



## INQUEST INTO THE DEATH OF CHLOE LEE VALENTINE

Finding of Inquest - Cause of Death

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Finding Recommendations

*An enlightened truth, and the bedrock of sound child protection, is that childhood is fleeting. This time of life must be optimised for children's sake, and for society's good, because bad early experiences have deleterious, life-long consequences. Because today's child is tomorrow's citizen, modern nations place a premium on the care, education and socialisation of children. That adults have a duty to nurture and not damage, disturb and distress children is a universal aspiration shared by all civilised peoples. That Australians allow this social norm to be transgressed in our rich and prosperous country is what's so shocking about the harm done under the rubric of child protection. The wrongs hereby perpetrated are of biblical proportions; doubly wicked are those who protest otherwise but must know, in their hearts, minds and consciences, that what they say is false.<sup>1</sup>*

Inquest conducted by Mr Mark Johns, State Coroner, South Australia

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<sup>1</sup> Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out-of-Home Care in Australia (2011) Sammut, Jeremy - ISBN 9781864322064 <http://www.cis.org.au/images/stories/policy-monographs/pm-122.pdf>, page 21



## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 14<sup>th</sup> day of August 2014, the 4<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> days of September 2014, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 16<sup>th</sup> days of October 2014, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 15<sup>th</sup> days of December 2014, the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup> and 27<sup>th</sup> days of February 2015 and the 9<sup>th</sup> day of April 2015, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Chloe Lee Valentine.*

*The said Court finds that Chloe Lee Valentine aged 4 years, late of 18 Wilmot Street, Ingle Farm, South Australia died at the Women's and Children's Hospital, 72 King William Road, North Adelaide, South Australia on the 20<sup>th</sup> day of January 2012 as a result of closed head injury with contributing extensive subcutaneous and intramuscular haemorrhage.*

**INQUEST INTO THE DEATH OF CHLOE LEE VALENTINE**  
**FINDING OF THE STATE CORONER**

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## 1. **Introduction and cause of death**

- 1.1. Chloe Lee Valentine died on 20 January 2012. She was 4 years and 5 months old at the date of her death. A post-mortem examination was conducted by forensic pathologist, Dr Karen Heath, who provided a report<sup>2</sup> giving the cause of death as ‘closed head injury with possible contributing factor extensive subcutaneous and intramuscular haemorrhage’, and I so find.
- 1.2. Dr Heath said it was not possible to determine from the neuropathological findings whether the head injury observed was a result of one episode of trauma or the cumulative effect of several episodes of head injury. She said that other findings at autopsy included extensive bruising of the scalp and face, back, chest, abdomen and upper and lower limbs. She said that in particular there was extensive subcutaneous and intramuscular bruising of the lower back, buttocks and thighs. It was this bruising that was described as a possible contributing factor to the cause of death, namely extensive subcutaneous and intramuscular haemorrhage. Dr Heath explained that a bruise or intramuscular haemorrhage occurs as a result of a blunt trauma to the tissue. She described in her evidence what she called a ‘confluent area of bruising’ which is actually a large number of bruises that had all merged together into one bruise so that she could not tell where one bruise finished and one started. She said the bruising was not only in the skin and the fat underneath the skin, but was also in the muscles, particularly of the buttocks and thighs. She said that there are layers of muscles in those areas which sit one on top of the other. She said that when there is extensive bruising blood can collect between those layers of muscle. She said that during Chloe’s post-mortem examination she looked at the muscles in those areas and there was a large amount of blood collected between those layers such that during the dissection the blood squirted out under pressure rather than just oozing out or remaining within the tissues. To Dr Heath this indicated that there had been a large amount of blood contained within the muscle and the layers between the muscle and that it had built up to a certain amount of pressure. She said that in cases where there is extensive bruising and bleeding it has been documented that the severe bruising can cause enough blood loss to cause death. It is for that reason that she described it as a possible contributing factor to death in this case.

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<sup>2</sup> Exhibit C100

- 1.3. The means by which the bleeding contributes to death is of course a loss of blood volume which further decreased the amount of blood that was available to supply oxygen to the brain, thus starving the brain of more oxygen than was already occurring from the swollen condition of the brain. Dr Heath was unable to attribute how much each of those process contributed to death but considered that the head injury was the predominant cause with a possible contribution from the blood loss from bruising<sup>3</sup>. Dr Heath said she had never seen this degree of bruising in a child before in her experience as a forensic pathologist and had only ever seen it once in an adult<sup>4</sup>.

## **2. The events of mid January 2012**

- 2.1. In mid January 2012 Chloe was living in a house at Ingle Farm with her mother Ashlee Polkinghorne and Ashlee's partner of the time, Benjamin McPartland. Ashlee Polkinghorne and McPartland had purchased a 50cc dirt bike for Chloe. The bike was far too big for her and she could barely touch the ground. She weighed 17 kilograms at the time of her death but the bike weighed over 50 kilograms. Nevertheless, McPartland repeatedly put Chloe on the bike despite her being unable to stop the bike without falling off it to the ground. Ashlee Polkinghorne filmed these episodes using her mobile phone. The footage shows McPartland putting her back on the bike and, to use the words of the sentencing judge, Justice Kelly, 'virtually throwing Chloe back on the bike after she had fallen off'. This pattern of conduct started on Tuesday, 17 January 2012. It continued until Thursday, 19 January 2012 on and off. On that day, certainly prior to 3:39pm, Chloe was rendered unconscious. By 3:39pm on that Thursday either Ashlee Polkinghorne or McPartland were conducting internet searches looking for advice on what to do with an unconscious person. However, they failed to obtain any medical treatment for Chloe until 11:58pm on Thursday, 19 January 2012 after Chloe stopped breathing. Despite the fact that she was unconscious they waited another 8½ hours before making the ambulance call. By their own admission, during that intervening period they occupied themselves by using Facebook, doing some internet banking, searching the internet as to what to do when a person was rendered unconscious, and smoked cannabis.

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<sup>3</sup> Transcript, page 84

<sup>4</sup> Transcript, page 84

- 2.2. The sentencing judge found that the conduct of repeatedly placing Chloe on the motorbike and the failure to act by obtaining medical assistance for her once she was unconscious amounted to a very serious example of the crime of manslaughter by criminal neglect. McPartland had pleaded guilty to that crime approximately a month before trial. Ashlee Polkinghorne did not plead guilty until the third day of the trial after unsuccessful voir dire arguments about the admission of evidence. McPartland was given a head sentence of 7 years with a non-parole period of 4 years and 2 months, and Ashlee Polkinghorne was sentenced to a head sentence of 8 years with a non-parole period of 4 years and 9 months.

### **3. Reason for Inquest**

- 3.1. The criminal offending of Ashlee Polkinghorne and McPartland were dealt with in the appropriate forum. The Inquest did not focus on that period in January 2012. Instead, the Inquest focussed on the nearly 4½ years of Chloe's life leading up to those terrible events in January 2012. The conduct of Ashlee Polkinghorne and McPartland in relation to Chloe and the motorbike speaks for itself. One particularly chilling aspect of it was that Ashlee Polkinghorne could be heard in the video showing Chloe's torment to be laughing at the child and her efforts to ride and maintain control of the motorbike.
- 3.2. That complete failure to show the love and care that is to be expected of a mother towards a child did not come out of nowhere. There had been many previous warning signs that Ashlee Polkinghorne was unfit to be Chloe's mother and guardian. The warning signs had been made known to the child protection authority in this State which is known as Families SA and is a part of the Department for Education and Child Development. I refer to it in this finding simply as Families SA, except where it is necessary to give it its formal title.

### **4. Chloe's Families SA history**

- 4.1. In this part of the finding I propose to describe through the evidence of a number of different witnesses the many interactions between Families SA and Ashlee Polkinghorne in relation to Chloe. Unfortunately this methodology will result in me referring to the same incident through the eyes of a number of different witnesses, however, I consider that to be the most convenient way of dealing with the matter.

4.2. The evidence of Trisha Foord, Kate Wallis, Krystal Benyk and Nicky Behsmann

Kate Wallis, Krystal Benyk and Nicky Behsmann were young women who were friends of Ashlee Polkinghorne. Trish Foord was the mother of Kate Wallis and had some involvement with Ashlee and Chloe by virtue not only of her daughter's friendship with Ashlee, but because of her daughter's relationship with Ashlee's brother, Jake. Trisha Foord made notifications to the Child Abuse Report Line (CARL). She said that her daughter Kate was living with Ashlee's brother Jake and Ashlee at the home of Alan Polkinghorne in 2006. At that time Ashlee was not attending school. Ms Foord said that Mr Polkinghorne told Ashlee, Kate and Jake that they had to leave his property. Ashlee had a boyfriend by the name of Thomas Lagden to whom she became pregnant. She was couch surfing before obtaining a unit provided by the Salvation Army. Ms Foord said that during Ashlee's pregnancy she saw her to be dirty, smelly and unhygienic and she had heard that Ashlee was taking drugs and drinking. She was aware that Ashlee was not obtaining proper antenatal medical treatment and Ms Foord was concerned about the baby. As a result of this Ms Foord contacted the CARL and raised these matters, including Ashlee's involvement in a fight in which Mr Lagden was a participant.

4.3. Ms Foord said that once Families SA became involved and workers were visiting Ashlee's unit to check on Chloe she was aware that Ashlee was cleaning the premises in preparation for their visits. She was concerned that Ashlee was deceiving the workers.

4.4. Ms Foord became aware of a telephone call received by her daughter, Kate, from Ashlee in the middle of the night when Ashlee was recorded by Kate as admitting that she was high on drugs and was a better carer for Chloe when under the influence of drugs. Ms Foord referred to an occasion when Chloe came to her house and she noted that she was behind in her development.

4.5. Kate Wallis was Trish Foord's daughter. She was in a relationship with Jake who was Ashlee's brother. Ms Wallis said that Ashlee's unit with the Salvation Army was dirty, smelly and unhygienic and that Chloe was always in a bouncer by herself. She was not dressed appropriately. Ms Wallis referred to the telephone call from Ashlee late at night. She said that Ashlee was talking really quickly and sounded 'weird'. Ashlee admitted that she was high and talked about how much money she was spending on drugs. She made it plain that Chloe was present while she was taking

these drugs. Ms Wallis recorded some of the conversation<sup>5</sup>. The recording is that of a highly excitable, irrational, foolish and almost hysterical teenager boasting about her drug taking behaviour. Shockingly, she suggests that she is a better mother to Chloe when taking drugs.

