.

38  
39 MS GREENWOOD: Which probably segues very neatly into my  
40 next question, which is is it true that the court can order  
41 contact on an interim basis but not on a final order?

42  
43 COMMISSIONER: Or subject to the qualification the  
44 Director just indicated, the agreement of the --

45 A. And subject to - there is a final child protection  
46 order or directive order that can put not a positive  
47 contact obligation but can in a negative sense restrict a

1 parent's contact.

2

3 MS GREENWOOD: I was intending that question to be  
4 positively having contact.

5 A. That's right. So under 68(1)(c) that I referred to  
6 court through proceedings can manage contact in a positive  
7 sense setting out when it's to occur and how it's to occur,  
8 subject to an agreement from the Chief Executive if that's  
9 required. But in an ongoing way the court's only able to  
10 place restrictions on a parent's time through a directive  
11 order for up to 12 months.

12

13 Q. I would contrast that power of the court with section  
14 65D of the Family Law Act 1975. And, Commissioner, again  
15 just for ease I'll hand up a copy for everyone.

16

17 COMMISSIONER: Thank you.

18

19 **EXHIBIT #AT-14 - SECTION 65D OF THE FAMILY LAW ACT 1975**

20

21 MS GREENWOOD: Now, under the Family Law Act the court's  
22 power to make a parenting order, and that is subject to  
23 another provision on parenting plans, may make such  
24 parenting orders as it thinks proper. Would that assist  
25 the court in child protection proceedings to be able to  
26 take the best interests of the child into account in terms  
27 of contact and other conditions and, for example, ongoing  
28 contact with a grandparent may be something that's in the  
29 best interests of the child?

30 A. Yeah, there are any number of possibilities like the  
31 one you just touched on. Clearly if there are grandparents  
32 that are participating as non-parties and through that they  
33 might be seeking ongoing time with the child or children,  
34 it would be of great benefit no doubt to them to have that  
35 set out in an order. And there may be matters where it's  
36 appropriate to set out what the contact may look like  
37 through the order for a particular parent or both parents.

38

39 COMMISSIONER: The substantive difference between the  
40 family law context and the child protection context is, as  
41 I would understand it, in the family law context the  
42 contesting parties are the parents; in the child protection  
43 context it's the State who becomes the parent to a degree  
44 or to the degree that the order confers parenting power on  
45 the State.

46

47 A. Yes.

1 COMMISSIONER: And in the family law context it is the  
2 parents who have to perform as required by the parenting  
3 order and are constrained as required by the parenting  
4 order, whereas here or in the child protection context it's  
5 the State that has to perform the obligations of the  
6 parent. Now, that seems to be the most substantive  
7 difference between the two jurisdictions.

8 A. Yes.

9  
10 COMMISSIONER: And the question is perhaps whether it is  
11 proper and reasonable for a good system that the court  
12 directs the State as the parent as if the State were a  
13 natural parent with no different interest to that of a  
14 private human parent. Do you agree with that distinction  
15 and are there consequences that arise from that distinction  
16 which make the application of the family law model, if  
17 I can call it that, problematic in some way?

18 A. Yes, Your Honour, there is a key difference and that's  
19 public law, which is child protection, and considering  
20 private law, and with the added responsibilities that the  
21 State has and the sort of principles I've referred to  
22 seeking to provide support to get the children home, you do  
23 run the risk that the more prescriptive the order gets it  
24 may then have a clear impact on the progress of a case.

25  
26 COMMISSIONER: But not necessarily an adverse impact?

27 A. No, it could be the other way too, Your Honour. It  
28 would really be matter dependent and whether there was a  
29 need in a particular matter to set out as part of an order  
30 what contact would look like and how it may progress  
31 through towards reunification.

32  
33 MS GREENWOOD: Moving on to a new topic, which is the  
34 standing of kin in these matters - sorry, I'll just make  
35 sure I get my wording correct, Commissioner. So I'll start  
36 with the situation of some close kin or carers of the child  
37 who may, once proceedings are on foot, seek leave to appear  
38 under section 113.

39 A. Yes.

40  
41 Q. And there are similarities with section 65C of  
42 the Family Law Act, and again just for ease of everyone  
43 I'll just provide copies of that now. So, going to the  
44 Family Law Act, that provides that a parenting order in  
45 relation to a child may be applied for by, as well as the  
46 parents and the child, a grandparent of the child or any  
47 other person concerned with the care, welfare or

1 development of the child.

2 A. Yes.

3

4 Q. Now, under 113 someone who is concerned with the care,  
5 welfare or development of the child may apply to have  
6 standing under child safety proceedings, but that only  
7 occurs once proceedings are on foot; is that the correct  
8 statement?

