

Redacted Final Report
Full investigation – *Ombudsman Act 1972*

Complainant	Mr Steven Egberts
Department	Department for Child Protection
Ombudsman reference	2018/02813
Department reference	18/DCSI/0321
Date complaint received	6 March 2018
Issue	Whether the agency erred by omitting to communicate with the complainant and his partner in respect of concerns relating to the care and protection of their late grandchildren

Introduction

The events giving rise to this complaint are well known.

On 30 May 2016, Mr Steven Graham Peet murdered his domestic partner, Ms [REDACTED] (the mother), and two of her children, [REDACTED] (Child A) and [REDACTED] (Child B), in the family home near Hillier.

Child A was six years old. Child B was five.

Mr Peet pleaded guilty to three counts of murder. At the time of writing he is serving a term of life imprisonment with a non-parole period of 36 years.

The sentencing judge described the murder of Child A and Child B as ‘senseless and incomprehensible.’

The mother had another child, [REDACTED] (Child C). At the time of the murders, Child C lived with his father in the home of the complainant, Mr Steven Egberts (Child C’s paternal grandfather; **Steven**), and the complainant’s partner, Ms Janet Wells (**Janet**). Child C is ten years old.

As is entirely understandable, the murders have had a profound impact on Child C, Steven and Janet:

We feel like we have lost everything here, we have lost everything and there’s no hope to get it back. There’s no hope to get it back. We have got so many concerns about what [Child C] is going to be like when he is older and understands what happened.¹

¹ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 47:29 (Steven speaking).

Families SA was the agency responsible for delivering child protection functions within South Australia for the entirety of Child A and Child B's lifetime.

Child C, Child A, Child B and the mother were all known to Families SA.

Families SA received its first notification concerning the family in August 2008. It continued to receive notifications concerning the mother's household until the time of the murders in May 2016.

Those notifications primarily concerned allegations of substance abuse, excessive physical discipline and neglect within the mother's home.

It does not appear that Families SA ever received a notification raising concerns about Mr Peet's involvement with the family.

This notwithstanding, Families SA's response to the notifications it did receive remains a source of significant distress to Steven and Janet:

We were never offered anything in the way of information about their welfare. Now it's come to light that over this period of time that the children were homeless, poorly fed, poorly clothed, [there was] poor school attendance that equated to nine out of 60 days in attendance. Now, we were not even informed of notifications that were being made. We had no idea where the children were.²

It's one thing for all of this to happen, but [there's also] the reality of knowing that we were robbed of any possible chance. We had no information to make a judgement on. Without that, we're useless. We're useless to them [the children]. The only people that were holding this information were withholding it, I mean just absolutely withholding it. They knew all this. They stated all this, all these reports come back, "This happened a year ago, this happened 18 months ago". Why the hell are we not told about it?³

I understand there will likely be a coronial inquest into the circumstances surrounding the deaths of the mother, Child A and Child B. At the time of writing, the scope of that inquest has not been made public. I infer that the inquest will consider the information about the family known and available to Families SA at the time of the murders.

Having reviewed Families SA's files concerning the family, there is much I could say about the agency's response to the notifications it received about the mother.

Owing to the pending coronial inquest, however, I have limited the scope of my investigation to the following question: did Families SA err in omitting to communicate with Steven and Janet in respect of its interactions with the family?

As the agency appears to have held very little information about Mr Peet, I have not directed my investigation towards the question of whether the agency failed to alert Steven and Janet to his presence in the mother's household.

I may nevertheless consider the question of the agency's wider response to the notifications it received about the mother at a later date.

Jurisdiction

Section 16(1) of the *Ombudsman Act 1972* provides that I must not entertain a complaint if it is made after 12 months from the day on which the complainant first had notice of the matters

² *Id.*, transcript at 6:39 (Steven speaking).

³ *Id.*, transcript at 44:47 (Steven speaking).

alleged in the complaint unless I am of the opinion that, in all of the circumstances of the case, it is proper to entertain the complaint.

Noting the nature and significance of the complaint, the substantial personal loss experienced by the complainant, the progress and resolution of the criminal proceedings and the relatively short period of time which has elapsed since the matters alleged, I am satisfied that it is proper to entertain the complaint.

The complaint is otherwise within the jurisdiction of the Ombudsman under the Ombudsman Act.

The complaint is a prescribed child protection complaint for the purposes of the Ombudsman Act and the *Health and Community Services Complaints Act 2004*.

From 2006 until November 2016, Families SA was the agency delivering child protection functions within South Australia. The Department for Child Protection has now assumed those functions.

Hereafter, I have used the term ‘**the agency**’ to refer to the administrative unit responsible for delivering child protection functions at the given time. Use of the term in the present tense should be taken to refer to the Department for Child Protection.

Investigation

My investigation has involved:

- assessing the complaint
- seeking a response and relevant records from the agency
- reviewing the agency’s files concerning the mother, Child C, Child A, Child B and Mr Peet
- seeking and considering further information from the agency
- seeking and considering information from the Crown Solicitor’s Office
- interviewing Steven and Janet
- seeking further information from Child A’s primary school and clarifying that information with the agency
- considering:
 - the *Ombudsman Act 1972*
 - the *Health and Community Services Complaints Act 2004*
 - the *Children’s Protection Act 1993*
 - the *Children and Young People (Safety) Act 2017*
 - the *Children and Young People (Safety) Regulations 2017*
 - the Charter of Health and Community Services Rights
 - the Information Privacy Principles
 - the Information Sharing Guidelines for Promoting Safety and Wellbeing
 - the Department for Education and Child Development’s *Information Sharing Guidelines for Promoting Safety and Wellbeing – Procedure*
 - the agency’s *Child Protection Manual*, Volumes 1 and 2
 - reports of prior inquiries into the South Australian child protection system⁴
- preparing a provisional report and seeking the views of the parties
- preparing this final report.

⁴ Specifically: *The Life They Deserve: Child Protection Systems Royal Commission Report* (August 2016); *Inquest into the Death of Chloe Lee Valentine: Finding of the State Coroner* (April 2015) and *Our Best Investment: A State Plan to Protect and Advance the Interests of Children* (March 2003).

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.⁵ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...⁶

Response to my provisional report

1. I provided my tentative views to the parties by way of my provisional report dated 30 January 2019.
2. Steven and Janet responded to my provisional report by way of email dated 1 February 2019. In that email, Steven and Janet expressed satisfaction with my provisional views and noted:

... As we had explained in our meeting, we have been subjected to a pitiful and heartbreaking lack of effort by those in power to confront the deaths of our beloved grandchildren, [Child A] and [Child B], in the face of needless neglect by Child Protection. Our hearts broke as we read the report and spent hours crying over the missing pieces of their lives as it appeared in words. Although painful, it provided long awaited answers to some of our questions ...

3. The agency responded to my provisional report by way of correspondence from its Chief Executive Officer dated 28 February 2019.
4. Much of the agency's response was directed to the recommendations foreshadowed by my provisional report. I have set out and considered the agency's submissions at the conclusion of this report.
5. The agency also commented on some of the observations made in my provisional report. I have incorporated those comments in the body of this report where appropriate.

On the matter of legal professional privilege

6. In the course of my investigation I found it necessary to request a copy of the Crown Solicitor's files concerning the family law proceedings involving the family. The Crown Solicitor acted for the Minister for Education and Child Development in those proceedings.
7. The Crown Solicitor subsequently obtained instructions to supply my investigators with the requested documents. In supplying the documents, the Crown Solicitor sought to emphasise that the agency did not wish to waive legal professional privilege over them.

⁵ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp 449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁶ *Briginshaw v Briginshaw* at pp 361-362, per Dixon J.

The Crown Solicitor requested that I keep the material confidential and that I not disclose or further distribute certain information from within the documents.

8. Much of the materials contained within the Crown Solicitor's file had previously been disclosed to my investigation by the agency itself. The agency did not at that time seek to claim or emphasise any privilege in respect of the documents.
9. Section 20 of the Ombudsman Act provides that the Crown and the agencies to which the Ombudsman Act applies are not entitled to privilege in respect of the production of documents or the giving of evidence in relation to an Ombudsman investigation.
10. Section 26(2) of the Ombudsman Act permits me to authorise or require the disclosure of information obtained in the administration of the Ombudsman Act if I consider that to do so would be in the public interest. I am similarly empowered to publish certain information about an investigation under section 26(3) of the Ombudsman Act.
11. To the extent that I have disclosed information from within the Crown Solicitor's file in this report, this is because I consider it to be in the public interest that Steven and Janet are fully informed of the matters informing my conclusions.
12. I will provide the parties with an opportunity to speak to the question of wider publication upon distribution of this report.

Approach to the investigation

13. In the passages of this report that follow, I attempt to summarise the agency's actions concerning the family, as identified from the files supplied to my investigation.
14. I have not interviewed the child protection workers responsible for recording or following-up on the notifications received by the agency. I considered doing so; however, I am mindful of the scope of my investigation and of the fact that these parties may yet be called to give evidence during a coronial inquest.
15. It is important to note that the passages of this report that follow do not constitute an exhaustive chronicle of the records supplied to my investigation. I make it clear, however, that I have reviewed and considered all of the records supplied by the agency, including the full files relating to Child C, Child A, Child B and the mother.
16. Before I turn to the agency's records, it is necessary that I briefly set out the statutory framework and the assessment and investigation processes observed by the agency in respect of child protection notifications during the period relevant to my investigation.

The assessment of notifications

The statutory framework

17. The Children's Protection Act was in operation throughout the period relevant to my investigation. That Act was subsequently repealed on the full commencement of the Children and Young (People) Safety Act in October 2018.
18. Pursuant to section 19(1) of the Children's Protection Act, where the Chief Executive of the agency suspected on reasonable grounds that a child was at risk and believed that the matters causing the child to be at risk were not being adequately addressed, he or she was required to:

- cause an assessment of, or investigation into, the circumstances of the child to be carried out; or, otherwise
 - effect an alternative response which more appropriately addressed the potential or actual risk to the child.
19. Section 19(1) was qualified by operation of section 14 of the Children's Protection Act. Section 14 provided that the Chief Executive was not required to take or initiate any action under the Children's Protection Act in relation to a notification in circumstances where he or she was satisfied:
- that the information or observations on which the notifier formed his or her suspicion were not sufficient to constitute reasonable grounds for the suspicion; or
 - that, while there were reasonable grounds for such a suspicion, proper arrangements existed for the care and protection of the child and the matter of the apparent abuse or neglect had been or was being adequately dealt with.
20. The circumstances in which a child was to be deemed 'at risk' were identified in section 6(2) of the Children's Protection Act. These included where:
- there was a significant risk that the child would suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have had, but did not have, proper protection
 - the child had been, or was being, abused or neglected
 - a person with whom the child resided had killed, abused or neglected some other child or children and there was a reasonable likelihood of the child in question being killed, abused or neglected by that person
 - the guardians of the child were unable or unwilling to care for and protect the child or had abandoned the child
 - the child was of compulsory school age but had been persistently absent from school without satisfactory explanation of the absence
 - the child was under 15 years of age and was of no fixed address.⁷
21. The terms 'abuse' and 'neglect' were defined in section 6(1) of the Act as including physical or emotional abuse of the child, or neglect of the child, to the extent that:
- the child had suffered, or was likely to suffer, physical or psychological injury detrimental to the child's wellbeing
 - the child's physical or psychological development was in jeopardy.

The assessment and investigation process

22. Child protection concerns are ordinarily raised with the agency by way of notifications made to the agency's Child Abuse Report Line (**CARL**) and electronic Child Abuse Report Line (**eCARL**).
23. Each notification made to CARL or eCARL is assessed by an agency practitioner to determine whether it gives rise to a reasonable suspicion that a child is at risk of abuse or neglect.
24. During the period relevant to my investigation, the agency's two-volume *Child Protection Manual* (collectively, **the Child Protection Manual**) set out the agency's assessment procedure.

⁷ Section 6(4) was inserted by amendment to the Act and came into operation on 28 April 2016. It provided that 'in assessing whether there is a significant risk that a child will suffer serious harm to his or her physical, psychological or emotional wellbeing; or a child has been, or is being, abused or neglected', for the purposes of the Act, 'regard must be had to not only the current circumstances of the child's care but also the history of the child's care and the likely cumulative effect on the child of that history.'

25. Under the Child Protection Manual, notifications that were assessed as raising a reasonable suspicion of abuse or neglect were to be 'screened in', meaning that an agency response was deemed necessary. Notifications that did not meet this criteria were 'screened out', meaning that no agency response was to be provided.
26. Under the Child Protection Manual, notifications could be screened out for a number of reasons. Most relevantly, a notification could be screened out on the basis that it amounted to a 'Notifier Concern' or 'Notifier Only Concern' (**NOC**), defined as follows:
- There are reports made to Families SA from both mandated and non-mandated notifiers which Child Abuse Report Line Workers consider do not constitute reasonable suspicion of child abuse or neglect as defined by the legislation. This may also be used when the information or observations on which the notifier formed his or her suspicions do not constitute reasonable grounds for the suspicion. This may be because the reports are:
- too vague (ie. very imprecise concerns, no clear allegations of abuse)
 - too peripheral (the allegations involve behaviour which at worst might be considered to be poor quality parenting but cannot be seen to be indicative of abuse per se)
 - are mischievous or of low credibility in other ways, in addition to either of the above.⁸
27. Notifications that were screened out by the agency on NOC grounds were recorded as such, with no further action taken.
28. Notifications that were screened in by the agency were recorded in the agency's case management system as a new child protection intake. Under the Child Protection Manual, the practitioner was then responsible for assigning the intake a tier rating based on the practitioner's assessment of the child's safety.
29. The Child Protection Manual distinguished between children who were 'in immediate danger' (Tier 1), children who were 'primarily at risk of significant harm' (Tier 2) and children who were 'primarily in need, who would suffer in the long term if intervention did not occur' (Tier 3).⁹
30. The Child Protection Manual summarised the responses required for each classification:
- Tier 1: Immediate response to all reports of children in danger, participating in a coordinated investigation with Police and CPS.
- Tier 2: Thorough investigation of reports of children at risk, possibly involving other key agencies.
- Tier 3: Responding in a less intrusive manner and engaging the family in a shared approach where there are high needs in the family but low risk to children in the short term.¹⁰
31. The Child Protection Manual provided for different investigation processes depending on the tier rating assigned to an intake. Generally speaking, practitioners were required to investigate the circumstances of the child, conduct a safety assessment and determine whether abuse or neglect had occurred.
32. Where abuse or neglect was substantiated, the investigating practitioner was required to prepare a risk assessment concerning the child. Intakes assessed as having a low risk level were closed. In most other cases, intakes were to remain open while the agency engaged with the family and until a subsequent risk assessment determined that the risk was lowered.

⁸ Child Protection Manual, volume 1, p. 105.

⁹ *Id.*, p. 142.

¹⁰ *Id.*, p. 144.

33. Viewed in isolation, the procedure described above risks presenting a misleading picture of the agency's practices during the period relevant to my investigation.
34. This is because at the relevant time a significant proportion of intakes that had been assessed as raising credible child protection concerns were not investigated by the agency. I refer to the agency's practice, enshrined in the Child Protection Manual, of closing intakes without action due to resource constraints.
35. The Child Protection Manual set out the circumstances in which practitioners could close an intake on 'Closed No Action' (CNA) grounds:
- "Closed No Action" is a closure code within the child protection system which may be applied to a Tier 2 or Tier 3 notification when the District Centre has insufficient resources to conduct the requisite investigation or family meeting, and the subsequent associated follow-up work for that case in light of the priority and urgency of other cases.
- No Tier 1 case will be Closed No Action, ie. the CNA closure code must not be used for any Tier 1 notification. Where a Supervisor has no capacity to allocate a Tier 1 matter within the required 24 hours, the Supervisor should alert his/her Manager immediately.
 - The CNA code can only be used where no action has commenced following intake.
 - In a matter where it is alleged that a criminal offence has occurred, the requirements for Families SA to refer the matter to Police still applies. The intent to close with CNA does not absolve Families SA of this responsibility. Similarly, referral to Police does not limit the ability of Families SA to close that particular intake using CNA.
 - If three or more previous intakes have been closed using CNA during the last 12 month period then the intake should be allocated for action. It is acknowledged that the impact of this may be that another intake might need to be CNA'd that would otherwise have been allocated for response. If, having considered this, there is still no capacity to allocate such an intake within the 10 days allowed, the Manager should be advised within that period.
 - Any intake that has been closed for resource related reasons or because of inability to complete the investigation should be considered in any subsequent allocated intake.¹¹
36. During the 2015/16 financial year, the agency closed 56.45% of all intakes without any action. Between 2011 and 2015, this rate fluctuated but was never lower than 40%.¹²

The agency's interactions with the family

37. The mother was born in 1987. The mother was of Aboriginal cultural background. Her early childhood was marked by significant abuse and neglect. She was removed from the care of her mother and stepfather and placed with a foster carer at approximately five years of age.
38. As an adult, the mother formed a relationship with Mr [REDACTED] (the father), Steven's son.
39. The mother gave birth to her first child, Child C, on 6 April 2008. [REDACTED]
40. The mother and the father had two more children together: Child A, a girl, was born on 12 September 2009 and Child B, a boy, was born on 24 February 2011.

¹¹ *Id.*, p. 154.

¹² Submissions of agency to Ombudsman investigation 2016/10215.

41. The mother and the father subsequently separated. For most of the period relevant to my investigation, the father lived with Steven and Janet in their home at Salisbury Park. Child A and Child B primarily resided with the mother and the father's access to the younger children was limited.
42. The agency received its first notification concerning the family on 26 August 2008:

Notification 1

Child C is four months old.

The mother and father have separated. The father has expressed concerns about Child C's safety. The father recently attended the mother's house to pick up Child C. The mother was intoxicated. Other persons at the house attacked the father. The father was prevented from removing Child C from the property.

An agency practitioner subsequently contacted the notifier for further information. The practitioner was informed that the mother had left the house with Child C. The father was looking for the mother. He had contacted SAPOL. SAPOL had expressed a willingness to meet with the father at Steven and Janet's home, however the father had left the property by this time.¹³

43. The agency assessed the notification as raising credible child protection concerns. A Tier 2 intake was subsequently raised, with 'an investigative response recommended'. Reference was made to the mother's own child protection history, her alleged intoxication and the incident of violence involving the father.¹⁴
44. The agency's records disclose that the intake was closed on CNA grounds on 25 September 2008. No rationale for this decision is provided. No other action is recorded on the file.¹⁵
45. The agency received its second notification concerning Child C on 3 March 2009:

Notification 2

Child C is eleven months old.

The mother and father recently engaged in a confrontation in the street. The mother and father were each seeking to take possession of Child C. Child C became distressed at the altercation. SAPOL attended and the incident deescalated. The agency was informed that incidents involving the parents were not uncommon.

The notifier described the mother as a 'good mother'.¹⁶

46. The agency assessed this intake as meriting a child protection response. A Tier 2 intake was raised.
47. An agency practitioner subsequently attended the mother's home and made enquiries into the incident. Child C was sighted and was said to be healthy and responsive in appearance. The mother informed the practitioner that the tensions with the father stemmed from the mother's housing insecurity. The mother informed the practitioner that she was obtaining assistance from a youth accommodation service. The practitioner referred the mother to a support service for assistance in advancing her

¹³ JIS history – Child C, intake no. 1027594.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ JIS history – Child C, intake no. 1056758.

position on the Housing SA waiting list. The mother expressed a willingness to engage with this service. The mother otherwise reassured the practitioner that she and the father had reconciled after the incident.¹⁷

48. The agency subsequently closed the intake on the basis that child abuse had not been confirmed. The following closure rationale was recorded on the file:

Although an incident did occur where the father took the child from the mother it is not known what if any impact this had on the child. Services are involved with the family and [the notifier] took action to protect the child by contacting the police. The parents [sic] are involved with [support service 1] and are willing to accept referrals to [support service 2]. Families SA agreed to write a letter in support of Category 1 accomadation [sic] for the mother to resolve the issue of the family being separated[,] [...] Although there was an incident – child abuse cannot be confirmed.

49. The agency received its next notification concerning the family on 24 October 2011:

Notification 3

The mother was arrested the previous weekend following a drunken altercation with a neighbour.

The father informed the notifier that approximately one week earlier the mother threatened to hit the father with a metal pole in front of the children. The father consequently left the family home.

SAPOL are said to be aware of the incidents. The notifier reported that no threats had been directed towards the children.¹⁸

50. This notification was screened out by the agency on NOC grounds. No rationale for this assessment is recorded in the file.¹⁹
51. There appear to have been no further notifications between October 2011 and January 2014.
52. The agency next received a notification concerning the family on 20 January 2014:

Notification 4

SAPOL attended the mother's residence two days ago in response to reports of a verbal altercation between the mother and the father at the front of the property. The children witnessed the argument. According to the notifier, the children did not appear distressed or upset. SAPOL reportedly asked the father to leave the property.²⁰

53. This notification was screened out by the agency on NOC grounds. It was recorded in the file that 'the information provided does not meet the CP Screening criteria.'²¹
54. There appear to have been no further notifications concerning the family until November 2014.

¹⁷ *Id.*

¹⁸ Case note dated 24 October 2011, subject: 'NOC – Notifier 1', Case No. 99346.

¹⁹ *Id.*

²⁰ Case note dated 20 January 2014, subject: 'NOC – DV – Notifier 1', Case No. 213121.

²¹ *Id.*

55. On 3 November 2014 the agency received a notification alleging that the mother had physically abused Child C (**the November 2014 notification**).²² This notification was made by Janet. It was the only notification made directly by the grandparents.²³ The details of this notification are significant:

Notification 5

The mother and father have been in an 'on again, off again' relationship for approximately ten years. There are no family law orders in place. The father is employed. He has contact with the children around his work schedule. Steven and Janet are caring for the children every weekend or every second weekend in negotiation with the mother. The children refer to Janet as their 'granny'. Child C (aged six years and seven months) is attending [REDACTED] Primary School.

On 24 October 2014 the mother asked Steven and Janet to take the children into their care. Janet informed the mother that she was unavailable due to work commitments. The mother was unhappy with this and informed Janet that Child C had been 'carrying on'. It was agreed that Steven and Janet would care for the three children individually over the course of the weekend, starting with Child C. Steven and Janet were to collect Child C at 3pm that afternoon.

At 1:30pm the mother sent Janet a text message stating that [REDACTED]

Janet subsequently attended the mother's home to collect Child C. [REDACTED]

Janet and the mother initially agreed that Child C would remain in the grandparents' care until he felt comfortable with returning to the mother's home. Child C is fearful of the mother. Janet and Steven have been taking Child C to school. On 29 October 2014 the mother attempted to collect Child C. The school subsequently contacted Janet and Steven. Child C wishes to continue attending school but he is fearful that the mother will collect him. Staff from the school have warned Steven and Janet that they cannot prevent this from happening.

The mother is attempting to persuade the father to return Child C to her care. The mother recently sent her cousins to Steven and Janet's home to intimidate them into returning Child C to the care of the mother. According to Janet, it is possible that the

²² Case note dated 3 November 2014, subject: 'T2(5) – PHY2 – EMO2 – Notifier 1', Case No. 257751.