- 4.6. Ms Wallis said that she and Jake took the recording to the Families SA Modbury office and met with two ladies. She played the recording for them. It was Ms Wallis' understanding that Ashlee later found out about this report. However, there was a subsequent report by Ms Wallis to CARL in which she expressed concern about Chloe's lack of development and domestic violence against Ashlee by her then partner. Ms Wallis said that Ashlee found out about this report that she made to CARL and after that Ms Wallis received threatening telephone calls in the early hours of the morning including one from Ashlee threatening violence<sup>6</sup>. She said that she did not see Ashlee or Chloe after that<sup>7</sup>.
- 4.7. Krystal Benyk met Ashlee Polkinghorne when they were working together at McDonalds. Ms Benyk was two years older than Ashlee. When Ashlee was pregnant with Chloe she asked Ms Benyk to be Chloe's Godmother and Ms Benyk accepted. In her evidence she said she regarded it as an honour to have that role and to guide Chloe through life<sup>8</sup>.
- 4.8. Ms Benyk had a lot to do with Ashlee and Chloe and said that Ashlee did not want to be around Chloe at times. As a result Ms Benyk did the feeding, changing and bathing of Chloe. She said that Ashlee would be out the front of the house with friends while she was with Chloe. She said that the unit was filthy with bottles and nappies lying on a sticky floor. She said that there were no parents around and that people could visit and smoke and drink, including using cannabis. She said that she felt like she was there to look after Chloe as no-one else would do so. She said that she did not take the matter up with Ashlee because she was intimidated by Ashlee, knowing that she would 'go off' at Ms Benyk if she raised the matter<sup>9</sup>. Ms Benyk

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<sup>5</sup> The recording was admitted as Exhibit C102a and the transcript of the recording as Exhibit C65q

<sup>6</sup> Transcript, page 149

<sup>7</sup> Transcript, page 149

<sup>8</sup> Transcript, page 156

<sup>9</sup> Transcript, page 161

gave the following telling evidence when she asked why she did not express concern to Ashlee about what was going on at this time:

'Because she'd just crack it with you. She'd go off at you and that was it, you weren't allowed to come over, you weren't allowed to see Chloe, so it was like a little game with Ashlee. I didn't want to say anything because I didn't want Chloe not to have anyone there.'<sup>10</sup>

This evidence is very revealing. It is consistent with Ashlee's use of Chloe as a means to get her own way and manipulate others.

- 4.9. Ms Benyk said that when Chloe was approximately 10 months old she started having Chloe stay with her overnight at Ashlee's request so that she could go out. Ms Benyk was happy to accommodate her. This would happen once a week or a fortnight. After Chloe was a year old then she would stay with Ms Benyk for weekends and then for weeks at a time. She said that when it was time for Chloe to go home she would contact Ashlee, but Ashlee would not pick up her phone. The longest that Chloe was left in Ms Benyk's care was for a period of four or five weeks<sup>11</sup>. Ms Benyk gave evidence of Ashlee's association with numerous men who were violent towards her<sup>12</sup> and said that Ashlee did not care about putting herself in danger, so she would not care about putting her child in danger either.
- 4.10. Ms Benyk gave evidence of Chloe's condition when she came to stay with her. She said that she was usually dirty and that her clothes smelled of 'pot'. Her hair was dirty. Ms Benyk would not use Ashlee's clothes for Chloe but kept clothes for her at her own house. She said that Chloe had nappy rash all the time and her skin was red raw and that it took weeks to get rid of it. Ms Benyk said that when Chloe was 3 years old she told Ms Benyk that she hated her mother<sup>13</sup>. She also said that Chloe would become distressed at the prospect of returning to Ashlee<sup>14</sup>.
- 4.11. Ms Benyk gave evidence of an event that took place when Chloe was approximately 14 to 16 months old when Ms Benyk picked Chloe up from Ashlee and Chloe did not look very well. Ashlee brushed it off as being related to the fact that Chloe had only just woken up from nap. However, when Ms Benyk tried to give Chloe something to

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<sup>10</sup> Transcript, pages 161-162

<sup>11</sup> Transcript, page 166

<sup>12</sup> Transcript, page 166

<sup>13</sup> Transcript, page 170

<sup>14</sup> Transcript, page 170

eat she vomited and was continuously sick so Ms Benyk took her to the Women's and Children's Hospital. Ms Benyk was unable to get in touch with Ashlee as her phone did not answer. The staff diagnosed Chloe as being dehydrated with gastroenteritis and she was put on a drip and kept overnight. Ms Benyk stayed with her during the night. She said that she was unable to make contact with Ashlee until 2am or 3am and then told her that Chloe was in the Women's and Children's Hospital. Ashlee said that she was 'off her face on drugs and wouldn't be able to come to the hospital because they'd kick her out'<sup>15</sup>. Ms Benyk said that Ashlee arrived at the hospital in the mid afternoon of the following day with a social worker from Families SA. She said that Chloe was discharged into Ashlee's care.

- 4.12. Ms Benyk said that when she made reports to CARL she did not give her name because she was scared that Ashlee would find out that she had made a report and then she would not be able to see Chloe<sup>16</sup>.
- 4.13. Ms Benyk said that when Ashlee commenced her relationship with McPartland in 2011 Ms Benyk's contact with Chloe decreased and ceased altogether. She was no longer able to have Chloe stay with her overnight. Ms Benyk said the last time she saw Chloe was in the early part of December 2011 when it was suggested that Chloe and Ashlee might spend Christmas Eve with her. McPartland interrupted and said 'no'. He said this forcefully and aggressively. They were sitting in the lounge room talking and Chloe had come out of her bedroom and wanted to play and talk with them. According to Ms Benyk, Ashlee and McPartland told her several times to go back to her room and play but Chloe persisted in coming out again. McPartland took her to her room and told her if she did not listen she would get soap put in her mouth. Chloe came out a short time later and McPartland said 'you're not listening so you are getting soap in your mouth'. He went into the kitchen and Ms Benyk saw him chop up a cake of soap, breaking it into little flakes. He put them in the palm of his hand and mixed them with water making soap. He walked up to Chloe's bedroom. Ms Benyk next heard Chloe screaming hysterically and McPartland was telling her 'next time you'll listen'. Ms Benyk could hear Chloe was very distressed and could hear her gagging. She said to Ashlee that she wanted to go in and get Chloe out of there and Ashlee replied with words to the effect of 'don't you think I want to as well'.

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<sup>15</sup> Transcript, page 173

<sup>16</sup> Transcript, page 176

However, Ms Benyk was too intimidated by McPartland and had heard that he could be violent. McPartland came out and said words to the effect 'the little bitch'<sup>17</sup>.

- 4.14. In another statement Ms Benyk referred to having visited the house at which McPartland and Ashlee were living with Chloe. She saw that they had setup a camera in Chloe's room which was connected to the television in the lounge room. Chloe had been put in her room and McPartland was watching her on the television and when she would go for the door handle to come out of her room, McPartland would yell at her telling her not to come out<sup>18</sup>. Ms Benyk told Ashlee that she considered that was McPartland was doing to Chloe amounted to child abuse<sup>19</sup>. She said that Ashlee did not respond. Ms Benyk was asked why she did not report these later occasions involving McPartland to CARL. She said she did not do so:

'Because I had given up on them ... Well it was four and a half years of reporting and they did nothing, so like you lose all faith in the system. Sorry.'<sup>20</sup>

- 4.15. Ms Nicky Behsmann was a friend of Ashlee and Ms Benyk. She said that Ashlee was very neglectful of Chloe from the very beginning, leaving Chloe in front of the television in her bassinet for long periods of time and always wearing vomit stained clothes<sup>21</sup>. She said that Chloe never at any stage had what she needed when under Ashlee's care and was never looked after properly under Ashlee's care. She said that the only time Chloe was looked after properly was when she was in other people's care, such as Krystal Benyk and a lady called Joy Rann who will be referred to later<sup>22</sup>. Ms Behsmann said that Ashlee was affected by drugs a lot of the time while in the Salvation Army unit, consuming marijuana and methamphetamines<sup>23</sup>. She said the house was always messy with food stuck on the couch, clothes everywhere and generally unhygienic<sup>24</sup>.
- 4.16. Ms Behsmann said that she was involved with Ashlee and Chloe for most of Chloe's life. She considered that Chloe had a very delayed development because Ashlee never spent time teaching her. She said Ashlee was 'too busy looking for somewhere

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<sup>17</sup> Exhibit C103

<sup>18</sup> Exhibit C103a

<sup>19</sup> Transcript, page 179

<sup>20</sup> Transcript, page 180

<sup>21</sup> Transcript, page 187

<sup>22</sup> Transcript, page 188

<sup>23</sup> Transcript, page 189

<sup>24</sup> Transcript, page 190

and someone to drop her off to so she could go out and have a good time herself'<sup>25</sup>. She said that she did not think Ashlee enjoyed being a mother<sup>26</sup>.

4.17. Ms Behsmann said that when Ashlee and Chloe were living in Royal Park in 2011, immediately before they moved in with McPartland, Chloe's room was kept very dark. Ashlee had put sheets up on the window so that the room was very dark and that she would not open a window and let fresh air in due to the fact that she was 'paranoid that neighbours might smell the marijuana and report her for her drug use'<sup>27</sup>. Ms Behsmann gave evidence that Ashlee would call Chloe a selfish little cow and sometimes would call her a little bitch<sup>28</sup>.

4.18. Tellingly, Ms Behsmann said:

'For four and a half years things didn't really change; she always lived in squalor and mess, but as much as I loved Chloe and I wanted to be there I was raised differently and I have different expectations of how I would like to live.'<sup>29</sup>

She said that Ashlee never had any time for Chloe because all she wanted to do was get high<sup>30</sup>.

4.19. Ms Behsmann said that around this time she became aware that Ashlee was engaging in prostitution. She did not know who was looking after Chloe while Ashlee was engaged in this activity.

4.20. Ms Behsmann made reference to the episode involving the video monitoring of Chloe in her bedroom and McPartland yelling at her not to come out of her room when she looked as if she was going to do so<sup>31</sup>. Ms Behsmann also gave evidence of McPartland being abusive to her in Chloe's presence when they were all in the car together and McPartland told her to 'get the fuck out of the car'<sup>32</sup>.

4.21. Ashlee obtains supported accommodation services from the Salvation Army

Katie Lawson was the Salvation Army case manager who managed Ashlee Polkinghorne's case. Ashlee obtained accommodation through the Salvation Army between June 2007 and May 2008. She moved into the accommodation shortly

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<sup>25</sup> Transcript, page 192

<sup>26</sup> Transcript, page 192

<sup>27</sup> Transcript, page 194

<sup>28</sup> Transcript, pages 195-196

<sup>29</sup> Transcript, page 198

<sup>30</sup> Transcript, page 198

<sup>31</sup> Transcript, page 205

<sup>32</sup> Transcript, page 207

before Chloe's birth which occurred in July 2007. The case summary in the Salvation Army file<sup>33</sup> says that Ashlee's twelve month stay came to an end because her lease was not renewed due to a number of neighbour complaints and a large amount of rubbish built up in the property. Furthermore, Ashlee did not engage in support services offered by the Salvation Army.

4.22. Ms Lawson gave evidence at the Inquest and said that at the beginning of Ashlee's stay in the unit provided by Salvation Army at Hope Valley, Ashlee was quite engaging and grateful for the accommodation. Her evidence painted a picture of a situation that gradually deteriorated until it became completely unacceptable from the Salvation Army's point of view. After Chloe was born Ms Lawson would often find Chloe in the bassinet in front of the television when she went for her scheduled visits. Ms Lawson said that Ashlee would often refuse to let her see certain things. In the end the Salvation Army became aware that, contrary to Ashlee's lease agreement, Tom Lagden was living in the premises. Accordingly, a letter was sent reminding her that she was in a supported accommodation house and that the terms did not allow her to have another person staying with her<sup>34</sup>. At one point when Ms Lawson visited the premises Lagden was present and was introduced to Ms Lawson as Ashlee's brother Jake. The deception was revealed when Ms Foord make contact with the Salvation Army to alert them to what had occurred and that the person was not Jake, but was in fact Lagden<sup>35</sup>. By October 2007 the property was noted to be very dirty.

