

CHILD SAFETY COMMISSION OF INQUIRY

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

On Tuesday, 9 December 2025 at 10.13 am

Before: Mr Paul Anastassiou KC, Commissioner

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

2
3 COMMISSIONER: Mr Hastie.

4
5 MR HASTIE: Commissioner, there are a few exhibits, if
6 I could tender.

7
8 COMMISSIONER: Sure.

9
10 MR HASTIE: The witness referred yesterday to a process
11 map. If I could tender a nice colour copy in big size.
12 It's an emergent order process map.

13
14 COMMISSIONER: Yes.

15
16 MR HASTIE: As I understand it, this is headed "Draft",
17 but is it correct that this has been now finalised?
18 A. That's correct.

19
20 COMMISSIONER: That will be exhibit CL-72.

21
22 **EXHIBIT #CL-72 - EMERGENT ORDER PROCESS MAP**

23
24 MR HASTIE: Commissioner, the witness also referred
25 yesterday to the Koori Court in Victoria.

26
27 COMMISSIONER: Yes.

28
29 MR HASTIE: And she happened to mention that there was an
30 evaluation of that court.

31
32 COMMISSIONER: Yes.

33
34 MR HASTIE: If I could tender a copy of that evaluation.

35
36 COMMISSIONER: Thank you. That will be CL-73.

37
38 **EXHIBIT #CL-73 - EVALUATION OF KOORI COURT IN VICTORIA**

39
40 MR HASTIE: And the witness also referred, Commissioner,
41 to the existence of various - and was asked questions about
42 various delegations to herself and to members of her
43 office.

44
45 COMMISSIONER: Yes.

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47 MR HASTIE: I could probably tender those in one bundle.

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COMMISSIONER: Do they reveal that the delegation to OCFOS is still current?

MR HASTIE: Yes, Commissioner. So if I could tender the instrument of authorisation and delegations, one's to a legal officer, one's to a senior legal officer, one's to the Director, one's to the principal legal officer of the Office of the Child and Family Official Solicitor. Sorry, Commissioner, I'm just making sure that I'm not duplicating.

COMMISSIONER: That's all right. Take your time. That bundle of delegations will be CL-74.

EXHIBIT #CL-74 - BUNDLE OF DELEGATIONS

COMMISSIONER: Do you understand that the delegation empowers the holder or, in other words, the OCFOS officers to make an application for emergent orders?

MS SWEET: I can answer that, Your Honour. If you see - it's an interim delegation. See paragraph 2, "Authorise the person from time to time who is the holder of the office set out at schedule A", and you'll see halfway down the page this one's for --

COMMISSIONER: Yes.

MS SWEET: -- I've got the legal officer - "to exercise and perform the powers, authorities, functions and duties conferred and/or imposed on either the Director General or under the provisions specified in schedule C." And if you go to schedule C --

COMMISSIONER: Yes.

MS SWEET: -- over the page, Your Honour, you'll see that there's a reference to 25, which is the temporary assessment order.

COMMISSIONER: Yes.

MS SWEET: And you'll see 39, application for the court assessment order, and you will see 51AC for the purpose of making an application for a temporary custody order.

1 COMMISSIONER: Yes.
2
3 MS SWEET: You'll also see that - no, I withdraw that.
4
5 COMMISSIONER: It speaks for itself, yes. Thank you.
6
7 MS SWEET: But to answer the question. All right. Just
8 before I recommence with the witness, I also have something
9 to hand up myself, which is the case that the witness
10 referred to yesterday about service on parents --
11
12 COMMISSIONER: Yes.
13
14 MS SWEET: -- and the test of practical impossibility. So
15 I will hand that to you, Your Honour.
16
17 COMMISSIONER: For the sake of clarity of the record,
18 we'll tender it, mark it as an exhibit, I think.
19
20 MS SWEET: Yes, indeed. Yes, indeed. So it's the --
21
22 COMMISSIONER: CA-48.
23
24 **EXHIBIT #CA-48 - SKJ V HR & ANOTHER [2023] QCHC 17**
25
26 MS SWEET: Yes. The citation is SKJ v HR & Another
27 [2023] QChC 17. And you'll see, Your Honour, that the
28 relevant text - well, you see that if you go to paragraph
29 22 it sets out the section, which is section 56, and then
30 you'll see at paragraph 24 it refers - the court refers to
31 the fact that the purpose of the section is to bring to the
32 attention of the child's parents the nature of
33 the application which is being sought. Before reliance
34 upon service by post, pursuant to sub (2), is permitted it
35 must be demonstrated that personal service was not
36 practicable. It then refers to the Childrens Court Rules,
37 and at 26 the fact that practicable is not defined in
38 section 56, and then the relevant wording is at paragraph
39 28, "Section 56 requires the DCPL to satisfy the learned
40 magistrate that it was a practical impossibility to serve
41 the applicant personally before service by post was
42 permitted," and it goes on to have some commentary about
43 there being a dearth of efforts to effect personal service.
44
45 COMMISSIONER: Yes. Thank you.
46
47 MS SWEET: Yes, thank you.

MS SWEET: Welcome back, Ms Schifilliti.

A. Thank you.

Q. If I can take you - I think you had a bundle, a witness bundle, in front of you which had your statement and various annexures to it?

A. That you provided to me yesterday? I have a document that you provided to me yesterday, which I am assuming you're not referring to. I have my own witness statement here. But if you provided me with additional information I'm not sure where that is. Is it in one of the folders?

Q. Okay. Do you have a document in front of you that refers to an index? I think it was a document that your solicitors provided to me.

A. No, I don't have that.

Q. All right.

A. I have my own witness statement, but there's no annexures to that.

Q. All right. Let's go to court book volume 2, part 2?

A. Yes, I have it.

Q. Yes, thank you. Actually, what I'm looking for, I want to take you to your - an annex to your witness statement. If you have your witness statement there, I'm looking to take you to the expenditure figures that are at what is page 21 of 23. Do you have that?

A. No, I don't have the annexure to my own witness statement.

Q. Okay.

A. It might be tabbed here, but.

Q. We'll hand this up to you.

A. Thank you.

Q. Your Honour, in my copy of the statement it is the very last page and it has two tables on it. Do you have that? It has a table titled "Paralegal positions expenditure summary" and another table, "Office of the Child and Family Official Solicitor expenditure".

1 COMMISSIONER: Yes, I've got it. That's fine. Sorry.
2
3 MS SWEET: Do you have that, Your Honour?
4
5 COMMISSIONER: Yes, I do, sorry.
6
7 MS SWEET: Yes, thank you.
8
9 Ms Schifilliti, I want to take you to the second table, so
10 the table that it refers to the expenditure of your office?
11 A. M'hmm.
12
13 Q. Yes. And you'll see there it goes through from the
14 years 16 to 17 to 24/25, and the expenditure of your office
15 in the year of 2016/2017 was 1 million --.
16
17 COMMISSIONER: Ms Sweet, I'm not sure if there's any claim
18 for confidentiality as to the precise figures. Perhaps
19 Mr Hastie can indicate. Because we can follow the course
20 of not referring in terms to the content if you wish.
21
22 MS SWEET: I'm proceeding on the basis that there isn't.
23
24 COMMISSIONER: No.
25
26 MS SWEET: But I'm happy to be told otherwise.
27
28 MR HASTIE: No, I don't think there is, Commissioner.
29
30 COMMISSIONER: All right. Very well.
31
32 MS SWEET: The expenditure is roughly 1.9 million; do you
33 see that?
34 A. Yes, I do.
35
36 Q. Yes. And then in the last financial year, 24/25, it's
37 5.8 million?
38 A. Yes.
39
40 Q. Yes. Can you tell His Honour the reasons behind the
41 increase in the expenditure?
42 A. I have only been in the Official Solicitor role since
43 June of 2024, and so --
44
45 Q. I accept that, but these are figures that are annexed
46 to your statement. I assume that you can speak to them?
47 A. I had no involvement as such in the Office's

1 expenditure up until my appointment in an acting position
2 as the Official Solicitor and now in my substantive
3 position as Official Solicitor. So I am unable to comment
4 on anything until my involvement in the role. I had no
5 oversight of this expenditure.
6

7 Q. No, I accept you didn't have oversight. I'm just
8 asking you, given that you have annexed these figures to
9 your statement, whether you can provide any insight, if
10 you've made any enquiries, about the increase in
11 expenditure and the causes of it in the process of
12 preparing your statement?

13 A. No, I haven't made any enquiries. I can certainly
14 comment on the 2024/2025 year, but, when I was responsible
15 for that, if that would assist the Commissioner.
16

17 Q. Please.

18 A. So for the 2024/2025 year OCFOS received a temporary
19 uplift in funding, which allowed my team to employ some
20 additional legal officers for a one-year period. By the
21 time we were able to appoint those positions we were at
22 least six months into the financial year, and that was
23 about securing full-time equivalent positions to be able to
24 put those positions against, and that's why the expenditure
25 has gone from five million six hundred to five million
26 eight hundred for that period. That would be reflective of
27 that temporary uplift in funding. That temporary uplift in
28 funding did not continue beyond 30 June of this year. So
29 we are now back to our full-time equivalent establishment
30 of 77 positions for the Office of the Child and Family
31 Official Solicitor.
32

33 Q. I want to ask you about the experience of the OCFOS
34 workforce?

35 A. M'hmm.
36

37 Q. So, say - you've talked about there being various
38 initial consults with an OCFOS officer, and it's correct to
39 say that these OCFOS officers are generally embedded within
40 service centres?

41 A. Correct.
42

43 Q. Yes. So roughly speaking - if you can put a sort of
44 average on it - how experienced is the OCFOS officer
45 sitting in those legal consults?

46 A. Varies greatly. So we've had some legal officers who
47 have been in OCFOS since the inception of the team, and

1 we've had also some really more recently appointed legal
2 officers. They tend to come on as new graduates to our
3 team.
4

5 Q. Yes.

6 A. And we tend to grow our own staff wherever possible
7 into legal officers and then senior legal officers.
8 I guess that is somewhat limited by the number of positions
9 we have. So, for example, we only have two principal legal
10 officer positions, and we have - but we have nine senior
11 legal officer positions. The remaining legal officer
12 positions was two graduate legal officer positions. Within
13 that FTE number, but, we also have nine litigation support
14 officers and we have a business officer, an executive
15 assistant and a practice leader.
16

17 Q. So say a legal officer, how many years legal
18 experience do they need before they can attain that status
19 of legal officer?

20 A. The role profile doesn't specify how many years of
21 experience you need. There's no post-admission experience
22 designated or particularised in the role profile for a
23 legal officer.
24

25 Q. Okay. So the legal officer sitting in these consults
26 providing legal advice might be a graduate position?

27 A. The graduate legal officers, they don't tend to have a
28 service centre that is purely their own. So, in other
29 words, they would support a legal officer in the role that
30 they do. So they wouldn't do a legal consult typically on
31 their own. It would be the legal officer who does the
32 legal consult supported by a graduate legal officer. If a
33 graduate legal officer is to give legal advice, then that
34 would be supported by the senior legal officer who they
35 would report to.
36

37 Q. Okay. So it might be a legal officer doing the
38 consult themselves?

39 A. Yes.
40

41 Q. Yes. Thank you. Now, in terms of your role, who do
42 you report to?

43 A. I report to the assistant chief operating officer of
44 statewide operations in the service delivery stream.
45

46 Q. So within the department?

47 A. Yes.

1
2 Q. Yes. And who does that person report to?
3 A. The deputy director-general of service delivery.
4
5 Q. Okay. Now, I was going back last night to your
6 resume, and you refer to yourself as an executive leader.
7 So is there an executive leadership team of which you are
8 part?
9 A. Yes. So there's the statewide operations leadership
10 group that I'm a part of, yes, and that - sorry.
11
12 Q. No, go on.
13 A. I was just going to say that consists of directors
14 within the statewide operations team.
15
16 Q. Yes. So you're in a leadership team with people of
17 director level?
18 A. Director level and the assistant chief operating
19 officer is in that as well, yes.
20
21 Q. Okay. And you say that your advice - you provide
22 high-level evidence-based advice to the executive. Is that
23 that group or is that a different group?
24 A. That includes - that could include the deputy
25 director-general, the assistant chief operating officer or
26 the DG.
27
28 Q. Okay. So you provide - sometimes you're providing
29 advice to the executive?
30 A. Yes.
31
32 Q. And your advice informs statewide operations and
33 policy and practice - I'm still reading from your CV?
34 A. Yes.
35
36 Q. That's correct?
37 A. Yes. None of those - I think it's - what the
38 department does really well --
39
40 Q. Yes?
41 A. -- is there is a lot of consultation across divisions
42 or business units. So I work very closely with the Office
43 of the Chief Practitioner to provide advice and we consult
44 with the Office of the Chief Practitioner. We work very
45 closely, say, with Strategic Policy and Legislation. If
46 they require input on particular documents, then they will
47 seek assistance in relation to that. So I guess there's

1 a - it's a very consultative process whereby things are
2 never done in isolation within the department.

3

4 Q. Yes. Thank you. I want to ask you about your view on
5 whether the current structure, this sort of bifurcated
6 model with OCFOS internally in the department and the DCPL
7 being an independent statutory body, whether that structure
8 in your view as the Official Solicitor is achieving the
9 rationale that was set for a new model in the Carmody
10 report. So in the Carmody report it talks about there
11 being a policy rationale for the new proposed structure,
12 and this is set out in - and I might take you to
13 Mr Miller's statement, which appears at - so tab 57,
14 Ms Schifilliti. Do you still have --

15 A. Still at volume 2, still?

16

17 Q. Yes. There's always a volume here that we completely
18 ignore. Today that's volume 1. So at tab 57 you should
19 see a document that starts, "I, Nigel Miller"?

20 A. Yes, I have that.

21

22 Q. Yes, thank you. And you'll see there if you go over
23 the page to page 2 of 70, which is 875?

24 A. Yes.

25

26 Q. And this is - and I've checked this. This is a direct
27 quote from the report of Commissioner Carmody.

28

29 COMMISSIONER: Which paragraph?

30

31 MS SWEET: Yes, just at the very top of the page,
32 subparagraph (c).

33

34 COMMISSIONER: Yes. I'm just looking at a different
35 bundle.

36

37 MS SWEET: Yes, sorry, Your Honour.

38

39 COMMISSIONER: Just the paragraph in the statement.

40

41 MS SWEET: Yes. Paragraph 7(c) of Mr Miller's statement.

42

43 COMMISSIONER: Yes, thank you.

44

45 MS SWEET: Yes.

46

47 *The policy rationale for this new proposed*

1 *structure for legal advice and*
2 *representation is to establish greater*
3 *accountability and oversight for the*
4 *applications that are being proposed by*
5 *individual child safety service centres and*
6 *particular regions to ensure that only*
7 *necessary applications are being made and*
8 *those that are made are managed*
9 *appropriately.*

10
11 Now, accepting for a minute that the exact proposed
12 structure envisaged by the Carmody report might not have
13 been - might not be the exact structure we have but, just
14 taking that rationale on its own, do you agree that the
15 current structure has established greater accountability
16 and oversight for applications that are being proposed by
17 child safety service centres?

18 A. I accept - I accept in part that there is greater
19 accountability and oversight. I think what happened, but -
20 so I put a caveat on that --

21
22 Q. Yes, I'm just asking what are your views on whether
23 that's happened. You can accept it in whole, in part; you
24 can disagree with it entirely. I would like your view as
25 the Official Solicitor.

26 A. Yes. So I do accept it in part. I think what has
27 happened, but, is pre-2016 the department had court
28 coordinators --

29
30 Q. Yes?

31 A. -- and no child - no in-house child protection legal
32 team, and so as a result of Carmody OCFOS was established,
33 obviously, and DCPL was established, and I think what has
34 happened is the - with the appointment then of two separate
35 legal teams - I think that if you had one legal team, that
36 that would - that would provide the same level of oversight
37 and accountability irrespective of where it sits. So
38 I think what has happened is the pendulum has swung too far
39 towards a legal framework as part of that and away from a
40 human services framework. So I think what has happened is
41 in saying, "Well, the department didn't have enough
42 oversight with court coordinators because they weren't
43 legally qualified," we've then put in place two sets of
44 lawyers, and that that's gone too far because now you've
45 created a very litigious system and you've then got all of
46 these unintended consequences as a result of that system,
47 which is reflected I think in the data.

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Q. Reflected in the?

A. In the data.

Q. In the data?

A. M'hmm.

Q. And so what do you say are unintended consequences of this bifurcated model?

A. I think that you have a system that is very difficult to navigate for families. I think it's really confusing. So, for example, we see that play out with appeal matters that are lodged by parents. They don't know the players in the model. We get applications that are served on DCPL for appeals that should be served on the department and vice-versa. The parents don't - they think that Child Safety is the applicant when they're not. There's confusion across the board for everything for parents, so I think it's a really difficult system for them to navigate.

I think other unintended consequences include the length of matters - the length of time that matters are taking through court. It's more than doubled under this current model, and we know that the longer that matters are in court there's a poorer trajectory for children being reunified to families.

We know that - as I said yesterday, I think the court work has resulted in this - you know, court work dominating case management and a shift away from CSOs being able to work relationally with families once matters are before court, and I think that's had a really significant impact on the way that we work with families. Our - in a human services framework with an in-house child protection legal team you should be able to establish a system whereby CSOs and senior team leaders are supported by legal officers to do their work, and that in doing that the CSOs and the senior team leaders have more time to work with families, and surely that can only result in improved outcomes for children and families.

Q. Okay. So I'd like to take up two things that you said there, and partly to do that could you go to paragraph 7(a) of Mr Miller's statement. Do you see that there where he talks about - 7(a)?

A. Yes.

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Q. Yes. And Mr Miller says that the Carmody Inquiry's rationale for shifting policy and practice to set up the OCFOS and the DCPL was that there is not an independent legal assessment made of the strength or suitability of an application at the early stage. So why do you say having - I think you're advocating for one set of internal lawyers; correct?

A. Yes.

Q. How does that - and given that these are lawyers that are embedded within Child Safety, where you've given evidence that the practitioners are the experts and it's not for you to second-guess their risk assessment, how does your proposed model bring the necessary level of independence to the litigation model?

A. Yes, I can answer that. I think that OCFOS do do an independent legal assessment based on the strength of the evidence, and I think we're able to do that, we're able to establish that independence by having a clear separation between legal and practice decisions, which is why we're not involved in any practice decision-making processes. That's a very deliberate structure.

COMMISSIONER: But how does that fit with the instructional model when the decision-maker ultimately as to whether an application is made to the court following the change of practice in either 2018 or 2020, as the case may be, is the CSO/team leader?

A. Commissioner, I think that that still enables an independent legal assessment. OCFOS is still providing independent legal advice to the decision-maker.

COMMISSIONER: Well, you said to me yesterday that one of the problems that you perceived with the decision-maker so far as the question of whether an application for an emergent order should be made shouldn't be the lawyer because it would create a conflict, given that OCFOS is a legal adviser to the department; was that essentially what you said to me?

A. I think there's implications for legal professional privilege and protecting that privilege and upholding the integrity of that.

COMMISSIONER: Just focus on the issue that I'm raising with you, if you don't mind, which is your evidence to the effect that if the lawyer were the decision-maker when it

1 comes to making the application for an emergent order that
2 would create a conflict of interest, I assume then, in the
3 role that the OCFOS performs because it also is a legal
4 adviser to the department. Have I misstated or
5 misunderstood what you've --

6 A. That's correct. My position is that you should not be
7 the decision-maker and the legal adviser, that there needs
8 to be a separation between the decision-maker and the legal
9 adviser.

10
11 COMMISSIONER: Well, I want to suggest to you that your
12 perceived conflict of interest is not well-founded because
13 if the decision-maker is the lawyer, the relevant decision
14 being whether there is material before the lawyer that
15 would provide a proper basis for the application, I, for my
16 part, don't see how that creates a conflict of interest.
17 Indeed, is it not more likely that a conflict of interest
18 would arise if the internal lawyer is but an adviser in the
19 process and the decision-maker is the department, such that
20 an opportunity then arises for the advice of the lawyer not
21 in particular cases being accepted by the department,
22 leading to the escalating review process that you've
23 mentioned, whereas if the lawyer were the decision-maker on
24 the question of whether an application ought go forward to
25 the court there would be no room for any conflict of
26 interest; the lawyer would be simply giving effect to the
27 lawyer's assessment of whether there was a proper basis to
28 make the application? You see, what I'm suggesting to you
29 is that your analysis of there being a conflict of interest
30 for the reasons you describe is in fact misconceived?

31 A. Commissioner, I didn't say conflict of interest.
32 I was talking about legal independence.

33
34 COMMISSIONER: But you explained the legal independence -
35 well, your reason, the reason you gave me, for it being
36 preferable that the department be the decision-maker rather
37 than the lawyer was because, as I understood it and as I've
38 just tried to precis it to you, of a perceived conflict
39 that arises if the lawyer is the decision-maker rather than
40 acting on the instructional model of advising the client,
41 the client being the department, and the department making
42 the decision. That's what I'm focusing on, that
43 explanation you gave yesterday; do you agree?

44 A. I don't agree with you, Commissioner.

45
46 COMMISSIONER: Right. Okay. That's fine.

47

1 MS SWEET: The second point I wanted to pick up with you
2 in respect of the evidence you gave before is I think you
3 said that cases are taking longer and that means that
4 there's a poorer trajectory for the children who are the
5 subject of that litigation when it comes to reunification
6 with the family?

7 A. M'hmm.

8

9 Q. And I want to check a couple of things. First of all,
10 are you saying that the fact that the case is lengthier is
11 causing reunification to become more likely? Is it
12 correlation or is it causation in respect of likelihood of
13 reunification?

14 A. The longer that matters are in court I think you see a
15 less chance of working towards reunification because
16 matters become --

17

18 Q. Why is that?

19 A. Well, matters become protracted. So you're actually
20 not working on reunifying families during that period
21 because it becomes so focused on the litigation. So it
22 loses that relational aspect, and you'd be - I mean, the
23 department, I'm assuming - I don't know, but the department
24 could possibly - and that would be a question I guess that
25 the Commissioner could ask the department about
26 reunification rates and what that looks like.

27

28 Q. Yes, because I mean you're aware of the department's
29 obligation to engage in concurrent planning?

30 A. Yes.

31

32 Q. Yes?

33 A. Yes.

34

35 Q. Are you in a position to be able to say, well, that is
36 being - concurrent planning is dropping off a cliff because
37 everybody's focused on litigation?

38 A. I couldn't say that without the data.

39

40 Q. And is it part of progressing litigation that there
41 are case plans and case plans need to be updated and put
42 before the court which will deal with reunification? I'm
43 just trying to explore the issue with you?

44 A. Yeah, so - and this is probably a question for DCPL
45 because we're not involved at that stage. OCFOS are not
46 involved. So from the point that the initial application
47 affidavit and affidavit of service are filed then OCFOS are

1 no longer involved in those matters.
2
3 Q. Yes. But the department is still involved --
4 A. Yes.
5
6 Q. -- by reason of - I mean, there's obligations of
7 collaboration and case planning --
8 A. Yes.
9
10 Q. -- between DCPL and the department?
11 A. Yes.
12
13 Q. But you say OCFOS then doesn't have a --
14 A. An ongoing role.
15
16 Q. Yes.
17 A. That's right.
18
19 Q. And part of what I think you're contending for is that
20 you would have an ongoing role and you wouldn't have the
21 independent statutory body; is that right?
22 A. Yes, I think that there would still be some role - if
23 matters were to be contested then you could - at that point
24 in time, if you needed to, you could rely on an external
25 agency, whatever that looked like, on an instructional
26 model.
27
28 COMMISSIONER: Sorry, could you just say - I couldn't hear
29 what you said then.
30 A. Sorry, Commissioner. I said that if you were to keep
31 it at one level of lawyers, albeit with an integration kind
32 of approach, if you were to keep it at one level of lawyers
33 and if the matter was to come to a contested hearing stage,
34 then at that point in time if there was no capacity then
35 I propose that you could then outsource to an external
36 agency, whatever that looks like.
37
38 COMMISSIONER: An external agency, what, to the DCPL or to
39 some external law firm?
40 A. No, no. In a previous model matters were outsourced
41 to Crown Law at that point, who acted on instructions from
42 the department.
43
44 COMMISSIONER: All right.
45
46 MS SWEET: Ms Schifilliti, I want to hand up to you a
47 submission that the Commission received from the Together

1 union, which is a branch of the ASU?
2 A. M'hmm.
3
4 Q. Are you familiar with this union?
5 A. Yes, I'm familiar with the union, yes.
6
7 Q. That wasn't a loaded question. Can I take you in the
8 first instance to page 7.
9
10 COMMISSIONER: Can we just mark --
11
12 MS SWEET: I beg your pardon, Your Honour. I tender that.
13
14 COMMISSIONER: Yes. The Together submission will be
15 CA-49.
16
17 **EXHIBIT #CA-49 - TOGETHER SUBMISSION**
18
19 MS SWEET: Thank you.
20
21 And I want to take you to - sorry, was that 49?
22
23 COMMISSIONER: Forty-nine.
24
25 MS SWEET: Thank you.
26
27 Do you have page 7 there?
28 A. Yes, I do.
29
30 Q. So just up the top the paragraph starts, "Given these
31 concerns". I'll take you to the concerns in a minute, but
32 the overall - what is being advocated for by this union,
33 which I should just add - so Together Queensland says that
34 it represents the majority of child safety workers. Do you
35 accept that about its representation, that it represents
36 the majority of child safety workers? Do you know?
37 A. I don't know. Yeah, I don't know. I couldn't comment
38 definitively on that.
39
40 Q. But are you aware of what type of members they have in
41 terms of child safety workers?
42 A. Yes, I think it's a mix.
43
44 Q. Yes.
45 A. Yeah, and I know that some of my team are members of
46 the union as well. I think it's a mix across the
47 department, but I couldn't comment on what that composition

1 looks like.

