

CHILD SAFETY COMMISSION OF INQUIRY

Harry Gibbs Commonwealth Law Courts Building,
119 North Quay, Brisbane

On Friday, 12 December 2025 at 10.01 am

Before: Mr Paul Anastassiou KC, Commissioner

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

1 COMMISSIONER: Yes, Ms Freeman.

2
3 MS FREEMAN: Thank you, Commissioner.

4
5 COMMISSIONER: Welcome back.

6
7 MS FREEMAN: Thank you. Thank you. Great to be here.
8 I call Clair Martin.

9
10 COMMISSIONER: Yes, thank you.

11
12 <CLAIR SHIRLEY MARTIN, AFFIRMED [10.02 am]

13
14 <EXAMINATION BY MS FREEMAN

15
16 MS FREEMAN: Could you please tell the Commission your
17 full name?

18 A. Clair Shirley Martin.

19
20 Q. Thank you. And whereabouts do you work?

21 A. I work at the Labrador child safety service centre on
22 the Gold Coast for the department of families, Child
23 Safety, and within the Office of the Child and Family
24 Official Solicitor.

25
26 Q. Okay. And your current role is principal legal
27 officer; is that right?

28 A. Yes, it is.

29
30 Q. Okay. What sort of qualifications do you have,
31 Ms Martin?

32 A. I hold dual qualifications. I have a bachelor of arts
33 in psychology and I have a law degree and a postgraduate
34 diploma in legal practice, skills and ethics. I'm an
35 admitted lawyer.

36
37 Q. Okay. Great. Now, you've been with the department
38 since 2011; is that right?

39 A. Yes, since April 2011.

40
41 Q. Okay. And prior to working for the department what
42 was your work experience?

43 A. I worked as a solicitor in private practice between
44 March 2008 and that April 2011. I worked as a solicitor in
45 criminal law, family law, child protection law, domestic
46 violence, in Beenleigh.

47

1 Q. Okay. So prior to coming to the department you worked
2 in private practice doing child protection matters?

3 A. Yes, I did.
4

5 Q. So you would have been acting for families and
6 children?

7 A. I was acting for parents at the time. My principal
8 was a separate representative, so he acted for children.
9 But I represented parents, and I represented children in
10 both youth justice matters and - sorry, in youth justice
11 matters and as a direct representative in child protection
12 matters, but not as a separate representative.
13

14 Q. Okay. When you did start working with the department
15 you were initially employed in the role of court
16 coordinator; is that right?

17 A. Yes, I was.
18

19 Q. All right. So this was pre-2016. The role of court
20 coordinator, what did that look like generally?

21 A. So the court coordinator role was within the service
22 centre an officer that assisted the service centre with
23 court work. So it had a broader range of functions than
24 the current roles we have within OCFOS. The court
25 coordinator role was responsible for preparing court
26 material with the child safety officer and then going to
27 court, running those applications all the way from emergent
28 orders all the way through to child protection orders post
29 court-ordered conference stage. So if there was no
30 agreement after a court-ordered conference and the matter
31 needed to be listed for a hearing the matter would be
32 briefed to Crown Law. The court coordinators would assist
33 in the preparation of that brief and would generally
34 instruct Crown Law at the hearing of the matter.
35

36 The court coordinators also had a general support function
37 in relation to QCAT matters in relation to preparing
38 statements for QCAT and did a range of other legal and
39 quasi-legal tasks with the service centre, but they did not
40 give legal advice. There was no requirement for court
41 coordinators to be legally qualified. In a number of
42 places they were, as I was, legally qualified. But in
43 other service centres there were child safety officers or
44 other departmental staff who progressed to that role based
45 on experience.
46

47 Q. All right. So the role of giving legal advice was

1 held within Crown Law staff who were engaged to provide
2 that advice?
3 A. Yes. So if a service centre needed legal advice about
4 a particular matter the court coordinator would generally,
5 back then, make contact with the departmental court
6 services unit that would assist with the briefing up to
7 Crown Law to get advice if it was something that's, say,
8 outside what our internal legal services department did.
9
10 Q. Okay. All right. Now, you're currently a principal
11 legal officer. Since when have you held that role?
12 A. I've held that role since 2018. I believe it was
13 October 2018.
14
15 Q. Okay. And in terms of that role what generally does
16 it involve, if you just explain to the Commissioner,
17 please?
18 A. Yes. I - so we have two substantive principal legal
19 officer roles within OCFOS. The role has the legal
20 function of providing independent complex legal advice in
21 relation to matters. The way our team is structured,
22 I supervise five senior legal officers, and those five
23 senior legal officers supervise a team of lawyers in
24 different regions across the state.
25
26 Q. Okay. Ms Martin, you've provided a statement to the
27 Commission in relation to some matters in response to a
28 notice; is that correct?
29 A. Yes, I have.
30
31 Q. All right. I'll just give you a copy of that, please.
32
33 And, Commissioner, I do have a copy of that statement --
34
35 COMMISSIONER: Yes, I do - well --
36
37 MS FREEMAN: This has all the annexures to it. Would you
38 like --
39
40 COMMISSIONER: Maybe in another bundle. So if you have a
41 spare that would be convenient.
42
43 MS FREEMAN: Yes, I do.
44
45 MS SWEET: It's also tab 71.
46
47 COMMISSIONER: Yes, thank you.

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MS FREEMAN: If you could just have a look at the first tab of that folder, Ms Martin, it should be a copy of your statement; is that right?

A. Yes, it is.

Q. Yes. And that's a statement you signed on 3 November this year; is that right?

A. Yes, it is.

Q. And then following that are the annexures to your statement?

A. Yes.

Q. There are some 32?

A. Yes.

Q. Yes. And is that statement true and correct to the best of your knowledge and belief?

A. Yes, it is.

Q. All right.

Commissioner, I'll tender that and the annexures.

COMMISSIONER: Yes. Statement of Clair Martin and annexures will be exhibit CL-78.

EXHIBIT #CL-78 - STATEMENT OF CLAIR MARTIN AND ANNEXURES

MS FREEMAN: Now, Ms Martin, could I just take you to paragraph 11, please, on page 3. There you set out some matters that in your role as PLO you might provide expert legal advice to the department or the child safety officers; would that be right?

A. Yes. It varies within my role. So it might be a child safety officer. It could be a team leader. It could be a manager. It could be a regional director.

Q. Okay. Now, at subparagraph (b) you refer to adoption matters?

A. Yes.

Q. Can you just tell us what sort of advice you might provide about adoption matters in your role?

A. Certainly. Our department has an adoption and permanent care services team. In September 2022 the legal

1 work for adoptions moved into our team, so into OCFOS.
2 Prior to that there's a provision in the Adoption Act that
3 allows a departmental coordinator to appear. So prior to
4 that it wasn't legal officers doing the adoption work for
5 the department. So since September 2022 our team has been
6 responsible for all adoptions matters. So that might
7 involve dispensation applications, it might involve
8 stepparent adoptions, and then interim adoption orders,
9 which are made for one year before a final child adoption
10 order could be made, as well as final adoption orders.

11
12 Q. All right. Can you explain to the Commissioner from
13 your experience in providing that kind of advice how the
14 Adoption Act applies in the child protection space
15 typically?

16 A. I can. Obviously we know that adoption is the third
17 recommendation in the permanency principles of the Child
18 Protection Act.

19
20 Q. Yes.

21 A. The Adoption Act has - in terms of the function of
22 that Act, there's two. It provides for adoption where
23 parents are choosing adoption for their child. It does
24 also have the ability to allow for adoption if a - it uses
25 similar wording to the Child Protection Act but not exactly
26 the same. So it talks about a parent not willing and able
27 to provide for the long-term care of a child. But there's
28 some complications in relation to moving straight from the
29 child protection jurisdiction into the adoption
30 jurisdiction. One of those is that there's somewhat
31 limited grounds in section 34 and section 9 of the Adoption
32 Act for dispensation. So --

33
34 Q. Sorry to interrupt, you're talking about dispensation
35 of parental consent?

36 A. Yes. So dispensation of a parent's consent. So
37 within the child protection system if the parents are
38 consenting to an adoption, if they're agreeable to that
39 process, there's guardians available to staff in relation
40 to making contact with the adoption and permanent care team
41 who will assist the child safety officers working under
42 child protection through that process if parents are
43 agreeable to it.

44
45 If parents are not agreeable to adoption as the option for
46 their child there is a mechanism through seeking
47 dispensation. If we were seeking dispensation of both

1 parents it would be a double dispensation --

2

3 Q. Right.

4 A. -- which at law can happen but there's an additional
5 requirement if the child's on a child protection order. We
6 would need to demonstrate not only that there's one of the
7 conditions listed in the dispensation section but you would
8 have to demonstrate that the parent is unreasonably
9 withholding their consent to the adoption. So if you had a
10 circumstance where the parent understood their child needed
11 long-term care but they still wanted to play a role, they
12 still wanted to be consulted on long-term decisions, they
13 still wanted to have that relationship with their child, we
14 wouldn't be able to get a dispensation in those
15 circumstances.

16

17 And then there's another issue that arises where if an
18 adoption order is made for a child on a child protection
19 order there's a requirement to have an adoption plan. An
20 adoption plan is set out in the Adoption Act in terms of
21 what's prescribed to be in them. They're not required for
22 every adoption, but they are required for children who are
23 on child protection orders. It's a prerequisite. And the
24 adoption plan must be agreed to by the parties. So if the
25 parents in the child protection system don't agree to
26 adoption as an option for their child they, by conclusion,
27 wouldn't agree to the adoption plan, which is a
28 prerequisite for the adoption. So even if the court
29 granted a dispensation they still need to agree to the
30 adoption plan or adoption cannot proceed.

31

32 Q. Right. Okay.

33

34 MS McMILLAN: Mr Commissioner, could I just ask the
35 witness to slow down very slightly? Some of us are still
36 in the dark ages writing by hand.

37 A. Certainly.

38

39 MS FREEMAN: Thank you.

40

41 So, Ms Martin, in terms of the applications for
42 dispensation of parental consent, who brings those
43 applications?

44 A. So it depends on the proceeding. So if it's a
45 stepparent adoption the applicant is ordinarily the parent
46 seeking the stepparent adoption. So if it was a mother
47 seeking to adopt her stepchild she would bring a - she may

1 bring a dispensation application in relation to the
2 biological father. In circumstances where it's not a
3 stepparent adoption, so any other adoption, the adoption
4 and permanent care team would instruct us and our lawyers
5 from our office would bring that dispensation application.
6

7 Q. So that team you're just talking about, do they sit
8 within OCFOS or are they separate?

9 A. No. So they sit within the department but they're
10 separate to Child Safety - sorry, apologies, they're
11 separate - so they sit within the statewide operations
12 branch.
13

14 Q. Right.

15 A. They're separate to service delivery in relation to
16 child protection matters, a separate team and a separate
17 unit. They do have involvement. The adoption - it used to
18 just be the adoption unit. That changed to adoption and
19 permanent care services.
20

21 Q. Right.

22 A. And they play a role in regional service delivery in
23 relation to permanency matters.
24

25 Q. Right.

26 A. They assist service centres on some matters where
27 conversion to either a permanent care order or a long-term
28 guardianship order to other might be a suitable option.
29

30 Q. Okay. So if there is contemplation being given by the
31 Chief Executive as to what type of order and what the
32 permanency for that child ought to be under the Act, and
33 looking at those provisions in section 5BA, how does that
34 unit become involved in that process?

35 A. So that unit must be involved if adoption was the
36 permanency option being considered. So service centre
37 staff would have to consult with that unit. In relation to
38 long-term guardianship to a suitable other or a permanent
39 care order, that unit can assist. So the service centres
40 can do that assessment and they can progress the referral
41 to the Director's office for those types of orders without
42 any involvement from that team. But they also do - they
43 have a dual role in terms of permanency matters. So that
44 team will often go out to regions and run training in
45 relation to converting orders into permanent care orders or
46 LTGO orders. So they provide a training function to
47 regions, and they also can provide some assistance in terms

1 of resourcing to progress those matters.

2

3 So the Act requires what we call 51VAA reviews of long-term
4 orders. Sometimes that team might become involved in those
5 reviews, and they may assist with completing a suitability
6 assessment or referring a matter for an external
7 professional to complete the suitability assessment,
8 essentially to help those matters progress, because
9 resourcing of service centres sometimes can make that
10 difficult to progress and prioritise those matters and give
11 them the importance they deserve. So that team can operate
12 as an additional resource for service centres, but it's not
13 a compulsory requirement.

14

15 Q. Okay. So if there was to be - if adoption was
16 considered a suitable option for permanency for a child and
17 the parents are not consenting and there was a
18 consideration of a dispensation of parental consent, that's
19 something that that unit would apply for?

20 A. Yes. So it's something that that unit would - so they
21 would need to determine that adoption was an appropriate
22 option and that they intended to pursue an adoption order,
23 and in terms of considering whether to pursue an adoption
24 order, the dispensation, it may be a prerequisite to
25 seeking the adoption order.

26

27 Q. All right.

28 A. The instructions for that action would come from that
29 unit.

30

31 Q. Okay. And in your role as an OCFOS lawyer you might
32 give some legal advice about the suitability of such
33 applications; is that right?

34 A. Yes.

35

36 Q. Okay. All right. It's not something that, for
37 example, the Director of Child Protection Litigation would
38 get involved in, as far as you're aware?

39 A. No. Not an adoption proceeding under the Adoption
40 Act.

41

42 Q. Okay. All right. Okay. Now, in terms of your role
43 as a PLO you supervise a number of areas or locations; is
44 that right?

45 A. Yes.

46

47 Q. Can you just explain to the Commissioner sort of the

1 breadth of the geographical locations that you oversee?
2 A. Yes. I have legal teams within the south-east, so
3 that's the two districts of the south-east region, which is
4 Gold Coast and Logan. I have Moreton-Brisbane as a region.
5 So that's all of Brisbane, Moreton Bay. I also have part
6 of the Sunshine Coast, which is Caloundra and Maroochydore
7 service centres, and I have Far North Queensland. So that
8 includes Cairns, the Gulf and everywhere in the Far North
9 Queensland region. Essentially I have 21 service centres,
10 and that's excluding the hubs. So Cairns has, in Thursday
11 Island, Mareeba, those hubs as well. But I have 21
12 substantive service centres that my lawyers provide support
13 to.

14
15 Q. Okay. And how many PLOs are there in the state?

16 A. There's two, two substantive PLO positions. Since
17 December of last year we have temporarily been able to put
18 on a third principal legal officer using a different
19 position.

20
21 Q. Do you think there should be more PLOs?

22 A. Yes, I do. I think it's - I think it is a challenge
23 to provide the level of support and guidance to staff when
24 we only have two substantive principal lawyers in the
25 entire team.

26
27 Q. Now, you have been at OCFOS since its inception in
28 2016; is that right?

29 A. Yes, I have.

30
31 Q. Okay. And we've heard some evidence about the changes
32 in the way that office has operated over the years. Can
33 you just tell us between - so the period between 2016 and
34 2018, what was OCFOS's role in terms of bringing
35 applications, providing legal advice, et cetera to people
36 within the department?

37 A. Yes. So when - at inception the role of the OCFOS
38 legal officer was to be the applicant for emergent order
39 applications. So that is temporary assessment order,
40 temporary custody order and court assessment orders.

41
42 Q. Yes.

43 A. The applications for those orders are sworn evidence.
44 The application itself, it's a requirement that it's sworn
45 evidence.

46
47 Q. Yes.

1 A. Which is distinguishable from child protection order
2 applications, which are statements of pleadings in the
3 traditional legal sense.
4

5 Q. Right.

6 A. The applications for the emergent orders themselves
7 are sworn documents. Our legal officers were delegated
8 to - and still are, I believe, under the delegations, to
9 make those applications, which meant that we had to sign
10 those applications. We - and the applications had to
11 include the grounds on which the order was made or sought,
12 and the statement of facts in relation to the records the
13 department hold, the current circumstances and what the
14 child safety officer was seeing out in the field all had to
15 be sworn evidence by the legal officer.
16

17 Q. Okay. And at that point in time did OCFOS have any
18 role in referrals to DCPL?

19 A. Yes. So at inception OCFOS was the decision-maker
20 about what got referred to the Director's office. So you
21 might have a situation where Child Safety assessed that a
22 long-term order was required and OCFOS disagreed but they
23 didn't have sufficient evidence for that and would on the
24 evidence refer it to the Director's office as a short-term
25 order. Then the Director in providing reasons, if they
26 disagreed, only gave those reasons in relation to the OCFOS
27 position, not the CSO or the team leader's position.
28

29 Q. Right. So in terms of when the OCFOS lawyer was
30 coming to draft these applications for the emergent orders
31 how would you be able to satisfy yourself that there was a
32 reasonable basis for making that application such that you
33 could sign it?

34 A. So a lot of that evidence was based on departmental
35 records, so things that were recorded that you could
36 actually see. One of the early issues that arose was that
37 myself and other lawyers would sometimes refuse to sign a
38 sworn statement based on things we were told verbally over
39 the phone that we couldn't verify. So a child safety
40 officer might call the team leader with an update of what
41 was happening in the home. The team leader would document
42 that into an email usually and then would send that to us.
43 It sat very, very uncomfortably as legal officers and
44 officers of the court to have to then swear to the accuracy
45 of that information. We raised concerns quite early on
46 about best evidence, and we know that in this jurisdiction
47 the rules of evidence are relaxed, but we still obviously

1 need to try put direct evidence and the best evidence
2 before the court. We as lawyers have real concerns about
3 being the swearers of fact on applications that we were
4 also giving legal advice on.

5
6 COMMISSIONER: Can we just pause there for a minute.

7 A. Yes, Commissioner.

8
9 COMMISSIONER: Firstly I would like to know in relation to
10 paragraph 31 of your statement how this change came about
11 in 2018. You say:

12
13 *Delegations were amended in 2018 so that*
14 *the senior team leader was the*
15 *decision-maker.*

16
17 Now, as I understand it, and I've been given the current
18 delegations, there remains to this day delegations in
19 favour of OCFOS?

20 A. Yes, Commissioner --

21
22 COMMISSIONER: So isn't it more accurate to say that
23 additional delegations were provided to enable the senior
24 team leader to make the decision?

25 A. Yes, Commissioner. I believe paragraph 31 is not in
26 relation to emergent orders; it's in relation to the
27 referral to the Director's office under section 15 of
28 the Director of Child Protection Litigation Act.

29
30 COMMISSIONER: I see. Okay. But in any case as things
31 presently stand do you agree that there are extant
32 delegations in favour of OCFOS which would enable, subject
33 to practice internally to the contrary, for an OCFOS lawyer
34 to be the applicant on an emergent application?

35 A. Yes, Commissioner, those delegations still exist. So
36 our legal officers can still make that application.

37
38 COMMISSIONER: Right. And the reason they don't is
39 because there's been a change of practice?

40 A. Yes, Commissioner.

41
42 COMMISSIONER: What can you tell me about the - who made
43 the decision to change the practice, how it was made and
44 whether you were involved in it?

45 A. Yes, Commissioner. My - I can only - so in - when
46 that change was made it was prior to the principal legal
47 officer position existing. So at the time I was in a

1 senior legal officer position. I managed the south-east.
2 So I believe I had nine service centres and 11 lawyers on
3 my team. My team, the practice was consistent and our
4 lawyers would be the applicant for those matters. We
5 became aware - as I indicated, our legal officers raised
6 really concerns about being the swearers of fact. We had
7 some places across the state where lawyers were refusing to
8 sign the application and swear to those facts.

9

10 COMMISSIONER: Can I just unpack that concern with you?

11 A. Yes.

12

13 COMMISSIONER: You said the concern raised by the lawyers
14 was about swearing to the accuracy of the material
15 contained in the application?

16 A. Yes.

17

18 COMMISSIONER: So in the case of an emergent order there
19 isn't a separate supporting affidavit. The matters stated
20 in the body of the application, the form that's provided to
21 the court, is verified on oath?

22 A. Yes.

23

24 COMMISSIONER: Right. Now, is it not self-evident that
25 the content of the application insofar as it refers to
26 facts are facts that the person, if it's a lawyer, is
27 verifying on information and belief?

28 A. Yes, Commissioner.

29

30 COMMISSIONER: So it's hearsay?

31 A. It is. It's all - yes, it's hearsay.

32

33 COMMISSIONER: And that's acceptable in this jurisdiction?

34 A. Yes, it is.

35

36 COMMISSIONER: So the lawyer is not to be taken to be
37 directly swearing to the truth of the matters contained
38 based on the lawyer's own knowledge?

39 A. No.

40

41 COMMISSIONER: But on information and belief?

42 A. Yes.

43

44 COMMISSIONER: And is it not the proper function of the
45 lawyer, having regard to the matters that are referred to
46 in the application emanating from the investigation by the
47 CSO and the team leader, that those matters are considered

1 to amount to a proper basis for the bringing of the
2 application?

3 A. Yes, Commissioner.
4

5 COMMISSIONER: And ultimately the weight to be given to
6 the evidence contained within the application sworn to on
7 information and belief by the lawyer is a matter for the
8 court?

9 A. Yes.
10

11 COMMISSIONER: Right.

12 A. Accept that.
13

14 COMMISSIONER: Well, then I don't really understand on
15 that basis why the lawyers should be concerned about their
16 role as the applicant?

17 A. Commissioner, if I may expand on that?
18

19 COMMISSIONER: Please do.

20 A. So in these matters, in emergent order matters, the
21 child safety officer is usually out in the field, so at a
22 home, out doing their investigation. They will telephone
23 the team leader. They will give the team leader an update.
24 What was missing from that process was the ability of the
25 child safety officer as the person in the field to actually
26 review the evidence as typed. So the evidence wasn't
27 contained in departmental records at that time. It was
28 being verbally relayed to the team leader. Sometimes what
29 we see now conversely is we get that information as
30 verbally relayed and with the lawyer drafting the
31 application they send it to the CSO and the CSO has the
32 ability to say, "Actually, that wasn't accurate. I need to
33 amend it," before it gets deposed.
34

35 COMMISSIONER: That's a process or communication problem,
36 isn't it? That's got really nothing to do with whether the
37 applicant ought be the lawyer or the CSO? I mean, what
38 you've described is a difficulty of process, isn't it?

39 A. It is, Your Honour - sorry, Commissioner.
40

41 COMMISSIONER: And of course the CSO in the field who's
42 the source of the information that's being translated, as
43 it were, into the document, into the application, ought be
44 given a proper opportunity to make sure that what he or she
45 has said has been faithfully and accurately recorded in the
46 document. But that's all it comes down to, isn't it?

47 A. It does, Commissioner. But in the absence of the

1 child safety officer having to sign that document there's
2 no ability for them to declare that the contents are true
3 and correct.
4

5 COMMISSIONER: I'm not sure that that follows because, if
6 a draft of the document produced on the instructions of the
7 person in the field is provided to that person, that person
8 can tell the lawyer, "Yes, I'm happy with that," or, "No,
9 it requires amendment," or, "You've forgotten to include
10 something," whatever the case may be. So, again, there's
11 no practical impediment, is there, to the opportunity for
12 the CSO to verify and be satisfied and communicate that
13 satisfaction to the lawyer?

14 A. There's no practical impediment. But as it currently
15 stands they're the one that has to verify that under oath
16 or affirmation. In 2016 they didn't do that at all; it was
17 not the process. So only the legal officer was swearing to
18 that information. There was no record or there was no
19 court process in which the child safety officer would
20 affirm the accuracy of that information.
21

22 COMMISSIONER: Well, again, the information is provided to
23 the lawyer, the lawyer provides that information in the
24 form - in the application form, explicitly on information
25 and belief based on the information provided by the CSO.
26 The only critical element that seems to have been missing
27 as a matter of process at some point in time is the
28 communication of the form and the content of it for
29 verification by the CSO before the lawyer signs the
30 application. So if one overcame that lacuna that would do
31 the job, wouldn't it?

32 A. Commissioner, it would. But the other part of that is
33 in terms of the evidence. So the child safety officer is
34 making an assessment while they're in the field. So,
35 again, the legal officer's application on belief will be an
36 application on belief of what we believed their practice
37 assessment is as well, so their judgment call in the field
38 is --
39

40 COMMISSIONER: But - sorry, complete your answer.

41 A. So I was going to say so part of the difficulty in
42 that is again it goes back to best evidence. I just -
43 I want to be clear as well, Commissioner, I have no
44 difficulty with the legal officer making the decision to
45 proceed with court proceedings. I don't have any
46 difficulty with doing that. I have difficulty personally
47 doing it in the absence of any statutory authority to be

1 the decision-maker outside of actually being the applicant
2 in the proceeding.

3

4 COMMISSIONER: Well, as things presently stand you have
5 the statutory authority by the extant delegation, don't
6 you?

7 A. I have a delegation to make application, Commissioner.
8 But if that application is challenged I'm also then a
9 witness and I'm the only witness in those proceedings.

10

11 COMMISSIONER: That's a matter of having somebody
12 separately appearing in the proceeding. I understand the
13 point that if you were the advocate in the proceeding you
14 couldn't be the witness - you couldn't be the applicant and
15 the witness. As a matter of common court practice, it's
16 undesirable to have advocates cross-examined, but I have
17 seen it happen in rare cases, then the barrister has to
18 give the brief back. But that could be readily dealt with
19 by ensuring that the applicant is not the advocate. Then
20 I take it that that's easy enough to arrange because
21 presumably you have some arrangement for a range of OCFOS
22 lawyers to be available to act as court advocates?

