

CHILD SAFETY COMMISSION OF INQUIRY

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

On Thursday, 11 December 2025 at 10.01 am

Before: Mr Paul Anastassiou KC, Commissioner

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

1 COMMISSIONER: Mr Hastie --

2

3 MR HASTIE: Yes, Commissioner.

4

5 COMMISSIONER: -- before we recommence the evidence of
6 the Director, I'd like to raise a matter concerning the
7 tender of CL-75.

8

9 MR HASTIE: Yes, Commissioner.

10

11 COMMISSIONER: And I think it would be helpful to recount
12 the background. CL-75, which I'll come to in a minute, is
13 an update, so I'm told, of the document which is at court
14 book 695 dated 20 February 2025. That document was
15 produced as an attachment to a witness statement of
16 Clair Martin and specifically referred to at paragraph 52.
17 That paragraph says:

18

19 *Our legal officers are given tools and*
20 *resources to assist with ensuring the*
21 *language (indistinct) of the advisers is*
22 *not perceived as practice advice. An*
23 *example of this is the Alternative Language*
24 *Guide, which provides example language to*
25 *avoid any perception that they may be*
26 *crossing over into practice. This guide*
27 *includes wording and suggestions in*
28 *relation to the removing of "I" from legal*
29 *advices."*

30

31 And the Alternative Language Guide dated 20 February is
32 produced, and I note that the witness statement of
33 Ms Martin is dated 3 November.

34

35 So Ms Schifilliti was asked quite a number of questions
36 about this document, commencing at transcript 3317, at
37 point 44 relevantly, questions from Ms Sweet:

38

39 *Q. Could you tell His Honour why this*
40 *document was created?*

41

42 *A. This document was created largely for*
43 *lawyers who were new to our team who'd come*
44 *from, you know, different legal backgrounds*
45 *and had not essentially worked in a human*
46 *services framework before. So it was about*
47 *essentially providing them with a tool or a*
resource as to their communication with

1 CSOs that is within an instructional model.

2

3 Then skipping over a few questions, down to line 25 on
4 page 3318:

5

6 Q. So this is the tool that's currently
7 in operation to assist new officers?

8 A. It may have been reviewed recently.
9 So what we did this year was I called it
10 the enhanced - our enhancement project, and
11 it was all part of developing our
12 resources. As part of that we did a vision
13 statement, we had OCFOS values, and we did
14 some documents. We pulled together some
15 documents that we thought might be really
16 supportive to our team in that.

17

18 Q. Okay.

19

20 And the answer proceeds:

21

22 And so those documents were developed at
23 the beginning of this year and then they
24 were reviewed, you know, six months later,
25 and as a part of that we reviewed a whole
26 suite of our documents. I expect that this
27 would have been reviewed at the time and
28 there may have been amendments to this
29 document as a result of those reviews.

30

31 Then skipping over to page 3319 at - between line 5 and
32 11 - "You should" - "I'm not going to" - sorry, there's a
33 quote from a document, and the answer in response to the
34 quote is:

35

36 "... Remember that OCFOS operates under an
37 instructional based model and should not
38 refuse to run an application unless there
39 is no legal foundation." That's correct?

40

41 And that is a reference in the 20 February document to the
42 passage on page 2 which provides in terms "remember that
43 OCFOS can only take instructions from STLs, not CSOs" - I'm
44 sorry, I've read the wrong sentence:

45

46 Remember that OCFOS operates under an
47 instructional based model and should not

1 *refuse to run an application unless there*
2 *is no legal foundation.*

3

4 Then skipping over to some questions that I asked at
5 page 3321, at the bottom of the page the answer to my
6 question at line 47 was:

7

8 *I think it would be beneficial to the*
9 *Commissioner to receive the latest version*
10 *of this document.*

11

12 To which I responded:

13

14 *Well, this is a pretty modern, 20 February*
15 *2025?*

16

17 Answer:

18

19 *Commissioner, we work in an actual learning*
20 *framework within the department and we're*
21 *constantly reviewing the way we work to*
22 *continuously improve what we do and how we*
23 *do that.*

24

25 Then there's another question, which I'll skip over.
26 I asked at line 16:

27

28 *See if you could answer my question. Has*
29 *it been reviewed at your initiation?*

30

31 Answer:

32

33 *All documents have been reviewed at my*
34 *initiation, yes.*

35

36 Then down to line 29:

37

38 *I'm now asking you a different question,*
39 *which is whether you agree with me that the*
40 *statement [the statement I've previously*
41 *quoted] is wrong.*

42

43 Answer:

44

45 *I don't agree with you, Commissioner. As I*
46 *said --*

47

1 Now, when one comes to the most recent version of this
2 document, which is exhibit CL-75, and when one turns to the
3 corresponding passage, which is on page 2 of that document,
4 against or adjacent to the heading "Advice versus
5 instructions" there is no reference in that to any legal
6 test at all; indeed it's bereft of any reference to the
7 test to be applied when determining whether an application
8 should be made. Instead it says:

9
10 *If you have any concerns with the*
11 *instructions received you should discuss*
12 *these with your senior legal officer as the*
13 *escalation process may need to occur.*
14

15 My questions are as follows, and I'm giving you advanced
16 notice of these, Mr Hastie, and your client can expect to
17 receive a notice that will incorporate the questions I'm
18 about to indicate I would like answered.
19

20 I want to know when the first version of the 20 February
21 document was created. And, by the way, I should note that
22 CL-75 does not contain a date in November as opposed to the
23 February document, which is 20 February. It is silent as
24 to the time in February that it was created. I may need to
25 infer - perhaps, unless there's evidence to the contrary,
26 I will infer - that the document was created after the
27 witness statement prepared on behalf of Ms Clair Martin,
28 who produces it.
29

30 So, getting back to my questions, when was the 20 February
31 document first created; how many reviews have been
32 undertaken and at what intervals and by whom of that
33 document. I will require the production of all versions
34 and iterations of the 20 February document that preceded
35 its latest update, apparently as of 20 February. I want to
36 know who within OCFOS is responsible for and undertook the
37 review of that document on each occasion on which it was
38 reviewed. I want to know when the February version of the
39 document was reviewed most recently and by whom, who was
40 involved in the review, at whose instigation, and when the
41 version that you have tendered as CL-75 was approved and by
42 whom.
43

44 I require all communications between officers of the
45 department and OCFOS, and all internal communications
46 between OCFOS officers and between department officers
47 concerning the initiation of the review of the February

1 document, and all drafts of that document created in the
2 process of the review. I want to know who the author of
3 the November document was; that is of CL-75.

4
5 I want all instructions that were given concerning the
6 review of the February document, whether given orally or in
7 writing; if given orally, all documents that evidence those
8 instructions. I want all legal advice given in connection
9 with the review of the February document. If you wish to
10 take an objection as to privilege, you need to identify the
11 documents concerned with sufficient description, including
12 as to who the author is, who the recipient was and the date
13 of the document. And I require that material to be
14 produced by no later than Tuesday, 16 December, so that
15 I can consider this material over the course of the January
16 break.

17
18 Now, it may be that Ms Martin is able to shed some light on
19 these questions. I'm going to respectfully ask that if the
20 Director's evidence is not finished today he come back at
21 another convenient time next year and we will make a start
22 with Ms Martin tomorrow.

23
24 MR HASTIE: We will make?

25
26 COMMISSIONER: We'll start Ms Martin's evidence tomorrow.

27
28 MR HASTIE: Tomorrow. Okay. Thank you, Commissioner.

29
30 COMMISSIONER: In the morning. So you will get a formal
31 notice, but I wanted to give you advanced notice of those
32 matters so they can be addressed as soon as possible, given
33 the timeframe.

34
35 MR HASTIE: Thank you, Commissioner. We will do our
36 utmost obviously to locate all this material and to respond
37 to the notice.

38
39 COMMISSIONER: It may not even be voluminous.

40
41 MR HASTIE: Well, I don't know.

42
43 COMMISSIONER: I don't know either.

44
45 MR HASTIE: I have a difficulty on Monday because, believe
46 it or not, Energex is closing our building, and I can
47 probably work around that. But would you, Commissioner,

1 make it the Wednesday or is that too late?

2

3 COMMISSIONER: The Wednesday will be fine.

4

5 MR HASTIE: Thank you, Commissioner.

6

7 COMMISSIONER: All right. Thank you, Mr Hastie.

8

9 <NIGEL MILLER, CONTINUING [10.13 am]

10

11 COMMISSIONER: Now, Mr Miller --

12 A. Yes, Commissioner.

13

14 COMMISSIONER: -- where we left off yesterday was I'd
15 raised with you the terms of the paramount principle as
16 amended and asked you to consider overnight some
17 propositions that I put to you. I have a few more
18 propositions to put to you in relation to that matter, and
19 perhaps it would be best if I put them to you first and
20 then you give me whatever response you consider
21 appropriate.

22

23 The amendment to the paramount principle necessarily,
24 I suggest, involves the decision-maker making an unknowable
25 assumption or assumptions projecting what is in the best
26 interest of the child over the whole life of the child.
27 What I'm getting to is that, given the terms of the test as
28 amended in that section, necessarily it involves the making
29 of assumptions. Do you agree with that to start with?

30

31 A. Yes, I agree with that, Commissioner.

32

33 COMMISSIONER: If that's right, what assumptions should
34 the decision-maker make in relation to what is considered
35 to be in the best interests of the child?

36

37 A. Commissioner, the amendment to the paramount
38 principle, from my review of the history of the amendment
39 last night, coincided with the insertion of the new
40 permanency principles. So when considering the paramount
41 principle it would take you back to and need you to take
42 into account the provisions that are set out in section 5BA
43 and asking you to take into account the relational
44 permanency, also the connection the child is going to have
45 in 5BA(2)(b) and also the legal arrangements. However,
46 I take your point, Commissioner, that it's calling upon you
47 to at best make assumptions as to not just what may be in a
child's best interests through their childhood but calling
you to consider what then the effect of that might be

1 throughout their life.

2

3 COMMISSIONER: Yes. And there's an unavoidable evaluation
4 that needs to be made if one is considering the question of
5 what is in the best interest of the particular child about
6 what those interests are in the present circumstances that
7 a child is in, and those circumstances may be a pretty
8 broad set of factors that need to be considered in order to
9 make an evaluation in the case of an individual child of
10 what's in the best interests of that child. That, I think,
11 is unavoidable as a matter of analysis on the part of
12 the decision-maker called upon to consider that question,
13 and courts need to consider that question in many contexts,
14 in the family law context, in the child protection context.
15 But do you agree that the consideration must always be
16 focused on the interests of the individual child in that
17 individual child's circumstances?

18 A. Yes, I do.

19

20 COMMISSIONER: Right. So when one includes in that
21 consideration the longitudinal prospects of the child then
22 one is required to make assumptions in a longitudinal sense
23 throughout the child's childhood and even throughout the
24 child's entire adult life, given the express terms of the
25 section?

26 A. Yes, Commissioner.

27

28 COMMISSIONER: Yes. So I just wonder how that can be
29 done. Wouldn't one need to articulate what those
30 assumptions are? And, further, wouldn't any such
31 assumptions be inherently patronising with effect beyond
32 the child's childhood and into adulthood?

33 A. Commissioner, that will be dependent upon the
34 individual circumstances of the child and at what point in
35 their childhood a decision is being made. Where that
36 aspect - the aspect of considering the rest of the child's
37 life, in my view, would become more pronounced as a child
38 ages and heads towards transitioning out of the care
39 system. So, if you have a child who is aged 15 or 16 and
40 is seeking the assistance of the Chief Executive at that
41 point in time in terms of access to further study or
42 vocational study or even other aspects of engaging in
43 apprenticeships or so on, it might become quite relevant to
44 that child in a way that would not be relevant to a child
45 who is, say, aged four at the point a long-term order is
46 being made.

47

1 COMMISSIONER: But even in the case of a four-year-old the
2 overarching principle, or the paramount principle, I should
3 say, requires consideration of the best interests of
4 the child to be projected both through childhood and the
5 rest of the child's life whenever the question arises. So
6 how does one do that without making, as I've said,
7 assumptions and necessarily those assumptions may not - or
8 those assumptions may not correlate with the individual
9 aspirations that the child might have in due course for
10 that child's adult life?

11 A. That's so, Commissioner. At the point the court is
12 making a determination. What the court's provided with in
13 terms of looking forward is the child's case plan. That
14 case plan will only at best have a duration of six months
15 to run. Some case plans at the point the court is making
16 that determination might have a very short duration left to
17 run in terms of projecting forward as to the sorts of
18 actions that are going to be undertaken to meet that
19 child's needs.

20
21 COMMISSIONER: I accept that. What I'm trying to
22 understand additionally is what work do those additional
23 requirements have to do in terms of decision-making in
24 relation to an evaluation of the best interests of
25 the child when analytically all one can do is make an
26 assumption or assumptions?

27 A. That's so. You're simply tasked with making an
28 assumption.

29
30 COMMISSIONER: What are the relevant assumptions which
31 should be made?

32 A. The assumptions are - in my view you would start
33 with - you would be guided back or you are guided back
34 through the general principles or the other general
35 principles in terms of the scheme of the Act is to try if
36 the child has been taken into the care of the State,
37 considering what or if any actions have occurred in terms
38 of trying to support that child to be returned to their
39 family. But if that's not occurred or it's now no longer
40 open on the evidence your assumptions then are - must be a
41 consideration of the legal permanency principles, and part
42 of that will be looking to where the child is placed,
43 making an assumption as to how secure that placement is.

44
45 COMMISSIONER: But all of those factors could be taken
46 into account, could they not, without needing to rely upon
47 the additional words in that section?

1 A. You are correct, Commissioner, that those things were
2 taken into account prior to the amendment to include the
3 projecting forward throughout the child's life.

4

5 COMMISSIONER: As best one can as matters stand at the
6 time that a evaluation is made?

7 A. Yes, Commissioner.

8

9 COMMISSIONER: Yes. All right. Thank you. My final
10 topic for you, Mr Miller, for the moment at least is to
11 come back to the question of the involvement of other
12 relevant persons in decisions as to long-term guardianship
13 and as to placement, and taking those two situations
14 separately if you don't mind. Yesterday you explained to
15 me that, let's say, a kinship carer or a foster carer could
16 seek leave to intervene in a court proceeding where, for
17 example, you may be seeking leave to withdraw a long-term
18 guardianship application pursuant to section 57A or be
19 seeking to make a long-term guardianship application. A
20 person with a relevant interest such as a kinship carer or
21 a foster carer could seek to intervene in the proceedings.

22 A. Sorry, Commissioner, if I can - I'm just getting some
23 feedback here. I'm hearing other - sorry, Commissioner --

24

25 COMMISSIONER: Could you not hear me?

26 A. I could hear but there's constant --

27

28 COMMISSIONER: I'll ask the audio people to see if there's
29 something that can be done.

30

31 MR HASTIE: I could hear it, too. I thought it was next
32 door.

33

34 MS McMILLAN: It's next door.

35

36 WITNESS: It's next door? Okay.

37

38 COMMISSIONER: I'm sorry.

39 A. Sorry, Commissioner, if I understand what you're
40 suggesting is that --

41

42 COMMISSIONER: Well, you told me that --

43

44 A. Yes.

45

46 COMMISSIONER: -- one way in which a person such as a
47 carer might be heard is if they seek leave to intervene in
the proceeding.

1 A. Yes, Commissioner.

2

3 COMMISSIONER: And I'm giving you the two examples of
4 where their intervention might occur if they have an
5 interest in intervening. One might be where an application
6 is made by you for a long-term guardianship order, let's
7 say to the Chief Executive, or where you seek to withdraw
8 that application.

9 A. Yes. So the first point - so, if it's an application
10 that I brought for long-term guardianship that's before the
11 court to the Chief Executive, another party could seek
12 through the court's leave to join those proceedings as a
13 non-party.

14

15 COMMISSIONER: Yes.

16 A. Now, that does occur at times.

17

18 COMMISSIONER: Yes.

19 A. And it might be that the purpose of that person
20 entering the proceedings as a non-party could be to provide
21 the court with relevant information in terms of not just
22 the case plan but also whether or not guardianship should
23 be considered.

24

25 COMMISSIONER: They may wish to contend that they should
26 be nominated under the present law as a long-term guardian
27 other, they may wish to say to the court, "Look, we haven't
28 been asked" or whatever the case may be "and we tried to
29 express our interest in the role but it was rebuffed" or
30 whatever the case might be.

31 A. And that's so, and they may seek a direction from
32 the court that a suitability assessment be undertaken of
33 them for consideration by the Chief Executive of whether or
34 not they could be nominated.

35

36 COMMISSIONER: And mightn't they also intervene in an
37 application by you for leave to withdraw a long-term
38 guardianship order presumably in relation to the proposed
39 placement arrangements pertaining to the child that may be
40 contested by a kinship carer or the foster carer?

41 A. So, Commissioner, are we talking about the scenario
42 where there's an existing long-term guardianship order
43 granted --

44

45 COMMISSIONER: Well, no, I'm talking about the scenario
46 where you have applied for a long-term guardianship
47 order --

1 A. Yes.

2

3 COMMISSIONER: -- arrangements have been made for
4 reunification in either the narrow or broader sense --

5 A. Yes.

6

7 COMMISSIONER: -- and therefore you're asked, as I would
8 understand it, by the department to withdraw the
9 application.

10 A. Yes. They will provide us with their current
11 assessment, which might be, "We've assessed the child as no
12 longer in need of protection," and their view may be that
13 we should then withdraw our application.

14

15 COMMISSIONER: And that assessment that is provided to you
16 and I assume also provided to the court would entail detail
17 as to the proposed placement arrangements that the
18 department has considered appropriate.

19 A. Yes. It will. If the department has made a decision
20 to place a child under section 82(2) back with a child and
21 that is the basis on which they've assessed the child's no
22 longer in need of protection, that would be put before the
23 court.

24

25 COMMISSIONER: And 82(2) "parent" in the broad sense; that
26 is in terms of the extended definition in section 11?

27 A. Yes, Commissioner. I think we covered that. The
28 definition as appears in section 82(2) would be the
29 section 11 definition of "parent".

30

31 COMMISSIONER: So if, say, the present carer of the child
32 thought that what was proposed was not suitable or in the
33 best interests of the child, the carer could seek to
34 intervene pursuant to section 113 and be heard on the
35 application?

36 A. They could be heard and the court would consider
37 whether or not they are someone that can assist the court
38 with a relevant matter.

39

40 COMMISSIONER: One of the things I'm concerned about is
41 whether carers are given adequate opportunity to be heard
42 in relation to both guardianship decisions and placement
43 decisions. My hypothesis for discussion purposes is let's
44 say there's a carer who has been caring for the child for
45 let's say no less than six months, and that carer considers
46 that the arrangements that are proposed in terms of the
47 re-placement of the child are not in the best interests of

1 the child. Shouldn't that carer be entitled to be heard on
2 that question before the court?
3 A. I would say yes, if the matter is before the court of
4 course.

5
6 COMMISSIONER: And what I'm wondering about is what
7 arrangement would better facilitate the opportunity for
8 carers to be heard on matters such as guardianship and
9 placement. Presently if they are sufficiently well
10 resourced and energetic enough to seek leave to intervene
11 then there's a pathway. But it's hardly encouraging
12 participation by the carer, it would seem to me. And
13 wouldn't a possible arrangement be that in the case of any
14 carer of standing, let's say, of six months or more, why
15 shouldn't such a carer have a right to be heard in any such
16 variations or applications either for guardianship or in
17 relation to a placement decision made by the Director under
18 section 82(2)? And if the placement of the child were the
19 explicit subject of a court order, the earlier order
20 granting custody to the Chief Executive, then a
21 re-placement of the child would require a variation to the
22 order which would present an opportunity for relevant
23 interested persons, including carers, to address the court
24 in relation to the fundamental question of what is in the
25 best interests of the child.

26 A. Yes, Commissioner. I would make a couple of points.
27

28 COMMISSIONER: Please.

29 A. And I will be able to provide these references to the
30 Commission. There have been at times matters that have
31 been published by QCAT where there's a cross-over with the
32 issues you're raising where carers have cared for children
33 for, in some cases, years and then the decision has been
34 made based on issues in respect of statements of standards
35 that the children are moved. On viewing those cases there
36 then is consideration as to whether or not the carer has
37 standing to seek the review.

38
39 COMMISSIONER: This is under section 91 of the Act:

40
41 *The child's carer is entitled to have the*
42 *decision to remove the child from the*
43 *carer's care reviewed by the tribunal if*
44 *(a) the Chief Executive has custody or*
45 *guardianship of the child under a child*
46 *protection order and the carer is not a*
47 *provisionally approved carer.*

1
2 I'm not sure what that condition really involves presently.
3 And (c):
4

5 *Either, the child protection order grants*
6 *the Chief Executive long-term guardianship*
7 *of the child or the stated reason for the*
8 *decision is the carer is no longer a*
9 *suitable person to have care of the child,*
10 *or the carer is no longer able to meet*
11 *standards of care on the statement of*
12 *standards for the child.*
13

14 So it's a limited right of review.

15 A. There is, yes, a limited right. And there are other
16 decisions, Commissioner, that relate to where carers are
17 then seeking ongoing contact with children who have been in
18 their care for many years. And in that aspect they don't
19 have a review right because QCAT has found that they're not
20 parents or they're not members of the child's family, and
21 so they're not an aggrieved person for when decisions are
22 made that they can no longer have ongoing contact with a
23 child that they've cared for.
24

25 COMMISSIONER: I would be grateful if you could draw those
26 decisions to my attention at some convenient time.

27 A. Yes.
28

29 COMMISSIONER: What is the condition in (b), 91(b),
30 directed to as you understand it, "and the carer is not a
31 provisionally approved carer"? So if you are a
32 provisionally approved carer you have no right; is that how
33 I should read it?

34 A. Yes, Commissioner, it's not a provision that I've
35 dealt with very often, Commissioner.
36

37 COMMISSIONER: No.

38 A. But I would read it as if a child is placed in your
39 care on a provisional basis. As to how long that
40 provisional basis may be maintained, I'm not sure. But you
41 are not entitled, if a decision is then made to move the
42 child, to seek a review.
43

44 COMMISSIONER: Well, it just describes the status of the
45 carer. And if the status of the carer is a provisionally
46 approved carer then the section doesn't operate to the
47 benefit of the carer. You have to be a non-provisionally

1 approved carer.

2 A. Yes.

3

4 COMMISSIONER: Whatever that means, but I'll find out.

5 A. That's what I understand it's suggesting.

6

7 COMMISSIONER: So are there any other relevant provisions
8 in relation to the rights of a carer to seek a review of a
9 decision as to placement or guardianship that I should be
10 aware of?

11 A. Commissioner, just back to the provisional basis,
12 there is reference in section 82 where it sets out the
13 number of different entities or people that can be approved
14 to care for a child. 82(1)(e) then refers to if the Chief
15 Executive is unable to approve somebody as a kinship carer,
16 approved foster carer or another entity or a licensee, you
17 then are left with what is referred to as a provisional
18 carer. But back to your question --

19

20 COMMISSIONER: So, therefore, if you are a provisionally
21 approved carer within the meaning of 82(e) you don't have
22 any rights?

23 A. That would be my understanding, Commissioner.

24

25 COMMISSIONER: Yes, I see. Thank you for that. That's
26 helpful.

27 A. Subject to the limitations placed on a right of review
28 in QCAT, the only other option you would have under the
29 scheme of the Act is to seek to access the child protection
30 proceeding, if it was on foot, through a section 113
31 application.

32

33 COMMISSIONER: But, if it's a decision made by the Chief
34 Executive under section 82(2), as the carer you would have
35 no rights, subject to the limited rights of review to QCAT?