9

10 COMMISSIONER: Well, that would follow, wouldn't it?

11 A. Yeah, if I just come back to section 113 to start  
12 with, it's really the court's being asked to consider  
13 whoever it is that is making this application to  
14 participate, the court needs to consider under section  
15 113(3)(b) the extent to which the person may be able to  
16 inform the court about a matter relevant to the proceeding,  
17 and also taking into account their relationship with the  
18 child, which is your point that somewhat similar under  
19 section 65C of the Family Law Act it's another person  
20 that's concerned with the care, welfare or development of  
21 the child. It's very similar. But we're really asking the  
22 court to consider who they are, what their relationship is  
23 and can they assist.

24

25 MS GREENWOOD: So if I could give an example. A child  
26 could be living with their aunty for 10 years and, unless  
27 Child Safety approves the aunty as a guardian and unless  
28 DCPL makes an application, that long-term kin carer or  
29 family member cannot apply to the court and seek  
30 guardianship of the child; and that's section 65?

31 A. Yeah, I think I understand the question. But as  
32 somebody who is not a parent of the child --

33

34 Q. Yes.

35 A. -- or the child, they don't have standing to bring  
36 their own application. So, yeah, you're talking about a  
37 scenario where the child is placed with - yes, that's  
38 right. But if there's a current proceeding before the  
39 court that person would be able to come down and seek  
40 non-party status and to participate in the proceeding, if  
41 that was granted, and to seek guardianship to them if  
42 they're family. But they don't have standing to commence  
43 the proceeding; I agree with that.

44

45 Q. And so therefore someone who is caring for the child  
46 and has been for a very long time is essentially suspended  
47 in time and space until such time as DCPL have brought the

1 action and --  
2 A. Until such time as the matter is referred to my office  
3 or somebody that does have standing has brought the matter  
4 before the court.

5  
6 COMMISSIONER: On that point, Director, if a  
7 representation were made to you by a kinship carer, a  
8 foster carer, whomever it might be, to make an application  
9 to revoke or vary an order, is that something that you're  
10 entitled to consider and form a view about whether you  
11 should, having regard to those representations, take some  
12 action?

13 A. At the moment, Commissioner, all I could do in that  
14 scenario is to refer the matter to Child Safety to  
15 consider.

16  
17 COMMISSIONER: But if you had power yourself to consider a  
18 representation by a person interested in the child in the  
19 way that has been described and was satisfied that they had  
20 a sufficient interest and a sufficient basis to have the  
21 matter brought before the court then you would be able to  
22 do so; but presently you --

23 A. Presently I can't.

24  
25 COMMISSIONER: Presently you can't?

26 A. No.

27  
28 COMMISSIONER: You can only act on referrals from the  
29 department?

30 A. Yes.

31  
32 COMMISSIONER: Yes, thank you.

33  
34 MS GREENWOOD: And would that be useful to have that more  
35 unfettered ability to do that?

36 A. Or a very clear mechanism for somebody in standing to  
37 seek through Child Safety that a suitability assessment be  
38 undertaken, and if that was positive and it met the  
39 situation that the matter be referred to me. Because if  
40 I receive one of these matters and if I was in power the  
41 very first thing I would be doing is asking Child Safety to  
42 provide me with information about the matter and an  
43 assessment of the matter.

44  
45 Q. That may be a better arrangement than the way it is  
46 now?

47 A. Well, yes, at the moment we're just dependent upon

1 Child Safety being approached and undertaking that  
2 assessment and then referring the matter to me.

3  
4 COMMISSIONER: But if you had power to act upon a request  
5 or a representation to you that you take some action to  
6 either seek, vary or revoke an order then presumably you  
7 could then ask the department to conduct a suitability  
8 assessment if you thought that was warranted and consider  
9 that?

10 A. Yes.

11  
12 COMMISSIONER: And then consider what you do next?

13 A. Yes.

14  
15 MS GREENWOOD: Thank you, Commissioner. And if I may just  
16 tender that section 65C, and I believe we're up to 15 now.

17  
18 COMMISSIONER: Yes. That will be exhibit AT-15.

19  
20 **EXHIBIT #AT-15 - SECTION 65C OF THE FAMILY LAW ACT 1975**

21  
22 MS GREENWOOD: And in fact, just building on that earlier  
23 question, would it make sense for someone who is a carer to  
24 be able to apply directly and not go through Child Safety  
25 or your office at all? What would you see as the upsides  
26 and the downsides of that?

27 A. Yeah, sorry, it's not something I'd considered before  
28 you asking that. Yeah, you could fashion into the Act that  
29 there be some - perhaps an ability to bring an application  
30 with leave, provided that they met whatever the criteria  
31 is. I don't have a sense of how many carers are seeking  
32 guardianship. So I don't have a sense as to whether it  
33 would be a small number, a great number or what that would  
34 look like.