23 A. We do, Commissioner. But, to be clear, back when we
24 were regularly the applicant on all matters that
25 arrangement was not in place. So the lawyer signing the
26 application was also the advocate running the proceeding
27 and --

28

29 COMMISSIONER: Well, that's undesirable, isn't it?

30 A. Absolutely - and also was the legal officer that gave
31 legal advice on the matter. So that's why - that's part of
32 why our lawyers and myself were very concerned about that
33 practice.

34

35 COMMISSIONER: Well, I can understand that concern because
36 it would put you as the advocate in front of the court in
37 an invidious position that you might be called upon to give
38 evidence and cross-examined?

39 A. Absolutely.

40

41 COMMISSIONER: But, as I say, there's a sort of obvious
42 remedy to that problem; right?

43 A. Yep.

44

45 COMMISSIONER: So if we put that problem aside, and if we
46 assume that particularly in the era of instant electronic
47 communication that the CSO, who's the sort of origin of the

1 assessment, is provided with a copy of the document to be
2 put before the court and is satisfied as to its accuracy,
3 then that problem goes away. What I want to come to is the
4 role of the lawyer in scrutinising, assessing or evaluating
5 the material that is assessed by the CSO to form an
6 independent legal judgment as to whether that material
7 provides sufficient evidence to form a proper basis for the
8 making of the application. Isn't it that qualitative
9 assessment that is the work of a lawyer in this context?

10 A. Yes, Commissioner. It's a forensic analysis of all of
11 the evidence to determine if a proceeding should be
12 brought.

13
14 COMMISSIONER: And would you not agree that the lawyer is
15 best qualified to make that assessment for the purposes of
16 bringing an application before a court?

17 A. I do agree that a lawyer is best qualified to provide
18 advice about whether that action should occur or shouldn't
19 occur, or whether there's additional evidence that may be
20 required before an action is taken.

21
22 COMMISSIONER: All right. Well, at the moment you operate
23 on an instructional model where, on the evidence I have
24 presently before me, the decision in that regard, even if
25 potentially contrary to the view of the lawyer concerning
26 the adequacy of the material, nevertheless is one that is
27 left to be decided by the department, by the CSO and the
28 team leader. Now, do you consider that to be a desirable
29 state of affairs?

30 A. I do, Commissioner. I think - I have a caveat to
31 that.

32
33 COMMISSIONER: Yes.

34 A. I do think it's desirable, but the caveat is that the
35 legal officers and our legal officers know that they only
36 act - they act on instructions, but they only act on lawful
37 and competent instructions. I think there's a - I think --

38
39 COMMISSIONER: What does that mean, "lawful and competent
40 instructions"?

41 A. So, Commissioner, that's a concept that comes from the
42 Legal Profession Act. So solicitors in Queensland are
43 bound to act on instructions but only to act on lawful and
44 competent instructions. It's that concept of not being a
45 mere mouthpiece and not just doing everything your client
46 tells you to do as a legal officer.

1 COMMISSIONER: I do understand that, and that's a
2 principle that is widely embedded in professional practice
3 standards and legislation that operate throughout the
4 country, and in court rules --
5 A. Yeah.
6
7 COMMISSIONER: -- proper basis certificates are --
8 A. YEP.
9
10 COMMISSIONER: -- required almost invariably in civil
11 litigation. I understand all of that. In due course you
12 can explain why you consider the - well, perhaps since
13 we've raised it you may as well tell me now why you
14 consider the present practice to be desirable?
15 A. Yep. Commissioner, I do think there could be changes
16 in relation to what we call the escalation process.
17 I think if you have an independent legal team - I go back
18 to the original recommendations of the last inquiry, the
19 Carmody Inquiry, around the Office of the Child and Family
20 Official Solicitor reporting only to the Director-General.
21
22 COMMISSIONER: Ms - would you like us to pause? No.
23 Thank you.
24 A. Reporting only to the Director-General. I think
25 that - I think if you have an independent legal team
26 I think the independence has to be clearly established.
27 I think that reporting structure could change that.
28
29 COMMISSIONER: What do you mean? That OCFOS should be
30 under the framework, for want of a better and more accurate
31 description, of the Attorney-General's Department?
32 A. No, I think under the Director-General of - the head
33 of the department, so the head of the organisation.
34
35 COMMISSIONER: But then you would still be within the
36 management structure of the department, wouldn't you, even
37 if you were to be sort of reporting directly in some
38 administrative structure to the Director-General?
39 A. It would, Commissioner, but in my experience the
40 higher you get up the hierarchy within government the more
41 weight and gravitas is given to legal advice. So we
42 operate in a human services --
43
44 COMMISSIONER: That's encouraging, I suppose?
45 A. Yeah. Commissioner, we operate in the human services
46 environment.
47

1 COMMISSIONER: Yes. Of course I understand that.
2 A. Practitioners are very used to shared decision-making
3 and collaborative decision-making processes. That's the
4 norm for how they work. That's the framework they're used
5 to. So what we see in offices sometimes is they reach a
6 decision, we give them legal advice, and that legal
7 advice - departmental officers don't understand the
8 consequences of not following it, so --

9

10 COMMISSIONER: Yes, well, that's really my - something
11 that troubles me. If you identify what the relevant
12 decision is at this point in the process, the relevant
13 decision, the material decision that's being made, is
14 whether there's a sufficient and proper basis to make an
15 application to the court, and in the present bifurcated
16 arrangements from OCFOS's perspective that's a question of
17 whether an emergent order and, if so, what kind of an
18 emergent order should be sought.

19

20 The CSO and the team leader have done their work in
21 gathering information, forming a risk assessment. There's
22 absolutely no problem with the shared consideration of the
23 matter at the point in time at which a decision needs to be
24 made whether to make an application to the court. There's
25 no problem with collaboration, debate; no problem with
26 properly taking into account the views and assessment made
27 by the primary investigators and evaluators, namely the
28 CSO. All of that collaborative work needn't change. But
29 ultimately if one focuses in on what the material decision
30 is at that point in time it is a legal and forensic
31 decision as to whether all of that material after proper
32 collaborative consideration is sufficient for the purpose
33 of making an emergent order application.

34

35 So, viewed in that context, why shouldn't the lawyer be the
36 decision-maker when it comes to that final step, if you
37 like, at that point in time as opposed to what is presently
38 the case, which is that the decision-maker is very clearly
39 to be the CSO or team leader and the lawyer is to act on
40 instructions? I understand you say the ability of any
41 client to give instructions is subject to the overriding
42 duty the lawyer has to the court, and therefore the lawyer
43 is not required to be the agent for the client to do things
44 outside that ethical obligation. I understand that. But
45 why should it even come to that question? Why should we
46 even get there in this context, is really my question?

47

1 proceedings in the course of ordinary legal practice would
2 usually sit with the client, provided it doesn't invoke
3 ethical obligations to the court or the duty to the court.
4 If a client wants to bring an application that is not
5 misconceived, that has a basis but weak prospects, that is
6 a matter in --

7
8 COMMISSIONER: I accept that.

9 A. Yeah.

10
11 COMMISSIONER: I accept that, subject to the overriding
12 principal duty that the lawyer has to the court and the
13 invariable requirement that the lawyer is to provide a
14 proper basis certificate for the bringing of the proceeding
15 to ensure that baseless claims are not brought. That is
16 true. But here it's a somewhat different context, isn't
17 it? It's a human services framework, and it's the exercise
18 of State power that's sought to be invoked by the State, by
19 the judicial arm of government?

20 A. Yes.

21
22 COMMISSIONER: So it's a slightly different context than
23 in an ordinary private civil context, would you not agree?

24 A. Commissioner, I would agree, and that's my point.
25 It's the court oversight. So it 's where - in a human
26 services context, where you have a practitioner making a
27 human services assessment, they should have the benefit of
28 legal advice about the quality of the evidence to support
29 that assessment. But that decision to - the decision to
30 take an action or seek an order, I think there should be
31 court oversight of that. If the child safety department
32 has the benefit of legal advice, has considered the legal
33 advice, and still - so in the course of that escalation, if
34 it went all the way up to a regional director who
35 considered the practice, considered the evidence,
36 considered the legal advice and any vulnerabilities or gaps
37 in that legal advice, made changes, if they still told us
38 to proceed to court and - in the model I envisioned, as
39 I said, I think our team should report to the
40 Director-General.

41
42 If the Director-General, with the benefit of legal advice,
43 considered the practice assessment of her staff and
44 considered the legal advice and still thought that an
45 application should proceed to court, I think the state
46 welfare agency should have the capacity to do that, to make
47 a decision to seek a court order. Not to make a decision

1 to have the order; to make a decision to have court
2 oversight in relation to that.

3
4 COMMISSIONER: Well, arguably, but the question at the
5 point in time that we're talking about is whether the
6 jurisdiction of the court should be invoked at all, that is
7 should an application be made, and I think you'll agree
8 that that's a forensic and legal evaluation involved in
9 that?

10 A. Yes, Commissioner.

11
12 COMMISSIONER: And so if the primary decision-maker is the
13 lawyer, if there is disagreement with the lawyer's
14 assessment on the part of the CSO, so you really invert the
15 present process, the escalation would be available,
16 wouldn't it, so that it could be escalated up the chain
17 that I've heard about from the principal solicitor,
18 Ms Schifilliti, and any such conflict would hopefully be
19 resolved in that process. It's just a question of where
20 you start, isn't it?

21 A. I accept that, Commissioner. I also do want to flag,
22 though, that there are many circumstances where social
23 workers will sit with far more risk than lawyers will sit
24 with. So there are many instances where, as a lawyer
25 giving advice on a matter, I wouldn't sit with the
26 liability that senior team leaders are happy to sit with
27 and --

28
29 COMMISSIONER: What do you mean by that?

30 A. So there's circumstances where a lawyer reviewing the
31 evidence that Child Safety holds, the legal analysis is
32 more intrusive than what Child Safety wants to do, and we
33 see that reflected in the Director's decisions. We see
34 Child Safety asking for a further short-term order because
35 their assessment is that reunification is achievable, and
36 the Director's office, on a strict analysis of the
37 evidence, think that long-term orders are more appropriate.

38
39 So I think it's critical to understand the inverse because
40 I think the assumption could be that Child Safety takes too
41 many orders and if lawyers were looking at that decision
42 there would be less children coming into care. But,
43 Commissioner, when you involve lawyers in terms of looking
44 at risk and liability, sometimes you get the opposite.
45 Sometimes you get more intrusive action decided by the
46 lawyers because they're not willing to sit with
47 the liability or the risk that a social worker will sit

1 with.

2

3 COMMISSIONER: So this is risk tolerance you're talking
4 about?

5 A. Risk tolerance.

6

7 COMMISSIONER: Well, risk is a hard thing to assess for
8 anybody, isn't it?

9 A. Absolutely. Yes.

10

11 COMMISSIONER: And the differences might be explicable by
12 reference to different individuals' subjective assessments
13 of the way in which the subject risk is to be evaluated?

14 A. Yes.

15

16 COMMISSIONER: And it's probably the case that variations
17 of that kind, that is in the evaluation of the facts for
18 the purposes of forming an opinion about the likelihood of
19 risk and the gravity of the risk, is always likely to be a
20 matter about which reasonable minds might differ?

21 A. Yes.

22

23 COMMISSIONER: And so there will be a potential variation
24 I suspect in the more marginal cases when it comes to risk
25 evaluation?

26 A. Yes, Commissioner, but it's also - to be honest,
27 I think we see it frequently in the getting Child Safety
28 uninvolved space. So when we talk about the revocation of
29 child protection orders I can think of a recent example
30 that - I know the Commissioner has heard evidence about
31 delegated authority work. A recent example where a
32 delegated authority community-controlled organisation
33 thinks a child is safe enough at home and the State no
34 longer needs to have an order and be involved, that's a
35 matter where we've referred it to the Director's office and
36 they weren't satisfied the child was no longer in need of
37 protection.

38

39 That decision about whether that order should be revoked in
40 my view should sit with the court. There should be court
41 oversight about whether the risk has been adequately
42 mitigated to have the State step out of the family's life,
43 rather than a lawyer being a barrier to Child Safety
44 getting an order revoked.

45

46 COMMISSIONER: Perhaps the issue that you've raised is
47 addressed by who should have a right to raise the matter

1 before the court. But give me the context of the example
2 you've just given. It's the - the delegated authority had
3 authority to do what? Place the child?
4 A. So the child's on an order, a long-term order,
5 I believe, delegated authority that the community
6 controlled-organisation has --
7
8 COMMISSIONER: Under section 82(2)?
9 A. 82(2), decision-making power --
10
11 COMMISSIONER: So that's a particular body, the name of
12 whom I've forgotten?
13 A. Commissioner, I believe you've heard evidence that
14 it's only [REDACTED] on the Sunshine Coast.
15
16 COMMISSIONER: Yes.
17 A. This wasn't that body. This was [REDACTED] in the
18 Moreton-Brisbane region, I believe.
19
20 COMMISSIONER: And that body also has delegated authority?
21 A. Yes, I believe so.
22
23 COMMISSIONER: So it's delegated authority in relation to
24 placement?
25 A. Yes. So in relation - they have delegations I believe
26 in relation to contact and placement under 82(2).
27
28 COMMISSIONER: Right.
29 A. The child that I'm thinking of had been home with his
30 mother almost 12 months. All of the references, all of
31 the information from the community-controlled organisation
32 were at the risk of being mitigated. The mother had done a
33 lot of work. She was engaged with them. She was working
34 with them. The test in the legislation, Commissioner, for
35 revoking an order is that the order is no longer
36 appropriate and desirable.
37
38 COMMISSIONER: What was the order that was to be revoked?
39 A. I believe it was a long-term guardianship to the Chief
40 Executive order.
41
42 COMMISSIONER: So that was to be revoked in place of?
43 A. In place of nothing. So --
44
45 COMMISSIONER: So reunification --
46 A. Reunification to the mother.
47

1 COMMISSIONER: Yes.
2 A. Reunification supported by the community organisations
3 that she was already linked in.
4

5 COMMISSIONER: But shouldn't that be a question that is
6 open to scrutiny by the court?

7 A. Yes, Commissioner. That's my point. So we've
8 referred that to the Director's office. The Director's
9 looked at it and said, "You cannot evidence this child is
10 no longer in need of protection." Based on historical risk
11 of the mother and all of the child protection concerns,
12 they were not satisfied on the evidence from the delegated
13 authority decision-maker that there was - that the risk had
14 been mitigated. So that then was referred back to the
15 Chief Executive to gather further evidence and get further
16 information before we can even try to revoke the order. In
17 my view a court should look at that and see whether they
18 are satisfied - the court is satisfied the parents have
19 sufficiently mitigated the risk.
20

21 COMMISSIONER: So you would say that - so this was an
22 application to discontinue the long-term guardianship order
23 or to revoke --

24 A. To revoke it, yes, Commissioner.
25

26 COMMISSIONER: So in that context your criticism is that
27 that becomes a matter exclusively within the
28 decision-making power of the Director?

29 A. Yes, Commissioner.
30

31 COMMISSIONER: And so if the Director considers that it's
32 not appropriate to revoke the order the matter is not
33 brought before the court?

34 A. Yes, Commissioner.
35

36 COMMISSIONER: And in that event the solution to your
37 criticism would be to give standing to others to move the
38 court for a determination, and that other might include the
39 delegate of the power under section 82(2), which is a
40 placement power, not a guardianship power because the
41 guardianship issue is the matter for the court; correct?

42 A. Yes. Commissioner, the mother in that circumstance
43 does have the ability to revoke the child protection order.
44 She has standing under section 65 to revoke that.
45

46 COMMISSIONER: Well, why couldn't she have brought an
47 application?

1 A. Commissioner, it's about the vulnerability of
2 the family and parents that we work with.

3

4 COMMISSIONER: I understand that.

5 A. If Child Safety thinks we don't need an order anymore,
6 we don't need to be involved, the obligation to bring that
7 application should sit with the State, not with a parent to
8 initiate litigation against the department.

9

10 COMMISSIONER: That's also a fair point. The State having
11 initiated the --

12 A. Yes.

13

14 COMMISSIONER: -- removal of the child ought to
15 facilitate - the removal of the child via the intervention
16 of the court, it ought to facilitate the revocation of
17 the order on the application --

18 A. Yes, and --

19

20 COMMISSIONER: -- of the person with a material interest,
21 and the mother plainly is such a person?

22 A. Yes. Commissioner, as a court coordinator that was
23 standard practice for me. I have a fundamental belief
24 that, if the State stands up and says a parent is not
25 willing and able in a courtroom, the State should also
26 stand up and say the parent has addressed the concerns and
27 is a parent willing and able. I did that on one occasion
28 where there was a couple of weeks left on an order, instead
29 of just letting it end. I think the - I think - if the
30 parent makes those changes they should have the opportunity
31 for the State to stand up and say that, and I think that
32 was a big change for me --

33

34 COMMISSIONER: So what will we need to do in terms of
35 making it more accessible - the court more accessible to
36 persons with relevant interests in the question of whether
37 (a) the order should be made in the first place and (b)
38 whether it should be revoked or varied in some way?

39 A. Yep, Commissioner, that for me comes down to the
40 expectations on the evidence. So when I used to do those
41 matters I can think of one where I had a three-page
42 affidavit that said, "Here's the review report. This is
43 what the mother's done. Child Safety thinks it's safe
44 enough. This is the circumstance." The court was
45 satisfied on that.

46

47 COMMISSIONER: I think we've strayed a bit. We've strayed

1 a bit. We started off discussing the question of who
2 should be the decision-maker at the point in time that an
3 application was being considered in your particular
4 jurisdiction for an emergent order. We have segued --
5 A. Yeah.

6
7 COMMISSIONER: And, if I may say so, because you've raised
8 some different issues - which I'm very happy to hear about;
9 in fact, I think they're important - into the question of
10 the involvement of the court in different contexts. So in
11 relation to the revocation or variation of a court order -
12 we can come back to affidavits - how would we better
13 facilitate the court having a say in that on the
14 application of relevant parties?

15 A. Commissioner, it's hard to answer that without talking
16 about affidavits because it's fundamental to the issue.
17 The test, Commissioner, is that the court may revoke an
18 order if it's no longer appropriate and desirable. The
19 Director's guidelines require Child Safety to demonstrate
20 the order is no longer appropriate and desirable, and that
21 the child is not in need of protection, which is not the
22 legislative test. So --

23
24 COMMISSIONER: "Not in need of protection". If the
25 child - the child was removed because the child met the
26 definition in section 10, and if the child were to be
27 returned without that state of affairs clearly no longer
28 continuing, then that wouldn't be a desirable outcome,
29 would it?

30 A. No, Commissioner, because there may - and you've heard
31 evidence about how when a child's in need of protection the
32 department might do an IPA. So they might place a child at
33 home with a parent and be able to work in home without a
34 court order being in place.

35
36 COMMISSIONER: Right. I understand there are all these
37 non-custodial options available when they are available.
38 But let's talk about the context which is the one most
39 challenging for the system, which is to look after children
40 who have been assessed to require protection of the State
41 outside the home for some period at least. It's obviously
42 desirable that that period be as short as possible --

43 A. M'hmm.

44
45 COMMISSIONER: -- and that the child be reunified wherever
46 possible. It is, however, not desirable for a child to be
47 removed and then returned to a state of affairs that has

1 not materially altered --

2 A. Absolutely.

3

4 COMMISSIONER: -- because if the child - if there was good
5 reason to remove the child, there's got to equally be good
6 reason to return the child, as a matter of commonsense?

7 A. Absolutely.

8

9 COMMISSIONER: Right. So who is it or would - how might
10 the process be changed so that in the example that you've
11 given others with an interest in the question of the
12 revocation/reunification of the child could more readily
13 have their views heard by the court?

14 A. Commissioner, it's hard to answer that because for me
15 it's not about other people. It's about the fact that the
16 legislation does not require the child to be evidenced to
17 not be in need of protection to revoke an order.

18

19 COMMISSIONER: Tell me how that works. What's your legal
20 analysis in that regard, because that's somewhat surprising
21 to me --

22 A. Certainly.

23

24 COMMISSIONER: -- that if you remove the child because of
25 the need to protect the child you don't need to satisfy -
26 as I understand your point, you don't need to be satisfied
27 that the child is no longer in need of protection in order
28 to return the child?

29 A. Yes. Commissioner, if you have the Act --

30

31 COMMISSIONER: Yes.

32 A. -- it's section 65(5) - (5)(b). So section 65 is in
33 relation to the revocation - variation and revocation of
34 particular child protection orders.

35

36 COMMISSIONER: 65B?

37 A. Sorry, just 65 is the section, and the subsection
38 I referenced was subsection (5)(a) - sorry, (5)(b).

39

40 COMMISSIONER:

41

42 *If the application is made by the child or*
43 *a parent of the child ... (b) immediately*
44 *after the application is made, the*
45 *registrar must give written notice ...*

46

47 Okay. So that's a right to make the application by the --

1 A. Yes, Commissioner, that's I believe section (5).

2

3 COMMISSIONER: Yes, (5)(b).

4 A. If you go down to (5B), it lists the matters in
5 section 59 that the court does not have to apply to
6 applications to vary or revoke.

7

8 COMMISSIONER: Sorry, which section?

9

A. (5B).

10

11 COMMISSIONER: "Section 59 ... (a) and (e)". All right.

12

A. Commissioner, and section 59(1)(a) is the requirement
13 that the child be in need of protection and that the
14 order --

15

16 COMMISSIONER: So you can revoke the order without being
17 satisfied the child is no longer a child in need of
18 protection, you say?

19

A. Yes, Commissioner. And then in the same provision
20 section 65, if you go to subsection (6), it talks about the
21 court may revoke an order only if "satisfied the order is
22 no longer appropriate and desirable for the child's
23 protection". So, as I indicated, you may have a situation
24 where the child is still in need of protection but a
25 voluntary intervention or an IPA is sufficient to ensure
26 that protection. The State does not require an order
27 and --

28

29 COMMISSIONER: But that is just a different way of the
30 child being protected. If things have changed such that a
31 more intrusive order in the form of a custodial order is no
32 longer required, then that's all consistent with the scheme
33 of the Act and the objective of keeping the child safe?

34

A. Absolutely.

35

36 COMMISSIONER: I don't really - your proposition, as
37 I understood it, is that in order to vary an order for
38 guardianship or any child protection order, because of
39 section 59 - sorry, 65B, certain specific provisions of
40 section 59 do not apply.

41

A. M'hmm.

42

43 COMMISSIONER: I won't take time trying to understand the
44 detail of that cross-reference just at the moment, but the
45 overarching principle of the Act would continue to apply
46 notwithstanding any particular variations in the Act in
47 relation to certain requirements that are dispensed with,

1 so that in all cases the paramount principle would apply,
2 and it would be hard to see how the paramount principle
3 would be satisfied if the child was in need, still in need
4 of protection, albeit that's a different question to what
5 might be sufficient to provide the child with protection?

6 A. Commissioner, what I am suggesting is that if you
7 could revoke an order you would tell the court that the
8 child is still in need of protection but this order is no
9 longer - it's too intrusive, it's no longer the way that
10 this child should be protected.

11
12 COMMISSIONER: That would be an entirely coherent system
13 and ought now be available --

14 A. It's not. I mean, the difficulty we have,
15 Commissioner, is that in the Director's guidelines we are
16 required to provide a brief of evidence demonstrating the
17 child is not in need of protection before an order can be
18 revoked.

19
20 COMMISSIONER: But you could demonstrate that the child is
21 not in need of protection by means of the intrusive
22 custodial order, therefore the child, though may still
23 requiring some protection, doesn't require custodial --

24 A. An order.

25
26 COMMISSIONER: -- protection outside the family, for
27 example?

28 A. Yes, Commissioner. That's an argument I myself have
29 run. The difficulty is that the Director's office
30 reference to child in need of protection is the
31 section 11 - section 10 definition of child in need of
32 protection.

33
34 COMMISSIONER: It probably is, isn't it, because
35 section 11 is really --

36 A. Section 10, yeah.

37
38 COMMISSIONER: -- an expression of --

39 A. Child in need of protection.

40
41 COMMISSIONER: -- the paramount principle?