2

3 Q. That's fine. But they advocate for the integration of
4 the work currently conducted by OCFOS and the DCPL into a
5 singular legal body within the Department of Child Safety.
6 Is that effectively - do you effectively agree with that
7 proposition --

8 A. Yes, I do.

9

10 Q. -- that that's what should - that's --

11 A. Yes.

12

13 Q. You as the Official Solicitor also advocate for that?

14 A. Yes, yes.

15

16 Q. And the union goes on to say that they:

17

18 *... further advocate that this body should*
19 *be structured as much as possible to*
20 *replicate the successful embedded frontline*
21 *legal support model established by OCFOS.*

22

23 Now, just taking that in parts, do you understand the term
24 "embedded frontline legal support model"?

25 A. No, but I can hazard a guess at what they mean by
26 that. I've never seen that term written like that,
27 "embedded frontline legal support model" --

28

29 Q. Apparently it's been successfully established by your
30 office.

31 A. I think what it means - but I think what it means -
32 there's not a document, is essentially what I'm saying,
33 that's got that as the header that I'd go, "Oh, I know
34 exactly what you're pointing to there." But I assume that
35 that means that - it's exactly what I was explaining
36 yesterday - where you have OCFOS legal officers that are
37 embedded in child safety service centres around the state
38 providing direct support to CSOs and senior team leaders as
39 matters evolve.

40

41 Q. Okay. Thank you. Now, we'll go back to some
42 concerns. Okay. So if you go to page - if you go to
43 page 4?

44 A. Of the same document?

45

46 Q. So, yes, we're still on the same document, and down
47 the bottom where it says, "Together Queensland's position

1 on the Director of Child Protection Litigation"; do you see
2 that?

3 A. Yes.

4

5 Q. So:

6

7 *Together Queensland supports the removal of*
8 *the Director of Child Protection Litigation*
9 *as an independent statutory office.*

10

11 And you support that removal; is that correct? Or do you
12 have a more nuanced position?

13 A. I don't - I'm really mindful - I'll be honest with
14 you, Counsel. I'm really mindful of the sensitivities
15 around this and the impacts on workforces, and I have a
16 great deal of respect for DCPL, as I do for my own
17 workforce, and so I think it would be totally inappropriate
18 for me to comment on that in the interests of ongoing
19 relationships between our agencies.

20

21 COMMISSIONER: But it follows, doesn't it, from your
22 position that there ought to be a single body embedded in
23 the department that if that suggestion were embraced the
24 DCPL model would necessarily be removed from the system?
25 I understand why you may not wish to say that in terms, but
26 that is the consequence, isn't it, of the view that you
27 express?

28 A. Possibly.

29

30 COMMISSIONER: Yes. All right.

31

32 MS SWEET: If I could take you to page 6, and you'll see
33 the first full paragraph, "It is our position"; do you have
34 that?

35 A. Yes

36

37 Q.

38 *It is our position that the current model*
39 *has effectively created a significant*
40 *redundancy in the child protection system*
41 *by implementing two simultaneous models in*
42 *circumstances where one of those models,*
43 *namely the embedded OCFOS model,*
44 *effectively addressed each of the concerns*
45 *identified by the Carmody Inquiry.*

46

47 Now, do you agree that the current model has created a

1 significant redundancy in the child protection system by
2 implementing those two models?

3 A. I do think it's a little bit more nuanced than that,
4 but I do agree that the embedded OCFOS model has - is able
5 to address each of those concerns that were identified by
6 Carmody.

7

8 Q. Yes. And if we just look back on to page 5, just so
9 we all know what we're talking about, you'll see that on
10 page 5 again the first whole paragraph talks about
11 chapter 13 of the Inquiry and refers to a number of
12 concerns which were to be addressed; you see those dot
13 points there?

14 A. Yes, yes.

15

16 Q. And so you understand that they're the concerns that
17 are talked about in - they're the concerns that you think
18 the embedded OCFOS model is able to address itself?

19 A. Yes. Yes, I do. Yes, I do.

20

21 Q. And when you talk - when you say that in terms of
22 significant redundancy that the position's more nuanced
23 what's the nuance that you see?

24 A. I actually think that wording is confusing to me.

25

26 Q. Yes.

27

28 COMMISSIONER: Sorry, what was that?

29 A. I think the wording is confusing.

30

31 COMMISSIONER: What --

32

33 A. *It is our position that the current model*
34 *has effectively created a significant*
35 *redundancy in the child protection system.*

36

37 COMMISSIONER: Yes.

38 A. OCFOS is only one part of that system. The legal
39 component of that is only one part. It's a very complex,
40 massive system of - yeah, I don't think I could
41 definitively say that.

42

43 COMMISSIONER: The question is what is meant by
44 "redundancy" in that context?

45 A. Yes, yes.

46

47 COMMISSIONER: Is that what --

1 A. So I'm unclear on that --

2

3 COMMISSIONER: Yes, I --

4 A. -- so I can't respond --

5

6 COMMISSIONER: I share your confusion about that.

7 A. -- with any definitive answer. It's - yep.

8

9 MS SWEET: Yes, thank you. And if we go on to the next
10 paragraph the union contends that:

11

12 *... the independence of the DCPL model has*
13 *inadvertently resulted in harmful outcomes*
14 *throughout the child protection system.*

15

16 Now, it then goes on to say what it says these harmful
17 outcomes are that have resulted because of the DCPL
18 independence model --

19

20 COMMISSIONER: Which paragraph, which part?

21

22 MS SWEET: Yes, we were just on the "significant
23 redundancy" paragraph.

24

25 COMMISSIONER: Yes.

26

27 MS SWEET: So this is the next paragraph down that starts:

28

29 *It is further the position of Together*
30 *Queensland that the independence of*
31 *the DCPL model has inadvertently resulted*
32 *in harmful outcomes throughout the child*
33 *protection system."*

34

35 Do you have that, Your Honour?

36

37 COMMISSIONER: Yes, I do.

38

39 MS SWEET: Yes, thank you. And then it goes on to talk
40 about what it says these harmful outcomes are. It says
41 there:

42

43 *A significant increase in the duration of*
44 *child protection order proceedings.*

45

46 Now, just starting there, have you seen data to indicate
47 that there is a significant increase in the duration of

1 child protection order proceedings?

2 A. Yes.

3

4 Q. Yes. But based on your position within the model do
5 you say - do you agree that that has been - that is a
6 result of the bifurcated system?

7 A. I think that there's some elements of that, yes.

8 I know that the DCPL has data - DCPL has excellent data, by
9 the way. They've got good data, and so the Director would
10 be able to provide you with an extensive amount of data in
11 that regard, and I haven't read his statement, so I don't
12 know what's attached to that. There are - we do count data
13 a little differently in how we calculate data for - data
14 that we do capture.

15

16 Q. Yes.

17 A. Sorry, I've lost my train of thought. What was your
18 question again?

19

20 Q. No, no, well, I was just asking about if you had seen
21 data that suggested that - well, first of all, that there
22 was a significant increase in duration of child protection
23 proceedings. But the question you were just answering was
24 to what extent do you perceive that that increase in
25 duration is caused by the independence model that we
26 currently have?

27 A. Oh, okay. So, yes, sorry, that's where I was going.
28 So I know that the DCPL attributes some of that to family
29 group meetings, and they attribute some of that to personal
30 service of documents. Look, you know, in the FGM space
31 once again I think it's a little bit more nuanced than
32 that. I think there's a lot of contributing factors to why
33 matters may be protracted by - as a result of FGMs. And
34 obviously we've talked yesterday about personal service of
35 documents.

36

37 There's also in the 2023/2024 DCPL annual report the
38 Director refers to the provision of information to DCPL by
39 Child Safety as being one of the reasons for matters being
40 adjourned, and I - off the top of my memory I think it was
41 between 6.8 to 9.8 per cent of adjournments are as a result
42 of that, so as a result of that needing to provide data to
43 an external agency, needing to provide information.

44

45 COMMISSIONER: But is that to your understanding
46 information relevant to an application for a child
47 protection order, or is he talking about something else?

1 A. Well, the question was in relation to the duration of
2 Childrens Court proceedings, and I was just offering the
3 Commissioner my understanding of --
4

5 COMMISSIONER: Yes, I understood that.

6 A. -- factors why that could be the case.
7

8 COMMISSIONER: I understood that's what you were talking
9 about, and one of the reasons identified by the Director is
10 the furnishing of information by the department to his
11 office. I can ask him, and I shall, but I assume here for
12 the moment that he's referring to the provision of
13 information relevant to the prosecution of the application
14 for whatever order it is that's being sought?

15 A. That would be a question for him.
16

17 COMMISSIONER: Yes.
18

19 MS SWEET: Yes, thank you, Ms Schifilliti, I'm finished
20 with that document.

21 A. Can I just make a comment around that. When it refers
22 to these "harmful outcomes", I actually consider them to be
23 unintended consequences of the model.
24

25 Q. Yes.

26 A. And, on my reading of it right now, I agree with those
27 dot points.
28

29 COMMISSIONER: Have you had any discussions with the
30 Together union in connection with the preparation of this
31 submission?

32 A. No, Commissioner, I haven't.
33

34 COMMISSIONER: Have you had any discussions with them
35 about the kinds of concerns that are expressed on page 6,
36 the ones that you've agreed with but characterise as
37 unintended consequences?

38 A. Sorry, can you ask that question again?
39

40 COMMISSIONER: Have you had any discussion about the
41 matters that are referred to in this submission, in
42 particular the harmful outcomes, which you characterise as
43 unintended consequences, in the course of discussions with
44 this union?

45 A. No, I haven't. No, I haven't. But, Commissioner,
46 these are within the department - and, dare I say, these
47 are well known. The reason why this aligns with the

1 information I'm providing the Commissioner is because this
2 is felt acutely across the department. This is not just
3 the union's --
4

5 COMMISSIONER: So you would say this is the department's -
6 a statement of the department's position in relation to -
7 as you understand it, in relation to the duality of
8 the DCPL and OCFOS?

9 A. No, this is not the department's position. This is
10 the union's position. But some of the points in here that
11 the union make I agree with. There's a dot point down the
12 bottom about DCPL staff not being trained in Safe and
13 Together. I know that the DCPL staff have been trained in
14 the Safe and Together model because I recall that that
15 training occurred jointly some years ago.
16

17 COMMISSIONER: Well, I was just picking up --

18 A. I'm looking at the top dot - I'm reading this as
19 you're pointing me to it.
20

21 COMMISSIONER: I was just picking up on your statement
22 that this is well known within the department --

23 A. Yes.
24

25 COMMISSIONER: -- that these matters are well known, and
26 I assume you mean understood within the department, from
27 which I had inferred that this is the department's -
28 reflective of the department's dissatisfaction with the
29 duality of this system. Is that not the case?

30 A. I think that there's certainly elements of this which
31 align with the department's - I mean, I can't speak for the
32 department as a whole, but in relation to OCFOS, yes, this
33 is what I hear within my team.
34

35 COMMISSIONER: Yes. I'm merely asking about your
36 understanding. I of course appreciate you don't speak for
37 the department.

38 A. No.
39

40 COMMISSIONER: But you agree these are the kind of
41 concerns that are, can I put it this way, widely shared or
42 accepted within the department?

43 A. I don't know if I can speak for everyone in the
44 department, but certainly that's what I hear across teams,
45 yes, including within my own team. Counsel, there's -
46 sorry, as I'm reading it on the hop here --
47

1 COMMISSIONER: Take your time. Do take your time.
2 A. Yes. I don't necessarily agree with that final dot
3 point:

4
5 *A disconnection between DCPL staff members*
6 *and the values, principles and development*
7 *learnings of the department, resulting in*
8 *DCPL conducting work which is not*
9 *reflective of the department's commitment*
10 *to cultural practice and domestic violence*
11 *informed practice.*

12
13 I don't necessarily agree with that dot point.

14
15 MS SWEET: Yes.

16 A. I think as government agencies we are both working
17 hard in that respect, to be family and domestically
18 violence informed and to be culturally responsive. I don't
19 know what DCPL do in that regard, but I do know that we did
20 joint training together, and I expect that as child
21 protection practitioners you would be family and
22 domestically violence informed.

23
24 Q. Just on the issue of - and I am finished with that
25 document, thank you. Just on the issue of the initiating
26 affidavit and what is contained in it, you'll appreciate
27 that that's guided by at least two things. One is the
28 documents that under the court rules the Director is
29 required to file and, second of all, the Director's duty to
30 disclose relevant documents, which is an ongoing duty. Do
31 you have any suggestions as the Official Solicitor as to
32 how - what could potentially be removed from the
33 information or how you would see that it could be
34 streamlined such that we don't have parents receiving
35 lengthy affidavits that they can't process?

36 A. I mentioned it yesterday, but I'd like to expand on
37 that if that would be of assistance to the Commissioner.

38
39 COMMISSIONER: Of course.

40
41 MS SWEET: Yes, please.

42 A. So the affidavit templates that are currently in
43 operation were developed jointly between - before my time,
44 so I arrived in 2017, between OCFOS, DCPL and my
45 understanding is the with the Office of the Chief
46 Practitioner. I think - actually, no, the OCP didn't exist
47 at that time. So it was probably just between DCPL and

1 OCFOS at that time. They've been reviewed repeatedly since
2 then, reviewed again in 2022, and the version that we are
3 currently working on is the 2022 version.
4

5 I know that the Director of Child Protection Litigation is
6 committed to streamlining that document, as am I, and the
7 template document, the template initial affidavit document,
8 was revisited with DCPL back in June of 2024. They made
9 some really significant progress I think on streamlining
10 the document.
11

12 Q. Yes.

13 A. That version was not endorsed, and that was because
14 the child protection litigation project team was kind of
15 working on something similar in response to focus groups
16 which identified those issues where they were - the
17 documents were too - the initial affidavits were too big
18 for parents, they were difficult to understand, they were
19 overwhelming. As a result of that the child protection
20 litigation team developed an expert reference group to work
21 on the initial affidavit template in response to that
22 feedback from the focus groups, and working on developing a
23 new template. Unfortunately, that template document for
24 initial affidavits was not finalised before that child
25 protection litigation project team wound up, essentially.
26

27 Q. Do we know how close to finalisation it was, and do
28 you have a --

29 A. No, I don't.
30

31 Q. Do you have a copy of the most recent version?

32 A. No, I don't. But I say all of that. Recently in the
33 last couple of months OCFOS, DCPL, the Office of
34 the Child - OCP, Office of the Chief Practitioner and
35 QATSICPP have been working together, and we formed a
36 working group that was initiated by myself and the Director
37 of Child Protection Litigation, and so there's
38 representatives from each of those different divisions
39 working together to revisit the version of the template
40 that they - that wasn't endorsed in 2024. That consists
41 of, my understanding, you know, a very - a simplified
42 version of the template. Certainly my brief to our team
43 was, "I need this to be as simple as possible whilst still
44 covering off on the legislative thresholds that are
45 required." I believe that the Director of DCPL has a
46 similar view to me in that regard.
47

1 COMMISSIONER: The child protection litigation team, what
2 was that?

3 A. The litigation project team?
4

5 COMMISSIONER: Yes, project?

6 A. So that was an independent team that was set up -
7 OCFOS were at arm's length to that team, obviously because
8 of the sensitivities around it. Strategic Policy and
9 Legislation had a lot of involvement with that. It was a
10 very small project team that consisted of both an
11 operational stream and a policy stream. And so I was
12 involved and had meetings with that team in relation to
13 operational aspects of it and how we could streamline
14 processes to make things - I guess, yeah, to improve - to
15 improve the way we work operationally.
16

17 COMMISSIONER: In that regard have you consulted with the
18 Director about how the interrelationship between the - what
19 your office is responsible for and what the Director's
20 responsible for might be streamlined and improved to try
21 and abate the to and fro, I think you described it as
22 yesterday?

23 A. I think the Director and I are constantly working at
24 that. We meet every week for half an hour to talk about
25 issues as and when they arise. We're working purely on
26 operational things, but it's part of - the issues I think
27 are systemic issues. They're much bigger issues than what
28 an operational response will effectively address.
29

30 COMMISSIONER: What are the systemic issues? The matters
31 you've already raised?

32 A. The model. The model.
33

34 COMMISSIONER: The model. Being the duality of the model
35 for one thing?

36 A. Yes. Yes.
37

38 COMMISSIONER: Yes. Thank you.
39

40 MS SWEET: Thank you.
41

42 Now, I think yesterday we were talking about the department
43 seeking to have various - well, TAOs or TCOs being heard ex
44 parte and then it's ultimately a matter for the magistrate
45 whether that goes ahead?

46 A. M'hmm.
47

1 Q. And I just wanted to - and you said that the
2 application that is filed will have in it information about
3 the request for an ex parte hearing and the basis for that?
4 A. No. The covering email to the court will address
5 that.

6
7 Q. Okay.

8 A. So when - so the application is made to the court for
9 TAOs and for TCOs, and I would expect that when a legal
10 officer makes that application to the court, in accordance
11 with our process maps, that in that covering email we would
12 notify the court whether or not the parents wish to be
13 heard on the matter and their contact details so that that
14 was brought to the attention of the magistrate at the time.

15
16 Q. Yes. All right. I'd like to hand you up an
17 application for a temporary assessment order. In the
18 circumstance - in this circumstance it's dealt with in the
19 actual application.

20 A. Even better. Thank you.

21
22 Q. And I'd like to refer to this, and I don't want us to
23 refer to any names, and it's not necessary to refer to any
24 names or identify the parties.

25 A. Of course. Of course.

26
27 COMMISSIONER: The application --

28
29 MS SWEET: I tender that.

30
31 COMMISSIONER: -- yes - will be CA-50

32
33 **EXHIBIT #CA-50 - APPLICATION FOR TEMPORARY ASSESSMENT ORDER**

34
35 MS SWEET: CA-50.

36
37 So it's an application for a temporary assessment order --

38 A. M'hmm.

39
40 Q. -- and I want to take you to paragraph 11, which is on
41 page 2, please:

42
43 *Pursuant to section 26 of the Act, I am*
44 *seeking that this application be decided*
45 *without notifying or hearing the child's*
46 *parents for the following reasons. The*
47 *parents have been advised of the*

1 *application. The department will seek*
2 *their views on whether they wish to be*
3 *heard on the application.*

4
5 That's paragraph sub(a). Sub(b):

6
7 *When advised of the application, one of*
8 *the parents stormed out of the room and the*
9 *other parent went to the bathroom.*

10
11 Now, would you accept that based on that it's unclear
12 whether the parents wished to be heard?

13 A. That's one paragraph in the application. I know
14 nothing at all about this matter or the background of it to
15 be able to comment accurately.

16
17 Q. All right. Well, assume - because it's dealing
18 specifically with section 26 --

19 A. Yes.

20
21 Q. -- assume for a moment that that's the only time or
22 that this is the paragraph where the lawyer is giving
23 reasons as to why the application should be decided without
24 notifying or hearing the parents. Do you accept that that
25 does not inform a - and accepting again it's the
26 magistrate's decision whether or not to go ahead ex parte,
27 but in terms of seeking an application to be heard ex parte
28 with this information about the child 's parents that's not
29 sufficient?

30 A. I don't accept that because I don't want to take
31 something out of context that I don't know the entire
32 circumstances about.

33
34 COMMISSIONER: Just reading that paragraph, isn't
35 subparagraph 11(a) inherently contradictory:

36
37 *I am seeking that this application be*
38 *decided without notifying or hearing the*
39 *child's parents for the following reasons.*

40
41 And then (a) says:

42
43 *The parents have been advised of the*
44 *application [whatever that precisely*
45 *means]. The department will seek their*
46 *views on whether they wish to be heard on*
47 *the application.*

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Now, doesn't the statement that the department will seek their views on whether they wish to be heard on the application, is that not contradictory with the statement in the chapeau that the application be decided without notifying or hearing the child's parents?

A. I agree, Commissioner, it's contradictory.

COMMISSIONER: Yes. All right.

A. So I can't comment either way.

MS SWEET: And we sought some information from the department as to whether or not it kept statistics of how many applications were sought and heard - sought or heard ex parte?

A. M'hmm.

Q. And the information - I think this is dealt with in a statement of your colleague?

A. M'hmm.

Q. The --

A. I think it was my statement, yeah.

Q. Yes. The answer that came back is that the department does not keep those statistics?

A. That's correct.

Q. And it doesn't keep the - you'd accept also, don't you, that the data shows that about 96 per cent of emergent orders are granted?

A. That I don't know.

Q. Would you accept that the level of - that the overwhelming majority of emergent orders are granted?

A. Yes, I would accept that.

Q. And in those circumstances do you consider it's a statistic that ought to be kept by the department?

A. I can't comment on that. This is - when you talk about data that's collected by the department, that sits in a very different business unit to - and if the data's not collected based on the ICT systems that we have, then I can't comment on that.

COMMISSIONER: But isn't that kind of data the sort of data that is relevant to the characteristics of the court

1 process initiated by your office, the sort of data that if
2 collected ought to be collected by your office? Where else
3 would it be collected within the department if not within
4 your office?

5 A. To enable us to collect that data, but, we would have
6 to have an ICT system that supported the collection of that
7 data so that we could then report on it, and at the moment
8 we do not have that, no.

9

10 COMMISSIONER: So there's no field that you could populate
11 with data concerning the question of whether the
12 application for the emergent order was made ex parte or
13 not?

14 A. Not to my knowledge. If there was a data field,
15 I expect that you'd be able to report on it. Our
16 litigation support officers do all the data entry in
17 relation to court matters. So, I mean, I could take that
18 question on notice. But I know that we cannot report on
19 it, so I expect that there's not a data field on it. But
20 I could certainly take that question on notice.

21

22 COMMISSIONER: All right. Thank you.

23

24 MS SWEET: Now, Ms Schifilliti, in the court documents
25 there is a document that's called "The legal consult and
26 advice alternative language guide"?

27 A. Yes.

28

29 Q. Yes. I will take you to it in a minute, but before
30 I do could you just tell His Honour what that guide is for?

31 A. Do you have it in one of the tabs?

32

33 Q. Yes. So it is - it should be again - it's in
34 volume 2, part 2. It should be tab 45, page 695 of the
35 pagination.

36

37 COMMISSIONER: Yes, I have it.

38

39 MS SWEET: Thank you, Your Honour.

40

41 Do you have that, Ms Schifilliti?

42 A. Yes, I do.

43

44 Q. Yes. Could you tell His Honour why this document was
45 created?

46 A. This document was created largely for lawyers who were
47 new to our team who'd come from, you know, different legal

1 backgrounds and had not essentially worked in a human
2 services framework before. So it was about essentially
3 providing them with a tool or a resource as to their
4 communication with CSOs that is within an instructional
5 model.

6
7 Q. And the two rows, effectively the first one says - you
8 know, it identifies the issues, say if there's missing
9 information, don't say this, so like, "You don't have
10 enough information or evidence" --

11 A. M'hmm.

12
13 Q. -- "and this is how you should approach the consult"?
14 A. Yes. Yes, it was a tool. It was merely a tool to be
15 used. It's not something that's mandatory for our legal
16 officers to use. It was merely a support tool to be used,
17 mainly for inexperienced or new grad legal officers. And
18 we tried to word it so that it was easy to understand for
19 everyone.

20
21 Q. Yes. And I think down the bottom it says this is
22 version 1.0, 20 February 2025?

23 A. That's correct.

24
25 Q. So this is the tool that's currently in operation to
26 assist new officers?

27 A. It may have been reviewed recently. So what we did
28 this year was I called it the enhanced - our enhancement
29 project, and it was all part of developing our resources.
30 As part of that we did a vision statement, we had OCFOS
31 values, and we did some documents. We pulled together some
32 documents that we thought might be really supportive to our
33 team in that.

34
35 Q. Okay.

36 A. And so those documents were developed at the beginning
37 of this year and then they were reviewed, you know, six
38 months later, and as a part of that we reviewed a whole
39 suite of our documents. I expect that this would have been
40 reviewed at the time and there may have been amendments to
41 this document as a result of those reviews.

42
43 Q. Okay. Just over the page at 696 where there's the row
44 that commences "Advice versus instruction"?

45 A. Yes.

46
47 Q. And it speaks to certain things that shouldn't be

1 said, "Your application isn't strong. You shouldn't run
2 it"?

3 A. M'hmm.

4

5 Q. "I'm not comfortable putting this forward. You should
6 not apply until you have more evidence. I'm not going to
7 make this application." And it guess over onto the - this
8 is - "Try this instead. Remember that OCFOS operates under
9 an instructional based model and should not refuse to run
10 an application unless there is no legal foundation."

11 That's correct?

12 A. So this particular section I know has been amended
13 since then. So the next sentence says "so long as there is
14 a base level of evidence". That's now changed and now
15 lines up with the escalation process.

16

17 Q. Could we perhaps have the updated version?

18 A. Yes.

19

20 Q. I will ask your legal team for it. So what's wrong -
21 so let's just start again. "OCFOS operates under an
22 instructional based model and should not refuse to run an
23 application unless there is no legal foundation." Is that
24 still correct as an instruction that's given?

25 A. I don't - I can't remember what the current version
26 says, but it's on the basis of there should be an
27 escalation - so it's the next sentence. So there should be
28 an escalation if there are no reasonable grounds for the
29 order or the action.

30

31 Q. But I'm just asking you as the Official Solicitor --

32 A. Yes.

33

34 Q. -- is it correct to say that the OCFOS lawyer should
35 not refuse to run an application unless there is no legal
36 foundation?

37 A. I think that there's the three conditions around that.
38 As I said, there's the no reasonable grounds, there's
39 significant risk to the safety of a child - and I think the
40 latest version will reflect that. I'm not --

41

42 COMMISSIONER: Ms Schifilliti, you're simply being asked
43 about the statement in the first sentence there, which is -
44 this document is a document produced by your office?