35  
36 COMMISSIONER: There would also be occasions, wouldn't  
37 there, in terms of on that model there would be no anterior  
38 triaging or assessment of the veracity of the application?  
39 Your function, respectfully, is in part to evaluate what  
40 should be put before the court, including whether the  
41 matter should go before the court.

42 A. That's correct.

43  
44 COMMISSIONER: And that filter would not be present if the  
45 model of persons other than the parents, who I think  
46 already have the standing to make direct applications, were  
47 to be permitted to do so without anterior scrutiny by your

1 office or by the department?

2 A. But equally you would consider that if the child's  
3 been placed in the care of this person or people there has  
4 been an assessment made of their suitability. But what  
5 that looks like and whether that addresses what they're  
6 seeking, yeah, there would need to be some type of  
7 consideration by somebody, I would think.

8  
9 COMMISSIONER: I didn't understand the question to be  
10 confined to carers alone. It may have been. I thought  
11 your question was predicated on a broader standing, but  
12 perhaps I misunderstood that.

13  
14 MS GREENWOOD: Commissioner, I was mainly following the  
15 family law definition, which is any other person concerned  
16 with the care, welfare or development of the child.

17  
18 COMMISSIONER: Which is pretty broad.

19  
20 MS GREENWOOD: Which is pretty broad.

21  
22 COMMISSIONER: Which would extend beyond the kinship carer  
23 or the foster carer, for example. Yes.

24  
25 MS GREENWOOD: Final question. You were asked earlier  
26 about what the content of active efforts looked like within  
27 the Act. Are you familiar with the QATSICPP guidelines on  
28 active efforts?

29 A. Yes. No doubt I've seen them; yeah.

30  
31 MS GREENWOOD: Commissioner, this will be a subject for  
32 future submissions, but if I may tender the Queensland  
33 Aboriginal and Torres Strait Islander Community Controlled  
34 Child Protection Active Efforts in Practice.

35  
36 COMMISSIONER: Yes, that will be AT-16.

37  
38 **EXHIBIT #AT-16 - QUEENSLAND ABORIGINAL AND TORRES STRAIT**  
39 **ISLANDER COMMUNITY CONTROLLED CHILD PROTECTION ACTIVE**  
40 **EFFORTS IN PRACTICE**

41  
42 MS GREENWOOD: And I don't expect encyclopedic knowledge  
43 up hill and down dale, but are you aware of its origins in  
44 the Indian Child Welfare Act from the United States?

45 A. Sorry, the concept of active efforts coming --

46  
47 Q. Yes.

1 A. No, I wasn't aware of that, sorry.  
2  
3 Q. And then travelling via New Zealand? Are you aware of  
4 how it plays out in New Zealand at all?  
5 A. I'm aware there's a focus of this in New Zealand.  
6  
7 MS GREENWOOD: Thank you. Commissioner, you asked earlier  
8 what the difference between active efforts and reasonable  
9 efforts might be. I just seek to --  
10  
11 COMMISSIONER: That would have been reflective of my lack  
12 of mastery of the terminology. I would have meant active  
13 efforts or reasonable efforts.  
14  
15 MS GREENWOOD: An American judge has anticipated your  
16 question, Commissioner --  
17  
18 COMMISSIONER: Excellent.  
19  
20 MS GREENWOOD: -- and very helpfully written an article on  
21 that.  
22  
23 COMMISSIONER: Good.  
24  
25 MS GREENWOOD: So if I may hand up --  
26  
27 COMMISSIONER: Certainly.  
28  
29 MS GREENWOOD: -- an article, "'Active efforts' and  
30 'reasonable efforts': do they mean the same thing," by  
31 Judge Leonard Edwards.  
32  
33 COMMISSIONER: Excellent. Thank you. That article will  
34 be AT-17.  
35  
36 **EXHIBIT #AT-17 - ARTICLE, "'ACTIVE EFFORTS' AND 'REASONABLE**  
37 **EFFORTS': DO THEY MEAN THE SAME THING?"**  
38  
39 MS GREENWOOD: Thank you, Commissioner, that concludes my  
40 questions.  
41  
42 COMMISSIONER: Thank you very much. Mr Creamer.  
43  
44 MR CREAMER: Thank you, Commissioner.  
45  
46 **<EXAMINATION BY MR CREAMER** **[3.36 pm]**  
47

1 MR CREAMER: Director, I just want to start off addressing  
2 some of the matters you've raised in your evidence so far.  
3 That living document that you discuss that a CSO is working  
4 on and developing --

5 A. Yes.

6  
7 Q. -- that would also have a dual benefit, wouldn't it,  
8 in respect of the ability to extricate that information to  
9 put into a case plan, to have recommendations and for that  
10 negotiation process to happen much quicker for parents?  
11 Based on your evidence that 50 per cent of matters resolve  
12 once you have a case plan --

13 A. Yes.

14  
15 Q. -- I took that the living document would really  
16 shorten that time because the case plans could be developed  
17 from that document quite quickly; is that correct or am  
18 I wrong?