42 A. Yes.

43
44 COMMISSIONER: Because it would follow that if the
45 section 11 definition is met then the paramount principle
46 would be offended. The question is whether the protection
47 can be afforded by some --

1 A. Less intrusive --
2
3 COMMISSIONER: -- less intrusive needs?
4 A. Yes.
5
6 COMMISSIONER: I would be surprised if the Director
7 wouldn't agree with that proposition, but you say, as you
8 read his guidelines, they're somehow contrary to that?
9 A. Yes, Commissioner. To be clear, I'm sure the Director
10 would see the logic of that and the reasoning of that. But
11 the guidelines do require evidence that the child's not in
12 need of protection, which for the family I was referring to
13 there was also an element of asking for that evidence in a
14 way that's the traditional way of obtaining the evidence.
15 So Queensland Health, police, you know, all of the sources
16 of collateral information, when we did have the evidence
17 from the representatives of the delegated authority
18 organisation, who were saying, "As a community, we're
19 satisfied this child is safe and doesn't need to be on an
20 order."
21
22 COMMISSIONER: Well, that might be right, but at the end
23 of the day the court has to make a decision --
24 A. Yes, Commissioner.
25
26 COMMISSIONER: -- and it's entitled to have available to
27 it all relevant --
28 A. Yes.
29
30 COMMISSIONER: -- sources of information, despite what any
31 particular individual group might say, isn't it?
32 A. Yes, Commissioner. And, again, I agree with you, the
33 court should make that decision. I don't think it should
34 sit with a lawyer within - sit with a lawyer to make that
35 decision, and I don't think it should sit with a lawyer in
36 any organisation. I think it should sit with the court.
37
38 COMMISSIONER: Well, in your example - and, again, I do
39 take your point about the vulnerability of the people
40 involved and some better process to facilitate their
41 ability to contest these matters; that's a different
42 question. But in principle had they sought to bring an
43 application under - what was the section, 59 --
44 A. Sixty-five.
45
46 COMMISSIONER: Section --
47 A. To revoke, 65.

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COMMISSIONER: Yes, 65 - then the contention you've just put that the court can be satisfied based on the evidence that is put forward by that group, by the community-controlled organisation, that the order ought be revoked could be heard and determined by the court. The court may or may not agree that proposition.
A. Yes.

COMMISSIONER: The Director may or may not put contrary submissions. The Director, presumably, based on what you've told me, would say, "No, you need to get" - "you need to take into account other evidence," and then you have a contest about it, and ultimately it's a question for the court to decide. So isn't your point really that there ought to be a more ready pathway facilitated by the State for such contests when required to be heard by a court?
A. Commissioner, in addition to just the ordinary vulnerability of parents that are respondents to child protection order proceedings, in my example it's delegated authority, which means it's a First Nations family. So in --

COMMISSIONER: That might be so, but that doesn't mean they get to express a conclusive view, does it?
A. No, Commissioner, I mean in the context of the expectation of who should bring that application it would be putting the - it would be putting the burden to challenge the State on a very vulnerable parent rather than letting the court make that decision.

COMMISSIONER: I understand that point, that what you're saying is that there should be some better process by which the State facilitates the contest by contending relevant interests, particularly the - in this case, your example, the mother, so that the matter can be determined. Rather than leaving it to, say, the mother in your example to bring the application --
A. Yes.

COMMISSIONER: -- there might be some mechanism whereby - just thinking aloud, if I may - if the mother were to give notice to the Director, the Director is required to bring the matter before the court on the Director's application, such that that is the initiating pathway, and then the mother, the community-controlled organisation as well, could be heard on whether the order ought to be revoked for

1 the range of reasons you've described?

2 A. Commissioner, what I would say to that is there's
3 already the ability in law for a parent or a child to
4 revoke an order. We know it doesn't happen.

5

6 COMMISSIONER: No, but I'm suggesting something different,
7 that you could fashion a procedure whereby, upon notice
8 from the mother, for example, in your example, in your
9 case, to the Director, the Director is required to bring
10 the proceeding before the court, and the mother would be
11 entitled to put submissions to the court, presumably and
12 necessarily, I would think, also represented - legally
13 represented to do so, and the Aboriginal-controlled
14 organisation would have a right also to participate in
15 circumstances where it concerned a member of their
16 community. They could intervene anyway under I think it's
17 section 113, but you might make that whole process more
18 available at the instigation effectively of the mother via
19 the Director; that would be one way to do it?

20 A. As a hypothetical process I understand that,
21 Commissioner, but I'd be concerned that that brings it back
22 into adversarial. So the parent --

23

24 COMMISSIONER: Well, this is what interests me --

25 A. The parent has to give notice. The Director then has
26 to respond to that notice. In circumstances where Child
27 Safety thinks this order should be revoked I don't think
28 that burden should sit with the family member.

29

30 COMMISSIONER: Well, you see, this is what I find
31 troubling. The court's jurisdiction is invoked, and there
32 seems to be an approbation and a reprobation of the court's
33 jurisdiction. On the one hand, we want the court there to
34 scrutinise the evidence, make sure the community can have
35 confidence in the exercise of such a consequential State
36 power, but where it doesn't suit us we want to keep the
37 court out of it. Now, that doesn't seem to me desirable.
38 Whether or not it's a decision in which the department and
39 an Aboriginal-controlled organisation are in heated
40 agreement about or not, either we have a process that is
41 scrutinised by the court in order to provide the public
42 confidence that that does provide or we don't.

43

44 So your point about access to the court is a different
45 point, and there might be ways of the kind I've described
46 to better facilitate that. But to characterise it as
47 somehow negative because it's adversarial is to ignore the

1 fact that that's how justice operates in our system; that
2 is, competing interests that form a set of contending views
3 from which somebody, a judge, needs then to make a
4 decision. That's the way our system works. It doesn't
5 work on the basis of an unregulated, unreviewed
6 decision-making power on the part of the administrative arm
7 or executive arm of government, or any delegate of
8 the executive arm of government. And my basic proposition
9 is if you want it you've got to have it both ways.
10 A. Commissioner, I don't - apologies if I misspoke.
11 I wasn't --

12
13 COMMISSIONER: You didn't misspoke.
14 A. -- suggesting that there - I wasn't suggesting that
15 there shouldn't be court oversight at all times.
16 I absolutely think there should. I think that the exercise
17 of the State's power in this jurisdiction is the most
18 significant exercise of State power that you can see.
19 I think --

20
21 COMMISSIONER: And you wouldn't want to see it rest in --
22 A. -- courts need to be involved, I think there needs to
23 be court oversight. I just don't ever think the burden of
24 asking for that court oversight should sit with families.
25 I --

26
27 COMMISSIONER: That is a point you've made. I've
28 understood --
29 A. Thank you.

30
31 COMMISSIONER: -- and I've suggested sort of off the cuff
32 a mechanism by which notice - could be a simple letter; we
33 could make a very sort of straightforward process - by the
34 family to the Director requiring him to bring the matter
35 before the court could then facilitate that adversarial
36 contest to decide what should occur.
37 A. And, Commissioner, I think in my experience there have
38 been many families who have reached a point where they
39 don't need an order or it really should go back before the
40 court. I don't think parents are always empowered to
41 respond to a letter, to take the steps, to get legal
42 advice, to do the things they would need to do to be in a
43 position to send notice to the Director.

44
45 COMMISSIONER: Well, look, something has got to happen,
46 doesn't it?
47 A. Absolutely.

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COMMISSIONER: I mean, once the child has been removed and there's a court order and you want to vary or revoke the court order, there has to be some initiation of that process?

A. Yes.

COMMISSIONER: Now, I know that long-term guardianship orders are required also to be reviewed periodically. So that's a standard review. But, where there's been some good work that's resulted in the prospect of the child being reunified, that ought to be facilitated and facilitated with the scrutiny of the court --

A. Yes.

COMMISSIONER: -- by some mechanism that triggers that opportunity. To say that a parent couldn't, however vulnerable, simply give notice to the Director to trigger the event, that I would find a little difficult to accept, provided the parent concerned has access to some legal representation. I mean, QIFVLS, for example, would presumably be a suitable body to give such notice on behalf of the parent, and maybe there's an even broader mechanism to confer some right on the part of identified interest groups such as QIFVLS to themselves give the notice to the Director to trigger a process whereby the kind of matter that you've just described in your example could be scrutinised by the court?

A. Commissioner, we know in our matters that even when the parents have the benefit of legal representation they very infrequently are filing affidavit material or court material. They - and that's not a criticism of their legal representation. It's that in this jurisdiction the proceedings are generally run on challenging the evidence-in-chief, the case of the Director's office. What I'm suggesting is that the burden for asking for that court oversight should not sit with families, and I appreciate that there could be mechanisms that allow for that to happen in easier ways, but in my experience the parents in this jurisdiction struggle to take the steps that they need to take to get legal representation in the first place, to even go to QIFVLS or go to ATSILS. All of that stuff is preventative when it doesn't need to be.

COMMISSIONER: I don't discount anything you say about that, and the very significant disability and vulnerability that many of the families concerned are under. I don't

1 discount any of that. What's your solution to the problems
2 you've raised? I mean, if you accept that the court needs
3 to and it's in the public interest that it have oversight,
4 how is the Director to know unless he's given some
5 information about it?
6

7 Now, in the case you've raised the Director hasn't
8 apparently agreed with the assessment; all right. So he
9 was given notice. Now, if there was an obligation on the
10 Director to, once given notice, as he plainly was in your
11 example, bring the matter before the court, wouldn't that
12 do? He would then have to bring the matter before the
13 court because he's had notice that the department and the
14 Aboriginal community-controlled organisation both consider
15 that the order should be revoked. He doesn't. Well, it
16 should go to the court, shouldn't it?

17 A. It should, Commissioner. But in that proposal you
18 would have an outcome of exactly what I'm suggesting, like,
19 you don't need that independent lawyer to make the decision
20 to bring it back to court.
21

22 COMMISSIONER: But I'm suggesting to you that, if the Act
23 were amended to require him to do so upon being given
24 notice that he has impliedly been given in your example,
25 that would get the matter to court?

26 A. Yes, Commissioner. But that requirement on the
27 independent statutory agency is essentially compelling him
28 to invoke the court's jurisdiction.
29

30 COMMISSIONER: That's right.

31 A. Which is what I'm saying should happen. Like, I'm
32 saying as soon as Child Safety are of the view that this
33 order is no longer required the court's jurisdiction should
34 be invoked regardless of whether a lawyer thinks it should
35 be or not. That should sit with the court.
36

37 COMMISSIONER: Well, that might well - you have an
38 argument in relation to that --

39 A. Thank you, Commissioner.
40

41 COMMISSIONER: -- where the application is to revoke it.

42 A. Yes.
43

44 COMMISSIONER: Yes. All right.
45

46 MS FREEMAN: Commissioner, might I make a suggestion --
47

1 COMMISSIONER: Yes.
2
3 MS FREEMAN: -- along these lines as another alternative
4 to what you've just been discussing?
5
6 COMMISSIONER: Please do.
7
8 MS FREEMAN: Ms Martin, can I take you to section 65 of
9 the Act, please.
10 A. Yes.
11
12 Q. And the first subsection of that, the chapeau of
13 subsection (1) prescribes that it's the litigation
14 Director, a child's parent or the child that might apply
15 for a revocation or variation of the CPO; is that right?
16 A. Yes, yes.
17
18 Q. Would one way - one solution to the problem you've
19 identified in your evidence today be to include in that
20 list of people the Chief Executive?
21 A. Yes.
22
23 Q. So it would be the litigation director, the Chief
24 Executive, a child's parent or the child might apply for a
25 revocation?
26 A. Yes.
27
28 Q. Okay. And that would then avoid this issue that
29 you've raised about the DCPL effectively being the
30 gatekeeper to the court process in these revocation orders?
31 A. Yes.
32
33 COMMISSIONER: That's also another way - thank you,
34 Ms Freeman, that's also a way in which the problem might be
35 resolved.
36
37 MS FREEMAN: Yes, and I've simply raised it for
38 Your Honour's consideration.
39
40 COMMISSIONER: We are interested in this Inquiry in
41 systemic issues. These are very much systemic issues.
42
43 MS FREEMAN: Indeed. Indeed. Thank you.
44
45 COMMISSIONER: I apologise that we've --
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47 MS FREEMAN: Don't be silly, Commissioner.

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COMMISSIONER: I'm not going to blame the witness, it was my questioning, but we have somewhat gone off on a little tangent, but an important and valuable one I think.

MS FREEMAN: Indeed. Indeed.

COMMISSIONER: Thank you. We might just take a short break.

MS FREEMAN: Of course. Thank you, Your Honour.

SHORT ADJOURNMENT

[11.26 am]

COMMISSIONER: Ms Martin wanted to say something about affidavits.

MS FREEMAN: Sorry, Your Honour?

COMMISSIONER: Ms Martin wanted to say something about affidavits, just to complete that discussion.

MS FREEMAN: Yes, yes. Yes, thank you.

WITNESS: Thank you, Commissioner. I think what I wanted to say - and I might acknowledge I did see the Director's evidence in relation to the list in the union submission. I think I just wanted to say that OCFOS and me, we don't disagree with any of those things in the list. It's about proportionality. So you do need an assessment, but I would suggest it's not necessary to have every assessment from 2018. You do need criminal history if it's relevant, but you don't need a parent's juvenile criminal history from 10 or 15 years ago. So it's not about the relevance of the individual areas, as outlined in rule 13. It's about whether you need all of that evidence or if you just need probative evidence in relation to all of those things.

COMMISSIONER: That's a matter of judgment --

A. Yes.

COMMISSIONER: -- for the lawyer concerned, isn't it? I mean, proportionality is an evaluative concept as well?

A. Yes.

COMMISSIONER: Somebody needs to make an evaluation about what's proportionate, in this context in terms of what is

1 sufficiently covered in relation to a particular topic in
2 rule 13, for example?

3 A. Yes.

4
5 COMMISSIONER: And I accept that.

6 A. Yes, Commissioner, and I think the difficulty with a
7 model in which a lawyer makes that decision is that you
8 do - in terms of what is included in a deponent's
9 statement, you have inconsistency. So we have multiple
10 matters where we refer to the Director's office and get no
11 feedback at all and the affidavit is deposed as it was
12 referred. We then get multiple affidavits where we get 10
13 pages of feedback requesting significantly long lists of
14 additional source evidence.

15
16 What I'm suggesting is that lawyers making that decision in
17 terms of relevance has the potential to create the system
18 where you have 300- or 400-page evidence based on the
19 expectations of the individual lawyer.

20
21 COMMISSIONER: Well, firstly, you raise the insoluble
22 problem of individual difference in terms of, you know,
23 people's intellectual approach to particular tasks. How
24 would the position be advanced if somebody other than a
25 lawyer was making decisions about the relevance of the
26 evidence, and who would make that decision if not a lawyer?

27 A. Commissioner, I think in my experience - so, as
28 I indicated earlier, OCFOS was the decision-maker on what
29 to refer to the Director's office for the first couple of
30 years of the model. I think if you look at the matters
31 that the Director referred back in the first year, from
32 memory I think it was zero matters. If you look at the
33 matters that were referred back in the second year, I think
34 it was - apologies, I haven't looked at the Director's
35 eight-year-old report in a while, but it was very low,
36 I think. I think the suggestion that internal lawyers or
37 OCFOS lawyers don't have the ability to assess what the
38 appropriate evidence, relevant evidence, is is -

39 Commissioner, I might put it this way. When we prepare a
40 brief of evidence and we refer it to the Director's office
41 it has all of the evidence that we as the OCFOS lawyers
42 think needs to be attached to the material. It's the
43 further requests after that. So once it goes to the
44 Director's office and they make their decision, they will
45 make the decision, file the application, and after they've
46 made the decision to file the application the child safety
47 officer might get affidavit feedback in a week, might be

1 three weeks, asking for more evidence and more documents.

2

3 COMMISSIONER: Well, in relation to that - firstly,
4 I asked you the question who would be the decision-maker if
5 not the lawyer in terms of the relevance of material?

6 A. Yes.

7

8 COMMISSIONER: Okay. And you referred to the first few
9 years, where there was very little referral back, and it
10 was at that point in time, as I understand the chronology
11 of events, that the lawyers in OCFOS were the referring
12 initiators --

13 A. Yes.

14

15 COMMISSIONER: -- or initiated the referral. So that's
16 the lawyers doing that work. Then you moved to the
17 circumstance where the Director becomes involved and starts
18 asking for more information or more affidavit material,
19 however it arises. Once the Director is involved you're in
20 a different realm to the emergent order context because
21 you're looking at in most cases more long-term custody
22 orders, permanent guardianship, permanent care orders, and
23 so the courts are being asked to make orders that are
24 potentially very consequential so far as the child is
25 concerned for a lot longer period of time than at the
26 emergent order stage. Now, in that context it's hardly
27 surprising, is it, that more evidence is required?

28 A. No.

29

30 COMMISSIONER: So I'm not understanding your point.
31 A. No. No, Commissioner, it's absolutely not surprising
32 that more evidence is required, and more evidence should be
33 required given the difference between, you know, a
34 three-day order and a longer-term or a more intrusive
35 order. I'm suggesting it's about interrogating the scope
36 of that evidence. So it's not about whether the things in
37 rule 13 are relevant because in most circumstances they
38 will be. It's about the scope of each of those things.
39 So --

40

41 COMMISSIONER: No, I'd understood that point.

42 A. Yeah.

43

44 COMMISSIONER: And that does require legal judgment,
45 doesn't it?

46 A. Mmm.

47

1 COMMISSIONER: All right. Ms Freeman.

2

3 MS FREEMAN: Ms Martin, I think we were - part of your
4 evidence has been about the role of OCFOS in the
5 application for emergent orders and, as I understand it,
6 currently the senior team leader is the one that makes the
7 decision about that with the ability to consult with
8 someone from your team to get legal advice; is that right?

9 A. The senior team leader is delegated to give us
10 instructions, yes. So they make the decision about whether
11 an application should be made, but they only make that
12 decision - so they make that decision with the benefit of
13 legal advice.

14

15 Q. Yes. Okay. And then a lawyer from OCFOS is also then
16 involved, as I understand it, in drafting the application
17 and the material that would go before the court for the
18 emergent order?

19 A. Yes. So ordinarily that would be a legal officer, so
20 a P04, a professional level legal officer. In some
21 circumstances it will be a senior legal officer, depending
22 on the complexity or any vulnerabilities in the
23 application.

24

25 Q. Okay. Now, if you want to just go back to your
26 statement, please, Ms Martin, at paragraph 34 --

27 A. Yes.

28

29 Q. -- you refer there to working under an instructional
30 model?

31 A. Yes.

32

33 Q. Do we understand that to be what's happening now is
34 that applications are made by OCFOS lawyers on instruction
35 from senior team leaders?

36 A. Yes.

37

38 Q. Okay. And you say at paragraph 34 that's your
39 preferred approach?

40 A. Yes.

41

42 Q. I just wanted to understand that a little bit more.
43 From your experience, what works well about the current
44 model?

45 A. So from - for all the reasons we discussed earlier.
46 In terms of having to be the swearer of fact, having to
47 potentially be a witness in your own proceedings, having to

1 try and remain independent and give legal advice about the
2 merits when you know that you're also the swearer of fact,
3 those are all the reasons --
4

5 Q. Can I just pause you for a second there. Why do you
6 see that as a problem if you're swearing the application
7 and you're giving legal advice? Where do you see that
8 creates a tension?

9 A. I think it creates a tension in terms of the delegated
10 decisions to team leaders. So you may have a situation
11 where we as a lawyer back then decided to apply for a
12 custody order. The team leader might then make a decision
13 about family contact for someone in the family. We would
14 then have to give legal advice sometimes about whether the
15 evidence supported that contact decision they made, and
16 you're then in a position where you're running an
17 application where there's a decision made that you don't
18 necessarily agree with.
19

20 COMMISSIONER: I really don't understand this conflict
21 issue.

22 A. Okay.
23

24 COMMISSIONER: You say, "My experience of working under an
25 instructional model" - you say that, "It's my preferred
26 approach as it's always sat uncomfortably to be in the role
27 where I was providing legal advice in a matter as well as
28 being the decision-maker." Now, I've already heard what
29 you have to say about the swearing of an application, and
30 we've discussed that you're swearing it on information and
31 belief, so I don't think we need to go over that.
32

33 What I find perplexing as a matter of analysis is the
34 proposition that there is some conflict, legal conflict,
35 between being the applicant on the application as the
36 lawyer and giving legal advice on the precise question of
37 whether an application should be made. In order for there
38 to be a legal conflict you need to identify different
39 interests that put the lawyer in conflict with the lawyer's
40 fiduciary duties?

41 A. M'hmm.
42

43 COMMISSIONER: And I can't see anything but a harmony of
44 interest, not a conflict of interest. Indeed, I would
45 suggest that the conflict arises where the lawyer with the
46 overriding duty to the court is given an instruction that
47 is not congruent with the lawyer's view about whether an

1 application should be brought.

2

3 Now, I understand there's an escalation process and so
4 forth, but the work of that process depends upon the lawyer
5 raising issues that lead to an escalation. So I have to
6 say frankly I think there is an inversion in thinking about
7 what a legal conflict of interest is in the propositions
8 that are advanced both by you and by the principal
9 solicitor on this subject. So I'm telling you what I think
10 so that you can tell me why I'm wrong.

11 A. Commissioner, I might suggest that there's two
12 different concepts. So the first is independence and the
13 independence of a legal team. There's guidance issued to
14 government lawyers in particular --

15

16 COMMISSIONER: And I'm aware of that.

17 A. -- about, you know - and you would be aware the
18 Queensland Law Society has a guidance statement in relation
19 to independence and how government lawyers have to take
20 those additional steps given we don't have the ability to
21 tell our client we're not going to act on a matter. So we
22 have to take additional steps to demonstrate that legal
23 independence, and one of the ways I would suggest that we
24 would demonstrate that is separating being an adviser and
25 being a decision-maker. It's one of the recommended ways
26 that government legal officers are encouraged to act, and
27 I believe it's one of the things that came up in the
28 Robodebt inquiry.

29

30 COMMISSIONER: It may be in certain contexts that there is
31 a conflict between being the decision-maker and the
32 adviser?

33 A. Yes.

34

35 COMMISSIONER: I can't off the top of my head imagine a
36 good example of that. But here you've got to keep coming
37 back to what is the decision in question. The decision in
38 question is should an application be made.

39 A. Yes.

40

41 COMMISSIONER: All right? And that impliedly involves the
42 lawyer making an evaluation of the material, a forensic
43 evaluation as well, as against a legal standard?

44 A. Yes.

45

46 COMMISSIONER: And if the view reached by the lawyer is
47 that the material available to the lawyer is consistent

1 with an application having a proper basis an application is
2 made; if it is not consistent no application is made?

3 A. Yes, Commissioner.
4

5 COMMISSIONER: So if in your advisory role you're asked to
6 grapple with the same question, which is, "Do you give
7 advice that there is a proper basis for making the
8 application," where is the disharmony between those two
9 positions?

10 A. Yeah, so, Commissioner, as I indicated, it's the two
11 separate concepts. So firstly independence. But I would
12 suggest --
13

14 COMMISSIONER: But the analysis isn't separate?

15 A. So what I would suggest in relation to conflict is we
16 have to remember the nuances of child protection means it's
17 not just the one decision. So it's not just the decision
18 to make the application for the order. Within that
19 decision there's a range of different considerations.
20

21 COMMISSIONER: No, that is a conflation, with respect.
22 There are other decisions that arise consequentially in an
23 ancillary way in a whole range of decisions that would be
24 the working out of the decision to make an application, the
25 application being successful. Then there are other
26 decisions that the department makes under the situation
27 where an order has been made, placement decisions, family
28 contact decisions, all of those kinds of things. They are
29 not decisions that the lawyer needs to make at the point in
30 time when an application is made.

31 A. Apologies, Commissioner. What I meant was that it's
32 not simply a decision to apply for a temporary assessment
33 order. It's a decision to apply and to seek particular
34 provisions.
35

36 COMMISSIONER: Yes.

37 A. So if we - if I as a lawyer were satisfied there was a
38 sufficient basis to apply for a temporary assessment order,
39 I then need to consider whether I can satisfy the
40 magistrate that the child requires interim protection by
41 the way of custody, I need to satisfy the court whether a
42 medical treatment examination is necessary.
43

44 COMMISSIONER: That's all embedded --

45 A. All of the provisions and all of the tests --
46

47 COMMISSIONER: Yes, I understand that, but that's all

1 embedded in a concurrent decision about what form --
2 A. Yep.

3
4 COMMISSIONER: -- of emergent order to apply for?
5 A. Commissioner, and then the reason the department's
6 decisions link to that is that you may have - so they still
7 have decision-making powers in relation to a range of
8 things. So, for example, if I as a lawyer thought we
9 should have an order with custody and the court made that
10 order, the department still has the ability to make a
11 contact decision for 24/7 contact to leave the child back
12 at home with the parent, and I as a lawyer might have to
13 give the delegate very firm legal advice about making an
14 administrative decision that doesn't properly take into
15 consideration the court's decision.

16
17 COMMISSIONER: Well, the department, if it were to do
18 that, would be acting prima facie in contempt of the order?
19 A. Absolutely, and I would have to give the delegate that
20 legal advice --

21
22 COMMISSIONER: You might.
23 A. -- Commissioner, and there's a complexity there when
24 I was the decision-maker in seeking that order.

25
26 COMMISSIONER: I still don't follow.
27 A. Okay.

28
29 COMMISSIONER: If the department made a decision in your
30 example which was inimical to the underlying assumption in
31 the order, namely that the child would be in custody of
32 somebody else - not in custody in prison, obviously --
33 A. Yes.

34
35 COMMISSIONER: -- by purporting to satisfy that order by
36 having 24-hour contact with the parents --
37 A. M'hmm.

38
39 COMMISSIONER: -- well, that would just be a contempt of
40 the order, on its face?
41 A. Yes, Commissioner, and, to be clear, I'm not
42 suggesting that that happens frequently, but I'm suggesting
43 a hypothetical of it might happen and I as a lawyer might
44 need to give that delegate very firm legal advice in
45 relation to the court decision and their obligations and
46 how to exercise those administrative decision-making powers
47 in a way that does not offend the court order.