36 A. Yes, Commissioner.

37

38 COMMISSIONER: And if the absence of any rights to be
39 heard in relation to the best interests of the child on the
40 part of carers is, as I understand it to be the case, a
41 matter which is disincentivising when it comes to the
42 preparedness of individuals to volunteer for that role,
43 then one way to abate the negative aspects of the role
44 would be to confer rights to be heard in relation to such
45 important decisions congruent with the obligations that are
46 voluntarily undertaken by carers rather than writing out
47 the role of the carer at some time, perhaps to be

1 arbitrarily determined like, for example, if the carer has
2 been a carer for no less than six months - perhaps it
3 should be a longer period; it's a matter for debate - but
4 my point is if you're asking people to volunteer to
5 undertake the role in effect being the day-to-day parent of
6 the child and in that relationship that person becomes
7 close to the child, understands or has a prima facie
8 meaningful understanding of the child's welfare, why
9 shouldn't we hear from or why shouldn't the courts hear
10 from those people when it comes to removing the child from
11 their care?

12 A. I agree, Commissioner. I would welcome the input of
13 anybody that has information that is relevant to what the
14 care of the child or what the child's needs are.

15
16 COMMISSIONER: But at the moment you don't get that input,
17 do you, other than from the department?

18 A. That's so. The usual way in which information from a
19 carer or evidence attributed to a carer would come before
20 the court will be through departmental material or through
21 suitability assessments which at times are conducted by
22 somebody independent, albeit engaged by the Chief
23 Executive.

24
25 COMMISSIONER: By third parties?

26 A. A third party, albeit engaged through the Department
27 of Child Safety.

28
29 COMMISSIONER: Yes.

30 A. It is more rare to have through direct affidavit
31 information from carers. However, at times carers do
32 provide evidence and do participate in proceedings. But
33 I take your point, Commissioner. The Act could be much
34 clearer as to how and on what basis a carer may seek to
35 join as a non-party, whether it's by right or whether it's
36 through leave. The Act could be much clearer.

37
38 COMMISSIONER: Maybe the Act should provide that carers
39 of, let's say, not less than six months standing should be
40 necessary parties to applications that your office make for
41 long-term guardianship. And maybe the Act should provide a
42 specific right given to the carer to be heard upon a
43 variation to any placement arrangement on the assumption
44 that the placement arrangement is, on this scenario,
45 expressly included in the court order --

46 A. Yes, and at the moment --

47

1 COMMISSIONER: -- so that they can be heard.
2 A. And, you're right, Commissioner, under the present
3 settings placement would only ever in effect appear on a
4 face of an order if the order's granting somebody custody
5 or guardianship separate to the Chief Executive.
6

7 COMMISSIONER: Somebody other than the Chief Executive?
8 A. Yes, so separate to custody or guardianship to the
9 Chief Executive the only time you could say that on the
10 face of the order it includes placement is where custody
11 has been granted to a named family member or guardianship
12 has been granted to another person who's named.
13

14 COMMISSIONER: So custody or guardianship other. But if
15 it's custody or guardianship Chief Executive, either/or,
16 the placement --

17 A. Is not part of the order.
18

19 COMMISSIONER: -- is entirely in the discretion of
20 the Chief Executive?

21 A. That's correct.
22

23 COMMISSIONER: Yes. Thank you. That's very helpful.
24 There are other people who want to ask you questions. So
25 I thank you for your assistance.

26 A. Thank you, Commissioner.
27

28 COMMISSIONER: Ms Sweet.
29

30 MS SWEET: Thank you, Your Honour.
31

32 **<EXAMINATION BY MS SWEET, CONTINUING** [10.44 am]
33

34 MS SWEET: Director, you may remember me from Tuesday
35 afternoon, where I asked you a couple of questions?

36 A. Yes.
37

38 Q. And since that time you've been in a very productive
39 conversation with His Honour. I would like to pick up on
40 something His Honour was asking you about in broad terms
41 which goes to the recommendations of the Carmody Inquiry,
42 and if I could just hand to you a copy of those
43 recommendations, and I've tabbed the recommendation I'd
44 like to take you to. I know you're familiar with it
45 because you reference it in your affidavit, and it's the
46 recommendation to establish your office, which is 13.17.
47 You have that there?

1 A. Yes, I do.

2

3 Q. Yes, thank you. What I want to take you to is the
4 second paragraph, which I also raised with the Official
5 Solicitor, which says:

6

7 *Staff from the Director of Child Protection*
8 *will bring applications for child*
9 *protection orders before the Childrens*
10 *Court and higher courts, except in respect*
11 *of certain interim or emergent orders where*
12 *it is not practical to do so. In the*
13 *latter case some officers within the*
14 *Department of Communities, Child Safety and*
15 *Disability Services will retain authority*
16 *to make applications.*

17

18 Just stopping there, do you read that as I do that the
19 intent of the recommendation was that staff from your
20 office would bring emergent order applications save in
21 circumstances where it wasn't practical to do so? Is that
22 how you read that?

23 A. Yes, I do.

24

25 Q. Yes. And that's not the model - that part of
26 the model is not part of our current model; correct?

27 A. That's correct. So --

28

29 Q. Yes.

30 A. -- if I can expand on that --

31

32 Q. Well, if you could just --

33 A. Sorry.

34

35 Q. -- wait for my next question --

36 A. Yes.

37

38 Q. -- and then I encourage you to expand on it. Is it
39 your view that it should be staff from your office who
40 bring, in the ordinary course, emergent order applications?

41 A. Yes, I would say so in the ordinary course, knowing
42 that --

43

44 Q. And why do you say that?

45 A. And I've touched upon this over the last couple of
46 days. The decision wherever it's taken to remove a child
47 from their family, it's a very - through bringing an

1 application is a very critical decision. It, in my view,
2 requires analysis of the evidence or information and in my
3 view an exercise of --

4
5 Q. If you could please --

6 A. Sorry.

7
8 Q. Thank you, Director.

9 A. And in my view an exercise of - it requires - my view
10 is it's a legal decision and it should be undertaken by a
11 lawyer, and that should be done so through independence.
12 And I would say even now under the current settings there
13 are occasions where this becomes an issue even within child
14 protection proceedings that I'm responsible before the
15 court for. The examples I would give, that at times if
16 there was to - if - there are still at times now
17 applications brought for, say, temporary custody orders
18 midway through a child protection proceeding. So you will
19 have the Chief Executive make an application, which I'm not
20 empowered to do --

21
22 Q. Yes.

23 A. -- because of some sort of emergent situation.
24 Likewise, I'm not empowered to seek a warrant. So if a
25 child is removed from the care of their carer, albeit maybe
26 placed through the Chief Executive, the person at the
27 moment who has the authority then to bring an urgent
28 application to seek a warrant is the Chief Executive,
29 albeit I may be seized of the matter, and so I'm in the
30 situation where myself or my lawyers are then providing
31 advice back to the Chief Executive but it falls in effect
32 back to a senior team leader as to what decision they're
33 going to be making.

34
35 Q. Yes. And you will no doubt be aware of the view held
36 by OCFOS that their advice in respect of emergent orders is
37 independent?

38 A. Yes, I'm aware of that.

39
40 Q. Yes. And that you're aware that the basis on which
41 that position is maintained is because they say there is
42 a - although they're internal to the Department of Child
43 Safety, they give only legal advice and not practice
44 advice, and that provides the necessary level of
45 independent legal assessment that the Carmody Inquiry said
46 was necessary?

47 A. What I would say --

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Q. Do you understand that to be the reason why OCFOS says their advice is independent, or do you think it's something else?

A. No, I understand the position is that OCFOS assert they're providing independent advice. But this is - from my perspective, I've not ever been privy to what that advice is, what that advice looks like and I --

Q. Yes, you spoke about that yesterday.

A. And I think there's also - from my perspective I don't have clarity around the basis on which the advice has been provided. As I understand it now perhaps the OCFOS officer re - is an authorised officer under the Act with certain delegations to do things, and it seems that, although they've been delegated the authority to make certain decisions, we have a situation where they're then giving advice about the decision to receive the instructions to then make the decision, if I put it that way.

Q. Yes. And you gave some evidence yesterday about the increasing number of referrals that your office --

COMMISSIONER: Sorry, Ms Sweet, before you move on, could you just explain to me the context in which a warrant is issued or arises?

A. Yes.

COMMISSIONER: That's the first I've heard of it. I would just like to understand --

A. Yeah, it's where a child is removed from their placement by a parent or somebody that's known to the child and --

COMMISSIONER: An unauthorised removal?

A. Yes.

COMMISSIONER: Yes.

A. So then in order to get the assistance of the police a warrant is then sought. Now, if the child is interstate or has been taken interstate you then have to rely upon the relevant police force in that state to locate and exercise the warrant.

COMMISSIONER: So even if the matter has progressed to the point where your office is involved in the ongoing seeking

1 of child protection orders that fall within your
2 jurisdiction, if that sort of event occurs you have no
3 jurisdiction to apply to the court for a warrant?

4 A. No, I have to make a request back to the relevant
5 service centre of the Chief Executive, outline the
6 concerns, and seek that they consider the issue and take
7 action or instruct an OCFOS lawyer to then seek a warrant.

8

9 COMMISSIONER: Yes, I see. Thank you. Ms Sweet, sorry.

10

11 MS SWEET: No. Thank you.

12

13 You gave evidence yesterday and your witness statement
14 refers to certain data which shows that over time your
15 office is receiving increasing numbers of referrals --

16 A. That's correct.

17

18 Q. -- about children, and many of these children - at the
19 time your office receives their files they are subject to
20 emergent orders?

21 A. Yes, I would agree with that. I think in the last -
22 or with the data from my statement at least 60 per cent of
23 the matters received in the year 24/25 were the subject
24 of - children were the subject of emergent orders.

25

26 Q. And many of those children on emergent orders are on
27 custodial emergent orders?

28 A. I would agree with that. There will be some matters
29 within the emergent orders per se where the order does not
30 provide for the child to be taken into the custody of the
31 Chief Executive, but on the whole they would provide for
32 custody of the child.

33

34 Q. Yes. And you're aware that a central reason for
35 this - the calling of this Inquiry is to interrogate why
36 there are increasing numbers of children entering the care
37 system?

38 A. Yes, I am.

39

40 Q. And the consequent increasing cost of the system?

41 A. Yes, I am.

42

43 Q. From your position and having been in the position
44 since 2016, what insights can you offer as to why there are
45 increasing number of children entering the system and have
46 been entering the system since the Carmody report?

47 A. What I can say is that, broadly speaking, I understand

1 the outcome of the Carmody Inquiry was that at that point
2 in time there needed to be far more work done in early
3 intervention, far more work, far more investment in
4 secondary services that were to provide help and assistance
5 to families at an earlier point in time, and if that was to
6 have occurred the idea was under the scheme of
7 the recommendations that we would have seen a marked
8 reduction in the number of children coming through into the
9 tertiary end of the system.

10
11 Q. Yes.

12 A. And, without being able to name a figure, I understand
13 that the Carmody Inquiry even modelled what that may look
14 like had all of the recommendations been implemented. So
15 there was great hope that through the 10-year roadmap we
16 would see a reduction in the numbers of children entering
17 the child protection system or the tertiary part of
18 the system. That has not occurred. Each year and every
19 year that my role has existed and my office has existed the
20 numbers have increased.

21
22 When looking at those numbers and looking at the data I've
23 not been able to identify any pattern as to when or why
24 there may be particular increases in matters. Year in year
25 out there does not seem to be a consistency. When you go
26 below the statewide level, some regions' numbers go down
27 one year, the other regions in that year will go up. So
28 what I'm saying, I guess there is no consistency even at a
29 service centre level year in year out. But the overall
30 numbers provide year in year out there are increases.

31
32 We did see in the data a real increase in the numbers
33 through the early stages of the pandemic. So the data
34 shows there were an uplift in the number of children who
35 entered the system who would have been taken into
36 out-of-home care, and it led to an increase in short-term
37 out-of-home care orders being made, and that in time then
38 led to an increase in matters coming back for those types
39 of orders ending and then an increase in long-term orders
40 being made.

41
42 And then more recently - I think I've addressed this in my
43 statement - we've seen yet again an increase in the matters
44 occurring from sort of the early parts of 2024 through to
45 today. As to what's driving that increase, I would say in
46 general, speaking general terms, the concerns broadly
47 defined you see in matters are relating to substance misuse

1 and domestic and family violence, and mental health. But
2 as to what or how the secondary services that have been
3 established - how many matters are being deferred to them,
4 I can't talk to that.

5
6 Q. Yes, and the drivers you speak about --
7 A. Yes.

8
9 Q. -- the drivers are not - the drivers haven't changed
10 since Carmody; would you accept that? Would you agree with
11 that?

12 A. I would accept that.

13
14 Q. So given that the drivers are known, there's been a
15 roadmap, you're across the data, what can you identify as
16 systemic failures within the system which are leading to
17 this increase?

18 A. Like I said, I don't think I'm in a position where
19 I can through data talk to how and at what point services
20 have been offered or accessed prior to the children
21 entering the tertiary end of the system. So I - I know
22 there's been a lot of work done in establishing these
23 services, in making them available to families. But, yeah,
24 I really - I don't think I'm in a position where I could
25 talk to exactly what has contributed to the ever increasing
26 numbers of children entering the system.

27
28 Q. Yes.

29
30 COMMISSIONER: You can speak to the legal process. Do you
31 have any - is there any part of the decision-making in
32 relation to the legal process, starting at the emergent
33 order stage because that's where it commonly starts, that
34 you consider contributes to the increasing number of
35 children being made the subject of a child protection
36 order?

37 A. Other, Commissioner, than pointing back to the
38 evidence I gave yesterday around there needing to be
39 greater amounts of early legal advice and representation
40 available to parents and families.

41
42 COMMISSIONER: And other pathways in terms of early
43 avoidance of litigation by, for example, something like the
44 United Kingdom model --

45 A. Yes, and --

46
47 COMMISSIONER: That could assist?

1 A. Yes, and with the benefit of counsel, legal advice,
2 even representation in early meetings, and then making sure
3 there is access at the time when the family needs to the
4 relevant service. If there was investment - and no doubt
5 there is investment in those things, yet year in, year out
6 numbers are increasing.

7
8 COMMISSIONER: Yes.

9 A. And I don't doubt - if I can make this point too, that
10 if we're going to talk about delegated authority - and in,
11 please, no way take my comments in any way that I'm not
12 supportive of that function and it being expanded.
13 However, when we're talking about delegated authority, it's
14 predicated on a child being in the custody of the Chief
15 Executive. The critical decision to bring a child from
16 out-of-home care or into out-of-home care is a precondition
17 then to the Chief Executive being able to delegate that
18 authority to a community-controlled agency. There needs to
19 be more focus, in my view, prior to that even occurring.
20 We're talking about the point in time. We need the
21 delegated authority involved but well ahead of a court
22 order.

23
24 MS SWEET: I'm glad you've raised this because I was going
25 to ask you about it, and I wanted to ask in respect of the
26 bringing in of delegated authority I think there have been
27 early adopters since 2020?

28 A. Yes.

29
30 Q. And they relate to powers such as family contact time,
31 connection to community, and in some cases the section
32 82(2) placement?

33 A. That's so. There are early adopters such as
34 Refocus --

35
36 Q. Yes.

37 A. -- which are largely situated on the Sunshine Coast.

38
39 Q. Yes, indeed.

40 A. And they have made decisions for individual children
41 in respect of placements.

42
43 Q. Yes.

44 A. And that has occurred in the context of even child
45 protection proceedings.

46
47 Q. Yes. And I want to ask you to what extent were you

1 consulted, was your office consulted, prior to the bringing
2 in of the delegated authority scheme?

3 A. I would have to go back and consult my records, but as
4 part of the implementation of the scheme the relevant
5 executive director in that area of the department did
6 undertake a - the presentation and training in respect of
7 what delegated authority was, what it looks like and what
8 the roadmap was for it, its rollout. But I'm not in a
9 position to give any evidence as to whether I was consulted
10 prior to that. I just don't recall, sorry.

11
12 Q. Yes. Well, as I'm hearing it, that doesn't sound like
13 consulting. That sounds like informing you --

14 A. Informing. Briefing.

15
16 Q. -- about what it's going to be?

17 A. Briefing and what it's going to be. It may be I was
18 consulted. I just don't recall, sorry.

19
20 Q. All right. And what issues have arisen within your
21 office in respect of what is really a disconnect between,
22 well, having the delegated authority of making decisions
23 and the imprimatur of your office in seeking these child
24 protection orders? What issues has delegated authority
25 thrown up for your remit to deal with?

26 A. Look, the issue is - and it's the issue that's
27 highlighted in every inquiry into child protection in every
28 state, you see it in the UK. It's information sharing.
29 And so there may be times where a decision has been taken
30 by the delegated authority that in a timely way we've not
31 been advised of that. But I am aware of instances, if we
32 talk about Refocus, where when my lawyers have delivered
33 training in terms of affidavits and evidence to child
34 safety staff on the Sunshine Coast it's been inclusive of
35 people from Refocus, the delegated authority, and I'm aware
36 of the matter that was before the court where it was the
37 delegated authority and their decision-making around
38 placement - placement of the children or child - I'm not
39 sure if it was plural - back with a parent then allowed us
40 to resolve the matter at a court-ordered conference, and we
41 had the benefit of the input of the delegated authority.

42
43 But, look, there might be instances where it's just the
44 information sharing could be improved. But I've had no
45 issues raised with me around how across the state it's -
46 there's been no issues raised around us other than perhaps
47 not getting in a timely way what those decisions are.

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Q. Yes. And in respect of the information sharing and the difficulties that that has caused what consequence has that had for the children who are the subject of the delegation?

A. It may have been that we just needed to seek a further update from the Chief Executive. But, again, I can't talk to any instances, but our information is gathered ahead of each court event from the Chief Executive. So my lawyers who are going to be appearing on a matter will be making contact with the relevant child safety officer and senior team leader. But we don't have the practice that as a routine a child safety officer or team leader attends court. So, prior to the model, in addition to having court coordinators at court, at times you'd often have the relevant child safety officer also at court, even at call-overs, and, although it was envisaged when the model was commencing and as part of the early planning that the child safety officers would continue to attend court, now it's not the case, that it's very much we're seeking an update ahead of court. We will at times stand matters down to seek further information if something's raised at court or outside of court. But it's really - yeah, there may be some matters where we've had to have a short adjournment in which to gather information that we're being told through people present at court is relevant for the delegated authority.

COMMISSIONER: Mr Miller, how does the intersection of the delegation of the placement power, say, to Refocus - I think that's presently the only community-controlled organisation that possesses that delegation --

A. That's my understanding, Commissioner, yeah.

COMMISSIONER: How does that intersect with applications that your office might be making? I mean, as you said at the outset on this subject, the delegation can only work effectively where the Chief Executive has custody or guardianship of the child. Both, really, isn't it? If the Chief Executive has custody the delegation can work?

A. Yes.

COMMISSIONER: Whether or not the Chief Executive has guardianship, the delegation can work because section 82(2) is empowering in relation to placement?

A. Yes.

1 COMMISSIONER: So how does the exercise of that power
2 intersect with what you do in terms of court applications,
3 and in principle is it any different whether the Chief
4 Executive possesses the power, as of course is the case
5 under section 82(2), or whether that power is delegated to
6 Refocus, for example?

7 A. Commissioner, there is no difference. When you think
8 about delegated authority, the Chief Executive still
9 retains the ability to make a different decision if they
10 took the view that the decision of the delegated authority
11 was in some way inappropriate.

12
13 COMMISSIONER: Is that right?

14 A. I might have it wrong.

15
16 COMMISSIONER: That would be an approbating and
17 reprobating of the delegation. The Chief Executive might
18 be able to revoke the delegation?

19 A. And that might be so. So where the delegated
20 authority has made a placement decision that's something we
21 must and do take into account, and, if their knowledge and
22 work with the family and their connection to the family
23 assists them to make that decision and do so at a much
24 earlier point, that only brings the proceedings hopefully
25 to a conclusion earlier.

26
27 COMMISSIONER: Well, I'm just really trying to understand
28 the context in which it intersects with your work. So it
29 might, for example, be relevant and arise in connection
30 with an application, on your part, for a long-term
31 guardianship order in favour of the Chief Executive, where
32 a question of placement might arise or it might already
33 have been resolved, I'm not sure.

34 A. That's so. If - through a proceeding, if we were
35 seeking a long-term order granting guardianship to the
36 Chief Executive and partway through that proceeding the
37 delegated authority placed the child back with one or both
38 of its parents, unless there's some fundamental issue, that
39 would have a real consequence to the application.

40
41 COMMISSIONER: What would it entail so far as the
42 application is concerned?

43 A. It would very well - I would expect we would take into
44 account that decision and on what basis it was made, and we
45 may then - we would then seek to amend our application and
46 all we might be doing is seeking a supervision order if one
47 was then required at that point in time.

1
2 COMMISSIONER: Or you might withdraw the application?
3 A. Or we might withdraw our application completely,
4 Commissioner.
5
6 COMMISSIONER: That might depend on whether the child is
7 being reunified to the parent that has the inherent
8 guardianship rights or just some other person?
9 A. That's so. It will dramatically change the trajectory
10 of the proceeding.
11
12 COMMISSIONER: Yes. Thank you. Sorry, Ms Sweet.
13
14 MS SWEET: Yes, thank you, Your Honour.
15
16 Director, just coming back to a point you made before, it's
17 necessary, isn't it, that for a delegated authority to get
18 involved the child is already in care?
19 A. Yes. The delegated - or there is no authority to
20 delegate unless the child's on an order.
21
22 Q. Yes. So all money spent on delegated authority is
23 spent in respect of children who are already in the system?
24 A. Yes, they would already be in the out-of-home care
25 system.
26
27 Q. Yes. And so that is money that is not otherwise - is
28 otherwise spent on matters such as early intervention which
29 is designed to keep children out of the system?
30 A. Yes.
31
32 Q. Yes. Director, I now want to take you to a submission
33 that I understand you'll be aware of, which is the Together
34 submission to this Commission?
35 A. Yes.
36
37 Q. Yes. May I hand a copy to the Director. Have you had
38 a chance to read this submission?
39 A. I have.
40
41 Q. Yes. Thank you.
42
43 COMMISSIONER: What exhibit, Ms Sweet?
44
45 MS SWEET: Sorry, it should be exhibit CA-49. You have
46 that, Your Honour?
47

1 COMMISSIONER: Yes, I do. Yes, thank you.

2

3 MS SWEET: Yes, thank you.

4

5 Can I take you in the first instance, Director, to page 4,
6 and there's a heading "Previous reviews of the child
7 protection litigation model"?

8 A. Yes.

9

10 Q. And the submission says:

11

12 *Over the past several years the child*
13 *protection litigation model has been*
14 *repeatedly reviewed by various stakeholders*
15 *with a purported aim towards adjusting the*
16 *model to provide better outcomes for*
17 *children and families.*

18

19 Just stopping there, do you agree with that statement?

20 A. Yes, I do agree. However, I would add that it's
21 been - it's not just the past several years.

22

23 Q. How long has it been? How long's the model been - and
24 when we talk about the child protection litigation model do
25 you take that to be a reference to the model that was put
26 in place in 2016?

27 A. Yes, I do.

28

29 Q. Yes. So how long do you say that the model has been
30 under review?

31 A. Very early in the commencement of the model I was
32 consulted as part of the review that was being undertaken
33 by Linda Apelt.

34

35 COMMISSIONER: By whom?

36 A. Linda Apelt.

37

38 MS SWEET: Apelt, A-p-e-l-t?

39 A. Yes.

40

41 Q. That was something that was attached to a --

42 A. So I understand she was undertaking a much broader
43 review of the system and an additional terms of reference
44 was added to her review to have an early look at the child
45 protection litigation model.

46

47 Q. Yes.

1 A. As part of that review I'd raised the issue around
2 affidavits. That was the one thing I do recall raising
3 with her, and in my view the - what was discussed
4 yesterday, that there is a different way to approach this.
5 So there was that early engagement with Linda Apelt. That
6 then led to a business process review that was undertaken
7 by KPMG.