19 A. Yes, I would hope that if that document or a document  
20 like it was used that it would hopefully be written in very  
21 plain language, be very clear in a social worker's words  
22 around what it is that they were worried about and what it  
23 is that they wanted the parents to address, "What are we  
24 worries, what do we need you to do," and that should lead  
25 into a case plan that actually is beneficial to the  
26 parents.

27  
28 Q. And when we're talking about efficiency, the ability  
29 for that to happen quicker because --

30 A. Yes.

31  
32 Q. -- I think my clients have experienced case plans  
33 taking up to two years.

34 A. Yes, and when you get the case plan it can be 25 to 30  
35 pages long and it's in language - I just question how  
36 helpful they are day to day in terms of helping child  
37 safety officer and helping parents do what needs to be  
38 done.

39  
40 Q. So that assessment document that you're discussing  
41 could perhaps have a combination of two factors, not just  
42 any evidence but also --

43 A. Yes, well, "This is my assessment and this is what I  
44 think needs to happen."

45  
46 Q. Yes.

47 A. Yeah.

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Q. Which goes into those elements of a case plan?

A. Yes, it does.

Q. I wanted to ask you about cultural plans and the obligation to ensure that First Nations children maintain a cultural connection.

A. Yes.

Q. We have heard lots of evidence about those and whether or not they're effective, and there's evidence in, say, certain instances they haven't been. I want to understand the level of scrutiny that your office applied when assessing those.

A. Looking at the cultural plan?

Q. Yes, the cultural plan and the ability for the child to maintain their connection in accordance with the Act and the schedule.

A. Yes, there would be regard to that. I heard evidence yesterday around referencing my office and the lack of, say, cultural practice advisers. Look, I don't have my own cultural practice advisers. We rely upon Child Safety's cultural practice advisers. So from the initial consult right through we're able and we're required, we've got the benefit of the direct input of the cultural practice adviser. I've been in consults on new matters, heavily reliant upon the input of a cultural practice adviser as to what the situation was on the ground right through to when I asked the question yesterday of my assistant directors, my assistant director referred to running a hearing last year on Mornington Island where he had the benefit of the cultural practice adviser there throughout the hearing who had great knowledge of local services, culture, connection, and was of great assistance. But, yeah, it's something we have regard to along with everything else we've got to have regard to.

Q. Well, that's particularly useful because when you look at your guidelines there doesn't seem to be that interaction that Child Safety have with cultural practice advisers, for example, or decision-makers in First Nations entities or individuals making decisions. But in practice you actually do have access to that?

A. Yeah, when we jump into a consult the cultural practice adviser will be in as well as the team leader and the child safety officer. Like, I was involved in a matter

1 myself that they were, like I said, great benefit to  
2 understand what the situation at that point in time was in  
3 a community.  
4

5 Q. And I'm going to take you to the guidelines shortly  
6 but there's nothing specifically in your guidelines, is  
7 there, referencing the employees within your DCPL to seek  
8 out that advice or does it just happen as a matter of  
9 course? I'll go to the guidelines. I can hand them up if  
10 you like.

11 A. Yeah, I do have a copy here somewhere.  
12

13 MR CREAMER: This is a really menacing document,  
14 Commissioner, but what it is in fact is --

15  
16 COMMISSIONER: Mr Creamer, it's one of many menacing  
17 documents.  
18

19 MR CREAMER: Yes. No, it's a copy of the annual report.  
20 But as you print it off it also includes the guidelines and  
21 the template forms. So I'll give a copy to you and to the  
22 Director, and then my colleagues at the Bar table have been  
23 provided with electronic copy. And there were certain  
24 paragraphs or passages I wanted to take you to in the  
25 guidelines and the report.

26 A. Yes.  
27

28 Q. But I'll just give you that if there's something you  
29 wanted to look up in response to that question. I might  
30 tender that document at this stage, Commissioner.  
31

32 COMMISSIONER: Yes, of course. That will be exhibit Q-8.  
33

34 **EXHIBIT #Q-8 - ANNUAL REPORT**  
35

36 MR CREAMER: Thank you.  
37

38 WITNESS: Mr Creamer, I was just consulting with my  
39 statement first to see if I had in any way made reference.  
40 What I'd refer you to is paragraph 81 of my statement where  
41 I am making reference to my guidelines.  
42

43 MR CREAMER: Yes.

44 A. I cross-reference that. It's from 310. Sorry, I've  
45 got far too much paper now.  
46

47 Q. That's part 5 on page 61 of 115 in the guidelines?

1 A. Yeah, like I said, I can see I've made reference to  
2 that in my statement. But perhaps if you want to take me  
3 to particular sections.  
4

5 Q. I will. It was more just in respect of  
6 the participation of Indigenous decision-making in respect  
7 of that question, but I will take you to your guidelines  
8 shortly. I just want to ask you before I do, though, you  
9 mentioned back in December in respect of Canada you talked  
10 about the therapeutic approach?