45 A. Yes, it is, yes.

46

47 COMMISSIONER: Right. So what's the answer to the

1 question? Is it still the case that OCFOS lawyers are
2 instructed they should not refuse to run an application
3 unless there is no legal foundation?

4 A. Well, there should be a legal foundation, obviously,
5 to run an application because we have a duty to the court.
6 But what I'm saying is that sits alongside the other
7 conditions as well.

8

9 COMMISSIONER: Is it or is it not the case that your staff
10 are instructed not to refuse to run an application unless
11 there is no legal foundation?

12 A. Commissioner, as I said, it sits alongside the
13 escalation process. This document is not to be read in
14 isolation.

15

16 COMMISSIONER: What's the escalation process? What you
17 were talking about yesterday where there's --

18 A. Yes.

19

20 COMMISSIONER: -- some debate had between the team leader,
21 say, and the OCFOS solicitor?

22 A. So the escalation process is - if a legal officer at
23 any point in time thinks that there's no reasonable grounds
24 for the order or the action, or the child is at risk of
25 significant harm as a result of the action or inaction
26 that's proposed, or there's a significant legal issue, then
27 the escalation process would mean that the legal officer
28 would then escalate to the senior legal officer so there
29 was a greater level of oversight. And then if the senior
30 legal officer was unable to resolve that with their
31 counterpart in a service centre then it would escalate
32 further. It would then go from senior legal officer to a
33 principal legal officer, and from a principal legal officer
34 to our Director. At each stage in that process the legal
35 officer at the higher level is required to review the
36 proposed course of action or the proposed order afresh.

37

38 COMMISSIONER: But everything you've just said depends on
39 that process being triggered by some disagreement at some
40 point in the decision-making process leading to the
41 escalation you've just referred to. However, if the OCFOS
42 lawyer, so instructed in accordance with this document that
43 he or she is not to refuse to run an application unless
44 there is no legal foundation, then acting upon that
45 instruction the application is made, there is no
46 opportunity for review or scrutiny of it, is there?

47 A. I think it would be beneficial to the Commissioner to

1 receive the latest version of this document.

2

3 COMMISSIONER: Well, this is a pretty modern, 20 February
4 2025?

5 A. Commissioner, we work in an actual learning framework
6 within the department and we're constantly reviewing the
7 way we work to continuously improve what we do and how we
8 do that.

9

10 COMMISSIONER: And has this document been reviewed because
11 in your view that statement is plainly wrong?

12 A. This document has been reviewed as part of the suite
13 of reviews and to ensure that there's consistency across
14 our documents.

15

16 COMMISSIONER: See if you could answer my question. Has
17 it been reviewed at your initiation?

18 A. All the documents have been reviewed at my initiation,
19 yes.

20

21 COMMISSIONER: Do you agree with me that the statement in
22 the first sentence, namely the instruction that the OCFOS
23 lawyer should not refuse to run an application unless there
24 is no legal foundation, is wrong?

25 A. Commissioner, as I said before, I think it sits
26 alongside a lot of other documents in the suite of
27 documents, including the escalation process.

28

29 COMMISSIONER: You've said that already. I'm now asking
30 you a different question, which is whether you agree with
31 me that that statement is wrong?

32 A. I don't agree with you, Commissioner. As I said, I --

33

34 COMMISSIONER: You think it's correct?

35 A. I'm not saying it's correct. All I'm saying is it's -
36 it does not sit in isolation.

37

38 COMMISSIONER: Well, I've understood that, and I've
39 suggested to you that the escalation process that you've
40 described is contingent upon there being some controversy
41 between the lawyer and the CSO or team leader which
42 triggers a review via the escalation process you've
43 described. But if there was no dispute because the lawyer
44 simply accepted on its face the instruction here given then
45 do you not agree that the escalation process would not be
46 invoked?

47 A. As in-house government lawyers we're still bound by

1 the Australian Solicitors' Conduct Rules and we still need
2 to ensure that there's reasonable grounds to run an
3 application.

4
5 COMMISSIONER: Yes, and that expression, there being no
6 reasonable grounds, is qualitatively different, do you not
7 agree, with the statement that there is no legal
8 foundation? What I suggest to you is that the statement
9 that there is no legal foundation sets an extremely low bar
10 for the bringing of an application for an emergent order,
11 quite inconsistent with the general principles that apply
12 in litigation that there must be a proper basis on the
13 evidence for the making of the application, and that's why
14 I'm suggesting to you that that statement is wrong. But
15 you don't agree; is that your position?

16 A. Commissioner, as I said before, it sits alongside
17 other documents to support this. It's part of a suite of
18 documents.

19
20 COMMISSIONER: All right. Thank you.

21
22 MR HASTIE: Commissioner, there are obviously from time to
23 time in the practitioner and ethics obligations different
24 expressions used, and I accept what, Commissioner, you
25 said, that a reasonable basis for it. Other times there's
26 no legal basis, and there's an even higher bar that from
27 time to time has been suggested as an appropriate basis.

28
29 COMMISSIONER: Well, Mr Hastie, you're welcome to make
30 submissions to me that this accurately reflects - this
31 statement accurately reflects the duty of a lawyer to the
32 court. I'll hear you on that in due course if you wish to
33 make that submission. The statement in terms, as I've said
34 already, seems to set an extremely low bar, and I should
35 add it does so in the context where applications are made
36 routinely ex parte --

37
38 MR HASTIE: Yes, Commissioner.

39
40 COMMISSIONER: -- with the additional obligations that
41 usually apply and should apply to any ex parte application,
42 the obligation of full disclosure.

43
44 MR HASTIE: Full disclosure, yes, Commissioner. I wasn't
45 contesting that. It was the - in part the way the question
46 was prefaced that I thought that I ought to stand up,
47 Commissioner.

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COMMISSIONER: Well, indeed, if I have prefaced any question to the witness in a way that you think is unfair, please say so and I'll see if I can rephrase it or you can --

MR HASTIE: There's no need, Commissioner. We've had our discussion.

COMMISSIONER: Yes, thank you, Mr Hastie. Ms Sweet.

MS SWEET: Still on the alternative language guide --
A. M'hmm.

Q. -- the next row down there's the heading "Crossing into practice", and can you tell me what that's a reference to?

A. That's about --

Q. As the issue?

A. Yeah, that's about having really clear distinction between legal advice and practice decision-making.

Q. Okay.

A. And for lawyers not to be involved in practice decision-making.

Q. Okay. And then we go over to the box on the right:

Rather than directing CSOs to consider less intrusive measures, assist them to understand and articulate why they have assessed that less intrusive options are not viable. It is not an OCFOS lawyer's role to provide practice advice. Where there are issues with practice, it can be worthwhile providing feedback to the OCFOS practice leader to allow them to address this with the CSSC.

Now, if we're talking about there being a lawyer thinking there are issues with practice and providing feedback to a practice leader, isn't that another way of saying you're giving advice on practice to the practice leader?

A. No, I see it as a way of feedback. I see it as ways that - like a feedback loop. So what we have done as part of the instructional model is we've developed feedback

1 loops in regions across the state whereby if we're starting
2 to see themes where actually our - in most regions it's our
3 principal legal officers who are reaching out with practice
4 leaders to actually - to be able to provide that feedback
5 to say, "Hey, we're seeing this happen," and it's a way of
6 continuing to develop the capability of our workforce.

7
8 Q. You don't agree that the feedback is legal advice?

9 A. No, it's feedback on the themes that we're seeing in
10 practice.

11
12 COMMISSIONER: Ms Schifilliti, I don't understand how you
13 bifurcate practice matters in this context from an
14 assessment as to whether there is a proper basis for making
15 the application, and I'll explain why. In the end the
16 application, if it's justified, depends upon the
17 investigation of the facts giving rise to a reasonable
18 apprehension that there is a child in need of protection.
19 The matters the subject of that investigation necessarily
20 in this context entail an investigation into the
21 circumstances of the family, the myriad circumstances in
22 which a child may be assessed to be in need of protection,
23 but underlying it all is a question as to whether in the
24 circumstances of this particular child the child is in need
25 of protection.

26
27 So in that context how is it that the lawyer is to
28 constrain himself or herself to matters that don't
29 necessarily involve an assessment and an evaluation of the
30 facts presented to the lawyer by the person investigating
31 the circumstances and bringing the matter to the OCFOS
32 lawyer for advice and assistance in relation to the
33 preparation of an application for an emergent order if that
34 is warranted in the circumstances?

35 A. Our advice is based on the merits of the application,
36 so based on the information that the CSO or the senior team
37 leader has at hand at that point in time, and we provide
38 advice on whether or not an application would have
39 reasonable grounds.

40
41 COMMISSIONER: Yes. So what is meant by the statement:

42
43 *It is not an OCFOS lawyer's role to provide*
44 *practice advice. Where there are issues*
45 *with practice, it can be worthwhile*
46 *providing feedback to the OCFOS practice*
47 *leader to allow them to address this with*

1 the CSSC.

2

3 What is practice advice? Where's the distinction? That's
4 what I'm trying to understand. What's practice advice
5 that the lawyer is told that he or she should stay away
6 from interfering with?

7 A. That is probably not a question for a lawyer then,
8 Commissioner: what is practice advice?

9

10 COMMISSIONER: Well, this is your guide to lawyers --

11 A. Yes.

12

13 COMMISSIONER: -- and you're telling a lawyer not to
14 intrude upon, as I would understand it, practice advice:

15

16 *It is not an OCFOS lawyer's role to provide*
17 *practice advice.*

18

19 What is the lawyer to understand is the constraint in
20 relation to the provision of practice advice? You must
21 know what you mean by "practice advice"?

22 A. Yes. So practice advice is - I don't know if I can
23 answer that question, Commissioner.

24

25 COMMISSIONER: Well, then if you can't answer it how's the
26 lawyer working in your office to understand what it means?
27 I mean, this is an express constraint on the role of the
28 lawyer: "It is not an OCFOS lawyer's role to provide
29 practice advice." So what do we mean by "practice advice"?
30 That's all I'm asking.

31 A. Practice advice would be how a CSO and a senior team
32 leader work and what - the strengths and the needs that
33 they look at within a family, is my understanding anyway,
34 the strengths and needs that they would look at within a
35 family which - it's not a matter for a lawyer to determine
36 when looking at evidence.

37

38 COMMISSIONER: But the point I was trying to make to you
39 earlier is that you cannot in this context unscramble the
40 question of the strengths and needs of the family, to use
41 your example, from the question of whether there is on the
42 available evidence a sufficient basis to make an
43 application. How do you unscramble that egg?

44 A. Commissioner, I don't know if I can extend this any
45 further. It's a very operational question that I'm not
46 involved in. It might be a question that's more
47 appropriate for somebody else. But because I'm not

1 involved in frontline service delivery I cannot answer your
2 question.

3

4 COMMISSIONER: But I assume you're involved in authorising
5 this sort of advice given to lawyers under your - who
6 you're responsible for?

7 A. Yes, as part of a team, yes.

8

9 COMMISSIONER: Yes, all right. Thank you. Ms Sweet.

10

11 MS SWEET: I'm going to move on from this document,
12 Commissioner.

13

14 COMMISSIONER: Thank you. And might I ask, Mr Hastie,
15 that I be provided with the updated version of this
16 document?

17

18 MR HASTIE: Yes, we've requested it, Commissioner.

19

20 COMMISSIONER: Thank you.

21

22 MS SWEET: I want to move on now to the issue of - that
23 you were asked about in the notice or the department was
24 asked about in the notice 143 about where there wasn't
25 recorded written legal advice from the department's
26 solicitors?

27 A. M'hmm.

28

29 Q. And that particular part of the notice that you
30 responded to, and you start dealing with it at paragraph 6
31 of your statement under the heading "Legal advices"?

32 A. Yes.

33

34 Q. Yes. Thank you. And the notice was seeking an
35 explanation as to if there - in respect of a bundle of
36 applications that the department had provided to us where
37 there was no written legal advice recorded, because the
38 department had told us that there was no written legal
39 advice recorded in respect of emergent orders, why that
40 was. And you've then here suggested a number of factors
41 that may be the reason why there's no written legal advice.
42 Now, what was the source of your information when putting
43 these factors together?

44 A. I spoke to members of my Brisbane leadership team, who
45 have more operational involvement than I do.

46

47 Q. Yes. Thank you. And is it correct to say that in

1 your operational guidelines there is a requirement where
2 there is face-to-face or verbal or oral advice given over
3 the phone that that legal advice should be committed to
4 writing as soon as possible?

5 A. That is best practice, yes.

6

7 Q. Yes. And when we say that's best practice, that's
8 what should happen?

9 A. Yes, that is what should happen.

10

11 Q. Yes.

12 A. It becomes an issue of capacity, and I think that is
13 supported by the data of no additional increase in
14 full-time equivalent positions since 2018 with a
15 significant trajectory in the number of emergent order
16 applications.

17

18 Q. So there's no increase in FTE, there's a significant
19 increase in emergent applications?

20 A. M'hmm.

21

22 Q. One of the outcomes of that is that there might be
23 oral advice given and there's a capacity issue which means
24 it's ultimately at times not committed to writing post
25 fact; is that correct?

26 A. Yeah, and you also have to I guess include those same
27 legal officers - even though I was talking yesterday about
28 having two dedicated legal officers do permanency work, and
29 that is absolutely the case, legal officers in service
30 centres are still responsible for also doing obviously
31 referrals to DCPL, in relation to child protection orders,
32 and some of them may still also be doing variations on
33 long-term guardianship orders. So they're not just doing
34 emergent orders.

35

36 You'll see, but, in paragraph 6(b) I've gone on to talk
37 about the process of drafting and settling those emergent
38 order applications includes advice to the CSOs in that
39 process whilst - during that drafting.

40

41 Q. Embedded in the drafting process --

42 A. Yes.

43

44 Q. -- there may be legal advice, like the bubbles on the
45 side or things like that, that's what that means?

46 A. Yeah, that's exactly right. The commentary.

47

1 Q. Okay. And in subparagraph (c) you talk about where
2 the child has been taken under the administrative power
3 under section 18?

4 A. M'hmm.

5

6 Q. And that that will generally be a decision made in the
7 field by the child safety officer, and you say over the
8 page that:

9

10 *As a result of the immediate decisions*
11 *required by the child safety officer and*
12 *senior team leader based on point-in-time*
13 *information available to the CSO, legal*
14 *advice is rarely able to be sought prior to*
15 *the exercise of powers under section 18.*

16

17 A. Yes.

18

19 Q. So in the majority of cases when a child is - the
20 Chief Executive takes a child into custody under an
21 administrative power that's not done with the benefit of
22 legal advice?

23 A. Not always.

24

25 Q. Well, you say here that "legal advice is rarely able
26 to be sought"?

27 A. M'hmm.

28

29 Q. So would it be fair to say in at least, say,
30 75 per cent of cases no legal advice has been sought prior
31 to the exercise of that power?

32 A. I couldn't put a figure on that.

33

34 Q. But you stand by "rarely"?

35 A. Yes.

36

37 Q. Yes, because that's the advice that was given to you
38 by your staff?

39 A. Yes.

40

41 Q. Yes. And then at paragraph 7 you talk about why there
42 might not be written legal advice in respect of matters
43 referred to the Director?

44 A. Yes.

45

46 Q. And is it the case that there also are circumstances
47 where there will be advice - there will be matters that are

1 being escalated where there has not been legal advice
2 recorded in writing?

3 A. That may be the case, yes.

4

5 Q. And is it particularly important that matters that are
6 the result of escalations are ultimately recorded in
7 writing, even when there are capacity issues that that's
8 something that really ought to be done?

9 A. That would be best practice, yes.

10

11 Q. Yes. And are you aware of any issues that are caused
12 by there being a lack of recorded legal advice?

13 A. None that I can think of specifically that have come
14 to my attention.

15

16 Q. Yes. And are you aware of circumstances where the
17 OCFOS lawyer has advised that there isn't a proper basis
18 for an emergent order and because there's an instructional
19 model in place that order has been - application has been
20 made anyway?

21 A. Sorry, can you restate that question?

22

23 Q. Yes. So there are circumstances where your lawyers
24 will advise that there isn't - on current evidence there
25 isn't a proper basis for the application?

26 A. M'hmm.

27

28 Q. Is it correct to say that they would say something
29 along the lines of --

30 A. No reasonable grounds.

31

32 Q. No reasonable grounds?

33 A. M'hmm.

34

35 Q. Because you work on an instructional model, are there
36 circumstances where the OCFOS lawyer's instructed to go
37 ahead in any event on the basis of what's currently before
38 them?

39 A. I can comment in relation to my role as the Director
40 for OCFOS because in my current role matters that haven't
41 been escalated to me that I've needed to resolve with my
42 counterparts in child safety service centres or in practice
43 or in regions. But certainly whilst I was in the Director
44 role I cannot recall any matters that came to me that I was
45 unable to resolve through an escalation process. So, if it
46 came to me and it was unable to be resolved at a senior
47 legal officer or a principal legal officer, I was able to

1 discuss the matter with the regional director, and in some
2 situations that meant that the regional director sought
3 further information from the service centre and was able to
4 send that through to me and I was then satisfied that we
5 had reasonable grounds and we then acted on those
6 applications. So I was never in my role - and that was
7 Director of half of the state. I was never in that
8 position in the six years that I was a Director. That may
9 not be the same for other people, but that was my
10 experience.

11
12 Q. And have you been told by your staff that this is
13 something that occurs, that they are instructed to file
14 when they --

15 A. Yes, they might be instructed to file, but I would
16 expect then that it would escalate and that it would have -
17 because each - I see it as being a very robust process.
18 That's the intention of it.

19
20 COMMISSIONER: How is it robust when the role of the OCFOS
21 lawyer is constrained effectively to accepting the
22 instructions of the department without intruding into
23 practice matters, assuming one can define what is meant by
24 practice matters? You see, on its face the model operating
25 intra-department doesn't seem to present a robust,
26 independent assessment by the lawyers at all. So I put
27 that to you because I would like your comment on that:
28 structurally it doesn't seem to do that?

29 A. I have a different perspective on that, Commissioner.
30 I think that if a matter came to me as the Official
31 Solicitor and I didn't think there were reasonable grounds
32 and I couldn't resolve that matter then I would escalate
33 higher, and that may be, you know, to the point of the DDG
34 or the DG to be able to resolve that matter. I've never
35 been in a situation, but, where I've needed to do that to
36 date.

37
38 COMMISSIONER: But the dominant decision-maker when it
39 comes to applying for an emergent order in the model that
40 presently operates is the department, is it not?

41 A. Yes. The department, as in the practitioner at
42 whatever level.

43
44 COMMISSIONER: Well, the department as represented by the
45 decision-makers of the department who are relevant, namely
46 the CSO and team leader?

47 A. And then to the manager and then to the regional

1 director, yes.
2
3 COMMISSIONER: That escalation assuming there's some
4 debate?
5 A. Yes.
6
7 COMMISSIONER: In a particular case?
8 A. Yes.
9
10 COMMISSIONER: But in the ordinary course of events the
11 decision is effectively made by the child safety officer
12 and team leader; is that not the case?
13 A. In the majority of matters, yes. The escalation would
14 only be invoked, I guess, if there was a concern.
15
16 COMMISSIONER: Yes. All right. Thank you.
17
18 MS SWEET: Just going back to the Childrens Court practice
19 note that was tendered yesterday, I want to just - I don't
20 think I need to take you to it. I think you clarified that
21 the temporary - the emergent order is an administrative
22 decision?
23 A. The removal is an administrative decision. So it's
24 not an order. So it's an administrative decision - you're
25 talking New South Wales; is that correct?
26
27 Q. Yes.
28 A. I just want to make sure we're on the same page. Yes.
29
30 Q. No, no, the --
31 A. So it's an administrative decision down there to
32 remove a child from parents, but you then must file an
33 application, what they call a care application, in the
34 Childrens Court, my understanding from memory is within
35 three days.
36
37 Q. And who is the applicant for the care order?
38 A. Is the CSO/senior team leader.
39
40 Q. So the department?
41 A. Yes, yes.
42
43 Q. Yes. And you mentioned yesterday that there had been
44 some work done in respect of interrogating the issue of
45 whether Child Safety could file in the Family Court, and
46 I think you said something about, "We looked at this a few
47 years ago," or something along those lines?

1 A. Yeah.

2

3 Q. Do you remember that evidence?

4 A. Yeah.

5

6 Q. What was the product? Is there sort of finalised
7 product from that work? Is there a report? Is there a
8 consultation paper? Can you recall?

9 A. Not that I'm aware of. As I said yesterday, the
10 majority of Federal Circuit and Family Court of Australia
11 work sits within the court services business unit, which is
12 not a business unit that reports to me any longer, and so
13 they have a team of court services advisers who do that.
14 I have one senior legal officer who represents the
15 department in relation to family law matters if required,
16 and they're instructed by that court services team. So
17 I couldn't comment any further than that. I proposed -
18 I mean, I provided the information to the Commissioner
19 yesterday merely by way of if he was looking at exploring
20 other models then that could be something that maybe he
21 would be interested in doing.

22

23 Q. Yes. And are you familiar at all with how the
24 family - well, the Federal Circuit and Family Court of
25 Australia deals with sort of initiating applications and
26 affidavits, and the constrained amount of material that is
27 provided under practice notes? Have you looked into this
28 at all?

29 A. My experience in the Federal Circuit and Family Court
30 is dated now, if I'm honest. I have not been in that
31 jurisdiction since I started in the department. So that's
32 seven years.

33

34 Q. And in the previous two weeks of hearings I raised
35 with some department witnesses whether there was a practice
36 or procedure in place whereby if there is criticism of the
37 department's conduct of a case or the fact of the
38 application being filed --

39 A. M'hmm.

40

41 Q. Whether there is a practice or a procedure in place
42 whereby that, I suppose, feedback from the court gets
43 relayed back to the department, and they referred to the
44 fact that OCFOS might report this in a court outcomes form
45 or something along those lines. Can you tell His Honour
46 what process is in place to ensure that, when there is
47 criticism of how the department conducts child protection

1 litigation, that is fed back to the department itself?
2 A. I agree with the statement that that would usually
3 occur in a court outcome form. That - on an emergent order
4 that would be completed by the legal officer --
5
6 Q. Yes.
7 A. That that would then go back to the instructing senior
8 team leader and CSO.
9
10 Q. Okay. So the court outcome form goes to the CSO and
11 the senior team leader?
12 A. Yes, to advise them of, yep, the order that was made
13 and what happened in court, typically.
14
15 Q. And is there any process by which these things are
16 sort of captured and become - form part of training or
17 inform, say, the work of the Office of the Chief
18 Practitioner?
19 A. When you talk about criticisms from the department?
20 Criticisms of the department from the court are you talking
21 about?
22
23 Q. Yes, I'm talking about that specifically.
24 A. Yes, not that I'm aware of.
25
26 Q. Okay. And you mentioned yesterday when His Honour was
27 asking you about what type of legal advice your office
28 gives and you mentioned adoption?
29 A. Yes. So - yes.
30
31 Q. And I think His Honour said, "We'll come back to
32 that." So I'm - this is where you're coming back to it.
33 A. M'hmm.
34
35 Q. Can you tell His Honour about the type of legal advice
36 you give on the topic of adoption?
37 A. So the adoptions work is largely contained by our
38 senior legal officers, and that work includes providing
39 advice to adoption and permanent care services team in
40 relation to step - largely step-parent adoptions or
41 dispensations with consent on adoptions, or where a matter
42 is ready to proceed to court for an adoptions matter.
43
44 Q. Okay. And just coming back to where I started, which
45 was on expenditure - now, I won't take you to the document,
46 but there was expenditure that you referred to in your
47 affidavit which related to paralegals. What was your

1 experience of the usefulness of that funding being spent on
2 paralegal roles within - in respect of the burden the court
3 process imposes on OCFOS?
4 A. I - the paralegal program does not sit with me. They
5 sit within the establishment of individual regions. That's
6 probably - I'm probably not the best person to answer that
7 question.
8
9 Q. I only ask it because the expenditure was in your --
10 A. Yes. That wasn't provided by me. I did not provide
11 that expenditure. That would have been provided by our
12 corporate services branch.
13
14 Q. Yes, thank you.
15
16 COMMISSIONER: Ms Sweet, before you move on to another
17 topic --
18
19 MS SWEET: Yes.
20
21 COMMISSIONER: -- can I just ask in relation to the
22 adoption issue --
23 A. Yes.
24
25 COMMISSIONER: -- can you explain to me in what context
26 your office gives advice in connection with adoption in a
27 child protection context? You mentioned dispensing with
28 consent?
29 A. On - yeah, for adoption applications, yes.
30
31 COMMISSIONER: So could you just explain to me what kind
32 of applications your office is involved with and advises
33 the department in connection with in the context of a child
34 protection - a child the subject of a child protection
35 order?
36 A. Commissioner, I don't have any direct involvement in
37 those adoption matters. Once again, I'm probably not the
38 best person to ask. And I don't have any oversight of
39 them.
40
41 COMMISSIONER: Can I assume that the department is only
42 involved in an adoption matter if the child the subject of
43 the proposed adoption is subject also to some child
44 protection order? Is that a fair assumption to make?
45 A. That would be a question for adoption and family care
46 services. I could not answer that question with any
47 certainty.

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COMMISSIONER: All right. Thank you.

MS SWEET: I just have one further topic, Your Honour --

COMMISSIONER: Yes.

MS SWEET: -- and it relates to a recommendation from the Carmody Inquiry.

I don't need to take you to any documents, but there was a recommendation that an amendment be made to the Child Protection Act to provide that before granting a child protection order the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and the family. Based on your knowledge of the Act, was that amendment made?

A. I'm not aware.

Q. And, regardless of whether it was made, when your office is putting together initiating affidavits for child protection orders is the material that you provide - does it include documents or affidavit evidence about the efforts that have been provided to support the child and the family?

A. It should, yes. It should give a really holistic view for that family, and I think that's particularly important for TAOs and TCOs given that those applications may be ex parte.