8
9 Q. Yes. Were you consulted as part of that review?

10 A. Yes, I was. Yeah.

11
12 Q. Yes.

13 A. So that was a review undertaken - I might have my
14 dates wrong, but 2017, 2018. Then, as set out in this
15 document, there was a review undertaken by the Nous Group.

16
17 Q. Yes. Were you consulted as part of that review?

18 A. Yes, I was. And then --

19
20 Q. Well, just --

21 A. Sorry.

22
23 Q. -- stopping there - thank you, Director - this
24 submission claims that that report remains cabinet in
25 confidence and has never been released or summarised
26 publicly. Do you agree with that statement?

27 A. That's my understanding.

28
29 Q. Have you seen the review?

30 A. Yes, I have.

31
32 Q. Thank you.

33
34 COMMISSIONER: When you say you've seen the review, are
35 you referring to a document produced by the Nous Group or
36 some other document?

37 A. The report produced by the Nous Group.

38
39 MS McMILLAN: Sorry, could the witness just repeat which
40 group?

41 A. The Nous Group.

42
43 MS SWEET: Nous. N-o-u-s. Nous.

44
45 Yes. And did you observe change to the system as a result
46 of that review?

47 A. No.

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Q. Thank you. So you were talking us through the reviews. We can keep going with this document, or was there something you would like to add?

A. Yes, no, I would say then in more recent times - it's the third bullet point there - there was what was referred to as the child protection litigation project.

Q. Yes.

A. That project was - although situated within the Department of Child Safety, it did, as I understand, report to both directors-general in the Department of Justice, who are now named Department of Justice, and the Department of Child Safety, as well as the Department of Premier and Treasury.

Q. And when was this? When did that project commence, to your knowledge?

A. I would say 2023. Yes, I'd say 2023. I then as part of that project had one of my assistant directors - he was seconded to the project, and so he undertook work in what was referred to as I think an operations stream, and then there was a separate policy stream, I understand.

Q. Yes. And when did that project cease, to your knowledge?

A. Sorry, what was the question?

Q. When did the project cease?

A. My assistant director who was seconded to the project returned to me in January of this year. But, as to what date the project ceased, I couldn't say.

Q. Yes. And you see here the - do you know the outcome of the project?

A. No, I don't. What I would point out is that the document we're referring to was largely produced as a submission to that project. So --

COMMISSIONER: Which document are you --

A. This submission by the union.

MS SWEET: Yes.

A. So this was produced as a submission to that project. So I'm aware of the contents of this document from that time. I think it was in --

1 COMMISSIONER: Were you invited to put a submission to the
2 project?
3 A. The project, yes, I was.
4
5 COMMISSIONER: And has that been provided by you? Can you
6 provide that - your submission to the project, that is?
7 A. Yes, I can, Commissioner. You may already have it.
8
9 COMMISSIONER: I may? Okay, I'll --
10 A. If there's something else you need, I'm happy to have
11 a look.
12
13 COMMISSIONER: Yes, thank you.
14
15 MS SWEET: It has - I think it has been provided. I think
16 it's currently the subject of a public interest immunity
17 claim.
18
19 COMMISSIONER: I understood there was a - there is, and
20 I'll raise it with Mr Hastie later, we need to resolve
21 that, but I didn't appreciate that the public interest
22 immunity claim extended to a submission made to the review
23 by the director. Is that the case, Mr Hastie?
24
25 MR HASTIE: I think that's correct, Commissioner.
26
27 COMMISSIONER: All right. Well, I would like some
28 submissions on the public interest immunity claim as soon
29 as possible so I can consider them.
30
31 MR HASTIE: Yes, Commissioner. It was hoped that they'd
32 be provided to the Commission this week. There's been a
33 little bit of a delay caused by circumstances beyond those
34 persons responsible for it.
35
36 COMMISSIONER: That's all right.
37
38 MR HASTIE: But I was informed this morning it's expected
39 they would be with the Commission next week.
40
41 COMMISSIONER: All right. And if there's a need to debate
42 those submissions the debate would have to be in camera,
43 with other parties not included --
44
45 MR HASTIE: Yes, Commissioner.
46
47 COMMISSIONER: -- in order not to, well, disclose that

1 which is sought not to be disclosed.
2
3 MR HASTIE: That's correct.
4
5 COMMISSIONER: Yes, understood.
6
7 MR HASTIE: Thank you
8
9 MR O'BRIEN: Commissioner, if it assists, the document
10 that I believe Mr Miller is referring to is at tab 17 of
11 the court book. I don't know if that's actually been
12 received or not. But if someone wishes to assert that
13 immunity I thought I'd better bring it to the Commission's
14 attention.
15
16 COMMISSIONER: At tab 17. All right. Well, what do you
17 say as to that, Mr Hastie? Should we --
18
19 MR HASTIE: I could be - stand corrected. I thought we'd
20 gone through each of the documents which weren't to be
21 released. But if this submission is part of the court book
22 it must be --
23
24 COMMISSIONER: Who put together the court book? You did?
25 All right. Well, I'll ask you, Mr Hastie, to just
26 check because I can't see a tab 17 in my bundle.
27
28 MS McMILLAN: Mr Commissioner, can I just comment that it
29 may be - I'm getting instructions on whether we would want
30 to be heard also on the public interest immunity --
31
32 COMMISSIONER: You have an interest in this? I mean a
33 relevant interest?
34
35 MS McMILLAN: Yes. Mr Stewart is an employee otherwise of
36 Queensland Health; not at the time.
37
38 COMMISSIONER: Now he is.
39
40 MS McMILLAN: Well, I don't know, that's what I just want
41 to understand, but I'm just flagging that we're getting
42 some instructions.
43
44 COMMISSIONER: All right. Mr Hastie, it does seem that a
45 submission dated 19 June 2024 is behind tab 17, and there
46 is I think an attachment to that submission behind tab 18.
47 I'm not sure if other parties have access to this document.

1 They do. Shall I direct that the other parties return that
2 document for the time being?

3
4 MR HASTIE: I'll just have to double-check with my
5 instructing solicitors, Commissioner.

6
7 COMMISSIONER: We don't want inadvertent disclosure.

8
9 MR HASTIE: No. No, that's correct.

10
11 COMMISSIONER: All right. I'll wait to hear from you on
12 that.

13
14 MR HASTIE: Thank you, Commissioner.

15
16 COMMISSIONER: Thank you.

17
18 MS SWEET: So, Director, it's your evidence, isn't it,
19 that from about 2017 there have been various reviews of
20 the child protection litigation model?

21 A. Yes.

22
23 Q. Yes. And is it also your evidence that from 2017 to
24 2024 these reviews have been consistently ongoing?

25 A. Yes. Look, there may have been a year here or there
26 where one wasn't.

27
28 Q. Sorry, I should've said periodically. There have been
29 periodic reviews in that period?

30 A. Yes, yes.

31
32 Q. And is your evidence that there hasn't been a unified
33 proposal to amend the system that has been put into place
34 in that period?

35 A. I would have to ask you to clarify. When you say
36 "unified", I've had input into various reviews.

37
38 Q. Yes. Perhaps I'll withdraw the question and I'll
39 start again.

40 A. Yes.

41
42 Q. What's your evidence about the outcome - the output of
43 these reviews in terms of amendments to the system?

44 A. Perhaps if I answer this way.

45
46 Q. Yes.

47 A. The outcome of the KPMG review, which was a business

1 process review, there were a number of recommendations and
2 a number of other, I think it may have been referred to as,
3 suggested strategies. That led to, along with the input of
4 other things, the changes which commenced in how the model
5 operates today, those changes which commenced from 1 July
6 2019. So there were real changes made in terms of the,
7 yeah, business processes, which were largely or in part
8 based on the KPMG review.

9
10 Q. Yes.

11
12 COMMISSIONER: What were the principal changes?

13 A. Commissioner, I would point to the - the key change
14 being that direct communication between my staff, my
15 lawyers, and the allocated child safety officers and their
16 senior team leaders.

17
18 COMMISSIONER: Rather than going via the OCFOS lawyer?

19 A. That's right. That's so. And then the restructure of
20 the OCFOS role to end at its current point now where -
21 after the initial affidavit has been filed and served.

22
23 COMMISSIONER: Anything else? What about the single
24 affidavit as opposed to the rule one?

25 A. Yes. Yes, sorry. Yes, Commissioner, the --

26
27 COMMISSIONER: What was the rule?

28 A. The single affidavit --

29
30 COMMISSIONER: As opposed to the court rule. What was the
31 court rule?

32 A. The separate rule 13 affidavit.

33
34 COMMISSIONER: That's it.

35 A. I do note, Commissioner, that in a number of my annual
36 reports I've set out what were those changes. A part of
37 them were within the annual reports that I'll be able to
38 draw your attention to on notice.

39
40 COMMISSIONER: I would be grateful. Thank you.

41
42 MS SWEET: And so since 2019 we've had further reviews of
43 the system; is that correct?

44 A. Since 2019 there has been the Nous Group review.

45
46 Q. Yes.

47 A. And in more recent times there was this child

1 protection litigation project.

2

3 Q. Yes.

4

5 COMMISSIONER: Can we call that the Stewart review for
6 convenience?

7 A. Yes, we can, Commissioner.

8

9 MS SWEET: And you've made a submission - you made a
10 submission to that review, the Stewart review?

11 A. Yes, I may have made more than one. I'd have to
12 check.

13

14 Q. And at the time of the calling of this Commission in
15 May 2025 were you aware of there being any public outcome?

16 A. No, I'm not.

17

18 Q. Yes.

19

20 COMMISSIONER: Ms Sweet, we might just take a quick break.

21

22 MS SWEET: Yes, of course, Your Honour.

23

24 **SHORT ADJOURNMENT**

[11.30 am]

25

26 COMMISSIONER: Mr Hastie.

27

28 MR HASTIE: Commissioner, yesterday you asked for
29 questions about reunification.

30

31 COMMISSIONER: Yes.

32

33 MR HASTIE: I attempted to indicate that we didn't have
34 any flow data, in other words we couldn't - we didn't have
35 any data that tracked an individual. But what we can
36 provide is a - and I'll tender it and I'll explain it. So
37 it's a schedule dealing with the children who are reunified
38 and not returned to primary placement between 30 - sorry,
39 on the dates 30 June 2017, 30 June 2018, 30 June 2020 and
40 21, 22, 23 and 24.

41

42 If I could just explain, Commissioner, for the sake of
43 simplicity, we simply go to the - the bottom left-hand
44 column deals with each region, and at the very bottom it
45 has Queensland, and that's divided up into Aboriginal
46 and/or Torres Strait Islander children and then
47 non-Aboriginal and Torres Strait Islander children.

1 Commissioner, you will see under the heading "Reunified
2 year ended 30 June 2017" a figure of 510?
3
4 COMMISSIONER: "Reunified" - which column?
5
6 MR HASTIE: The second column has the heading "Reunified
7 year ended 30 June 2017".
8
9 COMMISSIONER: Yes.
10
11 MR HASTIE: And if you go to the very bottom --
12
13 COMMISSIONER: Yes.
14
15 MR HASTIE: -- you will see three figures in colour.
16
17 COMMISSIONER: Yes.
18
19 MR HASTIE: Or in bold. Five hundred and ten is one
20 figure, and then 195 and then 315.
21
22 COMMISSIONER: Yes.
23
24 MR HASTIE: For instance, if I explain the 510, that means
25 that as at 30 June 510 children were regarded as having
26 been reunified to their families and - in other words,
27 reunified from either being in kinship care, foster care or
28 residential care.
29
30 COMMISSIONER: And what is meant by "reunified"?
31
32 MR HASTIE: Well, reunified to their family.
33
34 COMMISSIONER: To their natural family?
35
36 MR HASTIE: Yes, Commissioner. And then what happens,
37 what these figures track, is that within six months 30 of
38 those children had gone back to the placement, in other
39 words some 480 had stayed with the - stayed reunified, and
40 within 12 months 444 had stayed but there had been again a
41 number who had gone back to where they had been in primary
42 placement, and then beyond - the figures only go to beyond
43 that period to the present; 337 of those had stayed
44 reunified, in other words a number had gone back to --
45
46 COMMISSIONER: Well, that's very useful. I think in due
47 course it would be desirable to have a witness who can

1 speak to this data, how it's collected, the data underlying
2 it, the source of this data --

3

4 MR HASTIE: Yes.

5

6 COMMISSIONER: -- how it's captured and the like.

7

8 MR HASTIE: Yes.

9

10 COMMISSIONER: This is a quite high-level document.

11

12 MR HASTIE: Yes, Commissioner. As I understand it, there
13 is a national system for collecting this data, and the
14 reason I wanted to tender it now is that - without actually
15 wanting to make life difficult for the Director, but he may
16 have some knowledge of the way these sorts of things are
17 collected as well.

18

19 COMMISSIONER: Well, you can ask him in due course.

20

21 MR HASTIE: Yes, Commissioner.

22

23 COMMISSIONER: The table concerning reunification data
24 will be CL-76.

25

26 **EXHIBIT #CL-76 - TABLE CONCERNING REUNIFICATION DATA**

27

28 COMMISSIONER: Thank you, Mr Hastie.

29

30 MR HASTIE: Thank you, Commissioner.

31

32 MS SWEET: Director, at the bottom of page 4 of that
33 submission, which I think your evidence is effectively this
34 is - well, this is a submission to our Commission. Before
35 you were saying it's been repurposed from the child
36 protection litigation project, and in that sense you're
37 aware of the position taken by the union; is that fair?
38 A. Yes. What I would say is that from a quick review it
39 seems largely repurposed. The earlier submission, as
40 I understand the drafting of it, was led by an OCFOS legal
41 officer because on the submission - on the making of the
42 submission to the project the submission was circulated
43 widely and it was circulated throughout my staff as well.

44

45 Q. Yes.

46

47 COMMISSIONER: So do you understand the submission was

1 authored by an OCFOS solicitor?

2 A. There was a covering email, Commissioner, that
3 referred to having taken the lead in drafting the
4 submission that the union had then submitted on behalf of
5 the officer and I think it may have made reference to with
6 the input of other delegates.

7

8 COMMISSIONER: Would you mind in due course providing me
9 with a copy of that covering email?

10 A. Yes, I can, Commissioner.

11

12 COMMISSIONER: Thank you.

13 A. Because in response to becoming aware of the
14 submission I made contact with the union. I offered to
15 meet them to discuss any concerns that they may have. The
16 organiser - I think that's what they're referred to, as the
17 union organiser - I've never spoken to him and he's never
18 made contact with me.

19

20 What I will say is that I sit on the agency consultative
21 committee in the Department of Justice. The purpose of
22 that committee is to have quarterly meetings with this
23 union. I am a member of that committee. I attend each
24 meeting. No concerns have ever been raised with me by the
25 union. I even sought the attendance of somebody from the
26 union at my office to speak to the staff members that
27 I have who are members of the union, because the union also
28 represents staff in my office, and no issues have ever been
29 raised with me as to what appears in this submission.

30

31 MS SWEET: Yes. So you invited the union to speak with
32 you directly about this submission --

33 A. Yes, I have.

34

35 Q. -- and its contents, and --

36 A. And, like I said, there was a union organiser or
37 delegate responsible from the union at least for members
38 within the Department of Justice. I met with him. There
39 were no issues raised.

40

41 COMMISSIONER: Did you meet with him subsequent to the --

42 A. Receiving the submission, Commissioner.

43

44 COMMISSIONER: Yes. Could you also produce the submission
45 as it was provided in connection with the Stewart review?

46 A. Yes, Commissioner.

47

1 COMMISSIONER: Because there may some differences between
2 the present version, repurposed as it may largely be, and
3 the submission made at that time.
4 A. Yes, Commissioner.
5
6 COMMISSIONER: Thank you.
7
8 MR O'BRIEN: Commissioner, if it assists, that's at tab 11
9 of the court book.
10
11 COMMISSIONER: Thank you. It's good to see you've covered
12 the court book.
13
14 MR HASTIE: Can I confirm, Commissioner, the document we
15 were discussing before the break, privilege isn't claimed
16 and wasn't meant to be claimed over that document.
17
18 COMMISSIONER: That's good. Thank you.
19
20 MR HASTIE: So reference can be made to it.
21
22 COMMISSIONER: Good. Thank you.
23
24 MS SWEET: For the newest member at the Bar table of this
25 Commission, Mr O'Brien seems to be more across what's in
26 the court book than anybody else, so --
27
28 MR O'BRIEN: That's all Ms Connolly's work.
29
30 COMMISSIONER: He may have yet to be distracted by the
31 volume of the material, Ms Sweet.
32
33 MS SWEET: Director, at page 5 you'll see there's a
34 reference to chapter 13 of the Carmody Inquiry's report; do
35 you see that?
36 A. Yes, I see that.
37
38 Q. And it purports to summarise its concerns which the
39 Carmody Inquiry had about the child protection litigation
40 model at that time; do you see those dot points?
41 A. Yes, I do.
42
43 Q. And would you agree that generally speaking those were
44 concerns identified within the Carmody Inquiry about the
45 child protection litigation model?
46 A. Yes, I would.
47

1 Q. Yes. Thank you. If you go over the page you'll see a
2 paragraph starting, "It is our position"; you have that?

3 A. Yes, I do.

4
5 Q.

6 *It is our position that the current model*
7 *has effectively created a significant*
8 *redundancy in the child protection system*
9 *by implementing two simultaneous models in*
10 *circumstances where one of those models,*
11 *namely the embedded OCFOS model,*
12 *effectively addressed each of the concerns*
13 *identified by the Carmody Inquiry.*

14
15 Just stopping there, there's a sort of reference to a
16 significant redundancy in the system by having these two
17 simultaneous models. Do you agree that there is a
18 significant redundancy, which I take to mean duplication,
19 in the system by reason of the implementation of the two
20 models?

21 A. No, I don't agree with that.

22
23 Q. Thank you. And you're also aware of the position of
24 the union to be that they support the removal of
25 the Director of Child Protection Litigation as an
26 independent statutory office? You're aware of that?

27
28 COMMISSIONER: Before you move on to that point, can you
29 just explain why you don't agree that there's a redundancy
30 in the sense of overlap, because I think yesterday we were
31 discussing the consequences of the duality in terms of your
32 lawyer, for example, having to get on top of the file? Do
33 you remember the discussion we had about those matters?

34 A. Yes, I do, Commissioner.

35
36 COMMISSIONER: I would just like to understand why you
37 disagree with the proposition that's put?

38 A. Well, again, starting at the point if we're going to
39 accept the word "redundancy" is a direct reference to
40 duplication, yesterday I did accept there is a level of
41 duplication in terms of the work undertaken on a matter and
42 then the work undertaken by the early lawyer on an initial
43 affidavit, which then is settled by a lawyer on my
44 delegation. However, when you look at this paragraph,
45 "implementing two simultaneous models", it's not. At the
46 moment you have a clearly defined focus of my office
47 making - whether we currently sit in terms of a critical

1 independent decision on whether or not to bring a child
2 protection order with authority to either not --

3

4 COMMISSIONER: I understand your point. You're saying
5 that they're not simultaneous, they're sequential?

6 A. That's right, Your Honour. They're not simultaneous
7 at all, and, you know, the data shows that year in, year
8 out consistently my lawyers are making applications for
9 different types of orders or otherwise different, or we are
10 referring matters back that have been through already the
11 OCFOS model prior to getting to my office.

12

13 COMMISSIONER: Yes, I understand that now. Thank you.
14 Ms Sweet.

15

16 MS SWEET: In that paragraph it suggests that the embedded
17 OCFOS model is effective to address all of the concerns
18 identified in the Carmody Inquiry that we looked at on the
19 page before. Do you agree?

20 A. No, I don't.

21

22 Q. And why do you not agree?

23 A. Well, again, I just simply even point to the data in
24 the - and I set this out in my statement, I think,
25 sequentially moving through the consideration of matters
26 that come to my office, the high percentage of matters
27 where we're seeking clarification around information or
28 evidence, we're seeking further evidence, we're then
29 consulting, we're undertaking mandatory consultation as
30 required under the Director of Child Protection Litigation
31 Act, and then we're making at times different decisions,
32 albeit with the agreement on the input of our analysis of
33 the matter of the Chief Executive, and those things, if
34 I understand the question, are occurring right now in terms
35 of how the model's structured.

36

37 COMMISSIONER: Which particular paragraphs in your
38 statement do you draw attention to in that regard, if you
39 wouldn't mind saying?

40 A. So, Commissioner, first I would point to page 43.
41 Appearing under paragraph 180 I have a subheading "General
42 consultation between the DCPL and Child Safety". So from
43 here through the statement really provides a series of data
44 that relates to that initial engagement and decision. So
45 that table sets out the high rate of general consultation
46 on matters.

47

1 Then if you progress through my statement I then show on
2 page 44 under paragraph 183 data around the level of
3 requests made for either further evidence or information
4 when considering the matters. So in the last year shown
5 here of 2024/25 further requests for information or
6 evidence were made in 73.2 per cent of matters.

7

8 Then if I take you through further to page 45, under
9 paragraph 188 this table sets out the number of matters
10 that my lawyers needed to consult with Child Safety or the
11 Chief Executive of Child Safety under the DCPL Act. So
12 this is where on a lawyer's review of the matter they're
13 considering making a decision which is not consistent with
14 the Chief Executive's then assessment. So that's occurred
15 in 1,002 matters in the year 2024/25.

16

17 COMMISSIONER: Where does it explain that the reason for
18 the consultation was because of effectively a difference of
19 view about what should occur?

20 A. Oh, sorry, Commissioner, yeah --

21

22 COMMISSIONER: You see in the table heading --

23 A. Yeah, sorry, Commissioner, in paragraph 190 I make
24 reference to the DCPL needing to consult with Child Safety
25 under section 18 of the Director of Child Protection
26 Litigation Act. The purpose of that consultation is to try
27 and reach an agreement in respect of how the matter should
28 be dealt with.

29

30 COMMISSIONER: Yes, but - so in each of the 1,002 cases
31 which is referred to in the table for 2024/25 those
32 consultations only occurred because of a difference of view
33 taken by your office?

34 A. Yes. So that's a mandatory consultation,
35 Commissioner.

36

37 COMMISSIONER: Yes, yes, I follow that. But it wouldn't
38 be mandatory if there wasn't a difference of opinion, would
39 it?

40 A. That's so. It might be general consultation to
41 clarify aspects of the assessment. But where the lawyer is
42 then considering actually dealing with the matter in a
43 different way the Act requires us to try and reach an
44 agreement.

45

46 COMMISSIONER: Yes, I see.

47 A. Then if I progress through, on page 46 I outline a

1 table here under paragraph 194 that provides data in terms
2 of the matters that have been dealt with by being referred
3 back to the Chief Executive. So these are matters where at
4 the point in time the Director of Child Protection
5 Litigation has not gone forward and made an application.
6

7 COMMISSIONER: Any application or --

8 A. Any application, Commissioner.
9

10 COMMISSIONER: And so in 2024/25?

11 A. There were 96 matters that were referred back,
12 Commissioner. Now --
13

14 COMMISSIONER: Thirty-seven of which were without
15 agreement?

16 A. That's correct, Commissioner. Now, that's not to say,
17 Commissioner, that then some of these matters may not be
18 re-referred. So if I take you through to page 47, here
19 under paragraph 201 we set out in a table form - now this
20 was accurate as of 26 October 2025 - the number of matters
21 that had been referred back where a further matter has not
22 been received. So that is the child has not been the
23 subject of a new referred matter to my office. So, out of
24 the 96 matters referred back in the year 2024/25, as of 26
25 October 54 of those matters had not been the subject of a
26 referral back to my office.
27

28 COMMISSIONER: How would the referral back - so you refer
29 it back and then OCFOS refer it back to you. How does the
30 referral back from OCFOS to you arise?