11 A. Yes.  
12

13 Q. Now, this Commission has before it some information in  
14 respect of a number of pilot programs or models for First  
15 Nations children participating in the care system both in  
16 Victoria and I think the second model is in  
17 Western Australia, and they seem to have adopted a more  
18 therapeutic approach and culturally appropriate approach.  
19 When you were referring to the therapeutic approach in  
20 Canada did you see room for greater development here in  
21 Queensland for that type of model?

22 A. Yeah, no, the model that I witnessed in person in  
23 Canada was more a judge-led model of engaging family and  
24 extended family in the court process. I didn't see or  
25 didn't experience, from my recollection, therapeutic  
26 jurisprudence engaging with First Nations representatives  
27 or as part of that. But I don't doubt that that would be  
28 undertaken in parts of Canada.  
29

30 Q. And are you familiar with the models in Victoria, the  
31 models in Victoria and Western Australia, the --

32 A. No, well, I am familiar they have a court, I've heard  
33 reference to it, but I'm not familiar with the details of  
34 exactly how it works.  
35

36 Q. And one of the other matters you raised in your  
37 evidence-in-chief was the delegated authority and the need  
38 for that to occur earlier?

39 A. Yes. Well, the point I was making was that very  
40 supportive of delegated authority, but the precondition of  
41 that is that the child is already in the custody or  
42 guardianship of the State before such power could be  
43 delegated under the model as it currently works.  
44

45 The other point I'd make here, I heard reference to it  
46 yesterday, is the loss of what was the recognised entity  
47 function. That, as with most things, operated differently

1 depending on the location in the State. But in places such  
2 as Beenleigh and Southport very engaged, very at times  
3 forceful participation and advocacy on behalf of Aboriginal  
4 and Torres Strait Islander people. And we saw different  
5 engagements with recognised entities across the state in  
6 different locations. They were at the Bar table. They  
7 were making submissions. They were part of key decisions  
8 within Child Safety on whether to investigate and things  
9 like this. Yeah, it was very much different to what it  
10 currently is.

11  
12 Q. And the evidence yesterday was that parents should  
13 have a choice, they should have available to them the  
14 recognised entity plus also the current system which  
15 removing the recognised entity has taken away that choice;  
16 do you agree?

17 A. That's so. The recognised entity, I think it was  
18 hoped that some of the current Aboriginal family wellbeing  
19 services would take on the role of being a recognised  
20 entity for different children and their family. But I'm  
21 not aware of that happening in any matters.

22  
23 Q. In your evidence in December we also talked about -  
24 there was also the discussion that if DCPL had a greater  
25 role, if there was not bifurcation but DCPL was doing the  
26 emergent order stage as well, you talked about the benefit  
27 of having staff in regional areas, if your staff were  
28 placed in those regional areas if that model was adopted.

29 A. Yes, I think I was asked questions about that; yeah.

30  
31 Q. One of the challenges I think QIFVLS sees is that DCPL  
32 can operate a FIFO model at times. It will have staff who  
33 are outside of that region, and that places limits on  
34 DCPL's staff understanding of what services are available  
35 or some of the cultural issues. If there were a model  
36 where DCPL were delivering services without a bifurcated  
37 approach would that address some of those concerns?

38 A. Look, it may. I think I gave evidence that for the  
39 first seven - at least seven, maybe the first eight years  
40 I had a DCPL lawyer that joined me prior to joining me was  
41 a court coordinator and he just remained in place in the  
42 Atherton Child Safety Service Centre and continued to sit  
43 at his same desk but as a DCPL lawyer and undertook all the  
44 work on the Tablelands from sort of Tully, Innisfail,  
45 around Atherton, Mareeba, and through Mossman. In respect  
46 of that location now he's joined Youth Justice. But  
47 I currently have a lawyer that's been managing the matters

1 in that location - top of my head I'm going to say two  
2 years - and, yeah, each fortnight she does fly in from  
3 Cairns, heads up and does a circuit over I think three days  
4 across those locations, but she's consistently doing that.

5  
6 Would I be able to recruit another lawyer that could do  
7 that in location? Maybe. But that's an area that even  
8 when my lawyer was based in Atherton his OCFOS contact was  
9 in Cairns. There was no-one from OCFOS in the Innisfail  
10 service centre or the Atherton service centre or any  
11 locations he was going. So even now, yes, I have a person  
12 fly out to Mount Isa, spend time in Mount Isa, do the  
13 applications and then come back. But, yeah, it's harder to  
14 perhaps recruit in some of these locations that currently  
15 even now OCFOS don't have lawyers.