²³ Letter from Ms C Taylor to Ombudsman SA dated 21 September 2018.

mother wishes to reconcile with the father and that, because the father is rebuffing the mother's attempts to do so, the mother is being more persistent in her efforts to resume care of Child C.

[REDACTED] has previously made other disclosures to Steven and Janet. [REDACTED]

The mother has previously left the children with Steven and Janet for several months at a time and without warning.²⁴

56. The agency's case notes reflect that the notification was assessed as raising a reasonable suspicion that Child C had been physically and emotionally abused by the mother.²⁵
57. A Tier 2 intake was raised that same day.²⁶ The agency assessed Child C as provisionally safe in the care of the grandparents. The agency noted that this was an interim measure and that there remained a 'possibility that the mother will collect [Child C] from school.' [REDACTED]²⁷
58. The intake was closed on CNA grounds approximately two days later.²⁸ The agency subsequently forwarded a copy of the intake to SAPOL, together with Janet's contact information.²⁹
59. The agency did not inform Janet of its determination to close the intake without action.³⁰
60. There is no information in the agency's file to suggest that the agency conducted a safety assessment in respect of Child A or Child B at this time. The agency was aware from the information provided by Janet that Child A and Child B remained in the mother's care.
61. On 6 November 2014 a representative of Child Protection Services (CPS) contacted the agency in respect of the closed intake.³¹ CPS provides specialist assessment and treatment services to children in cases of suspected abuse and mistreatment. The agency, SAPOL and CPS ordinarily work in cooperation in the investigation of such matters.
62. The CPS representative advised:

SAPOL [...] informed us that you have CNA this matter. We were hoping you would consider engaging in a conversation with us in relation to this matter for several reasons:

1. SAPOL will seize evidence [REDACTED];
2. CPS is willing to provide an opinion [REDACTED];

²⁴ Case note dated 3 November 2014, subject: 'T2(5) – PHY2 – EMO2 – Notifier 1', Case No. 257751.

²⁵ *Id.*

²⁶ Case note dated 3 November 2014, subject: 'Familial Intake Report – CP1008', Case No. 257751.

²⁷ Case note dated 3 November 2014, subject: 'T2(5) – PHY2 – EMO2 – Notifier 1', Case No. 257751.

²⁸ Case note dated 5 November 2014, subject: 'CNA Rationale Allocation Meeting 5th November 2014', Case No. 257751.

²⁹ Case note dated 6 November 2014, subject: 'Email SAPOL re Intake', Case No. 257751.

³⁰ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 24:27.

³¹ Case note dated 6 November 2014, subject: 'Email communication with SAPOL & CPS re strategy discussion', Case No. 257751.

3. CPS is willing to interview [Child C] in relation to his experiences in the care of the mother;
4. SAPOL will [REDACTED] [depending] on the evidence obtained.
5. SAPOL will discuss the willingness of the father continuing to have care of [Child C] during further investigations.

Mostly we are concerned about [Child C]'s ongoing safety and the safety of the other children in the care of the mother and what arrangements would be considered for them if the mother is in fact arrested and we would like to have your involvement in these discussions.

Could you please advise of your availability tomorrow to discuss this matter further.³²

63. A strategy discussion between SAPOL, CPS and the agency was convened on 7 November 2014. [REDACTED]
[REDACTED]. CPS accordingly undertook to interview Child C.³³
64. SAPOL and CPS raised the matter of the agency allocating the intake for investigation. The agency's case notes record that the agency declined to reassess the matter 'due to workload capacity.' It was agreed that CPS and SAPOL would keep the agency updated as to the progress of the matter.³⁴
65. SAPOL undertook to speak to the father about the safety of Child A and Child B. SAPOL also undertook to advise the father that Child C should not be returned to the mother. SAPOL informed the agency that in light of the allegation involving Child C it would speak to the father about his assuming care of all of the children. The agency was advised that CPS would interview Child C within 4 to 6 weeks.³⁵
66. That same day, the agency was supplied with a copy of a 'notice of risk' that had been filed in the Federal Circuit Court as part of recovery order proceedings brought by the mother.³⁶ This notice alleged that Child C was 'living in an overcrowded house and [was] not attending school.' The notice also alleged that Steven 'has issues with Indigenous people' and that there was a risk of psychological harm to Child C while in the grandparents' home. It was further alleged that the relationship between the father and the mother was 'characterised by emotional abuse which the children have witnessed thus placing them at risk.' No further detail was provided.³⁷ This information was formulated into a notification and then screened out by the agency on NOC grounds.³⁸ A copy of the notification was subsequently forwarded to SAPOL.³⁹
67. On 11 November 2014 the Federal Circuit Court ordered the father to return Child C to the mother's care. A recovery order was to follow in the event that Child C was not returned to the mother by 13 November 2014.⁴⁰
68. On 13 November 2014 a notification was made to CARL in respect of the Federal Circuit Court proceedings:

³² *Id.*

³³ Case note dated 7 November 2014, subject: 'Strategy Discussion with SAPOL & CPS', Case No. 258749.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 67Z(3) requires the Registry Manager to notify a prescribed child welfare authority when such a notice is filed. The agency is such a prescribed child welfare authority (section 4).

³⁷ Case note dated 7 November 2014, subject: 'NOC – EMO – Notifier 1', Case No. 258749.

³⁸ *Id.*

³⁹ Case note dated 7 November 2014, subject: 'Email SAPOL re NOC', Case No. 258749.

⁴⁰ Case note dated 13 November 2014, subject: 'Email SAPOL re updates in relation to SAPOL investigation', Case No. 258749.

Notification 6

Steven and Janet have been served with the Federal Circuit Court order. They are in discussions with SAPOL as to their options. SAPOL is 'stumped' as to what Steven and Janet can do in the circumstances. SAPOL has received legal advice to the effect that it should not rush its investigation into the alleged assault. SAPOL is yet to interview the mother.

Janet has informed SAPOL that she will not return Child C to the mother, in apparent defiance of the Federal Circuit Court order.⁴¹

69. This notification resulted in a Tier 2 intake (**the November 2014 intake**). The following rationale is recorded in the file:

The caregiver has used physical discipline that bears no resemblance to reasonable discipline and the caregiver's behaviour was violent and out of control which inflicted injury. There are current concerns that now there is a Recovery Order in place through the Family Court [sic] which specifies the child must be returned to the care of the mother, placing him at further risk of physical abuse in an environment where he has recently been injured.⁴²

70. That same day, a representative of SAPOL emailed the agency:

The matter re: [Child C] has blown up a little today. The child's mother has initiated Family Court proceedings and the child's father and grandparents were last night served with a court order which orders that [Child C] is returned to his mother at 3pm today at Elizabeth Police Station by the father. The order also directs that all three (3) children are to be in the custody of the mother until the next court hearing. I am madly scrambling for legal advice about what action can be taken. The big question is whether a Family Court order overrides bail conditions. If it does, the grandparents have indicated that *will* [sic] breach the Family Court order in order to prevent [Child C] from having to go back to his mother. If it doesn't, I'm going to [REDACTED]

[...]

[Families SA] – I realise you've CNA'd this one, but any ideas you may have on ensuring the safety of this child would be appreciated.⁴³

71. That afternoon, SAPOL's representative again emailed the agency:

There is a possibility that this child has been returned to his mother. If this has not yet occurred, it is likely to occur in the near future as a result of a recovery order which is expected to be made by the Family Court [sic]. As a result of advice received it has been determined that further evidence should be sought before the alleged perpetrator is arrested.

[Families SA] – I understand this matter is closed at this time. I write primarily to ask that this position is reconsidered.

[...]

The Family Court have stated that if the paternal grandparents have not complied with this order, a recovery order will be made. As a result, [Child C] may be returned to the mother's care. This would prevent CPS from interviewing the child, and would inhibit police ability [sic] to gather evidence which would allow for effective action to be taken to ensure the child's safety. Given the nature of the allegations, and the corroborative

⁴¹ Case note dated 13 November 2014, subject: 'T2(5) – PHY5 – Notifier 1', Case No. 259872.

⁴² *Id.*

⁴³ Case note dated 13 November 2014, subject: 'Email communication with SAPOL and CPS re new concerns & allocation of case-se emails attached', Case No. 259872.

evidence that is available, police are concerned that the child's safety will be in significant danger if the course of events continues as it is.⁴⁴

72. This email was converted into a notification and added to the existing intake.⁴⁵ An agency practitioner subsequently advised CPS and SAPOL that the matter would be 'flag[ged] again at allocations meeting at 9:30am tomorrow.'⁴⁶
73. On 14 November 2014 the agency advised SAPOL and CPS that the matter had been allocated to a social worker for assessment and investigation.⁴⁷
74. That same day, a recovery order was made by the Federal Circuit Court. The nature of that order was that SAPOL and the Australian Federal Police were required to locate Child C and return him to the mother. The agency was made aware of the recovery order on 19 November 2014.⁴⁸
75. An Australian Federal Police officer subsequently contacted the agency to advise that he had removed Child C from the care of the father. The officer submitted that he was aware of the child protection concerns and accordingly had reservations about returning Child C to the mother's care.⁴⁹ The agency was informed that Child C was being transported to the Commonwealth Law Courts building in Adelaide to facilitate the handover to the mother.⁵⁰
76. The agency was also notified that the father had lodged an emergency application before the Federal Circuit Court, which was due to be heard that afternoon.⁵¹ Court staff were said to be 'demanding' that the agency attend Court in relation to the matter.⁵²
77. A supervisor at the agency's Elizabeth District Centre subsequently contacted the agency's Crisis Response Unit to request that a practitioner from that unit attend the Commonwealth Law Courts building.⁵³ That practitioner was directed to invoke section 16 of the Children's Protection Act so as to place Child C in the temporary care of the agency, pending the outcome of that afternoon's hearing.⁵⁴ It was determined that, depending on the outcome of the hearing, the agency would either return Child C to the father or, if the court did not consider the father to be a suitable carer, place Child C with Steven and Janet on the condition that the father remain out of the home.⁵⁵
78. Practitioners from the Crisis Response Unit subsequently attended the Commonwealth Law Courts building and invoked section 16 of the Children's Protection Act. Child C was transferred from the custody of Australian Federal Police to the care of an agency practitioner.⁵⁶

⁴⁴ Case note dated 13 November 2014, subject: 'Email SAPOL re updates in relation to SAPOL investigation', Case No. 259872.

⁴⁵ Case note dated 13 November 2014, subject: 'No Change – T2(5) – PHYS – Notifier 2', Case No. 259872.

⁴⁶ Case note dated 14 November 2014, subject: 'Email communication with SAPOL and CPS re new concerns & allocation of case', Case No. 259872.

⁴⁷ *Id.*

⁴⁸ Case note dated 19 November 2014, subject: 'Consultations Re Sec 16 and More', Case No. 259872.

⁴⁹ Case note dated 19 November 2014, subject: 'AFP re concerns re returning child to mother's care', Case No. 259872.

⁵⁰ Case note dated 19 November 2014, subject: 'AFP @ Adelaide FSA re request worker to attend court & pc to Liaison officer', Case No. 259872.

⁵¹ Case note dated 19 November 2014, subject: 'CRU RESPONSE to Hub request at Federal Magistrates Court', Case No. 259872.

⁵² Case note dated 19 November 2014, subject: 'FAMILY COURT ORDER TO 26 Nov 2014', Case No. 259872.

⁵³ Case note dated 19 November 2014, subject: 'Request from Elizabeth DC to attend Family Court and Invoke Section 16', Case No. 259872.

⁵⁴ *Id.*

⁵⁵ Case note dated 19 November 2014, subject: 'Consultations Re Sec 16 and More', Case No. 259872; Case note dated 19 November 2014, subject: 'Request from Elizabeth DC to attend Family Court and Invoke Section 16', Case No. 259872.

⁵⁶ Case note dated 19 November 2014, subject: 'CRU INVOKE S16 with father', Case No. 259872; Case note dated 19 November 2014, subject: 'CRU INVOKE S16 with mother', Case No. 259872; Case note dated 19 November 2014, subject: 'REVOKE S16 and child presented to father', Case No. 259872.

79. The agency subsequently instructed the Crown Solicitor's Office (**CSO**) to appear on behalf of the Minister for Education and Child Development in relation to the father's application.⁵⁷ On the presentation of submissions on behalf of the Minister, the recovery order was discharged and the matter was adjourned for one week. The Court ordered that Child C remain in the care of the father on condition that the father and Child C reside at Steven and Janet's home.⁵⁸
80. The Court also requested that the Minister intervene in the proceedings between the mother and the father. The Minister was asked to provide a written report regarding the agency's 'investigations to date' in relation to Child C, Child A and Child B by the next hearing.⁵⁹ The agency meanwhile undertook to assess the living arrangements at Steven and Janet's home.⁶⁰
81. The agency subsequently returned Child C to the care of the father, Steven and Janet.⁶¹ That same evening, agency practitioners conducted an inspection of Steven and Janet's property. The house was observed to be 'very orderly and clean'. The agency's notes record that the practitioners had 'no concerns with the occupants or the conditions in the home.'⁶²
82. The agency subsequently provided a report to the Federal Circuit Court on 25 November 2014. This report purported to provide an overview of the notifications received in respect of the children. It concluded:

At this stage Families SA is supporting [Child C]'s placement with Mr [REDACTED] and the paternal grandfather but not enough information is known about the family to form a strong position either way. Therefore, Families SA respectfully declines to formally intervene in these proceedings at this time but will continue to attend Court hearings and provide information to the Court (as amicus curiae) as to the progress of the investigation and any outcomes.⁶³

83. It does not appear that a copy of this report was ever supplied to Steven and Janet.⁶⁴
84. On 26 November 2014 the Federal Circuit Court proceedings were adjourned for approximately one month to allow CPS to complete its inquiries into the alleged assault. Orders were made that Child C continue to reside with the father at Steven and Janet's home, that Child A and Child B continue to reside with the mother and that the mother have weekly supervised access to Child C. Both the mother and father were ordered to undergo drug screening.⁶⁵
85. On 26 November 2014 a supervising practitioner consulted with the agency's Principal Aboriginal Consultant in respect of the family's situation:

PAC advised careful approach to be taken in this matter given the trauma history and the fragile nature any attempts at engagement with the mother will inevitably be [sic]. PAC to explore options regarding a trusted person that may be able to attend any home visit with worker to the mother to see if there is [a] chance [the] mother will acknowledge she requires assistance with discipline measures she is using and recognising triggers. Unsure at this stage as to the level of engagement FSA will be able to initiate with the mother.⁶⁶

⁵⁷ Case note dated 19 November 2014, subject: 'COURT PROCEEDINGS in Family Court, Case No. 259872.

⁵⁸ Case note dated 19 November 2014, subject: 'FAMILY COURT ORDER TO 26 Nov 2014', Case No. 259872.

⁵⁹ *Id.*

⁶⁰ Case note dated 19 November 2014, subject: 'REVOKE S16 and child presented to father', Case No. 259872.

⁶¹ *Id.*

⁶² Case note dated 19 November 2014, subject: 'CRU visit to the Paternal Grandparents' Home', Case No. 259872.

⁶³ Case note dated 25 November 2014, subject: 'REPORT FOR FAMILY COURT', Case No. 259872.

⁶⁴ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 29:23.

⁶⁵ Case note dated 26 November 2014, subject: 'Family Court Order 26 Nov 2014', Case No. 259872.

⁶⁶ Case note dated 26 November 2014, subject: 'PAC CONSULT', Case No. 259872.

86. CPS interviewed Child C on 26 and 27 November 2014. The agency was notified that Child C made disclosures about the alleged assault. The agency spoke with CPS and SAPOL and was informed that [REDACTED]. Each agency expressed concern about Child C having contact with the mother in the circumstances.⁶⁷ The agency subsequently undertook to seek CSO advice as to whether the agency could lawfully intervene to prevent the scheduled access visit from occurring.⁶⁸
87. The agency subsequently received CSO advice to the effect that it could not lawfully obstruct the access visit.⁶⁹
88. On 1 December 2014 an agency supervisor telephoned Janet to enquire as to the outcome of the access visit that had been scheduled to take place earlier that day.⁷⁰ Janet advised the practitioner that the father and Steven had elected not to facilitate the access visit. Janet reported that Child C was highly anxious and had expressed opposition to the visit. According to Janet, Child C expressed concern that his mother would hit him again and would prevent him returning to the father. Child C was 'dry vomiting'. The father and Steven knew they were contravening the court order however felt that they had no other choice. They were not altogether opposed to the mother having contact with Child C, but believed it should be in a controlled environment.⁷¹
89. Janet reported that Child C 'brightened up' once he was informed that the access visit would not take place. Janet stated that the family was unable to secure legal representation because they were not eligible for legal aid and could not afford to pay a private solicitor.⁷²
90. The agency supervisor informed Janet that Child C required urgent therapeutic support to assist him to overcome his issues with seeing the mother and to address the trauma associated with the separation. It was recommended that Janet arrange for Child C to visit the Child Adolescent Mental Health Service (**CAMHS**) to secure 'a rationale for why the court order was disregarded.' Janet was advised to seek that the court proceedings be adjourned in order to facilitate supervised access visits through Relationships Australia. The agency undertook to consult with the mother in relation to this proposal. The agency supervisor undertook to follow up the matter with Janet at a later date.⁷³
91. The agency subsequently advised CPS and the CSO of these developments.⁷⁴ On 5 December 2014 CPS supplied the agency with a summary of its forensic interviews with Child C. This summary described disclosures made by Child C during the interviews.⁷⁵
92. On 8 December 2014 a senior social worker and the agency's Principal Aboriginal Consultant made an unannounced visit to the mother's home. The mother's cousin informed the practitioners that the mother was not home however would be available the next day.⁷⁶

⁶⁷ Case note dated 27 November 2014, subject: 'UPDATE WITH CPS AND SAPOL FOLLOWING FORENSIC', Case No. 259872.

⁶⁸ Case note dated 27 November 2014, subject: 'CPS FURTHER CONTACT RE CONCERNS FOR ACCESS OCCURRING', Case No. 259872.

⁶⁹ Email from Ms [REDACTED] to Ms [REDACTED] dated 1 December 2014.

⁷⁰ Case note dated 1 December 2014, subject: 'PHC to Step Grandmother for outcome on Sunday access with Mother', Case No. 259872.

⁷¹ Case note dated 1 December 2014, subject: 'Retuen [sic] call from Step Grandmother', Case No. 259872.

⁷² Case note dated 1 December 2014, subject: 'Retuen [sic] call from Step Grandmother', Case No. 259872.

⁷³ *Id.*

⁷⁴ Case note dated 4 December 2014, subject: 'Emails with CROWN & CPS re report & follow up', Case No. 259872.

⁷⁵ Case note dated 5 December 2014, subject: 'CPS Summary of Forensic Interview – Emailed from [REDACTED]', Case No. 259872.

⁷⁶ Case note dated 8 December 2014, subject: 'Home visit to talk with the mother about access', Case No. 259872.

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93. On 15 December 2014 agency social workers attended Steven and Janet's home to speak with Child C about the access arrangements. Child C reported to the practitioners that 'things were really good' in Steven and Janet's home.⁷⁷
94. Child C informed the practitioners that he did not wish to see his mother. He said he was scared to return to the mother's home. In the course of the conversation he said, 'what Mum did was scary' and, [REDACTED].⁷⁸
95. The practitioners asked Child C whether there was any place where he would feel safe seeing the mother. Child C answered in the negative.⁷⁹
96. The practitioners informed Janet and Steven that they would need to justify to the Court why the access visits had not taken place. The practitioners suggested that the father raise the issue with his solicitor.⁸⁰
97. Steven informed the practitioners that he and Janet considered that the mother had shown 'no remorse' and that Child C would accordingly remain in their care. Janet advised that they were organising counselling for Child C through CAMHS and were waiting for an allocation.⁸¹
98. On 15 December 2014 the agency social workers also made an unannounced visit to the mother's home. The mother was informed that Child C did not wish to see her. The mother expressed disbelief at this. The mother volunteered that Child C had been coached by the father. The mother expressed irritation that the practitioners had spoken with Child C in her absence.⁸²
99. The practitioners spoke to the mother about services that could assist her to reconnect with Child C. The mother was encouraged to contact the agency for a referral.⁸³
100. On 17 December 2014 CPS supplied the agency with a formal report concerning its interviews with Child C. In this report CPS observed, *inter alia*, that:
- Child C described being physically assaulted by the mother
 - information provided by CPS's Forensic Paediatrician in relation to Child C's reported injuries 'appears consistent with Child C's description of [REDACTED]
 - although Child C was unable to provide detailed information in relation to his mother having '[REDACTED]', based on surrounding information it was 'considered likely that this incident occurred'.⁸⁴
101. CPS recommended, *inter alia*, that:
- Child C remain in the care of Steven and Janet while the investigation continued
 - Child C's contact with the mother be closely supervised by a person who could keep Child C 'physically and psychologically safe'
 - the agency consider undertaking a comprehensive assessment of the mother's capacity to provide appropriate care for Child C, Child A and Child B.⁸⁵

⁷⁷ Case note dated 8 December 2014, subject: 'Home visit to talk with [Child C]', Case No. 259872.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Case note dated 15 December 2014, subject: 'Home visit to talk with the mother about access with [Child C]', Case No. 259872.

⁸³ *Id.*

⁸⁴ Case note dated 17 December 2014, subject: 'CPS Summary Report', Case No. 259872.

⁸⁵ *Id.*

102. On 17 December 2014 the agency submitted a report to the Federal Circuit Court that provided a summary of the agency's further involvement with the family. This report concluded:
- [Child C] continues to clearly express that he does not wish to see his mother at this time and states that he is frightened of her. This has been assessed by the Department as a genuine expression of his wishes and is not viewed as being influenced by adults in his life. [Child C] is receiving therapy to address this trauma and therapy has been initiated with a view to assisting [Child C] to feel comfortable about having contact with his mother.
- The department is therefore concerned that contact between the mother and [Child C] occurs when [Child C] is so clear in regard to his wishes. Therapeutic intervention that has been initiated is well placed to work with [Child C] and incorporate the mother in the therapeutic process, should the mother indicate her willingness to engage in this process.
- Consultation with CPS has also indicated a strong recommendation that therapy be initiated for [Child C] and that contact between the mother and [Child C] be therapeutically assessed and reported.⁸⁶
103. At a hearing before the Federal Circuit Court on 18 December 2014 the agency undertook to facilitate two one-hour access visits between Child C and the mother at the agency's Elizabeth office. The agency also undertook to refer the mother to Aboriginal Family Support Services (AFSS) for therapeutic support.⁸⁷
104. On 22 December 2014 a senior social worker telephoned Janet to arrange a time for Child C to visit the agency's access facilities. Janet advised the practitioner that the Federal Circuit Court proceedings had been adjourned until March 2015. Janet referred to an incident that took place outside of the court building wherein the mother and the mother's cousin were said to have verbally abused the father. The mother's cousin was said to be the main instigator.⁸⁸
105. Janet informed the practitioner that when she went to pick up Child A and Child B for their Sunday access visit with the father, the mother's cousin approached the vehicle and observed that the father was not present. The mother's cousin informed Janet that Child A and Child B were not going with Janet. The cousin then drove off. Child C was upset that his brother and sister did not come to the grandparents' home. The practitioner advised Janet that this needed to be raised with the father's lawyer as the agency 'could not do anything about that.'⁸⁹
106. On 22 December 2014 the agency made an attempt to visit the mother at the mother's home. The agency's notes record that the house was unattended.⁹⁰ The agency was unable to telephone the mother's cousin on the phone number previously provided.⁹¹ On this same day, the agency's Principal Aboriginal Consultant confirmed that AFSS was prepared to accept a referral from the agency 'as long as [the mother] is willing to be involved with the service.'⁹²
107. On 23 December 2014 Janet, Steven and Child C attended the agency's Elizabeth office to view the agency's access facilities. Child C informed a senior social worker that he did not want to see his mother. The practitioner reassured Child C that the office was a safe place for children. Child C subsequently agreed to the access visit.⁹³

⁸⁶ Case note dated 18 December 2014, subject: 'FSA Update on Court and Report for Family Court, Case No. 259872.