31 A. So it will be in circumstances where we've identified
32 an issue with the investigation, and so we send it back for
33 that to be remedied. So an investigation or the issues
34 we've raised will be then actioned, and if at the end of
35 that the assessment still is the child's in need of
36 protection and an order is needed the matter at that point
37 would be referred again as a new child protection matter.
38 So, Commissioner, if it can help, I can give you an example
39 of --
40

41 COMMISSIONER: Please. But 54 - should I understand this
42 table to mean that of the 96 referrals that went back only
43 54 came back to you - or, no, sorry, 54 did not come back?
44 A. That's correct, Commissioner.
45

46 COMMISSIONER: So therefore 42 of the 96 didn't come back;
47 is that the right arithmetic? Sorry, have I got it the

1 wrong way around?

2 A. It's the wrong way around, Commissioner. It would be
3 42 of --

4

5 COMMISSIONER: I'm not surprised.

6 A. Yeah, 42 would be the subject - so an example of --

7

8 COMMISSIONER: Yes, so 42 did come back?

9 A. Yes. An example of the matter that we may not see
10 again is where a child may have been or has been cared for
11 by somebody else other than their parents, at the point the
12 child has then entered an emergent order, and it may be
13 that or it has been that an assessment has not been
14 undertaken of that person, so we will send it back for them
15 to be assessed as the section 11 parent, and then we don't
16 see the matter again.

17

18 COMMISSIONER: Are you able to say how many assessments by
19 OCFOS relating to a child in need of protection under the
20 first limb are referred back? I mean, by the first limb
21 I mean the child is assessed to be at risk of harm. The
22 second limb is there's no parent willing and able. The
23 second limb needs to be considered in the context of the
24 broader definition of parent?

25 A. Not in a data sense. It would require a review of
26 the individual matters, Commissioner. What I can point to
27 then on this point is at paragraph 205 I refer to in the
28 nine years to 30 June 2025 there's been 693 matters
29 referred back and I've had no involvement with 260 of those
30 children.

31

32 COMMISSIONER: So in relation to 260 of those children
33 there's no re-referral?

34 A. That's so, Commissioner.

35

36 COMMISSIONER: All right.

37 A. And then further then as we progress through to the
38 decisions that myself and my lawyers are making - this
39 appears on page 50 of my statement. There's a table there,
40 table 20. So these are matters that the DCPL has applied
41 for a different type of order or an order that is otherwise
42 different, and you'll see in the year 2024/25 that there
43 was a total of 671 applications made. Now, that can be
44 things, Commissioner, from different types of orders, or in
45 terms of what's included in an order otherwise different
46 could be duration of the order that was assessed or it
47 could be various terms of what order was assessed, and that

1 would come up at times in respect of, say, the protective
2 supervision order where there may be one thing stated as
3 the matter that needs to be supervised, then on review the
4 DCPL lawyer may have sought for different areas to be the
5 subject of supervision and may also have been combined with
6 a directive order for a parent to do something or not do
7 something. Then I provide a total of the matters dealt
8 with differently then, Commissioner, on page 51.

9
10 COMMISSIONER: Table 21?

11 A. Fifty-one, Commissioner.

12
13 COMMISSIONER: Yes, at table 21?

14 A. Yes, table 21. And this is really just a combination
15 of both the matters referred back or orders sought that
16 were different, and it shows in the year 2024/25 that there
17 were 667 matters, with 588 of those with agreement and 179
18 without agreement.

19
20 COMMISSIONER: Seven hundred and sixty-seven?

21 A. Yes.

22
23 COMMISSIONER: Yes.

24 A. So if I come back to probably where this started, and
25 that was the question around --

26
27 COMMISSIONER: Redundancy, I think.

28 A. -- redundancy or whether the OCFOS model has addressed
29 the concerns. I would submit that all the data is showing
30 that there's still significant differences being made
31 through the decisions taken by my office.

32
33 COMMISSIONER: Yes, thank you.

34
35 MS SWEET: And you'll see, going back to the union's
36 submission, the paragraph immediately under the one we've
37 just been dealing with, which is there's an assertion that:

38
39 *The independence of the DCPL model has*
40 *inadvertently resulted in harmful outcomes*
41 *throughout the child protection system.*

42
43 And then it sets out a number of dot points throughout the
44 balance of the page. Do you accept that there are
45 inadvertent harmful outcomes as a result of the
46 independence model?

47 A. No, I don't.

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COMMISSIONER: Again, would you like to explain why, or do you refer to your earlier answer?

MS SWEET: I'm just giving the Director a minute to review what's written there.

COMMISSIONER: Yes.

WITNESS: Well, perhaps would it help if I - as I reviewed each bullet point, to give you any comments I have?

MS SWEET: Yes, thank you.

A. Yeah. So the significant increase in duration of child protection order proceedings --

Q. Yes, well, first of all, do you accept that that is - whether or not it's a harmful - do you accept the accuracy of the statement that there has been a significant increase in the duration of child protection order proceedings?

A. What I - yeah, I accept that through the period of time that I've been involved in my function collecting data there has been an increase in the overall duration of proceedings. So that's the first point. I can't talk to data about the length of or duration of proceedings before my function commenced.

Q. Yes.

A. Or how that's collected and by who.

COMMISSIONER: What do you put down to the - or what's your view about the reasons for the increased duration?

A. The primary reason for the adjournment of all applications is for the development or revision of children's case plans. So that's the reason that appears most in terms of the adjournment of proceedings, and so --

COMMISSIONER: And that's not a matter within your control but within the control of the department, isn't it?

A. It is a - yes, the department's obligated or obligated with arranging for a child to have a case plan and overseeing of the case planning process, including through the family group meeting process. But it is a process, I think we discussed yesterday or the day before, that involves many people, many steps, and there's an increasing number. So, as there's an increase in children entering the system where there's been a determination made that

1 they are in need of protection, it's putting
2 ever-increasing amounts of children in a place where they
3 need to have a family group meeting convened to develop
4 that initial case plan.

5

6 COMMISSIONER: Whose responsibility is it to initiate the
7 family group meeting?

8 A. I understand it's the person that - whoever it is that
9 holds the delegation and forms the view a child is in need
10 of protection and help under the Act, they commence the
11 process. Now, internally I understand there are various
12 forms that need to be completed. They're passed on to a
13 separate person who will be tasked with then organising the
14 family group meeting or --

15

16 COMMISSIONER: But that doesn't - I'm just trying to get
17 clear that the organisation or the initiation of the family
18 group meeting doesn't fall within - as things are presently
19 allocated in terms of responsibilities, doesn't fall within
20 the responsibility of your office?

21 A. No. No, it doesn't, Commissioner.

22

23 MS SWEET: If I might, Your Honour?

24

25 COMMISSIONER: Yes.

26

27 MS SWEET: You deal with this in part of your statement at
28 paragraph 258.

29

30 COMMISSIONER: Thank you.

31

32 MS SWEET: If I could take you to that. Page 62 of your
33 statement, and at paragraph 258 you say, "In practice" -
34 and you're dealing with the reasons that proceedings are
35 adjourned, Director?

36 A. Yes.

37

38 COMMISSIONER: Yes.

39

40 MS SWEET: Yes.

41

42 *Proceedings are adjourned for any number of*
43 *reasons, with the following being an*
44 *overview of the standard reasons in the*
45 *order that they usually occur in a*
46 *proceeding which the DCPL captures and*
47 *reports on; see below.*

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Can I take you down the bottom of that page to subparagraph (f):

FGM [family group meeting] to develop initial case plan or FGM to review and develop revised case plan that is used when a proceeding needs to be adjourned for Child Safety to convene a family group meeting to either develop an initial case plan for a child or review and develop a revised case plan for a child.

And you say over the page:

Under the Child Protection Act, when Child Safety is satisfied that a child is in need of protection and needs ongoing help under the Child Protection Act, Child Safety must develop a case plan for the child, which occurs at a family group meeting. This case plan is a written plan for meeting the child's protection and care needs, and an FGM is a meeting of the following persons: the child, unless it is inappropriate; their parents; other family members who are considered likely to make a useful contribution to the plan's development; other persons whom the child has a significant relationship with; any legal representative; the independent entity if the child is Aboriginal or Torres Strait Islander; the Public Guardian; and anyone else considered likely to make a useful contribution to the plan's development at the FGM.

You say:

The DCPL is not involved in FGMs unless invited by Child Safety and is not responsible for the development of case plans.

Just stopping there, is it your view that your office should be made responsible for the development of these plans?

1 A. No. These plans are really part of a core function of
2 Child Safety in terms of linking their assessment and the
3 child protection concerns they are worried about, and what
4 it is not only that they would like the parents to do to
5 address those concerns but what it is that their staff are
6 going to do in order to assist the parents in addressing
7 those concerns.

8
9 In practice, there is different approaches taken depending
10 on the region and the service centre as to whether or not
11 the FGM is convened by somebody employed by the Department
12 of Child Safety, so somebody who is an authorised officer
13 who is an FGM convenor, or whether there's somebody else,
14 an external convenor, that's engaged to do it, or whether
15 the responsibility is provided to a completely different
16 agency, like a community-controlled agency, to undertake
17 case planning where the matter concerns an Aboriginal or
18 Torres Strait Islander child.

19
20 It's right, in my view, that those processes should occur
21 with the input of the family, really inclusive of
22 the family. It 's a family meeting, and we're really
23 looking for the family to come forward and contribute what
24 they can to the child's plan.

25
26 Q. Yes. Do you say that your office should be a
27 necessary participant in these meetings? Do you think that
28 would assist?

29 A. It would be matter dependent. In some matters that
30 there's a point or points that are heavily contested there
31 is great value in my lawyer being able to attend or being
32 invited to attend to ensure that whatever the concern of
33 the court is - so we will have matters where at the end of
34 a matter when the court has given its reasons and outlines
35 the type of order it's going to make it will pause if
36 there's some concern around whether the then case plan is
37 appropriate or desirable and will order that the then
38 current plan be reviewed, with a revised plan produced that
39 meets the court's findings. In those matters a DCPL lawyer
40 should be there to make sure it's understood what the
41 findings are and what it is that the court expects in terms
42 of the appropriateness of the plan that's going to be
43 produced.

44
45 But there are other meetings where it is not necessary that
46 the DCPL lawyer is present. But what is critical is that a
47 family member or the parents and any representative of

1 the child, which could be the separate representative or a
2 direct representative, are present and assist their clients
3 to participate.

4

5 Q. Yes, thank you. Going back to the submission - this
6 was a result of us talking about the significant
7 increase --

8 A. Yes.

9

10 Q. -- in the duration of child protection order
11 proceedings. The second dot point refers to a disconnection
12 between the court's facing constructive work conducted
13 between frontline workers with families resulting in court
14 outcomes which are often not reflective of shifting
15 positions resulting from Child Safety's collaborative work
16 with families?

17 A. So, yeah, the - and there's been evidence and
18 discussion around what at times may be referred to as a
19 parallel process, but the court proceeding - the basis of
20 the court proceeding - what's in evidence before the court
21 is Child Safety's evidence. It sits at the heart of
22 the proceeding. The Child Safety assessment is before the
23 court. If the assessment has changed we seek an updated
24 assessment, and that's an issue that I was attempting to
25 address yesterday in terms of the approach of the
26 affidavits.

27

28 Q. Yes.

29 A. Much - and I gave evidence that there is work ongoing
30 between myself and the Chief Practitioner's office and
31 OCFOS of trying to settle on - develop and settle on what
32 has a working title of a child protection assessment form.
33 So in my view - and this is what I put to Linda Apelt when
34 she consulted with me - we just need a way that the
35 allocated child safety officer and/or their team leader can
36 set out their assessment and as there's a change or, what's
37 referred here, a shift in position they would be updating
38 their assessment. And so when myself or the court require
39 the current assessment it would be a process of just making
40 sure the assessment as it sits on the system is current,
41 and that would form exhibit 1 to a very straightforward
42 affidavit, and, with any other documents that have come
43 into being that are relevant to whatever the shift is, it
44 would be a short updating affidavit. But I guess the
45 thrust of my evidence here is that what is happening at
46 court is based on what is happening with the family. These
47 matters are dynamic, and the proceedings develop in line

1 with whatever is happening in terms of Child Safety's
2 casework and engagement with the family.

3

4 COMMISSIONER: Because they are the relevant underlying
5 facts and they're not static?

6 A. That's right. They're dynamic, Commissioner.

7

8 COMMISSIONER: Yes.

9

10 MS SWEET: I'm just going to hand up to you - your counsel
11 has provided a copy to the Commission of the child
12 protection assessment document. Is this the document
13 you've just been referring to?

14 A. Yes, it is. This document should be viewed very much
15 as in draft. It's a version - it's the current version or
16 it is, if I put it this way, the version that was provided
17 to me to consider last week, on Thursday, and it represents
18 the input of staff from my office, from OCFOS and the Chief
19 Practitioner, and I understand QATSICPP has been consulted
20 and been involved to date. So in draft form this is where
21 the process is currently at.

22

23 Q. Yes.

24 A. And it's really an attempt to provide a child safety
25 officer with a form - or it may in time be referred to as a
26 tool; anyway - with a means in which in their own words
27 they can set out what their assessment is, what underpins
28 their assessment, and so really the idea would be, rather
29 than having child safety officers spend hours doing
30 narrative affidavits setting out their assessment, at times
31 in language that they're using that they're not familiar
32 with, that they would maintain their assessment in this
33 form, and then when either myself or the court requires the
34 current assessment we would put it before the court, and so
35 I would turn what would be contained in the assessment and
36 any source documents into an application, and in time into
37 a legal submission.

38

39 MS SWEET: I tender that, Your Honour.

40

41 COMMISSIONER: Yes. The draft child protection assessment
42 will be exhibit CA-52.

43

44 **EXHIBIT #CA-52 - DRAFT CHILD PROTECTION ASSESSMENT**

45

46 MS SWEET: Thank you.

47

1 Now, Director, coming back to these assertions about
2 inadvertent --
3 A. Yes.

4

5 Q. -- harmful outcomes, is there anything you'd like to
6 say about the allegation of non-collaborative working
7 relationships between your officers and child safety
8 service centres?

9 A. No, look, what I would say is that - well, I've taken
10 the Commission through some of the data that talks to there
11 being some decisions taken without agreement.

12

13 Q. Yes.

14 A. That is part of the model we have. There are going to
15 be some matters where the initial decision may not be with
16 agreement, and there might be matters along the way where
17 there's not agreement. However, as I gave evidence perhaps
18 on Tuesday, I have what I refer to as file lawyers that are
19 aligned with the service centres and court locations.
20 They're working alongside with the allocated child safety
21 officer. When you do review the emails and you see the
22 engagement, it's collaborative.

23

24 Q. Yes.

25 A. So separate to that, I have an obligation under the
26 Child Protection Act that, when I am or have performed a
27 litigation function in respect to a child who has died or a
28 child who has suffered a serious physical injury, under the
29 Act I then must undertake a review. Those reviews occur
30 and have occurred throughout the nine years in which I've
31 been operating. One of the standard terms of reference
32 that I ask when those reviews are undertaken is whether or
33 not there's any - or whether there is evidence of
34 collaboration, and those reviews consistently show that.

35

36 And separate to that, after giving evidence yesterday I put
37 a call out to my staff to provide me with examples of where
38 the court has made long-term orders granting guardianship
39 to other where there have been modifications made either
40 under section 79A or section 80, and various lawyers this
41 morning sent me through examples, and one - sorry, one of
42 those examples included an email - sorry. If I can just
43 have a moment?

44

45 COMMISSIONER: Sure.

46

47 MS SWEET: Yes, of course.

1
2 Just while the Director has a moment, I'm not sure that
3 I tendered his statement. Might I do that now?
4
5 COMMISSIONER: Yes.
6
7 MS SWEET: I have tendered it? If your associate could
8 just tell me the number.
9
10 COMMISSIONER: I'm not sure.
11
12 MR HASTIE: Mine's marked CA-51.
13
14 MS SWEET: Thank you.
15
16 COMMISSIONER: Okay.
17
18 WITNESS: Sorry, yeah.
19
20 MS SWEET: No, no, not at all.
21 A. No, it included an email that a child safety officer -
22 sorry, I'm just emotional.
23
24 Q. Yes.
25
26 MR O'BRIEN: Commissioner, would we be able to have
27 perhaps an early lunch break?
28
29 COMMISSIONER: Yes.
30
31 WITNESS: No, I --
32
33 COMMISSIONER: The Director has been going for a long
34 time.
35
36 WITNESS: Yeah. Sorry.
37
38 COMMISSIONER: It's no inconvenience. We could simply
39 adjourn now until, say, quarter to 2. It would be lineball
40 in a timing sense.
41 A. Thank you, Commissioner.
42
43 COMMISSIONER: That would be fine.
44 A. Thank you.
45
46 **LUNCHEON ADJOURNMENT** [12.28 pm]
47

1 MS SWEET: Yes, thank you. Now, Director, before the
2 break we were going through these allegations of harmful
3 outcomes as a result of the independence model, and I think
4 you were talking about some enquiries - well, I raised an
5 issue with you about this concept or the allegation of
6 non-collaborative working relationships; you recall that?
7 A. Yes, I do; yeah.

8

9 Q. Yes. And you indicated you'd made some enquiries with
10 your staff.

11 A. Yes. It was in response to seeking examples of recent
12 matters where the court had made long-term orders --

13

14 Q. Yes.

15 A. -- and in the context of that one of my lawyers
16 forwarded to me an email she had received on Monday when
17 one of these orders were made this week.

18

19 Q. Yes.

20 A. And the email contained a photograph of a child's now
21 long-term guardian with the child and a message of thanks
22 that was passed on to them for the work they had done in
23 the matter, and really sharing the good outcome of that
24 matter. Yeah, it made reference to a cake having been
25 bought on the way home and tears shed by both the child and
26 his now guardian.

27

28 Q. To celebrate the making of the order?

29 A. To celebrate the making of the order and sharing that
30 good news back with my lawyers who had undertaken some
31 significant work to get that outcome.

32

33 Q. Yes, thank you.

34 A. Yeah.

35

36 Q. Then there's this issue of these allegations of
37 inefficient work processes resulting from the externalised
38 nature of the DCPL. I know you've given some evidence
39 already about work processes. Is there anything additional
40 that you would like to add to that?

41 A. Look, some of these points we've already covered.

42

43 Q. Yes. I'm keen not to have anything repeated.

44 A. No, I appreciate that, Ms Sweet. The only additional
45 observation I would make is that there was a considerable
46 effort put in from my office and also from the Department
47 of Child Safety --

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Q. Yes.

A. -- as part of the implementation of their new Unify computer system where over the course of a number of years I had contributed to input into the system really in terms of leading to a level of integration between my own operations and Unify in the hope that it would lead to do away with any need for re-entry of data as part of this exchange of information. So at the moment at the time I undertook there was a business case I had prepared and it outlined how much manual information needs to be re- entered into my system, and the way court outcomes are currently managed in terms of information is entered into my system that then produces what's referred to as a court outcome form that then needs to be provided to the Department of Child Safety to once again be manually then re-entered into Child Safety's system.

Q. Yes.

A. So there was a lot of work undertaken to support integration. As I said, I had undertaken a business case. I had received funding through a specialist fund for the funds needed to upgrade whatever I needed to in my system; yet then the Department of Child Safety didn't proceed with the integration. And so there is still that ongoing manual process I've referred to in terms of the court outcome matters.

Q. Yes. And do you have any knowledge as to why that integration was not proceeded with by Child Safety?

A. No. When I was advised of the decision not to proceed with that integration it was somehow put - it was put to me that I had somehow been mistaken that there was ever a plan to integrate, yet, you know, I was referring to emails and meetings across years.

Q. Yes.

A. But, no, it just didn't proceed.

COMMISSIONER: Are you talking about the Unify model?

A. Yes, I am, Commissioner.

COMMISSIONER: And it was your understanding that there would be steps taken to integrate that system as between your office and OCFOS?

A. My office and the Department of Child Safety, Commissioner.

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COMMISSIONER: Yes.

A. So the level of integration that was proposed is that when they were wanting to or do refer a matter to me we would simply be able to accept all of the information transferred into my system.

COMMISSIONER: And is that now no longer proposed?

A. No. No longer proposed, Commissioner.

COMMISSIONER: Have you been given any explanation as to why that's no longer proposed?

A. No, Commissioner, other than that they're focused on other things. But this was prior to - the decision was made not to integrate well before the Unify system started in April.

COMMISSIONER: And you were told you had misunderstood the position such that --

A. Yes, I was.

COMMISSIONER: -- there was never a proposal to integrate?

A. Yes, Commissioner.

COMMISSIONER: I see.

A. And so had integration occurred it would have cut down on hundreds of thousands of data entry points.

MS SWEET: Yes. Thank you. And, this final point, the allegation that there is a disconnection between your staff and the values, principles and developmental learnings of the department resulting in your office conducting work which is not reflective of the department's commitment to cultural practice and domestic violence informed practice. Director, what do you say to that allegation?

A. No, I just don't accept that. There's a couple of points relied upon that.

Q. Yes.

A. I may have made reference earlier in my evidence, I'm not sure, that in each of my annual reports I outline the various training that I either offer to my staff or through my support staff have accessed. So we deliver some training directly and we also support staff to access training. My staff have been - or accessed training on the Safe and Together model. That was done in collaboration with the Department of Child Safety and OCFOS.

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Q. Yes. If I might indicate that the Official Solicitor, when that was put to her, she did not accept that proposition; she said that your staff had been trained in Safe and Together.

A. Thank you. And we have provided training throughout the years, too, in terms of our cultural competency. That's not to say there's not always a need in that area. But, you know, I just don't accept that in some way my staff undertaking the function they do in terms of their role in the child protection system is somehow disconnected from what are our shared values and principles and trying to keep children safe and learning from any issues that arise.

Q. Yes, thank you. If you turn over the page to page 7.

A. Yes.

Q. Yes. The union says that they are advocating for integration of the work currently conducted by OCFOS and the DCPL into a singular legal body within the Department of Child Safety, and they advocate for that body to be restructured as much as possible to replicate the successful embedded frontline legal support model established by OCFOS. I think you've given evidence that you're aware because of the union's submission to the child protection litigation project that this was the position of the union?

A. Yes, I was; yeah.

Q. Yes. And I take it from what you said previously that you disagree with the proposal that there should be an integration of that work conducted by both bodies into a singular body within the department?

A. Yes. Yeah, I disagree with that.

Q. I put this position to the Official Solicitor earlier in the week and she agreed that that was also her position. Were you aware at any time prior to today that that was the position of OCFOS?

COMMISSIONER: Well, just to be fair, I think the evidence of the Official Solicitor was not an explicit adoption of the submission but rather an acceptance that it followed from the view she had expressed that this consequence would be the outcome.

1 MS SWEET: We have different --
2
3 MR CREAMER: I think there was some reluctance to answer
4 that question, from my --
5
6 COMMISSIONER: Yes.
7
8 MR CREAMER: -- from the Official Solicitor.
9
10 MS SWEET: Well, my recollection was I put that position
11 to her; she agreed that that was also what she was
12 advocating for. What she was reluctant to do - and I stand
13 to be corrected by both you, Your Honour, and my learned
14 friends, that the --
15
16 MR CREAMER: It's Mr Hastie's client. So I'll leave it --
17
18 COMMISSIONER: Well, I think the transcript is probably
19 the best authority on this. So we'll see.
20
21 MS SWEET: If I might finish the submission that what the
22 Director - sorry, what the Official Solicitor would not
23 agree to was the earlier statement that she supported the
24 removal of the Director of Child Protection Litigation as
25 an independent statutory office, but it was my recollection
26 that she supported - she was advocating for the position at
27 the top of page 7. Nonetheless, I withdraw the question
28 and I'll ask a different question.
29
30 Do you understand if this position as advocated for by the
31 union is also the position of the department generally
32 and/or OCFOS?
33
34 MR HASTIE: Well, maybe that doesn't really matter what
35 this witness understands is someone else's position. How
36 does that advance the point?
37
38 COMMISSIONER: We might let the question be answered and
39 then ask the witness what the basis of that understanding
40 is.
41
42 MR HASTIE: I accept, but what difference --
43
44 COMMISSIONER: Well, it might have been said.
45
46 MR HASTIE: What difference does it make?
47

1 COMMISSIONER: Well, it might make - it is material. As
2 I recall, the evidence given by the Official Solicitor -
3 and I want to be careful in paraphrasing because I haven't
4 reviewed the transcript thoroughly --

5
6 MR O'BRIEN: Commissioner, it's at page 3304.