1
2 COMMISSIONER: Well, the example you've given one would
3 hope is aberrant?
4 A. Absolutely.
5
6 COMMISSIONER: And if you're put in that position as a
7 lawyer that's one of the burdens one has as a lawyer?
8 A. Yes.
9
10 COMMISSIONER: To tell their client that, "If you do what
11 you propose you'll be in breach of the court order"?
12 A. Yes.
13
14 COMMISSIONER: And the consequences that follow from that.
15 A. Commissioner, perhaps I used an example that I guess
16 was the extreme end, but, you know, inherent in those
17 decision-makings is also the placement decision. So if
18 I was the applicant on a court assessment order and I was
19 aware there was a family member that wanted to be a kinship
20 carer, if the team leader was not satisfied that that
21 person met the requirements to be a carer and a different
22 placement decision was met, then I would be running an
23 application where on the evidence I thought there was
24 enough for there to be custody to the Chief Executive with
25 a placement to that family member but the delegate's made a
26 contrary decision. It's a difficult position to advance as
27 the applicant when you also have to give advice to the
28 delegate who makes those related decisions, is my evidence.
29
30 COMMISSIONER: Well, the related decision should be
31 congruent with the order that's sought. But perhaps one
32 way around this is something that I've been raising where
33 it has sort of arisen, which is whether the order should
34 contain the particulars of the care plan --
35 A. Yes.
36
37 COMMISSIONER: -- such that they become orders of the
38 court - that would achieve clarity --
39 A. Yes.
40
41 COMMISSIONER: -- and subject to variation by the court on
42 application from time to time as circumstances change?
43 A. Yes, Commissioner --
44
45 COMMISSIONER: And we are talking about emergent orders
46 here, which are three days, in theory anyway?
47 A. Yes. Yes, Commissioner, I did see part of

1 the evidence in relation to that and the construction
2 argument. There is also authority in relation to the
3 adding of conditions to final orders in Queensland, which
4 I think is what - means it doesn't currently happen. So
5 there's --

6

7 COMMISSIONER: What, authority against --
8 A. Yeah. So there's a 2011 case, the Department v Le,
9 I think, in relation to the inability of the court to add
10 conditions to a final child protection order. So that
11 prevents it at law from happening, which is why --

12

13 COMMISSIONER: Is that a decision by whom?
14 A. It's a decision by the appellate jurisdiction, which
15 is the Childrens Court of Queensland.

16

17 COMMISSIONER: Which says what?
18 A. It says that it would be ultra vires to add conditions
19 to a final child protection order outside of the matters
20 listed in section 61.

21

22 COMMISSIONER: The mere making of an order?

23

24

25 COMMISSIONER: That it would be ultra vires the power to
26 make --

27

28

29 COMMISSIONER: To make the order on and subject to the
30 following terms?

31

32

33 COMMISSIONER: Compliance with the care plan?
34 A. Yeah, there would need to be - there would need to
35 be - Commissioner, I don't disagree with the proposition,
36 there just would need to be legislative reform, and
37 I think, as the Director said, we're seeing magistrates and
38 courts use supervision orders or directive orders
39 essentially to achieve that outcome even if that is not
40 necessarily their intent.

41

42 COMMISSIONER: A sort of collateral way of doing the same
43 thing --

44

45

46

47

47 A. Yeah. So, you know, instead of requiring the Chief
Executive to supervise a child's protection, a supervision
order might be made to supervise whether the Chief
Executive is going to take some actions over the next year.

1 So I understand the intent, but I think that would need
2 legislative reform for it to happen.

3

4 COMMISSIONER: So the case - what was the name of the case
5 that you referred --

6 A. It's definitely a 2011 decision.

7

8 COMMISSIONER: We can find it.

9

10 MS FREEMAN: Commissioner, I can give you the citation.

11

12 WITNESS: Great.

13

14 COMMISSIONER: Thank you.

15

16 MS FREEMAN: It's Department of Communities v Le & Ors
17 [2011] QCC 4.

18

19 WITNESS: Commissioner, I might add that there's a
20 wonderful resource in terms of the authority which is the
21 Child Protection Benchbook.

22

23 COMMISSIONER: Yes, I had that.

24 A. That has the entire list in terms of all of those
25 construction arguments and legal arguments.

26

27 COMMISSIONER: All right. I accept what you say. It
28 might well require legislative change. The Director was
29 talking about achieving sort of greater particularity for
30 the order via the terms of the care plan.

31 A. Yes.

32

33 COMMISSIONER: And I can't remember the section now, but
34 I can go back to it.

35 A. Yes.

36

37 COMMISSIONER: But, yes, I take your point.

38 A. Commissioner, I might say as someone who represented
39 parents as a solicitor one of the biggest frustrations
40 I would have then was the duration of the case plan only
41 being six months. So I think we - I used to hear from
42 clients about the department changing the goals and not
43 knowing what they needed to do. I think it would benefit
44 families and the department if that case plan in some way
45 could demonstrate what was going to happen for the whole
46 two-year period. So, you know, if you could build in that
47 at 18 months, if things weren't progressing to

1 reunification that suitability assessment automatically
2 happens so the family know - instead of having to review
3 the case plan every six months, the family know what the
4 plan is for the next two years. And I suspect the
5 reluctance to do that is that the child's needs might
6 change. So there would need to be a mechanism to make sure
7 if an emergent need for the child came up you could do that
8 outside of the care plan approved by the court of course.

9
10 COMMISSIONER: But the care plan isn't so much approved,
11 is it, but it's more a sort of precondition --

12 A. Yes.

13
14 COMMISSIONER: -- or do you say it's approved? I'm not
15 sure what the status --

16 A. Commissioner, I think this is part of - this is part
17 of the difficulty in the current model. The department
18 sees the case plan as a document for the child and the
19 child's family in relation to how that child's needs are
20 going to be met. But we know that it is a legislative
21 requirement that the court be satisfied the case plan is
22 appropriate and desirable for meeting the child's needs.
23 So we sometimes see the case plan needing to satisfy the
24 court of that, but the case plan only goes for a six-month
25 period. It doesn't anticipate what may happen or what may
26 be needed at 12 months.

27
28 COMMISSIONER: And that might be for a number of reasons,
29 including as you say the needs of the child. Circumstances
30 change. That's one factor. But the other factor might be
31 the work required to create a meaningful case plan. If you
32 watched the Director's evidence you will have noticed that
33 he spoke about the delays in the court process being very
34 significantly impacted by the time taken to develop a case
35 plan.

36 A. Yes.

37
38 COMMISSIONER: And, if you're wanting to develop a plan
39 over 18 months, I'm not sure whether that would take more
40 time in the creation of it or not. It probably would.

41 A. Commissioner, I think that's one of the tensions as
42 well because the Director needs the case plan for the
43 purposes of the court proceedings. Some of those delays,
44 I think it's relevant to note, is that sometimes it's
45 necessary to take that time and particularly with the FPP
46 programs where you have a culturally appropriate service
47 working with the family. Sometimes the family may not be

1 ready this month or next month. They might have to wait.
2 So from a family perspective - and I'm not suggesting that
3 there's not resourcing issues that also come into that for
4 the department. I know that there's very limited family
5 group meeting convenors within the department, and that
6 might assist. But I think it's also clear that sometimes
7 it has to wait a while until the family's ready to develop
8 their plan.

9

10 COMMISSIONER: Well, I think you raise a good point
11 because often a badge of failure or said to be a badge of
12 failure in the court process is how long it takes.

13 A. Yes.

14

15 COMMISSIONER: People complain about delay and how long it
16 takes et cetera.

17 A. Yes.

18

19 COMMISSIONER: That may not always be a failure --

20 A. Yes.

21

22 COMMISSIONER: -- that is to say the fact of delay or the
23 time it takes to complete the process, the court process,
24 in the context of child protection --

25 A. Yes.

26

27 COMMISSIONER: -- if one is aiming for a process that
28 concurrently involves the meaningful planning, engaging
29 with all interested parties --

30 A. Yes.

31

32 COMMISSIONER: -- in a case plan that would best achieve
33 as early as possible wherever possible the reunification of
34 the child and where not possible the best possible care
35 that's available.

36 A. Yes.

37

38 COMMISSIONER: So in a way it shows the danger of simply
39 inferring from certain objective data that therefore
40 there's a failure.

41 A. Yes. Commissioner, that's one of the most difficult
42 nuances of the system. If you look at the straight data it
43 looks like failure on the part of the department
44 consistently in terms of case plans. My office does
45 training for family group meeting convenors external and
46 internal to the department, and we hear from them
47 frequently about the importance of time sometimes.

1 Sometimes a family is not ready. Sometimes --

2

3 COMMISSIONER: Well, that's a very - thank you for raising
4 that with me --

5 A. Yes.

6

7 COMMISSIONER: -- because if one comes back to, say, some
8 of the criticisms of the work of the Director, including in
9 the union's submission, delay is pointed to as a failure on
10 the part of the Director's role. If a lot of the delay is
11 caused by the need for careful consultation over time with
12 the family to develop a case plan, then that's a rather
13 superficial view of it, isn't it?

14 A. Commissioner, I would say that in my experience it's
15 never taken 18 months for a case plan to be developed. I'm
16 talking about a court will sometimes give six weeks or
17 eight weeks for a family group meeting, and then get
18 frustrated that the department hasn't done it in the six
19 weeks or eight weeks. I'm saying that that process might
20 take three months, it might take a little bit longer, and
21 that's not necessarily a failure of the department. It's
22 about understanding the reasons why the FGM has not
23 happened.

24

25 COMMISSIONER: And when that happens, where the court is
26 expressing frustration about that, is it explained to the
27 court, at least one would hope, that there is advantage in
28 hastening slowly to have proper consultation with
29 the family; is that put to the courts so the court
30 understands what the position is, as far as you know?

31 A. Commissioner, my office has been out of those interim
32 proceedings since at least 2019. I can say anecdotally
33 that I sit at one of my courts every week on a particular
34 day and that I've heard matters just get adjourned for FGM
35 with no context or no explanation, no, you know,
36 articulation that it has been referred to an FPP and this
37 is the work that they've done. I've heard matters just
38 simply get adjourned.

39

40 COMMISSIONER: Well, thank you for pointing out the --

41 A. We have been somewhat removed.

42

43 COMMISSIONER: -- qualitative sort of underlying issues so
44 that we're not distracted merely by the --

45 A. The numbers.

46

47 COMMISSIONER: -- sort of objective data about delay.

1 A. Your Honour - sorry, Commissioner, that is a
2 consistent difficulty that my office has in terms of data.
3 I think I said in my statement we have no legal kind of
4 management system or system. It's something that our
5 original Official Solicitor was quite concerned about
6 coming from Legal Aid Queensland. Our lawyers have to
7 operate without that framework and that ability to collect
8 and collate data and track things. So sometimes the black
9 and white data that can be produced does not accurately
10 represent the experience of our lawyers.

11
12 COMMISSIONER: Thank you. Ms Freeman.

13
14 MS FREEMAN: Thank you, Commissioner. Ms Martin, I just
15 want to ask you about - we've heard some evidence about the
16 role of OCFOS in the emergent order process. What about
17 other lawyers? So I'm talking about parents having access
18 to legal representation. Do they and how often are you
19 seeing them being engaged at the emergent order stage? Can
20 you just tell the Commissioner about that, please?

21 A. Yes. Not as often as we would like to see parents
22 have lawyers. We do, though - I think there's been some
23 evidence that there's almost never a lawyer on temporary
24 assessment orders and temporary custody orders. It does
25 happen sometimes, and quite frequently sometimes.

26
27 So Legal Aid Queensland has an early legal service. That
28 early legal service does not require an application to be
29 made for them to assist. That early legal service - a
30 referral to that service can be made by my office, it can
31 be made by the department, it can be made by community
32 controlled organisations, NGOs. There's no limit on who
33 can make a referral, provided it's with the consent of the
34 client.

35
36 COMMISSIONER: This is the Legal Aid?

37 A. This is Legal Aid Queensland. It used to be called
38 the early intervention service, and then I understand it's
39 been changed to early legal service, given connotations
40 around the word "intervention" for families. So that
41 service has the ability and they often get involved when
42 the department is working on safety plans or voluntary
43 interventions before an order is required. There's also
44 other services. So the Institute of Urban Indigenous
45 Health runs BiOCs or Birthing in Our Community. That's in
46 the Logan Beenleigh - Brisbane area. That service I'm
47 aware has a lawyer employed that is able to provide early

1 legal advice to First Nations clients of the service. The
2 other thing --

3
4 COMMISSIONER: And what about QIFVLS, Mr Creamer's client?
5 A. Absolutely. And ATSILS.

6
7 COMMISSIONER: ATSILS.

8 A. ATSILS, in my understanding, does not require any
9 application to be made before they will assist the client.
10 They frequently get involved. And QIFVLS also frequently
11 gets involved. There's also community legal services.
12 There's a range of legal support available to families. In
13 my opinion it's not enough. It should be not means tested
14 and it should, you know, just happen automatically by
15 right. But there are services available.

16
17 The other thing that happens is that frequently when an
18 emergent order is being considered there might be
19 substantive proceedings on foot already for child
20 protection orders for other siblings or there may have been
21 recently finished proceedings. My team will make contact
22 with any lawyers that we know about. So it's one of the
23 questions we ask when we do our legal consult whether
24 there's any lawyers involved. We might check the court
25 outcome forms from the DCPL proceedings and see if there's
26 a lawyer involved.

27
28 The legal profession, in my experience, is exceptional at
29 jumping in pro bono as friend of the court to help families
30 that they know. They don't say, "I don't have a legal aid
31 grant; I'm not going to assist." They jump in and do as
32 much as they can as friend of the court in that early
33 interim stage.

34
35 Legal Aid Queensland also provides duty lawyers that are
36 available. And Legal Aid Queensland will absolutely be
37 able to speak to this much better than I can. But, you
38 know, they have duty lawyer services available at all of
39 the courts where we have call-overs, and that's where we
40 usually have our court assessment order applications.
41 There's generally a duty lawyer available.

42
43 COMMISSIONER: What about the ex parte applications?

44 A. Commissioner, I might say that there is - I think
45 there would be great benefit if there was a practice
46 direction in relation to the ex parte applications and how
47 that all works. There are some inconsistencies across the

1 state. So there's local court - there's some courthouses
2 that still want in-person appearances. So Redcliffe, for
3 example, if we seek a TAO or a TCO, the magistrate out
4 there expects our lawyer to appear in person.
5 Luckily we're quite --

6
7 COMMISSIONER: How unreasonable of him.

8 A. Luckily we're quite close to the court so it's not at
9 all unreasonable for us to accommodate. But, yeah, so we
10 do have courts where that is still happening. We also have
11 other courts and my lawyers express a frustration about
12 sometimes where - we accept it's a discretion of the court,
13 but sometimes we'll include in our covering letter that
14 the parent wants to be heard, give their contact details.
15 Some magistrates will elect to use their discretion and,
16 despite that information, choose not to call the parents.

17
18 COMMISSIONER: But it's within your discretion. The Act
19 allows you to make an application ex parte. But if the
20 circumstances are not in your judgment so urgent that they
21 require an ex parte application it's within your power to
22 decide, "We'll provide three or four days notice" or
23 whatever's considered to be appropriate of the application
24 and invite the parents to seek legal advice, perhaps assist
25 them to obtain legal advice and representation. So, while
26 it is a matter of discretion for the magistrate, also
27 there's an anterior opportunity for that discretion to be
28 exercised by you.

29 A. Yes. And, Commissioner, in some circumstances that
30 does happen. So the example of if a care agreement is
31 expiring, a care agreement doesn't invoke section 99. So
32 we might have to seek a temporary custody order at the end
33 of a care agreement. We might write to the court and say,
34 "We need this temporary custody order application heard on
35 this future date."

36
37 COMMISSIONER: Shouldn't you in all cases when an emergent
38 order for, let's say, a TAO or a CAO is being considered
39 consider the question of whether there is such urgency
40 associated with obtaining the order that it ought to be
41 sought ex parte and, when there isn't, give such reasonable
42 notice as you can to the parents?

43 A. Commissioner, I might just clarify for court
44 assessment orders there's no capacity for ex parte. For
45 TAOs and TCOs --

46
47 COMMISSIONER: No, I understand that. Yes, sorry, I got

1 the acronyms wrong. TAOs and TCOs.
2 A. That's okay. Your Honour, again, there's tests -
3 there's the test built into the Act. So if you have a look
4 at section 31 for temporary assessment orders it's about
5 determining the matter in urgent circumstances. So you
6 have to have urgent or special circumstances.

7
8 COMMISSIONER: But that's a matter of degree, isn't it?
9 A. Yes. It is. It is.

10
11 COMMISSIONER: So it might be urgent but not so urgent
12 that you need reasonably to go ex parte.

13 A. Yes. Commissioner, I think the other relevant or
14 salient point is the nature of these orders. So in most -
15 you know, there's the exceptions, but in most cases the
16 application needs to be determined on the day that it's
17 decided the application needs to be determined based on
18 what is happening in the home, what is happening for the
19 family.

20
21 COMMISSIONER: Well, in that case there's no question --
22 A. Yes.

23
24 COMMISSIONER: -- that you need to act in the best
25 interests of the child --
26 A. Yes.

27
28 COMMISSIONER: -- and move the court ex parte.
29 A. Yes. Commissioner, and that's actually an area where
30 - whether we get to urgent or special circumstances is an
31 area where our lawyers frequently give advice. So we might
32 suggest that, you know, once the child safety officers have
33 been in the field trying to get agreement, trying to safety
34 plan, that tends to happen at 3 or 4 o'clock in the
35 afternoon. They sometimes will come to us and ask for a
36 legal consult on an emergent order and we might have to
37 give them advice that they can't demonstrate urgent or
38 special circumstances, and the application can wait until
39 the following day and then be brought during business hours
40 as opposed to after hours. So it's a relevant
41 consideration and it's a consideration that our team has on
42 every one of those applications.

43
44 COMMISSIONER: Yes, I understand.

45
46 MS FREEMAN: Ms Martin, in order for a parent to go and
47 get legal advice about these emergent orders they have to

1 be aware of the orders being sought in the first place?

2 A. Yes, of course.

3

4 Q. So how is that facilitated? How are the parents being
5 advised of these applications and how is it practically
6 that they're able to then go and get legal advice if things
7 are happening in a really short space of time?

8 A. So when - so if the child safety officer is usually in
9 the field with the parents they would ordinarily tell the
10 parent that, "We're intending to make an application to the
11 court." They would ask the parents if they would like to
12 be heard. They would say, "We can tell the court you would
13 like to be heard, but it is ultimately a decision for the
14 court." We also encourage child safety officers to keep
15 the QATSICPP Know Your Rights card to tell the parents
16 about their rights. I appreciate that when on the day that
17 a decision might be made to remove someone's children it
18 may be really, really difficult for that parent to start
19 making phone calls right then and there. But as much as
20 possible child safety officers tell them about their legal
21 rights. I accept that it doesn't happen on those TAOs and
22 temporary custody orders every time because of the nature
23 of the orders. But --

24

25 COMMISSIONER: In your long - I'm sorry.

26 A. Apologise.

27

28 COMMISSIONER: No, no, finish.

29 A. I was going to say but, you know, if it hasn't
30 happened on the day of the removal when that three-day
31 order has been sought, it then would happen in those three
32 days between that order being made and a potential court
33 assessment order being applied for. It still doesn't
34 always and sometimes the family comes to court for the
35 first day of the court assessment order and they still
36 haven't got legal advice. And the matter - the good thing
37 about court assessment orders is that the 28 days starts
38 from the first court date. So, if the parents haven't got
39 legal advice yet and it gets adjourned for a week, it
40 doesn't make 28 days from that adjournment date; it's
41 28 days from the first court appearance. So parents aren't
42 disadvantaged in terms of the length of the order by taking
43 that time to go get legal advice.

44

45 COMMISSIONER: Yes. Well, I was going to ask you in your
46 long experience in this field have you ever known a court
47 on an ex parte application where the parents appear to

1 refuse to hear the parents?
2 A. Yes, Commissioner. So the process in which we apply
3 for all of our applications, we don't do physical filing,
4 we do electronic filing for court assessment orders and
5 temporary assessment orders. Some courts in the covering
6 letter we will say, "The parents want to be heard. These
7 are the details." And then we will get an email back
8 saying the magistrate's made the order. It's one of the
9 things that child safety officers have told us is really
10 difficult when they've said to the parent, "We will tell
11 the court you want to be heard," and then - and if that
12 doesn't happen the starting point is that the parent often
13 thinks Child Safety did that, even though we've told the
14 court they want to be heard.

15
16 COMMISSIONER: Are you saying that a lot of these orders
17 are made on the papers?

18 A. Yes, on the papers, Commissioner.

19
20 COMMISSIONER: Without hearing --

21 A. Even from us. Even from us as the applicant.

22
23 COMMISSIONER: I suppose in very clear cases of manifest
24 harm --

25 A. Yes.

26
27 COMMISSIONER: -- and obviously the underlying predicate
28 of a TAO or a TCO is urgency --

29 A. Yes.

30
31 COMMISSIONER: -- that might be reasonable, given the
32 basis upon which the application is made in the first
33 place.

34 A. Yes.

35
36 COMMISSIONER: But all the same. So, generally speaking,
37 when it comes to making these application there's no
38 physical attendance except for any idiosyncratic magistrate
39 who requires it; is that the case?

40 A. Yes. Commissioner, I might suggest there's been a
41 significant change in terms of process. So 10 years ago,
42 15 years ago pretty much every court just made these on the
43 papers with no hearing or no consideration or no
44 determination or ability to hear from anyone. That's
45 changed.

46
47 COMMISSIONER: Well, I think it's a bit of a stretch to

1 say "no consideration". I'm assuming that they read and
2 considered the papers --
3 A. Apologies, apologies, Commissioner, I mean
4 no verbal --
5
6 COMMISSIONER: -- but I know what you mean.
7 A. So no oral submissions. So it was on the papers. Now
8 more and more courts are - and this is a good thing - more
9 and more courts are hearing from parties, are hearing from
10 parents. Generally with technology it's a telephone call.
11 There will sometimes be a three-way phone call. They'll
12 dial the parent in. That technology means that more and
13 more of these matters are being heard. One of
14 the magistrates published a decision where he talked about
15 in this day and age of technology there's very little
16 reason why parents shouldn't always be brought into those
17 proceedings and a hearing, at least a small hearing.
18
19 COMMISSIONER: Which magistrate? Do you have a reference?
20 A. Magistrate Mac Giolla Ri, it was one of the decisions
21 when he was in Mount Isa.
22
23 COMMISSIONER: Yes, thank you.
24 A. I think the case talks about an old UK precedent where
25 it says even God himself required Adam to be brought before
26 a judge.
27
28 COMMISSIONER: It's a nice flourish.
29 A. Yes.
30
31 MS McMILLAN: He's Irish.
32
33 COMMISSIONER: Flourish.
34
35 MS McMILLAN: No, Mr Mac Giolla Ri is Irish. I was just
36 making an impertinent remark.
37
38 COMMISSIONER: Should I infer something from that?
39
40 MS McMILLAN: Judicial notice.
41
42 COMMISSIONER: I shan't.
43
44 WITNESS: Commissioner, the assistance we've been able to
45 take from that case is, you know, being clear with Child
46 Safety staff that these matters should be heard, parents
47 should be given notice; really in best case we do have that

1 hearing. But sometimes the court just determines it on the
2 papers.

3

4 COMMISSIONER: Because the making of an emergent order, if
5 it's custodial, in the child protection sense, that is the
6 child's removed from the child's family, is impactful even
7 if it's only for three days.

8 A. Absolutely. Commissioner, again, there's authority by
9 Judge Dearden in this jurisdiction that talks about these
10 being the most significant decisions that can be made, that
11 cut across the rights of a parent.

12

13 COMMISSIONER: And the child.

14 A. And the child. But, in terms of hearing it ex parte
15 where the parents would be the respondent, Judge Dearden
16 talks about when an application is being heard ex parte the
17 burden on a court and the burden on the applicant to make
18 sure that all of the relevant material is before the court.

19

20 COMMISSIONER: That's a general principle,

21 A. Absolutely, yes.

22

23 COMMISSIONER: But also the removal of the child --

24 A. Yes.

25

26 COMMISSIONER: -- can set in train a course of events that
27 can become sort of inexorable.

28 A. Yes.

29

30 COMMISSIONER: And one order leads to another and before
31 one knows it the child is away from the child's family for
32 months before there's any substantive determination of,
33 say, guardianship or --

34 A. Yes, it changes the status quo. It changes the status
35 quo for the family by removing the child. Commissioner,
36 I might say --

37

38 COMMISSIONER: It most certainly does.

39 A. I might say that as soon as we do get to court, so
40 whether it's a court assessment order or the Director's
41 applications, the parent does have the ability to oppose
42 those interim orders at every one of those court events at
43 law. I appreciate they may not have legal advice, they may
44 not be able to file material. But we do have a lot of
45 judicial officers in the state that will hear from parents
46 orally, will hear their version, will place weight on that
47 as they should given the rules, and will make a decision on

1 a court assessment order that the Chief Executive doesn't
2 need custody and will return the children even in that
3 interim space.