⁸⁷ *Id.*

⁸⁸ Case note dated 22 December 2014, subject: 'Phone call to Janet Wells re bringing [Child C] into office', Case No. 259872.

⁸⁹ *Id.*

⁹⁰ Case note dated 22 December 2014, subject: 'Home visit to [the mother] re access', Case No. 259872.

⁹¹ Case note dated 22 December 2014, subject: 'Phone call to [redacted]', Case No. 259872.

⁹² Case note dated 22 December 2014, subject: 'Consultation with PAC [redacted] re AFSS referral', Case No. 259872.

⁹³ Case note dated 23 December 2014, subject: '[Child C] in office', Case No. 259872.

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108. On 23 December 2014 a senior social worker again attempted to visit the mother at her property. The mother's brother answered the door. He informed the practitioner that the mother was not home. The practitioner requested that the brother pass on a letter to the mother confirming the location and time of the upcoming access visit.⁹⁴
109. On 29 December 2014 the mother presented at the agency's Elizabeth office with Child A, Child B and her cousin for the scheduled access visit. She informed staff that the visit was scheduled for 12pm and she was running late. The visit was in fact scheduled for 2pm.⁹⁵ The access visit subsequently took place. During the visit, the mother was observed to display an 'ongoing child-focused attitude'. Child C was initially reluctant to engage with the mother however warmed up as the visit progressed. At the conclusion of the visit Child C hugged his brother and sister goodbye. The mother presented Child C with a Christmas present. The agency practitioners and the mother confirmed that the next visit would take place later in the week.⁹⁶
110. Janet subsequently contacted a social worker to advise of an altercation involving the mother that took place as the parties were driving home. Janet reported that the mother pulled up to Janet and Steven's vehicle on Main North Road and yelled abusive remarks. The mother raised her finger at the grandparents. She yelled out, 'I've done nothing to do [sic] with you or Steve, it's to do with your son.'⁹⁷
111. Janet telephoned the agency again the next day. She advised a social worker that Child C was very stressed following the incident on Main North Road. She informed the practitioner that during the incident, the mother got out of the vehicle and was yelling that she had done nothing to them and it was all their 'fucking son'. Janet informed the social worker that she was concerned about the children witnessing this. Child C had said to Janet that the mother 'is good and then she is bad'.⁹⁸
112. Janet informed the social worker that Child C had been unable to sleep during the night after the visit. Child C told Steven not to leave him alone and asked Steven to sleep with him in the lounge room. Child C told Janet that the mother had told him that she was going to the grandparents' house to take him away. He was fearful of this. Child C also expressed concerns that Child A told him that he was going to go to her house. Child C was also concerned because his mother had spoken about school with him. He was worried that he would have to go back to his old school.⁹⁹
113. Janet reported that Child C was very withdrawn after the visit with the mother. He was said to be 'devastated' by the incident that took place on the way home. Janet expressed concerns that the mother considered the matter to be a 'game' and that the mother had deliberately changed her route home in order to confront the grandparents.¹⁰⁰
114. Janet enquired as to whether in the circumstances she should facilitate the next visit with the mother. The social worker advised Janet that Child C 'has to come in' because that was what the Court had ordered. Janet expressed concerns that Child A and Child B were not having access to their father. The practitioner told Janet that this would be 'addressed in the next hearing with the Judge'.¹⁰¹

⁹⁴ Case note dated 23 December 2014, subject: 'Home visit to [the mother] re access', Case No. 259872.

⁹⁵ Case note dated 29 December 2014, subject: 'Mo presented to office RE arranged access', Case No. 259872.

⁹⁶ Case note dated 29 December 2014, subject: 'Supervised Access with Mother and siblings [Child B] [sic] and [Child A]', Case No. 259872.

⁹⁷ *Id.*

⁹⁸ Case note dated 30 December 2014, subject: 'VM from MatGmo Janet RE request for return PC', Case No. 259872.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

115. An agency social worker unsuccessfully attempted to telephone the mother on 30 December 2014 and again on 31 December 2014. A voicemail message was left on each occasion.¹⁰²
116. On 31 December 2014 the mother attended the agency's Elizabeth office for the second contact visit. Janet and Steven did not arrive. The agency's social workers spoke with the mother about the incident on Main North Road. The social workers expressed concern about how the incident may have affected Child C. A practitioner informed the mother that Child C had been scared that the mother would take him away.¹⁰³
117. The mother responded to observe that Child C did not seem scared on Monday. The mother stated that it appeared to her that Child C did not want to leave her. The social worker expressed concern that the incident might have been witnessed by Child A and Child B. The mother confirmed that the incident took place. The mother stated that she did not speak with Child C but was talking to the grandparents. The mother asserted that her comments had been directed towards Steven only.¹⁰⁴
118. The mother expressed frustration that the father was not facilitating the access visits. She believed the father was breaching the court order. The mother said that Janet was not biologically related to Child C and therefore did not have 'any rights to Child C'. The mother's cousin expressed concern that Steven and Janet were 'manipulating the situation'.¹⁰⁵
119. At the conclusion of the discussion it was observed that the mother's cousin was recording the conversation. The practitioners had not consented to this.¹⁰⁶
120. On 5 January 2015 a senior social worker telephoned Janet to raise the matter of Child C's non-attendance at the second access visit. Janet informed the practitioner that Child C had a good time at the first visit but was very scared after the incident on Main North Road. Janet said that Child C refused to attend the second visit. The practitioner told Janet that the access visit was ordered by the court and that the father needed to discuss the matter with his lawyer. The practitioner informed Janet that the agency was liaising with AFSS for assistance with reconnecting Child C with the mother.¹⁰⁷
121. On 8 January 2015 a senior social worker discussed the family situation with a representative of AFSS. This representative advised that there was a possibility that AFSS would not accept a referral because there was no relevant order in place. The representative undertook to follow up the matter once the referral documentation was completed.¹⁰⁸
122. On 13 January 2015 practitioners from the agency attempted another unannounced visit to the mother's home. The mother's cousin answered the door and informed the practitioners that the mother was not at home. The practitioners gave the cousin a consent form relating to the AFSS referral to pass on to the mother.¹⁰⁹ The next day a senior social worker caused a letter to be sent to the mother's address referring to the consent form and requesting that the mother contact the agency in respect of the matter.¹¹⁰

¹⁰² Case note dated 30 December 2014, subject: 'PC out to Mo [...] - SW left message to return PC', Case No. 259872; Case note dated 31 December 2014, subject: 'PC out to Mo RE access - SW left message', Case No. 259872.

¹⁰³ Case note dated 30 December 2014, subject: 'PC out to PatGmo RE access & CV w Mo', Case No. 259872.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Case note dated 5 January 2015, subject: 'Phone call to Janet Wells', Case No. 259872.

¹⁰⁸ Case note dated 8 January 2015, subject: 'Phone call from [REDACTED] AFSS', Case No. 259872.

¹⁰⁹ Case note dated 13 January 2015, subject: 'Home visit to the mother re AFSS referral', Case No. 259872.

¹¹⁰ Case note dated 14 January 2015, subject: 'Letter to [the mother] [sic] re AFSS referral', Case No. 259872.

123. On 19 January 2015 practitioners from the agency again attempted to visit the mother at her home. The cousin answered the door and informed the practitioners that the mother had gone away for the weekend but would return in a few hours. The cousin stated that she was looking after Child A and Child B. The cousin informed the practitioners that she would arrange for the mother to return the consent form to the agency.¹¹¹
124. On 21 January 2015 a social worker attempted another unannounced visit to the mother's home. The social worker observed that the house was unattended. The practitioner left a message for the mother requesting that she contact the agency to discuss the AFSS referral.¹¹² Later that same day, the mother returned the consent form to the agency's office.¹¹³
125. The agency subsequently submitted a referral to AFSS. The documentation observed that:
- Families SA are not working with the family apart from having observed the access between [Child C] and his mother on the 29/12/14 and placing referral [sic] to AFSS.
- Families SA will be providing the Family Court a short report on the access and to inform the court that referral has been placed with AFSS and this case will then be closed.¹¹⁴
126. On 22 January 2015 a senior social worker telephoned Janet to enquire if the practitioner could visit Child C that morning. Janet informed the practitioner that Child C and Steven were away fishing. The practitioner informed Janet that the referral to AFSS had been submitted.¹¹⁵
127. On 23 January 2015 the agency was notified that AFSS had accepted the referral. The agency was requested to participate in an introductory meeting involving the family.¹¹⁶
128. On 27 January 2015 a senior social worker attended the mother's property. The practitioner informed the mother that AFSS had accepted the referral. The mother was requested to attend an introductory meeting. The practitioner asked the mother if she had a telephone. The mother answered in the negative. The mother informed the practitioner that her cousin had a mobile phone. The cousin gave the practitioner her new telephone number.¹¹⁷
129. On 28 January 2015 the agency reached a determination that the alleged assault by the mother had been substantiated.¹¹⁸
130. That same day, a supervising social worker completed two sets of safety and risk assessments in respect of Child C.¹¹⁹ The first set of assessments appears to have been backdated to 19 November 2014. There are no case notes in the agency's file relating to the assessments.

¹¹¹ Case note dated 19 January 2015, subject: 'Home visit to [the mother]', Case No. 259872.

¹¹² *Id.*

¹¹³ Case note dated 21 January 2015, subject: '[the mother] in Office', Case No. 259872.

¹¹⁴ Case note dated 21 January 2015, subject: 'Referral to AFSS re family preservation', Case No. 259872; Case note dated 23 January 2015, subject: 'Email from ██████████ AFSS re referral', Case No. 259872.

¹¹⁵ Case note dated 22 January 2015, subject: 'Phone call to Janet Wells', Case No. 259872.

¹¹⁶ Case note dated 23 January 2015, subject: 'Email from ██████████ AFSS re referral', Case No. 259872.

¹¹⁷ Case note dated 27 January 2015, subject: 'Home visit to [the mother] re AFSS', Case No. 259872.

¹¹⁸ Case note dated 28 January 2015, subject: 'Outcome rationale for I & A started 14-11-2014', Case No. 259872.

¹¹⁹ Documents identified as 'Safety_assessment_████████.xls', dated 28 January 2015 (safety assessment date 19 November 2014); 'Risk_Assessment_████████.xls' (undated; assessment date 19 November 2014); 'Subsequent_safety_assessment_████████.xls', dated 28 January 2015 (safety assessment date 28 January 2015); 'Risk_Reassessment_████████.xls' (undated; reassessment date 28 January 2015). Safety and risk assessments are conducted in accordance with the agency's Structured Decision Making tool.

131. The first safety assessment recorded that Child C was considered 'unsafe' as at 19 November 2014. The corresponding risk assessment assigned Child C a 'scored risk level' of 'Very High'.
132. The second safety assessment, identified as a 'Subsequent Assessment' recorded that Child C was considered 'safe' as at 28 January 2015. The corresponding risk assessment (described as a 'reassessment') assigned Child C a 'scored risk level' of 'Moderate'.
133. On 29 January 2015 the agency commenced preparations to close the intake.¹²⁰ It was recorded that the agency held 'no concerns for [Child C]'s safety' whilst he remained in the care of Steven and Janet. It was foreshadowed that the agency's next report to the Federal Circuit Court would reflect that:
- [Families SA intends] to close the case based on the fact the grandparents are prepared to continue caring for the child while the mother works with AFSS toward being reunified with her son and the considerable resistance by the mother and her support network to even consider engaging with Families SA.¹²¹
134. It was determined that the intake could not be closed 'until the meeting with AFSS, the mother and [Families SA] occurs and further consultation with [the CSO] regarding what is required for the [Court].'¹²²
135. On 4 February 2015 a senior social worker consulted with a supervisor and senior practitioner in respect of the intake. It was determined that the following 'ongoing assessments/intervention' was required:
- Arrange meeting with AFSS/mother
 - Write report for Family Court
 - Ensure all aspects of C3 [the agency's case management system] phase are completed for closure
 - Close FSA involvement[.]¹²³
136. The introductory meeting between AFSS, the agency and the family was scheduled for 9 February 2015. In discussion with AFSS on 4 February 2015, the agency undertook to inform the mother of this date.¹²⁴ A practitioner subsequently telephoned the mother's cousin and requested to speak with the mother. The cousin informed the practitioner that the mother was busy. The cousin undertook to inform the mother of the details of the meeting.¹²⁵ That same day the practitioner sent a letter to the mother's address confirming the meeting details.¹²⁶
137. On the morning of 9 February 2015 a practitioner telephoned the mother's cousin to remind the mother of the meeting later that day. The cousin confirmed that the mother had arranged transport to the office.¹²⁷
138. During a subsequent telephone call, the cousin informed the practitioner that it was possible that the mother would not make it to the meeting. The cousin stated that she was unable to contact the mother. The cousin supplied a mobile telephone number for the mother.¹²⁸ The practitioner subsequently telephoned the AFSS representative and

¹²⁰ Case note dated 29 January 2015, subject: 'CLOSURE PLANNING AND FURTHER TASKS', Case No. 259872.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Case note dated 4 February 2015, subject: 'Supervision 4 Feb 2015', Case No. 259872.

¹²⁴ Case note dated 4 February 2015, subject: 'Phone call from [REDACTED] AFSS', Case No. 259872.

¹²⁵ Case note dated 4 February 2015, subject: 'Phone call to T[...]', Case No. 259872.

¹²⁶ Case note dated 4 February 2015, subject: 'Letter to [the mother] re AFSS meeting', Case No. 259872.

¹²⁷ Case note dated 9 February 2015, subject: 'Phone call to T[...]', Case No. 259872.

¹²⁸ Case note dated 9 February 2015, subject: 'Phone call to T[...]' (2), Case No. 259872.

sent a text message to the mother advising that the meeting had been rescheduled for the following morning.¹²⁹

139. The mother did not attend the meeting at the rescheduled time. A practitioner telephoned the mother's cousin and spoke to the mother. The mother denied receiving the earlier text message. She indicated that she was looking for new accommodation and was not available to attend the meeting. The practitioner offered to hold the meeting at the mother's house in approximately ten minutes. The mother declined. The practitioner enquired when the mother would be available. The mother responded to ask when the practitioner would be available. The practitioner offered to have AFSS contact the mother directly to arrange a suitable time. The mother agreed to this.¹³⁰
140. On 23 February 2015 the agency supplied a further report to the Federal Circuit Court. This report provided an overview of the agency's recent interactions with the mother, including the aborted access visits. The agency observed that in its assessment Steven and Janet were 'justified' in declining to participate in the second visit. The report observed that the mother had to date not made any contact with AFSS in relation to the referral meeting.¹³¹
141. The report advised that Child C had commenced counselling with CAMHS on 5 February 2015. CAMHS was said to have reported to the agency that '[Child C] was apprehensive and at times was banging his head on the lounge and not wanting to talk about his mother to the worker.' It was also reported to the agency that '[Child C] kept saying that his mother doesn't love him and that [this] is the reason she hurts him.'¹³²
142. In the report, the agency advised the Court that a further counselling session was scheduled for 28 February 2015.¹³³ There are no case notes in the agency's file that confirm this information.
143. The report concluded:
- Families SA supports the current living arrangements for [Child C]. That is, [Child C] residing in the home of his paternal grandparents, with [Child C]'s father also residing in home. It is Families SA's assessment that the paternal Grandparents are providing primary care for [Child C] as [Child C]'s father has had no involvement in Families SA conversations with the family.
- Families SA considers [Child C] to be safe in this care arrangement and therefore is closing involvement.¹³⁴
144. A further hearing took place in the Federal Circuit Court on 5 March 2015. It was noted that the mother had yet to engage with AFSS in respect of her reunification with Child C. The matter was adjourned until 22 April 2015. It was ordered that Child C remain in the care of Steven and Janet until that date. The mother was to have supervised access to Child C as arranged between the parties. Child A and Child B were to have weekly contact with the father. The agency and SAPOL were each ordered to supply the Court with a copy of their records concerning the family.¹³⁵
145. On 6 March 2015 a senior practitioner consulted with an AFSS practitioner. The AFSS practitioner advised that she had attempted to set up a meeting with the mother on three separate occasions. The mother had not attended any of the meetings. The

¹²⁹ Case note dated 9 February 2015, subject: 'Phone call to [REDACTED]', Case No. 259872; Case note dated 9 February 2015, subject: 'Text message to [the mother]', Case No. 259872

¹³⁰ Case note dated 10 February 2015, subject: 'AFSS workers in office', Case No. 259872.

¹³¹ Case note dated 23 February 2015, subject: 'Family Court report', Case No. 259872.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Case note dated 19 March 2015, subject: 'Subpoena ADC 4019-2014 [REDACTED]', Case No. 259872.

AFSS practitioner expressed concern about the involvement of the mother's cousin. The AFSS practitioner opined that the relationship between the mother and the cousin 'presents like a DV relationship.' The AFSS practitioner informed the practitioner that AFSS would send the mother a letter advising her that it was now up to her to make contact with AFSS. The practitioner agreed with this approach.¹³⁶

146. On 16 March 2015 a senior social worker telephoned Janet to seek an update concerning the March 2015 court hearing. Janet informed the practitioner that the matter had been adjourned until 22 April 2015. Janet informed the practitioner of an assault that was said to have been perpetrated by the mother against Steven outside of the courthouse. According to Janet, the matter was raised with the Judge when the court hearing resumed.¹³⁷
147. On 18 March 2015 the agency conducted an exercise to identify Child C's 'risk and protective factors', as well as his 'family needs and strengths'. Both parents were considered to be disengaged from Child C. It was observed that 'the paternal grandparents are providing the care for [Child C] and attend to all his needs'.¹³⁸
148. The intake arising from the November 2014 notification was closed that same day. The intake closure notes record that the agency considered that it had 'fulfilled' its requirements to the Federal Circuit Court. The notes conclude:

[Child C] is safe and stable in his placement and it is now a decision that the Family Court [sic] needs to make with regards to his future placement.¹³⁹
149. On 22 April 2015 the agency supplied a copy of its records concerning the family to the Federal Circuit Court, in apparent compliance with the order made on 5 March 2015.¹⁴⁰
150. A further hearing of the Federal Circuit Court took place that same day. The agency advised the court that the agency, CPS and AFSS had closed their respective files concerning the mother. The Minister was granted permission to withdraw from the proceedings.¹⁴¹ The parties and their solicitors were granted leave to inspect and copy the materials furnished by the agency and the matter was adjourned until 6 July 2015.¹⁴²
151. On 15 July 2015 the Independent Children's Lawyer (ICL) filed an affidavit in the Federal Circuit Court which annexed approximately 18 documents sourced from the agency's file. These included the November 2014 notification and a summary of the disclosures made by Child C during the CPS interview.¹⁴³
152. The affidavit of the ICL was subsequently disclosed to Steven and Janet in the course of the court proceedings.¹⁴⁴
153. Meanwhile, on 27 January 2015 the agency received a notification concerning an incident that was said to have taken place approximately four months earlier. This

¹³⁶ Case note dated 6 March 2015, subject: 'PC to Sabina re AFSS involvement closing due to Mothers [sic] non engagement', Case No. 259872.

¹³⁷ Case note dated 16 March 2015, subject: 'Phone call to Janet Wells', Case No. 259872.

¹³⁸ Case note dated 18 March 2015, subject: 'Social work assessment of risk & protective factors & family strengths & needs', Case No. 259872.

¹³⁹ Case note dated 18 March 2015, subject: 'Closure', Case No. 259872.

¹⁴⁰ Case note dated 21 April 2015, subject: 'completed Subpoena sent to court via priority mail 22 April 2015', Case No. 281696; Case note dated 30 July 2015, subject: 'send covering letter to court', Case No. 281696.

¹⁴¹ Letter from ██████████ to the agency dated 8 May 2015.

¹⁴² Order of Judge Kelly dated 22 April 2015.

¹⁴³ Steven and Janet first supplied this document to my investigators in the course of their interview with my Office. The document does not appear within the agency's files concerning the family. I infer that the agency was not served with a copy of the document as the Minister had by this time withdrawn from the proceedings.

¹⁴⁴ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 30:29.

notification was assessed during the course of the agency's investigation of the preceding notification:

Notification 7

Approximately four months ago, an incident took place in which Child A was observed to lay back on the lounge and 'rub the crutch area of her pants as hard as she could.' Child A would stop this behaviour whenever somebody entered the room.

The notifier has witnessed similar behaviour on three occasions over the previous two years.

The notifier has not seen Child A for about four months. The maternal grandmother previously raised the matter with the mother; however, the mother 'didn't care'.

Child B is non-verbal, which is of concern to the notifier given his age.¹⁴⁵

154. This notification was screened out on NOC grounds. The CARL practitioner noted on the file that 'the report does not have sufficient information to give reasonable grounds to suspect abuse/neglect or that the child is at significant risk of harm.'¹⁴⁶
155. On 26 August 2015 a notification was made to eCARL concerning Child A's school attendance and behaviour:

Notification 8

Child A is now enrolled at Ingle Farm Primary School. Child A has attended two other primary schools this year.

Child A is in reception and her attendance since May has been 'very irregular'. When she does attend school, she is often late. She is frequently dropped off at the side of the road, requiring her to walk by herself to the school office, sign in late, and then make her own way to class.

On 25 August 2015 the mother called the school to say that Child A was going to be collected from the school by a taxi. The taxi was due to arrive at 3:45pm. School dismissal was at 3:05pm. Child A did not attend school the following day.

Child A's behaviour is suggestive of emotional irregularity. She cries very frequently and for no specific reason. She has a hard time making friends due to her poor attendance and due to her emotional outbursts. She is difficult to calm and struggles to verbalise her emotions. She needs a lot of one-on-one attention during class. She is often tired and vague and struggles with day-to-day tasks due to lack of concentration and ability. Her speech is very unclear.