7
8 COMMISSIONER: Would you like to take me to that passage,
9 Mr O'Brien?

10
11 MS SWEET: Would Mr O'Brien stop showing the rest of us
12 up.

13
14 COMMISSIONER: Yes, thank you.

15
16 MR O'BRIEN: None of this is my work, I'll hasten to add.

17
18 COMMISSIONER: Well, that's all right. You can take
19 credit for it. That's the job of a silk.

20
21 MR O'BRIEN: I think that's one of the few luxuries that
22 attends my new position.

23
24 COMMISSIONER: And congratulations on your appointment.

25
26 MR O'BRIEN: Thank you, Commissioner. I think learned
27 Counsel Assisting was asking questions on 9 December, and
28 so at page 3304 of the transcript the question asked in
29 respect of the submission:

30
31 *But they advocate for the integration of*
32 *the work currently conducted by OCFOS and*
33 *the DCPL into a singular legal body within*
34 *the Department of Child Safety. Is*
35 *that effectively - do you effectively agree*
36 *with that proposition?*

37
38 Answer, "Yes, I do." There's a further exchange:

39
40 *You as the Official Solicitor also advocate*
41 *for that?*

42 *A. Yes, yes.*

43
44 So that was the answer.

45
46 COMMISSIONER: I think Ms Sweet's been vindicated.

47

1 MR HASTIE: I didn't disagree, Commissioner, you might
2 notice, with the propositions that either you or my learned
3 friend Mr Creamer said. But this is a new point, and that
4 is to say what difference does it make what his
5 understanding of some other witness or some other view that
6 the department might have.

7
8 COMMISSIONER: Well, it might matter, and it depends on
9 the basis of the understanding, I think.

10
11 MR HASTIE: Very well.

12
13 MS SWEET: Would you like the question again, Director, or
14 is it sufficiently fresh in your mind that you can answer?
15 A. What I will say is that I have regular meetings with
16 the Official Solicitor and this has never been discussed
17 before. So I wasn't aware that that was her view. The
18 second part of the question is am I aware more broadly of
19 what the view is within the department.

20
21 Q. Yes.

22 A. To answer that I would say, look, the department is
23 big. There are many people over the years I'm sure - I've
24 had conversations with different people that have expressed
25 a view against the model. I actually don't know what the
26 current view of the current Director-General is. I've not
27 had a discussion about this with her.

28
29 Q. Yes, thank you. And you made some references before
30 lunch about attempts to discuss an earlier version of this
31 submission with the union.

32 A. Yes, yep. That's right.

33
34 Q. And that there was resistance by the union to meet
35 with you for that purpose?

36 A. No, they just didn't respond.

37
38 Q. Okay.

39 A. I, through the agency consultative committee that is
40 part of the Department of Justice where there are regular
41 meetings inclusive of the union, extended an invitation to
42 those union representatives to meet with me to discuss any
43 concerns they had. That did lead to a representative of
44 the union attending my office. I met with him. He had no
45 concerns to raise. However, from recollection, he did
46 point out that his role was as the union representative for
47 any of his members that were in the Department of Justice

1 and there was a different organiser that had responsibility
2 for the Department of Child Safety. But I extended an
3 invitation to him to talk to my staff in general to spend
4 whatever time he wanted to. But, yeah, there's been no
5 engagement with the union from the Child Safety perspective
6 about this submission, the earlier submission or any of
7 their concerns. I can indicate over lunch one of my
8 assistant directors called me and he advised that he's a
9 union member. He advised that he, on learning about this
10 submission, the first iteration of it, he himself tried to
11 contact the union and he was never called back.
12

13 Q. The first iteration being the iteration to the child
14 protection litigation --

15 A. To the Stewart review.
16

17 Q. The Stewart review?

18 A. Yes, yeah.
19

20 Q. Yes, thank you. Did you raise with OCFOS or the
21 department more generally that you could not get engagement
22 with the union about the Stewart review submission?

23 A. No, I've got no recollection of raising my concerns
24 about the union with OCFOS or with Child Safety.
25

26 Q. Yes, thank you. Director, I'd now like to take you
27 to --

28 A. Sorry, before you move on --
29

30 Q. Yes.

31 A. -- if I could just also briefly address there's an
32 issue raised on page 7 that refers to the standard
33 initiating affidavit, about the length of it and the number
34 of exhibits.
35

36 Q. Yes, is this page 9?

37 A. So the first bullet point on page 7.
38

39 Q. Yes.

40 A. Then it's again addressed I just note on the bottom of
41 page 9.
42

43 Q. Yes.

44 A. So I'm looking at the bottom bullet points, and --
45

46 COMMISSIONER: On page 7?
47

1 MS SWEET: On page 9.

2 A. At the bottom of page 9, Commissioner.

3

4 COMMISSIONER: Yes.

5 A. After having asserted that the current affidavit
6 extensive documentation, it's very long because it contains
7 - and there's a list of bullet points.

8

9 MS SWEET: Yes.

10 A. And, if you read through the bullet points, the first
11 bullet point:

12

13 *The details of the child who is the focus*
14 *of the application, including their*
15 *identity, family structure, their legal*
16 *circumstances.*

17

18 Q. Yes.

19 A. Then it refers to a fulsome child protection
20 assessment, its aim, the expert opinion based submissions
21 outlining why, whoever's made the assessment is of that
22 view.

23

24 Q. Yes.

25 A. Then they set out a detailed factual accounting of the
26 department's involvement with the family over any recent
27 investigations or period of intervention.

28

29 Q. Yes.

30 A. And if you go over the page they refer to a direct
31 accounting of every event directly observed by the deponent
32 which informed their assessment. There's also a reference
33 to a paragraph where they document attaching every document
34 which they've used to inform their assessment, and
35 subparagraphs identifying whatever the critical aspects of
36 that document are. They then set out the bullet point
37 about how the department meets its obligations under the
38 child placement principle for Aboriginal and Torres Strait
39 Islander children.

40

41 Q. Yes.

42 A. They've got here a section recounting the full child
43 protection history of the family, not just in Queensland
44 but either any state or territory and New Zealand. They
45 also refer to a section of the affidavit dealing with how
46 the department's met its obligations under section 73,
47 which is the active efforts provision.

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Q. Yes.

A. Two sections detailing the placement history and the family contact history, following the child going into out-of-home care; the section around the child's views and wishes; and then several sections detailing other relevant documents under rule 13.

Q. Yes.

A. I read that list and I would welcome the union to point out to me which of those things are not relevant to either my decision or the court's decision because, on my reading of that, it's all relevant and required.

Q. Yes.

COMMISSIONER: Isn't that revealed in the following paragraph:

This document is prepared in court and filed at the commencement of the child protection order proceedings even in circumstances where --

And won't read it out, but --

A. Yes. And then they suggested in some way giving parents access to the very information that underpins the assessment is somehow perversely undermining the parents' access to natural justice.

COMMISSIONER: But implicit in it is also an assumption that the jurisdiction is consensual, even where parents accept the legitimacy of the child protection concerns, even where agreement might yet be reached between the department and the respondent parents following court ordered conferencing, or there is sufficient agreement between all parties about substantive facts.

A. Yes, but --

COMMISSIONER: So it rather assumes that the jurisdiction is consensual, doesn't it?

A. It does, Your Honour, and that people have access to all this documentation in order to identify the agreed substantive facts.

COMMISSIONER: And it also ignores the very real possibility that, in the absence of all of the material

1 referred to in the paragraph above, which is criticised as
2 being overly extensive, I assume, that such agreement could
3 be reached.

4 A. Yes. Commissioner, my point merely is being that this
5 list of bullet points I would accept reflects what is
6 standard material that's sought to be put or given to my
7 office and then put before the court. But, on my review of
8 it, I don't know which part or which one of those bullet
9 points you would not want.

10
11 COMMISSIONER: Or, more precisely, what the court would
12 not require.

13 A. Yes, Commissioner.

14
15 MS SWEET: And, Director, as I understand it, this
16 criticism is part of a theme where it's put that there's a
17 work ethic in your department which requires this idea that
18 at the first mention of the CPO application, which might be
19 where you're seeking interim custody, there's a ready to
20 run trial approach so that, "We need to be ready to run to
21 trial at the first mention," that's not required and these
22 matters could be dealt with in a more gradual matter
23 because, "We don't need to be ready for trial on all
24 substantive issues at the first mention." What do you say
25 to that?

26 A. Well, the list of information we've referred to is
27 your starting point. Look, there's always other issues
28 that then arise from the information once we're under way
29 that we need to get the referral to a further expert or
30 information from another agency that might be raised in
31 response from a parent. But my view is that this is the
32 information you need in order to make a decision.

33
34 Q. And if I might just raise with you in that context a
35 suggestion in a submission from somebody who has worked as
36 an S00:

37
38 *In most child protection matters at a*
39 *minimum a prima facie case for custody on*
40 *the first return date could be supported by*
41 *an affidavit with the following four*
42 *things: criminal and domestic violence*
43 *histories, investigation and assessment,*
44 *information informing the assessment, and*
45 *the most recent drug screen.*

46
47 What would you say to that as sufficient for the

1 information that should be put before the court and served
2 upon parents at a first return date?

3 A. So if you could just, sorry, repeat. We're talking
4 about the assessment, was it?

5

6 Q. So this is talking about in the context of
7 overwhelming - it's ready to run to trial at the first
8 mention, and if what is sought is - and what should be -
9 needs to be shown is a prima facie case for custody, that
10 what should be put on the first return date is an affidavit
11 that has the exhibits limited to criminal and domestic
12 violence histories, investigation and assessment,
13 information informing that assessment, and the most recent
14 drug screen. What do you say to that as to whether that is
15 sufficient?

16 A. My view is it would not be sufficient.

17

18 Q. Yes. And why do you say that?

19 A. It would be matter dependent. But, like, there's a
20 lot contained within reference to the - even the
21 investigation. There's going to be all manner of documents
22 that have been obtained as part of that investigation, or
23 are they just proposing to have, like, a summary? I don't
24 understand. Yeah, I'm sorry, I'm at quite a - yeah, sorry,
25 other than referring back to what is, in my view, quite a
26 reasonable list set out of the types of things you need to
27 understand --

28

29 Q. Yes.

30 A. -- and have before the court to enliven the court's
31 jurisdiction.

32

33 Q. The other point that is brought up in this context is,
34 "Well, most of these matters resolve without the need for
35 hearing anyway. Why so we need the affidavit with all
36 those rule 13 exhibits? The work is wasted, isn't it, if
37 ultimately most of these things resolve prior to final
38 hearing." I mean, what do you say to that as a criticism
39 of the current approach?

40 A. I say the majority of matters - over 50 per cent of
41 matters are able to be finalised once you have a case plan.

42

43 Q. Once you have the case plan?

44 A. Case plan.

45

46 Q. Yes.

47 A. Now, once you have the case plan that's the first

1 opportunity, in my view, you have then to call on the
2 parents to say, "Okay, you've got the application. You
3 know what type of order or orders are being sought and the
4 duration of those orders." And now you have a copy of
5 the case plan, the things that you would like the parents
6 to do --

7

8 Q. Yes.

9 A. -- to address the concerns. And, in considering how
10 the plan fits with the order, when the parent is in that
11 situation the majority of matters will finalise. But,
12 again, that's putting the parent and all the other parties
13 in the proceeding in a place where they understand what the
14 basis is of the case, what the basis is of the concerns,
15 what the evidence is that underpins those concerns. And so
16 they are in a position where they can make an informed
17 decision about what action they might take on that
18 application, that is whether or not to oppose the
19 application.

20

21 Q. Yes. And the way they're put in that position is by
22 having this material --

23

A. Yes.

24

25 Q. -- that is currently required in the initiating
26 affidavit?

27 A. Now, if you have the scenario where there's some type
28 of partial disclosure or brief to the family as to what
29 underpins the assessment and the orders --

30

31 Q. Yes.

32 A. -- very quickly, in my view, I think you're going to
33 have people, if they have access to legal advice, being
34 advised to call for a full brief.

35

36 Q. Yes.

37 A. As a lawyer, I'm not sure how you would - prior to my
38 role, my current role, I gave evidence at the start of
39 the Inquiry I have been a lawyer in child protection
40 representing parents and children both separately and
41 directly for many years.

42

43 Q. Yes.

44 A. You need to understand what the case is about based on
45 the source documents. So if I maybe also put it this way,
46 that many or most of the applications that my lawyers are
47 making now are based on source documents. So we're making

1 decisions based on the source documents that appear in that
2 list because, at the point we're making our decision and
3 making applications, there's no initial affidavit ready to
4 be filed with the applications.

5
6 Q. Thank you.

7
8 COMMISSIONER: So when does the initial affidavit get
9 filed, generally?

10 A. Generally, Commissioner, I think I have already
11 produced some data in response to a notice that sets out
12 timeframes that it is not the case --

13
14 COMMISSIONER: Forgive me for not having digested all this
15 data just yet.

16 A. No. But, Commissioner, it's not the case - there are
17 few applications at the moment that are made without the
18 initial affidavit. Then there's still a large number of
19 applications leading up to the first mention where there's
20 still been no initial affidavit filed.

21
22 COMMISSIONER: So before the initial affidavit is
23 available what is the nature of the application that is
24 being made to the court? A temporary custody order or
25 something like that, is it, or a short-term custody order?

26 A. It will be any mix of the various interventions that
27 are in place. One of the positions we take as the DCPL is
28 if the child is not subject to any order or any other type
29 of care agreement, so that is they are not the subject of
30 an order or a care agreement, we will insist on the
31 affidavit being affirmed or sworn before we file so we
32 understand the exact evidential basis. But we are in a
33 position where often we need to make our application
34 because we have an order ending.

35
36 COMMISSIONER: So if it were a court assessment order --

37 A. Yes.

38
39 COMMISSIONER: -- that I think goes for 28 days --

40 A. Yes.

41
42 COMMISSIONER: -- you have to make an application for some
43 other form of child protection order in order for section
44 is it 99 to be engaged?

45 A. Yes.

46
47 COMMISSIONER: And then effectively the earlier order is

1 supplanted by the order that you seek?
2 A. Yes, Commissioner. Well, the earlier order is then
3 continued until such time as the court ends that order, and
4 that will be either through the making of the new order or
5 ending it and making an interim child protection order --
6

7 COMMISSIONER: It's extended as a matter of - by operation
8 of law?

9 A. It does. It does, Commissioner.

10
11 COMMISSIONER: But in order for that section to operate
12 you would need to make an application for the further
13 order?

14 A. That's so, Commissioner.

15
16 COMMISSIONER: Which you can do without having the
17 material that is the initial affidavit available?

18 A. Yes, Commissioner.

19
20 COMMISSIONER: But in order to do so you've got to make an
21 assessment of the material to decide whether you make any
22 and, if so, what kind of child protection order
23 application?

24 A. Yes. And so, Commissioner, we're making decisions
25 based off that list of source documents that I've read
26 through. We will have a proposed draft initial affidavit,
27 which has been reviewed at the same time. But the decision
28 largely or is based on the source documents. And one of
29 the --
30

31 COMMISSIONER: So when you go to court in that situation
32 what do you produce to the court for the court to make an
33 assessment as to whether they should accede to your
34 application for, let's say, a short-term custody order?

35 A. If I'm understanding your question right,
36 Commissioner, is this in the event that we are before the
37 court without any evidence?
38

39 COMMISSIONER: No. There's an emergent order that's been
40 made.

41 A. Yes.

42
43 COMMISSIONER: It hasn't yet expired. In order for it to
44 continue by operation of section 99 you have to, before the
45 expiration of the emergent order, make an application --
46

46 A. Yes.
47

1 COMMISSIONER: -- for some form of child protection order?
2 A. Yes.
3
4 COMMISSIONER: And at the time you make the application
5 you may not be in a position to provide the court with an
6 affidavit, what you call the initial affidavit?
7 A. That's so.
8
9 COMMISSIONER: And that might in turn be because you've
10 had late notice in terms of the referral from OCFOS to you?
11 A. Yes.
12
13 COMMISSIONER: Shortly prior to the expiry of the emergent
14 order, for example?
15 A. Yes.
16
17 COMMISSIONER: So when you go to the court in that
18 circumstance what material do you put before the court as
19 being the basis for your application yet to be further sort
20 of evidenced by an affidavit yet forthcoming --
21 A. Yeah, Commissioner, it's simply the application
22 itself, and that will be filed alongside with the initial
23 disclosure form.
24
25 COMMISSIONER: Yes. But in order to file the application
26 you need to have made an assessment as to whether the
27 application is warranted?
28 A. Yes.
29
30 COMMISSIONER: And for that purpose you rely on the
31 material --
32 A. The source documents.
33
34 COMMISSIONER: -- provided by OCFOS to you --
35 A. Yes.
36
37 COMMISSIONER: -- as part of the referral to you?
38 A. Yes.
39
40 COMMISSIONER: Yes, I understand.
41 A. And the only other point I'd make, Commissioner, is
42 that under the rules - and I can't talk to the rationale,
43 but rule 13, which I still have with me, subsection (4)
44 sets out a timeframe for when these key source documents
45 must be filed. And, unless there's a practice direction
46 dealing with this, which there isn't, or unless the court
47 has given a direction in a particular matter, it's to be

1 filed within 10 days after the first appearance of the
2 proceedings, so the first mention.

3
4 COMMISSIONER: What is your experience, if you're able to
5 say or you may have data, as to the notice prior to the
6 expiry of the emergent order that your office receives in
7 order to make an application for the child protection
8 order? And I imagine it varies because, say, a TA0 lasts
9 for I think three days and a temporary custody order also
10 for only three days. So you wouldn't get more than three
11 days notice in that circumstance, would you?

12 A. No, Commissioner. I do give some data in respect of
13 this issue in my statement.

14
15 COMMISSIONER: Yes.

16 A. It's on page 40, Commissioner, at paragraph 164. This
17 provides that in the year 2024/25 there were 284 matters
18 that my office received on the same day that whatever the
19 existing order in place was was ending.

20
21 COMMISSIONER: And that might be quite explicable in terms
22 of in relation to a three-day order.

23 A. Yes.

24
25 COMMISSIONER: One can infer that OCFOS can't be referring
26 a matter to you much before the order itself is made, that
27 is the emergent order.

28 A. No, no. In practice, Commissioner, I do outline some
29 other data on page 41 that relates to the different
30 timeliness provisions. So under the guidelines I've
31 issued, Commissioner, I do - there is a guideline that, if
32 it is an emergent order in place, we seek those to be
33 referred to my office no later than a day before they're
34 ending. If they're a child protection order that's in
35 place we seek to have those matters referred no less than
36 20 business days before they're ending. And I set out at
37 table 10 and table 11 as to the timeliness of those matters
38 meeting those timeframes.

39
40 COMMISSIONER: So when you say a child protection order
41 I thought they were the orders that only you could seek.

42 A. Yes, so these are existing child protection orders
43 that are ending, Commissioner.

44
45 COMMISSIONER: Yes, I see.

46 A. So they will be orders for an in-home intervention,
47 directive orders or supervision order, through to the

1 short-term out-of-home orders, either custody or short-term
2 guardianship.

3

4 COMMISSIONER: Yes, I follow.

5 A. And then you'll see table 12, which I've unhelpfully
6 spread across two pages, Commissioner --

7

8 COMMISSIONER: That's all right.

9 A. -- which shows that in the last financial year there
10 were seven matters that concerned children on an existing
11 child protection order that was ending on the day that we
12 received them. And then I set it out by then a series a
13 one business day or one clear business day and two to three
14 days. But in effect in practice we get many matters. We
15 receive many matters in the afternoon prior to the day the
16 existing order is ending.

17

18 COMMISSIONER: Yes, thank you.

19

20 MS SWEET: Director, I'm not proposing to ask you any more
21 questions about that Together submission. Was there
22 anything else you wished to say about it?

23

24 A. No.

25

26 Q. Thank you. What I'm going to hand you now, Director,
27 is a written submission that's made by one of your
28 applicant lawyers in the context of an application for a
29 long-term guardianship to the Chief Executive. And the
30 ultimate purpose of this line of examination, Director, is
31 to talk about what is put in these submissions at
32 paragraph 40 with respect to long-term guardianship and the
33 requirements under section 59(6) and (7). But before I do
34 that I just want to take you through some of the aspects of
35 the submissions, and I won't obviously refer to the names -
36 any identifying information.

37

38 A. Yes.

39

40 COMMISSIONER: Ms Sweet, do you want to tender this?

41

42 MS SWEET: Yes, thank you. I tender that, Your Honour.

43

44 COMMISSIONER: The written submissions will be CA-53.

45

46 **EXHIBIT #CA-53 - WRITTEN SUBMISSIONS**

47

48 MS SWEET: Thank you. So this is a matter where your
49 lawyers are seeking long-term guardianship Chief Executive

1 orders for five children; do you see that?

2 A. Yes, I do

3

4 Q. Yes. And you refer at paragraph 2 to the fact that
5 the court has the discretion to make the orders if it's
6 satisfied that the requirements of section 59 have been
7 met; do you see that?

8 A. Yes, I do.

9

10 Q. And one of those matters is that - the matters in
11 subparagraph (6) of section 59 refer to the need for the
12 court to be satisfied there's no parent willing and able to
13 protect the child within the foreseeable future.

14 A. Yes.

15

16 Q. And that that is a parent on the narrow meaning in
17 schedule 3; correct?

18 A. Yes, it is. It would be in that provision.

19

20 Q. Yes. And that the child's need for emotional security
21 will be best met in the long-term by making that order; and
22 then, at subparagraph (7), that the court must not grant
23 long-term guardianship of a child to (b) the Chief
24 Executive if the court can properly grant guardianship to
25 another suitable person.

26 A. Yes.

27

28 Q. So you go through and page 2 deals with some
29 preliminary matters about disclosure.

30 A. Yes.

31

32 Q. And you see section 106, that the court must as far as
33 practical ensure the child's parents understand the nature,
34 purpose and legal implications of the proceeding. You'll
35 see at paragraph 8:

36

37 *The applicant respectfully submits there is*
38 *no evidence before the court that the*
39 *respondents do not understand the nature,*
40 *purpose and legal implications of the*
41 *proceeding.*

42

43 A. Yes

44

45 Q. So that's not the same as saying - as giving positive
46 evidence that the parents do understand the nature, purpose
47 and legal implications of the proceeding, is it?

1 A. Yeah, I would accept that.

2

3 Q. And is it your lawyers' understanding that all that is
4 required is that there is no evidence to suggest there's a
5 lack of understanding?

6 A. No, I - no, if I just, sorry, can consider 106 as
7 well.

8

9 Q. Yes. So in a proceeding for a child the Childrens
10 Court must as far as practical ensure the child's parents
11 and other parties to the proceeding understand the nature,
12 purpose and legal implications of the proceeding.

13 A. Yes.

14

15 Q. And then there's a subparagraph - well, there's
16 another subparagraph that deals with English or
17 disabilities.

18 A. Yeah, it gives an example. But, yeah, it's a positive
19 obligation to have evidence before the court that they do
20 understand.

21

22 Q. Yes. So would it be correct to say that on the
23 submission in subparagraph (8) the court could not be
24 satisfied of what it needs to be satisfied under 106?

25 A. On what is written in paragraph (8), yes, I agree that
26 it should be making reference to the evidence from which
27 the court can be satisfied rather than pointing to an
28 absence of any evidence of not understanding.