4

5 COMMISSIONER: At that point in time, say, at the court
6 assessment order change, the argument is about whether a
7 court assessment order should be made. But embedded in
8 that is whether - because doesn't the TAO effectively
9 expire by the time - once the new application is made?

10 A. It expires. Section 99 continues it until the next
11 court date. But at the court date if the magistrate wants
12 to continue custody they have to - for a court assessment
13 order they have to be satisfied that interim protection is
14 warranted. So part of the difficulty with our Act, as I'm
15 sure you would appreciate, is all the different tests. So
16 you have unacceptable risk here, you have child in need of
17 protection here. When we're talking about custody for
18 temporary custody orders - for temporary assessment orders
19 or court assessment orders the legal test is whether
20 interim protection is required. So in the court assessment
21 order court proceedings a parent - and this happens
22 frequently, a parent or their legal rep might say, "We
23 agree that an investigation is necessary. We accept that
24 there's allegations that need to be investigated. But we
25 don't agree that the child needs to stay with the
26 department in their custody during the 28 days."

27

28 COMMISSIONER: Well, that follows, doesn't it --

29

A. Yes.

30

31 COMMISSIONER: -- because the predicate of a court
32 assessment order is that you're not yet in a position to
33 determine --

34

A. Unacceptable risk or --

35

36 COMMISSIONER: No, whether the child is a child in need of
37 protection?

38

A. Yes. You need that in order to - so you need the
39 court assessment order in order to make that assessment.
40 We don't have that evidence yet.

41

42 COMMISSIONER: So therefore there's a separate but related
43 question as to whether in the meantime --

44

A. Yes, the temporary --

45

46 COMMISSIONER: -- the child needs to be - what's the
47 expression?

1 A. It differs slightly. So in relation to temporary
2 assessment orders it's in the list of orders that can be
3 made. It says if the magistrate is satisfied interim
4 protection is required.
5
6 COMMISSIONER: Interim protection, yes.
7 A. And then in court assessment orders it's in
8 section 45, I believe. Again, it talks about interim
9 protection, temporary --
10
11 COMMISSIONER: Yes, that makes sense --
12 A. Yes.
13
14 COMMISSIONER: -- given what's being sought.
15 A. Yes.
16
17 COMMISSIONER: Thank you.
18
19 MS FREEMAN: Thank you, Commissioner. Just following on
20 from your evidence, Ms Martin, about I guess OCFOS's role
21 in facilitating parent contact on these applications, can
22 I take you to tab 5 of your material, please.
23 A. Yes.
24
25 Q. And I believe a version of this has already been
26 tendered at CL-72. So it's an emergent order process map.
27 A. Yes.
28
29 Q. Now, this is a process map for OCFOS lawyers; is that
30 right?
31 A. Yeah, it's between the child safety service centre and
32 the OCFOS lawyers. So I believe it says - yeah, so, a
33 process map. It's to explain the process. Child safety
34 practitioners like a process map to explain it rather than
35 having the text.
36
37 Q. Yes.
38 A. So, yeah.
39
40 Q. So in the first column under the heading
41 "Investigation commenced" --
42 A. Yes.
43
44 Q. -- we can see sort of in the middle of that column it
45 says, "Decision to file the TAO application"?
46 A. Yes.
47

1 Q. And then underneath that there's two boxes side by
2 side. One says, "CSO to inform parents that a TAO will be
3 sought" --
4 A. Yes.
5
6 Q. -- "and confirm whether they have legal
7 representation."
8 A. Yes.
9
10 Q. And the next step says, "OCFOS lawyer to inform legal
11 representatives that a TAO will be sought."
12 A. Yes.
13
14 Q. So do I take it from this that as part of your process
15 or your lawyer's process there will be a conversation with
16 the CSO about making sure they inform the parents about
17 what's happening if it's appropriate in the circumstances,
18 accepting that there might be TAOs that need to be sought
19 without notice?
20 A. Yes.
21
22 Q. But in the usual course there will be a conversation
23 with the parents about what's happening; is that right?
24 A. Yes.
25
26 Q. Yep. And then there will also be, as you said before,
27 potentially the OCFOS lawyer making contact with known
28 legal representatives or the family about the application
29 that's being sought?
30 A. Yes.
31
32 Q. And that's to facilitate then them having access to
33 legal advice and potentially representation at the hearing?
34 A. Yes. And so sometimes that might be the lawyer
35 saying, "I don't hold instructions but I'll appear as
36 friend of the court." It might be them saying, "I haven't
37 had any contact with that client for a lengthy period of
38 time; I can't assist. But if you file a CAO or file
39 something later let them know I'm still available." Yeah,
40 our lawyers do that any time we're aware that there's a
41 lawyer involved.
42
43 Q. All right. And so that's how the department and your
44 office facilitates parent involvement in the application?
45 A. Yes. I might also add to that that there's no
46 requirement in the Act to serve an emergent - a temporary
47 custody order or a temporary assessment order application.

1 If we're aware there's a lawyer involved and we make that
2 contact and they confirm, we give them a copy of that
3 application. We also give a copy to parents. There's
4 particular - so the requirement to not serve is in relation
5 to the urgency and the nature of the information.
6

7 So I can think of an example where we intentionally didn't
8 serve and it was because a survivor of domestic violence
9 made significant disclosures directly to a child safety
10 officer that meant we needed to seek a temporary assessment
11 order leaving the child with her and getting a directive on
12 the father. So the entire basis of that application were
13 the disclosures made by that mother. Obviously if we serve
14 that on the father there's a very significant risk to her.
15

16 In Childrens Court, so in CAO or DCPL proceedings, the
17 Childrens Court Rules apply. You'd be able to do what's
18 called a rule 31 application to ask the court to dispense
19 with the need for service on that material. TAO
20 applications aren't in the Childrens Court. So you don't
21 have that corresponding rule to protect people's safety.
22 So it works the other way around. Where there's no
23 requirement to serve in most instances we give a copy, even
24 if it's not a legal requirement. But there will be those
25 discretionary situations.
26

27 The other one that comes to mind is if there's a police
28 investigation, if they are looking at someone as a person
29 of interest and they've given us information but police
30 still want to try interview those parents, and they ask us
31 not to give that information to parents yet because it may
32 hinder a criminal investigation. So there's good
33 circumstances or good reasons why that really urgent
34 immediate information is not provided in every case.
35

36 Q. Yes.

37 A. But we definitely tell child safety officers
38 frequently to give parents notice, to give them a copy of
39 an application, unless there's an identified safety risk or
40 reason not to do it, and to put families on notice about
41 the seeking of those applications.
42

43 Q. Okay. Now, in terms of the instructional model that
44 we've been talking about --

45 A. Yes.

46 Q. -- so where you receive instructions to bring these
47

1 applications, one of the challenges that is posed by that
2 model, is it not, where there might be a case where the
3 senior team leader wants to bring an application but the
4 legal advice given by OCFOS is there's not a sufficient
5 basis.

6 A. Yes.

7

8 Q. And His Honour's heard some evidence about the
9 escalation process that then kicks into effect.

10 A. Yes.

11

12 Q. In your view does that escalation process work?

13 A. Yes. So I think I cover this a little bit in my
14 statement. We're talking about an escalation process in
15 the context of a document that's set out. I think I said
16 in my statement there has always been an escalation
17 process. There's never been a circumstance where I've put
18 an application before the court that I didn't think had
19 merit. And if that happened, if a team leader told me to
20 take an application that I didn't think had merit, whether
21 there was a documented escalation process or not, I still
22 wouldn't take that action, and I would encourage every one
23 of my lawyers not to take that action.

24

25 So the documented process as described has always been in
26 existence. If the child safety practitioner didn't agree
27 with legal advice, we would always go up to the next level.
28 And I think I indicated earlier the higher you get in that
29 level the more they understand the consequence and the
30 gravitas of not following legal advice as a public servant.
31 So that escalation process, yes, I think it works.

32

33 Q. What happens if you get to a point where a stalemate
34 is achieved; so there can be no consensus as between what
35 OCFOS views as a reasonable basis for an application and
36 what the child safety officer wants?

37 A. So we've had - so in terms of going all the way to the
38 top of the escalation process, I've never seen that happen.

39

40 Q. Okay.

41 A. I've had conversations with the former and current
42 Official Solicitor and said, "I hope you know that, if
43 I disagree, there's nothing you can do to compel me to."
44 That wouldn't be a lawful direction. And, you know, we've
45 said they would have to make the application - the Official
46 Solicitor would have to make the application herself. But,
47 as I said, I think the higher you get up in that hierarchy

1 - I don't think I know of any departmental regional
2 director that would try tell the Official Solicitor to take
3 that action despite legal advice. It wouldn't happen.
4

5 Q. Okay.

6 A. And it hasn't happened.
7

8 Q. At paragraph 82 of your statement, if you'd like to
9 turn that up --

10
11 COMMISSIONER: Are you leaving the escalation process?
12

13 MS FREEMAN: Sorry, Commissioner?
14

15 COMMISSIONER: Are you moving on from the escalation
16 process?
17

18 MS FREEMAN: I was just going to make one further point
19 and then I was going to move on.
20

21 COMMISSIONER: Please do.
22

23 MS FREEMAN: Paragraph 82, Ms Martin, just let me know
24 when you've got that up.

25 A. Yes.
26

27 Q. You indicate there that since the commencement of the
28 instructional model in 2020 you estimate the matters you've
29 been involved in - so less than 10 have been escalated to
30 the regional director level.

31 A. Yes.
32

33 Q. And so that's in your capacity as one of two PLOs in
34 the state?

35 A. Yes.
36

37 Q. You're aware of --

38 A. One of three now for the last 11 months; yes.
39

40 Q. But at least you have a fairly broad experience as to
41 what's happening across Queensland in terms of these
42 matters being escalated up the chain?

43 A. Yes.
44

45 Q. You've only known about less than 10 that have gone to
46 regional director level, and they've presumably resolved at
47 that point?

1 A. Yes.

2

3 Q. Yes.

4 A. So I think I say in the preceding paragraph in my
5 experience when I go to a manager of a service centre and
6 explain the legal advice and the action the staff want to
7 take 99 per cent of matters are resolved at the manager
8 level; the manager accepting the legal advice, the legal
9 position. Sometimes it's a compromise in that the manager
10 says, well, this is their practice assessment. You've told
11 them to do these actions. They might then go take the
12 actions and then they come back to us. So the manager
13 takes on board the recommendations. But it's very rare
14 that I have to in my regions escalate it to the director
15 level.

16

17 And I believe the Official Solicitor gave similar evidence.
18 She - up until her appointment into the acting Official
19 Solicitor role in July of last year she was my director.
20 So she covered the regions that I cover. So her experience
21 in terms of the low numbers is consistent with mine. But
22 I will caveat that by saying that I am aware that that is
23 not necessarily the experience of all of my colleagues
24 across the state. I suggest that at the end of
25 paragraph 82; it's not consistent with the experience of
26 PLOs in other regions.

27

28 Q. Okay. Commissioner, thank you.

29

30 COMMISSIONER: I wanted to ask you about - in the context
31 of the escalation process.

32

A. Yes.

33

34 COMMISSIONER: The senior team leader is the
35 decision-maker. Are they generally speaking individuals of
36 significant experience within the department?

37

38 A. Senior team leaders would ordinarily be child safety
39 officers, and then once they're ready to step up to the
40 next level of leadership. So it's a P05 level position.
41 Commissioner, that does depend on a region. So, you know,
42 I could say that every one of the team leaders at the
43 Nerang investigation hub has been a team leader since the
44 commencement of OCFOS. You know, there's consistency in
45 terms of staff retention on the Gold Coast or in Brisbane.
46 The staff retention in Cairns looks somewhat different. So
47 that means you get child safety officers becoming team
leaders earlier. So it might take, you know, four years to

1 become a team leader in Brisbane, or five years. In Cairns
2 you might become a team leader at two years, just based on
3 staff movements. I would say that, even if you do have an
4 inexperienced team leader, they have the benefit of a
5 senior practitioner in every office. So if they're not
6 sure about process or matters they do have that support
7 from someone to guide them in terms of practice.

8
9 COMMISSIONER: So, generally speaking, they're experienced
10 practitioners in the field?

11 A. Yes. Yes.

12
13 COMMISSIONER: All right. Now, what about the lawyers
14 that you employ? Because what I want to put to you is
15 this; I'll just be clear about it.

16 A. Yes.

17
18 COMMISSIONER: You've got a senior team leader with
19 experience, authority inside the department or the child
20 safety service centre.

21 A. Yes.

22
23 COMMISSIONER: And that person is the decision-maker under
24 your present instructional model. And is it not often the
25 case that the OCFOS lawyer giving the advice is a quite
26 junior and inexperienced person?

27 A. No, Commissioner, it's not junior and inexperienced.
28 But I do - there is a parity issue. So team leaders,
29 senior team leaders, are P05 level positions. Our legal
30 officers are P04 level positions. So they're one lower
31 level in terms of --

32
33 COMMISSIONER: So there's a power imbalance?

34 A. There's a power imbalance in terms of parity from the
35 legal officer. But I wouldn't accept that they're
36 inexperienced consistently --

37
38 COMMISSIONER: No, I didn't mean it in any kind of
39 pejorative way.

40 A. Yeah.

41
42 COMMISSIONER: I was really trying to get to the question
43 of whether their authority inside the Child Safety
44 structure within the department when it comes to debating
45 the question --

46 A. Yes.

1 COMMISSIONER: -- of whether an application should be made
2 puts them in a subordinate position --

3 A. Yes.

4

5 COMMISSIONER: -- to that of the team leader.

6 A. Yes. And, Commissioner, that's one of the things that
7 does arise when we have new staff. So when a new staff
8 member starts and are giving legal advice, they might have
9 a team leader who has been a team leader for 10 years, you
10 know, who knows the Act, who knows all the provisions.
11 That is something that you have with any on-boarding of new
12 staff.

13

14 COMMISSIONER: Of course.

15 A. But we have systems in place. So what we do is we
16 buddy up our lawyers with experienced lawyers. You know,
17 I have P04 legal officers who have no interest in people
18 management. So they haven't stepped up to the next level.
19 But they're experienced. They've been lawyers for many
20 years. We buddy up our staff with more experienced people,
21 and then through our supervision structures. So sometimes
22 we'll have the senior legal officer attending legal
23 consults with the P04 if they're new or if it's a
24 particularly complex matter or if we, you know, suspect
25 there may be any complexity or push back, anything like
26 that, the senior legal officer will jump in. And I do as
27 well, Commissioner. I will often - given the timeframes -
28 so we have the formal escalation process. But we also know
29 that if the decision has to be made today and we're getting
30 consulted at 2 o'clock, sometimes our legal officer will
31 flag concerns with their senior legal officer early.
32 They'll flag it with me early. And then I'll jump into the
33 consult at 3 or 4 o'clock so that we don't have to wait for
34 that process to happen before it can go through the
35 escalation process. So the answer, like so much in child
36 protection, is it depends. So sometimes the legal officer
37 is less experienced than the team leader, but there's
38 structures in place to make sure that they have the support
39 to give a legal opinion.

40

41 COMMISSIONER: Sure. But let's assume the lawyer is a
42 relatively junior lawyer and that lawyer's given an
43 instruction based on the decision of the far more senior
44 team leader that an application should be made. There is
45 at least the risk, is there not --

46 A. Yes.

47

1 COMMISSIONER: -- that the application will go ahead
2 without contest by the lawyer and therefore the escalation
3 process won't be invoked?

4 A. Yes. Commissioner, there is - there's that risk.
5 There's the risk that there may be pressure; there's that.
6 But I think what I would posit is that our lawyers are all
7 officers of the court and I would hope that - I mean,
8 I would hope that in performing their functions and making
9 a decision to put a matter before the court that would
10 always be forefront of their mind. And if they had any -
11 we set up our system, our team, in a way that is
12 intentionally designed to create psychological safety, to
13 create a feeling of an authorising environment to raise
14 concerns.

15
16 Within our team, if I disagreed with the Official
17 Solicitor, I will tell her that very clearly. You know,
18 there's no hierarchy. And, to be fair, I think she
19 respects that. There's no suggestion that you're going to
20 be criticised for taking a different legal position.
21 I have P04 lawyers who have taken different legal positions
22 to me, and we encourage a system where that's okay, where
23 our lawyers know that if they have worries, if they feel
24 they may be compromised in terms of being a lawyer, they
25 escalate and they raise that.

26
27 COMMISSIONER: All right.

28 A. So it's not that it's invulnerable to risk that that
29 may occur, Commissioner.

30
31 COMMISSIONER: Well, nothing is invulnerable to risk.

32 A. It's that there's mechanisms to try to prevent that
33 from happening.

34
35 COMMISSIONER: Yes. Another aspect of the
36 interrelationship between the OCFOS lawyer and the CSO is
37 the burden of preparing affidavits --

38 A. Yes.

39
40 COMMISSIONER: -- particularly the first affidavit in
41 connection with the work of the DCPL in getting a child
42 protection order, if so decided.

43 A. Yes.

44
45 COMMISSIONER: As I understand it that work, the burden of
46 it falls primarily upon the child safety officer.

47 A. Yes.

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COMMISSIONER: Why shouldn't the OCFOS lawyer draft the affidavits based on instructions?

A. Commissioner --

COMMISSIONER: Instructions in the technical sense.

A. Commissioner, I have no difficulty with a lawyer drafting that affidavit, in a theoretical sense. The reality, though, is we have one lawyer for every service centre where there's 25 child safety officers. So if you have --

COMMISSIONER: So it's a resourcing issue?

A. It's a resourcing issue. The other issue that arises, though, is - Commissioner, I suspect if you actually break down what it is that departmental officers struggle with in relation to court work it's not writing an affidavit. They know, in my experience, that they're statutory officers. They know that they have an obligation to put matters before court. What they frequently struggle with is the process, the feedback. They've written an affidavit today. They would really like to get it signed in the next couple of days. They might not get feedback on that affidavit from the Director's office for three weeks.

COMMISSIONER: That might also be a resources issue?

A. Absolutely. And I'm not criticising the department - the Director's office. It's a process thing. So they might - and, Commissioner, I'll use the experience of an investigation team. So if they finalise their assessment today, they've done a draft affidavit, they've sent it across to the Director's office, that team then hands the case over to new caseworkers to start preparing family group meetings and to do the ongoing stuff.

COMMISSIONER: The ongoing intervention team.

A. Yeah, the ongoing intervention. They move it to that team. That investigation child safety officer still is the original author of the affidavit. So you then have the - if the director makes the decision to file, they might provide affidavit feedback to that original child safety officer three or four weeks after they've already finished their investigation. And --

COMMISSIONER: So who has the carriage of ongoing affidavit preparation once the matter goes to the ongoing --

1 A. So future affidavits, updating affidavits will sit
2 with the ongoing intervention team, so the new child safety
3 officer.

4
5 COMMISSIONER: Right.

6 A. But the investigation child safety officer will still
7 have to sign that original initiating affidavit. And, as
8 you would expect, in four weeks a lot of change happens in
9 a child's life. So the Director's office will ask the
10 child safety officer deposing the affidavit for updates or
11 what's changed, and that officer actually has no
12 involvement in the case anymore; that, you know, some other
13 child safety officer's working on that.

14
15 COMMISSIONER: Don't they then forward the email to
16 the --

17 A. They do. But then the investigation CSO has to say -
18 has to start, you know, asking for more information using
19 the 159M powers. So they might have to gather more
20 information or more source documents on a matter that they
21 they're no longer even working on.

22
23 COMMISSIONER: Well, that depends on how you define what
24 their work is.

25 A. Sorry, I mean no longer caseworking. So no longer
26 having involvement with the family. They're still working
27 on it because they will still depose an affidavit, of
28 course.

29
30 COMMISSIONER: Yes. Does OCFOS provide any instruction,
31 training in relation to --

32 A. Yes.

33
34 COMMISSIONER: -- the preparation of affidavits --

35 A. Yes.

36
37 COMMISSIONER: -- to the CSOs?

38 A. Yes. So, yes, there's two on-line modules, like,
39 on-line - it's called Grow Training; I Learn Grow Training.
40 OCFOS also does a full day of court training for child
41 safety officers across the state. It's part of their child
42 safety officer training in block 2. It's a full day where
43 you go through the entire court continuum. You go through
44 what is evidence. You go through how to evidence all the
45 different things you need to evidence. You also go
46 through - we go through the different lawyers, the
47 different players, because it's a complicated jurisdiction

1 and it's really hard for CSOs to understand the continuum.
2 And then --

3
4 COMMISSIONER: When you say "continuum" you mean --
5 A. The child protection continuum.

6
7 COMMISSIONER: That's the internal child protection
8 continuum as the department refers to it or the court
9 process?

10 A. Look, it has - it doesn't have all of the departmental
11 mechanisms in terms of intake. Our continuum, from memory,
12 starts at section 14(2). So you have a reasonable
13 suspicion a child is in need of protection, a notification
14 has been recorded, you've done an investigation. But the
15 real focus of it is, "So here this might be a TAO. And
16 then these are the things that might happen during a TAO.
17 Then you might have a CAO."

18
19 COMMISSIONER: All right.

20 A. "And then you have the referral to the Director's
21 office. And then you have what happens in all those
22 interim proceedings before the making of a final order."

23
24 COMMISSIONER: Can I ask you this: in relation to training
25 provided to child safety officers in connection with
26 the preparation of affidavits --

27 A. Yes.

28
29 COMMISSIONER: -- what are the critical things that they
30 are trained about in respect of the preparation of an
31 affidavit; can you tell me?

32 A. Yes, Commissioner. If I may just go back one second
33 because I was going through all the training that we do.
34 So that's court continuum. Then in-house in each service
35 centre our legal officers run training, welcome to court,
36 about court concepts and then they run affidavit training,
37 which is a package on how to write an affidavit and --

38
39 COMMISSIONER: So I could have access to the training in
40 relation to the preparation of an affidavit?

41 A. Yes. So there's a PowerPoint presentation. I think
42 it was originally designed to be run in two different
43 sessions. So the first is the theory, the rules of
44 evidence, you know, all of the theory around, "This is what
45 an affidavit is. These are the things that need to go in
46 it." The second part is going through the actual template
47 and taking them through how they would need to fill that

1 in.

2

3 COMMISSIONER: What the subject matter needs to include.

4 A. The subject matter. And then in addition to that,
5 Commissioner, our legal officers will sit physically next
6 to child safety officers when they're doing their first
7 affidavit and will go through the different types of
8 evidence they should put in - you know, they could put in
9 each section. They will assist them with how that might be
10 drafted. They will assist them with what might be
11 relevant, what might not be relevant. So there's that
12 in-person support as well.

13

14 COMMISSIONER: Well, that's good to hear because my
15 experience is that very senior lawyers even have trouble
16 with drafting affidavits or witness statements to make them
17 admissible --

18 A. Yes.

19

20 COMMISSIONER: -- by conflating fact and conclusion.

21 A. And that is a particular difficult in this
22 jurisdiction because the child safety officers make
23 practice assessments in relation to things that in a
24 strictly legal sense you would see as the application of
25 legal standard; you know, it's a legal test and they make
26 child safety practice assessments in relation to the things
27 that are, you know, the ultimate issue for the court
28 decision-maker. It's difficult.

29

30 COMMISSIONER: That is maybe part of the problem.

31 A. Yes.

32

33 COMMISSIONER: Some of the matters relevant to an
34 assessment of risk in this area involve inherently an
35 evaluation or an opinion --

36 A. Yes.

37

38 COMMISSIONER: -- based on the set of circumstances, like
39 the existence of domestic and family violence in the home?

40 A. Yes.

41

42 COMMISSIONER: You need to describe what that conduct is
43 and then draw some conclusions from it.

44 A. Yes.

45

46 COMMISSIONER: All right. The risk assessment might also
47 be informed by learning about the impacts, harmful impacts,

1 of certain conduct.

2 A. Yes.

3

4 COMMISSIONER: And that is a growing field. So there is a
5 sort of conglomeration when it comes to an affidavit,
6 leaving aside all the topics that it needs to cover, of
7 both identifying the facts in terms of what happened,
8 what's happened in the home, for example, and then the
9 application of those facts to a distilled opinion, and it's
10 necessary to really separate those two things in order that
11 somebody looking at the material can understand where the
12 opinion comes from; do you see what I'm saying?

13 A. Yes, yeah.

14

15 COMMISSIONER: And that is a challenge in all court
16 jurisdictions.

17 A. Yeah.

18

19 COMMISSIONER: And particularly so here, I think.

20 A. Yes. The difficulty we have, Commissioner, when you
21 merge human services and law is we know as lawyers that you
22 need to state the foundations that helped you reach your
23 assessment or, you know, all of those things you have to -
24 those underlying facts. But as practitioners, when they're
25 making a practice assessment, they know so many things and
26 have so much theory and research and understanding as part
27 of their tertiary qualifications and as part of their
28 experience as practitioners it does not - sometimes it
29 doesn't even occur to them that they have to tell us that
30 stuff. So we have to set them - you know, I call it the
31 gut instinct. If a social worker has a gut instinct and
32 I can't see the evidence, I will sit with them and say,
33 "Tell me more, tell me more, tell me what is informing this
34 decision, tell me what you saw, tell me what you observed,"
35 and try to understand their practice assessment. And to be
36 a lawyer that understands and respects and values the
37 practice assessment is difficult and it's a skill, and we
38 have to teach our lawyers that.