The school has made '[m]any attempts' to contact the mother regarding Child A's attendance. Phone calls by the school to the mother are never answered. The school has previously arranged meetings with the mother to discuss the concerns. The mother does not attend these meetings. She claims to forget the meetings or says that she cannot attend.

At time of enrolment, the mother informed the school that she had moved into the area so that Child A could attend school every day. The mother and father do not live together. The mother claims that Child A visits the father on some weekends and that when Child A returns to the mother, she is very tired and naughty.¹⁴⁷

¹⁴⁵ Case note dated 27 January 2015, subject: 'NOC – SEX – Notifier 1', Case No. 271960.

¹⁴⁶ *Id.*

¹⁴⁷ Case note dated 26 August 2015, subject: 'NOC – Neglect – Notifier 1', Case No. 313786.

156. Notifications made to eCARL are not assessed contemporaneously. In this case, the notification was not assessed until 9 September 2015, approximately two weeks after it was made. The notification was screened out on NOC grounds on the basis that ‘the information does not meet the screening criteria for the risk/ground definitions.’¹⁴⁸
157. On 11 September 2015 a family report was supplied to the Federal Circuit Court. That report spoke highly of Steven and Janet’s parenting capacity.¹⁴⁹ The agency’s case notes do not disclose when this document was first supplied to the agency. It is evident that the agency received a copy of the report prior to 11 April 2016.¹⁵⁰ Steven and Janet also received a copy of the document in the course of the court proceedings.¹⁵¹
158. On 21 October 2015 the agency proceeded to assess a succession of notifications concerning Child A:

Notification 9

SAPOL received a telephone call from an individual (**William**)¹⁵² raising concerns that Child A had been ‘dumped’ on him by the mother. William states that he has only known the mother for a couple of months and that during this period he has looked after Child A ‘on and off’. The mother is in the habit of making unannounced visits to William’s home. She periodically leaves Child A in the care of William. William informed SAPOL that Child A had been in his care for the ‘last few days’ and that he has been unable to contact the mother.

SAPOL officers attended William’s home and reported that Child A appeared ‘well’ albeit ‘a bit anxious’ as to where the mother is. SAPOL has no concerns about William’s care of Child A and the house appears tidy and well presented. William has two children under the age of six in his care. William is reportedly ‘happy to care’ for Child A but does not want her to be ‘left with him long term’.

William claimed to be unaware of another child in the mother’s care. He has ‘never seen [Child B] [sic]’ on the occasions when the mother has attended his property.

SAPOL officers also attended the mother’s address. Nobody was observed to be home; however, the blinds were drawn and the officers could not see inside the property.

A SAPOL officer attempted to telephone the mother on the number provided by William; however, the mother did not initially answer the phone. After several attempts, the mother answered the phone and told SAPOL that she had ‘spoken to [William]’ and that ‘everything was fine’. The mother said that she was ‘trying to get home’. She reiterated that ‘everything was fine’ before terminating the call.

The mother has not returned any further calls from SAPOL, however the mother allegedly had a conversation with William wherein she informed William that she would ‘collect [Child A] tonight’.

SAPOL has approached Steven ‘in relation to the father being able to take [Child A] into his care’. Steven reportedly responded that he was unsure if the father would be permitted to do so under the Federal Circuit Court orders. These orders stipulate that the father is to have weekend access to Child A and Child B. According to Steven, this has not happened ‘for months’.

Steven is reportedly concerned that the mother prefers to leave Child A and Child B with a stranger rather than with family. Steven informed SAPOL that he would be ‘happy’ to take Child A and Child B into his care; however, he mentioned that there

¹⁴⁸ *Id.*

¹⁴⁹ Report of Mr [REDACTED] dated 11 September 2015.

¹⁵⁰ Letter from Ms [REDACTED] to the Federal Circuit Court dated 11 April 2016.

¹⁵¹ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 31:16.

¹⁵² I have assigned a pseudonym to the individual in question.

are already five people residing in the home and that the 'housing conditions would become cramped' if Child A were to live with the grandparents fulltime.¹⁵³

159. The case notes record that the CARL practitioner discussed the notification with a SAPOL representative. According to the case notes, SAPOL undertook to contact Steven a second time and inform him that his taking Child A into his care would be considered an 'acceptable breach' of the orders and would only have to be for a short-term period.¹⁵⁴

160. This notification was then screened out on NOC grounds. The following rationale is recorded:

No change to the assessment as the information provided does not suggest that the mother will not return for the child however if further concerns are raised this intake may be reassessed.¹⁵⁵

161. The notification bears the same case number as the 26 August 2015 notification made in respect of Child A's school attendance. I infer that the above rationale was referring to the agency's assessment of that notification.

162. Shortly afterwards the agency proceeded to assess a notification that had been submitted to eCARL the previous afternoon:

Notification 10

Child A arrived at school today with another child. She was dropped off by that child's father, William.

Child A and the other child were overheard to say that Child A's mother was in jail. Child A said, 'yes Mum's in jail'. The other child said that the mother had hurt her father.

Child A was asked where her brother Child B was. Child A said that Child B was 'with mummy in jail.' Child A informed staff that she was staying with William.

The school was concerned because the mother had not provided permission for Child A to be collected by any other person. The school attempted to telephone the mother; however, the mother did not answer. The mother has not supplied the school with any emergency contact information.

The school contacted William. William stated that he hardly knew the mother. William said he was picking Child A up from school. William provided inconsistent information to the school. At first he said that the mother's car had broken down; then he said that the mother was in jail 'for a few hours', that he didn't know where she was and that there were 'police issues'.

William requested that a teacher bring the children home because he did not have any clothes 'fit to come into the school.' The conversation was unclear and William sounded intoxicated. The school informed William that a teacher was unable to escort the children home and that he was not permitted to collect Child A without the mother's consent.

The school then managed to contact the mother. The mother sounded as if she was in the company of others. The mother seemed to be aware of what had been said between William and the school staff. The mother said that she was stuck in Blackwood with car troubles and that William had permission to take Child A home.

¹⁵³ Case note dated 21 October 2015, subject: 'REOPENED – No change – NOC – NEG – Notifier 2', Case No. 313786.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

Child A has informed school staff that her mother is an unlicensed driver.

The school holds concerns about the consistency of Child A's care. Child A is an emotionally immature and sensitive little girl and she lacks social skills. Child A has missed 21 out of a total of 50 days of school without cause. School staff were only made aware of Child A's change in home situation due to the conversation overheard between Child A and the other child.

The mother is often very vague in conversation. She never answers the phone when contacted by teachers. Child A has previously been collected from school by taxi and the mother is often late in collecting Child A. The teachers hold concerns for Child A's care and wellbeing.¹⁵⁶

163. This notification was assessed as raising credible child protection concerns. A Tier 2 intake was raised. The following assessment rationale was recorded:

RE10 – [Child A]'s social, emotional or cognitive development is seriously at risk as [a] direct result of the mother's behaviour eg the mother has left [Child A] in the care of people she hardly knows without making proper care arrangements for her. The mother also has been uncontactable and her location is unknown. The mother has shown no interest in or has made no attempt to contact the people [Child A] is staying with to negotiate proper care arrangements for her.

The information indicates that the mother's behaviour is also impacting on [Child A]'s emotional well being [sic] who [sic] is lacking in social skills which are related to [Child A]'s long term absence and inconsistent school attendance. The mother has displayed a reluctance to address the concerns around [Child A]'s poor school attendance by not answering her phone and not attending meetings organised with the school to address the concerns. It has also been reported due to the mother's drug use, she is often not aware of the children being in the home resulting her [sic] not attending to their needs. If information is received that [Child A] is no longer being cared by [sic] [William] and the mother has not been located and resumed care then the information may need to be reassessed as a Tier 1[.]¹⁵⁷

164. Later that same day, the agency received a further notification concerning Child A:

Notification 11

Child A is in the care of William. William hardly knows the mother. He first met the mother through the school about six months ago.

William has contacted the school to advise that he cannot continue caring for Child A 'as he is a single parent and suffers from depression.'

William has been caring for Child A for two days. The mother told William that she was leaving Child A in William's care so that she could meet her drug dealer. The mother's whereabouts are unknown and she is not contactable by phone.

William has provided conflicting accounts to Child A's school concerning the mother's whereabouts. William first said that the mother was in jail for a few hours. Then in a second phone call, he said that the mother was having car troubles. The notifier is of the belief that William is in communication with the mother and that William has informed the mother of his phone calls with the school. This was so the mother's story could match William's.

The school managed to contact the mother. The mother claimed she was in Blackwood. The mother gave verbal permission for Child A to go home with William.

¹⁵⁶ Case note dated 21 October 2015, subject: 'Tier 2 (10) – RE10 – Notifier 1', Case No. 313786.

¹⁵⁷ *Id.*

The mother has not provided the school with an emergency contact number.

The mother told William that 'all her family are "fuck faces"'. The mother claims that she has no other family available to care for the children. Child C is in the care of the father. The mother said that this is because Child C resembles the father.

William is said to be caring for Child A out of a sense of obligation and not because he wants to.

On the night of 20 October 2015 William contacted SAPOL because he was unable to negotiate proper care arrangements with the mother. At this time, SAPOL informed William that the mother was known to SAPOL.

The mother has mental health issues and is prescribed medication, which she is not taking.

On 20 October 2015 Child A said that the mother had gone to jail and that the baby had gone with her, meaning her brother, Child B.

Child A was enrolled at Ingle Farm Primary School on 4 May 2015. She was absent during Term 2 for 18 days out of a total of 43 days. During Term 3 she was absent for 21 days out of a total of 50 days. She has missed four days out of a total of eight days of the current term. The school has attempted to raise Child A's attendance with the mother; however, the mother does not attend meetings with the school. The matter has been referred to a school attendance officer. Due to Child A's poor school attendance, she has trouble making friends.

The notifier has been informed of the following:

- the mother is an ice addict
- there is no food in the family home
- the mother does not know that the children are in the home, due to her drug intoxication
- when Child A was left in William's care, the mother was meeting her drug dealer
- Child A has appeared fearful of the mother on occasions when she was returned to the mother's care
- the mother does not sleep at night; she visits William's home during the night and screams in the street for money
- William has previously given the mother money for food, which she then used to purchase drugs
- the mother does not hold a driver's licence and is driving an unregistered car; it is not clear whether the mother drives the car with the children present.¹⁵⁸

165. The above notification was added to the existing intake. The following assessment rationale is recorded in the agency's file:

RN02 – The information from the informant raises concerns that the mother has a substance misuse problem that is interfering [sic] with her functioning and her ability to provide safe care for the children.

NEG4 added for [Child A] as the mother has failed to make appropriate care arrangements for the child.¹⁵⁹

¹⁵⁸ Case note dated 21 October 2015, subject: 'Upgrade -T2(5) Grounds added RN02 and NEG4- RE10 – Notifier 2', Case No. 321641.

¹⁵⁹ *Id.*

166. The next day, the agency received a further notification concerning the situation:

Notification 12

The mother was located at her property the previous afternoon. At the time, Child B was observed to be playing outside the front of the house. The mother was inside the house.

The mother answered questions in a very vague manner. The mother presented as if she was under the influence of something.

The mother was informed that William had expressed that he was not coping with Child A. The mother was advised to collect Child A from William. The mother acknowledged this.

The mother then drove to William's home and collected Child A.

The mother may have been under the influence of some substance. She may not be capable of caring for a child.

The mother will not be happy to have Child A back in her care.

Child A did not attend school today.¹⁶⁰

167. This notification appears to have been added to the existing intake. The agency's case notes provide: 'new information does not change the current assessment'.¹⁶¹
168. There are no records in the agency's file to suggest that any further action was taken in respect of the 21 October 2015 intake. There is no record of the intake being closed. The file does not indicate whether the agency determined that abuse or neglect had been substantiated.¹⁶²
169. On 25 November 2015 a further notification was submitted to eCARL:

Notification 13

Child A informed her teacher that the mother 'pushed [William] and he fell and cut the back of his head. There was lots of blood everywhere.'

Child A's friend then said 'Yeah, [Child A]'s mum pushed my dad. Blood was everywhere. He cut his head.'

There have been inconsistencies with attendance and reliability of care for both Child A and her friend. William previously reported to an officer of the school that the mother was a heavy drug user.

It is understood that Child A's parents are separated. Child A's enrolment records suggest that she sees her father occasionally. It is unclear how often Child A sees her father.

The mother rarely attends classes with Child A. Child A's younger brother may have been accepted into a special needs school, scheduled to begin in 2016. The brother's specific diagnosis is not known.

Child A is very needy in class and receives extra support from school staff due to her emotional irregularity.¹⁶³

¹⁶⁰ Case note dated 22 October 2015, subject: 'No change – Tier 2 (5 days) RN02 – NEG4 – RE10 – Notifier 3', Case No. 321641.

¹⁶¹ *Id.*

¹⁶² Case note dated 25 November 2015, subject: 'NOC – Notifier 1', Case No. 334025.

¹⁶³ *Id.*

170. This notification was not assessed until 1 January 2016. It was then screened out on NOC grounds. The assessment rationale provides:

RE05 risk grounds considered, yet not met. In review of this notification, and recorded history on C3, there is insufficient information which suggests that the family violence is chronic and/or severe; additionally, with no SDM threshold identified. This matter has been assessed as a NOC.¹⁶⁴

171. On 25 November 2015 a further notification was made to eCARL:

Notification 14

Child A has attended school without any food or drink on three non-consecutive days over a one-week period. On one of those days, the temperature was almost 40 degrees. This has happened occasionally over the year. Once or twice, the mother has attended school during the day to bring Child A lunch.

Child A is often really hungry and is beginning to smell unclean.

Child A arrives late in the morning, meaning she misses the school's 'breakfast club' service.

School staff have been supplying Child A with food and water on the days when she arrives empty-handed.¹⁶⁵

172. As in the case of the preceding notification, this notification was not assessed until 1 January 2016.¹⁶⁶

173. This notification was screened out on NOC grounds. No assessment rationale is recorded on the file.¹⁶⁷

174. On 17 January 2016 a further notification was made to CARL:

Notification 15

The mother uses the drug ice on a daily basis.

The mother drives an unregistered car while under the influence of ice.

There is no food for the children in the mother's home. The mother is always asking family or friends for food or for a loan to buy food. The notifier has directly witnessed the mother's drug use. The previous day, the mother asked the notifier for money to buy drugs and for a loan to buy food.

The children are always presenting as hungry and they have trouble sleeping. The mother often leaves the children with unknown people.

The notifier believes that the mother will continue to prioritise her drug use over the needs of the children.¹⁶⁸

175. This notification was assessed as raising child protection concerns and a Tier 2 intake was raised. The following assessment rationale is recorded on the file:

¹⁶⁴ *Id.*

¹⁶⁵ Case note dated 25 November 2015, subject: 'NOC – Notifier 2', Case No. 334025.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Case note dated 17 January 2016, subject: 'Tier 2 (5) – RN02 – Notifier 1', Case No. 336693.

RN02 – Sig risk of NEG – Substance Use – the children could be at risk of NEG due to ongoing reports regarding the mother’s drug use and the impact on the children. Previous reports from multiple notifiers identify that it has been suspect [sic] that the mother has been substance affected when picking up children from a school and the child [Child A] arriving often without food. Past C3 history in collaboration with today’s information meets the SDM criteria.

RPA – Tier 2 (5) – There is a pattern developing regarding concern over the mother’s alleged drug use and lack of food for her children and [Child B] [sic] is under the age of 4 Y.¹⁶⁹

176. The intake was closed on CNA grounds the following day. No further action was taken.¹⁷⁰

177. A further Federal Circuit Court hearing took place on 4 February 2016. It was ordered that the agency be requested to intervene in the proceedings a second time.¹⁷¹

178. On 10 February 2016 two further notifications were made to CARL:

Notifications 16 and 17

The mother, Child A and Child B have been rendered homeless. The family spent the previous night in a tent.

Housing SA had funded the mother to spend the night in a motel. The mother elected to sleep in a tent instead.

The notifier is advocating for the family to stay in another motel. The notifier has no other information concerning the family.¹⁷²

The notifier subsequently made a further notification ‘to report identical information to what they reported 3 hours earlier.’¹⁷³

179. Both notifications were screened out on NOC grounds. The agency’s assessment rationale records:

Assessed as NOC as the information does not give reasonable grounds to suspect abuse/neglect or that the child is at significant risk of serious harm. Information is vague and lacks details and does not reach SDM Screening Criteria at this stage.¹⁷⁴

180. On 11 April 2016 the agency supplied a report to the Federal Circuit Court in which it provided a brief summary of the recent notifications concerning the family:

Since the previous correspondence from Families SA in February 2015, there have been five notifications received, two of which were assessed as Tier 2 intake [sic] (21/10/2015 and 17/01/2016). Concerns reported primarily related to the mother’s care of the children and allegations of neglect and drug use. In relation to the October Tier 2 intake it was alleged that the mother had left [Child A] in the care of a man she’d only known for a few months and could not be contacted as she was allegedly in jail. This intake was ‘closed no action’ as there was no capacity across the northern intake team to allocate the case.

In relation to the January 2016 Tier 2 intake it was alleged that; the mother uses ICE each day spending all her money on this habit; there is rarely any food in the home and the

¹⁶⁹ *Id.*

¹⁷⁰ Case note dated 18 January 2016, subject: ‘CNA CLOSURE RATIONALE’, Case No. 336693.

¹⁷¹ Neither the CSO’s file nor the agency’s case notes include a copy of the orders made on 4 February 2016. The substance of the relevant order is however replicated in the agency’s letter to the court dated 11 April 2016, which was retained in the CSO’s file.

¹⁷² Case note dated 10 February 2016, subject: ‘NOC – NEG – Notifier 1’, Case No. 341938.

¹⁷³ Case note dated 10 February 2016, subject: ‘No change – Notifier 1 recontacted’, Case No. 341938.

¹⁷⁴ Case note dated 10 February 2016, subject: ‘NOC – NEG – Notifier 1’, Case No. 341938.

children always present hungry; the mother has and will prioritise her drug use over the children; and concerns the mother was frequently substance abuse affected whilst caring for the children. Unfortunately this Tier 2 intake was also 'closed no action' due to full case loads of social work staff.¹⁷⁵

181. The report concluded:

Families SA's delegated authority; A/Supervisor [...] would like to advise the Court that that the Family Assessment Report provided by the Court has been considered, including the most recent intakes and the Courts [sic] noted concerns. At this point in time Families SA unfortunately have been unable to make any further assessment of this family and therefore can only reiterate what was previously communicated to the Court in the correspondence dated 23 February 2015. Families SA respectfully declines to intervene in these proceedings.¹⁷⁶

182. A copy of the above report was supplied to Steven and Janet in the course of the court proceedings.¹⁷⁷

183. On 13 April 2016 a further hearing took place in the Federal Circuit Court. The mother and father did not attend court. Steven and Janet were awarded sole parental responsibility for Child C. It was ordered that Child A and Child B have weekly overnight contact with Steven and Janet 'to commence on the first week following the children's whereabouts being identified.'¹⁷⁸

184. The ICL was ordered to make all possible enquiries to ascertain the address of the mother and school enrolments for Child A and Child B. The ICL was ordered to liaise with the agency in respect of these enquiries. The agency was ordered to supply the court with a copy of its records concerning Child A and Child B. An order was made that the Minister for Education and Child Development 'address the matters raised' in the agency's 11 April 2016 report at the next hearing.¹⁷⁹

185. On 22 April 2016 the agency supplied a copy of its records concerning Child A and Child B to the Federal Circuit Court.¹⁸⁰ On 28 April 2018 the ICL was granted leave to inspect and copy the materials produced by the agency.¹⁸¹ It does not appear that upon inspecting those records the ICL made any further disclosure to Steven and Janet.

186. On 1 May 2016 a CSO solicitor contacted Ms [REDACTED], an officer of the Department for Education and Child Development, to request information concerning Child A and Child B's school attendance and educational progress.¹⁸²

187. On 3 May 2016 Ms [REDACTED] furnished the CSO with a signed statement summarising the department's enquiries and records concerning Child A and Child B's enrolment and attendance.¹⁸³

188. Concerning Child A, Ms [REDACTED] advised:

- Child A had been enrolled at Ingle Farm Primary School since 4 May 2015, having previously been enrolled at Elizabeth Vale Primary School
- Child A's school reported that Child A's attendance was 'poor' in Term 1 of 2016

¹⁷⁵ Letter from Ms [REDACTED] to the Federal Circuit Court dated 11 April 2016.

¹⁷⁶ *Id.*

¹⁷⁷ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 29:37.

¹⁷⁸ Case note dated 18 April 2016, subject: 'Subpoena Information', Case No. 353963.

¹⁷⁹ *Id.*

¹⁸⁰ Case note dated 22 April 2016, subject: 'send covering letter to court', Case No. 353963.

¹⁸¹ Case note dated 22 April 2016, subject: 'Notification from Court', Case No. 353963.

¹⁸² Letter from Ms [REDACTED] to Ms [REDACTED] dated 1 May 2016.

¹⁸³ Case note dated 9 May 2016, subject: 'Email request for Kanggarendi involvement', Case No. 358030; Case note dated 10 May 2016, subject: 'Email from [REDACTED] to numerous parties RE [REDACTED] family', Case No. 358030.

- Child A was absent for 37 days out of a total of 55 enrolled school days during Term 1; of the 18 days she attended, 'many have Later Arrivals or Early Departs'
- the school's Aboriginal Worker reported that she had attempted to contact the mother many times with little success; this worker had also attempted to contact the mother through 'Steve', the male living with the mother; the worker was informed by 'Steve' a number of weeks ago that the family would be moving to the Munno Para area
- the issue of Child A's attendance was referred to an Attendance Officer on 19 October 2015; as at 3 May 2016 that referral had not been actioned
- on 2 May 2015 Ms [REDACTED] was notified that the mother had requested to enrol Child A at Evanston Gardens Primary School; the mother was accompanied by a person named 'Steve'; the school intended to action this request on 3 May 2016.¹⁸⁴

189. Concerning Child B, Ms [REDACTED] advised:

- Child B was enrolled at The Grove Education Centre, a learning facility catering to children with intellectual disabilities; Child B's enrolment at the school came about as a result of a transitional Negotiated Education Plan that had been developed in consultation with the mother and the Ingle Farm Children's Centre
- Child B did not attend school at all during Term 1 of 2016
- Child B had not yet reached the age of compulsory school attendance
- the principal of The Grove Education Centre attempted to contact the mother when Child B failed to arrive for the first week of Term 1; the principal subsequently notified Ingle Farm Children's Centre that Child B had not been sighted by the Education Centre
- on 8 February 2016 a referral was made to an Aboriginal Services Engagement Officer
- Child B's non-attendance was raised during a Student Review Team Meeting on 24 February 2016; the school reported that the family was 'often missing'; the mother had previously claimed that this was 'due to DV issues'; the school resolved to write to the mother and to refer the matter to an Attendance Officer
- On 4 April 2016 the school was advised by the Aboriginal Services Engagement Officer that Child A had been sighted attending Ingle Farm Primary School; an Aboriginal Site Education Officer intended to conduct a home visit to the mother's property to sight Child B
- the school was 'concerned that [Child B] requires significant extra support for learning and have not yet heard anything regarding a transfer'; on 23 March 2015 a referral was made to the department's Support Services unit, indicating 'concerns regarding [Child B]'s speech and language development. He has limited vocabulary and has difficulties communicating. There is concern regarding [Child B]'s cognitive and social development'.¹⁸⁵

190. Ms [REDACTED] supplied a copy of Child A's attendance 'Student Absence History Report'. This document disclosed that Child A had a school attendance rate of 32.7%.¹⁸⁶

191. A copy of Ms [REDACTED]'s statement was supplied to Steven and Janet in the course of the court proceedings.¹⁸⁷

192. A CSO solicitor forwarded Ms [REDACTED]'s statement to the agency that same day.¹⁸⁸

¹⁸⁴ Case note dated 10 May 2016, subject: 'Email from [REDACTED] to numerous parties RE [REDACTED] family', Case No. 358030.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 30:24.