29

30 Q. Yes. Thank you. And then see over on page 3 starts
31 dealing with the grounds for the order?

32 A. Yes, I can see that.

33

34 Q. Yes. And then another reference to section 59. And
35 then you refer to the section 10 and the definition of
36 "harm" in section 9, and then we have the submissions at
37 paragraph 21 --

38 A. Yes.

39

40 Q. -- asserting the children are at significant harm and
41 are at unacceptable risk of suffering significant harm.
42 And you rely on - I think the second respondent is the
43 father - the ongoing and entrenched pattern of behaviours
44 due to drugs misuse where the father has made admissions of
45 using drugs, particularly methamphetamine, to the
46 department which has led the department to verbally and
47 physically abuse the mother while under the influence.

1 A. Yes, I see that.

2

3 Q. We don't have the affidavit, but there's a single
4 paragraph reference there. Without seeing the affidavit,
5 given that's the submission, that paragraph has got a lot
6 of work to do to set out facts that underlie that
7 submission, doesn't it?

8 A. Yes, it does, without seeing the affidavit.

9

10 Q. Yes.

11 A. It's seeking to - yeah, I agree.

12

13 Q. And the children have been exposed to domestic
14 violence between the mother and the father, where the
15 children have reported witnessing the father physically
16 assaulting the mother. And again there's - that relies on
17 a single paragraph you see there?

18 A. Yes, I do; yeah.

19

20 Q. Yes. And the father has perpetrated domestic violence
21 towards the mother which has led to multiple domestic
22 violence orders and the father being charged and imprisoned
23 for domestic violence offences. And then you see the first
24 respondent's history of mental health illness where she has
25 a background of schizophrenia, depression and psychotic
26 episodes. And you'll see there sort of there's four
27 paragraphs there, but the submission doesn't refer to - it
28 refers to a history and a background, but it does not set
29 out there at least what the current state of the mother's
30 mental health is; correct?

31 A. Yeah, just to confirm, I'm looking at paragraph 21(d).
32 Yeah, it's referring to, I agree, a background.

33

34 Q. They're the submissions in respect of having suffered
35 significant harm and at unacceptable risk of suffering
36 relevant harm. How do your lawyers grapple with what is
37 acceptable and what is unacceptable in terms of risk of
38 harm? How is that grappled with?

39 A. Yeah, I would welcome an opportunity to look at the
40 affidavit to see exactly what's in those paragraphs. But
41 they should be seeking to evidence what are the risk
42 factors that underpin the ground that there's an
43 unacceptable risk.

44

45 Q. Yes. But just in terms of - not in respect of this
46 case but just more generally how do child practitioners,
47 lawyers, work out where the line - what's an acceptable

1 level of risk?

2 A. Yeah, so their decision, the starting point will be
3 looking at the child safety officer or team leader's
4 assessment to see what are the concerns that they have
5 identified that underpin whatever the unacceptable risk is.
6 But it will be matter dependent and then seeking to make
7 sure there's evidence that is clear that sits underneath
8 those identified child protection concerns in the
9 assessment.

10

11 Q. Yes. And you'll see paragraph 22 deals with no parent
12 willing and able for reasons of --

13 A. Yes, I see that.

14

15 Q. -- a relationship characterised by domestic violence
16 and the matters raised previously in the earlier paragraph,
17 inability and lack of insight to protect the children from
18 being exposed to domestic violence, mental health and
19 current limited engagement with mental health services by
20 the mother. It is noted that the mother is taking current
21 medication and engaging with a general practitioner.

22 A. Yes, I see that.

23

24 Q. Would you accept that - I mean, there's an allegation
25 of limited engagement, but then there's an acceptance that
26 she's medicated and engaging with her GP.

27 A. Yeah, it clearly - yeah, it refers to it noting that,
28 and by the footnote there's a series of a number of
29 exhibits that are referred to --

30

31 Q. Yes.

32 A. -- which no doubt would show her engagement.

33

34 Q. It's hard to understand at this stage how - if there's
35 engagement with a GP and taking medication, why that would
36 necessarily be classed as limited engagement; would you
37 accept that?

38 A. Yeah, and, sorry, is there limited engagement - I see,
39 yes, sorry, the first part of that sentence; yeah.

40

41 Q. Yes. And then there's the mother's inability to
42 secure safe and stable accommodation. That's not supported
43 by an evidentiary reference.

44 A. Yes, I see that.

45

46 Q. Perhaps there is one there. Perhaps the affidavit
47 deals with it; we don't know. And then the father being

1 incarcerated on multiple occasions which impedes his
2 ability to care for the children, and his lack of insight
3 and willingness to address domestic violence behaviour and
4 drug use.

5 A. M'hmm.

6

7 Q. Then paragraph 23 deals with orders - an assertion and
8 a submission that the orders are appropriate and desirable
9 because of the child protection concerns, and that the
10 first respondent's mental health remains ongoing and
11 unaddressed. On any view, that seems to be to say that the
12 mental health is unaddressed appears to be an overstatement
13 if one looks at 22(c).

14 A. I accept that there's an inconsistency on the face of
15 it.

16

17 Q. Less intrusive interventions have been trialled and
18 been unsuccessful; do you see that?

19 A. Yes, I see that at paragraph 23(b).

20

21 Q. Yes. And then, paragraph (c), unable to attain
22 unification by the parents failing to meaningfully engage
23 with services, address the child protection concerns.
24 "It's unlikely reunification will be achieved under another
25 short term order."

26 A. Yes, I see that.

27

28 Q. Yes. (d), the children have been placed in the care
29 of their paternal aunt and kinship carer - it names her -
30 between 2020 and 2021. And this is - I think these are --

31 A. 2023, yeah.

32

33 Q. -- June 2023 submissions, and have been in her care
34 since.

35 A. Yes.

36

37 Q. She's indicated that she requires ongoing financial
38 assistance from Child Safety to continue caring for the
39 children, and I think I mentioned there are five of them.

40 A. Yes.

41

42 Q. Yes. No other order on less intrusive terms will
43 ensure the children's safety, wellbeing and best interests.
44 And it's submitted that the children are children in need
45 of protection for the reasons outlined above. It then goes
46 on to talk about the case plans, and at 26 the case plans
47 are then attached to the affidavit.

1 A. Yes.
2
3 Q. And the goal is long-term out-of-home care. Then
4 moving on to page 5 there's a reference to the court
5 ordered reference, that there wasn't one convened because
6 the parents had not participated in court proceedings.
7 A. Sorry, just --
8
9 Q. Yes, paragraph 30.
10 A. Okay. Yes, I'm with you now.
11
12 Q. Yes. It's noted that the mother has indicated she
13 does not oppose the applications for the children in a
14 conversation she had with Child Safety in August 2022.
15 A. Yes.
16
17 Q. And that's relied upon. And then there's a note at
18 paragraph 32 that the father has indicated he does not
19 oppose the applications for two of the children but
20 disagrees with them in respect of --
21 A. Three other children.
22
23 Q. -- three others. It doesn't tell us why. It then
24 goes on to deal with the children's views and wishes, and
25 there are various views. There's a reference at 34 to a
26 child advocate referral, at 34, for two of the children,
27 and that one of the children's wishes were placed before
28 the court via a child advocate from the Office of Public
29 Guardian, and the child advocate advised that in respect of
30 her client, her child client, that the client did not wish
31 to be involved. There's then a reference to the assertion
32 or the submission that these are the least intrusive orders
33 available, and gives reasons why.
34
35 And then coming back to where we started at page 6,
36 paragraph 40, and I took you to the sections earlier
37 including that the court must not grant long-term
38 guardianship of a child to the Chief Executive if the court
39 can properly grant guardianship to another civil person.
40 Now, would we make the assumption here that the paternal
41 aunt, if she has been - the children have been in her care
42 since 2021, I think, or 2022 it says, that she is likely to
43 be a suitable person in terms of competency to care?
44 A. Yeah, I think that's a very clear assumption to make,
45 that if she's been caring for the children for just on the
46 face of this at two and a half to three - over three
47 years --

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Q. Yes.

A. -- and, unless there's any reference in the submissions to there being any concerns, yeah, clearly she must be meeting her obligations in terms of the day-to-day care of the children.

Q. Yes. So at paragraph 40 it refers to the requirement in 59(6).

A. Yes, I can see that.

Q. It says:

The applicant submits that the parents are not parents willing or able to protect the children from harm in the foreseeable future, as the parents have not addressed the substantial child protection concerns. The children are currently placed with their paternal aunt and have been in her care between the periods of 2020 to 2021.

I'm not sure that that's as extensive as it should be, but they've been in her care since that time I think it says earlier in the submissions.

A. Yeah, I believe it did; yeah.

Q. Yes:

It is within the children's best interests that a long-term order is made to ensure that the children experience permanency as outlined in the principles in section 5BA of the Child Protection Act.

Now, just based on that submission would you agree that the court cannot be satisfied that the principles in section 5BA have been met in respect of investigations about the suitability of long-term guardianship to other?

MR O'BRIEN: Commissioner, can I just object to the form of the question, which really is asking my client to make a qualitative assessment based upon a submission without regard to the two affidavits or the transcript of submissions. I appreciate the point and my learned friend is well entitled to explore matters of process, but that particular question --

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COMMISSIONER: Well, all right. I think the question can be slightly rephrased; that is, if one accepts - and, Director, I ask you to make an assumption - that the submission is a precis of the content of the affidavit material, there is no reference in the precis, specifically in paragraph 41, to compliance with section 57 - sorry, 59(7) --

A. 59(7)(a), Commissioner.

COMMISSIONER: Yes. So 59(7)(a), which correlates to section 5BA; in other words, there is no - the reference in the submission to any endeavours to find a suitable guardian other than the Chief Executive in this submission. Perhaps the way to avoid any speculation about this is to obtain the affidavit. But, just accepting for the moment the assumption that the submission is a precis and a comprehensive precis of relevant matters deposed to in the affidavits, there appears to be an absence of any reference in the submission and therefore one would assume in the affidavits to an investigation of the availability of any person as a long-term guardian apart from the Chief Executive.

A. Yes, I would accept that, Commissioner, on the face of the submissions, the suitability of the children's aunt --

COMMISSIONER: Or possibly other persons.

A. -- or anybody else, if the submission does not deal with her suitability or anybody else's.

COMMISSIONER: Ms Sweet, does that satisfy the question?

MS SWEET: Yes, thank you.

COMMISSIONER: Please ask another if you wish.

MS SWEET: Thank you.

COMMISSIONER: Do we have the affidavit material?

MS SWEET: No, we don't.

COMMISSIONER: We'll see if we can get it.

MS SWEET: Do you agree that, regardless of whether or not it's in the affidavit, that in written submissions in respect of in support of a long-term guardianship order

1 this material should be set out in submissions to the
2 court, the various attempts that have been made?
3 A. Yes, I do agree that the written submission should be
4 seeking to address the relevant factors in section 59 and,
5 through that, any other relevant parts of the Act.

6
7 MS SWEET: Yes, thank you. I am enjoying my time in the
8 limelight, Commissioner, but I am going to hand over to my
9 learned friend Mr Hastie, even though he didn't
10 specifically speak up in support of me before.

11
12 COMMISSIONER: All right. Thank you, Mr Hastie.

13
14 MR HASTIE: Thank you, Commissioner.

15
16 **<EXAMINATION BY MR HASTIE** **[2.44 pm]**

17
18 MR HASTIE: Mr Miller, when you graduated in 2005 am I to
19 take it that's when you went straight to the United Kingdom
20 to work?

21 A. Sorry?

22
23 Q. You went to the United Kingdom to work after you
24 graduated?

25 A. No, no. On graduating from university?

26
27 Q. Yes, in law?

28 A. In law? I was with Legal Aid Queensland.

29
30 Q. I see. And then you took time off to go to --

31 A. Yes. So I was with Legal Aid Queensland for five
32 years. I then - from memory, I was in the United Kingdom
33 from 2009 through 2010. I would have to check that, but
34 I think that was the year and a bit that I was there,
35 2009/2010.

36
37 Q. That serves for sufficient purposes. And then you
38 came back to Legal Aid, did you?

39 A. Yes, I did.

40
41 Q. And then you were appointed Director of this office?

42 A. Yeah, so I was commenced at Legal Aid Queensland --

43
44 Q. The specific time --

45 A. Okay.

46
47 Q. So can you recall the older system that prevailed

1 before the appointment of you as Director when applications
2 were made for protection orders?

3 A. Yes, I can; yes.

4

5 Q. All right.

6 A. I was practising in child protection from 2005, 2004,
7 yeah.

8

9 Q. All right. And that was a situation - do I understand
10 the whole of your evidence to be in effect that there would
11 be a representative, a court official, from the department
12 who would attend to Childrens Court and deal with mentions
13 and directions hearings?

14 A. Yes, yeah. I think, like, prior to even the court
15 coordinators I think it was then court services officers
16 they may have been referred to.

17

18 Q. All right; that name. But they weren't lawyers; is
19 that right?

20 A. No, they weren't lawyers.

21

22 Q. All right. And do I understand your evidence to be
23 that even back then from time to time a CSO would attend as
24 well?

25 A. CSOs would often be in attendance at court.

26

27 Q. All right. And if the matter ended up being - go to a
28 hearing, as it were, a full hearing, then the department
29 would engage Crown Law, who would send one of their
30 internal legal officers to run the litigation?

31 A. That's so. Crown Law then at the time had, varying
32 across the years, between four and six of their lawyers
33 that focused on child protection work.

34

35 Q. All right. And do I understand you to say in your
36 evidence that there was, in a sense, a benefit - you were
37 on the other side of course; you were for the parent, both
38 parents or --

39 A. Or for the child, yeah.

40

41 Q. I was going to ask you did you appear for the child as
42 well?

43 A. For children as well, yeah.

44

45 Q. All right. There was a benefit on those occasions in
46 having the CSO in attendance at the court so you could
47 engage with them and they could be engaged by the court as

1 to what should happen with the child?
2 A. Yes, and they'd be talking to parents whilst waiting
3 outside of court. In addition to being in court, they
4 would be talking to parents at court as well.
5
6 Q. And one of the disadvantages originally, do I take it
7 from what you're saying or what you said, initially after
8 your appointment was that the children services officers -
9 sorry, the CSOs wouldn't - you couldn't engage with them
10 when you were Director directly?
11 A. That's so.
12
13 Q. All right.
14 A. There was no direct communication.
15
16 Q. And the system's changed since --
17 A. It has.
18
19 Q. -- did I take you to say the KPMG recommendations?
20 A. Yeah, out of the KPMG business process review it led -
21 it was in part based on those recommendations fed into the
22 changes that allowed direct communication from 1 July 2019.
23
24 Q. And one of the - that's of continuing benefit to you
25 to be able to engage the CSO directly?
26 A. Yes, it is. Yes.
27
28 Q. All right.
29 A. To have that developed relationship with them.
30
31 Q. All right. And that would be so in part simply
32 because you could have - you would have - be able to talk
33 to them. It wouldn't be a necessary formal system of
34 talking to them. You would be able to via email or by
35 correspondence --
36 A. Email, calls, Teams.
37
38 Q. -- you would be able to just ring them up?
39 A. That's right.
40
41 Q. All right. And your office is an independent
42 statutory office and I understand you to say that your
43 officers, that is the people who answer to you, they all
44 work in Brisbane?
45 A. It's a Brisbane based model. So I only have one
46 office, which is in Brisbane. For many years I had a
47 lawyer based at Atherton within the service centre. He was

1 there for at least I think seven-plus years before he left
2 to go to Youth Justice to take on a lawyer role there.
3 But, yeah, my lawyers are Brisbane based, although some of
4 them live some way from the office.

5
6 Q. All right. The important thing is my next question.
7 A. Yes.

8
9 Q. Do I understand from the way you've framed your
10 statement is that when you were appointed and the office
11 was established it was decided that your officers would be
12 based in Brisbane, and there is a disadvantage to that, is
13 there?

14 A. It was just a decision of the government.

15
16 Q. No, but I'm asking you for your opinion.

17 A. Yes.

18
19 Q. Is there a disadvantage in the officers being located
20 in Brisbane and not, as it were, in any - in a service
21 centre or out in other parts of the state?

22 A. In response I'd say it was because of the Brisbane
23 office and that we were all together that in the early
24 stages of the model it allowed us to actually embed the
25 model and create practices. What is of great benefit,
26 though, is when my lawyers are able to attend and work from
27 service centres as well, if I put it that way.

28
29 Q. All right. When you're establishing an office and
30 you're getting an ethos together and you're working out
31 systems it's great to have everyone there. But now that
32 you've done that --

33 A. Yes.

34
35 Q. -- you've got the benefit of being able to actually go
36 out to regional service centres.

37 A. M'hmm.

38
39 Q. And that would be particularly important when there
40 are going to be applications to court?

41 A. Yes, yes. So at the moment, although my office is
42 Brisbane based, yeah, my lawyers are travelling to wherever
43 the applications are.

44
45 Q. All right. Assuming that you could get people who
46 would be willing to work in country Queensland, then there
47 would be an advantage to - do I take your evidence to be -

1 having people on location in service centres?
2 A. Yeah, provided you could attract qualified people, and
3 the other element there is the budget in which to support
4 having remotely based or remote offices.

5
6 Q. It works both ways, doesn't it? You have to pay for
7 transport and hotels, but you also have to pay for people
8 to actually live out of Brisbane?

9 A. Yes, but in order to maintain an office or a series of
10 offices would far exceed the travel costs.

11
12 Q. Yes, all right. Now, I take it in your response to
13 your answers to the Commissioner you could see the
14 limitations in the system for your office being engaged for
15 emergent orders or what you call emergent orders that have
16 to be made or sought almost immediately a conclusion is
17 reached that an order should be obtained from the court?
18 In other words, if at 9 o'clock in the morning you
19 realised - the CSO realised that an application had to be
20 made to rescue a child, then there would be a disadvantage
21 having to engage someone from your office in Brisbane to do
22 that if you were in Cairns or Rockhampton or Emerald or
23 wherever it happened to be?

24 A. I think it would depend upon the matter. I've
25 discussed this recently. So I have a number of lawyers in
26 my office that have worked in the OCFOS office for many
27 years --

28
29 Q. Yes.

30 A. -- to try to understand the differences and the
31 dynamics. Like, there's a principal lawyer that's joined
32 my office from OCFOS that I was only discussing this issue
33 with him last week. And, although he's based here in
34 Brisbane, for many years he supported Mount Isa, he
35 supported various locations across the state from here in
36 Brisbane. I think you're wanting to put to me, "Well, if
37 there's this urgent need in Cairns, can it not be done from
38 Brisbane?" I think it really would depend on the matter.
39 We have applications at the moment that are currently heard
40 in I think it's somewhere around 60 locations across the
41 state. Some of them are very remote. You've got Child
42 Safety that also are undertaking work and also legal work,
43 OCFOS, in locations where they're not based. So I would
44 say with the current technology I just don't know if that's
45 a barrier anymore. Like, I can recall just earlier this
46 year having a number of consults across two days involving
47 Child Safety staff both in Rockhampton and Emerald in

1 relation to children that were in Woorabinda, and it was
2 all just seamless with us linking in and discussing what
3 needed to happen in respect of that matter.
4

5 Q. I understand that. But I understood also in your
6 statement to say that you - the way that you preferred to
7 run a court case was to have your officers present
8 physically in court rather than do it remotely?

9 A. That's it. I like them to attend. So I think the
10 question then is, well, as I understand it at the moment
11 most emergent order applications seeking either a temporary
12 assessment order or temporary custody orders are dealt with
13 not in a court, they're dealt with by magistrates by phone
14 and in chambers.
15

16 Q. And so if there was - if the system was to change then
17 you would see - in the sense that your office would have
18 the ability to make those kinds of applications, you could
19 see technology being used to enable your office to do that?

20 A. Yes, and there are magistrates that are on call around
21 the clock. Like, those emergent order applications are
22 also at times made by police officers.
23

24 Q. Yes, all right. Depending on the location. All
25 right?

26 A. Depending on the location. Every now and then we will
27 see an early emergent order that's actually on the
28 application of a police officer rather than a child safety
29 officer.
30

31 Q. All right. And you obviously accept that there will
32 be from time to time, unfortunately, circumstances where an
33 application will just have to be made almost straightaway
34 when the circumstances are appreciated?

35 A. There may be that, yeah, if the child hasn't been
36 taken into care through a section 18 decision.
37

38 Q. Yep. If it hasn't been taken into care by section
39 18 --

40 A. Yeah.
41

42 Q. -- then obviously one of the emergent orders is the
43 preferable way to - if you can, I take it an emergent order
44 is preferable than a section 18 order, if you can; would
45 that be your view?

46 A. Sorry, I make the point that if a child has been
47 removed under section 18 there is a window of eight hours

1 in which to bring the application --

2

3 Q. Eight hours.

4 A. -- if a child is not --

5

6 COMMISSIONER: Should that be extended, in your view?

7 A. That eight-hour window, Commissioner?

8

9 COMMISSIONER: It seems very short.

10 A. And that at the moment, Commissioner, is then when you
11 will find at times the engagement of the police; so if you
12 have a section 18 removal at, say, 11 o'clock at night on a
13 Saturday evening where you've got to be before the
14 magistrate by 7 am on the Sunday.

15

16 MR HASTIE: In any event, what I wanted to ask you about
17 is there is an obvious benefit in - or this conception
18 reinforces the obvious benefit in your office or an office
19 being able to contact and talk to a CSO directly?

20 A. Yes, yeah, there is, yeah, obvious benefit.

21

22 Q. All right. And can I then just suggest that the way
23 the current system is set up you can see why there's a
24 benefit in having an internal solicitor being located in an
25 office, particularly if it's outside Brisbane, who has the
26 authority to bring an application for an emergent order?

27 A. Yeah, I --

28

29 Q. There's some efficiencies in being able to do it that
30 way?

31 A. It may be. But if that lawyer, even although they
32 were based - like I make the point that, when I had my
33 lawyer based in Atherton, although he was a DCPL lawyer, he
34 would have been quite easily and capable of making any
35 emergent order application that may have been required in
36 the area that the Atherton Child Safety Service Centre
37 manages. So the matters that he managed he would do
38 Atherton, Mareeba, Innisfail and then would also go north
39 to Mossman. But, yeah, he was embedded in a service centre
40 albeit as a DCPL lawyer. If you had other DCPL lawyers
41 exercising a degree of independence but based in child
42 safety service centres you would meet that immediate need,
43 if an emergent order application was being sought.

44

45 Q. Well, I suppose you've really answered my next
46 question.

47 A. Yeah.

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Q. So the Atherton person wasn't physically located in the office of the service centre?

A. Yes, he was.

Q. And so had the ability obviously to talk immediately to the CSO - well, eventually to the CSO?

A. Yes. And so for the first three years if he needed information from one of the child safety officers that he could see he was telephoning an OCFOS lawyer who was based in Cairns to call the child safety officer he could see to get the information he needed.

Q. All right. But under the current model if you had someone in Atherton they would be able to just walk next door and they would have a chat?

A. Next workstation, yeah.

Q. All right. And I might as well continue with the theme of ease of access. The draft protection assessment form that you --

A. Yes, yeah.

Q. -- that you've provided to us which sounds like a collaborative effort between a number of different agencies, including your own --

A. It is. It's not something that to date I've had input into other than seeking to get this back on the agenda and back the subject of collaboration from across Child Safety, OCFOS and QATSICPP.

Q. So it's been the subject of a negotiation - sorry, I shouldn't put it that way, but the subject of consideration for a number of years; would that be right?

A. It has. Yeah, for a number of years; yeah.

Q. All right. I just want to ask you about the logic of it.

A. Yeah.

Q. And if you can't answer me don't, but if you just want to provide an opinion independent of this form; maybe we could deal with it that way.