4.23. On 19 September 2007<sup>36</sup> Ms Lawson attended a case conference with Families SA workers, Megan Cheverton and Kelly Francou. At this meeting there was a discussion about the increasing seriousness of the situation regarding Ashlee and Chloe. In particular, the meeting discussed the report made by Kate Wallis of the phone call with Ashlee that she had recorded where Ashlee was talking about taking drugs while Chloe was in her care. The note records that following this meeting, which I will discuss in further detail when I come to the evidence of Kelly Francou, Ashlee's case would be managed by the Strong Families Safe Babies program.

4.24. Ms Lawson said that by early January 2008 it appeared that the Strong Families Safe Babies team were happy with Ashlee's progress. By contrast, Ms Lawson said that

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<sup>33</sup> Exhibit C84

<sup>34</sup> Exhibit C84, page 75

<sup>35</sup> Exhibit C84, page 105

<sup>36</sup> Exhibit C84, page 109

the Salvation Army were not happy with the state of the unit and Ashlee's attitude to their service.

4.25. On 18 March 2008 an episode occurred that foreshadowed the end of Ashlee's goodwill with the Salvation Army. Ms Lawson received advice that the rubbish at the unit had increased and that there were actually rats living in the rubbish and that the Salvation Army was being asked to take immediate action for the benefit of the other tenants in the unit complex. As a result of this information Ms Lawson and her team leader attended the unit. Ashlee was not home, however the property had been left unlocked and Ms Lawson and her colleague entered the premises. They found the house to be filthy with rubbish, dirty nappies, food scraps, empty cans and bottles of alcohol all over the house and that the laundry was full of dirty clothes with bags of kitchen rubbish on top of them. As a result of this they made contact with Nicholas Ratsch who was then an employee of Families SA in the Strong Families Safe Babies team who was then involved with Ashlee. The following day Ms Lawson made a CARL notification about the state of the property and the impact on Chloe. Ms Lawson explained that she made the CARL notification because she wanted Families SA to consider whether Chloe should remain in Ashlee's care<sup>37</sup>.

4.26. As a result of the state of the property the Salvation Army finally took steps for Ashlee to be evicted and she left the property in May 2008 in a filthy condition requiring the Salvation Army to engage professional cleaners. Ms Lawson's last contact with the Strong Families Safe Babies team was on 11 June 2008 when she was told that from their point of view there was nothing to suggest that Chloe was not being cared for appropriately<sup>38</sup>.

4.27. Families SA involvement with Ashlee and Chloe between Chloe's birth (July 2007) and October 2007

During this period Ashlee was living in the Salvation Army supported accommodation at Hope Valley. Megan Cheverton was a social worker at the Modbury Families SA office at that time. Ms Cheverton said that as at 22 August 2007 there were five notifications in relation to Chloe and they were from different people<sup>39</sup>. Ashlee and Chloe's case was assigned to Ms Cheverton. The concerns that had been expressed in those notifications included an unborn child concern, a report

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<sup>37</sup> Transcript, page 279

<sup>38</sup> Exhibit C84, page 119

<sup>39</sup> Transcript, page 300

of Ashlee and Chloe being at Tea Tree Plaza when Chloe was only a few weeks old and Chloe had not been recently fed. It was reported that Ashlee was spending a lot of time during the day at the local train station meeting with her peers. It was reported that during this period Ashlee had informed a notifier that she had had a binge of smoking 'speed' through a light globe for four days<sup>40</sup> and that she looks after Chloe better when she is taking speed<sup>41</sup>. Another report was to the effect that Ashlee told Lagden to keep some speed that he was given so they could use it later on. Reference is also made to Ashlee saying to Chloe 'Ssh you bitch' shortly after Chloe's birth. There is a report of Ashlee holding Chloe without proper support for her head and putting her in the pram with a bottle propped up with a blanket. Chloe was reported to have dried milk on her face, sleep in her eyes, dirty nails and a red line in the crease of her neck. There was also a report that Ashlee was spending about \$300 per week on methamphetamines and was giving Chloe tap water to drink because she could not be bothered making formula. The case was assigned to Ms Cheverton on or about 22 August 2007. Ms Cheverton and another worker, Leanne Sowerby, attended Ashlee's unit at Hope Valley on an unannounced visit on 23 August 2007<sup>42</sup>. Ashlee presented as hostile. The workers found the house to be in a mess with a stale smell<sup>43</sup>. They put the drug allegations to Ashlee and she denied them<sup>44</sup>. Ms Cheverton said that at that stage she was sceptical as to whether Ashlee was telling the truth. She reported to her supervisor, Kelly Francou, on 24 August 2007 and it was agreed that Ms Cheverton would continue to work the case and work with Ashlee and the other services that were already involved to monitor Chloe's safety<sup>45</sup>.

- 4.28. In response to another notification on 3 September 2007 from Child and Youth Health, Ms Cheverton made another home visit. The notification was to the effect that Ashlee's unit was extremely messy and there was rubbish and dirty nappies on the floor. Ashlee was not cooperating with the service. As a result of that concern being expressed the workers attended Ashlee's home. The note that they made of that attendance<sup>46</sup> was to the effect that they attended at the unit and knocked on the door several times. A male voice from inside the unit called out 'who is it?' and then went

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<sup>40</sup> Transcript, page 301

<sup>41</sup> Transcript, page 301

<sup>42</sup> Transcript, page 305

<sup>43</sup> Transcript, page 312

<sup>44</sup> Transcript, page 312

<sup>45</sup> Transcript, page 317

<sup>46</sup> Exhibit C67, page 259 and Transcript, page 320

on to say that Ashlee was out with her mother and had Chloe with her. The male did not open the door or identify himself and Ms Cheverton and Ms Sowerby left the premises.

- 4.29. Ms Cheverton in her evidence said that a response of that kind is a common experience when Families SA knock on the door.
- 4.30. Ms Cheverton said they returned to the office and then called Ashlee's mother, Belinda Valentine, to establish whether Ashlee was with her. She confirmed that Ashlee was not with her and that they had had a fight a few days beforehand. Then, later that afternoon, Ms Cheverton received a telephone call from Ms Wallis who informed her that Ashlee had been at home while she was knocking on the door and had no intention of answering the door to either Families SA or the Salvation Army<sup>47</sup>. As a result of this Ms Cheverton and Ms Sowerby went straight back to Ashlee's unit and knocked on the door. This time Ashlee answered the door and appeared to be expecting them. Ms Cheverton said that when they arrived there were obvious signs that cleaning had been taking place and the bottle steriliser was operating<sup>48</sup>. However, they briefly glimpsed at the bathroom and noted it to be unhygienic and noted that there was a knife in the vanity area<sup>49</sup>. They noted on the file that Ashlee and the parts of the home they were able to see presented very well on this occasion and 'she is very good at lying and hiding things and tells workers what they want to hear'<sup>50</sup>.
- 4.31. Indeed, this is a classic example of Ashlee's manipulative behaviour. Unfortunately this pattern was to continue for the next four years or so of Chloe's life.
- 4.32. 6 September 2007 was the day on which Ms Wallis contacted Families SA and spoke to Ms Cheverton to inform her that Ms Wallis was in possession of a recording of Ashlee boasting about taking drugs and her ability to 'look after' Chloe while she was on drugs. Ms Cheverton arranged with Ms Wallis to bring the recording in the following day. As Ms Wallis had already said in her evidence, she did indeed bring the recording into the Modbury office and it was played to Ms Cheverton on or about 7 September 2007. The tape makes harrowing listening. It is a rambling call from a person who is obviously drug affected. It is impossible in this finding to convey the

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<sup>47</sup> Transcript, page 323

<sup>48</sup> Transcript, page 325

<sup>49</sup> Transcript, page 326

<sup>50</sup> Transcript, page 327

impression one gains from listening to the tape. The conversation includes references to Chloe and I will quote the most pertinent of them:

'I look after her better (inaudible) or Krystal reckons I look after her better when I'm fuckin like, when I'm on gear cos, I fuckin like, I don't sort of like tense (inaudible) cos, when I fuckin feed her right. I've got into this thing right. She doesn't actually have to go to sleep in anyone's arms.'<sup>51</sup>

And as follows:

'Alright and then now so, yeah and now it's just easy cos, I can get drunk and do all that kind of crap. Because all I have to do is if I was too drunk. I'd just put the bottle like. I'd leave her in her rocker and put the bottle in her mouth instead of me holding it.'<sup>52</sup>

- 4.33. As a result of listening to this tape Ms Cheverton alerted her supervisor, Kelly Francou, because she now had clear confirmation that Ashlee was in fact using drugs while caring for Chloe. She said that this 'therefore obviously increased our sense of risk for Chloe's safety'. From that moment Families SA had knowledge that obliged it to make an application to the Youth Court under section 20(2) of the Children's Protection Act 1993. However, no such application was made. That is not surprising in view of the evidence to which I will refer later given by Mr Harrison in relation to section 20(2).
- 4.34. Ms Cheverton was not present when Ashlee Polkinghorne was asked to attend the office and the tape was played to her. Ms Cheverton was away that day but became aware that Ashlee did, after the tape was played, finally admit to drug use. Ms Cheverton said that following this incident a decision was made that the case would be referred to the Strong Families Safe Babies team and that this would occur in approximately three weeks at the beginning of October 2007<sup>53</sup>. Ms Cheverton agreed that Ashlee should have been referred for drug and alcohol counselling at that time<sup>54</sup>. I note that the best way to achieve that outcome would have been an application to the Youth Court under section 20(2) of the Act. Once again I note that that did not happen.
- 4.35. Kelly Francou gave evidence at the Inquest. She was the supervisor in the Modbury office of Families SA who supervised Ms Cheverton and Ms Sowerby in relation to

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<sup>51</sup> Exhibit C65q, page 4

<sup>52</sup> Exhibit C65q, page 5

<sup>53</sup> Transcript, page 335

<sup>54</sup> Transcript, page 338

Chloe and Ashlee's case. Ms Francou gave evidence particularly about the occasion when Ashlee was asked to attend at Families SA on 7 September 2007 to be confronted with the tape recording. Ms Francou said she took the recording extremely seriously<sup>55</sup> and she described it as:

'The turning point in the case for me to be able to do something.'<sup>56</sup>

That particular passage of evidence is very telling. I do agree with Ms Francou that this episode represented a turning point in the sense that it presented an opportunity to intervene in a way that might have changed the outcome. However, the opportunity was in my view not taken.

- 4.36. Ms Francou said that when Ashlee came in her memory of the meeting was that Ashlee was 'a terrified kid, a 16-year-old, with a baby trying to manage talking to the supervisor and the senior prac'<sup>57</sup>.
- 4.37. That passage of evidence demonstrates that Ms Francou was entirely misled by Ashlee. Ashlee may have presented for that moment as a terrified 16 year old. However, the reality was that she was quite worldly, perfectly capable of deceiving social workers who knocked at her door and then receiving them in her home hours later after she is proven to have deceived them and unashamedly showing them around the house as if nothing had occurred earlier in the day. I think that Ms Francou completely misread the situation and somehow believed that Ashlee was actually intimidated by Ms Francou's seniority. The fact is that Ashlee was unlikely to understand what Ms Francou's position was in the hierarchy of Families SA. I very much doubt that she was intimidated at all. This was almost certainly another example of Ashlee being manipulative and deceitful.
- 4.38. This is borne out by the fact that even on Ms Francou's account of the event, Ashlee was given an opportunity to admit to drug use and informed that if she was honest about it she would be in a better position. Despite this offer, Ashlee kept denying any drug use and it was only after she was finally played the tape that a crack began to appear in her armour. Even then she initially denied that the tape was of her. At that point Ms Francou suggested that they go to Gribbles and she provide a urine sample.