¹⁸⁸ Case note dated 9 May 2016, subject: 'Email request for Kangarenda involvement', Case No. 358030.

193. Later that same day, an agency practitioner responded to the CSO solicitor to advise that the request had been forwarded to the agency's Director of Metropolitan Services. This practitioner advised:

It is my understanding that you have requested that Families SA (NASH [Northern Assessment and Support Hub]) intervene in this matter and undertake any further work that is required however if this is incorrect I apologise. There have been a number of Family Court Matters that I have been asked to provide assistance with.

As [previously] indicated we do not have capacity to intervene or assist with any further assessment / work. With regards to as to whom will be taking over management of this case, given [a] departure from the office there are only 3 Supervisors across the office and with [the] replacement on training (induction) for the next six weeks I do not have another Supervisor to allocate this matter to. I will however attempt to respond as best I can.¹⁸⁹

194. A further Federal Circuit Court hearing took place on 4 May 2016, at which time the court considered the contents of the report authored by Ms [REDACTED]. In her absence, the mother was ordered to ensure that Child A and Child B attended school each day. The agency was ordered to supply the court with the location of Child A, Child B and the mother.¹⁹⁰
195. On 5 May 2016 the CSO solicitor responded to the agency's 3 May 2016 email (emphasis in original):

Yes, that is correct regarding the Court's request that the Minister intervene in this matter. This will need to be formally responded to with you having regard to Ms [REDACTED]'s statement, which you only received late Tuesday afternoon. The Court will need you to consider this and provide me with instructions as to whether or not this makes difference [sic] from the Minister's perspective, noting that to date the Minister has declined to intervene on the basis of resource constraints. I am communicating directly with Ms [REDACTED] to request that she provide an update with respect to the children's education and whereabouts, especially because an order was made for the school to release the children's address to the Court. I will include you into that email for your information.

The children are not attending school and are at risk. If the mother does not attend at Court in [sic] the next occasion then a warrant will be issued for her arrest.

The matter has been adjourned to **16 May 2016 at 2.15pm** for further consideration.

The Court was very concerned about the issue of capacity of the Elizabeth Office as per the letter dated 11/4/2016 and that children are at risk but resources are preventing intervention. This is why Crown was ordered to attend at Court. I submitted that you were yet to consider Ms [REDACTED]'s statement and that the matter was raised at higher levels within your organisation. I need this matter to be raised at Executive Level and to provide instructions that despite the risks to these children, I will be submitting that my instructions are to decline the request for intervention. I am asking for Executive input because as you are aware the Federal Circuit Court is an open Court and if submissions of this nature and adverse remarks are to be made, then it is best that the Executive Director is aware of same.

[...] [Ms [REDACTED]'s] report was helpful, but it also highlighted and confirmed concerns about the children and resulted in the Court remarking that the FCC and F/CTs are constrained and do not have investigative powers like the Minister does.

I will need your response by next **Friday, 13 May 2016**.¹⁹¹

196. That same day, the CSO requested an updated statement from Ms [REDACTED].¹⁹²

¹⁸⁹ *Id.*

¹⁹⁰ Orders of Judge Kelly dated 4 May 2016.

¹⁹¹ Case note dated 9 May 2016, subject: 'Email request for Kanggarendi involvement', Case No. 358030.

¹⁹² Email from [REDACTED] to Ms [REDACTED] dated 5 May 2016.

197. On 9 May 2016 the agency's Assistant Director – Metropolitan Directorate sent an email to the CSO and several agency practitioners, advising that the CSO's request had been considered and that:

[Kanggarendi] will review C3Ms, with the intention to sight the children and contact the school.

The Kanggarendi team will offer a non-investigative response to the family and assess what interventions may assist the mother and children.

[The Kanggarendi supervisor] will report the outcome of the intervention by Thursday the 15th May 2016.¹⁹³

198. The agency's two Kanggarendi teams provide non-investigative, community-based responses to notifications relating to Aboriginal children. The supervisor of the Kanggarendi team servicing the Northern metropolitan region subsequently responded to the Assistant Director's email:

We will attempt to touch base with the family this afternoon. [...] We will approach the case as a Kanggarendi case. [Senior Practitioner, Kanggarendi] in the meantime can I also get you to look on C3 [...]. Please touch base with the family, sight the children and identify their schooling for further contact. I will touch base with you prior to heading out.¹⁹⁴

199. That same day two agency practitioners attended the mother's listed address at Ingle Farm. The practitioners spoke with the tenant of the property, who advised that she had been residing in the property since approximately February 2016. The tenant advised that she knew the mother was a previous tenant because she received mail addressed to the mother at the property. The tenant advised that she had secured the property through the Accessible Housing service.¹⁹⁵
200. On 10 May 2016 an agency practitioner contacted Accessible Housing and was informed that the mother had vacated the Ingle Farm property on 25 January 2016. The agency was informed that the mother had not provided a forwarding address to the service.¹⁹⁶
201. On 9 May 2016 an agency practitioner received information to the effect that the mother, Child A and Child B had relocated to the Elizabeth area. The practitioner was also notified of further concerns about the mother. The substance of those disclosures is recorded in an email that was circulated between agency practitioners on 10 May 2016¹⁹⁷ and in a notification made to CARL that same day.¹⁹⁸

Notification 18

The mother is using ice daily, has a history of cannabis use and is dealing drugs herself.

The mother used to smoke cannabis but has since transitioned to using ice. The informant believes that the mother is 'in a bad way' and is 'on the stuff again', meaning the drug ice.

The informant is aware of the mother's current address. The informant recently visited the home. The informant holds concerns for the children due to the mother's heavy use of ice and erratic behaviour.

¹⁹³ Case note dated 9 May 2016, subject: 'Email request for Kanggarendi involvement', Case No. 358030.

¹⁹⁴ *Id.*

¹⁹⁵ Case note dated 9 May 2016, subject: 'Unannounced home visit to [Ingle Farm address]', Case No. 341938.

¹⁹⁶ Case note dated 10 May 2016, subject: 'Email re home visit to mother's address', Case No. 358030; Case note dated 10 May 2016, subject: 'Phone call from [...] Assessable [sic] Housing', Case No. 341938.

¹⁹⁷ Case note dated 10 May 2016, subject: 'Email re home visit to mother's address', Case No. 358030.

¹⁹⁸ Case note dated 10 May 2016, subject: 'T2(5) – RE02 – RN02 – Notifier 1', Case No. 358030.

The mother has been using ice for some time. Child A is being exposed to the mother's drug use. The informant is unable to supply times or dates in relation to this disclosure.

The mother has lost a substantial amount of weight over the previous 12 months. This is due to drug use.

The informant believes that the mother would flee interstate in order to avoid having Child A and Child B removed from her care.¹⁹⁹

202. This was the last notification that the agency received in respect of Child A and Child B.

203. The notification was assessed as raising credible child protection concerns and a Tier 2 intake was raised. The following assessment rationale is recorded in the agency's file:

Due the [sic] pattern of concern being reported that identify the mother has a substance abuse issue and although the details of how exactly this impacts of [sic] her parenting capacity is limited the CP history for these children identifies that the mother has a propensity for physical violence and it is reasonable to assume that in consideration of the mother's behaviours, current concerns, recorded history and the known effects of Ice, that the mother's drug use which is reportedly daily would be impacting on her parenting capacity which is evidenced by her non-attendance at court and reports that drugs are prioritised over the purchasing of food and accommodation and relationships with others placing the children at significant risk of serious harm.²⁰⁰

204. The same day that the intake was raised, an agency practitioner contacted a number of primary schools in the area. The practitioner eventually ascertained that Child A was enrolled at Evanston Gardens Primary School.²⁰¹ The school subsequently supplied the practitioner with the mother's Evanston Gardens address, as recorded in the enrolment records.²⁰²

205. That same day, two agency practitioners attended Child A's school and spoke with the school principal. The principal expressed concern about the change of custody that was scheduled to take place that evening, 'in that if the mother was not aware of it there may be a scene'. The principal had been supplied with a copy of the Federal Circuit Court orders by the grandparents. The practitioners undertook to make enquiries to ascertain whether the mother was aware of the orders.²⁰³

206. The practitioners then sighted Child A at the school. Child A was observed to be neatly dressed and clean. Child A appeared happy and was participating in class activities at the time. The practitioners did not speak with Child A. Staff informed the practitioners that Child A had only been attending the school for one term and that Child A had 'missed a couple of days of school'. Child A participated well and had given a talk to the rest of her class that morning. Staff indicated that the school 'had no issues or concerns for the child and she brought her lunch to school each day'.²⁰⁴

207. The practitioners subsequently attended the address provided by the school. There was initially nobody present at the home. The practitioners examined the outside of the home and inspected the tops of the rubbish bins. No drug paraphernalia was located.

¹⁹⁹ *Id.*

²⁰⁰ Case note dated 10 May 2016, subject: 'Email re home visit to mother's address', Case No. 358030; Case note dated 10 May 2016, subject: 'Phone call from [...] Assessable [sic] Housing', Case No. 341938.

²⁰¹ Case note dated 10 May 2016, subject: 'Phone calls x 5 to Primary School [sic] in Elizabeth area', Case No. 341938.

²⁰² Case note dated 10 May 2016, subject: 'Email re home visit to mother's address', Case No. 358030.

²⁰³ Case note dated 10 May 2016, subject: 'HOME VISIT – Unannounced', Case No. 358030.

²⁰⁴ *Id.*

The outside of the home appeared untidy 'however there appeared to be nothing of concern to FSA staff'.²⁰⁵

208. The mother then arrived at the property with her partner 'Stephen'. It is clear from the surrounding context that this was Mr Peet.²⁰⁶
209. The practitioners asked to see Child B. The mother then removed Child B from the car. He was observed to be smiling and happy. He had a small toy, which he showed off to the practitioners. The vehicle, which had been driven by the mother to the property, appeared at a glance to be ordinary, 'with no major safety concerns'.²⁰⁷
210. The mother was informed that the Federal Circuit Court had ordered the agency to locate and sight the children. The mother enquired if the practitioners had visited Child A's school and if Child A was still at the school. The practitioners responded in the affirmative and advised the mother that they did not intend to return to the school.²⁰⁸
211. The mother submitted that she was not aware of the Federal Circuit Court orders. She volunteered that she had been arrested the previous week on a 'Family Court Warrant'. The practitioners inferred that the mother's bail conditions would require her to attend the next hearing date, although this was not clarified with the mother.²⁰⁹
212. The practitioners observed that the mother was reasonable and polite in her behaviour, 'if not [appearing] a little perplexed or worried by the attendance of FSA', as did Mr Peet. Both were observed to be neatly dressed and clean. The mother was wearing makeup. Neither appeared to be under the influence of anything, nor suffering the after-effects of alcohol or drugs. There were no physical indicators of drug use.²¹⁰
213. The practitioners left the property and telephoned the school to inform staff that the mother claimed not to be aware of the court orders. Whilst on the phone with the school, staff informed the practitioners that the mother had arrived at the school. The school subsequently notified the practitioners that the mother had collected Child A early.²¹¹
214. This information was communicated to the CSO. A CSO solicitor subsequently emailed the agency's practitioners:

I need a response from Families SA as to the Court's request for intervention and your position on this matter and from Education as to the issues for the children re: school.²¹²

215. This was followed by a further email on 12 May 2016:

I will need a report from Families SA as to the current notification received and information as to the proposed investigation, what it involves and a timeframe for the Court. I will also need a report from [REDACTED] as to what has been happening from the school's perspective as previously discussed. The Court will want to know whether the mother complied with the order and brought the children to school for the paternal grandparents' Court ordered time and any other information relevant to the children. I will need those reports by tomorrow as Court is on Monday.²¹³

²⁰⁵ *Id.*

²⁰⁶ Case note dated 10 May 2016, subject: 'HOME VISIT – Unannounced', Case No. 358030 ('...her partner who identified himself as "Stephen" possibly with a middle name of "Graham". Stephen had a distinctive row of skull tattoos around his neck.'). Mr Peet is depicted with similar tattoos in photographs published in news reports following the murders.

²⁰⁷ Case note dated 10 May 2016, subject: 'HOME VISIT – Unannounced', Case No. 358030.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Case note dated 10 May 2016, subject: 'Email [...] to numerous parties RE [REDACTED] family', Case No. 358030.

²¹³ Case note dated 12 May 2016, subject: 'Email from Crown re [Child A] AND [Child B]', Case No. 358030.

216. On 13 May 2016 Ms ██████████ supplied the CSO with a further statement concerning the children's school attendance records. Ms ██████████ confirmed that Child A's enrolment at Evanston Gardens Primary School had been actioned. During the enrolment process, the mother informed the school that Child B was 'not at school'. Since the date of her enrolment, Child A had attended school on seven out of a total of nine days. She arrived late or left early on five of the days she attended. Mr Peet, identified as Child A's 'stepfather', was responsible for signing Child A in late on one occasion.²¹⁴
217. A copy of Ms ██████████'s statement was supplied to Steven and Janet in the course of the court proceedings.²¹⁵
218. That same day, the agency supplied the Federal Circuit Court with a written report concerning the children. The agency advised the court of the 10 May 2016 interactions with the mother. In respect of the 10 May 2016 intake, the agency advised:
- Families SA's delegated authority, Supervisor [...] would like to advise the Court that Families SA's Gawler Office will investigate and assess the reported concerns regarding the mother's alleged drug use. As part of this investigation, Families SA will speak with the mother, the children and the children's school and will also assess the living conditions of the family home, determine if the children's basic needs are being met and assess the mother's presentation. The findings of this investigation will be provided the [sic] Court upon completion. Families SA respectfully requests the Court adjourn the proceedings for a period of 4 weeks to enable this to occur.²¹⁶
219. A copy of the above report was supplied to Steven and Janet in the course of the court proceedings.²¹⁷
220. On 13 May 2016 a practitioner at the agency's Gawler office prepared an investigation plan in respect of the 10 May 2016 intake. That investigation plan envisaged further visits to Child A's school and to the mother's home. The agency was to discuss the child protection concerns and the ongoing court proceedings with the mother.²¹⁸
221. On 16 May 2016 a further hearing took place in the Federal Circuit Court. The mother attended this hearing, accompanied by Mr Peet.²¹⁹ Steven and Janet appeared in person and a CSO solicitor appeared on behalf of the Crown.²²⁰ The ICL submitted to the court that the mother had been served with a copy of the court orders on 9 May 2016. The ICL made submissions to the effect that the mother was being untruthful as to her knowledge of the court orders and appeared to be attempting to frustrate contact between the children and the grandparents.²²¹
222. The mother was ordered to ensure that the children were present at school on Tuesdays for collection by the grandparents. The mother was further ordered to enrol Child B at Child A's school within four days. The mother was to surrender Child B into the care of Steven and Janet in the event that Child B was not enrolled at a school by the following day. The matter was adjourned until 29 August 2016.²²²

²¹⁴ Case note dated 10 May 2016, subject: 'Email [...] to numerous parties RE ██████████ family', Case No. 358030.

²¹⁵ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 30:29.

²¹⁶ Letter from Ms ██████████ to the Federal Circuit Court dated 13 May 2016.

²¹⁷ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 29:42.

²¹⁸ Case note dated 13 May 2016, subject: 'Investigation Plan', Case No. 358030.

²¹⁹ Case note dated 17 May 2016, subject: 'Email from crown [...] in regards to orders and family court', Case No. 358030.

²²⁰ Case note dated 16 May 2016, subject: 'EMAILS re Family Court', Case No. 358030.

²²¹ Case note dated 17 May 2016, subject: 'Email from crown [...] in regards to orders and family court', Case No. 358030.

²²² Case note dated 16 May 2016, subject: 'EMAILS re Family Court', Case No. 358030.

223. On 17 May 2016 the CSO advised the agency of the orders made by the court. The CSO requested that the agency supply a draft report as to its investigations concerning the mother prior to the next attendance date.²²³
224. On 18 May 2016 an agency practitioner telephoned SAPOL to enquire as to whether there were any safety concerns regarding the mother or Mr Peet. The agency's case notes record that the agency was advised that SAPOL had 'no history' concerning Mr Peet. SAPOL disclosed that [REDACTED].²²⁴
225. That same day, two agency practitioners attempted a further unannounced visit to the mother's home. The gate to the home was closed and locked and the practitioners did not enter the property. The practitioners left a calling card for the mother.²²⁵ The practitioners then attempted to telephone the mother. The mother's telephone was disconnected.²²⁶
226. The practitioners then attended Child A's primary school. School staff provided the practitioners with a current mobile telephone number for the mother. The school advised the practitioners that the mother had enrolled Child B at the school the previous day.²²⁷ Child A and Child B had been dropped off by the grandparents that morning in accordance with the court orders. Staff had no concerns regarding the children. Child B had only started school the previous day. The children came with lunches every day.²²⁸
227. The practitioners met with Child A in the presence of an Aboriginal Community Education Officer (ACEO). Child A informed the practitioners that she lived with 'Mum and Pop'. Child A was asked if she had any worries at home. Child A responded that her brother Child C was at 'Pop's house' and that she wanted him to come home. This made her sad. Child A told the practitioners that she enjoyed making things at school and had no worries while at school. Child A worked on a 'safety house' with the practitioners. She coloured in parts of the house but did not draw any people when asked to do so. Child A advised the practitioners that she felt safe with the mother, Child B and 'uncle Ricki'. She was unable to tell the practitioners whether she felt unsafe with anyone.²²⁹
228. The practitioners observed that Child A was at times difficult to understand. Her speech appeared to be delayed for her age. The practitioners sometimes had to ask Child A to repeat her responses.²³⁰
229. The practitioners next met with Child B in the presence of the ACEO. The ACEO informed the practitioners that Child B had autism. The practitioners observed that Child B appeared to be a happy young boy. Child B appeared to be singing something, however the practitioners were unable to understand anything Child B was saying. Child B was asked to state his age. The practitioners were unable to understand Child B's response, however knew that he was saying 'five'. The practitioners noted that Child B's words 'sounded jumbled and did not make sense'.²³¹
230. A practitioner subsequently called the telephone number supplied by the school. A male answered and passed the phone to the mother. The practitioner requested to visit the mother and speak to her. The mother advised that she was busy and the

²²³ Case note dated 17 May 2016, subject: 'Email from crown [...] in regards to orders and family court', Case No. 358030.

²²⁴ Case note dated 18 May 2016, subject: 'Pc to SAPOL re safety check', Case No. 358030.

²²⁵ Case note dated 18 May 2016, subject: 'Hv to family, gate closed unsure were [sic] house was located', Case No. 358030.

²²⁶ Case note dated 18 May 2016, subject: 'Pc to [the mother] phone disconnected', Case No. 358030.

²²⁷ Case note dated 18 May 2016, subject: 'school visit to Evanston gardens primary school to see children', Case No. 358030.

²²⁸ Case note dated 18 May 2016, subject: 'Additional information re school visit', Case No. 358030.

²²⁹ Case note dated 18 May 2016, subject: 'school visit to Evanston gardens primary school to see children', Case No. 358030.

²³⁰ *Id.*

²³¹ *Id.*

practitioner would have to visit the next day. It was agreed that the practitioners would attend the mother's home at 11am the next day. The practitioner was instructed to enter via the gate to the property. The mother was informed that the practitioners had visited the children at the school.²³²

231. The mother telephoned the agency the next morning to cancel the scheduled home visit. The mother stated that she needed to attend Salisbury to renew her vehicle registration. The practitioner asked the mother about her upcoming availability. The mother stated that she would telephone the practitioner later that day to arrange a time for the visit.²³³ The agency's case notes do not clarify whether this occurred.
232. On 20 May 2016 the practitioners attempted a further visit to the mother's property. The practitioners were confronted by a large, aggressive dog. The practitioners telephoned the mother from their vehicle. The mother stated that she was not at home. The mother said that her partner was at home. She would call her partner to collect the dog. She asked the practitioners to leave a note with her partner outlining what the practitioners wished to discuss with her. The mother said that the practitioners could otherwise return the following week. The practitioner informed the mother that the agency had received a notification concerning the children, and that the practitioners needed to discuss a number of things and needed to inspect the inside of the house. The mother was informed that the practitioners would return after the weekend.²³⁴
233. On the morning of 23 May 2016 Mr Peet telephoned the agency to advise that he and the mother would not be at home for that morning's scheduled visit 'as the children were sick and [he and the mother] were taking them straight to the doctor.'²³⁵ It appears that on this occasion the agency may have rescheduled the home visit for 25 May 2016,²³⁶ although this is not recorded in the relevant case note. An agency practitioner subsequently contacted the school and confirmed that the children were not at school. The school principal informed the practitioner that Mr Peet had telephoned the school that morning to advise that the children were ill.²³⁷
234. On 25 May 2016 two agency practitioners attended the mother's home for a visit it had scheduled with Mr Peet. The door was not answered and there were no sounds heard from within the property. The dog was no longer present. The practitioners left a note on the front door asking the mother to telephone the agency as soon as possible.²³⁸
235. On 26 May 2016 two agency practitioners attended the mother's home. The mother and Mr Peet were present at the home. The mother advised the practitioners that Child B was sick and at home. The practitioners questioned the mother about her reported use of the drug ice. The mother denied using ice. The mother stated that she and Mr Peet did not use drugs or drink alcohol. The mother volunteered that the father previously used ice. The mother said that she believed the father was still using ice. The mother informed the practitioners that she smoked marijuana 'for her epilepsy', as she wanted 'to use the nature [sic] stuff and doesn't trust medication.'²³⁹

²³² Case note dated 18 May 2016, subject: 'Pc to [the mother] [...] re seeing kids at school and meeting her', Case No. 358030.

²³³ Case note dated 19 May 2016, subject: 'Pc in from [the mother] cancelling today's [sic] meeting', Case No. 358030.

²³⁴ Case note dated 20 May 2016, subject: 'HV and Pc to family not at home re investigation', Case No. 358030.

²³⁵ Case note dated 23 May 2016, subject: 'Pc in from the mothers [sic] partner cancelling this morning meeting', Case No. 358030.

²³⁶ Case note dated 25 May 2016, subject: 'hv to family for appointment family not at home', Case No. 358030 ('Mothers partner organised this appointment time on behalf of mother').