Q. Yes.

Yes, I don't have any further questions.

COMMISSIONER: Thank you, Ms Sweet. The Bar table? Who - is there --

MR CREAMER: Commissioner, I am intending asking some questions for about half an hour.

COMMISSIONER: Yes.

MR CREAMER: Could we have a short break so I could get set up; is that okay?

COMMISSIONER: Yes, of course. We'll take a 10-minute break. Thank you.

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SHORT ADJOURNMENT

[12.02 pm]

COMMISSIONER: Mr Creamer.

MR CREAMER: Thank you, Commissioner.

<EXAMINATION BY MR CREAMER

[12.16 pm]

MR CREAMER: Ms Schifilliti, I'm acting for QIFVLS. You're familiar with the Queensland Indigenous Family Violence Legal Service?

A. Yes, I am, Mr Creamer.

Q. I wanted to ask you some questions about the therapeutic jurisprudence model you've talked about or the alternative model you've talked about with Victoria.

I also understand there's a similar model that operates in Western Australia. Are you familiar with --

A. No, not the Western Australia model. I was aware of the model in Dubbo in Western New South Wales, but not aware of Western Australia.

Q. But, in any event, I take your evidence that you're generally supportive of that type of model, a therapeutic model, as opposed to a litigation model in this --

A. Absolutely.

Q. And can you tell me the reasons why you see value in adopting that type of model?

A. Yes, definitely. Look, I think it's all about - for First Nations families I think it's all about being actively involved in decision-making, and I think that self-determination is more than just consultation and participation. I think it's about decision-making. And I think that a child protection Murri Court allows that to occur.

COMMISSIONER: Could you just explain or through the witness explain, Mr Creamer, what the therapeutic model looks like, the features of it, so I can understand it?

MR CREAMER: Your Honour, if it assists, one of QIFVLS' submissions actually goes to that issue.

COMMISSIONER: Right. It just would be helpful to know that what you're referring to is consistent with the

1 witness's understanding; that's all.

2

3 MR CREAMER: It's a submission that's set out on - it's
4 dated 1 December 2025. I'm not sure what document that is
5 in the soft copy.

6

7 COMMISSIONER: That's all right.

8

9 MR CREAMER: In any event, it sets out the two examples,
10 Your Honour, the Western Australia model, the Dandjoo
11 Bidi-Ak model --

12

13 COMMISSIONER: Yes.

14

15 MR CREAMER: -- and its cultural immersion and therapeutic
16 practice, and our submission sets out a number of aspects
17 of that model: culturally designed space and welcome;
18 Aboriginal teams present during hearings; it operates in a
19 way where there's not a power imbalance between
20 decision-makers; obviously plain language and name shaming;
21 family engagement; navigational support; elevation and
22 inter-design. Those are some of the themes that we've set
23 out in our submission in respect of the Western Australia
24 model.

25

26 And in respect of the Victoria model, the Koori Court, it
27 again adopts similar examples. Has a child protection
28 practice lead, but also I think just a significant cultural
29 influence in the way the court operates and that
30 participants are - practice with that jurisdiction --

31

32 COMMISSIONER: So a removal decision would still involve
33 the exercise of judicial power?

34

35 MR CREAMER: Yes.

36

37 COMMISSIONER: But in a different context?

38

39 MR CREAMER: Yes.

40

41 COMMISSIONER: Yes.

42

43 MR CREAMER: A similar example in Queensland might be the
44 Murri Courts, Commissioner, which operated in a number of
45 jurisdictions.

46

47 COMMISSIONER: Yes.

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MR CREAMER: So at the magistrate court level greater participation from Indigenous Elders and community members, and a greater focus on culture as a place to address those issues.

COMMISSIONER: Yes.

MR CREAMER: Sorry, Ms Schifilliti, we cut you off there.
A. That's my understanding too. Yes.

Q. Yes. So you were just talking to the strengths and you said - was there anything where you hadn't addressed? That would be largely Indigenous led, self-determined, better outcomes?

A. Yeah, and culturally responsive, to make sure that decisions are made by magistrates in a way that is culturally responsive and includes the views of the community and recognises that connection to culture is a key factor in safety for First Nations children.

COMMISSIONER: Wouldn't that entail, including in the assessment, a balance of harm analysis, which is presently absent from section 10? If you were to look at the perspective of the child from the position of the child's cultural association and identity, wouldn't you need to look at, well, what is the harm if the child remains with the family or what is the harm of removal? Isn't that part and parcel of it?

A. I'm not proposing a different legislative provision in relation to that. I'm proposing a different pathway that would be available to First Nations families to be able to choose whether or not they went through the traditional Childrens Court proceedings or whether or not they went through a child protection Murri Court, and I think that's imperative, is that they're able to make that choice, not in relation to changing the legislation around a different test for First Nations children.

COMMISSIONER: Well, assuming that the court has to apply the legislation, what I'm really raising is there might be some need to look at the criteria that is established by the legislation. But, if you've answered that, that's fine.

MR CREAMER: And I think your evidence is applying the legislation in a way which is culturally appropriate to the

1 families participating in the child protection system?
2 A. Yes, and recognising that families need a seat at the
3 table and that First Nations families are bigger than just,
4 you know, the small family, you know, that they're much
5 bigger. It's about the community and the community being
6 involved in that process so that it really is culturally
7 responsive, and I think, as you pointed out, Mr Creamer,
8 that any child protection Murri Court process needs to be
9 certainly taking on the learnings, I think, from Victoria
10 in the Koori Court system and from Western Australia, and
11 possibly from Dubbo as well. You don't need to re-invent
12 the wheel. But I think that it needs to be place based, so
13 it needs to be essentially co-designed with First Nations
14 peoples in Queensland. It needs to be led in partnership,
15 I think, with the department, but they need to have a seat
16 at the table and, as I said, it's - I think that's at the
17 crux of it, is that it's led, designed and focused on First
18 Nations families.

19

20 COMMISSIONER: Well, if a family is to - any family is to
21 have a seat at the table, then that would rather suggest
22 that applications for emergent orders should not routinely
23 be made or sought ex parte; doesn't that follow?

24 A. At the moment it's a provision in the legislation,
25 Your Honour.

26

27 COMMISSIONER: Well, it allows for it?

28 A. The lawmakers have made that, yes.

29

30 COMMISSIONER: It allows for an ex parte application?

31 A. I don't know if it's appropriate for me to comment on
32 that because of that.

33

34 COMMISSIONER: It doesn't require the application to be ex
35 parte?

36 A. It may be made ex parte.

37

38 COMMISSIONER: It may be. It's permissive.

39 A. M'hmm.

40

41 COMMISSIONER: So if you want to change the process so
42 that families have a seat at the table, to use your
43 expression, the relevant table is the Bar table when it
44 comes to making an application for an emergent order, and
45 that, I'm suggesting, means that as a matter of practice,
46 unless it can't be avoided for some reason to do with
47 urgency, applications for emergent orders should not be

1 made ex parte; they should be made on reasonable notice.
2 Don't you agree that that follows from your statement that
3 families need to have a seat at the table?
4 A. My reference to Murri Court is in relation to child
5 protection order applications, because you need time --
6
7 COMMISSIONER: Not in relation to an emergent order?
8 A. In relation to child protection order applications
9 I think a Murri Court system is appropriate.
10
11 COMMISSIONER: But you wouldn't --
12 A. And that's how I think it's set up in those other
13 jurisdictions in relation to the longer term orders.
14
15 COMMISSIONER: But you would exclude from any reform
16 process applications for emergent orders, would you?
17 A. I think - I mean, you would need to work that through.
18 There's really tight time constraints around that.
19
20 COMMISSIONER: All right. Well, at least we have that
21 clear. Mr Creamer.
22
23 MR CREAMER: And this type of therapeutic model seems to
24 fit with your evidence that there should be a focus on the
25 human services model rather than litigation?
26 A. Yes.
27
28 Q. And the consequences - you've talked about some of the
29 consequences of litigation, but can you speak a little bit
30 more about the human services approach and the benefit you
31 would see for First Nations families?
32 A. So human services frameworks are family and
33 domestically violence informed. They're responsive to
34 cultural need. They've got children at the centre.
35 They're family focused. And they're trauma informed. And
36 I think that when you look at First Nations families and
37 the history of intergenerational trauma I think that's
38 imperative.
39
40 COMMISSIONER: Well --
41
42 WITNESS: So a - I'm sorry, Commissioner.
43
44 COMMISSIONER: Just tell me what all that means, a human
45 services model as opposed to a litigation model --
46 A. So a --
47

1 COMMISSIONER: -- and all of the good that will come from
2 a human services model?
3 A. A human services framework is - and I'm sorry I keep
4 using the same word - it's the only way that I can see it.
5 It's so important. It's all about relationships.
6
7 COMMISSIONER: All right.
8 A. It's all about relationships between the parents and
9 the children and the way that we work with them so that
10 they remain at the centre and they're continually the focus
11 of how we work. And I see it as us being here to serve
12 them in a really appropriate way, and I --
13
14 COMMISSIONER: And you see the litigation of issues in
15 courts to be inimical to that human services approach?
16 A. Commissioner, what I'm saying is that --
17
18 COMMISSIONER: I just don't know how we have it both ways.
19 A. Yeah.
20
21 COMMISSIONER: I mean, if you're going to say it should be
22 a court decision to remove and then - if there's concurrent
23 planning going on, prima facie I don't see that there's an
24 inconsistency with the two processes occurring at the same
25 time. But what I would like to understand because these
26 labels are bandied about with great alacrity - human
27 services model, relationships, et cetera, they're all
28 agreeable generalities. But what in practice would you do
29 to implement a human services model either in place of the
30 court's involvement in the process or alongside it? And
31 let's start with would you see it as in place of or
32 alongside?
33 A. Alongside it.
34
35 COMMISSIONER: Right. Now, what would it look like in
36 practice? What would need to be done?
37
38 MR CREAMER: This is your chance, Ms Schifilliti. You
39 might not get another one.
40 A. No pressure, Mr Creamer. No, pressure.
41
42 Q. So this is important for my client's purposes.
43 A. I think that in a human services framework having the
44 department as the applicant in child protection
45 applications would mean that the department could continue
46 to work to support children and families.
47

1 COMMISSIONER: That is a different question; okay? I've
2 heard what you've said about that. But that wasn't my
3 question. My question is, if I can repeat it: how would a
4 human services model working in tandem, on your position,
5 assuming your position is that, with the involvement of
6 the court in the process - what would it look like in
7 practice and what will we need to do at a practical level
8 to implement this human services focus or approach in
9 tandem with the litigation model continuing somehow
10 alongside it? That's what I'd like to know about.

11 A. So, following on from what I was saying, in relation
12 to what the human services - what a human services
13 framework brings, I think if you had CSOs and senior team
14 leaders continuing to support those families, then that
15 would mean that at each and every court event that there is
16 that ongoing ability to be able to have open communication,
17 to be able to continue to engage relationally with families
18 to seek to resolve matters as matters progress. There
19 would be --
20

21 COMMISSIONER: Is that not now available?

22 A. No. No, it's not, Commissioner. It's not. At the
23 moment you have a real disconnect. You have a disconnect
24 between a litigation system because it sits with an
25 independent statutory authority to the work that the
26 department is doing with children and families, and that's
27 why you're having all of these unintended consequences.
28

29 COMMISSIONER: So you put it all down, the problems and
30 the impediments to having a human services framework, to
31 the fact that there is in existence an independent
32 statutory office, the duty of which office is to consider
33 and then prosecute such child protection orders as are
34 determined by that office? You see that as the origin of
35 all of the evil when it comes to the process that the
36 litigation model entails?

37 A. I think it's a significant contributing factor,
38 Commissioner.
39

40 COMMISSIONER: All right. Thank you. Mr Creamer.
41

42 MR CREAMER: And the general principle behind a human
43 services model is support families and children with the
44 aim of reunification?

45 A. That's exactly correct.
46

47 Q. And the contrast when we're in litigation is we are in

1 court and we're arguing and we're in entrenched positions;
2 is that a fair contrast --

3 A. Yes.

4

5 Q. -- or how would you describe it?

6 A. No, that's exactly how I would describe it. I think
7 I made the comment yesterday that court work is dominating
8 case management of matters, and I think that if we can
9 shift away from that I think that that would be a positive.
10 I think that working with families and supporting families
11 and having family-led decision-making in this process takes
12 time, and that doesn't necessarily align with court events,
13 and I think that if you had a child protection Murri Court
14 that that would certainly allow that to occur. I mean, it
15 would occur similarly, you know, in a Childrens Court if
16 you were allowed - if you went back to a human services
17 framework that supported that, that sat alongside
18 litigation.

19

20 As I said this morning, Commissioner, I think the pendulum
21 has swung too far in a litigation - towards litigation and
22 away from human services, and I think that it needs to
23 recalibrate to refocus on children and families.

24

25 COMMISSIONER: Yes, I think --

26

27 MR CREAMER: One of the challenges here from this Inquiry
28 is if there is a single model it could ultimately mean the
29 end of OCFOS?

30 A. Yes, I appreciate that.

31

32 Q. And moving towards a greater, bigger DCPL model?

33 A. M'hmm.

34

35 Q. And greater litigation and perhaps greater level of
36 unintended consequences?

37 A. Yes.

38

39 Q. What would you see as the downsides for First Nations
40 families if that was the case?

41 A. That would be devastating, Mr Creamer. I see the
42 current model as being incongruent with self-determination
43 for Aboriginal and Torres Strait Islander families.

44

45 COMMISSIONER: What, if any, weight do you give to the
46 importance of any decision to remove a First Nations child
47 being open to scrutiny and being the result of a decision

1 made by a court on evidence relating to the need to protect
2 the child?

3 A. I'm not sure if I understand your question,
4 Commissioner.

5
6 COMMISSIONER: Do you not accept that it is important that
7 whenever a child is removed, any child, that there is a
8 solid credible basis for the removal of the child in order
9 that there be public confidence in the system, that there
10 must be - I won't keep repeating it. Do you not understand
11 my proposition?

12 A. No, I think I understand, Commissioner. You're saying
13 that there must be - it must be subject to scrutiny, must
14 be robust, and it must be - there must be credibility
15 behind it; I understand that.

16
17 COMMISSIONER: And presently the way the system operates
18 requires the satisfaction of the court when it comes to
19 making an order for the removal of a child?

20 A. Yes.

21
22 COMMISSIONER: Now, I think you've already said that you
23 don't suggest that some body, entity, other than the court
24 should be a decision-maker - should be the decision-maker
25 when it comes to the removal of a child?

26 A. Yes.

27
28 COMMISSIONER: Right. So it's a judicial --

29 A. I think that ultimately the court's the
30 decision-maker.

31
32 COMMISSIONER: -- exercise of judicial power?

33 A. M'hmm.

34
35 COMMISSIONER: And don't you accept that because it is the
36 exercise of judicial power that fact provides public
37 confidence in the system?

38 A. Yes.

39
40 COMMISSIONER: And that public confidence is important
41 generally and especially important to provide confidence to
42 Aboriginal and Torres Strait Islander peoples that their
43 children are not, as has occurred in the past, being
44 removed without sufficient basis to do so?

45 A. M'hmm.

46
47 COMMISSIONER: Right. So that's the court process, isn't

1 it --

2 A. Yes.

3

4 COMMISSIONER: -- being invoked? And that process has to
5 be reliable and open to scrutiny, do you accept?

6 A. Yes, yes.

7

8 COMMISSIONER: So how does one balance that interest,
9 which I think you accept, with somehow modifying the
10 process so that the matters that are relevant to assist
11 with reunification, for example, are well supported, and in
12 what way do you see the court process, if you accept it is
13 necessary, being modified so as to better enhance the
14 participation by First Nations peoples and also to better
15 enhance the human services framework operating necessarily
16 alongside the litigation model, unless it is your
17 contention or somebody's contention that the
18 decision-makers when it comes to the removal of a child
19 should be some entity other than a court? See, put it
20 another way, you can't have it both ways. If you want the
21 confidence that comes from the decision to remove being a
22 decision made by a court, it being a highly consequential
23 exercise of State power, then that process must be robust;
24 do you not agree?

25 A. Yes.

26

27 COMMISSIONER: Right. So how do we - if we're going to
28 accept the proposition that the court should remain
29 involved as the decision-maker when it comes to removal and
30 that it is important that those decisions are well founded
31 in order to have confidence that children are not being
32 removed for the wrong reasons or for inadequate reasons,
33 and that we're not stealing another generation of
34 children --

35 A. M'hmm.

36

37 COMMISSIONER: -- how do we do that while at the same time
38 doing what you suggest should be done, which is to have the
39 human services framework also operating concurrently with
40 the court process?

41 A. Commissioner, in relation to Aboriginal children, I'm
42 assuming you're referring to, the magistrates --

43

44 COMMISSIONER: Well, I'm referring to all children, but
45 with particular regard to Aboriginal children in connection
46 with the consequences of the poor decision-making
47 concerning the removal of an Aboriginal child. And I've

1 heard evidence in fact from Mr Creamer's I think Chief
2 Executive that there remains a view afoot that children,
3 Aboriginal children, are being removed without sufficient
4 basis. Now, that view would be seriously undermining of
5 public confidence in the system and calls into question the
6 process, the court processes, the quality of the material
7 put before the court, the ability of Aboriginal and Torres
8 Strait Islander peoples and others to have a seat at the
9 table at critical decision-making points, including at the
10 emergent order stage and including having the opportunity
11 for representation in order to do so?

12 A. Commissioner, if you could - if you could come up with
13 a way where you could do an emergent order that allowed
14 sufficient time in the circumstances for the involvement of
15 First Nations people as part of that process that would -
16 I think that would be good.

17
18 COMMISSIONER: Yes.

19 A. But it comes down --

20
21 COMMISSIONER: Well, I think it would be good too. That's
22 what I'm wanting your help with.

23 A. It comes down to timing, but. They're emergent
24 orders. They're same-day orders given the circumstances of
25 the matters.

26
27 COMMISSIONER: They may not need to be all the time, and
28 the question of the duration of the order is something that
29 can be considered, the way they're extended, et cetera.
30 But that's just one aspect of it. The point that I'm
31 really trying to make is that either you have a court
32 process which is to provide confidence for all concerned in
33 the actions of the State when it comes to protecting
34 children or you don't. If you do, there is no point sort
35 of lamenting in a handwringing way about the fact that
36 there's a litigation process because that is the element
37 that provides the public confidence and should provide
38 confidence to the people involved. That isn't to say that
39 the litigation process is the only process to be
40 considered, and what you've said is that it gets in the way
41 of the human services framework, and I want to understand
42 why that is so and how things might be changed so that the
43 two processes can co-exist more happily. And I must say it
44 was my understanding that the concurrent planning efforts
45 of the department continue alongside and in tandem with the
46 court process, and maybe they need to be improved, made
47 more robust. I'm not sure yet. But the proposition that

1 is embedded in your evidence is that the two are
2 inconsistent courses of action, or might be, and that's the
3 point that I seek to question.

4 A. Commissioner, I'm not saying that working in a human
5 services framework and a litigation framework are
6 inconsistent with each other. There will always need to be
7 litigation. My suggestion is that you need to have CSOs
8 and senior team leaders continuing to work throughout that
9 process with families rather than it becoming purely about
10 the litigation. It needs to be an ongoing continuum of
11 support to families and working with the families in the
12 hope that you would reunify those children to those
13 families. I'm not saying that they're separate processes.
14 I'm saying that they need to sit alongside each other, but
15 at the moment there's a real disconnect between those, and
16 I think that's where we need to improve, and I think if we
17 can improve that then all of the - or most of the
18 unintended consequences that you're seeing at the moment
19 I think could be resolved.

20

21 COMMISSIONER: All right. Well, that's good to know. I'm
22 just trying to understand the boundaries of our debate here
23 and --

24 A. Yeah, it's about that ongoing engagement that
25 continues to happen, that open communication that continues
26 to happen between families and the department, and what
27 that looks like, and for First Nations families it's about
28 them having ongoing engagement and being involved,
29 participating in that process.

30

31 COMMISSIONER: And being facilitated to participate?

32 A. Yes. Yeah.

33

34 COMMISSIONER: I understand.

35 A. And if that doesn't occur, Commissioner, then you -
36 I think you have a poorer trajectory for children and
37 families.

38

39 COMMISSIONER: And at present you consider that the court
40 process deflects somehow the best processes that could
41 occur if a human services framework were operating truly in
42 tandem with the court process?

43 A. That's absolutely correct, Commissioner.

44

45 COMMISSIONER: Right. Good.

46

47 Mr Creamer, I'm sorry, I wanted to get those matters clear.

1
2 MR CREAMER: And, Ms Schifilliti, we've heard that in that
3 model providing support to families it's best done through
4 Aboriginal community-controlled organisations?
5 A. Yes, through delegated authority, yes.
6
7 Q. And you would agree with that, no doubt?
8 A. Yes.
9
10 Q. I want to turn to a different topic, and probably
11 equally as controversial, but let me ask it.
12 A. Thank you, Mr Creamer.
13
14 Q. My client has had a number of concerns in relation to
15 evidence it's heard not just during this Inquiry but
16 through practising in the jurisdiction around the failure
17 to comply with a number of the department's obligations?
18 A. Are you talking about the child placement principle?
19
20 Q. I'll walk you through them. So firstly the
21 obligations under the Human Rights Act?
22 A. M'hmm.
23
24 Q. And you'd be familiar with section --
25 A. Section 28, m'hmm.
26
27 Q. -- 28? Yes. Thank you. And section 26, which is the
28 protection of families?
29 A. M'hmm.
30
31 Q. And then also in respect of including the charter, in
32 relation to the Act itself, the Child Protection Act?
33 A. M'hmm.
34
35 Q. The charter. So ensuring Aboriginal and Torres Strait
36 Islander children can maintain their cultural connections.
37 And we've heard during the course of this Inquiry a number
38 of non-Indigenous carers actually talking to the weaknesses
39 in their cultural plans --
40 A. M'hmm.
41
42 Q. -- the inability or lack of resources to maintain the
43 cultural connection for children, and I wanted to ask in
44 this context you provide advice to the department on a
45 number of issues, or your office does?
46 A. Yes, that's correct.
47

1 Q. You spoke about that yesterday afternoon and this
2 morning. Do you provide any advice in respect of
3 compliance with the Human Rights Act for Aboriginal and
4 Torres Strait Islander children?

5 A. We provide advice in relation to the Human Rights Act
6 and in relation to active efforts and the child placement
7 principle. Sorry, I'm probably not speaking loud enough.
8 Mr Creamer, I don't know if all of these documents have
9 been provided to the Commission so far, but I've reviewed
10 the documents that we have as resources for our legal
11 officers in supporting them to give legal advice to the
12 department. There are numerous documents. If you will
13 indulge me, we have "Attending a legal consult with OCFOS,
14 information for CSOs". That goes through the
15 recommendation that cultural practice advisers be invited
16 to attend all legal consults in relation to First Nations
17 families. It talks about in relation to preparing - CSOs
18 preparing for a legal consult for emergent orders that if
19 it's a First Nations child that there's an independent
20 person for the parents and the children, and it asks what
21 active efforts have been undertaken to prevent the
22 children's entry in the child protection system.

23
24 Q. Can I ask you this question, and I appreciate there's
25 a --

26 A. Yes.

27
28 Q. One of the challenges in this jurisdiction, child
29 protection, and we've seen it in other states, "Family is
30 culture", a New South Wales report --

31 A. M'hmm.

32
33 Q. -- is there's policies, there's legislation, but
34 there's a breakdown in practice, and what I'm particularly
35 interested in is there is legislation, there's human rights
36 legislation, there's the Child Protection Act, there's the
37 placement principles and a number of other things, but what
38 we've heard is a breakdown in practice, and I'm
39 particularly interested in does your office provide any
40 advice where there are those - where there is that
41 breakdown in practice, which is consistent with what this
42 Inquiry's heard?

43 A. We provide advice to CSOs and senior team leaders
44 around the obligations, and it's then a matter for them in
45 their practice. So we ask the questions, we include the
46 information that's provided by the CSOs and the senior team
47 leaders in relation to the legal advice that we provide,

1 and if we do a written legal advice it will cover off on
2 all of that. In relation to our template documents for
3 initial affidavits, that's also addressed in all of those
4 documents. So we address it with the CSOs and the senior
5 team leaders, and how they can engage with families in
6 ensuring that the elements of the child placement principle
7 are followed.

8
9 Q. So it's more of a training tool as opposed to
10 providing advice where there's instances of failure to
11 comply, for example?

12 A. Yes.

13
14 Q. And I wanted to ask you about the STM tools along the
15 same frame. We know they're no longer used, but --

16 A. That's probably not a question for me, Mr Creamer.
17 I don't have any involvement at all in the STM tools, nor
18 does my team.

19
20 Q. Can I ask you this, though. Was there any advice
21 provided after those tools were removed about the bias
22 associated with the tools and any legal consequences of
23 that bias?

24 A. I can't remember. I can't recall. I don't - I don't
25 know.

26
27 Q. And how would we be able to find that out from your
28 office?

29 A. It wouldn't be through my office. I wouldn't be the
30 right office.

31
32 Q. So I can assume that your office didn't provide that
33 advice?

34 A. Oh, no. No, no, no.

35
36 Q. I wanted to ask you now about the court process
37 generally.

38 A. M'hmm.

39
40 Q. And there's a number of criticisms or experiences that
41 my client raised in their submissions, and our general
42 approach is this, that some of those issues could be
43 resolved by way of practice directions?

44 A. From the court?

45
46 Q. From the court.

47 A. M'hmm.

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Q. Which aren't available in child protection matters generally; do you agree with that?

A. Yes.

Q. And so some of those issues around filing, notice, timelines, the evidence and whether or not rules of evidence should apply, those are matters which could ultimately be addressed in appropriate practice directions by the court?

A. Agreed.

Q. And that might obviously be a sensible way to resolve some of the issues which seem to infect the evidence in the current proceedings?