A. Yeah, yeah.

Q. Put it aside and just treat it on the basis that, if we have a child services officer who could fill in an

1 assessment which provided the details that are important
2 such as the - obviously the identity of the child and the
3 parents, the ages of the - well, maybe everyone, the
4 circumstances of the child, what brought the circumstances
5 to the attention of the department, what the concerns were
6 or, I should put it, what are the significant risks to the
7 child and what orders should be sought and why, then that's
8 the sort of format that you think would assist in the
9 process of - if you had to go to court?

10 A. Yes. So the focus of this form - and I may not have
11 done a great job of setting this out yesterday - is that
12 for the children that come through an emergent order
13 process currently there is an established process for the
14 child safety officer to set out their assessment and the
15 types of information --

16
17 Q. Yes.

18 A. -- you've referred to. But from that point onwards in
19 the system there is not such a process then. You have your
20 case planning where a plan will be produced. In law then
21 six months later it should be reviewed, and there should be
22 a report about that review, and it should lead to the next
23 case plan. And if that's occurring you can through the
24 case planning and looking at the issues they're seeking to
25 focus on have an understanding of perhaps what the current
26 assessment is. But, other than that process, when it comes
27 time then at the nine-month mark, at the 12-month mark, at
28 the three-year mark the only way at the moment that a child
29 safety officer is able to set out their assessment is
30 through a lengthy narrative affidavit. And so they're
31 viewing the affidavit as court work where what I'm really
32 proposing is to give them some type of form, which will be
33 the subject of further consultation around, that they can
34 use to continually maintain their assessment; yeah.

35
36 Q. All right. There are a couple of things that I wasn't
37 quite sure about. I noticed that you - and I'm sure you
38 didn't mean it pejoratively, but the child safety officer
39 thinks that this sort of information is - or an affidavit
40 is sort of court work and that's not their core work,
41 they're mostly social workers and psychologists, and they
42 would prefer to assist the family than fill out an
43 affidavit; that's what you meant?

44 A. And that's the feedback I hear --

45
46 Q. Yes.

47 A. -- that needing to prepare affidavits is viewed as

1 court work, where I'm really trying to have a system where
2 in their own way, using their own language in a form that
3 is theirs and they're comfortable with that they keep track
4 of their assessment.

5
6 Q. All right. So there are two things that follow from
7 that that I wanted to ask you about.

8 A. Yes.

9
10 Q. One of the things you would advocate as a way of
11 getting around the lengthy affidavit that they have to
12 prepare might be that a form like this is completed and
13 it's updated, you might have to work out some ways of doing
14 that, whether you just keep undating it and put another
15 date or whether you just keep changing it by day to day and
16 that's the latest version --

17 A. That's so. It might be as part of the regular review
18 of the plan, so at a minimum once every six months, that
19 they would review the assessment. There might be little
20 that's changed. Yeah.

21
22 Q. So one way of dealing then with and in using the form
23 might be for the lawyer to be responsible for putting this
24 assessment into an affidavit?

25 A. That's so. I don't think myself - what I'm really
26 hoping is we get to the point where the form of the
27 affidavit is quite brief and it's really giving guidance to
28 the assessment as exhibit 1 and any other source documents.

29
30 Q. That was my next question.

31 A. Yes.

32
33 Q. So you just put the assessment on as exhibit 1.

34 A. Exhibit 1. And then any other documents, whoever's
35 made this assessment has had regard to, would be listed as
36 the other - so the affidavit hopefully would be just a
37 matter of - a number of pages.

38
39 Q. All right. Or it could be, couldn't it, as what
40 I think is the hint in the New South Wales practice
41 direction - I don't know whether you saw it - where this
42 becomes a document tendered on its own force. You might
43 have to have someone sign it, but you could do it that way
44 without the need for an affidavit.

45 A. That way, as long as the other source documents that
46 underpin the assessment or the facts are then - yeah, it
47 may be dealt with, yeah, through tendering it as an

1 exhibit.

2

3 Q. And sometimes - or you could just file it. You don't
4 have to always --

5 A. Well, that's so. I'm just imagining the first
6 mention, "Here it is." But, yeah, if you had time to file
7 and then serve, yes.

8

9 Q. They introduced a rule in Queensland which allows you,
10 if you have an affidavit - sorry, instead of what used to
11 be a cumbersome affidavit, you could just file
12 correspondence for a civil dispute. So there's no reason
13 why you'd need to have an affidavit, because you'd agree
14 with this: sometimes it just is a little bit cumbersome and
15 a little extra work putting an affidavit together in a nice
16 way?

17 A. I agree, and I hear that child safety officers at
18 times will go off-line for a day or more to prepare an
19 affidavit.

20

21 Q. Yes, when they could be out doing other things with
22 children in need.

23 A. Yeah, or parents in need.

24

25 Q. Or families in need.

26 A. You know, the job of a child safety officer is very
27 varied. I caught some of the evidence of one of the child
28 safety officers I think in Cairns. And, listening to the
29 various forms that she had to go through and the various
30 referrals she was making in addition to the affidavit,
31 yeah, it sounds like there was quite a heavy administrative
32 load on the child safety officer.

33

34 Q. All right. Can I just ask you you've mentioned and
35 given evidence before about the types of - when you get a
36 reference from Child Safety and sometimes you refer them
37 back, sometimes you ask for more information, and it seems
38 like sometimes that's a formal situation, sometimes that's
39 a more informal situation, and sometimes you just have to
40 say, "Look, there's nothing I can do with this at the
41 moment," and, as you told the Commissioner earlier this
42 morning, sometimes they will come back and sometimes they
43 won't.

44 A. If the matter's referred back, yes.

45

46 Q. All right. Can I take it then that the applications,
47 when you actually make them, you'd be confident that in

1 each of the cases that your officers make that the children
2 are in need of protection; that is that they either have
3 suffered significant harm, were suffering it, or there was
4 an unacceptable risk that they would in the future suffer
5 significant harm, and that they didn't have a parent able
6 and willing to protect the children from harm?

7 A. Yes. Yeah, I accept that.
8

9 Q. All right. And I think the Commissioner asked you
10 about a continuum. There's obviously some very bad cases
11 that you would have seen and some cases where like - well,
12 this is a good example, the one that my learned friend
13 asked you about before, the written submissions - I can't
14 remember what exhibit it is now. CA-53. That might fall
15 into - if I took you to it. We've got paragraph 21. It
16 refers to the male obviously misusing drugs, particularly
17 meth, and also physically abused the female, or the mother,
18 and the children were said to have witnessed that, and
19 obviously the mother's been the recipient of it. And in
20 this case the mother has her own mental health illnesses.
21 Clearly parents not able and willing to protect the
22 children from harm, in fact probably harming them by their
23 drug addiction, mental illness and domestic violence; you'd
24 agree with that?

25 A. Yeah, I do. And I think I've already given evidence
26 that the big drivers of intervention are domestic and
27 family violence --
28

29 Q. Yes.

30 A. -- and some substance misuse, there's particular
31 reference to methamphetamine use, and then also concerns
32 around mental health.
33

34 Q. In terms of a continuum, if you were asked to try and
35 use a continuum, a very bad - I don't know whether it is
36 bad, break a child's legs or bruise them, but that kind of
37 situation is often what people think in terms of abuse and
38 the need for protection. If we thought that that physical
39 violence was at one end or I don't know whether you'd even
40 come in on thinking that way, but where would you put this
41 in terms of a continuum if you wanted to embark on that
42 process at all?

43 A. Look, it's matter dependent and I would defer to my
44 Child Safety colleagues. If you were to put this question
45 to them they would no doubt refer to various research that
46 would suggest that some of the most significant
47 consequences on a child's wellbeing will be neglect and it

1 will be emotional abuse, if it's significant. So it's very
2 much matter dependent. You might have a one-off physical
3 abuse type matter that is catastrophic or you might have a
4 matter that involves a level of physical abuse that pales
5 in comparison to a child that's been subjected to chronic
6 psychological abuse.

7
8 Q. Thank you, Mr Miller. And in fact this is a good
9 example really of what you - when my learned friend asked
10 you before what you thought were the drivers of the
11 increase in the numbers of children in need of protection,
12 the three of them are here. One thing I wanted to develop
13 a little bit further with you, in a sense going back to
14 2005, some of the drivers would have been the same, there
15 might have been others that were the product of a care and
16 protection order. Would it be one way of looking at a
17 driver and the increase is the increase in the availability
18 and use of meth around the countryside?

19 A. Yeah, Mr Hastie, I know that now for a number of years
20 Child Safety has produced information as part of their
21 reporting making reference to the number of matters or the
22 increasing number of matters that involve a parent using
23 meth, methamphetamine. My memory of 20 years ago, I don't
24 think it was anywhere near as prevalent as it is now.

25
26 Q. And marijuana wouldn't have had the same effect and
27 probably not as prevalent as meth?

28 A. I don't recall there being concerns that would
29 underpin a child protection application simply based on the
30 use of cannabis or marijuana; yeah.

31
32 Q. All right. So that might be one, and we know that
33 drug use has gone up and drug offences have gone up and
34 other offences have gone down. So that's some indicator
35 that's consistent with your recollection and that evidence;
36 that's correct, isn't it?

37 A. It is. And I hear where it's made reference to, yeah,
38 the prevalence of methamphetamine, it's now - it's a much
39 greater concern now than, say, the misuse of alcohol.

40
41 Q. All right. Thank you. That was my next question.

42 A. That's what I - and that's what I understand Child
43 Safety - part of what - when they produce sort of
44 information around what are the underlying drivers and the
45 complexity of matters, that methamphetamine features quite
46 prominently in that.

47

1 Q. All right. And one of the - the next proposition
2 I wanted to ask you about is this. It would be true to
3 say, wouldn't it, over the last, I don't know, maybe
4 10 years, and maybe particularly the last five years
5 society's intolerance to domestic violence has increased,
6 hasn't it?

7 A. Yes. What I would say is I think clearly there's a
8 greater awareness to the prevalence of domestic and family
9 violence. There's a greater understanding of what
10 behaviours are considered violent and, in your words too,
11 there's much more action in response to violence and
12 there's an intolerance; yeah.

13
14 Q. All right. Well, you've said it because I was just
15 about to ask you that.

16 A. Yeah.

17
18 Q. And so there's the reporting of domestic violence, and
19 there is almost a requirement of a police officer and the
20 court to make an order and a referral about domestic
21 violence, isn't there?

22 A. I'd have to actually defer to Child Safety and the
23 police on that point as to at what point the police's
24 mandatory obligations are triggered on an attendance at an
25 event where there's concerns around violence.

26
27 Q. I'll put it another way. If there is a complaint to
28 police about the occurrence of domestic violence it's more
29 often that they will intervene in the last five or 10 years
30 than they would of last 20 years ago in the form of a
31 charge?

32 A. Yeah, and I'm aware of the inquiry into how domestic
33 and family violence is managed by police. There was an
34 inquiry over the last couple of years even.

35
36 Q. All right. And more likely to lead to a court order
37 that separates the violent partner?

38 A. Yes. If I put it this way. The Childrens Court
39 exercising the Child Protection Act jurisdiction has a
40 mandatory consideration of any existing domestic violence
41 or protection order that's in place when it's making a
42 child protection order. So if there is a domestic violence
43 order in place between the two parents at the point the
44 Childrens Court is considering a child protection order or
45 the making of one it must have regard to a domestic
46 violence order and whether or not it needs to be amended.

47

1 Q. All right. And it would be true to say, wouldn't it,
2 that from all of that if we were to try to reduce the
3 number of children the subject of care and protection
4 orders we might be - a good place to start might be the
5 things that trigger the need for those protection orders?

6 A. Yes. And, Mr Hastie, there are matters and I myself
7 have been involved in matters before taking on this role
8 where the risk posed to the child through the child
9 protection proceeding in the end was managed through the
10 making of a domestic violence order rather than a child
11 protection order.
12

13 Q. Or, going back further than that, trying to manage the
14 occurrence of domestic violence by prevention and
15 education?

16 A. Yes. Yeah.
17

18 Q. All right. And, in the case of drugs, these sorts of
19 environment and the circumstances that might lead to a
20 person to take drugs?

21 A. Yes, or if somebody is taking drugs, using drugs,
22 having the availability of drug and alcohol services for
23 them to access.
24

25 Q. All right. One of the things that you mentioned at
26 the start of your evidence was that you got this - a large
27 number of notifications of potential child abuse.

28 A. That's right, yeah.
29

30 Q. And then you've got a smaller number of
31 investigations. It almost drops by a third or something
32 like that, I think you said. And then out of
33 the investigations there's only a component of those which
34 are regarded as being substantiated.

35 A. Yeah, I'm just looking at my notes here. You start
36 with over 140,485 reports concerning 86,122 children.
37 There's only then 44,183 notifications recorded. Yeah,
38 then you go down - it steps down then, the number of
39 investigations commenced. But, yeah.
40

41 Q. And then out of the substantiations you get - say,
42 about half, maybe a bit more than that, lead to some kind
43 of emergent orders?

44 A. Well, yeah, my calculation was that when you're
45 undertaking an investigation - so this is someone within
46 Child Safety has formed a reasonable suspicion that the
47 child may be in need of protection, that the use of even -

1 even if you take into account that each temporary
2 assessment order is completely separate to any court
3 assessment order, so that is the child is not the subject
4 of both, the use of emergent order applications is only
5 occurring in around 12.5 per cent of investigations.
6

7 Q. All right. So that in between all of that you've got,
8 it's reasonable to infer - you might have the department
9 engaging with parents independent of any order or any
10 agreement?

11 A. Yeah, I think it shows that the majority of
12 investigations are being undertaken through working with
13 the family, working with the parents and obtaining any
14 consent they need in order to conduct the investigation.
15

16 Q. All right. And hopefully that might put them on the
17 path that required no intervention?

18 A. And that's so, Mr Hastie. I understand as a result of
19 the new response that's been implemented in response to
20 notifications we're hopeful that far more families will be
21 referred earlier to the services they need to help them.
22

23 Q. All right. And if you need to then - apart from
24 actually going to court, you've got parental agreement - a
25 system in the Act of a parental agreement?

26 A. Yeah, you've got intervention through parental
27 agreement. That doesn't necessarily incorporate that step
28 up into a child protection care agreement. So there is a
29 level of intervention that can be offered just through an
30 agreement.
31

32 Q. And one of the things you've recommended but in effect
33 in your evidence was to have some sort of - well, it is an
34 alternative dispute. I can't think of a better word.
35 I see my learned friends down the end of the table I think
36 call it a pre-court order. But you don't need to call it
37 that. It's really a case where you're trying to get the
38 parents and the department to work together independent of
39 something more formal, is it?

40 A. That's so. Yeah. And so in the United Kingdom it's
41 referred to as a - I think it was a pre-proceedings meeting
42 where you're bringing the family together with the social
43 workers and they each respectively have their lawyers
44 involved and they're seeking to reach an agreement.
45

46 COMMISSIONER: You would be familiar, Mr Hastie, with many
47 contractual provisions that require pre-litigation

1 mediation before any proceeding can be issued. So it's a
2 bit like that, isn't it?

3

4 MR HASTIE: Yes.

5

6 COMMISSIONER: So it's sort of analogous to an agreement
7 between the parties to some arrangement that they won't
8 bring proceedings until they've first attempted mediation,
9 except here it wouldn't be by anterior agreement; it would
10 be as a matter of process.

11

12 MR HASTIE: My hesitation, Commissioner, was that I didn't
13 know whether or not the right expression was the dispute is
14 between two parties. It's like the hesitation about
15 whether or not you can have an agreement between
16 prosecuting authorities and a complainant and an accused,
17 whether or not you could call that a dispute resolution,
18 because it's a public interest involved and, Commissioner,
19 your comment before about --

20

21 COMMISSIONER: I understand your point, and I understand
22 it's not a perfect analogy. But the object is the same,
23 which is to try and head off litigation before it starts,
24 isn't it?

25

26 MR HASTIE: Can I show you - I'll hand up to you what's
27 described - I'll tender the One Minute Guide from the City
28 of Stoke-on-Trent which I think you referred in your
29 evidence to the public law outline and --

30

31 A. The public law outline.

32

33 Q. And it's dated January 2020, and the commission of the
34 of the public law outline 2014 has been superseded. I can
35 provide that, but it's not very helpful. But it seems
36 consistent with the logic of what you were saying,
37 Mr Miller; that is, a letter before proceedings,
38 pre-proceeding meetings, a period of change, and a
39 pre-proceedings review?

40

41 A. And so that letter would include the details of any
42 local solicitor firms that undertake the - in the UK at
43 least when I was there I think it was called childcare
44 work, that the letter entitles the parents to head off to
45 any number of local solicitors with the letter and through
46 that letter they then get legal representation that's not
47 means tested. That lawyer then with the parent engages in
this pre-proceedings meeting that appears in the middle at
the bottom of this page.

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Q. Well, I'll tender that, Commissioner.

COMMISSIONER: Yes, that will be CL-77.

**EXHIBIT #CL-77 - ONE MINUTE GUIDE FROM THE CITY OF
STOKE-ON-TRENT**

MR HASTIE: And, just to assist us further a little bit, an application can be made for a child protection order in the UK, it would seem, by an officer - they still have a Society for the Prevention of Cruelty to Children or an authorised officer?

A. Sorry, you'll have to say that again.

Q. An application for a child protection order can still be made by - can be made by a representative of the Society for the Prevention of Cruelty to Children? Can you recall that, or am I testing you?

A. It may be that, yeah, there is still an ability for somebody from an agency like that or separate to that. It's --

Q. An authorised officer?

A. It's a local authority.

Q. And I was going to suggest to you once an application's made then the local authority is engaged?

A. It's the local authority that makes the application.

Q. All right.

A. Or it's a social worker from the local authority; yeah.

Q. And one of the things you mentioned yesterday was that in the UK a child would have a representative?

A. Yes. On the making of an application - and there may have been a change, but when I was there every child was then assigned a children's solicitor.

Q. Can I suggest to you this. The way you put it yesterday is the correct way and that is to say a child would have an individual who might represent them, and then they could also have a lawyer?

A. Yes, there was also a guardian assigned to them as well called the children's guardian who, from my time practising there, seemed to be people who had previous

1 experience working in local authorities as the social
2 worker.

3

4 Q. All right. And the child could also have a lawyer
5 appointed?

6 A. Every child has a lawyer as well.

7

8 Q. All right.

9 A. A lawyer and one of these guardians.

10

11 Q. And the parents could have a lawyer?

12 A. And, yeah, each parent has a lawyer.

13

14 Q. Or would have a lawyer?

15 A. They do have lawyers; yes.

16

17 Q. All right. So would it make things - sorry, I didn't
18 mean to distract you by this form, but I thought that it
19 might be useful if the Commission had what you were talking
20 about in a documentary form.

21 A. Yes.

22

23 Q. So taking - that's the sort of - one way of
24 approaching it which is a way you would advocate. Now,
25 I take it you would advocate that - if you had to have an
26 emergent order, you would have to have an emergent order.
27 But before you actually applied for a care and protection
28 order you would try and build in some system where you
29 could have this pre-application for a care and protection
30 order?

31 A. Yes, yeah. Look, this has been looked at. I was
32 consulted on even a proposal in respect of here in
33 Queensland that the dispute resolution branch within the
34 now named Department of Justice had made or was looking to
35 make around offering some type of pre-referral to me
36 conference, like, an alternative dispute resolution
37 process, with the concept being that matters where there
38 was no order or no care agreement in place and the
39 assessment is an in-home, say, supervision order, whether
40 there would be more value in bringing those matters - the
41 parents and Child Safety in those matters together through
42 a supported dispute resolution process to try and reach an
43 agreement without the need for an application or a matter
44 to be referred to my office for an application made.

45

46 COMMISSIONER: Mr Miller, the proposition was put to you
47 by Mr Hastie that your evidence was to the effect that

1 where an emergent order wasn't required but prior to a
2 child protection order being made some sort of
3 pre-proceeding letter and --

4 A. Yes.

5
6 COMMISSIONER: -- following that a meeting could be a
7 process that would be useful. I just need to clarify what
8 your view is a little because I had understood your
9 evidence yesterday to be that such a process could also be
10 anterior to an emergent order in circumstances where an
11 urgent custodial order wasn't required.

12 A. That's so. You could have a process that both of
13 those matters, Commissioner, would benefit from bringing
14 the parties together in a supported process to try and
15 reach an agreement.

16
17 COMMISSIONER: I'm not sure Mr Hastie was trying to
18 suggest otherwise; I just want to be clear about that.

19
20 MR HASTIE: No, I wasn't, Commissioner.

21
22 COMMISSIONER: No. Thank you, Mr Hastie.

23
24 MR HASTIE: Really my next question then was can we take
25 it from your evidence and your attitude generally, like a
26 lot of people in your position, you prefer if the parents
27 were legally represented?

28 A. Definitely.

29
30 Q. All right. And that was then a question of whether or
31 not there would be sufficient moneys available in Legal Aid
32 or either internally or externally to have them
33 represented.

34 A. And that's so. And, I mean, there's been various
35 attempts made or Legal Aid have various initiatives in
36 place to try and provide that early legal advice. I can
37 recall there was a proposal even around the time of the
38 Carmody Inquiry where one of the proposals was to have
39 better relationship with the Mater Mother's Hospital where
40 if somebody was identified as potentially being in need or
41 you had concerns around an unborn child - we had one in
42 seven Queenslanders then at the time was being born at the
43 Mater Hospital - where the proposal was that you would link
44 that mother-to-be with a specialist lawyer that could
45 assist her in terms of her or any engagement she was going
46 to have with the Department of Child Safety.

47

1 Q. So the only issue there is you'd have to get over the
2 question of confidentiality and whether or not the mother
3 would be willing to have her name put forward?

4 A. Well, that's - and at the time Micah, who is a
5 community-based agency in South Brisbane, was involved and
6 was also providing support, yeah. But I'm aware that Legal
7 Aid have - or they have had for a long time the early legal
8 advice service. But they're - we're talking about a great
9 need here, yeah.

10

11 Q. And, in the case of a child, I suppose that depends on
12 the child, the age of the child and the circumstances
13 whether or not a child would - it would be better
14 independently represented?

15 A. Yeah, it will be very much child by child, and as to
16 their understanding, their maturity.

17

18 Q. All right.

19 A. As to whether we're talking about a lawyer engaging
20 earlier as a direct representative.

21

22 Q. How does it work? Which way does it work? If they're
23 younger does that mean - the lawyer couldn't take
24 instructions, I suppose, but there might be a greater need
25 for someone outside to represent the lawyer? Is that a --

26

27 A. There may be --

28

29 Q. One way of looking at it?

30 A. And that's where the child advocates through the
31 Office of the Public Guardian can play a role, where the
32 child may not yet be Gillick competent in terms of the
33 various aspects that might be the subject of the child
34 protection proceeding. I know various states take a
35 different approach as to where there's - whether there's a
36 particular age that a child must be, if you're over a
37 particular age you're directly represented, if you're a bit
38 younger than a particular age it's separately. In my role
39 as a separate representative I'd be meeting with and
40 talking to the children, depending on their age. There
41 were some matters where such was the view that I would then
42 also arrange for a direct representative to advocate
43 directly for the child, because I would be clear with them
44 as to what my position was and why, and if we couldn't
45 reach a consensus, yeah, I would arrange for them to be
46 directly represented.

47

1 COMMISSIONER: In the Family Court, as you understand it,
2 is a child represented by a guardian as well as a lawyer,
3 or the lawyer effectively operates as a guardian ad litem?
4 A. In the Family Court?

5
6 COMMISSIONER: In the Family Court.
7 A. So the independent children's lawyer --

8
9 COMMISSIONER: Let's say that person is representing a
10 young child?

11 A. Yes, so they're a best interests advocate, and when
12 needed they, like in the child protection jurisdiction,
13 will engage the assistance of a report writer. But that's
14 a piece in time assessment. But also there are other
15 social science professionals even embedded here in the
16 court that the court can make use of in some cases.

17
18 COMMISSIONER: Yes.
19 A. Yeah.