39

40 COMMISSIONER: I'm not suggesting that in any way that you
41 shouldn't place weight and value on what you call the
42 practice assessment --

43 A. Yes.

44

45 COMMISSIONER: -- the evaluation of the risk that the
46 child safety officer has arrived at.

47 A. Yes.

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COMMISSIONER: What I'm really getting at is for that evaluation to be subject to effective scrutiny in a court for others, the parents --

A. Yes.

COMMISSIONER: -- for example, to be in a position to scrutinise that there needs to be a way in terms of presentation of the evaluation in the affidavit that disaggregates as far as possible the evaluation, the evaluative judgment from the facts upon which that judgment is based.

A. Yes.

COMMISSIONER: Now, lawyers should understand that.

A. Yes.

COMMISSIONER: As I've already said, it's astonishing how many don't when one looks at a lot of affidavit material in all sorts of context.

A. Yes.

COMMISSIONER: But it's because it's difficult.

A. Yes.

COMMISSIONER: And naturally people don't think in terms of that dichotomy when they're forming an opinion about something. And so it's not surprising. But all of that suggests to me that the work of preparing these affidavits would be better undertaken by lawyers. Albeit like the work of lawyers in preparing any affidavit material, it depends on the instructions in the true sense that come from a client or the investigator or whomever.

A. Yes.

COMMISSIONER: And what I want to understand is whether you agree with that proposition.

A. Yes, Commissioner. I practised in family law. So I took instructions, I drafted affidavits for clients frequently. My preference - to be honest, sometimes we get affidavits, our team gets affidavits from child safety officers that are 100 pages and none of that was relevant; they didn't need to do any of that.

COMMISSIONER: Well, that's another question.

A. We have to distil it down and make it coherent.

I think it would be easier for us, I think it would be

1 easier for child safety officers, but with the caveat that
2 I don't think you can have one lawyer drafting all of the
3 affidavits and dealing with the emergent orders. Our
4 lawyers do an amazing job at the moment, but they are
5 stretched. You know, they can't do what they need to do in
6 any given day.

7
8 COMMISSIONER: So it again comes down to a resourcing
9 issue.

10 A. Resources, yes.

11
12 COMMISSIONER: And the evidence I've heard about the
13 burdens upon child safety officers is they, too --

14 A. Yes.

15
16 COMMISSIONER: -- can't complete all the tasks they need
17 to complete in the day and the work preparing affidavits
18 deflects them --

19 A. Yes.

20
21 COMMISSIONER: -- from doing the work that is more sort of
22 core and arguably more important in terms of their
23 functions in the process. So it places a very significant
24 burden on them --

25 A. Yes.

26
27 COMMISSIONER: -- and has impacts that are quite broad in
28 terms of their ability to engage with the family, with
29 the carers, with whomever --

30 A. Yes.

31
32 COMMISSIONER: -- they need to engage in to engage with
33 at, let's say, a social work level or a human services
34 level with the families concerned --

35 A. Yes.

36
37 COMMISSIONER: -- and the child, importantly.
38 A. Yes. The other part of that, Commissioner, is, you
39 know, the duration. So the longer a matter is in court the
40 more updating affidavits are required. And that makes
41 sense as a rule of law. The court needs to know what's
42 happening in the matter that the court is apprised of.
43 But, you know, I think when we moved to the model in 2019
44 where OCFOS stepped out the intent communicated to the
45 department at that point was that there would be three
46 affidavits in proceedings: there would be the initiating
47 affidavit, there would be a case plan affidavit, and there

1 might be an affidavit after court ordered conference for
2 trial.

3

4 COMMISSIONER: And a rule 13 affidavit?

5 A. No. So that was in 2019 when we moved away from the
6 rule 13 - the separate affidavits.

7

8 COMMISSIONER: Yes.

9 A. So that was when we moved to the joint initiating
10 affidavit. So it still had all the source documents from
11 the rule 13 affidavit in the initiating affidavit.

12

13 COMMISSIONER: And you agree that that was a good
14 development?

15 A. Absolutely. The one affidavit. 100 per cent
16 supported by me and my team.

17

18 COMMISSIONER: You would have, if you watched the
19 Director's evidence, heard about a sort of pro forma
20 document that --

21 A. Yes.

22

23 COMMISSIONER: -- is being worked on that hopefully would
24 be a document which would serve some concurrent purposes,
25 the sort of keeping of necessary records and assessments
26 which a CSO needs to do in the ordinary course of their
27 work --

28 A. Yes.

29

30 COMMISSIONER: -- being the foundation and support for
31 affidavits that could then be more easily prepared. Does
32 that strike you as a good idea?

33 A. Yes, Commissioner. I was involved in the development
34 of that document. So that document was originally
35 developed in Cairns in Far North Queensland. We were
36 looking at a trial of OCFOS lawyers drafting affidavits
37 using that document - with our lawyers drafting the
38 document - sorry, the affidavit; child safety officers just
39 drafting their practice assessment, their child protection
40 assessment, and then that being attached as an exhibit.
41 That trial did not occur.

42

43 And then I believe that document has been repurposed as
44 part of the current affidavit expert group that's working
45 on the affidavit template. I am absolutely in support of
46 that. Again, like everything, I have some caveats.
47 I think the Director was talking about it being a live

1 document that the child safety officer keeps updating.
2 That would be a worry for me in terms of the purpose.

3
4 So, Commissioner, if we think about social assessment
5 reports, that's a report done by an external professional.
6 Usually they have the same qualifications as a child safety
7 officer or a senior team leader. They interview a family,
8 see them for one day and prepare a report. Those reports
9 can take three to six months to be done. They're detailed.
10 And what we would be asking the CSOs is to keep live an
11 assessment of not just one day but of all of the casework
12 and knowledge and information and engagement they have with
13 the family.

14
15 I think I'm supportive of a child protection assessment
16 form. I'm not supportive of it being a live document that
17 CSOs keep going when they don't have engagement with
18 families' related purpose to keep that. So if they've
19 changed their assessment and they want a different order,
20 absolutely think they could do that form and use it in an
21 affidavit to update the court. But I don't think they
22 should be expected to keep a running practice assessment of
23 what their current assessment may be at any different time.

24
25 COMMISSIONER: And by this time the child safety officer
26 in question is in the continuing intervention --
27 A. Ongoing intervention, yes.

28
29 COMMISSIONER: -- or ongoing intervention area, and then
30 you've got the complication of third party providers also
31 providing assessments.
32 A. Yes.

33
34 COMMISSIONER: That's what you're saying?
35 A. No, Commissioner, I don't think that's a problem.
36 I think that the court can be informed by a social
37 assessment in the proceedings. I was using that in the
38 context of how long it takes to prepare those reports.
39 It's a big piece of work preparing an assessment of that
40 nature.

41
42 COMMISSIONER: But that's subcontracted?
43 A. It is. But I think the Director was suggesting that
44 that's a form child safety officers could keep as like a
45 live assessment of what their current assessment was. What
46 I'm suggesting is that it could be an assessment that they
47 do at particular points, if they have a new assessment or

1 something changes. But there would be difficulty in them
2 keeping it as a live assessment of what's going on or every
3 change that's happening for the family.

4
5 COMMISSIONER: Wouldn't it only need to be updated as and
6 when the child safety officer had relevant contact with
7 the family?

8 A. Your Honour, the child safety officers have relevant
9 contact with their families 20 times a day sometimes. So
10 that's what I'm suggesting --

11
12 COMMISSIONER: That's not what I've heard.

13 A. Not every family --

14
15 COMMISSIONER: The evidence is that they rarely have, once
16 a month, and often it's very short and --

17 A. In relation to children on long-term guardianship
18 orders, yes, absolutely. I know those are the visits they
19 don't get to do frequently. In relation to matters that
20 are before the court, interim matters, there's a lot of
21 contact with children and families, and it would make sense
22 in terms of proportionality of what urgent work needs to be
23 done.

24
25 COMMISSIONER: Well, perhaps after lunch --

26 A. Yes.

27
28 COMMISSIONER: -- you can tell me how in your ideal world
29 the affidavit process would be streamlined --

30 A. Yes.

31
32 COMMISSIONER: -- to confine it to the relevant material
33 and to try and reduce the burden on all concerned in
34 preparing such affidavits.

35 A. Yes, Commissioner. I'm happy to have a think about
36 that over lunch.

37
38 COMMISSIONER: Please do.

39 A. Thank you.

40
41 COMMISSIONER: We'll adjourn to 2.15.

42
43 **LUNCHEON ADJOURNMENT** **[1.08 pm]**

44
45 COMMISSIONER: Ms Freeman, before we recommence, I should
46 indicate that I need to rise at half past 3 today.

47

1 MS FREEMAN: Sorry, Your Honour?
2
3 COMMISSIONER: I need to rise, I need to finish at half
4 past 3.
5
6 MS FREEMAN: Yes, thank you, Your Honour.
7
8 COMMISSIONER: I'm afraid it does mean that other counsel
9 again will not get an opportunity in this session, but
10 we'll continue with the evidence in what I've called the
11 leftover hearing next year.
12
13 MS FREEMAN: Yes.
14
15 COMMISSIONER: I suspect that will be in early February.
16
17 MS FREEMAN: Yes.
18
19 COMMISSIONER: If it's possible in terms of the
20 availability of the courtroom and other things, is the
21 first week of February, some time in that week, convenient
22 to counsel? I'd like to try and ensure that it is
23 convenient.
24
25 MS McMILLAN: It is for me. I've got other things on hold
26 until we learnt that. So, yes, that's amenable to me.
27
28 COMMISSIONER: I can't yet guarantee it will be the first
29 week.
30
31 MS McMILLAN: No, I understand that.
32
33 COMMISSIONER: But I'm going to aim for the first week in
34 February.
35
36 MS McMILLAN: Yes, I understand that.
37
38 MS FREEMAN: I think that's okay for me, Commissioner.
39
40 COMMISSIONER: All right.
41
42 MS FREEMAN: But I'll just double-check that.
43
44 COMMISSIONER: If it isn't, if it becomes an issue, then
45 please communicate with the secretariat. All right. You
46 were going to tell me about affidavits?
47 A. Yes, thank you, Commissioner. I might start by saying

1 that, as indicated, I was a practitioner who represented
2 parents pre the changes.

3
4 COMMISSIONER: Yes, I hadn't forgotten that.

5 A. I shared the frustrations of a lot of lawyers at that
6 time about the inability to get information from the
7 department. There was a level of secrecy in relation to
8 the structured decision-making tools. You never got a copy
9 of those and you ultimately had to subpoena the department
10 to get information relevant to prepare your case.

11
12 COMMISSIONER: Yes.

13 A. So I do think the changes with respect to disclosure
14 are absolutely positive and should exist in relation to
15 litigation. I think in terms of affidavits a lot of the
16 source documents attached to affidavits, so the 200-plus
17 exhibits, a lot of those could be dealt with through
18 disclosure rather than being annexures to an affidavit.
19 What I would suggest - and I might say I've been --

20
21 COMMISSIONER: Well, provided that the document is not one
22 that the court requires --

23 A. Yes.

24
25 COMMISSIONER: -- for the purposes of considering the
26 application. Yes, I understand that.

27 A. Yes. And, again, so that goes to the scope. So, as
28 I've indicated, the court needs the current assessment, the
29 most recent investigation. I would submit the court
30 probably doesn't need every assessment the department has
31 ever done; so not since, you know, 2018. If the family or
32 the legal reps would like that additional evidence they
33 should absolutely have the right to obtain it. But in many
34 instances child safety officers are attaching exhibits to
35 their affidavits, and those exhibits are not documents that
36 they relied on to form their assessments. They're
37 documents and exhibits that they're reading for the first
38 time when they're deposing their affidavit.

39
40 COMMISSIONER: Where are they produced then?

41 A. They're produced because the Director's office asks
42 for them. So in that process of asking for additional
43 feedback and giving and - so the affidavits are sent to the
44 Director's officers unsworn.

45
46 COMMISSIONER: Yes, I understand that.

47 A. The Director's office settles them and as part of that

1 process they provide feedback, and the --

2

3 COMMISSIONER: Can you identify the species of documents
4 that are required by the Director that you think are
5 necessary to form part of the affidavit?

6 A. Yes. So, as I indicated, historical assessments. So
7 the child safety officer might say in the affidavit that
8 there have been five previous investigations. That fact is
9 made known to the court in terms of how many times the
10 department has been involved in the past. I would suggest
11 that every one of the assessment and outcome documents of
12 those historical assessments are not strictly required.

13

14 COMMISSIONER: Well, it might depend - again, it's fact
15 dependent, isn't it, because the assessments might
16 demonstrate an ongoing pattern of some sort of conduct --

17 A. Yes.

18

19 COMMISSIONER: -- that is relevant to fortifying, if you
20 like, the present assessment of risk?

21 A. Yes. And in this jurisdiction harm can obviously be a
22 series of events; so the cumulative harm concept. And in
23 those cases those documents and all the historical things
24 might be relevant because they go to the child safety
25 officer's assessment of there being cumulative harm. I'm
26 suggesting it's not necessary in every case.

27

28 COMMISSIONER: Yes.

29 A. I also think that there needs to be proportionality.
30 So if you take an example of --

31

32 COMMISSIONER: Proportionality is a pretty nebulous
33 concept, isn't it?

34 A. Yes, it is. I accept that. I think it's about - if
35 I can use the example of prior to the new model. If you,
36 for example, said a child safety officer had 10 matters in
37 court, not 10 cases altogether, 10 matters in court, they
38 would know from very early on in those proceedings which
39 are the matters likely to never be able to settle, that
40 would go all the way to a final hearing. They could give
41 more attention to the court work for those matters. And
42 I want to be really clear. I'm not saying get a child
43 protection order without the required evidence or without
44 giving the court what it needs to satisfy --

45

46 COMMISSIONER: No, I'm not taking you to be saying that.

47 A. Yeah, I just - I think, you know, you might have a

1 matter where a family has had to make the really, really
2 difficult decision to relinquish the child because of the
3 child's needs. In matters like that the criminal history
4 of the parents forms no part of the basis to seek the child
5 protection order. But we have requests on occasion to
6 attach criminal histories in relation to those parents
7 where the department's assessment is that they're not able
8 because of the inability to meet the complex needs of the
9 child; it's not that they're not able because of criminal
10 offending or nefarious conduct on their part.

11
12 COMMISSIONER: It might be stale in the sense of a long
13 time in the past and not relevant.

14 A. Yes.

15
16 COMMISSIONER: That's what you're saying.

17 A. That. And, you know, I can think of some recent
18 examples where we've suggested we should redact the
19 juvenile criminal history, which normally would be a not
20 for production criminal history, and there's been push back
21 and said that all needs to go before the court in
22 circumstances where the parents are nearly 30 years old.
23 I don't - and, you know, if the juvenile offending was in
24 relation to children or sexual offending it may be
25 relevant, and I accept that. But, you know, shoplifting
26 charges and stealing charges from when someone was 15 are
27 very unlikely to be relevant to child protection
28 proceedings.

29
30 COMMISSIONER: If the parents were represented one
31 possible way of truncating the volume of the material would
32 be to adopt a procedure which is common in other
33 jurisdictions and that is to have a statement of agreed
34 facts.

35 A. Yes.

36
37 COMMISSIONER: And the statement might contain, let's say,
38 50 facts that are agreed and only four or five or whatever
39 the case might be that are contested. So, rather than
40 drafting lengthy affidavits, it might be sufficient that
41 the court is provided with a statement of facts that is
42 agreed, and insofar as it's not agreed then evidence could
43 be targeted to that --

44 A. Yes.

45
46 COMMISSIONER: -- to those matters. That potentially
47 would reduce the burden of preparing affidavits.

1 A. Yes.
2
3 COMMISSIONER: I don't think it's an entirely consensual
4 jurisdiction.
5 A. It's not.
6
7 COMMISSIONER: So you'd still need to prove an evaluation
8 of the risk of harm and capability issues.
9 A. Yes.
10
11 COMMISSIONER: But you could potentially substantially
12 reduce the affidavit burden. And the other thing I was
13 wondering but it may not be applicable here is whether
14 certain formal proofs could be established by the provision
15 of a certificate by the Director or the OCFOS solicitor as
16 the case may be that avers to the fact
17 as sufficient conclusive - actually conclusive evidence;
18 that's a mechanism that is available under certain
19 statutes.
20 A. Yeah.
21
22 COMMISSIONER: But it may not be apposite here. But
23 I would invite both OCFOS and the Director to consider
24 other procedural means by which the process of putting
25 forward material before the court might be truncated
26 because I'm pretty sure that the court will be --
27 A. Pleased.
28
29 COMMISSIONER: -- likely to be very pleased at having a
30 reduced body of material to have to digest, provided that
31 it is adequate for the purposes of assessment and the
32 parties can have access to the relevant material if they
33 wish to dispute something.
34 A. Yes. Commissioner, the other thing that might work as
35 well is to adopt a process like they use in the Family
36 Court jurisdiction where --
37
38 COMMISSIONER: Yes.
39 A. -- there's a limit in the rules on the size of
40 affidavits.
41
42 COMMISSIONER: But that's a bit arbitrary. It's like
43 imposing limits on, you know, the length of submissions and
44 things.
45 A. And we know that this jurisdiction is always best
46 interests. So it would need to be subject to some sort of
47 discretion in circumstances where there might need to be

1 more exhibits. But what I would suggest is that the nuance
2 of this jurisdiction is a lot of the time the question of
3 whether the child is in need of protection is actually not
4 the pertinent issue for the court; it's what order.

5
6 COMMISSIONER: Well, there you go. So if you had a
7 process where you had a statement of agreed facts and that
8 fact, that critical fact, which is central to engaging the
9 jurisdiction of the court were not in dispute --

10 A. Yes.

11
12 COMMISSIONER: -- then that could be fact number 1.

13 A. Yes.

14
15 COMMISSIONER: It's agreed that the child is in need of
16 protection.

17 A. Yes.

18
19 COMMISSIONER: And you could then concentrate the
20 evidentiary material, submissions and evaluation on the
21 question that is live --

22 A. Yes.

23
24 COMMISSIONER: -- which is what kind of order should be
25 made.

26 A. Yes. The difficulty we have now is, because we're
27 proving both consistently all the way through the
28 proceedings, that's where the significant material comes
29 from and that's where the burden on Child Safety comes
30 from. And I'll give this example. If a parent makes an
31 admission to a child safety officer that they're using -
32 misusing a substance, before the Director's office that
33 admission in itself was included in the sworn evidence of
34 the child safety officer as, "This parent told me on this
35 date they're using this drug." That being sworn evidence
36 was the evidence that substance misuse is a current issue.
37 And the only time we would - Child Safety would look to
38 compel parents to do urine drug screens would be if the
39 parent disputes that comment and says, "No, I never said
40 that to you," or if the parent said, I've, you know,
41 entered relapse prevention programs and I'm now no longer
42 using it," and we wanted to test whether that was true or
43 not. But we're in a situation now where child safety
44 officers are asking parents to complete urine drug testing
45 not because they're needed as part of their casework with
46 the family but because they're needed to prove in court
47 that substance misuse remains a live issue. So that's what

1 I mean when I talk about looking at the scope of the
2 evidence and the evidence needed.

3

4 COMMISSIONER: They're sensible observations, if I may say
5 so. I mean, one fact that could also be agreed, if it is
6 agreed, is that substance abuse or substance use remains a
7 current issue in connection with this child.

8 A. Yes.

9

10 COMMISSIONER: Now, if that were agreed that would be
11 sufficient, wouldn't it?

12 A. It would. In terms of the question of whether the
13 child is in need of protection, that would be sufficient.

14

15 COMMISSIONER: Well, I would invite you and your office,
16 and I make the same invitation to the Director, who's
17 represented, to consider such other processes and
18 procedures which are commonplace in other jurisdictions.
19 The problem of voluminous material and all that that
20 entails in terms of cost and effort is not unique, as I'm
21 sure you know --

22 A. Yes.

23

24 COMMISSIONER: -- to the child protection jurisdiction.

25 A. Yes.

26

27 COMMISSIONER: And so whatever efforts can sensibly be
28 made to streamline the process is all to the good.

29 A. Yeah. Commissioner, I must say a lot of that
30 streamlining and the agreement on facts does still happen
31 at that court ordered conference. I think part of
32 the difficulty is, if parents are not legally represented,
33 entering into any sort of discussions about what are agreed
34 facts or not is particularly difficult.

35

36 COMMISSIONER: And in particular in circumstances where
37 the parents are vulnerable --

38 A. Yeah.

39

40 COMMISSIONER: -- then - I mean, one has to be confident
41 that they've been advised and able to reach truly
42 consensual agreements --

43 A. Yes.

44

45 COMMISSIONER: -- and not being simply - so they're not
46 suborned into agreeing to things.

47 A. Yes.

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COMMISSIONER: Of course I accept that.
A. And that there would also need - because it's not a consent jurisdiction, it would also be satisfying the judicial officer that the child is in need of protection based on those agreed facts, and then you can move straight to the question of what's the least intrusive order, which is the test I would say is done frequently the one that's being considered, "What order do we need to keep this child safe?"

COMMISSIONER: Is that the area most common in your experience to be a matter of controversy?
A. In my experience most parents accept that - you know, most accept that there is a reason for the department intervening in their lives. They might dispute whether a child protection issue is still current or they might dispute the impact that the issue has on the child or their ability to parent. But it's not necessarily the question of whether the child's in need of protection. It's the question of, "Why do you need an order? So why do you need to have custody of my child to do this?" I'm aware that I'm guessing, but I suspect that for most families and most parents it's not even the question of whether the child's in need of protection. It's the question of whether the State's going to take their child out of their home. That's the pertinent issue for litigation. So if a parent --

COMMISSIONER: Those two questions are related, aren't they?
A. They're related at law. But from a parent's perspective - I think about the RPAs and the voluntary agreements. The parents in those matters, they accept that there's a reason - in most cases accept that there's a reason Child Safety is involved and coming to visit them and working with them. But the fear and the concern is about whether that can still happen with the children being in their home.

COMMISSIONER: Well, isn't it an obligation under the Act for the minimum necessary intervention rather than the opposite?
A. Yeah, there's a principle that the State must only take action that is warranted in the circumstances. And then there's also 51ZB, which requires the Chief Executive to give consideration to voluntary intervention. There's,

1 as with everything in this Act, a caveat to that where, if
2 the child would be at immediate risk if the parents
3 withdrew their consent, the Chief Executive doesn't need to
4 consider voluntary intervention.

5
6 COMMISSIONER: Yes, I mean, section 5BE --
7 A. Yes.

8
9 COMMISSIONER: -- "In protecting the child, the State
10 should only take action that is warranted in the
11 circumstances."

12 A. Yes.

13
14 COMMISSIONER: As one would expect.

15 A. Yes, absolutely. And I might just add, Your Honour,
16 the test for a child protection order at section 59 has
17 another similar provision to that which is the court can
18 only make the order that is least intrusive, so once it's
19 before the court. So that is a statement of general
20 principle in relation to the State action. But also in
21 court proceedings the court must make the least intrusive
22 order.

23
24 COMMISSIONER: Well --

25 A. Of course.

26
27 COMMISSIONER: Quite.

28 A. Yes.

29
30 COMMISSIONER: And for good reason.

31 A. Yes.

32
33 COMMISSIONER: At any event if your office and the
34 Director's office - both intimately engaged in this legal
35 process, such an important part of the experience of a
36 child and families in the child protection system - are
37 able to come up with some agreed ways that are at least
38 worth trialling to short - not to take shortcuts as such
39 but to truncate the process in a way that will achieve the
40 ends of the system, child protection, keeping children
41 safe, and abate the sort of volume of material and the
42 length and difficulty associated with the court proceeding
43 that would be progress.

44 A. Yes. Your Honour, might I add those discussions and
45 those consultations and those meetings have been consistent
46 since 2016. I was involved in the development of the
47 current affidavit template back in 2017 when it was

1 developed. Then, as it is now, the intent was to have a,
2 you know, streamlined affidavit that got all the relevant
3 information before court. And then we have had multiple
4 opportunities to review the affidavits and the material,
5 and the extent and scope of all the 159M and N material
6 that is sought from partner agencies. And that is not an
7 issue that's been able to be resolved. So I just wanted to
8 clarify it's not that we haven't tried; we've tried. And
9 in theory our office, the department and the Director's
10 office all agree that the affidavits put before the court
11 should be the best evidence and should give the court what
12 it needs and should be done in a way that is - in a way
13 that is putting the best evidence before the court of what
14 the court needs and not overwhelming families and not
15 putting that huge burden on the families and the court to
16 read that material. The difficulty is that, despite all of
17 that consultation and all of that work to try to get
18 resolution, we haven't got there.

19
20 COMMISSIONER: Have you examined the possibility of having
21 agreed statements of fact? It does assume representation
22 of the parties, of the parents, doesn't it?

23 A. I would suggest that that under the current model
24 would be almost impossible because the Chief Executive must
25 be satisfied of a child in need of protection and they need
26 to make a referral to the Director's office. Once that
27 happens the Director has to make a decision to apply for a
28 child protection order. Then once the Director makes that
29 decision and an affidavit is filed, Child Safety no longer
30 have lawyers. The practitioners dealing with the matter
31 don't have the benefit of help from our office once that
32 happens.