A. I agree.

Q. The other point I wanted to raise was in respect of legal advice.

A. M'hmm.

Q. Now, my clients have raised with the Commission, and a number of witnesses, the importance of early notifications and legal representation generally - and I need to make sure you acknowledge that on the transcript, so "yes", "no"? I will say this: but there's real value in having legal representation for families going through this process?

A. Yes.

Q. And, as I say, we've raised the importance of having an early notification process for First Nations families, whether that's to QIFVLS, ATSILS or Legal Aid, and ensuring they get early - representation at the earliest possible point. Did you have any - do you agree that would be a sensible approach?

A. Yes, I do.

Q. And that would obviously be important for ensuring better outcomes; we know that the evidence supports that families that do have legal representation have better outcomes through the court process?

A. I believe that parents and children should all have legal representation, Mr Creamer.

Q. And at the earliest possible occasion?

A. Yes, Mr Creamer.

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Q. And that would obviously necessitate at the emergent order stage then?

A. If there was time.

Q. Now, the only other question I wanted to raise was in respect of this oversight of policies and legislation. Obviously your department hasn't provided advice on certain things. But what has been a consistent theme during the course of this Inquiry is there are some limitations to oversight, there are some limitations to compliance?

COMMISSIONER: Can you just provide some context to that for the benefit of the witness, please, Mr Creamer? It's a bit general.

MR CREAMER: Yes. So just going back to those questions I asked in respect of section 28 of the Human Rights Act --

A. M'hmm.

Q. -- and in respect of children maintaining cultural connection, in respect of the efforts to identify families, for example, or kin in compliance with the Aboriginal child placement principles, so these types of issues --

A. Yes.

Q. -- in respect of First Nations children, and one of their proposals and which my client makes is a body with independent oversight powers, whether that would be an Aboriginal commissioner of children or whether that's something that should rest with the QFCC. But would you agree there's a need for better oversight and independence in that process generally?

A. I think it would be beneficial.

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

COMMISSIONER: Thank very much, Mr Creamer. Does anybody else have questions? I understood that ATSILS want to ask a few questions.

MR SCHMIDT: Apologies, Commissioner.

COMMISSIONER: Yes. No need to apologise.

2
3 MR SCHMIDT: I'll be very, very brief. I think most
4 issues have already been canvassed.

5
6 Good afternoon, Ms Schifilliti. My name's Michael Schmidt.
7 A. Hello.

8
9 Q. There was - you were talking yesterday about
10 alternative dispute resolutions and that being a potential
11 alternative pathway to litigation; is that right?

12 A. I was talk - yeah, I was talking about early
13 engagement and prior alternative action --

14
15 Q. Okay.

16 A. -- I think was a comment that I made.

17
18 Q. Not a problem. Are you aware of - just to give an
19 example, of the pre-action procedures that exist, say, for
20 example, in family law?

21 A. Oh, very broadly. Very broadly.

22
23 Q. You've never had the misfortune of practising in
24 Family Court, I take it?

25 A. As I said this morning, not for a long time.

26
27 Q. No, not a problem.

28
29 Perhaps if I tender this, Commissioner. I may have
30 provided you an extra one, sorry.

31
32 COMMISSIONER: Just pardon me for a moment. I'll get the
33 exhibit number. Pre-action procedures for parenting cases
34 will be AT-6

35
36 **EXHIBIT #AT-6 - PRE-ACTION PROCEDURES FOR PARENTING CASES**

37
38 MR SCHMIDT: Thank you, Commissioner.

39
40 If you could turn to page 4 for me just in those pre-action
41 procedures there's a very helpful diagram of the way that
42 jurisdiction tends to operate as an alternative dispute
43 resolution pathway. Now, I should preface this by saying
44 that this is not in all matters of the Family Court. In
45 matters of urgency there's obviously exceptions. But, if
46 I just step through this pathway very quickly, there
47 includes a compulsory dispute resolution conference. If

1 there's an outcome from that, there can be consent orders
2 or written agreements. If the matter does not resolve,
3 parties must be given written notice of intention to file,
4 and then eventually a person files.

5
6 Would a pathway like that - where a mediator with Child
7 Safety and the parents, an agreement could be reached
8 through that process, if agreement is reached perhaps that
9 could be filed with the court, could that be something as
10 an alternative in some matters to litigation?

11 A. I note page 2 of the document that you've provided
12 sets out numerous dot points, all of which apply in child
13 protection matters, and that these applications are exempt
14 in those matters. So I would have those concerns. But in
15 relation to dispute resolution I think that there is a real
16 value in making - in child protection order proceedings -
17 I'm sorry.

18
19 Q. Sorry, Ms Schifilliti, I was getting some extra
20 advice.

21 A. Sorry.

22
23 Q. Please, if you could repeat that.

24 A. I was just going to say I think that there is
25 definitely - so yeah. So back to page 2.

26
27 Q. Yes.

28 A. There's exemptions there about why it's not
29 appropriate in the Family Court jurisdiction, and those
30 exemptions all apply in the child protection space: if the
31 matter's urgent, if the court is satisfied there are
32 reasonable grounds to believe that there's been child abuse
33 or family violence by a party, there is a risk of family
34 violence by a party, or there is a risk of child abuse if
35 there were to be a delay in applying to the court. So all
36 of those apply in child protection. So on that basis
37 I would have some concerns.

38
39 But in relation to bringing forward a dispute resolution,
40 you know, what is essentially a court-ordered conference at
41 the moment, bringing that forward definitely in child
42 protection order proceedings I think there would be some
43 real benefits in that.

44
45 Q. Is the downside to, say, the current court-ordered
46 conference process that it seems to be the last step before
47 the matter is listed for a contested hearing, so it's

1 towards the back end of litigation --
2 A. Yes.
3
4 Q. -- rather than more towards the front?
5 A. Yes.
6
7 Q. So it's your view that that court-ordered conference
8 process should be brought towards the front end of
9 litigation, as opposed to where it is now, which is towards
10 the back?
11 A. I think it would be helpful. I mean, one of the
12 reasons I - and it's in a space that I don't currently
13 operate in, but I don't think it's difficult to reconcile
14 that. I mean, at the moment it's to narrow the issues in
15 relation to going to a contested hearing, but I think, you
16 know, a version of that would be really helpful for
17 families to be at the table and to be part of those
18 discussions to try and resolve the matter earlier, yes.
19
20 Q. But there are alternatives that do exist currently,
21 such as intervention with parental agreement, or IPAs --
22 A. Yes.
23
24 Q. -- or assessment care agreements --
25 A. M'hmm.
26
27 Q. -- or - I think there was another type of agreement --
28 A. Child protection care agreements?
29
30 Q. Care agreement. Thank you. Yes.
31 A. Yep. At different stages.
32
33 Q. Yes.
34 A. Yeah.
35
36 Q. So that process that exists right now with parents
37 working with Child Safety to develop an intervention with
38 parental agreement, is that a mediated process or is that
39 something that's just done directly between the parents and
40 Child Safety?
41 A. We don't tend to have a lot of involvement in relation
42 to safety plans and things like that, but my understanding
43 is probably on advice from the Office of the Chief
44 Practitioner, you'd be better off guided - asking that
45 question through them. We don't tend to give a lot of
46 advice in that space. They're voluntary interventions. We
47 give advice on assessment, care agreements and child

1 protection care agreements in - yeah, by way of voluntary
2 things, but beyond that not in relation to safety plans,
3 which are part of IPAs as well.
4

5 Q. Okay. Now, we've talked a lot about the temporary
6 assessment orders, temporary custody orders and court
7 assessment orders. Now, the test involved with making a
8 temporary assessment order, it doesn't apply section 10, it
9 applies a different standard when it comes to making those
10 orders, that being that the court may make an order if an
11 investigation is necessary to assess whether a child's in
12 need of protection and an investigation cannot be properly
13 carried out unless the order is made?

14 A. M'hmm.

15
16 Q. So would it be fair to say that is a lower threshold
17 for making of that order than, say, a temporary custody
18 order or a child protection order generally, given the
19 standard of section 10 is not being applied?

20 A. They are very different tests.

21
22 Q. Yes.

23
24 COMMISSIONER: But isn't the point to investigate whether
25 section 10 --

26 A. Yes.

27
28 COMMISSIONER: -- does apply? So it's anterior to that
29 conclusion, isn't it?

30 A. Yeah, the - it's the investigation to assess whether a
31 child is in need of protection, which is the section 10.

32
33 MR SCHMIDT: Now, just to pick up on that, when it comes
34 to a child protection investigation what cannot be
35 investigated in the absence of an order, is your
36 understanding? What I'm trying to question I suppose is an
37 order is not necessary for Child Safety to conduct an
38 investigation; is that right?

39 A. Yes, you could enter into an assessment care
40 agreement, which is a voluntary intervention.

41
42 Q. Well, the agreement of a parent is not even required
43 for an investigation to be carried out; isn't that correct?

44 A. For an assessment care agreement, yes, the parent's
45 consent is required.

46
47 Q. Sorry, I'll be more specific. My apologies. To

1 assess as to whether a child is in need of protection,
2 Child Safety has the power to investigate that question
3 with or without an order; isn't that correct? Sorry, in an
4 investigation and assessment --

5
6 COMMISSIONER: Mr Schmidt, doesn't that come down to a
7 question of what power is required in order to effectively
8 investigate? Certainly the department can take an
9 investigation, I imagine, so far, can take it further with
10 the agreement of a parent. But let's assume no agreement
11 is reached. Mightn't there be practical impediments in
12 terms of the power of the department to effectively
13 investigate in the absence of a temporary assessment order?
14

15 MR SCHMIDT: That is a fair question, Commissioner, and
16 one I'm looking to explore in terms of what powers does the
17 department gain through the making of a temporary
18 assessment order they did not have previous to the making
19 of that order.
20

21 COMMISSIONER: All right. Well, let's --
22

23 WITNESS: If you have a look at the specific provisions,
24 they talk about, you know, whether or not that it's custody
25 or not custody in relation to that, whether or not, you
26 know, you're seeking an order for medical examination or
27 treatment --
28

29 MR SCHMIDT: That's a good point. So, if there does need
30 to be a medical examination or treatment of a child and the
31 parent's not agreeing, that would be an example of why you
32 would need that provision under a temporary assessment
33 order?
34

35 A. That's correct.
36

37 COMMISSIONER: What about entering upon the premises?
38

39 A. That's - yes, and that would also need to be a
40 provision. So entering premises. Authorisation to have
41 contact with the child is another reason why you may need
42 it. Yeah, so there's numerous, and that's all set out in
43 the legislation.
44

45 MR SCHMIDT: Yes, yes. But in terms of having contact
46 with a child, the department, for example, can have contact
47 with the child when the child's at school without the
parent's consent currently without an order; isn't that
right?

1 A. Under a separate section of the Act.
2
3 Q. Yes.
4 A. Yes.
5
6 Q. Yes.
7 A. And there's provisions around that and parameters,
8 yes.
9
10 Q. And - perhaps I'll start here. A section 159
11 request --
12 A. For information sharing?
13
14 Q. Yes. That doesn't require an order, does it?
15 A. No. So you can do that.
16
17 Q. Okay.
18 A. M'hmm.
19
20 Q. Could you just explain to the Commission what a 159
21 request is and --
22 A. It's information exchange. So we can request
23 information from other agencies. So it's in relation to -
24 for example, you would most commonly request that from,
25 say, QPS, the Queensland Police Service, from
26 Queensland Health, from Education, to be able to inform the
27 department.
28
29 Q. And those information requests, they don't require a
30 subpoena or a warrant or anything of that sort, do they?
31 A. No, no.
32
33 Q. They can include, for example, medical information
34 for - about a child and a parent, for example?
35 A. Yes, yes.
36
37 Q. Including therapeutic records?
38 A. Yes.
39
40 Q. So in circumstances where - so for most tasks that
41 would be required during an investigation they can be
42 carried out in the absence of an order; is that fair to
43 say?
44 A. No, I don't agree.
45
46 COMMISSIONER: It's a bit general.
47

1 MR SCHMIDT: It is very general.
2 A. It is very general, and it turns on the circumstances
3 of any particular matter.
4

5 Q. Okay.

6 A. I think part of the information that needs to fill in
7 the rest of that picture is the gravity or the significance
8 of matters that come to the attention of the department.
9 There - these are - I don't think I can emphasise it enough
10 without getting into the details, but there's - there're
11 quite horrific circumstances that relate to children, and
12 sometimes an order is required to enable that investigation
13 to properly be carried out.
14

15 Q. And a temporary assessment order can be made with or
16 without custody as the Chief Executive?

17 A. That's correct, yes.
18

19 Q. Okay. So, if it was just that they needed to have
20 authorised contact with the child and that would assist in
21 the completion of an investigation, a TA0 could be sought
22 without custody, for example?

23 A. Yes, yes.
24

25 Q. Okay. Thank you. Okay. Thank you very much for your
26 time.

27 A. Thank you.
28

29 COMMISSIONER: Thank you, Mr Schmidt. Is there any
30 re-examination?
31

32 MR HASTIE: Yes, could I just ask two questions?
33

34 COMMISSIONER: Of course.
35

36 MR HASTIE: I realise the time, Commissioner --
37

38 COMMISSIONER: No, it's all right. We'll carry on.
39

40 MR HASTIE: -- but we could finish this witness, and no
41 doubt you'll be happy, before lunch.
42

43 COMMISSIONER: No, carry on.
44

45 **<EXAMINATION BY MR HASTIE** **[1.04 pm]**
46

47 MR HASTIE: You've said in answer to a question from

1 Mr Creamer that some of the court processes could be
2 improved by, say, practice directions from the court?

3 A. Yes.

4
5 Q. What sort of practice directions and what about?

6 A. I think Mr Creamer did a very good job of articulating
7 what they could look like. I think there would be some
8 real benefit in talking about timeframes for matters to
9 move through the court more efficiently. I think that that
10 would probably be one of the biggest benefits.

11
12 Q. Just the court setting out what they expect to happen
13 within a short period - within a period of time?

14 A. Yes, yes.

15
16 Q. All right. Anything else?

17 A. Off the top of my head, no, I think that's probably
18 the most significant.

19
20 COMMISSIONER: Can I just ask in relation to that question
21 have you had any communications with the court about what
22 practice matters might be considered for modification,
23 bearing in mind that the court sets its own rules without -
24 I believe not subject to direction from the government, and
25 therefore if there are some concerns about practice that
26 could be improved of the kind that Mr Creamer mentioned
27 wouldn't it be a good idea to communicate those concerns to
28 the Chief Judge or the Childrens Court?

29 A. Yeah, there's a Childrens Court committee that
30 convenes, and there was - they were in the process of
31 drafting some practice directions a while back. I'm not
32 aware that they have been finalised.

33
34 COMMISSIONER: But have you communicated some suggested
35 changes to court practice to the court?

36 A. We were consulted in relation to the practice
37 direction at the time.

38
39 COMMISSIONER: Is there --

40 A. I can't recall the specifics of that practice
41 direction, sorry, Commissioner.

42
43 COMMISSIONER: Is there some document where you've set out
44 what, from your perspective, might be changed in terms of
45 the court rules or practice and procedures?

46 A. Not that I can recall.

47

1 COMMISSIONER: All right. Thank you.
2
3 MR HASTIE: And then one other question or issue. You've
4 got still exhibit CA-50 there, the one that my learned
5 friend tendered about the temporary assessment order?
6 A. CA-50? Is it in one of these folders?
7
8 Q. It's the draft application - sorry, it's an
9 application --
10 A. Okay. Let me find that. Sorry --
11
12 Q. -- for a temporary assessment order.
13 A. -- there's a lot of documents up here.
14
15 Q. My learned friend asked you some questions about it.
16 A. M'hmm.
17
18 Q. Ms Sweet is happy to let you borrow hers for the
19 moment. Just don't take it away with you.
20 A. I think I have it. Yes. Thank you.
21
22 Q. All right. Now, my learned friend took you to
23 paragraph 11?
24 A. Yes.
25
26 Q. And you will observe if you go back - there's some
27 other parts of the document I want to take you to. On the
28 first - paragraph 1 says that - leaving aside the name and
29 the places, if you wouldn't mind - that the newborn was
30 born on the 28th of June 2024?
31 A. Yes.
32
33 Q. And if you go to the last or the second last page
34 you'll see that the application was affirmed on 28 June
35 2024?
36 A. Yes.
37
38 Q. And if you go to page 3 at paragraph 19 you'll see on
39 5 February 24 there was a notification, presumably to the
40 department, about a one-year-old?
41 A. Yes.
42
43 Q. At the what would seem to be the same address as the
44 parents?
45 A. M'hmm.
46
47 Q. And then in paragraph 21 there's another - what's

1 regarded as an additional notification on 26 February --
2 A. Yes.
3
4 Q. -- 2024. Can I - this is by the by in a sense, but we
5 can see that there seemed to be significantly more
6 notifications than there are of children. Is this an
7 indication of what happens from time to time if the
8 department receives multiple notifications about one child?
9 A. Yes.
10
11 Q. All right. But in this case it's a one-year-old, and
12 you'll see that the notifier, like the notifier did the
13 previous time, but this time whether or not it's the same
14 one you wouldn't know, I take it?
15 A. No.
16
17 Q. All right.
18 A. The department would know.
19
20 Q. Yes. All right.
21 A. Yes.
22
23 Q. Okay. In paragraph 21 there's a reference to the
24 sorts of situations and things that occurred in that
25 household, apparently drug related, violence and a
26 transient household?
27 A. Yes.
28
29 Q. If you go onto the next page you'll see further
30 reference to drugs being at that household and the little
31 boy being up until 3 am?
32 A. Yes.
33
34 Q. And the notifier in paragraph (m) referring to the
35 mother saying she's going to strangle him; you see that?
36 A. Yes, yes.
37
38 Q. All right. If you go to paragraph 22 you'll see
39 further concerns being reported in March 2024, and in
40 paragraph 23 those concerns are reported again, and again
41 another reference to the place being a well-known drug
42 house?
43 A. M'hmm.
44
45 Q. And an injury occurring to the child?
46 A. Yes.
47

1 Q. In paragraph 24 you'll see there's the first reference
2 to the mother being pregnant?

3 A. Yes.
4

5 Q. And there's a little bit more of the history there
6 about the mother having been to - having extensive mental
7 health history with multiple presentations to the ED.
8 Presumably that's the emergency department?

9 A. Yes.
10

11 Q. And with drug-related concerns, self-harm, suicidal
12 thoughts and mental health concerns?

13 A. Yes.
14

15 Q. And there's a reference there in subparagraph (b) and
16 (c) to what seems to be on the face of it that the notifier
17 might indeed be a hospital or a doctor?

18 A. I can't comment on that.
19

20 Q. That suggests by the reference to what the medical
21 history suffers and the polysubstance positive results from
22 the mother suggests that at least there's a reference to -
23 that someone knows some medical history of this mother, the
24 pregnant mother? It's a reasonable inference if you're
25 reading this document?
26

27 COMMISSIONER: It speaks for itself, Mr Hastie.
28

29 WITNESS: Yes.
30

31 MR HASTIE: Thank you. Thank you, Commissioner
32

33 WITNESS: I can't comment in relation to notified details,
34 yeah.
35

36 MR HASTIE: All right. And then in subparagraph (d) the
37 notifier seems to be concerned about the mother's moods,
38 drug use, self-harm and her ability to look after an unborn
39 child - a baby?

40 A. Yes, I can see that.
41

42 Q. And in paragraph 25 there's again another reference to
43 the mother being this time 36 weeks pregnant, having
44 presented - I don't know where to, but the notifier being
45 aware that the mother's known for drug use, she used
46 amphetamines, methadone, benzodiazepine, marijuana and
47 having tested positive to that?

1 A. Yes, I see that.
2
3 Q. And then there's a reference to the - what's said to
4 be the father, and he was present in the hospital, and
5 there was a suspicion that he was using drugs, and he was
6 yelling and eventually he was asked to leave?
7 A. Yes.
8
9 Q. All right. So this is a week prior to the application
10 being made. And in subparagraph (d) the notifier is aware
11 that the mother decided to leave the hospital, and then she
12 had to be seen by a mental health team, and she was picked
13 up and brought back?
14 A. Yes.
15
16 Q. Do you see all that?
17 A. Yes.
18
19 Q. And in subparagraph (e) the notifier - it suggests it
20 was the hospital, doesn't it?
21 A. Once again, I can't comment.
22
23 Q. This information - well, the fact that they're brought
24 back to hospital. Anyway. The notifier then aware that
25 the prenatal mental health services were being contacted by
26 the hospital if - that [REDACTED] had no preparation for the
27 baby --
28
29 COMMISSIONER: We'll just strike the reference to the
30 name.
31
32 MR HASTIE: I'm sorry.
33
34 COMMISSIONER: That's all right.
35
36 MR HASTIE: The mother having no preparation for the baby
37 and the notifier being aware that the doctor was concerned
38 for liver functions, including her use of amphetamines.
39 And then subparagraph 6, an unborn risk --
40 A. Yes.
41
42 Q. -- alert was sent, and then on the 28th the hospital -
43 sorry, the child safety officers attended - I'm sorry, on
44 the 28th the baby was born, and then the child safety
45 officers attended and tried to speak to the - or did speak
46 to the parents?
47 A. Yes.

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Q. Now, the other aspect that I wanted to draw your attention to was --

COMMISSIONER: Mr Hastie, you've put the sort of contextualising facts, noting from this affidavit, to the witness. Is there a question that you want to ask her?

MR HASTIE: Yes, there is, Commissioner, but the witness hadn't had a chance to look at this.

COMMISSIONER: No.

MR HASTIE: So if - and you've seen - if I could take you to the next part of it where the - leaving aside the criminal history that's referred to, there's the - paragraph 28 refers to the investigation and assessment, and they'd spoken to the parents?

A. Yes.

Q. And the threats that were made about the baby, and if you look at subparagraph (j) there's - the CSO sought the parents' consent to enter into an assessment care agreement and they refused. And then subparagraph (k), then they were informed that the - about the child being, in their view, at immediate risk of harm and that Mr - sorry, and that the father stormed out - angry and stormed out of the room?

A. Yes.

Q. Now, this would be - you see, my learned friend took you to where it was said in the application that - it's subpara - so going back to paragraph 11 --

A. Yes.

Q. -- that the parents had been advised of the application and that the department would seek their views on whether they wish to be heard. You mentioned before in your evidence that an email would be sent to the court about whether they did wish to be heard. Is this the sort of thing that might be sent to the court informing the court of the situation, and the email may or may not be able to - the department may or may not be able to inform the court whether the parents wish to be heard on the application?

A. Yes.

1 Q. And is this type of situation the type of situation,
2 in your experience, that wouldn't be unusual as a basis for
3 an application for a temporary assessment order?

4 A. Yes, this is a - this is the kind of application that
5 we would - that wouldn't be uncommon.
6

7 Q. With the facts that have been outlined in this
8 application?

9 A. Yes.
10

11 Q. All right. And you indicated I think to my learned
12 friend before - Mr Schmidt, I think it was - that some of
13 the pre-action procedures wouldn't be suitable in your view
14 that are referred to in the Family Court, that is
15 reasonable grounds to believe further abuse of the child or
16 family violence or the matter being urgent?

17 A. That's correct.
18

19 Q. That's the sort of thing in your view that wouldn't be
20 suitable for either presumably a pre-action procedure of
21 some kind or service?

22 A. Yes, I agree.
23

24 MR HASTIE: Thank you, Commissioner.
25

26 COMMISSIONER: Ms Schifilliti, may I just make this
27 observation to you in relation to the affidavit you've now
28 been taken to, and that is this case, which I've heard a
29 great deal of evidence about in detail, is I think at the
30 probably higher end of complexity in terms of the factual
31 circumstances and it involves numerous children, numerous
32 removals, the removal of a newborn child, but I think is
33 not unique in terms of the challenges faced by the
34 department in explaining why a decision is made to apply
35 for an order.

36 A. Yes.
37

38 COMMISSIONER: And my point is simply this: because the
39 order concerns a child in a family context which is a
40 unique set of circumstances and because it can often occur
41 that the factual background is complicated by the numerous
42 actors involved, whether they're the children or the
43 parents or several parents, the job of explaining it all to
44 a court for the purposes of obtaining an order is not
45 necessarily a straightforward pro forma matter, is it? And
46 the point of making that observation is that while we may
47 all wish that affidavit material is simplified, not

1 unnecessarily complicated, the story that needs to be told
2 is often a complicated story involving understanding many
3 facts that all bear upon the assessment of a risk to the
4 child?

5 A. I agree.

6
7 COMMISSIONER: And this case is actually a very good
8 example of just that. So I suppose my point is that it's
9 simple enough to say in a simplistic way we need to make it
10 all much simpler and straightforward and not as complicated
11 and more streamlined, but when one considers that
12 aspiration in the context of the incredibly variable and
13 often very complicated factual background relevant to a
14 particular family and child it's much easier said than
15 done.

16 A. I believe it's about proportionality. So, for example
17 - and I'm talking in the child protection order space now -
18 if you have a family that relinquishes care of a child you
19 wouldn't need to provide this level of detail --

20
21 COMMISSIONER: No. This might be --

22 A. -- in relation to court material.

23
24 COMMISSIONER: I think this is a complicated case.

25 A. Yes, yes.

26
27 COMMISSIONER: But it's not --

28 A. Which necessitates the need for further detail and
29 further information; yes.

30
31 COMMISSIONER: So it's really a matter of putting forward
32 to the court such information and evidence as is relevant
33 to meet the criteria in the Act and as required by the
34 circumstances of the case in question.

35 A. I do not disagree with you.

36
37 COMMISSIONER: No. And it's not necessarily a
38 straightforward exercise is really the point I'm trying to
39 make. And there's probably, therefore, a limit to the
40 degree to which it can - the material to be put before the
41 court can be simplified according to a sort of pro forma
42 affidavit structure, though there will be cases of course
43 where that is possible but not in all cases, maybe not even
44 in a lot of cases; do you agree?