²³⁷ Case note dated 23 May 2016, subject: 'Pc to Evantson [sic] gardens school re school attendance today', Case No. 358030.

²³⁸ Case note dated 25 May 2016, subject: 'hv to family for appointment family not at home', Case No. 358030 ('Mothers partner organised this appointment time on behalf of mother').

²³⁹ Case note dated 26 May 2016, subject: 'hv to family discuss concerns', Case No. 358030.

236. The practitioners raised the subject of the mother's adherence to the Federal Circuit Court orders. The mother advised that she understood the consequences of not adhering to the orders.²⁴⁰
237. The mother agreed to allow the practitioners to inspect the inside of the property. The practitioners observed that Child B was present inside the home. He was wearing underwear and a t-shirt, 'despite being sick and it being forecast for 18 degrees' that day. Child B was crying when the practitioners entered the home. The mother was observed to pick up Child B and comfort him. He later sat with Mr Peet on the lounge.²⁴¹
238. The mother informed the practitioners that the carpets in the home had just been cleaned. The practitioners observed that the home appeared clean and tidy. The family did not have many belongings, 'just the basics' such as a television, table, mattress, etc. The practitioners inspected the pantry, which was observed to hold enough food for a few meals.²⁴²
239. The practitioners inspected the children's bedrooms. Both rooms had 'lots of toys on the floor'. Neither room had a bed or any bedding. The practitioners asked the mother where the children slept. The mother directed the practitioners to a mattress standing up against the hallway adjacent to the lounge room. The mother informed the practitioners that she had 'beds on order', which were due to be delivered by 'Rent A Room' the following week.²⁴³
240. The practitioners observed that the family appeared to have no storage equipment. The mother was asked if the family was struggling financially. The practitioner offered to refer the mother to a financial counsellor. The mother responded that she believed she was not receiving 'all her payments' but was otherwise fine. The mother volunteered that she obtained food from a food cooperative.²⁴⁴
241. A practitioner subsequently discussed the family's situation with a financial counsellor. That counsellor advised the practitioner that it would be appropriate for the practitioner to seek approval to purchase beds for the home. The counsellor opined that the family would otherwise be locked in to an expensive repayment schedule. The counsellor volunteered that she would attempt to allocate the case to allow the agency to renegotiate the rental contract with the company. The practitioner subsequently sought advice from a supervisor as to the possibility of the agency purchasing furniture for the family.²⁴⁵
242. On 27 May 2016 the agency initiated the process of referring the mother to its Financial Counselling and Support Program.²⁴⁶
243. On the morning of 30 May 2016 an agency practitioner attempted to telephone the mother. The practitioner observed that the mother's telephone appeared to be switched off. The reason for the telephone call is not recorded in the agency's case notes.²⁴⁷
244. Later that morning, two agency practitioners attended the mother's property. The practitioners knocked on the door. There was no answer. It was observed that the heater servicing the home appeared to be switched on. The practitioners could not hear any sounds coming from inside the home.²⁴⁸

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Case note dated 26 May 2016, subject: 'Consultation with financial counselor [sic] and supervisor re financial support', Case No. 358030.

²⁴⁶ Case note dated 27 May 2016, subject: 'Financial Counselling & Support Program Referral – CP1018', Case No. 358030.

²⁴⁷ Case note dated 30 May 2016, subject: 'Pc to the mother no answer phone is off', Case No. 358030.

²⁴⁸ Case note dated 30 May 2016, subject: 'hv to family not at home', Case No. 358030.

245. Later that day, the agency was notified that Mr Peet had murdered the mother, Child A and Child B inside the family home.²⁴⁹

The interview with Steven and Janet

246. Steven and Janet attended an interview with my investigators on 11 October 2018. Neither party was required to give evidence under oath.
247. The record of interview makes for very difficult listening. I thought both parties did very well in articulating their views to my investigators.
248. During interview, Steven summarised his complaint in respect of the agency's information sharing practices:

The mother had stopped handing over the children [...]. We spent the next, I think, 14-odd months without seeing the children. She was hiding the children. She was attending court periodically -- Family Court.

The investigation with the police over [Child C]'s initial assault was taking forever. [...] Families SA, during this time, were constantly in contact with us. They only gave their blessing to us taking custody of [Child C], so they were well aware of the situation and what was happening. They had a representative present in each of the court hearings. They were well aware of what was going on. The only problem was that they were not handing over any information to us.

Now considering the fact that we had the custody of the older brother, [...] we would have been a priority in all of this situation, and we were never offered anything in the way of information about [Child A and Child B's] welfare. Now it's come to light that over this period of time the children were homeless, poorly fed, poorly clothed, [there was] poor school attendance that equated to nine out of 60 days in attendance.

Now we were not even informed of notifications that were being made. We had no idea where the children were. Our lives were a mess trying to find those children. We used to quite often drive around. People would spot them somewhere in a certain neighbourhood, and we would drive around these neighbourhoods trying to see if we could see them, hoping that we might drive down a street and they would be playing out the front or whatnot. [...]

Because we were involved in the Family Court, we thought we were in the loop. So there was no point in us making any notifications. [...] Even during that process, the responses were negligible. I mean, we weren't being contacted back, we would never get a return phone call. No one was ever there when we phoned; "We'll pass the message on, someone will return the call." The call wouldn't be returned. We would re-ring; same thing the next time. Then even if we did get a response, in the context of hindsight everything was just a lie anyway. They were pointless conversations [in terms of] helping us.²⁵⁰

[...]

It's one thing for all of this to happen, but [there's also] the reality of knowing that we were robbed of any possible chance. We had no information to make a judgment on. Without that, we're useless. We're useless to them [the children]. The only people that were holding this information were withholding it, I mean just absolutely withholding it. They knew all this. They stated all this, all these reports come back, "This happened a year ago, this happened 18 months ago". Why the hell are we not told about it?²⁵¹

249. Janet commented:

²⁴⁹ Case note dated 30 May 2016, subject: 'NGI – PHY4 – Notifier 1', Case No. 358030.

²⁵⁰ Interview with Mr S Egberts and Ms J Wells dated 11 October 2018, transcript at 6:15.

²⁵¹ *Id.*, transcript at 44:47.

[It's] just a phone call. Like even if they had answered or returned one of my phone calls, it would have been nice [for the agency to have said] "Heads up, go get them [the children] if you find them".²⁵²

250. Steven described the circumstances giving rise to the November 2014 notification and its immediate aftermath:

The mother had [REDACTED]

[REDACTED] What happened is when we initially got hold of him, we told them [...] that we weren't returning [him]. After a couple of days she wanted him returned. We told her "This can't happen. We have already been to the police. We have reported to the CARL line and we can't return him to [you]".

We were then intimidated by the family, who were rocking up in carloads, making threats and all sorts of things, and then a few days later we had Federal Police knocking on our door with a [recovery] order for the child.

[...]

Now, we had to hide the child from the Federal Police for about four weeks. Our houses, every one of our children -- we have nine children between us -- our children's houses were all being raided. Our houses were being raided, [our] workplaces... They were absolutely determined to get the child back, which we couldn't stand for because we knew [REDACTED]

Now eventually I came to an agreement with the Federal Police and they agreed to look at what we had as evidence. We have reported to the police. We had reported to the CARL line. We had numerous text messages and photos as evidence [REDACTED].

Thankfully, those Federal Police risked their jobs to save [Child C] that day. I agreed to hand him over, as long as they would look at the evidence. Once they saw the evidence, they all risked their own jobs to help us that day. They refused to hand him over to the Family Court, which could have resulted in them losing their jobs. It was a pretty serious thing at the time, but they understood what was going on.²⁵³

251. Janet described the experience of making the November 2014 notification:

I was a dribbling mess, I was crying my eyes out. And they [the agency] must have made the notification to the police straightaway, because I got a phone call within two days.²⁵⁴

252. At time of interview, neither Steven nor Janet was aware that the agency had initially determined to take no action in respect of that notification.

MS WELLS: I made [the notification] to the [CARL] line. I stayed on there for about two hours [...] and they rang the police. They must have put their concerns through to the Elizabeth police, and then about four days later I had the Elizabeth police ring me and asking [for] information. I had to email through the photos, the emails and all that sort of thing, the pictures and messages that she had sent. I gave them all the information. Then they [the police] took a statement from us[.]²⁵⁵

[...]

They did everything right when it come to me complaining about [REDACTED], and I had all the evidence there and everything. And we had her [the mother] ringing wanting him back and I [couldn't] hand him back. I said "I can't do it."

²⁵² *Id.*, transcript at 21:31.

²⁵³ *Id.*, transcript at 4:22.

²⁵⁴ *Id.*, transcript at 23:13.

²⁵⁵ *Id.*, transcript at 21:43.

MR EGBERTS: Looking back now, it was hard for them [the agency] to have any alternative, because of the amount of evidence we had --

MS WELLS: I told them we weren't going to hand him back anyway. I said "She can come back to the door, I'm not going to hand -- he [Child C] doesn't want to [go], he's devastated".²⁵⁶

253. Each expressed dismay upon being informed of the CNA determination:

MR EGBERTS: Man, now I'm gobsmacked.²⁵⁷

MS WELLS: It's not worth making the notification then, is it?²⁵⁸

254. Steven and Janet provided their recollection of the circumstances surrounding the October 2015 notifications:

MR EGBERTS: We heard from Modbury Police Station, they rang us one day and said [...] [that] [Child A] had been left at some man's house and they [had] determined that [the mother] had only known this bloke a short while.

Anyway, she left him there for apparently overnight and didn't return for a week. They rang us and they said "Look, we've contacted Families SA, and they've told us to ring you". And they said "Are you interested in taking [Child A]?" And I said "Well, of course, we are. Where are you? I'll come and pick her up." They said "Well, look hang on, slow down a bit. We'll call you back at 6 o'clock tonight. We'll make some arrangements and we'll recontact you." We rang -- we still didn't get a phone call from those people. We were ringing up later that night and when we finally got contact with them they said "Oh no, sorry, we passed the child back to the mother."

MS WELLS: I had rang Families SA to find out what the update was because I knew they were involved, police said they were. Four phone calls, not one phone call back. I kept leaving my name, asking, telling them what happened.²⁵⁹

255. Steven criticised the agency's position in respect of the Federal Circuit Court proceedings:

In April of '16, six weeks before the children passed -- five weeks, I think -- we presented at court, and we were stopped out the front by a Families SA representative, who we had been accustomed to dealing with at the Family Court, and she basically explained to us that the shit had hit the fan and everything was going wrong.

Once again, we still weren't aware of the full story but she was saying that the thing that scared us the most was the drug usage. We knew [the mother]'s volatile nature as a straight person, and were very concerned what would happen if she was taking ice. [...]

At that court date we went into the court [...], and we were panicking obviously because of the drug usage, and the [CSO] lawyer started explaining to the judge what was going on. And then [she] said to the judge "Your Honour, we would like to decline to intervene any further" and even the Family Court judge had just gone "What the hell is going on here? This doesn't sound right". She said, "Look, I want you to present in court, [at] the next court [hearing] [...], so that we can get something resolved here."

Now she wanted another investigation held straightaway into the children's welfare, the presiding judge of the Family Court. She told them that this was not good enough and all the rest of it.

Now at that court [hearing], we were granted our access to the children again, which for us was just a huge relief. We hadn't seen them in so long that we were just glad to see them again. I mean, we really thought that we were on the right path at this time, considering the evidence that Families SA was presenting. Unbeknownst to us they

²⁵⁶ *Id.*, transcript at 23:16.

²⁵⁷ *Id.*, transcript at 25:30.

²⁵⁸ *Id.*, transcript at 25:38.

²⁵⁹ *Id.*, transcript at 8:46.

weren't presenting all of the evidence. There was much more evidence that they had left out of that court case. There was no mention of all of the notifications, who the notifications were made by, what the notifications were. [Child A] and [Child B] spent most of that year living in a car or in a tent, in a drug addict's backyard.²⁶⁰

256. Steven and Janet described the period following the April 2016 hearing:

MR EGBERTS: So we were given all of these orders, and we had [access to the children] a week later. Now, part of those court orders were that we were not to discuss any of the current court matters with the children, which was hard to do because we wanted to ask them "What is happening at home?" But it became painfully obvious on that visit, that [Child A] had been intimidated by the mother into not telling us anything.

She spent nearly -- a good couple of hours, on our first meeting, intimidating the older brother to return home. "Mum said you have to come home. Mum said there's a room for you at home and you need to come home."

MS WELLS: She's crying her eyes out, [while] she's saying this.

MR EGBERTS: She was crying her eyes out. So that visit went by. We'd had an arrangement, we told the courts we didn't want any contact with the mother. We wanted our access to be granted after school and to return them to school so that there needed to be no contact with the mother or the family.

We had a second contact [visit] a week later. We were given -- they wanted us to just have Tuesday nights to ease the mother into it, or whatever. So we had a second visit.

On that second visit, it was still apparent that there was something really wrong with [Child A]. [Child B] had no ability to express himself, so we've never had a conversation with [Child B]. When we dropped [Child A] off the second time at school, we kept sending her -- we were in the classroom and we kept sending [Child A] back to the class. It was about to start. We said "All right, sweetie, go and have a good day at school and we'll see you next week". Next week was my 50th birthday, and she was excited about making me something for my birthday. But she kept running back up to me, crying, just hugging my leg, and this happened about five times. She just wouldn't let go. So we knew things weren't right.

MS WELLS: She was never like that. She loved school. The teacher was crying; I'm crying, Steve's crying.²⁶¹

257. Steven elaborated on his belief that further notifications had been made by Child A's school:

The teachers at the school knew [of the mother's homelessness], and were obviously reporting this to Families SA. We have a good rapport with [the primary school] now. The teachers there, they're mortified. They can't believe [it]. They said every week they picked straws to decide who was going to make notifications this week about [Child A] and [Child B]. They made numerous. The numbers the Families SA present are not the numbers that [staff at the school] say that they made.²⁶²

258. Steven and Janet were critical of the agency's assessment of the notifications that followed the events of November 2014:

MR EGBERTS: We're just blown away that you can even talk about [...] [Child A] and [Child B]'s safety without bringing [the ██████ assault] into it. They were well aware of all of this.²⁶³

[...]

[The agency said that] most of these notifications only equated to Tier 2. Well, we obviously object to those classifications in the first place. That's just a way to get you out

²⁶⁰ *Id.*, transcript at 9:27.

²⁶¹ *Id.*, transcript at 13:22.

²⁶² *Id.*, transcript at 10:36.

²⁶³ *Id.*, transcript at 4:45.

of trouble when you are wrong, because those notifications in the context of what happened to the older brother should have been automatically a Tier 1. Surely alarm bells are ringing when you have one child that has been -- as I say, we don't even know what the

Now they reckon they couldn't because [Child C] was six years old. But still the context of Families SA, how are alarm bells not ringing in your head? Why are these notifications about two other children, being abused in all sorts of manners, not being taken into context? Now, they weren't being fed, they weren't being clothed, they weren't presenting to school. [Child B], the youngest boy, was autistic and the education system was demanding that he receive urgent help before school age to help him work his way through his problems. [...]

So where they get their context for a Tier 2 classification in this, to me that is criminal in itself.

MS WELLS: Why are they not letting us know that [Child A] and [Child B] need us?

MR EGBERTS: We told them at the end of the day, we said, "If you weren't prepared to do anything, why were you not giving us the opportunity to do it?" We'd already shown our determination with the oldest child.²⁶⁴

259. Each expressed dissatisfaction at the agency's response to the notifications:

MS WELLS: I have a copy of notifications that were made when [Child C] was eight months old. That was the first notification on that. [...] If she [the mother] is already in the system why are they not, as I said, why haven't they just given us the opportunity to stay focused on -

MR EGBERTS: This is the sticking point, I think, in all of this, is we told them, if you didn't want to do it why pretend for a year and a half, and then just present at court and [...] [say] to the judge "Look, it's all just gone berserk. It's an absolute mess, your Honour, but we are declining to intervene"? I mean how is that supposed to sit with us?

That our grandchildren were treated like garbage and I mean they were, they were treated like garbage[,] [...] I told Families SA very early on in the piece, I said "Look you come to me with any evidence that suggests that you ever went and checked on those children", because we knew, we knew they had never checked on those children. They were getting reports about these children sleeping in tents, sleeping in cars, the mother drugged out of her mind with no food or clothes being provided, they never even rocked up once. Not once.

How can you do that to two small children? Surely one visit was not out of the question. [...] Surely one time to go around there and check was not out of the question, considering the context. Their older brother had been half beaten to death. How do you not say to yourself "Man, maybe we better go and check once".

We have talked to the people, the drug addicts that were letting them live in the backyard with the tent, and I mean these people are cracked out of their brain, but even they can't understand why Families SA never came around.²⁶⁵

260. Steven and Janet each submitted that further disclosure by the agency would have prompted them to take further action in the context of the family law proceedings:

MS WELLS: Yes [we would have acted differently].

MR EGBERTS: Of course. We took [Child C] and we withheld him. We -- I find what we did to be -- I'm quite horrified that we risked all of our family. We put all our family through hell to do this for [Child C]. [...]

Families SA were well aware of what we were prepared to go through to help [Child A] and [Child B] [...]. We knew that [Child A] and [Child B] were in danger, obviously from a

²⁶⁴ *Id.*, transcript at 11:9.

²⁶⁵ *Id.*, transcript at 17:15.

violence standpoint, and then when they started telling us about ice usage, that concern became even more real. Now, obviously no one could predict what eventually happened. We didn't think that danger was coming from somebody else, but that danger was still present.

The fact [was] that [the mother] was not handing over these children to us for a year, nobody had seen these children in a year, and those that had were making notifications about their welfare, and all of these notifications were concerning no food, [the children] presenting at school with no lunches and poorly dressed. I mean they were living in a tent, for Christ's sake[.] [...]

We told the judge [at the April 2016 hearing] that because Families SA were showing such a lack of interest that we needed [...] custody, or access [to the children] so that we, somebody was looking after those children, somebody on the outside was checking on the welfare of those children.²⁶⁶

261. Each summed up their sentiments concerning the agency:

MR EGBERTS: This is -- it's a huge insult to us. It's a huge insult to the children, and people tend to forget that we have been left with the task of explaining to the older brother why nobody gave a shit about his little brother and sister.

So, like I said, this just cuts really deep and we can't let it go. Everywhere we go to try and get justice we have just been screwed over. I have got no faith left in the system whatsoever, not a single iota.²⁶⁷

[...]

There's nothing we can do for [Child A] and [Child B] now, but I am not going to let their memory go without fighting with everything that we've got. We have got nothing. We've just been left in a horrible situation. My health is up the shit. They convinced us to take full custody of [Child C], and I purely believe they did that so they had to pay us a lesser amount for taking that child. We get \$65 a week for this child.

MS WELLS: I wouldn't want him under Families SA anyway, the way it is.

MR EGBERTS: No, neither would I.²⁶⁸

262. I extend my gratitude to Steven and Janet for their willingness to speak with my investigators about the matter.

Enquiries of Child A's primary school

263. During interview, Steven and Janet expressed concern that a number of notifications apparently made by Child A's former primary school did not appear to be reflected in information disclosed by the agency.

264. In light of these concerns, I wrote to the primary school in an effort to ascertain whether the agency's files presented an accurate record of the notifications that were made by school staff.

265. On 9 November 2018 the current Principal of the primary school responded to my enquiries to advise that, although the school retained several records relevant to my request, staff absences and difficulties in accessing some electronic systems prevented the school from accurately determining the number of notifications made by staff.

266. The Principal was able to supply my investigation with records pertaining to five apparent notifications. Four of those notifications appear to be reflected in the agency's files, as already supplied to my investigation.

²⁶⁶ *Id.*, transcript at 12:13.

²⁶⁷ *Id.*, transcript at 18:9.

²⁶⁸ *Id.*, transcript at 19:6.

267. The remaining (apparent) notification (dated 27 October 2015) does not appear in the agency's file. In respect of this entry, the school's records relevantly provide:

[Child A] not sighted since home visit last Wednesday. Class teachers tried without success 26th and 27th Oct to make contact with mum. Mandate [sic] report made. Phone call to police re: welfare of [Child A].

268. I subsequently wrote to the agency to request that it attempt to locate any records relevant to the above entry.
269. On 3 December 2018 the agency's Acting Chief Executive Officer responded to advise that the agency had been unable to locate any such documents. The Acting Chief Executive Officer stated that she was otherwise 'unable to usefully comment' on the apparent discrepancy in records.

Submissions from the agency

270. The agency supplied my Office with an overview of its involvement with the family by way of letter from the agency's Chief Executive Officer dated 16 April 2018. At this time, the agency also supplied my Office with a copy of its files concerning Mr Peet, the mother, Child C, Child A and Child B.
271. On 13 June 2018 I wrote to the agency's Chief Executive Officer to provide notice under section 18(1a) of the Ombudsman Act of my decision to conduct a full investigation of the issues considered in this report. In doing so, I sought some further information concerning the agency's information sharing practices.
272. On 5 July 2018 the Chief Executive Officer of the agency submitted, *inter alia*:

DCP [Department for Child Protection] staff communicate with possible alternative carers when they are actively investigating possible care options after a determination has been made to remove children from the care of their primary caregivers.

In this matter, no determination had been made by DCP staff to remove [Child A] and [Child B] from their mother's care. Therefore, communication with possible alternative carers, such as their maternal [sic] grandfather, Mr Egberts, at that point was not appropriate.

Speaking more generally, there are a range of significant issues which could arise if notifications were routinely discussed with, or otherwise communicated to, possible caregivers such as immediate family, extended family or kin.

[...] The confidentiality provisions of child protection legislation in South Australia (historically s58 of the *Child Protection Act 1993* [sic] ("*CP Act*") and currently s164 of the *Children and Young Person (Safety) Act* [sic] ("*CYPS Act*") prohibit the provision of personal information which has been obtained by DCP staff performing their functions under the *CP Act* (or from 22 October the *CYPS Act*).

As an exception to this prohibition, DCP social work and psychologists are specifically authorised by the Chief Executive to disclose personal information in the course of their therapeutic and statutory duties.

Any such disclosures must only be made where absolutely necessary, and substantial caution must be exercised when deciding what personal information about children or primary caregivers can be provided, and to whom. Given the often complex family relationships that DCP staff encounter during the course of child protection work, contacting interested family or kin regarding the recent notifications does not routinely occur, as it would not be consistent with good practice. In some cases, an interested family member may even be responsible for abuse against the primary caregiver, which may or may not be known by DCP staff. Of course in some limited circumstances (such

as where all of the parties involved – including the practitioners – are very well known to each other), it could be argued that such communication may be of some assistance, however, given the complexity of this approach and heightened risk profile, taking this step could not be utilised as routine practice across the Department. Accordingly, any such communication (outside of investigating possible placement options when that is necessary), would probably not fall under the Chief Executive’s authorisation, and would therefore be potentially unlawful.