16  
17 COMMISSIONER: So do you say that in terms of the  
18 difficulty of recruitment of lawyers to work based in a  
19 particular location those constraints apply equally to you,  
20 to your office, and to OCFOS?

21 A. That's so. So even if there wasn't a bifurcated model  
22 there might still be some locations where you're just  
23 unable to recruit a lawyer with the requisite skills to  
24 undertake the role.

25  
26 COMMISSIONER: Yes.

27  
28 MR CREAMER: And one of the challenges that QIFVLS has  
29 seen in negotiating matters is that there's a distinction  
30 I think in your office where you have file lawyers and then  
31 you have lawyers that attend court, and in certain  
32 instances those lawyers who are attending on court days  
33 don't have the instructions to be able to negotiate and  
34 finalise matters, and that's an obstacle that QIFVLS have  
35 experienced?

36 A. I've heard that, but the file lawyer under my  
37 delegations has the authority to resolve matters and can  
38 make decisions in respect of duration. So say we're  
39 seeking a two-year order but evidence is put before the  
40 court at a mention that a particular concern has been  
41 addressed and a view is taken it might be 12 months. Well,  
42 they have the authority to make that call and seek that  
43 final order. It's more I've delegated the change of order  
44 types that are being sought, that sits at a higher level.  
45 So if it's the difference between, say, seeking long-term  
46 guardianship to custody that would be something that  
47 they'll want to check with what we refer to as the

1 applicant lawyer.

2

3 Q. And that creates some difficulties in being able to  
4 resolve matters?

5 A. It may if the applicant lawyer is caught somewhere  
6 else in a trial or is not available at the time. It might  
7 not be able to happen instantly. It might need to be  
8 adjourned for a period, one week, two weeks, for them to  
9 consider whatever the new information and then amend the  
10 application.

11

12 Q. I wanted to ask you in respect of - again, it's  
13 touching on that issue of cultural capability, and  
14 obviously now you say you've got access to the CPAs and  
15 others. But within your annual report this year --

16 A. Yes.

17

18 Q. -- if you go to appendix 2 in your report it lists the  
19 training that your staff participated in. As a matter of  
20 fairness I'll also say we have reviewed your last year's  
21 report as well. And I think in that report last year, if  
22 you can accept this, I think your staff participated in  
23 about four CPDs which would touch on cultural issues,  
24 cultural training and cultural --

25 A. I would, yeah, take that if you've looked at it; yes.

26

27 Q. I don't see any, though, in this appendix 2 for the  
28 most recent year. What is the approach in terms of  
29 continuing to improve and develop cultural capability in  
30 your office?

31 A. Best practice would be that we would be providing  
32 lawyers with each year access to cultural capability  
33 training. That's something I haven't done last year. We  
34 have engaged service providers over the years to deliver  
35 cultural capability training. That's an area that clearly  
36 I can do better. If I think back to even, say, the  
37 recognised entity in the Beenleigh/Southport space, when  
38 they were in action they provided very good cultural  
39 capability training to groups of my lawyers and including  
40 the then magistrate that was located at Southport all  
41 participated with them at their cultural centre in  
42 Currumbin. But, yeah, it's something that with resources  
43 and time I'd clearly like to have a lot more of.

44

45 Q. Your obligations under the Human Rights Act?

46 A. Yes.

47

1 Q. I don't see any reference to those obligations in your  
2 guidelines for your staff. Now, what is the obligation on  
3 your staff in terms of considering particularly the  
4 relevant provisions for First Nations people under  
5 section 28 in the Human Rights Act?

6 A. Yes, and that's right. I'm looking at my guidelines.  
7 I last issued them in July '19. So they wouldn't, I doubt,  
8 include that. But they clearly need to take into account  
9 the engaged human rights, and if they're going to take  
10 action or make a decision that limits them it's got to be  
11 justifiable and demonstratable, the limitation. I think  
12 that's the wording of the Act. We seek on the initial  
13 decision to have consideration of the relevant human rights  
14 and the decision we make, what limitations that's placed on  
15 those human rights.

16  
17 COMMISSIONER: Doesn't the Act require that only the  
18 minimum that is required to keep the child safe is sought  
19 and ordered by the court?

20 A. It does. In terms of the DCPL Act it seeks - there's  
21 a principle of the DCPL Act, Your Honour, that --

22  
23 COMMISSIONER: And the Child Protection Act. I mean,  
24 aren't they concurrent obligations where - I mean, there  
25 can't be any doubt that the removal of a child involves the  
26 interference with human rights.