45 A. Yes, it depends on the facts of a particular matter.

46
47 COMMISSIONER: Yes, all right. Well, thank very much for

1 your participation and for contributing to or adding to the
2 insights that I'm trying to glean from a mass of material.
3 I appreciate your assistance.

4 A. Thank you for the opportunity, Commissioner.

5
6 COMMISSIONER: We'll adjourn until 2.15.

7
8 <THE WITNESS WITHDREW

9
10 LUNCHEON ADJOURNMENT [1.24 pm]

11
12 COMMISSIONER: Please have a seat.

13
14 MS SWEET: Yes, thank you, Your Honour. The Commission
15 calls Mr Nigel Miller.

16
17 COMMISSIONER: Yes.

18
19 <NIGEL MILLER, AFFIRMED [2.18 pm]

20
21 <EXAMINATION BY MS SWEET

22
23 MS SWEET: Good afternoon, Mr Miller.

24 A. Afternoon.

25
26 Q. Do you have a folder in front of you that's labelled
27 "Court book, volume 2, part 2"?

28 A. Yes, I do.

29
30 Q. Yes, thank you. Could I take you to tab 57 of that
31 folder, please.

32 A. Yes, I have that.

33
34 Q. Do you have there a document that you recognise as a
35 witness statement you have signed in this proceeding?

36 A. Yes. Yes, that's my statement.

37
38 Q. Can I take you to page 943, please.

39
40 COMMISSIONER: If you could just tender it.

41
42 MS SWEET: I will. I'm just getting the witness to view
43 his signature.

44
45 COMMISSIONER: Yes, carry on.

46
47 THE WITNESS: Yes, yes, I've got that.

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MS SWEET: It's 70 pages, and that's your signature --
A. It is.

Q. -- that's affirmed on 7 November 2025? I tender that.

COMMISSIONER: Yes, thank you.

MS SWEET: And there are a number of exhibits to that statement, Mr Miller?

A. Yes. Yes, there are.

COMMISSIONER: The statement of Mr Miller, together with the annexures, will be exhibit CA-51.

EXHIBIT #CA-51 - STATEMENT OF MR MILLER, WITH ANNEXURES

MS SWEET: Yes, thank you. Now, Mr Miller, the position of the Director of Child Protection Litigation was established by statute on July 1, 2016; correct?

A. Yes, it was.

Q. It sits within the Justice portfolio?

A. It is.

Q. And you are the inaugural Director?

A. I am.

Q. And you're still with us in that position?

A. I am. I am still in that position. I've been in the position since 1 July 2016.

Q. Yes, thank you. And did you have input into or make submissions in respect of the legislation that ultimately became the Director of Child Protection Litigation Act 2016?

A. No, I did not. Well, sorry, at the time I was employed at Legal Aid Queensland. Whether in some way I was consulted on parts of it I can't recall.

Q. Yes. And your current employment is through until June 30, 2026?

A. Yes, it is.

Q. And you're appointed on a fixed basis?

A. I'm appointed, yes, on a fixed basis.

1 Q. And you say in your statement the establishment of the
2 DCPL came about because of a recommendation of the Carmody
3 Inquiry?

4 A. Yes, that's right, of the earlier Queensland child
5 protection commission of inquiry that was undertaken by Tim
6 Carmody.

7
8 Q. Yes. And you say that, on its establishment,
9 Queensland became the first jurisdiction in Australia to
10 create a professional separation between the investigation
11 and assessment of child protection concerns on behalf of
12 the State and the decision also on behalf of the State as
13 to whether or not a child protection order application
14 should be made and the type of order that should be sought?

15 A. Yes.

16
17 Q. Yes. Has any jurisdiction in Australia subsequently
18 followed suit?

19 A. I'm not aware of any.

20

21 Q. And at that time that power, the decision as to
22 whether or not a child protection order ought be made and
23 what type of order should be sought, transferred from the
24 department to your office; correct?

25 A. Yes.

26

27 Q. You say that the transfer of this key decision-making
28 function represents a fundamental, innovative shift in
29 policy and practice in child protection litigation within
30 Australia. Could you just expand on that for His Honour?

31 A. Yes, I can. It separates out the - it separates out
32 the tasks of receiving notifications about child protection
33 concerns, investigating them and assessing them under the
34 Child Protection Act, and then the key decision based on
35 the outcome of that investigation and assessment on whether
36 an application is brought. That's the fundamental shift,
37 that you have independent legal oversight of that decision.

38

39 COMMISSIONER: Can you describe for me what you regard in
40 substance as the decision that is called upon by your
41 office to make in relation to the application of
42 a particular order for child protection and how that is
43 different, as you perceive it, from the work that is done -
44 the anterior work done by the department to investigate the
45 concerns arising from the notification and what follows
46 from the notification before the matter gets to your office
47 or one of your staff?

1 A. Sorry, can I just ask you to speak up a little?

2

3 COMMISSIONER: Yes, sure. Certainly. Did you not hear
4 me? I'll repeat it.

5

6 MS SWEET: Can I ask you both to speak up, please?

7

8 THE WITNESS: I'm sorry.

9

10 COMMISSIONER: I've been making the same requests of other
11 witnesses. So I've offended my own rule. But I'll try
12 again.

13 A. Yes, thank you.

14

15 COMMISSIONER: And I'll rephrase the question. What is in
16 your opinion the difference in substance between the work
17 undertaken by the Child Protection Department and its
18 relevant officers - the child safety officer, the team
19 leader - in connection with the investigation of concerns
20 or notifications as opposed to the work that your staff do
21 in determining the question of whether the matter as
22 investigated should proceed to an application to court for
23 an appropriate child protection order?

24 A. So, as I referred to, you have - the Department of
25 Child Safety still receives child protection concerns and,
26 where they form a reasonable suspicion, they're then
27 mandated under the Act to take action, and that's the
28 investigation through section 14. My role commences at the
29 point in time that the Chief Executive, as I understand it,
30 through a senior team leader forms the view that a child is
31 in need of protection and that that protection can only be
32 afforded to the child through a child protection order.
33 That is when the senior team leader is then compelled by
34 law to refer a matter to me and my office.

35

36 We then undertake an independent review of their
37 investigation which comprises of any source documents they
38 want to give us as well as their assessment of those source
39 documents and consideration of what is a draft affidavit.
40 We then turn their investigation and the outcome of that,
41 their assessment, into a legal application that addresses
42 the criteria in the Child Protection Act.

43

44 COMMISSIONER: Do you initiate any further investigations
45 on your own part if you consider that the material produced
46 to you is not sufficient or do you rather communicate your
47 concerns and request that the department undertake such

1 further investigations as you consider are necessary?
2 A. So in response I would say outside of a child
3 protection proceeding I have no ability to gather
4 information independently from, say, other government
5 agencies or someone beyond Child Safety. So all of my
6 information gathering is back through the Department of
7 Child Safety. And so we may - well, not may, we do seek
8 additional information or evidence in over 70 per cent of
9 the matters we deal with. Now, that can be anything from
10 clarity around some aspect of a case note or something else
11 through to, "We need you to go and get this further
12 information from this source or another source."
13

14 COMMISSIONER: So is your work essentially a forensic
15 exercise in assessing the material presented to you in
16 order to form a view informed by the legislative
17 requirements as to whether there is a proper basis for
18 making the application and to determine what the
19 appropriate application is in the circumstances?

20 A. Yes, that's right.
21

22 COMMISSIONER: Yes, thank you.

23 A. Now, can I just also add that there are two other
24 types of matters that I can receive through operation of
25 law and that is where a child may already be the subject of
26 a child protection order, and that is through in-home
27 orders that could be as low as a directive order that a
28 parent is to do something or not do something right through
29 to the most intrusive order. If a child is the subject of
30 any order and an assessment's made that that order is no
31 longer required, those matters are --
32

33 COMMISSIONER: Are you talking about what are called
34 emergent orders?

35 A. No, Your Honour, I'm talking about substantive child
36 protection orders.
37

38 COMMISSIONER: All right.

39 A. So Child Safety through their work with families, if
40 they reach a point where their assessment is the order is
41 no longer required, they refer that matter to my office
42 and, if it meets the criteria, we will bring an application
43 to revoke that child protection order. And then there's a
44 third type of matters that we receive where there is a
45 permanent care order in place that grants long-term
46 guardianship to a named person where there's an assessment
47 undertaken that that named person is not complying with one

1 of their obligations in terms of their care of the child.
2 So they are the three types of matters we receive, but
3 99 per cent or greater would be the first type.
4

5 COMMISSIONER: Would be, sorry?

6 A. The first type, that a child is in need of protection
7 and a child protection order is appropriate and desirable.
8

9 COMMISSIONER: And that usually follows the making of some
10 form of emergent order?

11 A. Yes, Commissioner. However, if you allow, I can
12 expand on that.
13

14 COMMISSIONER: Please do. Please do.

15 A. In the last year, 2024/2025, somewhere around 60 or
16 61 per cent of the matters - I think it's dealt with in my
17 statement - were children who were the subject of an
18 emergent order. So these are children that could - very,
19 very few temporary assessment orders, a much greater number
20 of court assessment orders or temporary custody orders. So
21 these are matters that a notification has been received by
22 the Department of Child Safety. That notification has been
23 screened in, responded to, investigated and assessed.
24 Separate to that we then receive matters where children are
25 on substantive child protection orders but where the
26 assessment is that a further child protection order is
27 needed.
28

29 COMMISSIONER: Give me an example?

30 A. So that will be primarily matters where children have
31 been out of home on an order that grants custody of them to
32 the Chief Executive, and at the end of that order Child
33 Safety will make an assessment that either a further
34 short-term based order is needed or a long-term order is
35 needed. And then separate to those scenarios we also --
36

37 COMMISSIONER: And how do they --

38 A. Sorry.
39

40 COMMISSIONER: How does that latter category arise? That
41 is to say - I've understood perhaps not comprehensively
42 that the usual pathway is for an emergent order to be
43 sought. There's a range of them. Some of them are
44 non-custodial. Many are - probably the majority I think
45 are custodial emergent orders. Once a determination is
46 made by the department that there is a need for a formal
47 child protection order the matter is referred to your

1 office?

2 A. Yes.

3

4 COMMISSIONER: You then do what you've just described to
5 me, make an assessment of the evidence and form a view
6 about the appropriate form of child protection order, and
7 the matter is taken from there. And we can leave it at
8 that for the moment.

9 A. Yes.

10

11 COMMISSIONER: But just explain to me how that latter
12 category arises?

13 A. So - and I will come back, Commissioner, to address
14 the matters that we don't take forward, that we refer back.

15

16 COMMISSIONER: Yes, yes. Of course that's a different
17 issue; yes.

18 A. Yes. However, there is a group of children who,
19 through the department's best efforts, are not reunified
20 back to family.

21

22 COMMISSIONER: Yes.

23 A. So they're the subject of earlier proceedings. Then
24 they're the subject of a substantive child protection
25 order, so in this case a custody order. They will have a
26 plan in place at the point the order's made as to what
27 actions and objectives the Department of Child Safety will
28 undertake to attempt to reunify that child to their family.
29 It's where that order is coming to an end and the
30 assessment has been updated, and that assessment might
31 require a further extension or a new type of short-term
32 order or the assessment might be that a long-term order's
33 needed.

34

35 COMMISSIONER: So would that arise in the context where
36 through your office previously a short-term custody order
37 had been sought and requires extension?

38 A. Yes. So all short-term orders at the moment that are
39 coming to an end would have been orders that were sought by
40 my office. However --

41

42 COMMISSIONER: Because if it's not an emergent order you
43 have exclusive jurisdiction to apply to the court?

44 A. Yes, yes, in order to obtain an order. But other
45 people do have standing in order to try and revoke or vary
46 orders under certain circumstances, that being the child or
47 a parent of the child.

1
2 COMMISSIONER: You mentioned a permanent care order.
3 A. Yes.
4
5 COMMISSIONER: It's my understanding that when it comes to
6 the variation of that kind of order it's only you - or your
7 office I should say more precisely - that has standing to
8 apply for a variation to that order?
9 A. Yes, yes, Your Honour.
10
11 COMMISSIONER: Is that right?
12 A. If you allow me just to check the provision,
13 Commissioner?
14
15 COMMISSIONER: Yes, certainly.
16 A. Yes, Your Honour, I'm the only person. I just wanted
17 to confirm the child was also not entitled to seek a
18 variation. But it is solely my responsibility, my
19 obligation.
20
21 COMMISSIONER: Yes.
22
23 MS SWEET: Could the witness just tell us where he was in
24 the statement? You were looking at your statement then?
25 A. Sorry, I was looking at the Child Protection Act.
26
27 Q. Thank you.
28
29 COMMISSIONER: What was the section --
30 A. Sorry.
31
32 COMMISSIONER: -- just for future reference?
33
34 MR HASTIE: 65AA, I think.
35
36 THE WITNESS: Yes, it's 65AA, Commissioner.
37
38 COMMISSIONER: Thank you very much. Sorry, I interrupted
39 you. I'm just trying to understand or get clear with you
40 the scope of your jurisdiction, but I think you have made
41 that clear. Thank you. Ms Sweet.
42
43 MS SWEET: Thank you, Your Honour. Now, Mr Miller, I'm
44 now at paragraph 7 of your statement where you set out
45 extracts from the Carmody Inquiry's report to illuminate
46 the rationale for the shift in policy and practice by
47 creating your independent statutory office; do you see that

1 there?

2 A. Yes, I do.

3

4 Q. And you say that the rationale included that:

5

6 *There is not an independent legal*
7 *assessment made of the strengths or*
8 *suitability of an application at an early*
9 *stage.*

10

11 And, in your understanding, the fact that there was no
12 independent legal assessment because the assessment was
13 engaged by, in the first instance, a court coordinator who
14 was not legally qualified and the ultimate decision-maker
15 was a manager from the child safety service centre; does
16 that accord with your recollection.

17 A. No, no. Prior to the change it was still the senior
18 team leader or a child safety officer --

19

20 Q. Yes.

21 A. -- that would make the decision about what type of
22 order or whether an order was to be sought. In practice
23 what happened was that they would draft an affidavit that
24 set out their assessment and exhibit any documents they'd
25 have regard to. The summary of their assessment was then
26 placed into the form of a child protection application and
27 lodged with the court. Once before the court, it was then
28 the role of the court coordinator to represent the
29 Department of Child Safety at call-overs in respect of that
30 application.

31

32 Q. Yes, thank you.

33

34 COMMISSIONER: And at that time what were the available
35 short-term orders? Were there some equivalent to the
36 present emergent orders?

37 A. At the time that my role and office was created all of
38 the existing short-term orders were in place.

39

40 COMMISSIONER: So the range of emergent orders that
41 presently exist --

42 A. Yes.

43

44 COMMISSIONER: -- were available pre-2016?

45 A. That's so.

46

47 COMMISSIONER: But sourced directly by the department

1 without the department having any in-house legal resources;
2 is that the position?

3 A. Yes. It might assist for me to explain that since
4 2004 I practised in Queensland child protection.

5
6 COMMISSIONER: Yes.

7 A. Prior to my appointment I did have slightly over
8 12 months where I acted as a local government lawyer in
9 London in a local authority doing child protection work.

10
11 COMMISSIONER: And what did you learn of relevance that
12 you'd like to perhaps share that formed your experience in
13 both roles?

14 A. Yes, Commissioner, in terms of the approach in the UK
15 I don't profess to be across what the current operation of
16 their system is, but at the time I worked in the system it
17 was a the system that was taken very seriously by
18 government, by local authorities, by lawyers. Every person
19 was entitled to legal representation - it was not means
20 tested - and that included the child. So parents were all
21 afforded legal representation throughout the proceeding.
22 And any matter that had any level of complexity was then
23 dealt with through courts that were convened by specialist
24 judges.

25
26 COMMISSIONER: So were they Childrens Courts?

27 A. Yes, yeah, they were a part of the UK's Family Court,
28 the Family Court division. Now, these matters were dealt
29 with even at times in the High Court in the UK. So it's a
30 very established system where there are whole chamber sets
31 of barristers that do work solely in this area, undertake
32 this work. So it was an area where there was a lot of
33 guidance provided through case law and through a judicial
34 outline that had been issued that covered various things
35 such as timeframes as to when particular events should have
36 occurred by.

37
38 COMMISSIONER: You mention case law. My impression is
39 that there is a scarcity of judicial authority in relation
40 to the operation and interpretation of the Child Protection
41 Act in the context of Queensland child protection
42 litigation. I've been referred to a few cases. But am
43 I right in thinking there isn't what one would call a body
44 of jurisprudence in the area?

45 A. In response, Commissioner, I would say you are right
46 in that there is not a large body of jurisprudence. There
47 is a growing amount of jurisprudence that's being issued at

1 appellant level in response to appeals.

2

3 COMMISSIONER: There is?

4 A. There is. It's a growing number, Your Honour.

5 I undertake quite a few appeals in my role. And, separate

6 to that, we do have at times individual magistrates that

7 will go ahead and publish decisions where they form the

8 view that it will be of assistance to understand not just

9 how their --

10

11 COMMISSIONER: Yes, I've read some of those.

12 A. Yes.

13

14 COMMISSIONER: And when you take a matter on appeal does
15 that go to the District Court?

16 A. It's dealt with in the Childrens Court of Queensland

17 convened by a judge. Now, those judges - the initial

18 starting point is they have judges that hold a Childrens

19 Court commission.

20

21 COMMISSIONER: Yes.

22 A. However, if one is not available under the Childrens

23 Court Act the court can be convened by a District Court

24 judge, but it is very much the Childrens Court.

25

26 COMMISSIONER: And the Chief Judge of the Childrens Court
27 is a District Court judge?

28 A. She is. So she's referred to as the President of the

29 Childrens Court.

30

31 COMMISSIONER: Sorry, yes.

32 A. But she also sits in the District Court as a judge.

33

34 COMMISSIONER: Yes. Are you aware of any appellate
35 authority beyond that court that has significance in the
36 child protection area?

37 A. Yes, Commissioner, there are a small number of matters
38 that have progressed to the Court of Appeal.

39

40 COMMISSIONER: Yes.

41 A. They primarily relate to whether or not the Court of

42 Appeal has a right and someone with leave can appeal to

43 that court a decision of a judge. So there's been a string

44 of matters where there's been determinations made that

45 there is no right of appeal even with leave to the Court of

46 Appeal of a decision of a judge sitting at the appellate

47 level of the Childrens Court.

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COMMISSIONER: So there's no appeal even with leave to the Court of Appeal from a decision of the Childrens Court constituted by a judge of the District Court who also holds a commission in the Childrens Court?

A. Yes, unless there's some fundamental error in how the appeal was conducted. So there has been one matter proceed at the Court of Appeal level where it was determined that what had occurred at the appellate level in the Childrens Court in respect of notice not being provided, that was set aside and the Court of Appeal went ahead and determined that matter.

COMMISSIONER: But there would be an opportunity in theory at least, would there not, for judicial review?

A. That's so, Your Honour. You could also take a judicial review application. They are made at different times or in the context of a *parens patriae* application and through that avenue accessing Supreme Court of Appeal and then the High Court. So I have had a matter go for special leave to the High Court which was not granted.

COMMISSIONER: Yes. And how is the *parens patriae* jurisdiction invoked, in your experience? In what context?

A. It is - in the matters that we've dealt with they are matters where, rather than seeking to appeal through to the appellate court a judge of the Childrens Court, a parent has taken steps to lodge an application in the Supreme Court.

COMMISSIONER: For judicial review?

A. For judicial review. And in those matters they have resolved to date through the applicant then lodging an appeal in the Childrens Court which is then dealt with.

COMMISSIONER: Which can then deal with the appeal as a rehearing at least rather than a narrow point of law?

A. Yes. And, in a reflection, where there is another avenue, a specialist jurisdiction to deal with the matter established, the *parens patriae* jurisdiction should be exercised very cautiously.

COMMISSIONER: Yes. I distracted you from telling me about your experience in the United Kingdom.

A. Yes, Commissioner. So I do have experience of slightly over 12 months working for a local authority in London undertaking child protection work. And then

1 separate to that I should also note that I have undertaken
2 a Churchill Fellowship where I undertook a tour of the
3 system in Colorado. I also had some time in Massachusetts
4 and spent time in Ontario, in Toronto, before heading to
5 Switzerland, back to the UK, and then to Scotland to look
6 at their different approaches, but primarily in terms of
7 legal representation and how that's undertaken.

8
9 COMMISSIONER: Well, if there are some aspects of practice
10 in the United Kingdom or in Canada that you consider should
11 be considered, would be beneficial in the Queensland
12 context, this is your opportunity to say so publicly --
13 A. Yes, Commissioner.

14
15 COMMISSIONER: -- and I'm very interested to hear what you
16 might say about it.

17 A. Yes, Commissioner. What I would say about the UK is
18 that they have a separate body and persons who are
19 appointed to each matter, to each child, as their guardian.
20 So these are people who have a background in social science
21 who then work alongside the children's solicitor. They
22 attend contacts. They produce --

23
24 COMMISSIONER: Do you mean like a guardian ad litem?

25 A. Yes. So every child in the UK gets a solicitor who
26 has a degree of expertise through their Law Society, and
27 children are also assigned a guardian. Now, I should
28 preface this was when I was practising there. And
29 I understand there has been no change. And so you have a
30 second social worker or social scientist also involved
31 producing reports that are put before the court. So that's
32 a fundamental difference to what happens in Queensland.

33
34 In Queensland some children where applications are
35 contested or there's some degree of complexity the court
36 will appoint a lawyer to separately represent them, and
37 that lawyer through undertaking their role at times will
38 commission an independent report. But it's a point in time
39 report that's referred to as a social assessment report.
40 They may come back and do an addendum closer to any
41 hearing. But it's not the case that they're working
42 throughout the proceeding with the young children's
43 solicitor as to when things evolve.

44
45 COMMISSIONER: And what are the sort of matters that a
46 lawyer appointed to represent the child might be concerned
47 about? Is it the continuation or the making of any order

1 or is it to do with the placing options available to the
2 child?

3 A. So this is in Queensland, Commissioner?
4

5 COMMISSIONER: Yes, I'm bringing you back to Queensland.
6 You said that sometimes the court would appoint a lawyer to
7 represent the child. It's commonplace in the family
8 jurisdiction, I understand.

9 A. Yes, it's a very similar model, Commissioner, to the
10 independent children's lawyer role. The separate
11 representative undertakes their own enquiries. They will
12 review the material that I've filed. They will identify
13 any issues that they see. They may request further
14 disclosure from myself and my lawyers, and through us from
15 Child Safety. They then may commission an independent
16 report. That independent report could also then lead to
17 additional experts that need to be engaged, much like you
18 see through the independent children's lawyer in the family
19 law jurisdiction.
20

21 COMMISSIONER: Is it common or exceptional for the court
22 to appoint a representative for the child?

23 A. I can't give you that figure at the moment. It would
24 be something that on notice I would seek to try and extract
25 from my case management system.
26

27 COMMISSIONER: That would be useful to know.

28 A. Yes.
29

30 COMMISSIONER: Just doing the best you can sitting there,
31 in a contested matter --

32 A. Yes.
33

34 COMMISSIONER: -- is it something that arises at the
35 initiation of the court? Is it in your experience
36 something that is requested by, let's say, the parents?
37 I assume they would be the protagonists. Is it something
38 that you can suggest and do suggest?

39 A. It can be any one of those things. The court of its
40 own initiative will appoint --
41

42 COMMISSIONER: Yes.

43 A. -- or it could be on issues or application made by a
44 parent, or it could be in fact that I'm seeking the
45 appointment of a separate representative due to the nature
46 of the matter.
47

1 COMMISSIONER: And where you might suggest to the court
2 that a representative, a lawyer, be appointed to represent
3 the child would there be particular circumstances where
4 that, in your view, is appropriate? For example, there
5 might be some conflict of interest or aspiration as between
6 the wishes of the parent and the wishes of the child.
7 Would that be --

8 A. That might be so. If a child has - a role of the
9 separate representative is to independently put before the
10 court the views and wishes of the child or even support the
11 child to participate more directly in the proceeding.
12

13 COMMISSIONER: Yes.

14 A. So it could be a clear basis in which to seek the
15 appointment of a separate representative we have an active
16 child or it might be that they are then directly
17 represented. And separate to that we have a system where
18 through the Public Guardian here in Queensland they have
19 specialist officers referred to as child advocates --
20

21 COMMISSIONER: Yes.

22 A. -- who also have a function of putting the child's
23 views and wishes before the court.
24

25 COMMISSIONER: And I've heard from a public guardian or
26 child advocate. In your experience have you been involved
27 in cases where the Public Guardian seeks to intervene in
28 the proceeding and submits to the court that separate
29 representation should be made available to the child?

30 A. Yes, or direct representation, depending on the age
31 and understanding of the child, they will assist in that
32 process; or it might be they just assist to the point where
33 the views and wishes are put before the court in the form
34 of a letter or a report; or they might support a child to
35 have an in-person meeting with the magistrate under
36 whatever the circumstances are required, in the court or in
37 chambers.
38

39 COMMISSIONER: In contested cases --

40 A. Yes.
41

42 COMMISSIONER: -- do you have any data to indicate what
43 percentage of parents - and I assume it's usually the
44 parent, is that a correct assumption to make, that's
45 contesting?

46 A. That's contesting. I would say usually, but at times
47 it will be the separate representative or the child.

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COMMISSIONER: Yes. But we're talking about a contested application. You're making an application for a particular child protection order, and it's opposed. Who's the usual opponent?

A. Usually it will be the parents.

COMMISSIONER: Yes.

A. It can be the separate representative or it may be the child, or it could be a combination of all of those.

COMMISSIONER: Who would the separate representative be representing?

A. The child.

COMMISSIONER: The child. So it's the child or somebody on behalf of the child or the parents would be the usual range of contestants?