273. The Chief Executive submitted that personal information may be provided to possible alternative carers in two other situations:

Personal information can be provided to possible alternative carers via their participation in Family Care Meetings. Both the invitation to and the attendance at the family care meeting by the possible alternative care giver would likely result in them being provided with personal information about the primary carer. In [the mother’s] case, given that no orders had been sought by DCP to remove [Child A] and [Child B] from her care, no Family Care Meeting was called.

Finally, possible alternative carers may be able to be informed of notifications via an order of the Federal Circuit Court (“FCC”). Indeed, in this matter DCP provided information to the FCC in response to two subpoenas issued by the FCC under s 69WZ of the *Family Law Act 1975*, in relation to [Child A] and [Child B].

274. The Chief Executive submitted that the release of subpoenaed documents to unrepresented litigants through the family law process would be unusual but not entirely out of the question. The Chief Executive was unable to confirm whether Steven and Janet were granted access to the subpoenaed materials in the Federal Circuit Court proceedings involving the mother.

275. In response to my query as to whether the agency considered that it adequately communicated with the complainant in respect of the agency’s interactions with the mother, the Chief Executive submitted:

DCP is of the view that according to law and good child protection practice, it was not an appropriate option for DCP staff to update or inform Mr Egberts of notifications concerning the care of [Child A] and [Child B] by their Mother. It would only have been appropriate to discuss issues surrounding the potential care of [Child A] and [Child B] with Mr Egberts in circumstances where a decision had been reached to remove the children from their mother’s care, which had not occurred at the time of their tragic death.

276. I subsequently made some further enquiries of the agency. The Chief Executive responded to those enquiries by way of letters dated 21 September 2018 and 18 October 2018.

277. In respect of the agency’s communication with Janet following the determination to ‘CNA’ the intake arising from the November 2014 notification, the Chief Executive submitted:

Ms Wells was not advised of the determination to close the intake which followed her notification. While the department has committed to exploring what kind of information might usefully be made available to notifiers as part of implementation of the Nyland Royal Commission recommendations [...], disclosure was not a legal requirement under the *Children’s Protection Act 1993*.

278. In response to my query as to the whether the agency was in the practice of communicating such determinations to notifiers, the Chief Executive submitted:

All individuals who notify suspected abuse or neglect through eCARL currently receive an automated message informing them that their notification has been received.

In certain cases, for example where there is a need for inter-agency collaboration and case management support, other government agencies may be advised of the actions taken following a notification and kept informed and/or engaged as long as it is relevant and lawful to do so.

Following the Nyland Report, and specifically recommendation 40, the government announced it would consider whether it is appropriate to provide notifiers with any additional, post-assessment information as part of its Call Centre Reform project.

Issues such as confidentiality, type of information provided, the purpose of providing information and the impacts on children will be considered. The use of notifier feedback in other jurisdictions will also be reviewed to understand whether a system is viable in South Australia. Any proposed release of information will be subject to requirements under the *Children and Young People (Safety) Act 2017* and the Information Sharing Guidelines, and will be informed by our paramount commitment which is to ensure the safety of at risk children.

Relevant law, policies, etc.

The Children's Protection Act

279. The Children's Protection Act operated throughout the period relevant to my investigation. The Children's Protection Act has now been repealed to coincide with the full commencement of the *Children and Young People (Safety) Act 2017*. The latter Act is of only limited relevance to my investigation.

280. For most of the period relevant to my investigation, the objects of the Children's Protection Act were as follows:

3—Objects of Act

The objects of this Act are—

- (a) to ensure that all children are safe from harm; and
- (b) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
- (c) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and
- (d) to recognise the family as the primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to children.

281. For most of the period relevant to my investigation, section 4 of the Children's Protection Act identified a number of 'fundamental principles', including:

4—Fundamental principles

- (1) Every child has a right to be safe from harm.
- (2) Every child has a right to care in a safe and stable family environment or, if such a family environment cannot for some reason be provided, in some alternative form of care in which the child has every opportunity that can be reasonably provided to develop to his or her full potential.
- (3) In the exercise of powers under this Act, the above principles and the child's wellbeing and best interests are to be the paramount considerations.
- (4) In determining a child's best interests, consideration must be given to the following:

- (a) the desirability of keeping the child within the child's own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection;
- (b) the need to preserve and strengthen relationships between the child, the child's parents and grandparents and other members of the child's family (whether or not the child is to reside with those parents, grandparents or other family members);
- (c) the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born;
- (d) if the child is able to form and express his or her own views as to his or her best interests—those views;
- (e) the undesirability of interrupting the child's education or employment unnecessarily.

282. Sections 3 and 4 of the Children's Protection Act were overhauled following the inquest into the death of Chloe Valentine. On 28 April 2016, both sections were consolidated as follows:

3—Objects

- (1) The primary object of this Act is to keep children safe from harm and in the administration of this Act that object must, in all cases, be the paramount consideration.
- (2) Without limiting subsection (1), the Act also has the following objects:
 - (a) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
 - (b) to recognise the importance of families to children and promote caring attitudes and responses towards children among families and all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided.
- (3) If decisions are to be made under this Act in relation to a child, the decision maker must have regard to the views of the child (if the child is willing and able to express such views).

283. At all material times, section 6 of the Children's Protection Act relevantly provided:

6—Interpretation

- (1) In this Act, unless the contrary intention appears—

abuse or neglect, in relation to a child, means—

 - (a) sexual abuse of the child; or
 - (b) physical or emotional abuse of the child, or neglect of the child, to the extent that—
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
 - (ii) the child's physical or psychological development is in jeopardy,

and *abused* or *neglected* has a corresponding meaning;

[...]
- (2) For the purposes of this Act, a child is at risk if—
 - (aa) there is a significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or

- (a) the child has been, or is being, abused or neglected; or
 - (b) a person with whom the child resides (whether a guardian of the child or not)—
 - (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
 - (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
 - (c) the guardians of the child—
 - (i) are unable to care for and protect the child, or are unable to exercise adequate supervision and control over the child; or
 - (ii) are unwilling to care for and protect the child, or are unwilling to exercise adequate supervision and control over the child; or
 - (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
 - (d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
 - (e) the child is under 15 years of age and is of no fixed address.
- (3) It is immaterial for the purposes of this Act that any conduct referred to in subsection (2) took place wholly or partly outside this State.

284. On 28 April 2016, following the inquest into the death of Chloe Valentine, the following subsection was inserted by amendment to the Act:

- (4) In assessing whether—
- (a) there is a significant risk that a child will suffer serious harm to his or her physical, psychological or emotional wellbeing; or
 - (b) a child has been, or is being, abused or neglected,
- for the purposes of this Act, regard must be had to not only the current circumstances of the child's care but also the history of the child's care and the likely cumulative effect on the child of that history

285. Section 19(1) of the Children's Protection Act provided for the agency's responsibility to assess and investigate matters giving rise to child protection concerns.

286. At all material times, section 19(1) of the Children's Protection Act provided:

19—Investigations

- (1) If the Chief Executive—
- (a) suspects on reasonable grounds that a child is at risk; and
 - (b) believes that the matters causing the child to be at risk are not being adequately addressed, the Chief Executive must cause an assessment of, or investigation into, the circumstances of the child to be carried out or must effect an alternative response which more appropriately addresses the potential or actual risk to the child.

287. Section 19(1) was to be read in light of section 14 of the Act, which at all material times provided:

14—Chief Executive not obliged to take action in certain circumstances

Nothing in this Act requires the Minister or the Chief Executive to take or initiate any action under this Act in relation to a notification of suspected abuse or neglect of a child if the Minister or the Chief Executive is satisfied—

- (a) that the information or observations on which the notifier formed his or her suspicion were not sufficient to constitute reasonable grounds for the suspicion; or
- (b) that, while there are reasonable grounds for such a suspicion, proper arrangements exist for the care and protection of the child and the matter of the apparent abuse or neglect has been or is being adequately dealt with.

288. Part 5 Division 1 of the Children's Protection Act provided for the convening of 'family care meetings' in respect of children considered at risk. Per section 28 of the Act, the purpose of a family care meeting was to provide a 'proper opportunity' for a child's family, in conjunction with a facilitator, 'to make informed decisions as to the arrangements for best securing the care and protection of the child' and 'to review those arrangements from time to time'.

289. At all material times, section 27 of the Act relevantly provided:

27—Family care meetings to be convened by Minister

- (1) If the Minister is of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection, the Minister should cause a family care meeting to be convened in respect of the child.
- (2) The Minister cannot make an application under Division 2 for an order granting custody of a child, or placing a child under guardianship, before a family care meeting has been held in respect of the child unless satisfied—
 - (a) that it has not been possible to hold a meeting despite reasonable endeavours to do so; or
 - (b) that an order should be made without delay; or
 - (c) that the guardians of the child consent to the making of the application; or
 - (d) that there is other good reason to do so.

290. Sections 30 and 32 relevantly provided:

30—Invited participants

- (1) Subject to subsection (2), the Care and Protection Co-ordinator convening a family care meeting will issue written invitations to attend to the following persons:
 - (a) the child; and
 - (b) the guardians of the child; and
 - (c) other members of the child's family who should, in the opinion of the Co-ordinator, attend the meeting; and
 - (d) any other person who has had a close association with the child and who should, in the opinion of the Co-ordinator, attend the meeting; and
 - (e) any other adult person (not being a legal practitioner) who the child or the child's guardians wish to support them at the meeting and who, in the opinion of the Co-ordinator, would be of assistance in that role.
- (2) The Co-ordinator is not required—
 - (a) to invite the child to the meeting if the Co-ordinator is of the opinion that it would not be in the best interests of the child for the child to attend; or
 - (b) to invite any other particular person to the meeting if the Co-ordinator is of the opinion that the attendance of that person would not be in the best interests of the child.

32—Procedures

- (1) The Care and Protection Co-ordinator must take reasonable steps to ascertain the views as to the care and protection of the child—

- (a) from those persons invited to a family care meeting who are unable to attend; and
 - (b) from the child (so far as his or her views are ascertainable) if he or she has not been invited, or refuses, to attend; and
 - (c) from any guardian or other family member who has not been invited to attend the meeting, if the Co-ordinator thinks it appropriate to do so, and must relay all those views to the meeting.
- (2) The Co-ordinator must ensure that sufficient information as to the child's circumstances and the grounds for believing the child to be at risk is presented to the meeting.

291. There were several legislative provisions relevant to the disclosure of information collected in the course of the administration of the Children's Protection Act.

292. At all material times, section 13 of the Children's Protection Act operated to restrict officers of the agency and other persons from disclosing the identity of a person responsible for notifying the agency of cases of suspected neglect or abuse:

13—Confidentiality of notification of abuse or neglect

- (1) For the purposes of this section, a notifier is a person who notifies the Department that he or she suspects that a child has been or is being abused or neglected.
- (2) Subject to this section, a person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure—
 - (a) is made in the course of official duties to another person acting in the course of official duties; or
 - (b) is made with the consent of the notifier; or
 - (c) is made by way of evidence adduced in accordance with subsections (3) and (4).

Maximum penalty: \$5 000.

- (3) Subject to subsection (4)—
 - (a) no evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, may be adduced in proceedings before a court without the permission of the court; and
 - (b) unless such permission is granted, a party or witness in those proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.
- (4) A court cannot grant permission under subsection (3) unless—
 - (a) the court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
 - (b) the notifier consents to the admission of the evidence in the proceedings.
- (5) An application for permission to adduce evidence under subsection (3)—
 - (a) must not, except as authorised by the court, be heard and determined in public; and
 - (b) must be conducted in such a manner as to protect, so far as may be practicable, the identity of the notifier pending the determination of the application.

293. At all material times, section 58 of the Children's Protection Act established a general duty to maintain confidentiality over certain personal information collected in the course of the administration of the Act:

58—Duty to maintain confidentiality

- (1) A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information.

Maximum penalty: \$10 000.

[...]

- (3) This section does not prevent—
- (a) a person from divulging information if authorised or required to do so by law; or
 - (b) a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates; or
 - (c) a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.

294. Section 58(3)(c) of the Children's Protection Act thus permitted the Chief Executive of the agency to authorise agency practitioners to divulge personal information collected in the administration of the Act.

The Information Privacy Principles

295. The Information Privacy Principles (**Information Privacy Principles**) have been approved by Cabinet and govern the collection, storage, use and disclosure of personal information by agencies. The Information Privacy Principles are located within the Department of the Premier and Cabinet Circular PC012 (**PC012**).

296. The Information Privacy Principles were in operation throughout the period relevant to my investigation.

297. 'Personal information' is defined in PC012 as 'information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

298. At all material times, the Information Privacy Principles relevantly provided:

Disclosure of Personal Information

- (10) An agency should not disclose personal information about some other person to a third person for a purpose that is not the purpose of collection (the secondary purpose) unless:
- (a) the record-subject would reasonably expect the agency to disclose the information for the secondary purpose and the secondary purpose is related to the primary purpose of collection;
 - (b) the record-subject has expressly or impliedly consented to the disclosure;
 - (c) the person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person;
 - (d) the disclosure is required or authorised by or under law;
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law, or of a law imposing a pecuniary penalty or for the protection of the public

revenue or for the protection of the interests of the government, statutory authority or statutory office-holder as an employer;

- (f) the agency has reason to suspect that unlawful activity has been, is being or may be engaged in, and discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (g) the agency reasonably believes that the disclosure relates to information about an individual that suggests that the individual has engaged or may engage in illegal conduct or serious misconduct in relation to a person; and
 - (i) the agency reasonably believes that the disclosure is appropriate in the circumstances; and
 - (ii) the disclosure complies with any guidelines issued by the Minister for the purposes of this clause.

The Information Sharing Guidelines

299. The *Information Sharing Guidelines for Promoting Safety and Wellbeing (the Information Sharing Guidelines)* have been approved by Cabinet and operate to provide a mechanism for agencies to share confidential information with other parties. The Information Sharing Guidelines complement the disclosure principles contained within the Information Privacy Principles and provide practical guidance in respect of the disclosure of personal information by agencies and relevant non-government service providers.
300. The Information Sharing Guidelines were in operation throughout the period relevant to my investigation.
301. The Information Sharing Guidelines provide that information may be shared by an agency in circumstances where an officer of the agency ‘believes, on reasonable grounds, that the disclosure is necessary to [...] protect a person or groups of people from potential harm, abuse or neglect’. Such disclosure must also comply with legislative obligations.
302. Under the Information Sharing Guidelines, criteria must be satisfied if information is to be disclosed without the consent of the person to whom it relates:
- A client’s informed consent to share information must be sought in all circumstances where it is considered reasonable and practicable to do so. The decision to share without consent must be based on sound risk assessment and approved by the appropriate officer in [the] agency or organisation.
- Disclosure of information without consent is permitted if it is not safe or possible to seek consent or consent has been refused and the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health or safety of a person or group of people. In certain circumstances, disclosure may be authorised or required by law and consent is not required.
303. Under the Information Sharing Guidelines, an agency may enact a separate instrument, termed an ‘ISG appendix’, to clarify applicable legislation, policies and procedures relevant to the sharing of information.
304. From approximately September 2015, the agency had in place such an appendix, termed the *Information Sharing Guidelines for promoting safety and wellbeing (ISG) – Procedure (the ISG Procedure)*.
305. At all relevant times, the ISG Procedure relevantly provided:

4.7 Specific obligations under the Children's Protection Act 1993

Obligation	Requirement	Application	To
<p>4.7.3</p> <p>Exception to the duty to maintain confidentiality s58</p>	<p>Families SA staff must not divulge personal information they obtain about children, a child's guardians or other family members, or any person alleged to have abused, neglected or threatened a child, in their administration of the CP Act unless they are authorized or required to do so by law*¹ or by their employer*².</p>	<p>*2 The DECD Chief Executive has authorized Families SA staff to divulge information under s58(3)(c) when</p> <p>a) the information is divulged to a person (Government or non- government personnel including carers) with a duty of care for a child or young person; and,</p> <p>b) it is necessary to divulge that information to that person in order to protect that child or young person from risk of serious harm</p> <p>In all other circumstances a staff member should seek appropriate authorization from a relevant staff member to whom the Chief Executive or Minister has given a specific delegation of the power to authorize disclosure under section 58(3)(c). Note: Even where disclosure is authorized under section 58(3), the ISG principles must be followed, including the approval of the Families SA positions listed in section 5 when information is shared without the client's informed consent.</p> <p>*1 A person will generally only be authorized or required to disclose this information by law where there is a specific requirement under statute or an order or a Court that requires them to do so.</p>	<p>Families SA staff</p>

306. I understand that there is no standalone authorisation under section 58(3)(c) of the Children's Protection Act relevant to the Information Sharing Guidelines. The agency submitted to my investigation that the ISG Procedure itself encompasses such an authorisation.

The Charter of Health and Community Services Rights

307. The Charter of Health and Community Services Rights is established in accordance with Part 3 of the Health and Community Services Complaints Act. The Charter provides for eight rights that apply to the provision or use of most health and community services within South Australia.
308. During the period relevant to my investigation, section 3 of the Health and Community Services Complaints Act defined a community service as including 'a service for the care or protection of any child who has been abused or neglected, or allegedly abused or neglected, [including] any service that relates to the notification of any case of child abuse or neglect (or alleged child abuse or neglect), or the investigation of a case

where a child may be in need of care or protection, or any subsequent action taken by a service provider arising from any such investigation’.

309. The following Charter rights are particularly relevant to the matter at hand:

2. SAFETY - Right to be safe from abuse.

I have a right to be safe from abuse, or the risk of abuse, and to have my legal and human rights respected and upheld.

[...]

5. INFORMATION - Right to be informed.

I have a right to open, clear and timely communication about services, treatment, options and costs in a way that I can understand.

[...]

7. PRIVACY - Right to privacy and confidentiality.

I have a right to have my privacy respected and my personal information kept confidential and secure. Personal information about me may not be disclosed without my consent, unless the disclosure is required to lessen or prevent a serious threat to life, wellbeing, or safety or is required by law.

310. I have had regard to the Charter in formulating my views in respect of the complaint.

Whether the agency erred by omitting to communicate with the complainant and his partner in respect of concerns relating to the care and protection of their late grandchildren

The statutory framework and the paramount considerations

311. At all material times the agency was the administrative unit responsible for delivering child protection functions within South Australia. Those functions found primary expression in the Children’s Protection Act, which divided certain responsibilities between the agency and the Minister for Child Protection.

312. Broadly speaking, the principal functions of the agency under the Children’s Protection Act were

- to receive and assess notifications concerning the suspected abuse or neglect of children
- to investigate the circumstances of children who were possibly at risk
- to remove children from dangerous situations and, at the delegation of the Minister, to take such action as was necessary to ensure the care and protection of children deemed to be at risk.

313. There is an obvious and natural tension between, on the one hand, the interests of children who may be at risk of abuse or neglect and, on the other, the interests of persons who stand accused of having abused or neglected children.

314. Section 4 of the Children’s Protection Act resolved this tension through the expression of certain ‘paramount considerations’, which governed the agency’s exercise of its statutory powers.

315. Those paramount considerations were as follows:

- the child’s wellbeing and best interests²⁶⁹

²⁶⁹ The considerations informing the assessment of a child’s best interests were identified as (a) the desirability of keeping the child within the child’s own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection; (b) the need to preserve and strengthen

- the right of all children to be safe from harm
- the right of all children to be in a safe and stable family environment or, in the unavailability of such an environment, to be in some alternative form of care in which the child has every opportunity that can reasonably be provided to develop to his or her full potential.

316. The effect of section 4 was to require that the agency prioritise a child's rights, wellbeing and best interests over all other considerations.

The duty of confidentiality

317. The agency's functions and powers are such that the agency will necessarily receive and collect information concerning the personal affairs of individuals who come into contact with the child protection system.
318. Such information may be collected from notifiers and other informants, in the course of the agency's assessment or investigation of child protection notifications (including through use of coercive powers) and by means of other processes conducted under child protection legislation.
319. For the most part, South Australia has not enacted legislation recognising the individual's right to privacy. The manner in which a public authority may use or divulge information collected in the course of carrying out its functions will depend on the particular statutory context.
320. There are also the Information Privacy Principles and the Information Sharing Guidelines, both of which exist as whole-of-government policies.
321. The 1991 *Report of the Select Committee of the Legislative Council on Child Protection Policies, Practices and Procedures in South Australia*, which was influential upon the drafting of the Children's Protection Act, saw fit to emphasise the individual's right to privacy when considering the agency's information-gathering powers.²⁷⁰
322. More recent initiatives in the child protection sphere have placed greater emphasis on the need for timely information sharing when dealing with vulnerable families.²⁷¹ Such initiatives, including the 2003 Layton child protection system review, influenced the formulation of the Information Sharing Guidelines.
323. During the period relevant to my investigation there were two provisions of the Children's Protection Act which operated to restrict the manner in which information collected under the Act could then be used or divulged.
324. Firstly, section 13(2) of the Act prohibited the disclosure of the identity of a notifier. An exception was available when the disclosure was made between persons who were acting in the course of their official duties, was effected with the consent of the notifier or, in limited circumstances, was made by way of evidence adduced to a court.

relationships between the child, the child's parents and grandparents and other members of the child's family; (c) the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born; (d) the views of the child as to his or her own best interests, if capable of being expressed by the child; (e) the undesirability of unnecessarily interrupting the child's education or employment: Children's Protection Act, section 4(4).

²⁷⁰ *Report of the Select Committee of the Legislative Council on Child Protection Policies, Practices and Procedures in South Australia* (1991), p. 14 ('The Committee believes that it is important that the Department for Family and Community Services keeps data on abusers and abused children with a view to preventing further abuse, and recommends that a system is set up to do this which will have proper regard to the individual's right to privacy.' (emphasis in original)).

²⁷¹ See e.g., Council of Australian Governments, *National Framework for Protecting Australia's Children 2009- 2020*, p. 18.

325. Secondly and more relevantly, section 58 of the Children's Protection Act restricted child protection workers from disclosing certain personal information obtained in the course of their duties. An exception was available when the disclosure was authorised or required by law, would involve the divulging of de-identified statistical information or was otherwise authorised or required by the practitioner's employer.
326. Sections 13 and 58 were both offence provisions, meaning that a practitioner who contravened either section was liable to criminal prosecution.
327. There were nevertheless a number of mechanisms through which practitioners could lawfully share information with third parties. I discuss several of these mechanisms in turn below.

1. *Information sharing at time of intervention*

328. The agency has adverted to the standing authorisation that exists to permit practitioners to disclose information collected under the Children's Protection Act for the purposes of placing a child with an alternate caregiver.

2. *Information sharing for the purposes of a family care meeting*

329. The agency has also adverted to the power to convene family care meetings (now referred to as 'family group conferences') under child protection legislation. The purpose of such meetings is to assist those concerned with the welfare of a child to make informed decisions as to arrangements for the care and protection of the child. Clearly, this would require some degree of disclosure as to the cause for the agency's interest in the family.

330. The Chief Executive Officer submitted to my investigation:

Personal information can be provided to possible alternative carers via their participation in Family Care Meetings. Both the invitation to and the attendance at the family care meeting by the possible alternative care giver would likely result in them being provided with personal information about the primary carer. In [the mother's] case, given that no orders had been sought by DCP to remove [Child A] and [Child B] from her care, no Family Care Meeting was called.