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<sup>55</sup> Transcript, page 578

<sup>56</sup> Transcript, page 579

<sup>57</sup> Transcript, page 581

At that point, according to Ms Francou, Ashlee 'broke down' and said that it was her and asked them not to take her baby.

- 4.39. This is not the behaviour of a terrified 'kid'. Instead, it is the behaviour of an accomplished liar practised in deceit and manipulation. Ms Francou said that she then suggested that the only acceptable way for Ashlee to proceed was with some form of intense support from Families SA. She went on in the conversation to suggest that Louise Place would be a good facility for Ashlee and Chloe. However, Ashlee was well aware of Louise Place and knew that men were not allowed to stay there. She was adamant that she would not be prepared to go to Louise Place because she was in a relationship with Lagden and wished to maintain that relationship. Once again this is indicative of an assertive person. Far from being a terrified kid, Ashlee was prepared to stipulate what her requirements were, even when she was in this very weak bargaining position. In my view this is a further indication that Ms Francou completely misread the situation. I conclude that Ashlee was not at all intimidated by this meeting and simply made only those concessions that she strictly had to make for the purposes of keeping Families SA satisfied and avoiding, to the greatest extent she possibly could, Families SA's scrutiny. In any event, Ashlee agreed to cooperate with Families SA<sup>58</sup>. At the end of the meeting Ms Francou actually thanked Ashlee for her honesty. She explained that it was a very big thing for a 16 year old to admit what she was doing and that was why she thanked Ashlee for her honesty. In my view it is extraordinary that Ms Francou would take that step after Ashlee had been engaging in blatant lies for the vast majority of the meeting and then had only finally reluctantly admitted the truth when confronted with the tape. My impression is that far from this being a meeting that was intimidating or confronting, instead the Families SA staff took a 'softly, softly' approach with the result that any trepidation Ashlee might have had at the beginning of the meeting would swiftly have dissolved. Certainly being thanked for her 'honesty' would have emboldened her to engage in further lying and manipulation later on.
- 4.40. Ms Francou gave evidence of a follow-up case conference which Ashlee was required to attend. This occurred on 19 September 2007 at the Modbury District Centre. At that case conference Ashlee came into the meeting and made an offer to submit

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<sup>58</sup> Transcript, pages 581-582

herself to regular drug testing to show she was committed to not using drugs. The notes of that meeting record as follows:

'Kelly, not wanting to take this punitive line at this stage, thanked Ashlee for her commitment.'<sup>59</sup>

- 4.41. Ms Francou said she thought that Ashlee presented very well at the meeting and that it was a 'very frightening thing for her to come into that with all the professionals'. Ms Francou said that she remembered Ashlee being very proud of the fact that she 'hadn't used'<sup>60</sup>. I took Ms Francou to mean that Ashlee was proud of the fact that she had not used illicit drugs in the period between 7 September 2007 and 19 September 2007 which was less than two weeks. Ms Francou's position appeared to be that she regarded this pride in a twelve day period of abstinence as something to be regarded as a positive sign from Ashlee. In my view this demonstrates the tendency exhibited by Ms Francou to be over optimistic. Twelve days of abstinence is hardly a major achievement when the welfare of an infant of only three months is at stake.
- 4.42. It is interesting that Ashlee made the offer of submitting to urinalysis on a regular basis at this second meeting. It should be remembered by that time she had had an opportunity to reflect on the first meeting for some twelve days. As I have already noted, at the first meeting she was thanked for her honesty and given good reason to feel confident in her ability to bluff the Families SA workers thereafter. It should be remembered that Ashlee was living with Lagden who had a considerable involvement with the criminal justice system. He would have been well aware of the processes for urinalysis and the opportunities that are afforded to users of that system to substitute urine samples and so on. It is interesting to speculate whether Ashlee made this offer following some discussion with Lagden. He would certainly have been in a position to explain to her the ways in which urinalysis might be evaded.
- 4.43. Ms Francou in her evidence, as I have already said, demonstrated a tendency to be over optimistic about Ashlee's prospects. She suggested that the other agencies shared her belief about the prospects of Ashlee's commitment to abstaining from drugs<sup>61</sup>. However, when it was pointed out to her that the representative from the Child and Youth Health Service had said in the meeting that she had made ten attempts to engage with Ashlee but only got to see her twice, and that the Salvation

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<sup>59</sup> Transcript, page 597

<sup>60</sup> Transcript, page 597

<sup>61</sup> Transcript, page 599

Army was far from happy with Ashlee's performance as a tenant, she still seemed unable to accept that she had an unrealistic idea of Ashlee's true character. In my opinion it is quite clear that Ms Francou adopted an unduly optimistic view of Ashlee's potential to change her behaviour.

4.44. Strong Families Safe Babies team become involved

The period from September 2007 until February 2008 during which Ashlee and Chloe were residing at the Hope Valley Salvation Army unit was important for a number of reasons. At this point Chloe was a newborn infant. Ashlee was her 16 year old teenage mother who was, for the first time in her life, not only in charge of a household, but responsible for the nurture and caring of the newborn infant, Chloe. During this period the Strong Families Safe Babies section of Families SA took responsibility for Ashlee and Chloe's case. During this period their case was the principal responsibility of Nicholas Ratsch who was then a senior social worker. At the time of giving evidence he had been promoted to the position of principal social worker in Families SA which is a very senior role and a role that provides consultancy service and advice to workers in the field.

4.45. Mr Ratsch said that on 10 October 2007 he spoke to Ms Cheverton of the Modbury office about Strong Families Safe Babies taking over Chloe's case. Mr Ratsch then understood that the Modbury office had undertaken an investigation and had determined that Chloe was a high risk infant and the matter was being transferred to Strong Families Safe Babies for family preservation work which he described as trying to preserve the family unit<sup>62</sup>.

4.46. On 12 October 2007 Mr Ratsch undertook a joint home visit with Ms Cheverton. He was introduced to Ashlee and she was told that he would be taking over her case. This was his first meeting with Ashlee<sup>63</sup>. Mr Ratsch assessed Ashlee as being keen to do anything she could to keep her child in her custody and he said that at that time she was prepared to engage with his service<sup>64</sup>, although right from the very start there were signs that Ashlee could be reluctant to cooperate because she told Mr Ratsch that she was not keen on the frequency of the proposed home visiting which would be approximately one to two visits per week<sup>65</sup>.

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<sup>62</sup> Transcript, page 456

<sup>63</sup> Transcript, page 459

<sup>64</sup> Transcript, page 461

<sup>65</sup> Transcript, page 462

- 4.47. Mr Ratsch was well aware that the staff from the Modbury office had assessed Ashlee as a convincing liar and he said that during his work with her he experienced the same dishonesty. He gave as an example Ashlee telling him that she was in one place when she was really somewhere else<sup>66</sup>.
- 4.48. Mr Ratsch's next contact with Ashlee was on 19 October 2007 when he conducted a home visit with Ms Libby Daniel who was the family support worker with whom he was working. A family support worker is not a social worker, but a person who assists social workers in carrying out their role. Mr Ratsch attempted to contact Ashlee on 23 and 24 October 2007 with no success, but on 26 October 2007 they attended a planned home visit<sup>67</sup>. They noted the unit to be untidy with a mattress on the floor in the lounge where Ashlee slept because she was watching television until late in the night. They also observed containers with leftover food on the couch<sup>68</sup>.
- 4.49. At a further home visit on 7 November 2007 Ashlee again enquired how long Strong Families Safe Babies would remain involved with her and Chloe<sup>69</sup>. Once again she was showing even from this early point her reluctance to participate in receiving support to properly care for Chloe. The following day, 8 November 2007, Mr Ratsch received a phone call from Dot Woods, an employee of the Child and Youth Health Service (CYWHS) who had been visiting Ashlee since Chloe's birth. Ms Woods advised that her manager would like to convene a case conference to discuss future CYWHS involvement. A meeting was set for 13 November 2007 and on that day Ms Woods and another employee of CYWHS, Rosie Ranford, was present. Ms Ranford indicated that she was concerned about Ashlee's drug use and informed Mr Ratsch that Ms Woods had visited the home and observed Ashlee to be substance affected and unable to manage Chloe's needs and needed to 'palm off Chloe's feeding to Tom'<sup>70</sup>. Mr Ratsch was asked whether that was a serious concern. He said that it was 'concerning that one parent is substance affected'<sup>71</sup>. When it was pointed out to him that Ashlee had undertaken not to take any drugs at all<sup>72</sup>, Mr Ratsch appeared not to be aware of that agreement and instead referred to a later agreement that was part of a

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<sup>66</sup> Transcript, page 464

<sup>67</sup> Transcript, page 468

<sup>68</sup> Transcript, page 468

<sup>69</sup> Transcript, page 472

<sup>70</sup> Transcript, page 473 and Exhibit C67, page 227

<sup>71</sup> Transcript, page 473

<sup>72</sup> This was a reference to Ashlee's promise to Ms Francou on 7 September 2007 not to take any drugs at all

safety plan, to which reference will be made shortly. Mr Ratsch also was unable to recall that Lagden was not in any event supposed to be living in the house<sup>73</sup>. Following this meeting with CYWHS Mr Ratsch said they decided to put a 'safety plan' in place<sup>74</sup>. He said that partaking in drugs 'is not the preferred option' but that if it was something that Ashlee needed to do, that she needed to make appropriate care arrangements<sup>75</sup>. He said 'it's called a safety plan'<sup>76</sup>.

4.50. It was pointed out to Mr Ratsch that Ashlee had previously been told that she was not allowed to take drugs at all and it was suggested to him that the proposed safety plan would be sending a mixed message and he acknowledged that 'it could be seen that way'<sup>77</sup>.

4.51. It was suggested to Mr Ratsch that this information about Ashlee's drug use and her need to 'palm off feeding' to Lagden should have resulted in a notification to CARL. His immediate response was to ask whether the questioner meant should CYWHS have made a notification? When it was suggested to him that he should have made a notification he responded that as the allocated caseworker he was aware of it and able to deal with it through his case management. He said that:

'As I was the child protection worker already working with the case, I didn't need to make a notification for myself to have that information because I already had it.'<sup>78</sup>

Mr Ratsch was asked if it would have been prudent to make a notification so that there is a further notification on the system. His response was:

'I could have raised a notification which I would then have been investigating myself ... it wouldn't have changed.'<sup>79</sup>

He acknowledged however that when information comes to a worker who is involved with a case some workers will make a notification despite that fact<sup>80</sup>. In any event the safety plan was duly prepared by Mr Ratsch and signed by Ashlee Polkinghorne and Lagden on 23 November 2007<sup>81</sup>.