27 A. Yes. There's a clear principle that in protecting the  
28 child I should only take the action that's warranted in the  
29 circumstances, for example, by applying for the least  
30 intrusive child protection order.

31  
32 COMMISSIONER: Yes, and doesn't the Child Protection Act  
33 itself in the principles require that the court order also  
34 be the least intrusive that is available, to paraphrase?

35 A. Yes, it would be part of the principles and there's  
36 also rights clearly codified in the Child Protection Act,  
37 for instance the right of the child to be safe.

38  
39 MR CREAMER: There's also the charter as well.

40 A. Yes, the charter of rights. The child has a right to  
41 be protected from harm. Again, in principle 5B(e), in  
42 protecting the child the State should only take action that  
43 is warranted in the circumstances. And that's in  
44 reflection, but again subject to higher up in the hierarchy  
45 there, to a child's right to be protected from harm or risk  
46 of harm. But, yeah, you're right, Mr Creamer, I take your  
47 word --

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Q. There's specific obligations in your role but also your employees because of the way the Human Right Act is structured?

A. Yes, yeah. The Human Rights Act most definitely applies. When it commenced I myself undertook CPDs with my staff on the Human Rights Act training.

Q. Yes.

A. And I should note that any training that we have delivered internally at least is available internally to all staff by way of recordings.

MR CREAMER: I don't have any further questions, Commissioner.

COMMISSIONER: Thank you very much, Mr Creamer. Director --

MR CREAMER: I think there's going to be some re-examination.

COMMISSIONER: I beg your pardon. Sorry.

MS CONNOLLY: We just have a few questions in re-examination.

COMMISSIONER: Yes, of course

**<EXAMINATION BY MS CONNOLLY**

**[3.57 pm]**

MS CONNOLLY: We just have questions about two matters. It should be brief. First, Director, during your evidence last year in respect of the Together Union submission to the child protection litigation project --

A. Yes.

Q. -- the Commissioner asked if you could provide a copy of the covering email indicating that an OCFOS lawyer had taken the lead in drafting the submission; do you recall that?

A. Yes, I do.

MS CONNOLLY: I might hand up copies for the Commissioner and the Director of that covering email. That's an email chain dated 8 to 10 July 2024 with the subject "Together Union's formal submission to the child protection

1 litigation project".

2

3 COMMISSIONER: Yes, thank you. I don't think there's been  
4 any separate tender of a document on behalf of  
5 the Director.

6

7 MS CONNOLLY: No, that's right. This will be the first.

8

9 COMMISSIONER: So we'll call this DCPL-1.

10

11 **EXHIBIT #DCP-1 - EMAIL CHAIN DATED 8 TO 10 JULY 2024 WITH**  
12 **THE SUBJECT "TOGETHER UNION'S FORMAL SUBMISSION TO THE**  
13 **CHILD PROTECTION LITIGATION PROJECT"**

14

15 MS CONNOLLY: Thank you. I'll just confirm, Director,  
16 that that's the covering email that you were referring to?  
17 A. That is the covering email. So you can see that it  
18 was sent to me on 10 July 2024 at 10.37 am from a Cassandra  
19 Masjakin, she is an acting principal lawyer in my office,  
20 forwarding an email that was sent on 8 July 2024 at  
21 10.37 am writing by the individual to what seem to be group  
22 mail boxes making reference to the submission and being led  
23 by him.

24

25 Q. Thank you, Director. Second, during your evidence  
26 earlier today you referred to two further decisions of the  
27 Childrens Court of Queensland. I might just hand up copies  
28 of those two cases. You first referred to a decision by  
29 the President of the Childrens Court of Queensland about  
30 the power to make consecutive child protection orders.

31

32 A. Yes. But, look, I've got the same copy twice.

33

34 I don't have that decision.

35

36 MS CONNOLLY: Sorry, the Commissioner might have two

37

38 copies of the same decision as well.

39

40 COMMISSIONER: I have the same copy twice as well.

41

42 I think you will just need to substitute one for the other.

43

44 MS CONNOLLY: In respect of the decision about the  
45 consecutive child protection orders were you referring  
46 there to the decision of the Director of Child Protection  
47 Litigation v DHP and Another [2020] QChC 9?

48

49 A. Yes, I was.

50

51 COMMISSIONER: That will be DCP-2.

52

53

1 **EXHIBIT #DCP-2 - DIRECTOR OF CHILD PROTECTION LITIGATION v**  
2 **DHP AND ANOTHER [2020] QCHC 9**

3  
4 MS CONNOLLY: Thank you, Commissioner.

5  
6 You also referred to a decision by a Judge Rafter about  
7 authorising a medical examination of a child for the  
8 purpose of DNA parentage testing?

9 A. Yes.

10  
11 Q. Were you referring there to the decision of the  
12 Director of Child Protection Litigation v JT [2025] QChC  
13 15?