331. This appears to misconstrue the threshold for the convening of a family care meeting under the Children's Protection Act.
332. It was not necessary for the Minister to seek care and protection orders in order to cause a family care meeting to be convened in respect of a child. To convene such a meeting, the Minister needed only to be 'of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection'.²⁷²
333. In practice, the agency could lawfully have convened a family care meeting on the substantiation of any of the notifications concerning the family.
334. In its response to my provisional report, the agency accepted this position. The agency clarified that, notwithstanding the legislative threshold, 'in practice at that time, family care meetings were conducted by the Conferencing Unit in the Youth Court once proceedings had been filed.'

²⁷² This threshold has since been lowered: Children and Young People (Safety) Act, section 22(1) ('If the Chief Executive or the Court *suspects* that a child or young person is at risk...') (emphasis added).

3. *Information sharing under the Information Sharing Guidelines*

335. The Information Sharing Guidelines are a further mechanism through which otherwise confidential information may be disclosed to a third party.
336. Under the Information Sharing Guidelines, information may be shared by an agency in circumstances where an officer of the agency ‘believes, on reasonable grounds, that the disclosure is necessary to [...] protect a person or groups of people from potential harm, abuse or neglect’.
337. Information may be shared with or without the consent of the subject. Information may only be shared without consent in circumstances where it is unreasonable or impracticable to seek the consent of the person or consent has been refused, and the disclosure is ‘reasonably necessary to prevent or lessen a serious threat to life, health or safety of a person or group of people’.
338. While the Information Sharing Guidelines are primarily directed towards the disclosure of information between agencies and non-government service providers, the disclosure of information to private individuals is also expressly contemplated.²⁷³
339. As a matter of law, the Information Sharing Guidelines do not supplant legislative confidentiality obligations such as those that were found within section 58 of the Children’s Protection Act.
340. In theory, this limitation could have been wholly traversed by the standing authorisation provided by the Chief Executive in the agency’s ISG Procedure.
341. For reasons that are unclear to me, however, the authorisation within the ISG Procedure was more restricted in scope:
- The DECD Chief Executive has authorized Families SA staff to divulge information under s 58(3)(c) when
- a) the information is divulged to a person (Government or non-government personnel including carers) with a duty of care for a child or young person; and,
 - b) it is necessary to divulge that information to that person in order to protect that child or young person from risk of serious harm[.]²⁷⁴
342. The underlined text does not reflect criteria contained within the Information Sharing Guidelines.
343. The effect of the agency’s ISG Procedure was to limit the class of persons who could lawfully receive personal information from agency practitioners under the auspices of the Information Sharing Guidelines. It precluded the sharing of information with persons who did not have a duty of care in respect of the child in question, even if grounds to share information otherwise existed under the Information Sharing Guidelines.
344. This strikes me as very unfortunate. The Information Sharing Guidelines exist to provide a ‘consistent state-wide approach to appropriate information sharing practice wherever there are threats to safety and wellbeing’.²⁷⁵ Cabinet has previously directed that the policy be implemented throughout the public sector.
345. It also strikes me as being a very confusing framework for a frontline practitioner to interpret and follow.

²⁷³ See, e.g., Information Sharing Guidelines, p. 27 (Case Study 1).

²⁷⁴ Emphasis added.

²⁷⁵ Information Sharing Guidelines, p. 5.

4. *Information sharing with the authorisation of the Chief Executive*

346. Section 58(3)(c) of the Children's Protection Act permitted an agency practitioner to divulge information collected under the Act in circumstances where he or she had been authorised or required to do so by the agency's Chief Executive Officer.
347. The Chief Executive Officer therefore retained the discretion, subject to the considerations of the Children's Protection Act, to authorise the sharing of information on a case-by-case basis.
348. Such an authorisation could reasonably have been granted in circumstances where the sharing of information was considered most consistent with ensuring the safety, wellbeing and best interests of a child.

Should the agency have informed Janet of its decision to take no action in respect of the November 2014 notification?

349. I have made it clear in the context of an earlier, unrelated investigation that I consider that the agency's practice of closing intakes without action due to resource constraints to be contrary to section 19(1) of the Children's Protection Act.²⁷⁶ In that matter I observed that the practice appeared repugnant to the objects and spirit of the Children's Protection Act. Nothing to date has disabused me of that view.
350. I understand the agency is slowly phasing out this practice in accordance with the recommendations of the 2016 Child Protection Systems Royal Commission (**the Nyland Commission**).
351. The Nyland Commission also considered the question of whether notifiers should ordinarily be informed of the agency's assessment and response to their notifications:

Providing appropriate feedback to notifiers is critical. If notifiers do not receive feedback, it undermines their ability to provide the family with ongoing support. They might, for example, assume that a family is receiving support when they are not. Indeed, lack of feedback to notifiers tends to fuel the perception that their responsibility ends with the notification. Out of frustration at a perceived lack of response, notifiers who do not receive feedback might be provoked to make multiple notifications with no new information.

[...]

[T]he current Closed No Action (CNA) rate is unacceptable and must be addressed. In the meantime, if an Assessment and Support team decided to close a screened-in notification without assessment, providing feedback to notifiers would afford some accountability for that decision. The notifier is entitled to know both the response priority rating, if and when it is applied, and if the file were to be closed with no assessment. If the Agency cannot respond to the child, then it must at least advise the notifier and give them the opportunity to support the child and family in some other way, if possible.²⁷⁷

352. The above remarks are apposite to the matter at hand. It was reasonable for Janet to have expected a prompt and robust child protection response to her notification. She was left in the dark as to the agency's determination to take no action. Perhaps partly as a consequence, the situation proceeded to spiral out of control.
353. I consider that the agency should have notified Janet of the 'CNA' determination. The omission to do so was not in Child C, Child A or Child B's best interests.

²⁷⁶ Ombudsman ref. 2016/10215.

²⁷⁷ *The Life They Deserve: Child Protection Systems Royal Commission Report – Vol. 1*, report of The Hon Margaret Nyland AM (2016) at p. 144.

Should information concerning the 2015 and 2016 notifications have been disclosed to the grandparents?

354. In her correspondence with my investigation, the agency's Chief Executive Officer emphasised the significance of section 58 of the Children's Protection Act to the agency's information sharing practices:

The statutory obligations to ensure confidentiality of personal information obtained during the course of child protection work are highly relevant to the questions you have posed and to the conduct of [agency] staff in these circumstances.

[Section 58] prohibit[s] the disclosure of such personal information unless certain limited exceptions apply. Potential alternative carers do not readily fit one of the exceptions provided, unless [...] [agency] staff who are appropriately authorised are disclosing information to that person for the purpose of investigating placement options after a decision has been made to remove the child from the primary caregiver.

355. In respect of the matter at hand, the Chief Executive Officer further observed:

It would only have been appropriate to discuss issues surrounding the potential care of [Child A] and [Child B] with Mr Egberts in circumstances where a decision had been reached to remove the children from their mother's care, which had not occurred at the time of their tragic death.

356. I do not think I can address that position without briefly commenting on the agency's assessment of the risk to which Child A and Child B were exposed.
357. The agency's files record that a total of eleven notifications were made in respect of Child A and Child B's welfare following the substantiation of the November 2014 intake concerning Child C. The agency investigated just one of those notifications. That investigation commenced less than three weeks before the children were killed.
358. Many of the notifications following the November 2014 intake were 'screened out' by the agency on the basis that the threshold under section 19(1) of the Children's Protection Act had not been met.
359. Those notifications should never have been screened out. I simply cannot understand why they were.
360. How is it possible that the notifications concerning Child A's school attendance did not give rise to a reasonable suspicion, per section 6(2)(d) of the Children's Protection Act, that Child A had been 'persistently absent from school without satisfactory explanation'?
361. How could a notification alleging that the mother, Child A and Child B had been rendered homeless not give rise to a reasonable suspicion, per section 6(2)(e), that the children were 'of no fixed address'?
362. This is to say nothing of the cumulative effect of the notifications that were made in late 2015 and early 2016. What emerged from those notifications was a clear picture of disarray, substance abuse and neglect within the mother's household.
363. I do not consider that the NOC designation was used correctly in respect of any of the notifications which followed the substantiation of the November 2014 intake. In each case, there was sufficient basis to suspect that Child A and Child B were at risk within the meaning of section 6(2) of the Children's Protection Act.

364. Even at the policy level, the notifications were in no way capable of satisfying the agency's criteria for use of the NOC code.
365. I also do not understand why the agency did not proceed to assess the safety of Child A and Child B in light of the November 2014 notification. If the agency was truly satisfied that the mother had physically abused Child C, Child A and Child B were, by definition, likely also at risk.²⁷⁸
366. Three notifications concerning the family were screened in by the agency and then closed without further action. These were the notifications concerning the alleged assault on the father in August 2008 (notification 1), ██████████ (notification 5) and the allegation that the mother was using the drug ice daily and was prioritising that habit over the immediate needs of the children (notification 15).
367. The agency also appears to have taken no action to investigate the intake arising from the incident in October 2015. No reasonable person could have concluded that Child A and Child B were not at risk on the information that was available to the agency at that time.
368. As I perceive it, of the eleven notifications that were made in respect of the children following substantiation of the November 2014 intake:
- six were incorrectly screened out²⁷⁹
 - five were assessed as meriting a child protection response, of which four were then not investigated at all, in apparent contravention of section 19(1) of the Children's Protection Act.²⁸⁰
369. What this means is that the agency neglected or ignored a succession of opportunities to meaningfully assess the risk to which Child A and Child B were being exposed.
370. This is of material significance to the complaint because, had the agency properly availed itself of those opportunities, there may very well have been cause and means to share information with the grandparents.
371. In her correspondence with my investigation, the agency's Chief Executive Officer discussed the merits of the agency sharing information of concern with a child's extended family:
- [D]isclosures must only be made where absolutely necessary, and substantial caution must be exercised when deciding what personal information about children or primary caregivers can be provided, and to whom. Given the often complex family relationships that DCP staff encounter during the course of child protection work, contacting interested family or kin regarding the recent notifications does not routinely occur, as it would not be consistent with good practice. In some cases, an interested family member may even be responsible for abuse against the primary caregiver, which may or may not be known by DCP staff.
- Of course in some limited circumstances (such as where all of the parties involved – including the practitioners – are very well known to each other), it could be argued that such communication may be of some assistance, however, given the complexity of this approach and heightened risk profile, taking this step could not be utilised as routine practice across the Department.
372. The 'routine' disclosure of personal information collected under child protection legislation would likely not be in keeping with the best interests of the children and young people who come into contact with the child protection system.

²⁷⁸ Children's Protection Act, section 6(2)(b)(ii).

²⁷⁹ Notifications 8, 9, 13, 14, 16 and 17.

²⁸⁰ Notifications 10, 11, 12 and 15.

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373. There are also risks and complexities inherent in the disclosure of sensitive personal information to third parties. This much is recognised in the Information Sharing Guidelines, which require that the sharing of personal information by an agency first be the subject of a sound risk assessment.
374. Clearly, agency practitioners will not always possess sufficient information to assess a third party's capacity to receive and appropriately act on a disclosure made on behalf of the agency.
375. And yet, if ever there was a case for disclosure by the agency to an alternate caregiver, this was surely it.
376. I say this because the notifications concerning the family suggested that Child A and Child B were at serious risk of harm while they remained in the care of the mother. There was nothing in the notifications to suggest that the situation was likely to improve absent intervention; to the contrary, the progression of notifications throughout late 2015 and early 2016 suggested that the family's situation was steadily deteriorating.
377. In its response to my provisional report, the agency commented:
- DCP acknowledges an increase in the number of notifications received and respectfully submits that this was followed by increased involvement with the family, including visits and sighting of the home, and interviews of the children [Child A] and [Child B] [.]
378. I do not agree with this characterisation of events. There is nothing to suggest that the action taken in respect of the final intake was motivated or informed by an assessment of the notifications which preceded it. There was no assessment of the cumulative effect of those notifications.
379. There was also ample basis to conclude that Steven and Janet served as a significant protective factor in the lives of the children and that, owing if nothing else to their participation in the ongoing family law proceedings, the grandparents were well positioned to respond to a discrete and timely disclosure of information.
380. In fact, the agency was in an unusually good position to assess the risk and benefits of sharing information about the mother's household with the grandparents.
381. Firstly, agency practitioners were aware that Steven and Janet maintained an interest in ensuring the safety and wellbeing of the children. There was the fact of Janet's notification to the agency in November 2014 and the dialogue that then developed between Janet and the practitioners.
382. Secondly, agency practitioners had the opportunity to make direct observations of Steven and Janet's household and caregiving capacity in the course of their evaluation of Child C's placement.
383. Thirdly, the agency had the benefit of considering the conclusions expressed in the September 2015 family report commissioned for the purposes of the Federal Circuit Court proceedings. That report spoke very highly of Steven and Janet's caregiving capacity.
384. All of this information needed to be considered against the backdrop of the notifications concerning the mother and the agency's own inability or unwillingness to meaningfully act in the face of those concerns.

385. On the information before it, the agency could reasonably have concluded that Child A and Child B were at serious risk of harm and that, absent a meaningful statutory response, further intervention by the grandparents offered the best prospects for protecting the children.
386. Had the instrument been implemented in full, I consider that the Information Sharing Guidelines would have provided sufficient basis for the sharing of information between the agency and the grandparents. There was also the possibility of a discretionary disclosure made with the authorisation of the agency's Chief Executive Officer.
387. The agency may resile from this suggestion. It may be tempted to emphasise its own responsibility to intervene in cases of suspected abuse or neglect. But the prevalence of CNA closures means that, more often than not, the agency is failing to satisfy that responsibility.
388. In fact, a discrete and timely disclosure under the Information Sharing Guidelines appears more capable of meeting the agency's statutory obligations than a determination to take no action at all – there being the potential, per section 19(1) of the Children's Protection Act, for such a disclosure to amount to an 'alternative response which more appropriately addresses the potential or actual risk to the child.'
389. Of course, the need to share information may be reduced or negated entirely by effective and timely intervention by the agency. Such action was plainly lacking in the present case.
390. In concluding her 2003 review of South Australia's child protection system, the Hon Robyn Layton QC observed of the agency's confidentiality obligations:
- It is clearly not in a child's best interests to have personal information critical to a child's safety and protection or appropriate care not divulged to those responsible for their care. It is also nonsensical to interpret [section 58 of the Children's Protection Act] such that a parent would not have the right to information regarding a person who has been alleged to abuse their child, just because this is personal information about a third party. This is a circumstance in which the paramount consideration of the child's best interests would prevail, so that a parent may protect the child from a third party.²⁸¹
391. In my view, it is similarly nonsensical to interpret the agency's duty of confidentiality to preclude the sharing of information with a child's extended family where necessary to protect the child from serious harm. Here, again, the paramount consideration of the child's best interests must prevail.

Concluding remarks

392. Section 25(1) of the Ombudsman Act identifies the conclusions which are available to me at the finalisation of an investigation such as this one.
393. Most of these conclusions appear intended to reflect concepts which are well known to administrative law; i.e., I may conclude that the administrative act to which the investigation relates was made in apparent contravention of the law, was unreasonable, was made on the taking into account of irrelevant considerations, and so on.
394. Under section 25(1), I may also conclude that an administrative act was simply 'wrong'. The term 'wrong' is not defined in the Ombudsman Act. It does not appear to be

²⁸¹ *Our Best Investment: A State Plan to Protect Children and the Interests of Children*, report of The Hon Robyn Layton QC (2003) at 7.12.

intended to reflect any particular legal doctrine. It is a term that should be afforded its ordinary meaning.

395. An administrative act may appropriately be described as wrong if it is done in contravention of established policy or is otherwise not reflective of sound administrative decision-making.
396. At a more basic level, an administrative act may be described as wrong if it is likely to offend a reasonable person's sense of what is right.
397. It is chiefly in this latter sense that I consider that the agency's omission to communicate with Steven and Janet in respect of the notifications concerning the welfare of Child A and Child B was wrong.
398. It was wrong because it prioritised considerations of privacy and confidentiality over the safety and wellbeing of the children.
399. It was wrong because well-meaning individuals, who recognised the risk to which Child A and Child B were exposed, acted as the law said they should and then largely saw their concerns fall on deaf ears. And because the agency that was primarily responsible for ensuring the safety and welfare of the children, out of inertia or complacency or misplaced priorities, elected to do nothing rather than something.
400. It was wrong because Child A and Child B are gone and those remaining have lost all faith in the system that was set up to protect them.

Opinion and recommendations

It is my final view that the agency's failure to communicate with Steven and Janet in respect of the notifications concerning the welfare of Child A and Child B was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

Section 58 of the Children's Protection Act has now been supplanted by section 164 of the Children and Young People (Safety) Act. This latter section provides:

164—Confidentiality

- (1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions or exercising powers under this Act except—
 - (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of children and young people; or
 - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
 - (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

As was the case under the old section 58, section 164 of the new Act does not specifically authorise the release of personal information under the Information Sharing Guidelines. Although section 164(1)(a) authorises the disclosure of personal information 'as required or authorised by or under this Act or any other Act or law', the Information Sharing Guidelines do not hold the force of law.

Notwithstanding the above, the Chief Executive Officer of the agency retains the discretion to authorise the disclosure of personal information under section 164(4) of the Children and Young People (Safety) Act and regulation 42(1) of the Children and Young People (Safety) Regulations.

It is my understanding that the Chief Executive Officer of the agency has not issued an authorisation under the new legislation to permit the disclosure of information under the Information Sharing Guidelines.

In my 2018 audit of the implementation of the Information Sharing Guidelines within the South Australian public sector, I expressed the view that the objects of the Information Sharing Guidelines would be strengthened if the mechanism were incorporated into law.

I suspect that until this is done, practitioners will be reluctant to share information, even if authorised under the Information Sharing Guidelines and local management instructions, for fear of contravening legislative confidentiality provisions.

In my 2018 audit I also made a number of recommendations to agencies directed towards strengthening the implementation and application of the Information Sharing Guidelines within government. Since undertaking the audit, I have written to the Chief Executive Officer of the agency to express my concern with the actions taken by the agency to implement the Information Sharing Guidelines in the wake of the commencement of the Children and Young People (Safety) Act. As matters stand, I am not satisfied that the agency intends to fully implement the Information Sharing Guidelines in accordance with the relevant Cabinet direction.

In the circumstances, I make the following recommendations under section 25(2) of the Ombudsman Act:

1. That the Information Sharing Guidelines for Promoting Safety and Wellbeing be incorporated into law.
2. That section 164 of the *Children and Young People (Safety) Act 2017* otherwise be amended to authorise the disclosure of information where necessary to prevent a serious risk to the health and safety of a person.
3. That in the interim, the Chief Executive Officer of the Department for Child Protection issue a standing authorisation under regulation 42(1) of the *Children and Young People (Safety) Regulations 2017* to permit the disclosure of information by agency practitioners under the Information Sharing Guidelines.

The agency in its response to my provisional report acknowledged that it 'missed opportunities to investigate notifications and take other actions to assess the safety of [Child A] and [Child B]'.

In this regard, the agency observed:

It may be that as a result of these missed opportunities, FSA [Families SA] did not get to the stage of making an assessment about whether to share information with the children's grandparents, for example for making arrangements for the care of the children.

This notwithstanding, the agency has expressed disagreement with the second and third recommendations identified above. Perhaps understandably, the agency declined to express a view about my first recommendation.

Concerning the need for recommendations two and three, the agency submitted:

DCP submits that staff currently have extensive powers under s 164(1)(c) of the *Children and Young People (Safety) Act 2017* (“the Act”) to disclose information to grandparents and other family members if the disclosure would assist in protecting children and young people or in making arrangements for their care. [...] DCP submits that staff members do not need additional powers to disclose information to grandparents for these purposes.

I make it clear that in formulating my recommendations I have had regard to the information sharing provisions in the new legislation. I accept the agency’s position that section 164(1)(c), which authorises the disclosure of information in connection with the administration or enforcement of the Act, may authorise the agency to share information in circumstances similar to those identified in the Information Sharing Guidelines. My concern is that this fact will not be readily apparent to agency practitioners, and I remain of the view that a clear legislative position consistent with the Information Sharing Guidelines is warranted.

As to the scope of recommendations two and three, the agency submitted:

[The] provisional recommendations [also] go beyond measures that are intended to protect children and young people. The recommendations would enable a DCP staff member to disclose personal information where they considered the disclosure to be necessary to prevent or lessen a serious risk to an adult. [...] It is not part of DCP’s functions under the Act to make assessments about the wellbeing and safety of adults. [...] The disclosure of notification information to an adult (eg to a grandparent) may not be in the best interests of the child [...]. DCP staff should not have to weigh a child’s interests against an adult’s interests, and should not be considering whether to prioritise an adult’s interests over the interests of a child.

In addition, where the information only reveals a risk to an adult DCP will not usually be best placed to decide whether the information should be disclosed to an individual. [...] DCP staff currently have power pursuant to s 164(1)(e) to disclose information relating to adult safety to relevant agencies such as SAPOL and SA Health so that that agency can respond appropriately to the information.

[...]

[Concerning the third recommendation], consideration could be given to a specific authorisation under regulation 42 of the Regulations permitting the disclosure of information to prevent a serious risk to the health and safety of a person (adult) where that disclosure would not be inconsistent with the objects of the Act.

While I have given careful consideration to the above submissions, I am not persuaded to alter the recommendations in the manner requested. As the agency has itself observed, the exercise of any power under the Children and Young People (Safety) Act is made subject to the paramount consideration, expressed in section 7 of the Act, ‘to ensure that children and young people are protected from harm.’ Section 7 operates to prevent the sharing of information, even when necessary to ensure the safety of an adult person, where such an act would jeopardise the safety of a child. The suggested amendment to section 164 of the Act and any authorisation made in the interim would not change this.

The Nyland Commission has otherwise recommended that the agency ‘[p]rovide automated electronic feedback to all notifiers, confirming [...] what screening and response priority assessments were made in relation to their notification.’²⁸² The agency has indicated its ‘in

²⁸² *The Life They Deserve: Child Protection Systems Royal Commission Report – Vol. 1*, report of The Hon Margaret Nyland AM (2016) at p. 145 (being recommendation 40 of the Commission).

principle' acceptance of this recommendation; however, at time of writing the recommendation remains to be meaningfully implemented.²⁸³

In these circumstances, I have not made a further recommendation directed at the communication of assessment outcomes to notifiers. I would, however, urge the agency to commence communicating the fact of 'CNA' outcomes to notifiers as a matter of priority.

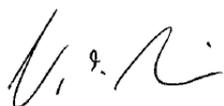
Final comment

In accordance with section 25(4) of the Ombudsman Act the department should report to the Ombudsman by **4 July 2019** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Child Protection as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

11 April 2019

²⁸³ DCP, *Child Protection: A Fresh Start – Progress Report* (June 2018), p. 20; letter from Ms C Taylor to Ombudsman SA dated 18 October 2018.