33
34 COMMISSIONER: That's a different problem, isn't it?
35 That's the problem that arises because of the bifurcation
36 of the new process.

37 A. Yes, yes.

38
39 COMMISSIONER: But let's assume based on some material in
40 whatever form under the present arrangements the Director
41 makes a decision that it's appropriate to apply for some
42 form of child protection order.

43 A. M'hmm.

44
45 COMMISSIONER: There will be no reason why at that point
46 there couldn't be agreement reached between the Director
47 and the representatives of the parents --

1 A. Yes.

2

3 COMMISSIONER: -- to see if facts could be agreed, thereby
4 shortening or truncating the need for evidence. And the
5 other area I thought is potentially problematic here is
6 that the factual background circumstances, as I've seen in
7 a number of cases that have been looked at in some detail
8 in the course of this Inquiry, is the facts are often very
9 complicated --

10 A. Yes.

11

12 COMMISSIONER: -- with a long background, lots of family
13 sort of relationships --

14 A. Yep.

15

16 COMMISSIONER: -- that change and need to be understood.
17 Now, there could be some way of making all of that material
18 that is included in affidavits very lengthy narratives less
19 dense and detailed if one identifies, well, what are really
20 relevant contextual facts and a short truncated summary of
21 those facts was agreed --

22 A. Yes.

23

24 COMMISSIONER: -- so that, instead of having perhaps a
25 narrative spanning 30 pages of the anterior events and all
26 of the family relationships, it might be sufficient for
27 certain of the key facts that contextualise the child's
28 situation to be reduced to a summary, which summary is
29 agreed as sufficient for the purposes of the application.

30 A. Yes.

31

32 COMMISSIONER: That's another thing that could be done?

33 A. It could, Your Honour. I suspect that representatives
34 for the parents would have some worries about that.

35 I certainly would have concerns about making concessions on
36 evidence if I haven't seen all the evidence. So, you know,
37 I think that process would need to be worked through. But
38 I might just add that I think the other part - and for me
39 it comes back to this - the separation of Child Safety
40 decision-makers from the court process, in my view,
41 exacerbates that.

42

43 COMMISSIONER: Well, how are they separated?

44 A. So they're the decision-makers still in relation to
45 contact and in relation to what's happening in the casework
46 for the family, and placement, you know, those
47 administrative decisions. They used to - and I'll speak to

1 my experience as a court coordinator. They used to play an
2 active role in relation to court. They would know what was
3 happening in court. They would know what submissions were
4 being made. They would know the relevant issues for the
5 parents and the families. And they don't always know that
6 anymore. They get a --

7
8 COMMISSIONER: But, if they're the source of
9 the information for the purposes of the affidavit, how are
10 they not involved?

11 A. They - so what they currently get is a court outcome
12 form from DCPL that gets sent. That gives them a summary
13 of what happened in court and give them a list of tasks of
14 things that they should do between now and the next
15 mention.

16
17 COMMISSIONER: Are you saying that the child safety
18 officer should be present in court instructing the lawyer?

19 A. No. No, Commissioner, I'm not saying they should be
20 present in court.

21
22 COMMISSIONER: Maybe it's a good idea.

23 A. So pre-DCPL as a court coordinator I sometimes would
24 have child safety officers come to court with me but not
25 for every mention, not for every matter. But, if we had a
26 particularly complex matter or if a contact decision had
27 been made that the parents were unhappy about, I would have
28 the team leader come to court with me. So you had the
29 benefit as the lawyer appearing in court on that matter, or
30 the court coordinator back then, you had the benefit of
31 getting those live instructions from the team leader.

32
33 COMMISSIONER: But what's to stop that from occurring now?

34 A. The way the model is set up at the moment --

35
36 COMMISSIONER: Well, let's just be clear what you mean
37 about that.

38 A. Okay. So --

39
40 COMMISSIONER: The Director's lawyers can talk directly to
41 the CSO?

42 A. Yep, they can talk.

43
44 COMMISSIONER: They can invite them to come to court if
45 they thought there was a need for it, could they?

46 A. They could. And there's always an ability for the
47 child safety officer or team leader to go to court if they

1 choose to.

2

3 COMMISSIONER: So what's the problem?

4 A. I'm saying that it's not - it's not done. It's not
5 something that happens anywhere. And I want to be clear
6 it's not done for good reason because I'm sure you've heard
7 lots of evidence about how busy they are. That process of
8 sitting at court can be lengthy. The thing that I think
9 used to happen in the past that cannot happen now is any
10 sort of negotiation with legal reps in relation to Child
11 Safety's decisions.

12

13 So I use the example of I would often - I might say in all
14 my years as a court coordinator I had two matters go to
15 final hearing, that's it, in six years. I would often
16 before the mentions make contact with the legal reps and
17 say, "What's your position? What is going on?" Sometimes
18 it would be my client's identified a grandparent and the
19 department hasn't assessed them yet, and I would walk into
20 the team leader's office and say, "What's going on with
21 this? What's delaying it? What's the hold up?" That
22 process of that face-to-face, instant (indistinct) before
23 court had the capacity to move matters forward. I would
24 also --

25

26 COMMISSIONER: But I'm not understanding - I accept
27 everything you say. Real-time instructions --

28

A. Yes.

29

30 COMMISSIONER: -- responsive to the emerging dynamic of
31 the court process is obviously a desirable thing.

32

A. Yes.

33

34 COMMISSIONER: But even under the present model I don't
35 understand why those interactions could not just as easily
36 occur with the lawyers conferring with the child safety
37 officers?

38

39 A. They can, and they do; that direct contact does
40 happen. You would have heard, Commissioner, that Child
41 Safety staff are relational. I've had times where --

41

42 COMMISSIONER: Well, I don't know what that means. Aren't
43 we all relational?

44

45 A. So they work on relationships. That's their core
46 business: building and developing relationships to effect
47 change through those relationships.

47

1 COMMISSIONER: With the --
2 A. With parents, with everyone.
3
4 COMMISSIONER: Of course.
5 A. That's how they operate.
6
7 COMMISSIONER: But that's how, generally speaking,
8 everybody operates, isn't it?
9 A. It's somewhat different for practitioners, and I'll
10 use this example. We sometimes have - because of
11 recruitment issues, we have to have a lawyer based remotely
12 for, you know, a period of time or to cover leave. I know
13 that in the offices where we have remote coverage or we
14 have other lawyers in other areas covering, I know that we
15 start to see a decline in timeliness. We start to get less
16 responses. There is a real benefit to a lawyer being in a
17 service centre, if the team leader or CSO haven't had the
18 opportunity to respond to emails yet, turning up at their
19 door and saying, "Hey, what's going on? We need to follow
20 up on this. It's urgent." We do that every day.
21
22 COMMISSIONER: All right. What's the practice in terms of
23 working from the office?
24 A. Our lawyers - some of our lawyers have
25 working-from-home arrangements. But the expectation for
26 every single one of them is that they're in the office more
27 times than they're at home.
28
29 COMMISSIONER: All right.
30 A. Unless there's particular medical or personal reasons.
31
32 COMMISSIONER: Work practices have changed, haven't they?
33 A. Yes.
34
35 COMMISSIONER: Right. And in the case of the OCFOS
36 jurisdiction presently it seems from what you've said that
37 applications are made over the phone, not even via Teams,
38 to the court for emergent orders?
39 A. We say phone because it's a call, but it is through
40 Teams ordinarily. Sometimes it's easier to join parents
41 with a mobile phone.
42
43 COMMISSIONER: Sure.
44 A. So sometimes the call itself is through a mobile.
45
46 COMMISSIONER: Anyway, I'm not understanding why
47 everything you describe, which is obviously desirable in

1 terms of communication and interaction, couldn't be
2 happening now.
3 A. I might take it the one step further and that's with
4 the Director's office not being Child Safety's lawyers they
5 can't give them - they can give them legal advice in
6 relation to the affidavit because that's a part of their
7 proceedings; they can't give them legal advice in relation
8 to the exercise of their decision-making power or any of
9 the other related issues. So what you have now is you have
10 Child Safety has their practice assessment; the Director
11 has his legal decision on what order to seek. As a court
12 coordinator I would go into a team leader's office and say,
13 "Your practice decision has these vulnerabilities. You
14 need to go gather this evidence or you need to go back and
15 reconsider your practice decision."
16

17 COMMISSIONER: Again, that's a consequence of the
18 bifurcation of the system, isn't it?

19 A. Yes. Well, if there wasn't that then you would have -
20 you run the risk of - so if you take the decision-making
21 power about what order is appropriate for a child away from
22 practitioners --
23

24 COMMISSIONER: Well, it is at present, isn't it?

25 A. -- as it is at present, but then also have the same
26 person or people that are making that decision, where
27 there's disagreement at times, if you have that person as
28 the lawyer that has to give that delicate advice about the
29 exercise of their administrative powers, that poses a real
30 issue.
31

32 COMMISSIONER: I don't understand why that would.

33 A. So I might --
34

35 COMMISSIONER: See, I'll be frank.

36 A. Yes.
37

38 COMMISSIONER: It seems a bit of a turf war to me.

39 A. I appreciate that and I understand that.
40

41 COMMISSIONER: Well, do you agree it is?

42 A. I don't - I don't think it is. I think it's - I think
43 it's about - to be frank, I think it's about how much value
44 is placed on the practitioner's assessment.
45

46 COMMISSIONER: All right. Well, let's test that.

47 A. Yes.

1
2 COMMISSIONER: You've got the State --
3 A. Yes.
4
5 COMMISSIONER: -- making a decision to remove a child or
6 to apply to remove a child.
7 A. Yes.
8
9 COMMISSIONER: But the State doesn't make that decision
10 via its executive power because, if it were to do so,
11 firstly, I think it would be the only place in the
12 civilised world where that occurs --
13 A. Yes.
14
15 COMMISSIONER: -- and, secondly, you would not have the
16 public confidence that comes from it being a judicial
17 decision.
18 A. Yes.
19
20 COMMISSIONER: Once you accept that it's desirable that
21 the exercise of such consequential State power should be
22 exercised by the judicial arm of government everything that
23 flows from that acceptance means that the decision-maker is
24 not in fact the child safety practitioner but the court.
25 A. Yes.
26
27 COMMISSIONER: Because, if it were otherwise, if the true
28 ultimate decision-maker was the CSO or the team leader, you
29 would have to persuade the public that that was a safe
30 course and it would expose risking the undermining of
31 confidence in the system. And one might then be led to the
32 position where more credible allegations could be made
33 about children not being removed - or being removed when
34 they shouldn't have been. So, I mean, that's why I say one
35 can't approbate the court system and reprobate it at the
36 same time.
37 A. I accept all of that. There's none of that that
38 I don't accept. What I suggest is that if you are invoking
39 the jurisdiction of the court to have oversight over the --
40
41 COMMISSIONER: Well, it's not oversight. It's
42 decision-making.
43 A. Sorry, decision-making, decision-making in relation to
44 the decisions, I would suggest that it is not helpful to
45 have different decisions by government officers put before
46 that court. So you --
47

1 COMMISSIONER: Well, if they're contending different
2 decisions that's obviously right.
3 A. And that's the current model as it stands. So you
4 have practitioners saying, "This is my practice
5 assessment," and then you have lawyers saying, "We
6 disagree. This is the court - this is the order we think
7 should happen."
8

9 COMMISSIONER: Well, let's pause there. That's precisely
10 the consequence of having a decision, the actual decision
11 to remove, being a decision made by the judicial arm of
12 government. So, much as the practitioner might want to
13 have the singular decision-making power in relation to that
14 question, that decision-maker doesn't. And so unless one
15 is going to say that should change then there will be a
16 difference between the decision-maker and the person upon
17 whose assessment the application is founded; okay? But
18 that decision to bring the application, whether made by the
19 lawyer or whether made by the child safety officer, is
20 ultimately subject to actual decision-making by the court.
21 A. Yes.
22

23 COMMISSIONER: And therefore if that is the system that is
24 considered to be appropriate in the circumstance of such,
25 as I say, consequential State power then you can't avoid
26 that problem, can you, the problem you perceive to be - as
27 I understand you perceive, namely the disconnect between
28 the, if you like, professional assessment of the child
29 safety officer on the one hand and the decision of
30 the court as the ultimate decision-maker? So you have to
31 make a decision whether you support one course of action or
32 another.
33

34 A. I think you can avoid the State going to the court
35 with a decision or asking for a decision where the State
36 officers going to the court are asking for different
37 things.
38

39 COMMISSIONER: But how are they asking for different
40 things? In what way are they asking for different things?
41 A. So we will have examples where Child Safety's practice
42 decision and practice assessment is that a long-term
43 guardianship order is appropriate. The Director's office
44 will review the evidence and say, "You don't have enough
45 evidence to support that. We're seeking a short-term
46 order." That will then go to the court --
47

48 COMMISSIONER: What's wrong with that? Isn't that

1 oversight?

2 A. So that will go to the court and the court will have
3 both positions. So the court knows, "This is what the
4 Director is seeking. This is Child Safety's assessment."
5 I would suggest that a more beneficial system would be if
6 Child Safety internally could get legal advice about the
7 prospects of that application so, instead of putting it to
8 the court when the assessment isn't what you're asking the
9 court to do, you go through that escalation process
10 instead.

11
12 COMMISSIONER: I don't understand that.

13 A. So, prior to the Director's office, if the department
14 wanted a long-term guardianship order and they didn't have
15 enough evidence to support that, even in the absence of
16 them getting legal advice because I wasn't in a legal role
17 at the time, I would sit down with the team leader and say,
18 "These are all your vulnerabilities. If you put this
19 before the court with that as your assessment or that what
20 you're seeking as the order you're seeking, you have zero
21 prospects of success and you're going to open yourself up
22 to credibility arguments about the quality" - all of those
23 discussions and things about the quality of their practice
24 assessment. DCPL can't do that. They can't --

25
26 COMMISSIONER: Why can't they do that?

27 A. I'm aware that advice has been given in the past that
28 the Director's - apologies, I believe I can't speak to
29 that, Your Honour.

30
31 COMMISSIONER: Why's that?

32 A. I might exert privilege in relation to being aware of
33 legal advice.

34
35 COMMISSIONER: Legal professional privilege?

36 A. Legal professional privilege.

37
38 COMMISSIONER: All right. Well, I won't press you.

39 A. Thank you.

40
41 COMMISSIONER: But I heard from the Director yesterday
42 that OCFOS maintains privilege in relation to
43 communications or considerations in connection with its
44 activities in relation to emergent orders.

45 A. Yes, we do.

46
47 COMMISSIONER: Well, I don't understand why you would do

1 that given that there's a common interest and, if that
2 material were conveyed to the Director, it would be
3 protected under the privilege provisions that apply under
4 the Director of Child Protection Litigation Act. There
5 will be no waiver of the privilege and, as I can presently
6 perceive it objectively, no conflict of interest. Indeed
7 it's a common interest, the common interest being the
8 protection of the child under and in accordance with
9 the objectives of the Act. So explain to me why, in your
10 view, privilege is asserted?

11 A. Privilege is asserted respectfully with --

12
13 COMMISSIONER: As against the Director.

14 A. -- as against the Director because at the moment
15 there's frequently not a common interest.

16
17 COMMISSIONER: Why isn't there a common interest? How is
18 there not a common interest?

19 A. The Director will seek an application - so the
20 paramount principle applies to everyone.

21
22 COMMISSIONER: Yes.

23 A. So obviously in relation to decisions for children,
24 the safety, wellbeing, best interests now and for the rest
25 of the child's life will always apply. There can amongst
26 practitioners and lawyers be very different interpretations
27 of that.

28
29 COMMISSIONER: But that doesn't mean there isn't a common
30 interest.

31 A. Which means that you will frequently in these
32 proceedings have really different positions.

33
34 COMMISSIONER: Well, that, if I may say so respectfully,
35 is a misconception of what the privilege is. It's legal
36 professional privilege, which I would understand belonged
37 to the Attorney.

38 A. Yes.

39
40 COMMISSIONER: Right. And you've got privilege belonging
41 to the Attorney arising or relating to material created by
42 the output of lawyers working for OCFOS intra department in
43 connection with the promotion of the best interests of the
44 child in accordance with the Child Protection Act.

45 A. Yes.

46

47 COMMISSIONER: That's one side of it. Then you have the

1 Director, whose jurisdiction is engaged at a later stage in
2 the process as the bifurcated arrangement presently exists,
3 and it's asserted that the Director is not entitled to the
4 material that could presumably be of assistance in relation
5 to the seeking of child protection orders once his
6 jurisdiction is enlivened because of what? It wouldn't
7 constitute a waiver, in my view, because there's a common
8 interest. Now, the fact that lawyers might disagree as to
9 the interpretation or take a different position, assuming,
10 as one does, that reasonable minds will differ about
11 particular matters, doesn't mean there's any conflict. It
12 just means there's a different view.

13 A. Your Honour, I might say that it's not about the -
14 it's about the - it's about the flow-on from that. So it's
15 about the fact that the delegates of Child Safety might
16 make a decision for which there's other review rights or
17 other mechanisms and, if that decision is fundamentally
18 different from the Director's position in terms of the
19 child protection order, there is the potential for that
20 conflict.

21
22 COMMISSIONER: Well, I don't --

23 A. I might --

24
25 COMMISSIONER: How would the potential - well, firstly,
26 you have to accept the proposition as part of this debate
27 that the Director - it's only provision of the material to
28 the Director. It's not provision to anyone else who might
29 have rights to review --

30 A. Yes, I accept that.

31
32 COMMISSIONER: -- and, in the event, if you were to
33 provide the material outside the Director it would be a
34 waiver of that privilege.

35 A. Yes.

36
37 COMMISSIONER: I understand that. But, irrespective of
38 whatever decision might be made by the Director - not the
39 Director, the department that might give rise to somebody
40 else having review rights of some kind like the QCAT, none
41 of that would be affected by the provision of the material
42 to the Director. I don't understand why it is that the
43 privileged material isn't provided to the Director.

44 A. I think what I might have to do on that issue,
45 Your Honour, is note that those decisions are made far
46 above my principal legal officer role. I am aware that if
47 the State - any State officers get legal advice from

1 Crown Law, or the Attorney-General, or the Solicitor
2 -general, the entire State is bound by that. And I do
3 think this is a debate that has been happening since 2016
4 about whether legal advice should be given or not given.

5
6 COMMISSIONER: Given by?

7 A. Given by the department to the Director's office. I'm
8 not aware if any advice or anything has been sought on that
9 particular issue.

10
11 COMMISSIONER: Maybe the Solicitor-General should be asked
12 to advise about this.

13 A. Certainly, Your Honour. On that particular issue it
14 may have assisted.

15
16 COMMISSIONER: Yes, all right.

17 A. But I'm not sure I can take that any further.

18
19 COMMISSIONER: No, okay. Ms Freeman.

20
21 MS FREEMAN: Thank you, Commissioner. Now, I'm going to
22 ask you some questions, Ms Martin, about an alternative
23 language guide that we've heard some evidence about earlier
24 in the week.

25 A. Yes.

26
27 Q. But before I do that I just wanted to take you through
28 a couple of other things. Can I take you to paragraph 71
29 of your statement, please, on page 13?

30 A. Yes.

31
32 Q. Now, you refer there to some escalation process
33 resource material, and that originally that referred to
34 matters being escalated where there is no baseline
35 evidence.

36 A. Yes.

37
38 Q. And then there was - that was updated to refer to
39 reasonable grounds. So I just want to sort of step through
40 that a little bit more with you just so the Commissioner
41 can understand what all this means. So can I take you
42 perhaps to the document behind tab 3 of your bundle, which
43 is a copy of the escalation process for emergent orders.

44 A. Yes.

45
46 Q. Do you have that in front of you? Now, if we have a
47 look at the first sentence of that or second sentence it

1 says:

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Under this model OCFOS will act on instructions provided there are reasonable grounds for the order.

A. Yes.

Q. And then underneath that there is the first dot point referring to matters needing to be escalated if there are significant concerns there are no reasonable grounds for the order.

A. Yes.

Q. So when you speak in paragraph 71 about there being a change this is the change?

A. Yes. I might note that this document has "draft" on it.

Q. Yes.

A. But, yes, that's the change. The earlier draft said "baseline evidence".

Q. Okay. Can I give you --

COMMISSIONER: Sorry, Ms Freeman --

MS FREEMAN: Sorry, Commissioner.

COMMISSIONER: -- I was distracted. Where --

MS FREEMAN: Tab 3.

COMMISSIONER: Yes, I've got the document.

MS FREEMAN: And then the first paragraph, the second sentence of that first paragraph --

COMMISSIONER: Yes.

MS FREEMAN: -- there's reference there to reasonable grounds.

COMMISSIONER: Yes.

MS FREEMAN: And then the first dot point underneath that there's reference to the escalation process being enacted

1 if there are no reasonable grounds or significant concerns
2 about that.

3
4 COMMISSIONER: Yes.

5
6 MS FREEMAN: Now, as I understand your evidence, there was
7 a version of this prior to this that talked about baseline
8 evidence?

9 A. Yes.

10
11 Q. Can I just provide you with a copy of a document, and
12 I'll circulate copies.

13
14 COMMISSIONER: Thank you.

15
16 MS FREEMAN: So, Ms Martin, if we have a look at that
17 first paragraph, the second sentence:

18
19 *Under this model OCFOS will act on*
20 *instructions provided there is baseline*
21 *evidence presented by the CSSC.*

22
23 Can you see that there?

24 A. Yes.

25
26 Q. So that was --

27 A. Sorry, yes.

28
29 Q. Yes, you can see that?

30 A. Yes, I can see that.

31
32 Q. So this is the version of this document that existed
33 prior to the one we were just looking at?

34 A. Yes.

35
36 COMMISSIONER: Well, they're both described at the bottom
37 of the page as version 1.0 20 February.

38
39 MS FREEMAN: Yes. Correct, Your Honour. I'm just about
40 to address that with the witness.

41
42 COMMISSIONER: Thank you.

43
44 MS FREEMAN: So the document that I've just handed to you
45 is - down the bottom we can see is dated 20 February 2025.

46 A. Yes.

47

1 Q. And if we have a look at the document that you have
2 behind tab 3 it also is dated 20 February 2025.
3 A. Yes.
4
5 Q. Can you explain that for the Commissioner as best you
6 can?
7 A. I didn't create either of these documents; so I can't
8 explain that. But I can say that I note that the document
9 in the court book has the current department name and the
10 other document you just handed was the old name.
11
12 Q. Yes.
13 A. My inference from looking at the two documents is that
14 the version history in the version in the court book may
15 not have been updated.
16
17 Q. Okay.
18 A. But the court book version is the later document, and
19 the one you've handed me that I refer to in my statement
20 with the baseline evidence reference is the version from
21 February that was sent to staff at that point.
22
23 COMMISSIONER: Sorry, now I am confused.
24
25 MS FREEMAN: Okay.
26
27 COMMISSIONER: So the document that has been handed up --
28
29 MS FREEMAN: Which I will tender, please, Your Honour.
30
31 COMMISSIONER: Yes. That document, "Escalation process
32 for emergent orders", will be CL-79.
33
34 **EXHIBIT #CL-79 - DOCUMENT, "ESCALATION PROCESS FOR EMERGENT**
35 **ORDERS"**
36
37 COMMISSIONER: I just got lost in the last question and
38 answer, Ms Freeman.
39
40 MS FREEMAN: Yes, can I perhaps assist, Commissioner. In
41 your paragraph 71 you say that you - well, you depose to an
42 updated version being produced in June 2025 following an
43 appeal decision.
44 A. Yes.
45
46 Q. Is that right?
47 A. Yes.

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Q. And so are we right in understanding that the document that's now CL-79 existed in February 2025?

A. Yes.

Q. And the document behind tab 3 was likely produced in June 2025, it's just got the wrong date on it?

A. Yes.

Q. Okay. Does that clear things up for you, Commissioner?

COMMISSIONER: Yes, it does. Well done.

MS FREEMAN: Thank you.

MS SWEET: Gold star.

COMMISSIONER: Gold star.

MS FREEMAN: There is reference in your - there's a footnote to paragraph 71 which refers to a particular decision of the Childrens Court. Can I just take you to that briefly, and I'll hand up a copy for the Commissioner.

COMMISSIONER: Thank you.

MS FREEMAN: Now, am I right in understanding the effect of paragraph 71 of your statement is that this particular appeal decision from Judge Holliday in the Childrens Court was the impetus for the change from "no baseline evidence" to "reasonable grounds"?

A. For the change.

Q. Yeah.

A. For the language change.

Q. The language change, yes. And is that because at paragraph 33 of that decision - and if you have a look at page 10, the final sentence of that paragraph, Her Honour comments or makes the observation of the clear and obvious need to protect the interests of children cannot override an obligation to ensure that an application is not made unless there are sufficient grounds to do so?

A. Yes.

Q. All right. So that particular observation by this

1 judge then prompted a change in the language in these
2 documents to make sure that was clear to everybody that was
3 applying these documents; is that right?

4 A. Yes.

5

6 Q. Okay. So then we come to this alternative language
7 guide --

8

9 COMMISSIONER: Before you leave that --

10

11 MS FREEMAN: Yes.

12

13 COMMISSIONER: -- the escalation process for emergent
14 orders, CL-79, the one that's just been handed up, how long
15 to your knowledge was that version of the guide or process
16 in operation prior to its amendment in about June of this
17 year?