20
21 MR HASTIE: The idea of having a pre-proceedings meeting,
22 does that - is that made a little bit difficult by the
23 current structure - sorry, I withdraw that. Would you
24 envisage - you would envisage, I take it, that your office
25 or someone like in your office would not need to be
26 engaged; it would be really a matter for Children's
27 Services to engage with the parents and their lawyers?
28 A. Yeah, I think it would really depend upon what the
29 process is that we're talking about, who's running the
30 process, as to whether the team leader or child safety
31 officer needed representation would depend I think --

32
33 Q. Sometimes a lawyer in your position can assist and
34 other times it might be regarded as adversarial?
35 A. Well, that's so. The whole hope with this is to bring
36 the parents together with that representation to try to
37 bring an outcome that avoids any need for court.

38
39 Q. All right. Is one way of looking at it - I think you
40 mentioned before that in order to get Legal Aid engaged at
41 the moment you almost need a piece of paper to show that
42 there is proceedings on foot?
43 A. Yeah, so Legal Aid will be able to and have no doubt
44 possibly put submissions to the Commission as to how their
45 grants of legal aid work. They do have an area that people
46 can seek advice from. But you very much need to understand
47 when you're going to seek the advice or when you're

1 providing the advice as the lawyer as to what is it that
2 we're talking about, what are the concerns.

3

4 Q. Yes. So a letter like - that we talked about, you'd
5 need at least that?

6 A. You'd need a letter, and that letter should - and this
7 probably says it, Mr Hastie - no, but the letter will
8 outline what it is that the local authority is concerned
9 about.

10

11 Q. All right. So at the moment one of the - can I put it
12 to you in this way and ask you for your opinion,
13 remembering I don't have instructions about the model at
14 all; I'm just posing things for you to think about --

15

16

17 Q. -- and the Commissioner to think about.

18

19 So that's understood, Commissioner?

20

21 COMMISSIONER: Yes, that's understood. Yes.

22

23 MR HASTIE: Is one of the limitations at the moment that
24 the way the Act requires the Chief Executive, as soon as
25 they're satisfied that a child is in need of protection and
26 that a child protection order is appropriate and desirable,
27 amongst other things, to refer the matter to you? In other
28 words, it's taken out of their hands?

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Q. That was my next question.

A. -- matters develop --

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Q. How much discretion in this that you've had?

A. Yes, that matters develop, and it might be day 2 or day - day 2 that the child safety officer through OCFOS contacts us and says, "Well, actually, the parents have now agreed to work with us. We're working through a plan, we've got an agreement," and on that basis we will refer the matter back.

Q. So the data you showed where there was a referral back by agreement might include those?

A. Yeah, there may be some of those matters in there.

Q. All right.

COMMISSIONER: In relation to those powers that you have presently under your Act, if you were to accept the referral as requiring action rather than referring it back or requiring more information from the department, would you regard it as within the proper exercise of that power as it presently is framed to implement a process whereby a letter preceding the litigation you will otherwise bring be provided to the parents setting out the concerns in accordance with the model broadly similar to the one in the United Kingdom?

A. Yeah, Commissioner, it would - if that was to be implemented, it would need to be done so in a way that we would be very clear that we'd received a referred matter and we were in the process of determining whether or not to make an application, and that would be the basis on which we would seek to engage with the parents.

COMMISSIONER: But isn't it open to you under your Act at present to implement that course of action? That's really underlying - that's the question underlying Mr Hastie's question to you.

A. Yeah, and it's not something, to be clear, Commissioner, I'd considered before, as to whether or not my functions would allow me to in effect undertake this - this step in a process to engage --

COMMISSIONER: Well, I would be grateful if would you consider that --

A. Yes, Commissioner.

COMMISSIONER: -- in relation to your powers.

1 MR HASTIE: Well, the question might be, Commissioner -
2 because I remember you, Commissioner, saying you didn't
3 think the Director had much discretion about whether or not
4 you had to file an application, I was wondering - so, to
5 develop that further, if that's - if that's correct, would
6 you prefer to have greater discretion about whether or not
7 it's appropriate to apply to the court and for what order?
8 A. Yeah, I think we're really talking about whether or
9 not I have the flexibility within my functions to undertake
10 a process like this whilst determining whether I'm going to
11 make an application or refer the matter back.

12
13 Q. Yes.

14 A. And whether I do have the authority to start then
15 engaging and gathering further information through a
16 process, I'd just need to consider it further.

17
18 Q. All right.

19
20 COMMISSIONER: Yes. I mean, it's section 9, isn't it, of
21 your Act, broadly?

22 A. That sets out the functions.

23
24 COMMISSIONER: Yes.

25 A. Yes, Commissioner.

26
27 COMMISSIONER: Prepare and apply for child protection
28 orders, and conduct child protection proceedings under
29 chapter 2. I don't express a concluded view of it, but -
30 on this question. However, you're empowered to conduct the
31 proceeding. That might be construed to include taking
32 steps in advance of issuing such proceedings to investigate
33 the possible avoidance of them. But perhaps you would
34 prefer to have an explicit power or discretion in that
35 regard, which was the further question Mr Hastie raised, or
36 maybe there are other sections of the Act which would
37 enable you to implement a like process within your present
38 powers?

39 A. And so that's - and I just - yeah, I will consider it
40 further, Commissioner --

41
42 COMMISSIONER: Thank you.

43 A. -- as I see section 12 under the powers I have the
44 power to do all things necessary or convenient to be done
45 in performing the Director's functions. So it's very
46 much --

47

1 COMMISSIONER: Well, indeed, it is --

2 A. Yeah.

3

4 COMMISSIONER: It couldn't be said to be unconnected to
5 the performance or the function, I don't think?

6 A. M'hmm.

7

8 COMMISSIONER: But that's a matter for consideration.

9 Thank you for raising it, Mr Hastie.

10

11 MR HASTIE: While we're on that question of the powers,
12 just looking for the moment at the orders that may be
13 sought, section 61 - not so much your powers, but it's the
14 powers of the court. But implicitly they're the only
15 orders the court can make, and I think, as the Commissioner
16 has observed, there doesn't seem to be any power that
17 allows the court to add additional requirements or terms.
18 The supervision order would. But it's either a custody
19 order and a guardianship order would seem to be, that's it.

20 A. Yes.

21

22 Q. There's two questions I wanted to ask you. One was
23 would it be helpful, do you think, in your view for the
24 Childrens Court to be in a position to put terms or
25 conditions or even recommendations on to a custody or
26 guardianship order?

27

28 COMMISSIONER: Is the assumption in your question,
29 Mr Hastie, that the court under the powers granted in
30 section 61 doesn't have that power?

31

32 MR HASTIE: Maybe I'll put it --

33

34 COMMISSIONER: Well, I'm interested in what you say about
35 that.

36

37 MR HASTIE: Well, it says - I don't want to really engage
38 in statutory construction, but it says "may make one or
39 more of the following orders that the court considers to be
40 appropriate". It would seem to suggest that it's limited
41 to those orders.

42

43 COMMISSIONER: Yes, but it doesn't prescribe or limit the
44 terms upon those orders might be made or the context of
45 those order.

46

47 MR HASTIE: All right. I'll ask this witness. That seems

1 to be what happens, isn't it, in the case of custody and
2 guardianship orders?
3 A. It is. However, I've made reference that the court at
4 times will make modifications in the context of orders
5 granting long-term guardianship to a suitable person. And
6 so on the face of the orders that I reviewed this morning
7 you start to get quite detailed modifications as to how and
8 on what basis contact between the child and particular
9 members of the child's family will occur, what role Child
10 Safety will have in that, details as to whether a parent or
11 both parents will be advised as to the location where the
12 child is living. So the modifications that I was reviewing
13 this morning do show a level of detail below the long-term
14 guardianship order.

15
16 Q. Do I take you to say that some courts have started to
17 do that in more recent times?

18 A. Yeah, we're starting to see courts making, say, a
19 custody order and then will also make a directive order or
20 even a supervision order that will deal with different
21 matters.

22
23 Q. I see. That's how they do the order?

24 A. Yes. And, separate to that, the court on appeal has
25 also determined that it has the flexibility not just to
26 make concurrent orders but to make consecutive orders.

27
28 Q. Yes, all right.

29
30 COMMISSIONER: And, Mr Hastie, take subparagraph (e), an
31 order granting short-term guardianship of the child to the
32 Chief Executive. Why couldn't the order of the court
33 provide, "I'll make an order or the court will make an
34 order granting short-term guardianship on and subject to
35 the following terms"? That's the question, isn't it?

36
37 MR HASTIE: Well, the question for you, Commissioner, is
38 whether or not to make it clear to invite the legislature
39 to amend so that to make it clear that they might do that.

40
41 COMMISSIONER: Indeed. But, I mean, as the Act is
42 presently drafted, it is a matter of construction. It may
43 be, properly construed, there is no constraint on the court
44 doing that here and now under the powers already given to
45 the court under section 61. It's not obvious to me that
46 there's any constraint --

47

1 MR HASTIE: I don't need to debate the question of
2 construction in this commission of inquiry into the system.

3
4 COMMISSIONER: Yes.

5
6 MR HASTIE: So it may well be, Commissioner. But I was
7 more interested in - and that will give the Director and my
8 client food for thought, won't it?

9
10 COMMISSIONER: Yes.

11
12 MR HASTIE: But it is the case, isn't it, that generally
13 it's been one of these orders and, as you've said, making
14 additional orders is because they've got a concurrent power
15 to give directions?

16 A. And that's so. And it's always matter dependent.
17 I can think of a matter where we've had a long-term
18 guardian who, due to age, could no longer provide the
19 day-to-day care for the child. And so rather than revoking
20 the long-term guardianship order we then made an order
21 granting custody. So the child still had their guardian
22 there making decisions, but there was some flexibility
23 through the custody order to allow that child to access the
24 care they needed. So there are - at the moment the orders
25 work in a myriad of different ways and, as I said, there
26 are at times rare matters where there are consecutive
27 orders made where, contingent on some event happening in
28 the future, a new order will commence. And so the example
29 of where this happened was the court had made a supervision
30 order and then a particular date in the future a custody
31 order was to commence which coincided with the parole
32 release date of the father on the scenario. I took that
33 matter on appeal, seeking guidance on appeal. The
34 appellant court said, no, that was inappropriate use of the
35 provision.

36
37 Q. All right. Can I just ask you about that particular
38 example you gave of an older person?

39 A. Yes.

40
41 Q. So it wouldn't be unusual, would it, for, for
42 instance, a grandparent or a great aunt to be in a position
43 to offer, particularly for a small child, guardianship?

44 A. Yes.

45
46 Q. And to agree to that, and then to find that they've
47 got older and they're really not able to do that partly

1 because of their own capacities?
2 A. Yes.
3
4 Q. And it also might be partly to do with the behaviour
5 of the child?
6 A. It may be. Yeah, it may be a combination of both;
7 yes.
8
9 Q. All right. And so that's just one of the unfortunate
10 difficulties that are faced from time to time when you're
11 trying to find a guardian other than - or keep a guardian
12 other than the Chief Executive; would that be correct too?
13 A. Yeah, it's one of the considerations.
14
15 Q. All right. And there would also be considerations for
16 a person in that position themselves, like an aunt or
17 someone, who was prepared to look after a child but there
18 was another - given that the parents couldn't, but it's
19 another question again whether they'd be prepared to
20 undertake to be a legal guardian; that's correct, isn't it?
21 A. Yes, I think you're putting to me whether they would
22 be prepared to be the guardian; is that --
23
24 Q. Yes, sometimes they've got - there's an issue, isn't
25 there, for you and the Chief Executive in finding people
26 who are prepared to be legal guardians?
27 A. Yes, we need people to come forward and want to take
28 on that responsibility.
29
30 Q. It's a hard ask in some respects, isn't it?
31 A. Yes, I would agree with that at times; yeah.
32
33 Q. And that's one - can I suggest to you that's one of
34 the reasons why it's hard to get guardians other than the
35 Chief Executive for a long-term appointment?
36 A. Yeah, I would accept that, yeah, there are various
37 reasons as to - that are put forward by way of case notes
38 or affidavits as to why someone might not be prepared to be
39 considered a guardian at that point in time or at any
40 point.
41
42 Q. All right. Is one possible way around that something
43 less than a - the long-term guardians that are often
44 sought, are they sought up until the age of 18? What's a
45 long-term guardianship period --
46 A. That's right. The order in effect - the order ends on
47 the child turning 18.

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Q. Right. But I suppose what I'm wondering is whether you could have a capacity for the court to make an order - a long-term guardianship until, you know, five years or 10 years, until they're a teenager or until it's reviewed by the court?

A. Yeah, you could have an order in place that requires the matter to return to court after, say, two years or five years, but you currently don't have that flexibility.

COMMISSIONER: Isn't any long-term guardianship order, whether made to the Chief Executive or in favour of another person, subject to revocation by the court?

A. Sorry, could you repeat that, Commissioner?

COMMISSIONER: Yes. Is the order, once made, one that can be varied by the court?

A. Yes, it is.

COMMISSIONER: So if, for example, a person other than the Chief Executive agreed to be the guardian and was assessed to be suitable and successfully made the guardian under an order, but for whatever vicissitude of life ultimately couldn't carry on for the contemplated period, that person could say, "Look, I can't carry on" or whatever reason may be driving the matter, and the order could be varied, couldn't it?

A. Yes.

COMMISSIONER: Revoked or varied?

A. The order could be varied or revoked, yes, Commissioner.

MR HASTIE: I think the question that I was posing was whether or not to encourage people to take on the role an order could be more limited in scope than finishing at 18, and I think this witness agreed with that - and that the legislation really didn't facilitate that, but it's a possibility.

COMMISSIONER: Because of the permanency principle.

MR HASTIE: Yes.

COMMISSIONER: Isn't that the problem?

MR HASTIE: Yes.

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COMMISSIONER: There were two sort of competing sort of interests, really: flexibility on the one hand and permanency on the other. The Act seems to favour permanency at present.

MR HASTIE: Yes. Then the idea under preference it's possible to have a child in those circumstances being looked after or placed with a kin or a family member is dealt with by the Chief Commissioner exercising their power to place the child with - under that section of the Act which allows the Commissioner - the Chief Executive to do that?

A. Sorry?

Q. If you've got a long-term guardianship to the Chief Executive?

A. Yeah, the obligation then in terms of the placement under that order sits with the Chief Executive.

Q. All right. And so that's how in a way the - if you can, the preference to have a child with family or kin is dealt with under that section?

A. Yes. So, if the order's granting guardianship to the Chief Executive, the Chief Executive then has the obligation to try and place them in the first instance with family.

Q. Now, on this topic of long-term guardianship, you mention in your evidence the limitation on the guardianship must be someone that's nominated by the Chief Executive, if not to the Chief Executive to other --

A. If it's not a family - like, a family member is able to outside of that nomination process seek guardianship, and when that happens the court then has the power to seek information about that person from the Chief Executive in considering whether or not they're suitable.

Q. All right.

COMMISSIONER: Is that family member in the broad sense?

A. Your Honour, as we discussed yesterday, "family" is not actually defined within the Act; but there is a family group, yes.

MR HASTIE: All right. And the person who's not a member of the family has to be some other suitable person

1 nominated by the Chief Executive?

2 A. Yes, that's correct.

3

4 Q. So in both instances, as you've indicated, has to be a
5 suitable person?

6 A. Yeah, there needs to be a finding - even if other
7 person is nominated, Child Safety would have made their
8 assessment about their suitability, and then the court is
9 making a finding about that suitability. And the things
10 the court needs to consider are set out in the Child
11 Protection Act's regulations or the regulations that sit
12 alongside the Child Protection Act.

13

14 Q. Hopefully I've got a copy for you and the
15 Commissioner. If I could provide you, Commissioner, with a
16 copy of the child protection regulations.

17

18 COMMISSIONER: Thank you.

19

20 MR HASTIE: And it's regulations that don't actually do
21 much. But if you go to regulation - what used to be called
22 regulations, they're now called sections, I think - 17
23 you'll see a heading "Suitable persons". And then
24 regulation 18 defines a suitable person in ways that are
25 fairly general. And then if you go to regulation 24 you'll
26 see another definition of "suitable person". And in
27 section 27 the Chief Executive may consider the following.
28 And I didn't bring it with me, Commissioner, I apologise,
29 but the Director will be aware that in order to be a carer
30 or - the carer and a member of the carer's family must have
31 a blue card.

32 A. Yes, I am aware that that is still a current
33 requirement. However, I understand an Act has passed that
34 will remove that requirement once the Department of Child
35 Safety has developed a way in which this issue will be
36 managed, if I put it that way.

37

38 Q. Yes, we know the section's been - there's an
39 Act that's been repealed but not proclaimed.

40 A. Yes.

41

42 Q. And it will need further work still. But what
43 I wanted to ask you about is the present situation is,
44 isn't it, that one of the inhibitors to the appointment by
45 the court of a suitable person is that the persons who
46 might otherwise be regarded by the department as suitable
47 cannot get a blue card and therefore are ineligible to be

1 appointed guardians?

2 A. Look, Mr Hastie, I'd have to defer to you on that
3 point as to whether - I just can't recall right now as to
4 whether the court still retains a power in order to find
5 somebody suitable without a blue card. I just can't
6 remember the way the scheme fits together.

7

8 Q. All right. But leaving aside - is that because you're
9 not sure of the way the amendment works?

10 A. No, no, I'm very certain that for the Chief Executive
11 to place a child with somebody there is the blue card
12 issue. I'm just not clear as to whether the blue card is
13 still an issue, say, if somebody's family and the court's
14 considering granting them guardianship directly. I just
15 can't recall, sorry.

16

17 Q. No, but my question is is that because you're not sure
18 of the effect of the change last year or because you're
19 still not just generally?

20 A. Just generally. Without looking at the point and
21 working my way through the Act, it would be something
22 I would need to consider, I think. Perhaps the court may
23 be able to make guardianship decisions to somebody, a
24 family member, without a blue card.

25

26 Q. All right.

27

28 COMMISSIONER: Pursuant to its power under section 61(f);
29 is that what you're saying, potentially?

30 A. Yes.

31

32 COMMISSIONER: Granting long-term guardian to a child to a
33 suitable person other than the parent of the child who is a
34 member of the child's family.

35 A. That's so. And I'm just not clear right now whether
36 there is a prerequisite that that person also have a blue
37 card. I'm sorry, I'm just not across that detail at the
38 moment.

39

40 MR HASTIE: All right. That's all right. If there isn't
41 that additional power there - and I hesitate to say this,
42 Commissioner, maybe that's a matter of construction of the
43 various Acts, but --

44

45 COMMISSIONER: I don't want to get into every construction
46 argument, but I understood what the Director was saying is
47 that, quite apart from other requirements as to possessing

1 a blue card, the court might have power to make certain
2 orders irrespective of whether the proposed guardian or for
3 that matter the person to be given custody has a blue card.
4 But that would be a matter of construction of the Act, and
5 I'm not sure that there's any authorities in relation to
6 that. Perhaps that's what you're wondering about,
7 Director, whether there are authorities about it.

8
9 MR HASTIE: Maybe the Director can make enquiries of his
10 staff and let the Commission know.

11
12 COMMISSIONER: Yes.

13
14 MR HASTIE: Or us informally, perhaps, the Director,
15 Mr Miller. But can we deal with it this way. Is it your
16 understanding at least that one of the inhibitors to
17 appointing persons other than the Chief Executive as
18 long-term guardian that the nominated person other than the
19 Chief Executive wouldn't be able to get a blue card?

20 A. Yes, I'm aware there are issues in not just the
21 nominated person - sorry, I'm aware --

22
23 Q. The suitable person generally?

24 A. I am aware there are issues connected to blue card
25 eligibility when it comes to placement of children with
26 people under the Chief Executive's authority, and it
27 extends beyond just the person they're having regard to
28 when placing a child. But, other people who may spend time
29 in the house, there is a requirement there. It will be a
30 particular - it might be if there's - there is a timeframe,
31 that if somebody is spending more than X number of days or
32 hours they also need to have a blue card.

33
34 Q. All right.

35 A. And so that is a limitation on the placement of
36 children with some people that has underpinned this Act
37 that is yet to be proclaimed.

38
39 COMMISSIONER: And that's under section 82(1), isn't it?
40 That's the Chief Executive may place the child in the care
41 of, and there's a list?

42 A. Yes, Commissioner. And so sometimes there is an
43 inhibitor to that process because of this blue card issue,
44 not just in respect of the person but maybe other adult
45 members that spend time in that house.

46
47 COMMISSIONER: Yes, I've heard about that. Mr Hastie,

1 I assume you have a bit to go.

2

3 MR HASTIE: I'm sorry, I didn't realise the time.

4

5 COMMISSIONER: No, that's all right. Regrettably we're
6 going to have to reconvene at a convenient time to the
7 Director in the new year. I say this not pejoratively. We
8 are going to need a sort of leftovers hearing because there
9 are a number of counsel in respect of some of the early
10 witnesses who didn't get a turn, and there have been
11 counsel here waiting to ask the Director questions.
12 Therefore, we're going to have to adjourn the Director's
13 evidence part-heard to early in the new year. I hope
14 that's not too inconvenient for you.

15 A. No, not at all, Commissioner.

16

17 COMMISSIONER: And we will make arrangements for that to
18 occur, because I think to make a meaningful start on the
19 next witness we really need to start in the morning.
20 Hopefully her evidence can be finished tomorrow but, if
21 not, she might have to go over to the leftovers hearing as
22 well. But we'll try and arrange for that to occur early in
23 the new year, once everyone's back from their January
24 break, of course. So don't get too concerned.

25

26 MR HASTIE: I was going to ask you, Commissioner,
27 I assumed that meant February.

28

29 COMMISSIONER: Yes, of course it meant February. And so
30 I'm afraid that we will have to leave it here for now, and
31 it will give you an opportunity to think of many more
32 questions in the meantime, Mr Hastie.

33

34 MR HASTIE: Thank you, Commissioner.

35

36 COMMISSIONER: Director, thank you for your contribution,
37 for persevering for several days and very helpfully
38 answering so many questions, most of which I understand
39 were mine. I have somewhat monopolised the discussion with
40 you, but it's been of great assistance to me and I look
41 forward to seeing you in the new year.

42 A. Thank you.

43

44 COMMISSIONER: Thank you.

45

46 MR O'BRIEN: Commissioner, two matters. I will work with
47 Counsel Assisting to provide a further statement before the

1 resumed hearings to attempt to cover the laundry list that
2 we've recorded.

3

4 COMMISSIONER: Please do. This is an inquiry, and so any
5 other matters that the Director considers pertinent to be
6 considered I welcome any further contribution, even if they
7 haven't already been matters raised in the course of the
8 evidence I've heard to date.

9

10 MR O'BRIEN: Yes, our list will definitely do that, we
11 hope. The second matter. I was going to ask if I may
12 tender a copy of the summons that was issued to Mr Miller.
13 I do that only because as an independent officeholder just
14 so that there is a record of the basis upon which he
15 attended to give evidence today.

16

17 COMMISSIONER: Yes, of course, I mean, the record exists
18 anyway, doesn't it?

19

20 MR O'BRIEN: I wasn't familiar, so I just --

21

22 COMMISSIONER: Well, it's been signed by me, hasn't it?

23

24 MR O'BRIEN: Well, I think this exchange probably makes
25 that --

26

27 COMMISSIONER: Not discourteously I have, but --

28

29 MR O'BRIEN: No, no, I think this exchange probably makes
30 the record sufficiently clear if there was any doubt.

31

32 COMMISSIONER: Yes, I think it's been clear that the
33 Director is here under notional compulsion in any case.

34

35 MR O'BRIEN: Yes. Thank you, Commissioner.

36

37 COMMISSIONER: Thank you very much. We'll adjourn until
38 10 o'clock tomorrow.

39

40 **THE HEARING WAS ADJOURNED AT 4.11PM UNTIL FRIDAY,**
41 **12 DECEMBER 2025**

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