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<sup>73</sup> Transcript, pages 473-474

<sup>74</sup> Transcript, page 475

<sup>75</sup> Transcript, page 475

<sup>76</sup> Transcript, page 475

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<sup>78</sup> Transcript, page 477

<sup>79</sup> Transcript, page 481

<sup>80</sup> Transcript, page 477

<sup>81</sup> Exhibit C67, pages 308-309 Safety Plan

- 4.52. Mr Ratsch was asked a number of questions about the following paragraph in the safety plan:

'Ashlee and Tom agree that when they choose to consume alcohol or drugs, they will arrange for a non-substance affected adult to provide care for Chloe – be responsible for meeting Chloe's needs.'<sup>82</sup>

It was suggested to Mr Ratsch that this almost amounts to an implicit condonation of the consumption of alcohol or drugs but he did not agree<sup>83</sup>. Mr Ratsch acknowledged that he drafted the safety plan<sup>84</sup>. When it was suggested to him that there was a major difference between the terms of the agreement Ashlee had been required to give to Ms Cheverton and Ms Francou a couple of months beforehand and the safety plan, he responded 'it could be perceived that way'<sup>85</sup>. Mr Ratsch's reluctance to concede what was obvious did not reflect very well on him as a witness. It is quite plain that there is a fundamental difference between what Ms Francou had demanded of Ashlee and the terms of the safety plan. Ms Francou had been adamant that Ashlee was to cease consuming drugs and she had agreed to that. It will be recalled that she had even offered to submit herself voluntarily to urinalysis testing. By contrast, Mr Ratsch's safety plan contained no prohibition at all and used the language of choice in relation to Ashlee's consumption of drugs. This is not a matter of a perceived difference, it is quite obvious and he should have been prepared to concede it. Furthermore, he should also have been prepared to concede that it was implicit in the safety plan that Ashlee and Lagden will consume drugs or alcohol. That is the very purpose of the paragraph. His reluctance to concede that is another example of his attitude as a witness. In the end, he finally acknowledged that it would have been better to avoid any form of condonation of drug use in a 16 year old in the hope that it might be possible to get her to abstain from drugs completely<sup>86</sup>.

- 4.53. In any event, on the same day as the meeting took place with Ms Woods and Ms Ranford from CYWHS, Mr Ratsch and Ms Daniel attended at Ashlee's house and observed the build-up of rubbish. It was planned to visit Ashlee the following Monday to assist in tidying the house. Mr Ratsch was asked in his evidence whether

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<sup>82</sup> Exhibit C67, page 309

<sup>83</sup> Transcript, page 482

<sup>84</sup> Transcript, page 483

<sup>85</sup> Transcript, page 484

<sup>86</sup> Transcript, page 484

he perceived it as part of the role of a social worker at the Strong Families Safe Babies team to help with waste removal and his response was in the affirmative<sup>87</sup>.

- 4.54. A further home visit took place on 26 November 2007 and again this was a planned home visit. The house was noted to be clean and orderly. Once again Ashlee was asking how much longer Strong Families Safe Babies would be involved. Mr Ratsch said that this was a regular feature of conversations with Ashlee<sup>88</sup>.
- 4.55. The next significant event occurred on 30 November 2007 when Mr Ratsch received information from a police officer, Detective Brevet Sergeant Rankin, who herself had received information from Ms Trisha Foord about Ashlee and Chloe. Detective Rankin said that information from Ms Foord was reliable. The information was that Lagden had been involved in a fight with a person at Tea Tree Plaza the previous day and that Ashlee had left Chloe in her pram to become involved in the fight with Lagden. In addition to this Ms Foord raised a general concern about drug use within the home. Mr Ratsch made a telephone call to the police officer, Detective Rankin, however he did not make contact with Ms Foord. He conceded that he should have done so but could not recall why he did not<sup>89</sup>. In relation to this episode Mr Ratsch conceded that it would have been prudent for him to have notified the matter to CARL<sup>90</sup>. It had taken a number of days for Mr Ratsch to make contact with Detective Rankin. He said that there would have been little point in him attending at Ashlee's unit after his conversation with the police officer because the incident had taken place several days prior by that stage and it did not suggest an immediate danger<sup>91</sup>. However, he had not had any contact with Chloe or Ashlee for some days and acknowledged that he did not know whether Chloe was safe or not<sup>92</sup>.
- 4.56. Mr Ratsch's next home visit was on 10 December 2007 when he noted:

'Still no overt signs of drug use. No indication of sores, track marks, substance affected behaviour during workers' visits, nor illicit substances or substance abuse paraphernalia. This is a safety factor as it indicates that the parents have not ceased substance misuse, that it has been reduced somewhat and that the parents are being responsible about appropriately storing it.'<sup>93</sup>

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<sup>87</sup> Transcript, page 486

<sup>88</sup> Transcript, page 497

<sup>89</sup> Transcript, page 501

<sup>90</sup> Transcript, page 501

<sup>91</sup> Transcript, page 501

<sup>92</sup> Transcript, page 502

<sup>93</sup> Transcript, page 506

- 4.57. Then, on 12 December 2007, Mr Ratsch and Ms Daniel met with Carolyn Curtis (nee Lockett), their supervisor at Strong Families Safe Babies for the purposes of preparing a case consultation sheet. It is a matter of concern that the case consultation sheet contains the following statement:

'To date no service has sighted any evidence to suggest that either parent is using drugs and the parents have not presented on any occasion as being under the influence.'<sup>94</sup>

Mr Ratsch acknowledged that Ms Curtis would not have known that piece of information of her own knowledge and she must have got it from Mr Ratsch and Ms Daniel at the case consultation meeting<sup>95</sup>. He acknowledged that the information was wrong because such concerns had indeed been raised by CYWHS workers. Mr Ratsch was unable to explain how this wrong information found its way into the document<sup>96</sup>. Furthermore, there was nothing in the case consultation that reflected the information that had been reported by the police officer who had conveyed Ms Foord's concerns. Mr Ratsch acknowledged that it did not appear from the notes that he had informed his supervisor, Carolyn Curtis, of that information but said that he believed he would have had 'the conversation' with her and that 'there are many conversations that were had between myself and my family support worker and the supervisor which were not necessarily casenoted'<sup>97</sup>. This is an acknowledgement of an issue that was apparent throughout this Inquest, namely that the casenotes failed to record many pieces of information that ought to have been included in them. Mr Ratsch acknowledged that when he observed things that potentially could have been the subject of a notification, he foreclosed the possibility of abuse being concerned if he did not make a notification himself. He acknowledged that people looking at the file subsequently would not know what he had observed unless his record keeping was meticulous and that he had acknowledged that he did not record everything that had happened<sup>98</sup>.

- 4.58. Mr Ratsch undertook a further home visit on 10 January 2008 and on this occasion he noted that there was a water bong used for cannabis smoking in the family home and Lagden and Ashlee had said that it was Ashlee's and that she occasionally smokes cannabis<sup>99</sup>. The unit was also noted to be full of rubbish and car parts<sup>100</sup>.

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<sup>94</sup> Exhibit C67, page 206

<sup>95</sup> Transcript, page 509

<sup>96</sup> Transcript, page 509

<sup>97</sup> Transcript, page 511

<sup>98</sup> Transcript, page 542

<sup>99</sup> Transcript, page 515

- 4.59. A further home visit took place on 21 February 2008 and on this occasion the house was clean and tidy. The workers discussed Ashlee's amphetamine use with her and she claimed that it had no impact on her parenting<sup>101</sup>. Ashlee was very dismissive of concerns about her amphetamine use and made jokes, smirked and rolled her eyes<sup>102</sup>. Despite this clear evidence that Ashlee was engaging in amphetamine use, when asked if he got that impression Mr Ratsch was only prepared to answer 'possibly'<sup>103</sup>. He was unable to say why Ashlee would have carried on in the way she did if she were not using drugs<sup>104</sup>. In my opinion it is clear that she was and clear that Mr Ratsch would have been aware of that, however he was not prepared to make that concession in his evidence. This does not reflect well on him at all.
- 4.60. In late February 2008 Ms Lawson from the Salvation Army contacted Ms Daniel to say that she had received a letter of complaint from a neighbour of Ashlee's in the unit complex. It raised the concerns that there were more than three males residing at the property with Ashlee and Chloe, that police were frequently at the property, that bikes and cars arrived at all hours of the night and that conversations about drugs and drug use had been overheard with yelling and screaming at all hours of the night and drunken youths loitering in the area of Ashlee's unit. There was also an email from Ms Lawson to Ms Daniel saying that Ashlee was not able to form sentences when Ms Lawson spoke to her on the telephone<sup>105</sup>.
- 4.61. In response to the letter and information from Ms Daniel, Mr Ratsch set about investigating the allegations. He contacted the police officer I have referred to earlier, Detective Brevet Sergeant Rankin. He asked her about the allegation that there had been a number of recent SAPOL visits. After some time he received a telephone call from the police officer to inform him that there had not been any police attendances at the house other than when police were looking for someone at that address<sup>106</sup>. This appeared to be a source of some comfort to Mr Ratsch, although it would seem that police attendances looking for a particular person at a particular address are hardly a positive sign. On 11 March 2008 Mr Ratsch contacted Ms Lawson effectively to make a case in support of Ashlee remaining in the unit as there was a real possibility

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<sup>100</sup> Transcript, pages 515-516

<sup>101</sup> Transcript, page 517

<sup>102</sup> Transcript, pages 517-518

<sup>103</sup> Transcript, page 518

<sup>104</sup> Transcript, page 518

<sup>105</sup> Exhibit C67, page 183

<sup>106</sup> Transcript, page 521

at that time that the Salvation Army would terminate the lease<sup>107</sup>. There is a reference to a possibility that Chloe might stay in Bridgewater with Ashlee's mother and Mr Ratsch is noted as having 'argued' that this is not a great option, as Chloe was in a critical attachment period and it could be traumatic and have detrimental consequences for her to be separated from Ashlee at that time<sup>108</sup>. This is an indication that Mr Ratsch was aware of a possibility that Ms Valentine might be able to care for Chloe at this time, but that it would involve a separation from Ashlee. However, he was opposed to the idea.

- 4.62. The next concerning event took place on 19 March 2008 when Ms Daniel received a phone call from a person called Mary from the Salvation Army who said that she and Ms Lawson had been out to a home visit at Ashlee's house. They informed Ms Daniel that the house was unlocked and no-one was at home and that she and Ms Lawson had entered the unit and had observed the lounge to be untidy with rubbish and several dirty nappies on the floor, piles of dirty clothes in the laundry with bags of rubbish on top with ants crawling over everything, a queen size mattress in the back room in an untidy state, the kitchen was untidy and there was a patched hole in the wall near the front bedroom<sup>109</sup>. They had also received complaints from Housing SA that rats had been seen on the premises<sup>110</sup>. Mr Ratsch was informed of this information by Ms Daniel<sup>111</sup>. He then contacted Mary from the Salvation Army and essentially confirmed what had already been said to Ms Daniel. He made the following note:

\*\*\* Salvation Army, as the landlord, had no legal right to enter the home and were effectively trespassing \*\*\*<sup>112</sup>

He said that he made that entry for 'further consideration' because he was 'concerned that effectively the landlord had entered the house essentially unlawfully or at least that's what I believed at the time'<sup>113</sup>. That same day Mr Ratsch attended the premises for an unannounced home visit. They observed some rubbish and a broken mirror in the bathroom which Ashlee acknowledged had happened sometime before. They noted that there was a hole in the wall which Ashlee said occurred when she fell over

<sup>107</sup> Exhibit C67, page 174 and Transcript, page 522

<sup>108</sup> Exhibit C67, page 174 and Transcript, page 523

<sup>109</sup> Exhibit C67, page 164

<sup>110</sup> Transcript, page 526

<sup>111</sup> Transcript, page 527

<sup>112</sup> Exhibit C67, page 163

<sup>113</sup> Transcript, page 527

into the wall and 'fell straight through it'. Ashlee and Lagden reported that they felt the house had termites and that the walls 'were weak'<sup>114</sup>. They assisted Ashlee to remove the rubbish and clean up. They filled the boot of their car and the back seat with rubbish bags and took them away. Mr Ratsch was asked what the hole in the wall might actually have been caused by and responded that it was hard for him to speculate. It was pointed out to him that as part of his job of investigating it is important to speculate to determine how the holes might have got there and then to carry out further investigations and enquiries. He said he 'could' speculate that there had been some violence in the home or that it could have been caused by drunken behaviour<sup>115</sup>. He took it no further than asking Ashlee and receiving a response that she believed that there were termites in the home. However, he did not see any sign of termite activity. It was suggested to him that this was just a silly claim and he finally acknowledged that he suspected it was<sup>116</sup>.