18 A. Commissioner, if I could take you to paragraph 68 of
19 my statement it sets out the development of that resource.
20 So in September of 2024, so September of last year, some
21 appreciative enquiry sessions had happened with our
22 lawyers.

23

24 COMMISSIONER: All right. I understand, but can you just
25 tell me at least roughly how long was the CL-79 version in
26 effect, in operation, within the department prior to the
27 change in June 2025 or thereabouts?

28 A. So from the - this document was sent on 13 March 2025
29 to our legal team.

30

31 COMMISSIONER: Which one?

32 A. The --

33

34 COMMISSIONER: CL-79?

35 A. Yep.

36

37 COMMISSIONER: So was there no earlier version than this?

38 A. No, not of a formal escalation - documented escalation
39 process resource like this that referred to baseline
40 evidence.

41

42 COMMISSIONER: So this operated from March 2025?

43 A. Yes.

44

45 COMMISSIONER: Until it was amended in about June 2025?

46 A. Yes. So the draft plan proposed amendment happened in
47 June 2025. I can't confirm that a final version was sent

1 out in June.
2
3 COMMISSIONER: When was it? You don't know when the final
4 version was sent out?
5 A. I don't have that detail, apologies.
6
7 COMMISSIONER: But the document which is behind tab 3, it
8 has "draft" on it. Do you know whether that's been
9 distributed within the department?
10 A. I know it's definitely been distributed. I just can't
11 assist with the specific date that that has been
12 distributed.
13
14 COMMISSIONER: But not before June?
15 A. Not before June.
16
17 COMMISSIONER: And CL-79 came into existence and was
18 distributed about March 2025?
19 A. Yes.
20
21 COMMISSIONER: And were you involved in the drafting of
22 this?
23 A. I was not.
24
25 COMMISSIONER: Approval of it?
26 A. I was not. I might suggest, Commissioner, that it may
27 assist to understand where the concept of baseline evidence
28 came from for our team.
29
30 COMMISSIONER: You can in a minute.
31 A. Okay.
32
33 COMMISSIONER: I just want to find out --
34 A. No, I wasn't involved.
35
36 COMMISSIONER: -- what involvement and/or approval you
37 gave to this document.
38 A. I was not involved in the drafting of this document.
39 Our team consults in relation to all documents. So it
40 would have been sent to me for review.
41
42 COMMISSIONER: Well, you're one of only two principal
43 legal officers. I assume that a document as important as
44 this would have come to your attention and required your
45 input --
46 A. Yes.
47

1 COMMISSIONER: -- and effective approval, wouldn't it?
2 A. Yes.
3
4 COMMISSIONER: Well, now you can tell me about what
5 baseline means.
6 A. Thank you. Commissioner, I was on leave at the time,
7 but I understand around September or August of last year my
8 office consulted with the Queensland Law Society in
9 relation to that issue of independence and government legal
10 officers. One of the things that was recommended and the
11 specific and express wording was "baseline evidence" as
12 the --
13
14 COMMISSIONER: So we can blame them?
15 A. -- as the recommendation from the Law Society.
16 I might --
17
18 MS FREEMAN: Can I just get you to pause there,
19 Ms Martin --
20 A. Yep, absolutely.
21
22 Q. -- just because it might assist. Can I take you to
23 tab 9 of your bundle, please.
24 A. Yes.
25
26 Q. This is a document headed "QLS advice for key points".
27 A. Yes.
28
29 Q. Can you see that there?
30 A. Yes.
31
32 Q. And the second last dot point or dash point if
33 I could - sorry, the third last, so it starts with, "Even
34 where an application may not be strong" --
35 A. Yes.
36
37 Q. -- can you see that there?
38 A. Yes.
39
40 Q. "OCFOS can still run the matter where acting on
41 instructions the weaknesses in the matter identified to the
42 region, there is baseline evidence, and the application is
43 true and factual."
44 A. Yes.
45
46 Q. So is that the genesis for this phrase "no baseline
47 evidence"?

1 A. Yes.
2
3 Q. Okay.
4 A. I might add that when I returned from leave I became
5 aware that there was no written legal advice from the Law
6 Society. I asked for it.
7
8 Q. Yes?
9 A. I understand they have a process or a policy of not
10 providing it in writing, any advice. This QLS advice, the
11 key points, was as a result of our team having
12 understandable reservations around that concept of baseline
13 evidence.
14
15 Q. Yes.
16
17 COMMISSIONER: So the Queensland Law Society as a
18 professional body --
19 A. Yes.
20
21 COMMISSIONER: -- representing lawyers in the State of
22 Queensland --
23 A. Yes.
24
25 COMMISSIONER: -- not barristers but lawyers --
26 A. Solicitors or legal officers, yes.
27
28 COMMISSIONER: Right. And they presumably give guidance
29 in relation to ethical matters?
30 A. Yes.
31
32 COMMISSIONER: And there was a meeting with them?
33 A. Commissioner, I can't say whether there was a meeting
34 or a phone call or - I was not involved in that meeting.
35 I can't say how the meeting or how the need for the meeting
36 arose.
37
38 MS FREEMAN: But this was what was communicated to staff?
39 A. This is what was communicated to our staff.
40
41 Q. And, Commissioner, you might note --
42
43 COMMISSIONER: And what does it mean to say "if the
44 weaknesses in the matter are identified to the region"?
45
46 What does that mean? What's the region in that context?
47 A. Apologise, which is which dot point?

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COMMISSIONER: Well, it's the one that --

MS FREEMAN: The third from the bottom.

COMMISSIONER: -- you were taken to. "Even where an application may not be strong" --

A. So the region would be the child safety service region. So if our lawyer's sent to the south-east - so we refer to the region and when it goes to the regional director, the child safety region. So that, in the context of our team, means where we've given legal advice that the strength - that there's weaknesses, there's vulnerabilities or that an application may not be strong and we've identified that to the region or the service centre. It's used interchangeably.

COMMISSIONER: Meaning relevantly the team leader making the decision in question?

A. Yes.

COMMISSIONER: And so the qualification is that there is baseline evidence.

A. Yes.

COMMISSIONER: A sort of euphemism for something.

A. And that was a concept that was very troubling for me and for a lot of our legal officers. It's undefined. It's not clear. We have officers really concerned about that direction and, instead of saying something didn't have a proper basis or no merit, having to weigh up baseline evidence as a concept.

COMMISSIONER: To give meaning to that notion.

A. Yeah, absolutely.

COMMISSIONER: Yes.

MS FREEMAN: And then, Ms Martin, if you just have a look at the next dot point after that it says:

Any doubts as to the strength of the application should be put before the court for a determination.

A. Yes.

1 Q. So do I take it to understand that what that's telling
2 you is that if you're not sure just put it before the court
3 and let them work it out?

4 A. Yes, and that being communicated to our legal team is
5 of particular concern because we hear that from child
6 safety officers and team leaders frequently that we
7 frequently have to push back and say, "There's no basis for
8 the application. I will not just put it before the court."
9 That's what we do every day. So this QLS advice and the
10 direction our team took from it was of concern for a lot of
11 our lawyers.

12
13 Q. All right. And that's because it doesn't accord with
14 what you see as your role as an independent legal adviser?

15 A. Yeah, and my duty to the court.

16
17 COMMISSIONER: Well, it's quite wrong to say that if
18 you've got doubts about your advocacy --

19 A. Just put it before the court.

20
21 COMMISSIONER: -- you should just put it before the court
22 and say, "Your Honour, we don't know."

23 A. Absolutely.

24
25 COMMISSIONER: "We're troubled." It's your duty as a
26 lawyer, isn't it, to make --

27 A. Yes.

28
29 COMMISSIONER: -- a forensic and legal assessment of the
30 matter having a reasonable basis to be prosecuted in the
31 court?

32 A. Yes. Yes. Yes. And I might add that, the published
33 decision that changed all of that, our lawyer involved is a
34 very experienced, very competent, very appropriate lawyer
35 who does an exceptional job and, in my view, may have felt
36 some pressure to proceed with this application based on
37 this changed position to baseline evidence.

38
39 MS FREEMAN: And so you're talking about that decision
40 that I handed up?

41 A. The published decision that was handed up.

42
43 COMMISSIONER: We might tender that decision just for the
44 ease of reference, really. CL-80, the decision of the
45 Childrens Court in VD & WD v Department of Child Safety.

46
47 **EXHIBIT #CL-80 - VD & WD V DEPARTMENT OF CHILD SAFETY**

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MS FREEMAN: Thank you. So then, Ms Martin, can I take you to tab 26 of your bundle, please, which is this alternative language guide?

A. Yes.

Q. And we can see at the bottom of that page it's got the date 20 February 2025, so the same date as CL-79 --

A. Yes.

Q. -- which talks about no baseline evidence. And we can see in this document, if we go to the second page, in that first row on the second page, "Advice versus instruction", and then at the second column there's reference there to this at the top in bold:

Remember that OCFOS operates under an instructional base model. You should not refuse to run an application unless there is no legal foundation. So long as there is a base level of evidence, it is to be put before the court for a decision.

Am I right in understanding that the genesis of that concept as described there seems to be this QLS advice?

A. Yes.

COMMISSIONER: Do you know or are you just inferring?

A. No, I know. I was involved in the development of all of these resources and in sharing them with staff. I, as indicated earlier, am never reluctant to be controversial, and I was - I made it clear the whole way through that I was not considering the baseline evidence test; that it was a merit test in terms of a proper basis and reasonable grounds.

COMMISSIONER: Well, isn't the proposition in the first sentence also plainly wrong, in your view?

A. Yes.

COMMISSIONER: Did you say so?

A. Yes.

COMMISSIONER: But, notwithstanding this document or your input, this document was disseminated within the department?

A. It was disseminated within the OCFOS team, but it's

1 not a document --

2

3 COMMISSIONER: Well, that's what I mean, within the
4 relevant --

5 A. -- but, yes, in the department; yes.

6

7 COMMISSIONER: And when was that disseminated?

8 A. I believe all of the documents were sent in March. So
9 all of the - the Official Solicitor called these
10 enhancement resources for our team. They were all sent in
11 March 2025.

12

13 COMMISSIONER: So whose decision then was it, contrary to
14 your objections, to disseminate this material?

15 A. The Official Solicitor sent it out. So it was sent
16 out by the Official Solicitor. Commissioner, I might add
17 in relation to this document that the intent of this
18 document was not to tell our legal officers what their
19 legal advice should be. The intent of this document is in
20 relation to language, so in relation to the way that Child
21 Safety practitioners hear legal advice. And I'm aware that
22 we've had instances where lawyers in the past have said -
23 it's the language they've used that has not resulted in
24 them being - so instead of saying - instead of saying,
25 "It's my assessment that we can't" - so a lawyer would say
26 or has said, "It's my assessment that we're not making the
27 application." It's about changing that to say, "The
28 evidence does not support making the application you want
29 to." So instead of making it --

30

31 COMMISSIONER: So put it in the passive voice?

32 A. Passive instead of "my".

33

34 COMMISSIONER: The passive voice is normally a misleading
35 way to express oneself, but --

36 A. Yes, and part of working with social workers is
37 changing the natural style that you might have as a lawyer
38 to be assertive, to changing that really formal bold way of
39 speaking and communicating and being really formal. To get
40 proper instructions and engagement from Child Safety as a
41 client you do have to change that a little bit in terms of
42 style.

43

44 COMMISSIONER: But might you be pandering to the wrong
45 things here? I mean, you need to say what you mean and
46 mean what you say and speak plainly.

47 A. Yes.

1
2 COMMISSIONER: And speaking in the passive voice is
3 usually the opposite way, isn't it?
4 A. It is. But in terms of getting the information and
5 instructions you need out of social workers it's sometimes
6 a necessity.
7
8 COMMISSIONER: All right. Okay. In any event, this was a
9 guide to language but implicitly also a guide to the role
10 of the lawyer because it's against the heading, "Advice
11 versus instruction" and is reminding the lawyer that the
12 lawyer's role is to give advice, not make a decision;
13 that's essentially what it's saying, isn't it?
14 A. Yes.
15
16 COMMISSIONER: In any event, you disagreed with the
17 statement that I've just referred you to --
18 A. M'hmm.
19
20 COMMISSIONER: -- and to the reference to baseline --
21 A. Base level.
22
23 COMMISSIONER: -- base level of evidence; that's right?
24 A. Yes, I disagreed with that.
25
26 COMMISSIONER: Okay.
27 A. Commissioner, I must - just to clarify, I'm not sure I
28 disagreed with the no legal foundation part of that.
29 I definitely disagreed with the baseline evidence.
30
31 COMMISSIONER: But sitting there today I think you just
32 agreed with me, but please if you --
33 A. Yes. No, I do - I do agree. I absolutely agree.
34 I just wanted to say I can't with certainty say
35 I definitely at the time this was developed and distributed
36 disagreed with legal foundation. I definitely disagreed
37 with baseline evidence.
38
39 COMMISSIONER: Yes, I see. All right. Thank you.
40
41 MS FREEMAN: And then, Ms Martin, if I could just show you
42 this document. It was a document that was tendered I think
43 yesterday. I think it's CL-75. It was tendered yesterday
44 morning by Mr Hastie. I'll just show you a copy of it. Do
45 you have that, Commissioner?
46
47 COMMISSIONER: Yes, I do; yes.

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MS FREEMAN: Yes, thank you. So this is another version of the alternative language guide, and we can see at the bottom of that first page this reference to November 2025; can you see that?

A. Yes.

Q. Now, firstly, have you seen this document before?

A. Yes.

Q. And when do you recall this being distributed to you and other lawyers at OCFOS?

A. I might indicate that I think the Official Solicitor spoke about updating resources, and we've been doing a lot of work on that. As part of that I was drafting operating guidelines, which is I think a 67-page document. It was very big. Most of my drafting type attention was on that document. I'm aware that the review of this document started this year, second half of the year, around July. It was - I was given a link. It was sent out. But I don't recall reviewing it or looking at it again in the last - I don't think I gave any specific feedback on it again in the newest development.

Q. Okay. But when do you recall this being disseminated to your lawyers?

A. To our team?

Q. Yes.

A. I know it was sent out for consultation, and I think it was sent out in November again this year, but I can't say a specific date with certainty.

COMMISSIONER: Can I assume it was sent out after the date of your statement, which was 3 November?

A. Apologies, I actually - I did look that up. It was sent out on 14 November. Apologies, I completely forgot that.

MS FREEMAN: Yes.

A. So our practice leader, Sarah Keogh, emailed this document. It was attached to an email on 14 November. So it was after my statement.

MS FREEMAN: Okay. And that's why you haven't attached it to your statement?

A. Yes.

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Q. Okay.

COMMISSIONER: Did you have anything to do with initiating the review to the document that leads to this exhibit CL-75?

A. No.

COMMISSIONER: Do you know --

A. My recollection, Commissioner, is that after the publishing of this decision in June the Official Solicitor wrote to our leadership team and said we likely need to review you some documents as a result of that decision, and then that initiated a review of multiple documents. I think all of our documents were reviewed.

COMMISSIONER: The document being the escalation process, which is behind tab 3 of your statement, you indicated was disseminated internally in the department or at OCFOS in about June, and that followed the decision in March by the - in the appeal decision in VD & WD; right? So, the earlier version that you disagreed with and the escalation document that referred to the baseline evidence, that was corrected by in June --

A. Yes.

COMMISSIONER: -- the escalation document?

A. The correspondence from the Official Solicitor saying it needed to be updated and reviewed was in June. I can't say with - because reviewing our documents involves consultation with staff. The decision to review doesn't necessarily mean the review happens immediately. So it was initiated in June, and then that review has happened over the past four, five months.

COMMISSIONER: So, just so I'm clear, the escalation process document that is behind tab 3, are you able to say when that was disseminated? I think you said in June 2025, this year?

A. So the original version, the baseline evidence version, was definitely in March. I'm aware that the Official Solicitor indicated those documents needed to be reviewed in June. I do not recall if the document was actually disseminated again in June. I don't know the date that it was sent out again to our team. I might indicate, though, that we did share the learning from the decision with our team. So, even though they didn't have the formal

1 document that changed that reference to baseline evidence,
2 they were very aware and in many instances relieved that we
3 were going back to the ordinary legal test that we applied
4 in relation to proper basis instead of baseline evidence.

5
6 COMMISSIONER: Well, I have sent a notice in relation to
7 these matters. So I might get greater clarity when I have
8 a response to it.

9
10 MS FREEMAN: Yes, a response to that is under way,
11 Commissioner.

12
13 COMMISSIONER: Yes, I understand that. Well, what is
14 exercising my mind is why, if the escalation process
15 document, which is behind tab 3, was corrected by in or
16 about June --

17
18 MS FREEMAN: Why it took until November for the other one?

19
20 COMMISSIONER: -- why it took until November for there to
21 be any change to the language guide.

22
23 MS FREEMAN: I will get some instructions on that and make
24 sure that's addressed in the response to the notice.

25
26 COMMISSIONER: All right. Thank you.

27
28 WITNESS: Commissioner, I don't know if it assists but
29 I can potentially assist with a little bit of that --

30
31 COMMISSIONER: Please.

32 A. -- and that is the fact that, you know, when we
33 develop resources or tools like this no-one is doing that
34 as a special project as a quarantine officer. We're doing
35 all of those reviews, we're developing training packages,
36 we're doing all of those additional things while also doing
37 our core business. So it does sometimes take our team a
38 lengthy period of time for all of our principal lawyers or
39 directors to review documents. And we also make all
40 changes in consultation with our team. So we will send
41 things out usually to our senior legal officers first to
42 review to see if they have any issues or concerns with
43 the document, and then after that consultation process we
44 will send it out to our whole team and we'll make any
45 amendments or review. So it does take a few months to
46 develop or review a document of this nature.

1 COMMISSIONER: You see, the description of the escalation
2 process or in the escalation process in CL-79 and the
3 alternative language guide in the unamended form - which
4 tab is that behind, Ms Freeman?
5
6 MS FREEMAN: 26.
7
8 COMMISSIONER: I've just lost it. 26.
9
10 MS FREEMAN: 26.
11
12 COMMISSIONER: Somewhat subjugates the role of the lawyer,
13 doesn't it?
14 A. Yes.
15
16 COMMISSIONER: And that would be worrying to you?
17 A. Yes. Commissioner, I think I say in my statement that
18 one of the worries I have in relation to our team and the
19 current team is that we sit within statewide operations,
20 which is service delivery. We have wonderful colleagues
21 and it's a lovely branch, but the purpose of that branch is
22 to support frontline service delivery. I see our role and
23 my team's role as very different to that. We do support
24 them by nature of the work we do, but it's not our purpose.
25 Our core purpose has to be independent legal advice.
26 I think that there have at times been instances where
27 supporting the region is escalated in a way that could
28 potentially compromise that legal independence, but I see a
29 solution to that in reporting directly to a
30 Director-General.
31
32 COMMISSIONER: Yes, I see. I had understood your evidence
33 in that regard. Because I need to break shortly,
34 Ms Freeman, are you going to go to exhibit 75, the updated
35 version of the guide?
36
37 MS FREEMAN: The updated version, yes. So, Ms Martin, if
38 we go to the second page we see again the heading in the
39 first column "Advice versus instruction", and then - have
40 you got that in front of you?
41 A. This one or --
42
43 Q. Yes, yes, sorry.
44 A. Yeah.
45
46 Q. The blue one, yes. And then there is that first
47 paragraph in bold. We can see that there has been some

1 change to that wording?
2 A. Yes.
3
4 Q. And so now it does not refer to legal foundation or
5 baseline evidence at all, does it?
6 A. Yes.
7
8 Q. All right.
9 A. It's been updated.
10
11 COMMISSIONER: So it addresses the - I think you've
12 accepted - incorrect statement about the legal foundation
13 for bringing a proceeding by omission, that is to say by
14 not addressing that subject at all.
15 A. Yes.
16
17 COMMISSIONER: How is that helpful to the lawyers?
18 A. What it does is it removes the reference to baseline
19 evidence. As I indicated, many of our lawyers had concerns
20 in relation to that. It encourages them to - if they have
21 concerns or they're unsure to discuss it with their
22 supervisor and have that conversation with their
23 supervisor.
24
25 COMMISSIONER: But why shouldn't it say what is said in
26 the now modern current escalation process document behind
27 tab 3 which is there must be reasonable grounds for the
28 order?
29 A. Commissioner, I think it should. I think that
30 potentially part of the reason it doesn't say that is
31 because we sit within a branch that are intended to support
32 service delivery.
33
34 MS FREEMAN: Just before we finishing, and this might help
35 answer the question that the Commissioner just raised, you
36 mentioned before about updating operational guidelines for
37 OCFOS.
38 A. Yes.
39
40 Q. Can I please hand up a copy of those?
41 A. Thank you.
42
43 Q. So this was a document that you were involved in
44 drafting; is that right?
45 A. I drafted the document in its entirety. I think
46 I indicated earlier it was 67 pages. I apologise, it was
47 63.

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COMMISSIONER: If I had longer it would be shorter.
A. As you would appreciate in the context of what I just said about doing this while doing all the other parts of my role, I think it took over a year to have a draft version of this document. It was identified as a need within our leadership team. We had had operating guidelines when OCFOS first started. We had updated them a couple of times. But we had some significant changes to the way we do our core business, and our staff didn't have any guidance - any written guidance. So they have a lot of guidance from their senior legal officers, but there was nowhere that told them, "This is how we do our job. This is - these are the values of our team. These are the things we" - you know, the guidance.

So I was given approval, I believe it was last year some time, to work on operational guidelines. And, as I indicated, it took me I think over a year to get them done. I believe the draft was sent to the team on 20 August of this year. And then, as I indicated, that consultation process for our team occurred. So it was reviewed by our leadership team. It was reviewed by our legal officers, all of our legal officers, and then issued on 2 December.

I might add that the guide goes to, you know, the general concept of role of a lawyer, you know, what we expect of our staff, goes to our values statement, it goes to our cultural commitment --

COMMISSIONER: Ms Martin, I'm sorry to cut across you.
A. No, apologies, Your Honour, I couldn't see the time.

COMMISSIONER: I need to adjourn.
A. Thank you.

MS FREEMAN: Yes.

COMMISSIONER: What is the relevant provision that you want to draw attention to?

A. I just wanted to --

MS FREEMAN: Page 43, please, Commissioner, as an example, paragraph 228.

COMMISSIONER: And that was circulated in October?

1 A. It was circulated - it was given - the draft was
2 finalised in August. Consultation occurred. It was
3 circulated on 2 December - sorry, it was finalised on
4 2 December, the final document.

5
6 COMMISSIONER: But when was it circulated to, say, the --
7 A. Commissioner, I can say that I sent it on 20 September
8 to our - sorry, 20 October - of August to our senior
9 legal - to our Brisbane leadership team. I don't know the
10 date that that was sent --

11
12 COMMISSIONER: And that would include the OCFOS solicitor,
13 Ms Schifilliti?

14 A. Yes, the Official Solicitor; yes. So our leadership
15 team - so the Official Solicitor, directors, principal
16 lawyers, and our practice leader - have had it for a few
17 months. And then I'm not sure the date that it was sent
18 out to our legal officers for consultation, but it was
19 within the past couple of months.

20
21 MS FREEMAN: Can I just put one final proposition to you?

22
23 COMMISSIONER: Yes, please, Ms Freeman.

24
25 MS FREEMAN: Apologies, Commissioner, hopefully it's
26 quick.

27
28 COMMISSIONER: No, not at all.

29
30 MS FREEMAN: Sorry, I should tender that operational
31 guideline, please.

32
33 COMMISSIONER: Yes. That will be CL-81.

34
35 **EXHIBIT #CL-81 - OPERATIONAL GUIDELINE**

36
37 MS FREEMAN: And then finally, Ms Martin, just to round
38 off this point, am I right in understanding that this
39 operational - very comprehensive document entitled
40 "Operational guidelines" is the key document that your
41 staff ought to consult with when they are trying to
42 understand what their role is --

43 A. Yes.

44
45 Q. -- as an independent lawyer?

46 A. Yes.

47

1 Q. Yes.

2 A. Now that it's updated, yes.

3

4 Q. Yes. And that the purpose of the alternative language
5 guide is really just to help them in their discussions with
6 the CSOs and senior team leaders as opposed to providing
7 definitive guidance as to how to do their job?

8 A. Yes, it's just a tool mostly for new staff to
9 understand why human - how to work with human service
10 professionals.

11

12 Q. Yes, okay. Thank you. That was all that I wished to
13 deal with.

14

15 COMMISSIONER: All right. Thank you, Ms Freeman.

16

17 MS FREEMAN: Thank you.

18

19 COMMISSIONER: And thank you very much, Ms Martin, for
20 your assistance. I regret to say, from your point of view,
21 that you'll have to return at a date hopefully in early
22 February that is also convenient to you. The Commission
23 will communicate with you. We'll find a convenient time
24 for you to join the leftovers hearing; I say that tongue in
25 cheek.

26 A. Certainly.

27

28 COMMISSIONER: And all that remains for me to do is to
29 wish everybody a very joyful Christmas, and I hope you have
30 an enjoyable break, and I look forward to seeing you all in
31 the new year. Thank you very much.

32 A. Thank you.

33

34 **THE HEARING WAS ADJOURNED AT 3.41PM TO A DATE TO BE FIXED**

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