A. Yes. Yes. Now, it's also important to point out that under section 113 other people are allowed through order to participate in proceedings and can be afforded all the rights and responsibilities of a party. And so it may be that the contest is actually undertaken through a non-party.

COMMISSIONER: And could that non-party be, say, a foster carer or a kinship carer?

A. Yes, Commissioner, or an extended family member who has not yet been able to care for the child.

COMMISSIONER: Well, I would put that category within the broad category of kinship, a kinship member of the family.

A. Yes, Your Honour.

COMMISSIONER: It could be anyone, couldn't it?

A. It could be anyone. But they're somebody that is able to assist the court with some aspect of the court's decision-making in respect of the child.

COMMISSIONER: And do you consider it desirable that there be contending positions put before the court in connection with your application? You're the moving party, obviously --

A. Yes.

COMMISSIONER: -- because you have a duty to be the moving party.

1 A. Yes.

2

3 COMMISSIONER: Do you regard it as a desirable thing that,
4 where appropriate or possible, there be a contest of views
5 aired before the court about the application you're the
6 moving party on?

7 A. Yes, Commissioner. We welcome other views. We
8 welcome other submissions, other evidence.

9

10 COMMISSIONER: Yes. And I take it that you welcome that
11 participation via legal representation?

12 A. Yes, Your Honour.

13

14 COMMISSIONER: Do you have experience of contested matters
15 where the contesting party is not represented; so
16 self-represented parents, for example?

17 A. Yes, Your Honour, there are matters, possibly large
18 number of matters, where a contested hearing is undertaken
19 by an unrepresented party.

20

21 COMMISSIONER: And I think I know the answer to this
22 question based on my own experience, but what impact does
23 that have on the conduct of the proceeding and how long it
24 takes and the ability for it to be heard in an efficient
25 way by the court, that is to say when the contesting party
26 is not represented?

27 A. It has those impacts, Your Honour. There are impacts
28 in terms of their understanding of the process, the
29 material, how it is that they are to put their evidence
30 before the court, how it is that they are to go about
31 questioning the other witnesses. It adds to time where
32 somebody does not have legal representation.

33

34 COMMISSIONER: It adds significantly, doesn't it, to the
35 time taken to deal with the matter --

36 A. Yes.

37

38 COMMISSIONER: -- where the party with a legitimate
39 interest in being before the court is not represented?

40 A. Yes, it does. Yes.

41

42 COMMISSIONER: Yes. So that's another reason to
43 facilitate representation on the part of parents, kinship
44 members, the child in the court process?

45 A. Yes.

46

47 COMMISSIONER: All right. Thank you. Ms Sweet.

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MS SWEET: Thank you. Just coming back --

COMMISSIONER: Sorry, actually, before we leave this topic, was there anything that you wanted to identify further about the procedure as you experienced it in the United Kingdom, firstly, and, secondly, what you learnt from your work or study in Canada that you'd like to raise?
A. Yes. In terms of the UK in certain matters under what was referred to and I think it still is the public law outline, which outlines how these matters are to be conducted, in certain matters you could seek early findings in terms of the threshold issue so as to know whether or not you are in jurisdiction and to give the local authority then the ability to consider the court's findings to go away and then present what their plan would be in terms of the intervention and type of order.

COMMISSIONER: So a sort of separate question or questions?

A. Yeah, so it's a finding on whether or not we have a child in need of protection. So it's not waiting for 18 months or two years for the court to make that finding.

COMMISSIONER: So how would that work if one were to attempt that --

A. You have a hearing as early as possible on the question of whether or not the child is in need of protection. That is very separate to what type of order that is needed and what the plan should be in order to meet the findings of the court.

Equally, in Colorado the system they had there and I observed was that parents are called on very early in the proceeding, by sort of day 3. They will have a threshold in which it is being put to them, "These are the grounds of the application." And they can elect then to have a trial at the one-month mark, and that trial could be either judge or a jury, and that's conducted within a month of the commencement of the proceedings.

COMMISSIONER: They have a jury process?

A. They can have a six member jury panel consider the grounds of whether or not the threshold is crossed.

COMMISSIONER: Are you aware of the differences that may exist between the definition of a child in need of

1 protection under the Queensland Act, section 10, and how
2 that concept is defined in the relevant UK legislation?
3 A. Your Honour, what I would say - and it's been many
4 years since I've looked at their legislation, but it was
5 again, my memory of it, based on whether or not a child was
6 in an unacceptable risk of harm. It came down to an
7 assessment of risk, looking at the various factors that we
8 do here.

9

10 COMMISSIONER: I have understood imperfectly at this point
11 that in the United Kingdom there is an approach to that
12 question that involves an exercise in balancing harm. It's
13 a lot like the assessment that one would make in the
14 context of an interlocutory injunction application about
15 what's called the balance of convenience: will it do more
16 harm or less harm to grant the order? And that's usually
17 the decisive consideration whether to grant an
18 interlocutory injunction, as a general proposition.

19

20 In the section 10 definition of a child in need of
21 protection in this Act the criteria sort of answers the
22 question itself in that if the child is at an unacceptable
23 risk of harm and there is no parent willing and able to
24 protect the child from the harm equals child in need of
25 protection.

26 A. Yes, Commissioner.

27

28 COMMISSIONER: That doesn't require, I don't think, an
29 interrogation of the question of whether the child might be
30 harmed and in what way by the removal of the child, having
31 regard to practical matters such as the availability of
32 placement options for the child. So it's a kind of one-way
33 or one-sided analysis on one view. Do you have a view
34 about whether the definition of a child in need of
35 protection should involve an examination of the question of
36 what is to become of the child and the consequences that
37 flow from that at the time that a decision is made as to
38 whether the child is a child in need of protection? In
39 other words, should there be a balancing exercise or
40 evaluation of the merits of either removing the child or
41 not removing the child when examining the principal and
42 primary question of whether the child is in need of
43 protection?

44 A. In response I would say that in Queensland the system
45 functions in a way where children are often removed under
46 emergent orders and so at the time - and I'm sure we will
47 cover this in my evidence - at the time we are then making

1 a child protection application the child is already outside
2 of the home, they're already in care placed by the
3 Department of Child Safety in a placement.

4
5 COMMISSIONER: Yes.

6 A. It would be very rare that we have matters that
7 proceed through to a final hearing some lengthy time after
8 the application is made where the child is still in the
9 home and we are seeking an out-of-home order. So the
10 question as to when you need to balance whether there is
11 harm or trauma, as it's been put in one of the reported
12 decisions, that the child will sustain through removal
13 needs to occur at the first point in time that an order is
14 being sought to undertake that to remove the child.

15
16 COMMISSIONER: Well, that might be right. But it doesn't
17 mean that the question is redundant later.

18 A. Yes, yes.

19
20 COMMISSIONER: Because, for so long as the child is out of
21 home or so long as the child is accommodated in suboptimal
22 arrangements such as non-family based residential care,
23 particularly for a very young child, a child under 10 --
24 A. Yes.

25
26 COMMISSIONER: -- and there are some instances of that,
27 there is at least in principle or there is a rational basis
28 for inferring that the harm is ongoing and the sooner that
29 is abated the better. Therefore, though the question might
30 be also asked at an earlier point in time, I'm suggesting
31 it's not a redundant question at the later stage.

32 A. Yes, Commissioner, I accept that at any point
33 through a - you refer to as the child protection continuum.

34
35 COMMISSIONER: Yes, I've heard that.

36 A. But really at any point whether you are before a court
37 or a magistrate seeking that a child be removed there needs
38 to be a way to take into account what the Commissioner's
39 suggesting as to what might or will be the impact of the
40 removal and weighing that up against how worried we are
41 against the concerns that have led to the action.

42
43 COMMISSIONER: I accept that.

44 A. Yes.

45
46 COMMISSIONER: But what I'm interested in is whether you
47 think that the sort of key section that invokes the

1 jurisdiction, namely section 10, allows for that analysis
2 or evaluation or not. My reading of it on the face of it
3 is that it doesn't.

4 A. No, no, I would agree, Commissioner. What I would
5 say, though, is that, once you determine that a child's in
6 need of protection, the second part of that is identifying
7 how that protection needs to be provided. So are we
8 looking to seek an order that would have the child remain
9 in home or remain with a family member or are we seeking an
10 order that will see them in general foster care or another
11 type of placement, including residential care?
12

13 COMMISSIONER: So the balance of harm analysis is relevant
14 and available to be considered when one is considering
15 placement options, for example?

16 A. Yes. Now, that decision, unless we have a family
17 member - and I use that word because that's how it's
18 defined in the legislation - unless a family member is at
19 court and seeking to have a child placed in their temporary
20 custody, unless that's occurring, it is a decision for the
21 Department of Child Safety, the Chief Executive, as to
22 where placement is going to be.
23

24 COMMISSIONER: Yes, well, we'll come back to that issue
25 more generally.

26 A. Yes.
27

28 COMMISSIONER: In relation to the question of balancing
29 harm as a concept occurring at an earlier point in time,
30 namely at the emergent order stage, as I understand it the
31 point of the emergent orders, particularly the TAO, is to
32 allow the department sufficient powers by the making of the
33 order to investigate whether the child is in fact a child
34 in need of protection. Then there are of course temporary
35 custody orders. They are sought, as I understand it, where
36 the department has made the decision that the child is in
37 need of protection and immediate protection in the form of
38 some custodial order. And then there are a range of
39 emergent orders that don't involve removing the child - and
40 I should have mentioned also court assessment orders --
41 A. Yes.
42

43 COMMISSIONER: -- which fall into the same category,
44 theoretically at least, as a temporary assessment order;
45 that is the predicate being that the assessment as to the
46 child needing protection is not yet complete. So in that
47 context it's difficult to see how, except in the case of a

1 temporary custody order, there could be any earlier
2 analysis of the balance of harm if the whole point of the
3 order is to enable an assessment of the risk, as
4 I understand it anyway.

5 A. Yes. But it may be, Commissioner, that a magistrate
6 considering a temporary assessment order application might
7 seek to deal with the issue through just authorised time.

8
9 COMMISSIONER: Through?

10 A. Through authorised time. So authorising authorised
11 contact, authorising a child safety officer to have contact
12 with a child --

13
14 COMMISSIONER: Yes.

15 A. -- and then through that contact, if further concerns
16 were to be received, they can always --

17
18 COMMISSIONER: So that would a non-custodial or temporary
19 assessment order?

20 A. That's right. And it might be that it also empowers
21 them to arrange any medical assessment that might be
22 needed, and it doesn't necessarily need to grant custody of
23 the child.

24
25 COMMISSIONER: Yes. So indeed in that instance that
26 you've just referred to it will be available to the
27 magistrate - though it's not expressed in terms, I don't
28 think, in the Act - to consider the balance of harm as
29 between removing the child as part of the temporary
30 assessment order or not removing the child but rather
31 granting certain powers to facilitate the further
32 investigation of the risk. It could well work there,
33 couldn't it?

34 A. Yes. But I should preface, Your Honour, that I have
35 never - prior to or at the moment in my role I have no
36 involvement with applications for emergent orders. In all
37 of my time at Legal Aid Queensland I was never in the
38 situation where I was able to be heard on a temporary
39 assessment order application. And so I speak from that
40 context, but I can talk to what the law provides.

41
42 How it works in practice I'm somewhat reliant on what
43 I see. There is a published decision made by a magistrate
44 sitting in Mount Isa. I think it was actually in respect
45 of an application for a temporary custody order where he
46 sought to undertake this process where he weighed up the
47 risk of harm of removing a child and even placing them in a

1 temporary placement for some undefined time before they
2 were going to be able to go to what was the planned
3 placement with an aunty at Mornington Island, I think from
4 the decision it says.

5
6 COMMISSIONER: Magistrate Mac Giolla Ri.

7 A. Magistrate Mac Giolla Ri, yeah.

8
9 COMMISSIONER: Yes.

10 A. So it's the case of - I think it's referred to as the
11 Department of Child Safety and maybe Natalie Ward.

12
13 COMMISSIONER: Yes. It will be a rational exercise, would
14 it not, to consider at that early stage the balance of harm
15 in the context of deciding whether in the context of a
16 temporary assessment order it is necessary to remove the
17 child from the custody of the parents?

18 A. Yes. In the context, Commissioner, as I understand
19 from considering that case, the evidence was provided by
20 the then Chief Practitioner that she was aware of no
21 research in terms of that question as to what the harm is
22 in terms of removal.

23
24 COMMISSIONER: What was the evidence; that there was no
25 risk?

26 A. She was aware of no research on that point, no
27 evidence as to harm, but did concede that it would be
28 traumatic.

29
30 COMMISSIONER: I thought there was some controversial
31 amongst the psychologists that the removal of a child,
32 particularly a young child, that involves the detachment of
33 the child from the parents is very likely to be emotionally
34 harmful to the child and very likely to have long-term
35 consequences. So perhaps I'll need to find out more about
36 that area in terms of the literature. But so far the
37 evidence I've heard in this Commission is that that is an
38 uncontroversial proposition. But, anyway, thank you. Are
39 there any other matters in relation to your experience in
40 Canada that you'd like to mention?

41 A. In Canada I had the - so I was in the city of Toronto.
42 I had the good fortune to spend some time with a judge
43 there who had very much taken a lead in the area of child
44 protection and really viewed it - my words - that he took a
45 therapeutic approach to the jurisdiction.

46
47 COMMISSIONER: Yes.

1 A. He would run yearly courses, I think they were at the
2 time, for any lawyers or other judiciary that wanted to
3 undertake this course each year. He was issuing notes
4 around various issues that would come up. And he also had
5 a program where if you make contact with him you could
6 shadow him for a day or so where you would sit with him in
7 chambers. He took you through what his process was in
8 preparation of each matter. And then you'd go into court
9 and watch him put it into practice. And he really saw his
10 role as trying to proactively case manage the matter to get
11 kids back to their parents; and, if that wasn't the case,
12 to try and encourage attendance from other family members,
13 because that was his option if he wasn't able to get kids
14 home to family. Now, if through that process he was
15 unsuccessful, I understand that a different judge would
16 consider any contested hearing after that process.

17
18 COMMISSIONER: So if you were to identify the practical
19 elements of the Canadian judge's practice - is it a secret
20 who he is? If you don't wish to --

21 A. No, Commissioner. One of the things that struck me
22 was that he would schedule matters at a particular time
23 throughout the day. So call-overs would start at 9. The
24 family's matter would be on at 9. The next matter would be
25 listed at 9.20. The next matter would be listed at 9.40
26 and so on through the day. And so people weren't coming up
27 to court and waiting hours in which to get on. They were
28 timed slots throughout the day.

29
30 COMMISSIONER: That's courteous, good judicial practice,
31 isn't it?

32 A. Yes. He also kept extensive notes in terms of the
33 interests of other people who were coming along to court,
34 the family members. And so the example I can give is that
35 he had made a note that the grandfather in the matter had a
36 particular interest in fishing. And so before the mention
37 got under way he stopped and addressed the grandfather
38 directly and asked him how the fishing had been, and he was
39 really trying to keep him engaged and focused within the
40 proceedings.

41
42 COMMISSIONER: How did he encourage the participation of
43 the family members in the process; how did that happen?

44 A. It would be through the department or the parents
45 asking, "If you have anyone else that is in your family
46 that could come forward to play a role here." But, yeah,
47 as to the actual - what the documentation looked like and

1 how he did that, I can't recall.

2

3 COMMISSIONER: So that is an approach which involves the
4 encouragement of participation by the child's extended
5 family, kin, in the court process so that they're heard and
6 can be included in the search for a solution that would see
7 the child returned if not immediately to the parents but to
8 some member of the extended family; is that the broad idea?
9 A. Yes. And there's a variation of this now operating in
10 Beenleigh. There's a location here in Queensland --

11

12 COMMISSIONER: Yes.

13 A. -- where you have the magistrate that's very much
14 focused on identifying any other family members that may be
15 an option to consider in parallel and actively encouraging
16 Child Safety to engage with them, to give them notice of
17 the application, and to consider whether or not they'd like
18 to step forward and be assessed or even come and
19 participate in the proceeding.

20

21 COMMISSIONER: I understand --

22 A. So that's Magistrate Mac Giolla Ri.

23

24 COMMISSIONER: Yes, yes, I'm aware of that. I also
25 understand that there's some efforts in that regard - and
26 I can't be more specific than that presently, but I will
27 find out about it - being undertaken in South Australia.
28 Are you aware of --

29 A. I'm not aware of that, Commissioner.

30

31 COMMISSIONER: So the essential idea is to --

32 A. Commissioner --

33

34 COMMISSIONER: Yes?

35 A. -- I can talk to a decision that was given last
36 Thursday.

37

38 COMMISSIONER: Yes.

39 A. I'm conscious that we're in a public hearing.

40

41 COMMISSIONER: Well, if it's on the public record and you
42 can speak about it --

43 A. It is a decision at the moment of Magistrate Mac
44 Giolla Ri that I understand he's afforded the young people
45 in question time to consider his proposed anonymisation of
46 the judgment to see whether or not they object towards him
47 publishing this judgment.

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COMMISSIONER: Be a little cautious because proceedings of the Childrens Court are confidential and private, aren't they?

A. Yes. There are various restrictions under the Act. However, he has produced a judgment that's written with - it's anonymous. He's changed the various names of the parties.

COMMISSIONER: Right.

A. But, like I said, I understand he's seeking input from the young people who at times participated directly in the proceeding as to whether or not they object to him then publishing that decision. But, in short, this is a matter where a further short-term order has been made with a clear focus on the Department of Child Safety considering an older adult sibling as the option.

COMMISSIONER: Yes. Yes, I see. Just to try and put some sort of practical boundaries around this discussion, in cases where there is very significant abuse or neglect the decision to remove a child is not a difficult decision where there's demonstrable harm that's manifest and really is incontrovertible; do you accept that?

A. Yes, I do.

COMMISSIONER: In those cases the difficult question is how does the system, including the legal system, facilitate as early as possible return if not to the immediate family to some other person with a connection that the child - to whom the child has a connection. In other cases, which might be the hard cases, the difficult cases, there is the potential at least to examine whether a removal is really required in the circumstances. Do you accept that sort of dichotomy between the more straightforward case and --

A. Yes, I do. I do.

COMMISSIONER: Where, in your experience in the child protection jurisdiction, would you see the majority of cases falling; at what end of the spectrum or ends of the spectrum? I realise it's difficult to generalise, but I'm inviting you to generalise.

A. The majority of cases involve children that are already in the custody of the Chief Executive, Child Safety. Now, there are matters - I was consulted on one it could have been Friday or yesterday, Your Honour - where the decision had been made on a court assessment order that

1 the child was not to be removed. And so a magistrate had
2 declined - had made the order but had declined providing -
3 declined for the order to provide to take the child into
4 the Chief Executive's custody. And so in this matter my
5 applicant lawyer - it was actually one of my assistant
6 directors - was then tasked with considering the child
7 safety assessment that it was still for an out-of-home
8 order, they still sought an out-of-home order. On his
9 assessment, his application, he's now seeking an in-home
10 order. And so there are matters where the court - an
11 out-of-home order is sought by the court on an emergent
12 basis and the court is not making those, that does happen,
13 and that will then have great influence in terms of our
14 assessment of the matter and what order is then required.

15
16 COMMISSIONER: In answer to my question you said, well,
17 most of your cases are ones where the child in question is
18 already in the custody of the Chief Executive, I assume
19 pursuant to an emergent order.

20 A. Yes.

21
22 COMMISSIONER: But that fact doesn't alone answer the
23 question of which end of the spectrum, as a general
24 proposition, the cases for child protection fall because
25 your answer begs the question of whether the child should
26 have been at the emergent stage in the custody --

27 A. Yes, I now understand the question, Commissioner.
28 I don't capture data in terms of what the substantive child
29 protection concerns are. So I'm not in any way classifying
30 them in terms of sexual abuse, physical abuse, emotional
31 abuse. I would have to defer to the Department of Child
32 Safety, who does collect that. I understand in the way
33 they present their data or have until quite recently
34 produced data that showed there was a lot of children who
35 had been assessed as at risk of suffering emotional harm.
36 Now, it's a bit more nuanced in that you have action or
37 lack of action and then you have the resulting harm on a
38 child's wellbeing, one of their domains --

39
40 COMMISSIONER: What I'm trying to get at is this --

41 A. When you look into those - I was going to say,
42 Commissioner, many of those matters will involve domestic
43 and family violence. So the child's not been directly
44 exposed to the point where they've sustained physical abuse
45 but, by being there and being present and witnessing the
46 abuse, they're then sustaining emotional harm. But I can't
47 give you any sense as to, in terms of the spectrum, how

1 many matters are at the very serious end - and there are
2 examples of very serious matters - down to the other end
3 where we're simply concerned about risk, that is that we're
4 not running a case that a child's actually been harmed.

5
6 COMMISSIONER: And in that category of case, that latter
7 category of case --

8 A. Yes.

9
10 COMMISSIONER: -- do you consider it your role and the
11 role of your office, I should say, to evaluate whether in
12 the circumstances presented to you based on the evaluation
13 by the department the matter ought to proceed to a child
14 protection order and, if so, what kind of order?

15 A. Yes, that's something that we take into consideration.
16 And it might be that there's been some fundamental problem
17 with the investigation that we will refer the matter back
18 or it might be that we just form the view the child is not
19 in need of protection.

20
21 COMMISSIONER: Yes. The distinction I'm trying to draw
22 out perhaps might be said to be a - somehow an assessment
23 or critique of risk. I'm really trying to understand the
24 spectrum in this sense. If a child has been directly
25 physically or sexually abused or manifestly neglected,
26 there's not a lot of room for interpretation about the fact
27 that that child has and may indeed even be continuing to
28 suffer harm in that environment.

29 A. Yes.

30
31 COMMISSIONER: That's what I would call a straightforward
32 case when it comes to the evaluation of the question of
33 whether the child is in need of protection. Other cases
34 turn upon an evaluation based upon, in turn, some
35 definitions that might be well accepted in terms of study
36 and literature of concepts such as exposure to domestic and
37 family violence. The consequences of that exposure may,
38 one imagines, vary markedly as between particular children.
39 Some children might be more susceptible to harm from
40 exposure to that kind of behaviour than others. On the
41 other hand, all children or people are susceptible to being
42 harmed if they are directly physically abused or sexually
43 abused. So that's the distinction I'm trying to draw out
44 because the evaluation in the former case is a more nuanced
45 exercise, I suspect.

46 A. Yes, I accept that.

47

1 COMMISSIONER: Yes. And so when you send matters back
2 that means you've rejected the referral as requiring an
3 application for a child protection order?

4 A. Yes.

5

6 COMMISSIONER: And I'm assuming - and you correct me,
7 though, if I'm wrong - that you're not sending back cases
8 to the department where there are demonstrable and direct
9 aspects of abuse?

10 A. No. But if I answer it in this way.

11

12 COMMISSIONER: Yes, please.

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COMMISSIONER: And that's specifically provided for in
section 11.

A. It is. So the threshold assessment needs to be made
in the context of who are the people that are in
section 11. So these are people that may have acquired
parental responsibilities through testamentary instruments,
so people who have stepped up to care for children through

1 a will. It could be a wide class of people. It will be
2 scenarios where a family has been working with Child Safety
3 through an interventional parental agreement but, in so
4 doing, the family may have arranged for the children to
5 live with the grandparent. And that arrangement could be
6 in place for an awful long time before suddenly there's
7 some sort of dynamic change in the risk and our question at
8 times will be, "Well, why do we need an out-of-home order?
9 Why can't the child remain where they have been with their
10 grandparent, and we could just put a direction around the
11 parents' time as to who's posing the risk?"
12

13 COMMISSIONER: So an intervention with parental agreement
14 is a form of - well, it's not an emergent order.

15 A. No.
16

17 COMMISSIONER: It's an emergent arrangement, if you like,
18 because it depends on agreement. But that could be going
19 on for a while --

20 A. Yes.
21

22 COMMISSIONER: -- something changes, and then you get a
23 referral; is that what you're --

24 A. Yes.
25

26 COMMISSIONER: Yes, I see.

27 A. So these will be the matters that I refer to in the
28 data as either no order or no statutory care agreement. So
29 these are the matters that there's been a level of
30 intervention through agreement, but as a result of the
31 children being the subject of an order or a care agreement.
32 Now, they can make up anything - I outline in my statement
33 10 per cent or more of the matters; in some regions it's
34 much greater.
35

36 COMMISSIONER: So an agreement that falls short of or
37 isn't formally --

38 A. So they don't mount - so the children are not subject
39 to an assessment care agreement, which can be entered as
40 part of an investigation or if Child Safety forms the view
41 a child is in need of protection. And even if the child
42 needs to be out of the home they can enter into a child
43 protection care agreement that sees the child placed
44 outside of the home for up to I think it's six months. But
45 separate to those scenarios we have a children who are the
46 subject of a notification and investigation, and through
47 that the family make arrangements for the children to live

1 elsewhere with a grandparent. And then somewhere down --

2

3 COMMISSIONER: Outside the --

4 A. Outside of a --

5

6 COMMISSIONER: -- formal arrangements --

7 A. Outside of a child protection care agreement. So that
8 will be - the intervention with parental agreement can
9 actually encompass many types of intervention with a
10 family.

11

12 COMMISSIONER: Not involving the agreement of the
13 department?

14 A. No, it will be an agreement but it might not be
15 through a child protection care agreement. It might be
16 through a safety plan that's ongoing and with an
17 expectation that - so if I step back a moment,
18 Commissioner.

19

20 COMMISSIONER: Sure.

21 A. The moment the Chief Executive forms the view a child
22 is in need of protection they then have an option. The Act
23 requires to try and work with the family through agreement.
24 If they can't do that or if that's not appropriate anymore,
25 they then refer it to my office. But at the same time that
26 they form that view, they determine a child in need of
27 protection, they then need to start that active work
28 towards developing a case plan for the child that sets out
29 it is the concerns are going to be addressed. This has
30 happened in that space where children are intervention with
31 parental agreement in addition to children who are referred
32 to my office.