- 4.63. It was at this point that Ms Lawson from the Salvation Army made a CARL notification of her observations of the house when it was unattended that day. The notification included information that numerous people frequent the house on a regular basis, including people residing in the property who should not be, that people were intoxicated and yelling and attracting police attention. She included the information that there was a build-up of rubbish around the house and that when the house was visited and found to be unlocked it was in an extremely untidy and unhygienic state and was seen to have alcohol cans scattered, bags of rubbish, dirty clothes, dirty nappies and so on. As a result of that notification Mr Ratsch conducted a further home visit with Ashlee the following day, 20 March 2008. He informed her of the notification. He noted that 'Ashlee reported that she was feeling upset and unmotivated because of the notion that someone had been inside her house and notified on her'. He noted that 'Ashlee reported that she felt unjustly treated by Salvation Army'. Mr Ratsch made a further inquiry about the hole in the wall but Ashlee maintained that she was not substance affected, presumably falling back on her claim that the wall was 'weak'. Ashlee denied that anyone else was residing in

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<sup>114</sup> Exhibit C67, page 163

<sup>115</sup> Transcript, page 531

<sup>116</sup> Transcript, page 522

the house. Mr Ratsch informed Ashlee that he would not be confirming abuse as a result of the notification<sup>117</sup>.

4.64. Mr Ratsch was asked in his evidence whether he conveyed to Ashlee that it was his opinion that it was inappropriate for the Salvation Army to enter her house and he responded that he possibly did. In my opinion, from the tone of the notes, and from Mr Ratsch's evidence on this subject<sup>118</sup>, he almost certainly did express that opinion to Ashlee. Mr Ratsch was asked what identifiable damage Ashlee suffered as a result of this allegedly unlawful intrusion by the Salvation Army and he responded 'nothing really beyond the embarrassment of being caught out'<sup>119</sup>. He was then asked whether he thought that it was in the public interest that she was caught out on this occasion or not and he responded 'you could argue it was in the public interest'<sup>120</sup>. He was then asked:

'Q. You could just argue that, is that right. Is that how you measure the welfare of a child that it's arguably in the public interest that it be exposed.

A. I believe that when children are in danger it needs to be addressed, yes.

Q. And surely that's exactly what was achieved by the Salvation Army's representative entering the house.

A. Yes.'<sup>121</sup>

4.65. It was suggested to Mr Ratsch that it was foolish for him in dealing with Ashlee who was uncooperative, and engaging in behaviour that was exposing her child to risk, to do anything that might lessen her respect for authority. It was suggested that if anything he would want her to have a respect for authority and not a greater contempt for it than she already had. With this he agreed. He claimed that he encouraged his 'clients' to have respect for authority. However, he conceded that this philosophy did not come through in this instance<sup>122</sup>. He conceded that he would look at it differently now<sup>123</sup>.

4.66. This is a particularly concerning instance of Mr Ratsch going beyond merely advocating for Chloe and Ashlee. In this instance he engaged in the foolhardy behaviour of criticising another agency to Ashlee and, furthermore, suggesting that it

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<sup>117</sup> Exhibit C67, page 161

<sup>118</sup> Transcript, pages 537-538

<sup>119</sup> Transcript, page 538

<sup>120</sup> Transcript, page 538

<sup>121</sup> Transcript, page 538

<sup>122</sup> Transcript, page 539

<sup>123</sup> Transcript, page 539

had behaved in unlawful conduct and that she was right to feel unjustly treated by it. However, that very conduct had exposed matters of concern in relation to Chloe that would not otherwise have been uncovered. In my view it is extraordinary that an employee of Families SA would adopt this kind of attitude. It is plain that the Salvation Army was providing a service to Ashlee and a high level of support themselves. She was refusing to engage with Ms Lawson, but the service was still available should she choose to use it. She certainly had a roof over her head courtesy of the Salvation Army. I would have thought that it would be in everyone's interest for Mr Ratsch to have been supportive of the Salvation Army in his dealings with Ashlee, and not to have undermined the efforts made by the Salvation Army to check on the conditions in the unit. It is quite clear that the Salvation Army workers were not motivated by malice in any way in their decision to enter the property that day. They reported that they had found the premises unlocked and they said they kept calling out as they went in to see if anyone was there. They then made observations which were extremely concerning and which had child protection ramifications. In my opinion Mr Ratsch should not have in any way implied to Ashlee that the Salvation Army employees' actions were in anyway inappropriate. Doing that merely served to embolden Ashlee further in her defiance of authority figures, including Families SA itself.

4.67. Amy Kidner, Strong Families Safe Babies, February 2008 to July 2008

The narrative for this period is best told through the evidence of Amy Kidner. Ms Kidner was a student social worker at that time who was undergoing her placement at Families SA. She was placed with the Strong Families Safe Babies team and at the beginning of her placement she was supervised briefly by Nicholas Ratsch. Later she was supervised by Carolyn Curtis. She said that the Strong Families Safe Babies team was intended to be a high risk infant program dealing with children under the age of two years. I have mentioned that initially the senior social worker was Nicholas Ratsch. Throughout Ms Kidner's placement she also worked with Libby Daniel, the family support worker<sup>124</sup>. Ms Kidner's first meeting with Ashlee and Chloe was at the Salvation Army Hope Valley unit on 18 February 2008 for a home visit. On that occasion Ms Kidner said that Ashlee was friendly and open to them being there and did not show any sign of hostility<sup>125</sup>. However there was some

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<sup>124</sup> Transcript, page 402

<sup>125</sup> Transcript, page 405

rubbish outside the unit but she did not recall there being any particular concerns in relation to Chloe.

- 4.68. By 16 April 2008 Ashlee was facing eviction from the Salvation Army unit. Ms Kidner said that on 22 April 2008 she made seven telephone calls in relation to storing furniture on behalf of Ashlee until she could find somewhere to live<sup>126</sup>. Ms Kidner said that if Ashlee required help with obtaining furniture storage, notwithstanding the fact that she had her own mobile phone, Ms Kidner would assist with that. She did not regard it as odd then and does not regard it as odd now. She said that it helped to build a rapport with Ashlee<sup>127</sup>.
- 4.69. A home visit made by Ms Daniel, of which Ms Kidner was aware but not present, on 29 April 2008 recorded that there was rubbish in every room of the house and clothes on the floor and that a mattress on the floor was used for Ashlee and Chloe to sleep on. The note of Ms Daniel on that occasion accords that Ashlee was asked to 'think about' getting rid of the rubbish before Thursday when Ms Daniel would attend with Ms Kidner to help clear the house before the final inspection<sup>128</sup>. On the following Thursday Ms Kidner and Ms Daniel did indeed assist Ashlee to clean the unit<sup>129</sup>. Ms Kidner saw nothing odd in cleaning Ashlee's unit on her behalf on that occasion and did not think it odd when giving evidence<sup>130</sup>. It is interesting to note that at about this time the file shows a telephone call from Belinda Valentine in which she is noted as saying that she wanted Ashlee to have a reality check because Ashlee did not take responsibility<sup>131</sup>. Also, Ms Valentine said that Ashlee was not brought up to be messy or dirty but that she chose not to care because she was taking drugs<sup>132</sup>. It is clear that Ms Valentine was attempting to engage with Families SA and was wanting a firm line to be taken with Ashlee. It is equally clear however that the workers were taking what might be described as a 'softly softly' approach in assisting Ashlee with activities that ought to have been Ashlee's responsibility, for example, cleaning up her own mess.
- 4.70. Ms Kidner said that on 15 May 2008 she took Ashlee, Lagden and Chloe to the furniture storage facility to sign the storage agreement for the furniture. On this

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<sup>126</sup> Transcript, page 407

<sup>127</sup> Transcript, page 408

<sup>128</sup> Transcript, page 410

<sup>129</sup> Transcript, page 410

<sup>130</sup> Transcript, page 411

<sup>131</sup> Transcript, page 411

<sup>132</sup> Transcript, page 411

occasion she said that Ashlee appeared ‘very skinny, I observed that Ashlee’s hip, shoulder and backbones were very visible in the clothes that Ashlee was wearing’<sup>133</sup>. Ms Kidner acknowledged that this may have been a sign of drug use<sup>134</sup>. On another occasion at about this time<sup>135</sup> Ms Kidner went to considerable efforts to obtain funding for taxi travel so that Ashlee could attend an open inspection because she was at that stage homeless<sup>136</sup>. During this period Ms Kidner recorded taking Ashlee to real estate agents each week so that she could apply for rental in a number of different houses. Ashlee was asking Ms Kidner to do a lot of running around for her<sup>137</sup>. For a period during this chapter in Chloe and Ashlee’s life of homelessness they did have accommodation briefly at the home of Lagden’s mother<sup>138</sup> however that was not a long term option<sup>139</sup>.

- 4.71. On another occasion Ms Kidner took Ashlee to a visit at an organisation called JPET for the purposes of attempting to find paid work for her. Ms Kidner then drove Ashlee home to the place she was staying. However, Ashlee did not invite Ms Kidner into the house and Ms Kidner was unable to sight Chloe. Ms Kidner had to sit outside on the front porch having a conversation with Ashlee<sup>140</sup>.
- 4.72. Ms Kidner gave evidence that on 12 June 2008 she was concerned because Chloe had not been sighted by a member of Families SA since 27 May 2008. On that occasion when Ms Kidner attempted to arrange to see Chloe she was told by Ashlee that Chloe was in the care of a friend and so therefore she could not see her. Ms Kidner asked if Chloe would be available the following day and Ashlee replied by saying that she did not know what she would be doing the following day. Ms Kidner accepted that Ashlee was not being cooperative at that point and she gave evidence that she did not feel that she had the skills at that time to assert herself with Ashlee<sup>141</sup>. Ms Kidner then raised the matter with another senior social worker in the office, a Mr Frick, who then himself attempted to make contact with Ashlee to arrange for Chloe to be sighted. Mr Frick was no more successful because Ashlee refused to tell him the friend’s name that Chloe was with or the address. Mr Frick made a note that Ashlee made a

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<sup>133</sup> Transcript, page 417

<sup>134</sup> Transcript, page 418

<sup>135</sup> 21 May 2008

<sup>136</sup> Transcript, pages 422-424

<sup>137</sup> Transcript, page 427

<sup>138</sup> Exhibit C71, page 94

<sup>139</sup> Transcript, page 428

<sup>140</sup> Transcript, page 432

<sup>141</sup> Transcript, page 434

'speech' about how Strong Families Safe Babies thinks that Ashlee is a good mother and is always praising her and therefore she does not need Families SA 'looking over her shoulder and parenting her and harassing her'<sup>142</sup>. Ms Kidner acknowledged that Ashlee may have made these comments as a result of positive encouragement and praise that she herself and others, presumably, had provided to Ashlee by way of encouragement<sup>143</sup>. In any event, that day a further call was made by Mr Frick to Ashlee to inform her that if Families SA were unable to sight Chloe that day he would arrange for Crisis Care to visit her over the weekend. This prompted Ashlee to provide an address for the workers to attend. The address is not noted in the file and it is only possible to deduce from the note that the address was not that of Lagden's mother, but that of a friend<sup>144</sup>. The workers were not invited into the house on that occasion and had to make do with sighting Chloe outside the house<sup>145</sup>. Ashlee presented as difficult to engage and uncooperative<sup>146</sup>.