14 A. Yes, I was.

15  
16 COMMISSIONER: Yes, that will be DCP-3.

17  
18 **EXHIBIT #DCP-3 - DIRECTOR OF CHILD PROTECTION LITIGATION v**  
19 **JT [2025] QCHC 15**

20  
21 MS CONNOLLY: Thank you. No further questions,  
22 Commissioner. May the witness be excused?

23  
24 COMMISSIONER: Thank you very much. Director, thank you  
25 for your participation in this Commission. I regret to  
26 tell you that it may yet not have come to an end. Thank  
27 you for your very thorough statement and the patient  
28 participation in these oral hearings. Very grateful.

29 A. Thank you.

30  
31 COMMISSIONER: Court will adjourn.

32  
33 **SHORT ADJOURNMENT**

[4.02 pm]

34  
35 COMMISSIONER: It appears I left prematurely, just  
36 temporarily. Ms Sweet - no, Mr Hastie.

37  
38 MS SWEET: Gentlemen first.

39  
40 MR HASTIE: Commissioner, what I omitted to do was to  
41 tender another document. You might recall last year  
42 reference was made to the Lighthouse Project in the Family  
43 Court.

44  
45 COMMISSIONER: Yes. Director, you're excused, if you  
46 wish.

2  
3 MR HASTIE: If I could tender a set of documents that  
4 relate to it. One's a speech by the then Chief Justice of  
5 that court, that court now called the Federal Circuit and  
6 Family Court of Australia; and then a document from the  
7 website relating to what the Lighthouse triage is; and then  
8 a practice direction relating to it which is called the  
9 Evatt List.

10  
11 COMMISSIONER: Should I take those three documents as a  
12 related bundle?

13  
14 MR HASTIE: Yes, I think so, Commissioner.

15  
16 COMMISSIONER: Yes. I'll just find the exhibit number.  
17 That will be CL-87.

18  
19 **EXHIBIT #CL-87 - SPEECH; DOCUMENT RELATING TO LIGHTHOUSE**  
20 **TRIAGE; PRACTICE DIRECTION CALLED THE EVATT LIST**

21  
22 MR HASTIE: Thank you, Commissioner.

23  
24 COMMISSIONER: Thank you, Mr Hastie. I should have asked  
25 whether there was anything further before leaving. So  
26 thank you. Ms Sweet?

27  
28 MS SWEET: Yes, thank you, Your Honour. Two matters. One  
29 is I hand to you the tender bundle in respect of Clair  
30 Martin's evidence.

31  
32 COMMISSIONER: Yes.

33  
34 MS SWEET: It has three types of documents in it: the  
35 documents I formally took the witness to in her evidence  
36 from the additional document bundle she had; then the two  
37 additional documents that were the adoption numbers and the  
38 Carmody recommendation closure report; and it also includes  
39 the documents over which privilege was waived by the State.  
40 I'll hand that to you, Your Honour, and it has or will be  
41 very shortly circulated to my learned friends. It's  
42 nothing they haven't previously seen. So I tender that  
43 bundle in respect of Clair Martin's evidence.

44  
45 COMMISSIONER: All right. The material relating to  
46 Ms Martin will be exhibit CA-56.

47

1           **EXHIBIT #CA-56 - BUNDLE IN RESPECT OF CLAIR MARTIN'S**  
2           **EVIDENCE**

3  
4           MS SWEET:   Thank you.  The other thing I will tender just  
5           so it forms part of the record is the explanatory notes to  
6           the Child Protection Reform Amendment Bill 2017.  I don't  
7           need to take Your Honour to it now, and I can hand copies  
8           to my learned friends if they want them, but on page 36,  
9           the last paragraph refers to the amendments that are made  
10          to section 65 and speaks to the purpose of those amendments  
11          simplifying the section and the court not being required to  
12          consider certain matters under section 59.  So I tender  
13          that.

14  
15          COMMISSIONER:   Yes.

16  
17          MS SWEET:   And I'm indebted to the Director's counsel team  
18          for drawing that section to my attention.

19  
20          COMMISSIONER:   Thank you.  That material will be  
21          exhibit CA-57.

22  
23           **EXHIBIT #CA-57 - EXPLANATORY NOTES TO THE CHILD PROTECTION**  
24           **REFORM AMENDMENT BILL 2017**

25  
26          MS SWEET:   Those are the only housekeeping matters.

27  
28          COMMISSIONER:   Out of an abundance of caution, does  
29          anybody else wish to raise anything before I adjourn?  
30          Right.  Very well.  We'll adjourn.

31  
32           **THE HEARING WAS ADJOURNED AT 4.06PM UNTIL MONDAY,**  
33           **16 FEBRUARY 2026**

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