33

34 COMMISSIONER: But these intervention with parental
35 agreement, is that an agreement generally speaking
36 facilitated through the department?

37 A. It is. It's an agreement for the parents to work with
38 Child Safety.

39

40 COMMISSIONER: Yes. What if the parent said, "I don't
41 want to have anything to do with the department, but I'm
42 going to arrange for the child to be looked after by uncle
43 so-and-so or grandmother," and they make that arrangement?

44 A. And that might be those scenarios where through an
45 agreement or a safety plan children are then cared for by
46 somebody else and, although the parent might not engage,
47 Child Safety will make continued attempts to try and engage

1 that parent. But we do have matters that will then be
2 referred to our office after many months or even longer
3 where, for the best endeavours, the assessment is the child
4 is still in need of protection and then at that point an
5 order is needed.

6
7 COMMISSIONER: This process of the department looking for
8 the means by which the child can be placed either back with
9 the family if appropriate or with a parent in the broader
10 sense as described in section 11, the fact of a referral to
11 you and to your office and the making of an application for
12 a child protection order, is that in any way inconsistent
13 with those endeavours being continued whilst the court
14 process is under way?

15 A. No. It's actually - it's an obligation the Chief
16 Executive has to make reasonable efforts to work with the
17 family. If you look at the principles of the Act it's very
18 clear that we need to be supporting children to remain with
19 their family. It's only when we have to take the step that
20 they are removed the State then has an obligation to
21 provide whatever support is required to get the child home.
22 And it's only after a period of time, which now is defined
23 in the Act you have a continuous care period, if that's not
24 successful, well, then we move into the more permanent type
25 of options which I'm sure we'll discuss.

26
27 But, from the moment the team leader forms the view the
28 child is in need of protection, efforts then start in terms
29 of casework between Child Safety and the family, and that
30 is ongoing throughout the child protection proceeding. And
31 to point that I would say in the last financial year,
32 2024/2025, I withdrew 11.1 per cent of the applications.
33 They were withdrawn by myself.

34
35 COMMISSIONER: What current application?

36 A. All types, Your Honour. So all types of application.
37 So if the family working with Child Safety during
38 proceedings addresses the child protection concerns we will
39 withdraw our application. And so 11.1 per cent of
40 the orders that were finalised last financial year were
41 done so through the application being withdrawn.

42
43 COMMISSIONER: Is that after you've been provided with
44 information by the department of the placement arrangements
45 that have been made or are proposed to be made?

46 A. Yeah, or children will have been placed back home with
47 a parent. So Child Safety can make that placement decision

1 back with the parent provided the child protection order is
2 in place, and I can talk you through that key distinction.
3 But active throughout the proceeding there is the family
4 group meeting process, and we will probably talk about
5 delays in that space. But there is ongoing casework.
6 There is ongoing updates that I receive or, through me, my
7 lawyers receive ahead of each call-over about what's been
8 going on in the interim. Families at court might then
9 produce or present other information. We don't have an
10 established practice in Queensland of other parties other
11 than the separate representative often putting any evidence
12 before the court. But if they raise issues at court, even
13 through submissions, we will seek then to go back to Child
14 Safety to say, "Can you give us an update about this? The
15 parents said that they've engaged with this type of service
16 or program, and it's achieved this." Through that process
17 there will be ongoing consults between my lawyers or me and
18 Child Safety. If the concerns that we've assessed there
19 are addressed we will withdraw our application.
20

21 COMMISSIONER: So, your application, in this context you
22 have a temporary custody order?

23 A. Yes, that will be - and I'll be careful with my
24 language here. I'm talking about matters --
25

26 COMMISSIONER: Short-term custody orders?

27 A. No, I'm talking about matters where we will have an
28 interim child protection order that will grant temporary
29 custody or it could be an interim child protection order
30 that puts restriction around one parent's time. It could
31 be an interim child protection order under section 67 that
32 grants the Chief Executive authorised time with the
33 children. So there are three types of interim child
34 protection orders.
35

36 COMMISSIONER: Is there interim guardianship or not?

37 A. No, there's not. There is no guardianship that can be
38 made other than on a short-term substantive basis or then
39 on a long-term basis.
40

41 COMMISSIONER: So that again?

42 A. So there is a short-term guardianship order,
43 Commissioner, that can be made. But that's still a
44 substantive child protection order. So you do have
45 scenarios where - I understand there was perhaps some
46 evidence given in Cairns where guardianship decisions are
47 needed, yet there's some issue in terms of being able to

1 engage with a parent or parents who have the ability to
2 make that decision. And so at times the Childrens Court
3 will have to deal with those scenarios through orders that
4 may authorise either assessment or treatment of a medical
5 issue - that happens - but there is no ability for the
6 court to grant interim guardianship.

7
8 COMMISSIONER: There seems to me on the face of it a
9 potential asymmetry in, on the one hand, invoking the
10 court's jurisdiction to remove but not invoking the court's
11 jurisdiction and oversight when it comes to reunification
12 either, strictly speaking, to the parents or reunification
13 in the broader sense to perhaps the definition of "parents"
14 in section 11.

15 A. Yeah, or more broad, Commissioner, I'd say to family.

16
17 COMMISSIONER: Or more broadly than that.

18 A. More broadly. There will be a class of people who
19 won't meet the definition of "parent" in section 11 but
20 will clearly on the facts be part of the child's family.

21
22 COMMISSIONER: Right.

23 A. I accept that.

24
25 COMMISSIONER: I put the point that I think is - or
26 something I would like to understand anyway. The child's
27 been removed on some form of emergent order. Following
28 that, your officers made an application for an interim
29 child protection order as appropriate.

30 A. Yes.

31
32 COMMISSIONER: But on this scenario the child is not in
33 the custody of the parents; the child's been removed. And
34 reunification is the objective that should be pursued from
35 the outset of this action having been taken, sanctioned by
36 the court.

37 A. M'hmm.

38
39 COMMISSIONER: But the question of whether or not the
40 child should be placed in the care of a family member,
41 kinship carer, whomever, is not subject to oversight by the
42 court because the application for the order, whatever it
43 might be as you've just indicated, can simply be withdrawn.
44 And therefore the court doesn't get to scrutinise nor is
45 there an opportunity for anyone else to have a say as to
46 whether the arrangements proposed by the department for the
47 return of the child - bearing in mind that we've got to

1 assume that the removal in the first place was warranted -
2 is left unscrutinised. Do you have a view about whether
3 that's desirable?

4 A. Yes. In response, Commissioner, firstly, I'd make the
5 point that if an application is to be withdrawn that is an
6 application in the proceeding I make.

7
8 COMMISSIONER: Yes.

9 A. And it's only with leave of the court that the
10 application can be withdrawn. So we are putting evidence
11 before the court as to why it is that the application is no
12 longer needed; that is the child is not in need of
13 protection.

14
15 COMMISSIONER: And does that evidence include evidence of
16 the placement arrangements --

17 A. Yes, it might. It might be that they've exercised a
18 power under section 82(2) of the Act where, if there is a
19 child protection order in place which includes an interim
20 child protection order, it allows the Chief Executive to
21 place a child back with their parent. Now, this option is
22 not available under the emergent orders because they're not
23 classified in the same way. But definitely under an
24 interim child protection order or a substantive child
25 protection order the Chief Executive has the flexibility
26 where the parents address the concerns to place the child
27 back with the parent --

28
29 COMMISSIONER: And does "parent" in 82(2) have the same
30 meaning as in section 11?

31 A. It does.

32
33 COMMISSIONER: So the parent might not be the natural
34 parent of the child but somebody falling within the broader
35 description?

36 A. That's so. To illustrate the point I can refer to an
37 appeal decision Iran. One moment, Commissioner.

38
39 COMMISSIONER: Yes, of course.

40 A. Now, this is a published decision where, in effect,
41 through the proceeding it was identified through a DNA test
42 that the father, the named father, was biologically not the
43 child's father. However at this point the child, although
44 young, was spending overnight time with him. And so he was
45 then removed as a respondent to the child protection
46 proceeding because the definition of who a parent is for
47 the purposes of that part of the Act narrows considerably.

1 It is no longer people who have been exercising parental
2 responsibility. It's not people who may be a parent for
3 Aboriginal and traditional island custom. It is a narrow
4 group of people that have a legal right.

5
6 And so this gentleman was then removed as a respondent but
7 then sought to participate in the proceeding under a
8 section 113 application. Now, through this process Child
9 Safety continued to work with him because in law still,
10 having been named on the child's birth certificate, he was
11 the child's father. And so it led to - on appeal there was
12 a decision made that an application made under section 113
13 is not something that can be the subject of an appeal; it's
14 more to be considered as an interlocutory matter. We don't
15 want the court bogged down on appeal reviewing each
16 decision that's made along the way. But, in any event, the
17 judge pointed out that this gentleman could then remake his
18 application which would then be dealt with according to
19 law.

20
21 But to go back to the point is that the different
22 definitions of who is a parent changes throughout the Act,
23 and you have scenarios where you have people that meet --

24
25 COMMISSIONER: But for the power under section 82(2) the
26 definition of "parent", as you understand it, is what's set
27 out in section 11 or is it a --

28 A. If I just take a moment, Your Honour, to consult the
29 Act.

30
31 COMMISSIONER: Sure.

32 A. I don't want to mislead anyone. "Parent" is then
33 defined in schedule 3 of the dictionary --

34
35 COMMISSIONER: Right.

36 A. -- for certain provisions, and then for everything
37 else it's section 11. And so where section 82(2) sits in
38 the scheme, Commissioner, is that it's within part 6. And
39 so that would be the wider definition of who is a parent.
40 So it gives Child Safety a greater degree of flexibility on
41 placement of children who meet that wider definition of who
42 is a parent.

43
44 COMMISSIONER: So, unless it falls within the exceptions
45 or as specified in paragraph (a), it's otherwise
46 section 11?

47 A. Yes. But back to your question, Commissioner, as to

1 whether or not the court should have an oversight role in
2 an ongoing way in respect of placement, there is provisions
3 within the case plan part of the Act that places an
4 obligation on the Chief Executive to review the child's
5 care arrangement that's been the subject of a long-term
6 order to see whether or not at that point in time it is a
7 matter where the child could be the subject of an
8 application to vary that order to grant guardianship to
9 their carer either as a family member other or even
10 permanent care. So there is a requirement for that ongoing
11 consideration of the placement. Those matters will come
12 back to court. But, other than that, there is not a
13 practice - unless it happens within the proceedings,
14 there's not a practice for the court to have a role.

15
16 COMMISSIONER: So when you are persuaded that the
17 application you have made to the court for whatever child
18 protection order has been sought is no longer required
19 because of arrangements that have been made by the
20 department for the placement of the child back with the
21 parent or possibly with a kinship carer or whomever you
22 need to seek leave to withdraw your application?

23 A. If that occurs during the child protection proceeding.
24 Now, there is a legal provision within the DCPL Act which
25 I talked about earlier where the Chief Executive at a
26 future point in time under a substantive order forms the
27 view that an order is no longer required, by law they are
28 to refer that matter to me and I will bring an application
29 to revoke that order.

30
31 COMMISSIONER: That's a different scenario.

32 A. That is a different scenario in that the court's made
33 a substantive order, and then casework's continued, and
34 then a decision is taken that the order is no longer
35 required. Those matters will need to be referred to my
36 office and we will bring those applications if on our
37 review we are satisfied. But they are very small numbers.
38 Last year there were only 18 applications that resulted in
39 a revocation of a child protection order.

40
41 COMMISSIONER: What about the situation where you have -
42 what's the expression you used - an interim custody order
43 in place in favour of the Chief Executive and you have
44 pending an application for long-term guardianship let's say
45 in favour of the Chief Executive.

46 A. Yes.
47

1 COMMISSIONER: Arrangements are made at some stage during
2 the process for the child, and you're satisfied that the
3 long-term guardianship order is no longer required. What
4 do you do in those circumstances with your application?
5 A. It might be that we withdraw completely or it might be
6 that we will amend our application and seek a further
7 short-term order, which could be an in-home order. It
8 could be a continuation of the custody order for a set
9 period of time to make sure that reunification is going to
10 be successful.

11
12 COMMISSIONER: If you decide to withdraw the
13 application --

14 A. Yes.

15
16 COMMISSIONER: -- do you need leave?

17 A. We need the court's leave to withdraw an application.

18
19 COMMISSIONER: And what sort of material do you put before
20 the court to inform the court as to whether it should grant
21 leave?

22 A. In most cases it will be the updated assessment of the
23 Chief Executive through the Department of Child Safety, any
24 other source documents that are relevant to that and will
25 be satisfying the magistrate that the child is no longer in
26 need of protection or, if they are, that their protection
27 needs can be met through a non-order.

28
29 COMMISSIONER: Will that include evidence about the
30 placement arrangements that have been made for the child?

31 A. It will. If the child has been placed back with
32 family, like, back with a parent as per 82(2) or if a child
33 is being --

34
35 COMMISSIONER: Well, we need to distinguish between the
36 natural parents and the broader definition of "parents",
37 don't we?

38 A. Yes. Or it might be that a child is in the care of
39 another family member and that they're caring for the
40 children and the child's no longer in need of protection.

41
42 COMMISSIONER: Certainly. But is that the material that
43 the court is given in order to make an assessment of
44 whether it should grant leave to your application to
45 withdraw?

46 A. Yes. So it might be the updated case plan that sets
47 out the developments of what's happened in the matter. It

1 invariably will be a brief updating affidavit or it might
2 be something that we then tender to be an exhibit to be
3 considered that we haven't had time yet to get an updating
4 affidavit. But there will be some type of evidence we
5 point to that underpins the withdrawal.
6

7 COMMISSIONER: Unless the - I'm going to call it -
8 reunification strictly speaking is to the parent, the
9 natural parent, if it's reunification to some other person
10 who falls within the section 11 definition of "parent",
11 guardianship would remain with the natural parent, would it
12 not?

13 A. Yes.
14

15 COMMISSIONER: So --

16 A. Then it may be, Commissioner, that the parents have
17 entered into some sort of an arrangement or agreement. The
18 way to think about child protection orders is that, whilst
19 they purport or whilst they do grant custody or may grant
20 guardianship and includes all of the things that one would
21 consider parental responsibility for the family law
22 jurisdiction, it does not remove those things from a
23 parent. It simply constrains the part of their parental
24 responsibility to the extent that the order provides be
25 actioned or undertaken by somebody else.
26

27 COMMISSIONER: That's not the case if a long-term
28 guardianship order is made to another person or to the
29 Chief Executive, is it?

30 A. So, Your Honour, if I put this scenario where at times
31 we will see matters referred where a child is in the care
32 of a long-term guardian named on an order where the
33 assessment is they are once again in need of protection.
34 Now, if through that investigation Child Safety has
35 obtained a temporary custody order, so the emergent type of
36 order, the child is already in need of protection, that
37 order will override the long-term guardianship order. And
38 so it's like --
39

40 COMMISSIONER: So far as custody is concerned?

41 A. And guardianship, Your Honour. And so the effect of
42 that is that suddenly the constraint that's placed on a
43 parent is suddenly overridden only by a temporary custody
44 order. And I point you to --
45

46 COMMISSIONER: I'm not sure if we're talking about the
47 same scenarios. Can I just come back to mine?

1 A. Yes, sorry, Commissioner.

2

3 COMMISSIONER: And I'm happy to hear the no doubt endless
4 list of exceptions. But you said that the way to
5 understand child protection is that the orders don't take
6 away anything.

7 A. That's so.

8

9 COMMISSIONER: If a long-term guardianship order is made
10 in favour of the Chief Executive, unless and until it is
11 reviewed and revoked --

12 A. It constrains the parents' guardianship through --

13

14 COMMISSIONER: -- doesn't it take away guardianship rights
15 from the parent while it endures according to its terms?

16 A. That is a way to put it, Your Honour. It allows the
17 parents - in effect they can't exercise their parental
18 responsibility. It grants that to somebody else. But it's
19 not a scenario, say, out of the family law jurisdiction
20 where the court will and at times reallocate parental
21 responsibility. It will grant parent a sole parental
22 responsibility; that is removing in an ongoing way parent
23 B's parental responsibility.

24

25 COMMISSIONER: Come back to my question. I'd like to sort
26 of just delve into this issue a little bit more. My
27 question is really in what way should the court be involved
28 at the back end? Its jurisdiction is invoked at the front
29 end, and by that I mean at the time a custodial order is
30 sought whether as an emergent order or whether as a
31 short-term custody order that you seek. That's a serious
32 invocation of the court's jurisdiction.

33 A. Yes.

34

35 COMMISSIONER: The role of the court I think can be
36 characterised as a role which provides public confidence in
37 the system. That may be open to debate by some, but that's
38 the premise I think underlying the jurisdiction.

39 A. Yes, I accept all of that.

40

41 COMMISSIONER: So I'm interested in your view as to
42 whether the court's oversight of the return of the child,
43 the reunification of the child, is sufficient or whether it
44 ought to be enhanced. Because there's not a lot of point
45 in removing a child on the assumed predicate that the child
46 was a child in need of protection unless one is satisfied
47 at the point of reunification that things have changed

1 materially such that the child is no longer in need of
2 protection, and who gets to make that decision and how that
3 decision is evaluated I consider to be of some relevance.
4 A. Yes. At the moment, Commissioner, that is a decision
5 of the Chief Executive and the Department of Child Safety.
6 In saying that, there are review rights that attach to that
7 decision.

8

9 COMMISSIONER: To QCAT?

10 A. To QCAT, Commissioner. So it's not that there's no
11 oversight. You can have and I have been involved in
12 scenarios where a party will seek to review the decision to
13 place a child back with a parent on the basis that they are
14 concerned. However, back to your question --

15

16 COMMISSIONER: But that's the context in which the
17 question becomes relevant, I think --

18

19

20 COMMISSIONER: -- the one you've just given. And I'm
21 wondering - I mean, there are certain decisions under the
22 Act that are reviewable --

23

24

25 COMMISSIONER: -- under the QCAT Act. That Act is
26 presently itself under some review in terms of the
27 jurisdiction of QCAT by Mr Thomas, I think, a retired
28 judge. I'm wondering whether QCAT is the right venue or
29 tribunal in which to review decisions that are integral to
30 the exercise of the power of the Childrens Court under this
31 statute, the Child Protection Act, and whether the review
32 might be better undertaken as a variation to a court order
33 made by the court who made the order in the first place.

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COMMISSIONER: But it's not you, is it; it's more the
department?

A. No, it's the Chief Executive. Is there a role for the
court to oversee that decision? So I understand the

1 scenario. The next point I would make is that we don't
2 have an understanding - or I don't an understanding - of
3 how many children are reunified.

4
5 COMMISSIONER: No, and --

6 A. So --

7
8 COMMISSIONER: And there is some need for greater clarity
9 in the use of that expression because it's used to mean,
10 I think, reunification with a parent in the broader sense
11 as defined in section 11.

12 A. Yes.

13
14 COMMISSIONER: And maybe even more broadly than that to
15 persons outside those identified in section 11 in some
16 instances. So language matters. And it's hard to know
17 what we're talking about if we haven't got an agreement as
18 to what it is we're talking about.

19 A. And so I preface my comments with all of that in that
20 we have an Act that places obligations on the Chief
21 Executive to undertake different functions, responding to
22 concerns, investigating, assessing. Where a child is in
23 need of protection and an order is made, even an emergent
24 order, casework is being done, we should be taking all of
25 these reasonable efforts to get children home.

26
27 We have inordinate delays at the moment built into the
28 system to get the initial case plan which is to then
29 hopefully set out to a parent what it is we would like them
30 to do. The whole systems tooled around doing all we can to
31 try and get kids home or to family or to a biological
32 parent. And this has been so since 1999. Yet I have no
33 sense as to how often we are successful. So it's within
34 that context I would welcome the oversight of the court to
35 consider successful reunifications.

36
37 COMMISSIONER: You see, it just seems a bit one-sided to
38 invoke the court's jurisdiction at the outset but
39 thereafter when it comes to that process coming to an end,
40 hopefully to a successful end, a laudable end, the court is
41 not given any visibility of what is proposed --

42 A. Yes.

43
44 COMMISSIONER: -- unless, as a matter of practice, you
45 seek leave and in the course of doing so inform the court,
46 based presumably on information you in turn receive from
47 the department, of why it is that this is a good idea and

1 desirable against the assumed background that the child was
2 removed into the custody of the department for good reason
3 in the first place, otherwise we could end up in the
4 situation of revolving futility at huge cost?

5 A. And so, Commissioner, the other point I would make is
6 that we need to start using big data more effectively, and
7 I put this scenario to you. It happens every week. And we
8 will no doubt talk at some point around alternative dispute
9 resolution mechanisms, what that might look like. At the
10 moment we have a dispute resolution process called a court
11 ordered conference.

12
13 COMMISSIONER: Yes.

14
15 MR HASTIE: Now, court ordered conferences - and I met
16 with the manager of the dispute resolution branch, who
17 conducts the court ordered conferences as a court event on
18 behalf of the court, only in the last fortnight. And
19 I understood her to be saying that - and it's held
20 I understand for many years that between 54 and 60 per cent
21 of matters are resolved through a court ordered conference.
22 So we have great success when we do manage to get to that
23 event with a team leader, a child safety officer, in a room
24 with a case plan that the parents can then look at,
25 interrogate, think about and decide whether or not they
26 agree. And it equally gives myself and my lawyers the
27 ability to then make any concessions that are needed in
28 terms of type of order or duration. So we may be seeking a
29 two-year order, and I've had magistrates put this to me not
30 in a court setting but asked me the question, "You will go
31 to a conference. You will come back before us. There will
32 be goodwill amongst everybody. There's been a resolution
33 reached. You will all agree that a 12-month order is
34 needed or an 18-month order is needed." In rare occasions
35 they might not agree because it's not a consent
36 jurisdiction. The court might say, "That's great. But
37 what I also need you to get me is this." And that happens
38 on rare occasions. But on the whole the court will accept
39 the agreement that's been reached and will make those
40 orders.

41
42 COMMISSIONER: With all relevant parties and interests are
43 represented and so on?

44 A. Yes. The question then is: when we are able to
45 achieve a resolution through agreement, does that more
46 likely lead to kids getting home? I don't know.

47

1 COMMISSIONER: And is it more likely to endure?
2 A. That's right. Now, commonsense would say where
3 parents and other interested people have a role in agreeing
4 to an outcome that's not through a contested hearing where
5 witnesses give evidence and are cross-examined, commonsense
6 says big data would show that we must get better outcomes
7 on those matters. But I don't know, Commissioner.

8
9 COMMISSIONER: And in a way you come back to the approach
10 of the Canadian judge, which is to get all of
11 the interested parties together as soon as possible to see
12 if resolution in the interests of the child can be
13 achieved.

14 A. Yes. And even in the Colorado context where those
15 findings were made that the threshold was crossed in our
16 language a child in need of protection - it is then
17 judge-led intervention through the 12-month mark. The
18 judge drives intervention. You come back before the judge
19 every week, every two weeks, "All right. Have you gotten
20 yourself into this rehab program?" "No." This happened.
21 This is a matter I saw. The father said, "They don't have
22 a spot for me." The judge picks up the phone, "Rehab, this
23 is judge so-and-so. I've got Mr so-and-so here. He tells
24 me you don't have a spot. Oh, if he comes down this
25 afternoon you can see him? Yeah, okay. Thank you."

26
27 COMMISSIONER: Well, Director, overnight - because we're
28 going to adjourn in a minute --

29 A. Yes.

30
31 COMMISSIONER: -- I'd like you to think about the ways in
32 which the I'll call it mediation process --

33 A. Yes.

34
35 COMMISSIONER: -- could be accelerated, better
36 implemented, and what it might look like, because there is
37 a contest of opinions, I think, as to whether the model,
38 the litigation model, is somehow impeding the activities
39 that would otherwise be available to resolve matters. The
40 expression I have in mind is the litigation model as
41 opposed to the human services framework, and it was
42 suggested by the previous witness that they're somehow in
43 tension, those two approaches. What you've said suggests
44 that they're not necessarily and, indeed, concurrent
45 planning to both reunify whilst other processes are under
46 way would suggest that they're not mutually exclusive
47 courses of action.

1 A. No, not at all.
2
3 COMMISSIONER: But, given the criticisms that are made of
4 the court process which is sort of approbated and
5 reprobated at the same time, I'd be interested in your
6 views as to how that process might be enhanced and
7 accelerated to hopefully mitigate the criticisms of it.
8 A. Yes.
9
10 COMMISSIONER: So any ideas on that subject we will pursue
11 tomorrow.
12 A. I've got lots of ideas, Commissioner, yeah.
13
14 COMMISSIONER: And thank you for your time, Director.
15 We're adjourning until 10.30 tomorrow because there's an
16 important ceremonial occasion that members of the Bar wish
17 to attend. Is 10.30 sufficient time, Mr Hastie?
18
19 MR HASTIE: I would have thought so, Commissioner.
20
21 COMMISSIONER: All right. We'll adjourn until 10.30.
22
23 MS SWEET: Should we ask the person participating in the
24 ceremony?
25
26 MR O'BRIEN: 10.30 would be --
27
28 COMMISSIONER: Yes, and welcome to the Commission.
29
30 MR O'BRIEN: Yes, my name is O'Brien, Commissioner.
31
32 COMMISSIONER: Yes.
33
34 MR O'BRIEN: Thank you for that. I was hoping to be a
35 small target, and I've achieved that so far. But 10.30
36 will be sufficient.
37
38 COMMISSIONER: Well, just you wait. Thank you very much.
39
40 **THE HEARING WAS ADJOURNED AT 4.11PM UNTIL WEDNESDAY,**
41 **10 DECEMBER 2025**
42
43
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45
46
47

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