- 4.73. Ms Kidner said that on 20 June 2008 she attended at Ashlee's house to pick her up to take her for a JPET appointment but Ashlee was not home. The JPET supervisor reported that she failed to attend the appointment<sup>147</sup>. Thereafter a number of attempts were made to contact Ashlee by telephone but it was either switched off or her phone was answered by a male, believed to be Lagden. Ms Kidner acknowledged that during this period Ashlee was becoming more evasive<sup>148</sup>. Nevertheless, Ms Kidner continued with her efforts to obtain accommodation and work for Ashlee, making numerous phone calls. After several days of being unable to contact Ashlee the workers attended at Lagden's mother's address where they were able to speak to Lagden. He said that he was going to meet Ashlee at Tea Tree Plaza and they offered him a lift to that location. On arrival at Tea Tree Plaza, Lagden saw Ashlee and called out 'FAYS workers' and Ashlee appeared to be embarrassed by their approach<sup>149</sup>. Ashlee was hostile and uncooperative. The workers agreed that they would go away and see Ashlee the following Wednesday. At least on this occasion they were able to sight Chloe. Ashlee refused to tell them where she was living at that point<sup>150</sup>.

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<sup>142</sup> Transcript, page 435

<sup>143</sup> Transcript, page 436

<sup>144</sup> Transcript, page 440

<sup>145</sup> Transcript, page 440

<sup>146</sup> Transcript, pages 440-441

<sup>147</sup> Transcript, page 442

<sup>148</sup> Transcript, page 443

<sup>149</sup> Transcript, page 444

<sup>150</sup> Transcript, page 445

4.74. During this period Ms Kidner agreed that she was running around after Ashlee trying to find her and that Ashlee had the upper hand<sup>151</sup>. In the middle of July 2008 Ms Kidner's placement at Strong Families Safe Babies ended and her involvement with the case ceased.

4.75. Closure of Strong Families Safe Babies file

I have already mentioned that from 1 May 2008 when Ashlee was evicted from the Hope Valley unit she and Chloe were effectively homeless, although they did spend a portion of that period living with Lagden's mother.

4.76. On 21 July 2008 Carolyn Curtis closed the Strong Families Safe Babies file. I will deal with that event in more detail under her evidence. Despite the closure of the file Ms Daniel was directed to keep working with Chloe and Ashlee<sup>152</sup>.

4.77. On 28 August 2008 there was a notification to CARL. The notifier was Senior Constable Adrian Cox who was a police officer. He said that around August 2008 he regularly patrolled Civic Park opposite Tea Tree Plaza. A number of people would drink alcohol under the rotunda at that location and there were public order problems. On 26 August 2008 he was on the afternoon shift. He and his partner spoke to a person by the name of Bobby Edwards who had a child with him in a stroller. The officers ascertained that the child was Chloe Valentine. Bobby Edwards was then 16 years old and said that he was looking after Chloe for Ashlee Polkinghorne, her mother. Senior Constable Cox said that it was a cold evening. The officers spoke to him and suggested that he take Chloe home due to the temperature and the time of night. They then watched from their car as Bobby Edwards pushed Chloe in her stroller towards where they believed Ashlee lived<sup>153</sup>. The following day, 27 August 2008, they again saw Bobby Edwards pushing Chloe in a pusher in the vicinity of Tea Tree Plaza. They stopped to speak to him because it was the second night running and as they were with him Ashlee appeared from the direction of the liquor store at Tea Tree Plaza. The officers took Ashlee's details as well as those of Chloe and Bobby Edwards and decided that they would make a notification to CARL. Senior Constable Cox was concerned at what he regarded to be 'shabby parenting'<sup>154</sup> because he thought it was inappropriate for the child to be passed around in the company of

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<sup>151</sup> Transcript, page 446

<sup>152</sup> Transcript, page 1004

<sup>153</sup> Transcript, page 709

<sup>154</sup> Transcript, page 711

people who were hanging around and causing various problems. As a result, Senior Constable Cox made a CARL notification the following morning.

- 4.78. As a result of Senior Constable Cox's notification an intake was raised. It went to senior social worker Jennifer Warren at the Modbury office of Families SA. Ms Warren gave evidence that she reviewed the notification and considered that it was worthy of investigation but she recommended that it be closed with no action because the office did not have the staffing capacity to investigate it<sup>155</sup>.
- 4.79. On 9 September 2008 Ms Daniel from Strong Families Safe Babies had a conversation with Ashlee who told her that she was at that time trying to find a place to sleep for the night. She confirmed that she had Chloe with her<sup>156</sup>.
- 4.80. On 24 September 2008 a notification was made to CARL. This notification was made by Ms Trisha Foord. The concerns expressed by Ms Foord were that Chloe and her mother had moved in with a man known to have an extensive criminal history including drug charges. Ashlee was said to be drinking a lot of alcohol and using whatever drugs she could get. Chloe had been sick and vomiting and was losing her hair. Ashlee continued to be transient. This intake was considered by Ms Warren who, once again, recommended that the intake be closed with no action. She said there were no staff to deal with this notification<sup>157</sup>.
- 4.81. A further notification was made on 10 November 2008 reporting that the previous day Ashlee was seen with Chloe at the park opposite Tea Tree Plaza where Ashlee was drinking. Chloe was carrying around a can of beer and was drinking from it. Lagden came through the park and Ashlee and Lagden had an argument and Ashlee hit him and spat at him in Chloe's presence. The notifier was a friend of Ashlee's who remained anonymous. The friend took the can of beer away from Chloe and distracted her while her mother was fighting. They removed the caked on formula from Chloe's bottle and cautioned Ashlee on her parenting but Ashlee did not appear to care about the concerns. The outcome of this notification was that a worker discussed the matter with Ms Curtis who said that Strong Families Safe Babies were still working with the mother and child and the mother was due to obtain

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<sup>155</sup> Transcript, page 631

<sup>156</sup> Transcript, page 632 and Exhibit C71, page 3

<sup>157</sup> Transcript, page 625

accommodation that day. Ms Curtis said that the matter would be followed up via case management. The outcome of the notification was no abuse confirmed.

4.82. The Court heard from Alan Bruce Johnston who was the manager of the combined Enfield and Modbury offices during this period. He acknowledged that he authorised the closing of two of these notifications with no action being taken because there was no staff to attend to them. He said he would have seen about 20 or 30 such cases each week<sup>158</sup>. He said that when they get closed there is no further action taken<sup>159</sup>. He said that he and every other manager felt extremely concerned about the risk they were carrying as a result of these decisions<sup>160</sup> and that the issue was raised at regional manager meetings over many, many years<sup>161</sup>. Mr Johnstone said at one point the managers were considering sending all of the closed, no action files through to executive<sup>162</sup>. He said that his director, Ms Ellis, was equally concerned but unable to take any action. He said that he never saw any increased resources as a response to these concerns<sup>163</sup>.

4.83. 11 November 2008 to 17 November 2008 - period of chaos for Ashlee and crisis for Chloe

This period in the chronology comes towards the end of the time of homelessness that I have just covered and coincides with the commencement of Ashlee's accommodation at Taperoo. I will deal with the evidence concerning her period at Taperoo hereafter. In this section I deal with two notifications in particular in the period 11 November 2008 to 17 November 2008. It is important also to bear in mind the context, namely that on 10 November 2008 there had been the notification referred to above relating to Ashlee being in the park opposite Tea Tree Plaza fighting with Lagden and Chloe being seen with a can of beer.

4.84. Senior Constable Bentley was a police officer who became involved with Chloe in the evening of 11 November 2008. On that evening he had a conversation with a person by the name of Natalie Bretones when he was tasked to an address in relation to the welfare of Chloe who was in Ms Bretones' custody. When Senior Constable Bentley arrived at the premises he saw that Chloe was safe and had been fed. Ms Bretones

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<sup>158</sup> Transcript, page 644

<sup>159</sup> Transcript, page 645

<sup>160</sup> Transcript, page 646

<sup>161</sup> Transcript, page 646

<sup>162</sup> Transcript, page 646

<sup>163</sup> Transcript, page 647

told him that she had been with Ashlee at Glenelg beach earlier in the day and that Ashlee was grossly intoxicated by alcohol and at some stage of the day Ashlee had wandered off and left no contact details and that Ms Bretones had been left with the custody of Chloe and had no other choice than to return home with her. She could not contact Ashlee or find any other person suitable to take Chloe into custody. Senior Constable Bentley did not consider that Chloe was in immediate danger at that point. Had he done so he would have taken custody of her himself and delivered her to a Families SA representative. Another police patrol had arrived and so Senior Constable Bentley was able to go and make further inquiries with Families SA. At this point it was approximately 9:45pm<sup>164</sup>. Senior Constable Bentley made a CARL notification. One of the first lines of inquiry was to try and contact Chloe's father. When they spoke with Lagden he refused to take custody of Chloe. He was 'very anti police'<sup>165</sup>. Senior Constable Bentley had returned to the Golden Grove police station for the purposes of the CARL notification because it is easier to gain access to the SAPOL mainframe system from a police station. Having contacted Families SA, Senior Constable Bentley was able to speak to Ms Katrina Heading who was a Crisis Care response worker and it was to Ms Heading that he made his notification. Subsequently, Senior Constable Bentley became aware that there had been a number of further phone calls between Families SA and the police and Ashlee's mother, basically trying to find the best place for Chloe to be cared for. He became aware that in the end a decision was made to place Chloe in a chauffeured car and return her to her mother's custody.

- 4.85. This was Senior Constable Bentley's last dealing with this matter. The records show that Chloe was returned by chauffeured vehicle (Brown's Chauffeured Cars) in the early hours of the morning of 12 November 2008.
- 4.86. Further evidence was taken from Ms Heading who raised the intake in the Crisis Response Unit on 12 November 2008. She said that her assessment was to assign the matter as a tier 1 case because Chloe was at imminent risk in that the care arrangement was not sustainable and the police could not find a guardian to care for Chloe. She said that she spoke to her supervisor, Di Cooper, who agreed with the tier 1 assessment. Ms Heading spoke to Senior Constable Bentley who was the notifier. She said that she tried to call Lagden and she tried to call Ashlee and each of

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<sup>164</sup> Transcript, page 654

<sup>165</sup> Transcript, page 657

these efforts was unsuccessful. Ms Heading said that she spoke to Ms Valentine to see if she would take Chloe. Ms Heading noted<sup>166</sup> that Ms Valentine would take Chloe 'if she must'. At 0021 hours on 12 November 2008 Ashlee had called Police Communications and was demanding Chloe be returned to her. Ms Heading said that she rang Brown's Chauffeured Cars, which is an organisation independent of Families SA. She was not aware of the identity of all of the drivers employed by that firm at the time. Ms Heading said that she spoke to Ashlee at 0012 hours and Ashlee was angry and verbally abusive. Ms Heading said that eventually a decision was made for Chloe to be returned to Ashlee. She said from her memory she thought that it was Lou Brown of Brown's Chauffeured Cars who transported Chloe. She acknowledged that no member of the staff of Families SA went with Chloe on that occasion. She said that only two people were available on the nightshift who could have done this. When asked about the risks involved in sending Chloe with an adult driver in a chauffeured vehicle, she responded that Families SA used Brown's Chauffeured Cars regularly and that they work with children under the Guardianship of the Minister. She added that there is always some risk. Finally, she said that she has a 'level of faith' in Brown's Chauffeured Cars. She said that she had used them before and had never heard of any problems. When asked what was expected to happen at the end of the journey, Ms Heading said that she expected that Ashlee would be waiting. She said that she checked in with Brown's Chauffeured Cars afterwards to see if the handover was successful and no concerns were noted so she did not make a record of this. She said that Lou told her that it went fine and that he had given Chloe to her mother. Ms Heading acknowledged that she did not ask if Ashlee was sober. She maintained that these actions were all appropriate.

- 4.87. Ms Heading did admit that it would not have been necessary for the Crisis Response Unit to have closed down if it had been necessary to attend on Chloe themselves. She acknowledged that on-call staff were available to fill gaps where needed<sup>167</sup>. She maintained that there would have been some period of time when the crisis response unit was not covered<sup>168</sup>. Remarkably, Ms Heading said that it would have been necessary, had a worker from the Crisis Response Unit accompanied Chloe on the trip back to her mother, for there to be two workers for occupational health and safety

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<sup>166</sup> Exhibit C91

<sup>167</sup> Transcript, page 1096

<sup>168</sup> Transcript, page 1096

reasons<sup>169</sup>. By contrast, she was quite prepared for Chloe to travel by herself with a potentially unknown person. Ms Heading's evidence was most unsatisfactory. In my opinion the response on that night was completely unacceptable. Without any doubt it was entirely inappropriate for a 16 month old child to be allowed to be transported by a potentially unknown person with a transport firm. Ms Heading maintained that she believed that it was Lou Brown himself. I have no confidence that she really did establish that. She made no note of her alleged contact with Brown's Chauffeured Cars afterwards to ensure that everything went according to plan<sup>170</sup>. In short, her memory was not particularly good and she had no firm basis for her belief that Lou Brown himself was conducting Chloe's transport beyond the fact that she had woken him up when she made the call<sup>171</sup>. I very much doubt that Ms Heading would have been prepared to put one of her own relatives in that situation. The fact that it would have required two workers in order to ensure that their occupational health and safety concerns were met, but that Ms Heading was prepared to leave Chloe as a hostage to fate regarding her welfare is preposterous. If it requires two adults to be present in order for occupational health and safety concerns to be met in the workforce, then it is preposterous to suggest that it was reasonable for Chloe to be left with an unknown adult at the age of 16 months. In my opinion Ms Heading completely failed to discharge her duties to an appropriate standard of care.

- 4.88. I propose to recommend that Families SA issue a policy prohibiting the transport alone of a child under the age of 12 years in any circumstances with a chauffeured delivery service unless in the custody of an employee of Families SA. I also intend to recommend that the operations of the Crisis Response Unit be reviewed with a view to determining whether it has sufficient resources and there is sufficient backup for situations such as that faced by Ms Heading on 12 November 2008. Ms Heading appeared to have a reluctance to call in a worker who may have been 'on-call'. There should be no such reluctance in a situation such as that being faced by Ms Heading. There should be no hesitation in arranging a call back for an on-call worker in a case such as that. I am concerned that there may be a reluctance on the part of a person in Ms Heading's position to institute a call back because of financial considerations. Staff should be informed as a matter of policy that the appropriate action is to institute

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<sup>169</sup> Transcript, page 1081

<sup>170</sup> Transcript, page 1078

<sup>171</sup> Transcript, page 1077

a call back in a situation such as that faced by Ms Heading. There should be no doubt at all about this and I shall recommend accordingly.

- 4.89. Before leaving this topic I will deal with the evidence of Belinda Valentine about it. Ms Valentine said that she received a call in the early hours of the morning from Crisis Care and was very confused having awoken from sleep. Her husband was away for work and she had her two sons who were aged 4 and 8 in her care and who were also asleep. She had only one car seat for her younger child. The Crisis Care worker told her that she needed to come and get Chloe from the home of a 15 year old and that Ashlee had been paralytic and had left Chloe in the care of this 15 year old in the Wynn Vale area. The address was one that Ms Valentine had never heard of and the suggestion was that she would pick up Chloe and return Chloe to Ashlee the next day. Ms Valentine said that she had been awakened from sleep and did not fully understand what was happening. She explained that she would have to take the boys with her and she only had one car seat. She said it was never suggested to her that an arrangement could be made for Chloe to be brought to her. She said that was never offered, but if it had been she would have accepted it. She was asked about the words that were attributed to her that she would take Chloe 'if I must'. She said that she did not say it in that way. Ms Valentine said she said that it would take her an hour and it would be necessary for her to take the boys and if that was the last option she would do so. She said she would never have said she would do it 'if I must' as bluntly as that. Ms Valentine said that Ms Heading never came back to her to discuss travel arrangements. She said that Ms Heading wanted her to speak to Ashlee to see what state Ashlee was in. Ms Valentine had spoken to Ashlee in the past on the phone when Ashlee was drunk, slurring her words and so on. Ms Valentine rang Ashlee and she sounded quite clear, although very angry and was using violent language. She said she was not drunk and that the girl she had left Chloe with had said she would take Chloe for the night. Ashlee's story was completely different from the story that Ms Valentine had gotten from Ms Heading about what the young girl had said about being left with Chloe in her care. Ms Valentine said that Ashlee did not sound drunk to her, but she was threatening her mother that if she took Chloe she would never allow Ms Valentine to see her again. Ms Valentine said this made her feel very distressed. She knew Ashlee was a drug user and used methamphetamines. She said that it was possible that Ashlee's anger that night was consistent with her having used methamphetamines, but that she did not know on the night what those effects were.

Ms Valentine said that she was upset and then received another call from Crisis Care. She did not say she could ascertain if Ashlee was drunk or not and she could not understand why they were asking for her opinion. Ms Valentine said she did not believe that Ashlee was drunk and that she was concerned about the threat that Ashlee had made that she would not see Chloe again if she took Chloe. She was very confused and upset but said that if Families SA had dropped Chloe to her she certainly would have taken her. She said that she would not have been prepared to drop Chloe back to Ashlee in the morning because it would not have been safe. Ms Valentine said she had no recollection of having said to Ms Heading that Ashlee had been good lately, but acknowledged that she may have done so. She said that her fear was about returning Chloe to Ashlee the next day.

- 4.90. I prefer the evidence of Ms Valentine in relation to his event. Ms Valentine's version makes sense. Her reaction was that of someone who was called in the middle of the night, awakened from sleep and having only one child car seat and two small boys in her care was asked to attend an address she had never attended previously to collect Chloe. She had only one child car seat for her car and one of her boys needed to use it. That would leave her with one child who ought to have a child car seat but would not have one. Furthermore, she would then be faced with dealing with a very angry Ashlee the following morning, or sometime the following day when she went to return Chloe to Ashlee's care. She also was faced with Ashlee's anger towards her and Ashlee's threats that she would not be allowed to see Chloe again if she took Chloe that night. In my opinion Ms Valentine was placed in an invidious, if not impossible position. For Ms Valentine's position to be summed up by the note that she would take Chloe 'if she must' did her a disservice. I have no hesitation in preferring her evidence to that of Ms Heading.
- 4.91. Chloe was not in Ashlee's care for very long following the incident on 12 November 2008 because the records show her being admitted to the Women's and Children's Hospital at approximately 9pm on the following day, 13 November 2008. She was not in Ashlee's custody, but rather was with Krystal Benyk who had been driven in by Nicky Behsmann. This incident was referred to earlier in my finding when I reviewed the evidence of those two witnesses. The evidence of Ms Claire Haskell, a senior social worker at the Women's and Children's Hospital, was to the effect that Ashlee did not present with Chloe on the evening of 13 November 2008, but that Ms Benyk

stayed with her. The following morning, 14 November 2008, Ashlee was still not present. The records show that Chloe was discharged to Ashlee's care sometime in the middle of the afternoon of 14 November 2008. Ms Haskell gave evidence that arrangements were made by the Women's and Children's Hospital for the Metro Home Link service to conduct follow-up home visits to Chloe to make sure that she was well and that her mother was managing with her<sup>172</sup>.

4.92. Clare McDonald was a registered nurse and a qualified midwife. She was a part of the Metro Home Link program in 2008 and saw Chloe on 17 November 2008. She gave evidence that another member of the Metro Home Link team, Nurse Mairi Martin, had attended Ashlee's home at Taperoo on 15 November 2008, the day after Chloe had been discharged the previous afternoon. Nurse Martin saw Chloe sleeping and Ashlee was obviously making arrangements to move into the house. Nurse Martin attended Ashlee's home the following day, 16 November 2008, but was unable to gain access or to speak to Ashlee. She made a phone call to Ashlee later that day and arranged for a visit the following day, 17 November 2008.

4.93. It was Ms McDonald who made the home visit on 17 November 2008 at 11am. She said that Ashlee and her friends were all lazing around watching *The Simpsons* on television and showing no interest in Chloe at all, not even Ashlee. Chloe was awake and looked grubby. She still had her hospital label on and looked uncared for. Ashlee was not participating in the visit/examination at all. Ms McDonald was left to examine Chloe while Ashlee watched television. Chloe had not been bathed since she had left hospital. She was generally grubby with dirty skin. No toys were observed in the house and as Ms McDonald said, normally a house with a toddler contains many toys. As a result of the combination of lack of interest by Ashlee, the lack of toys and Chloe's condition, Ms McDonald was concerned that Chloe was not being properly cared for. She notified her concerns to her case coordinator in accordance with their policy and also advised Ms Haskell who made a notification to Families SA, speaking to Ms Daniel.

4.94. The Port Youth Accommodation housing at Taperoo

As I have already mentioned, Ashlee commenced a supported accommodation tenancy at premises in Taperoo under the auspices of Port Youth Accommodation on or about 11 November 2008. At this point it will be recalled that the Strong Families

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<sup>172</sup> Transcript, page 681

Safe Babies file had been closed, although Ms Daniel, the family support worker, was tasked to continue working with Ashlee. Shortly after Ashlee entered the Taperoo accommodation a decision was made for the Strong Families Safe Babies file to be reopened. There is no record of why that decision was made. It is plain that the supervisor, Carolyn Curtis, planned to continue with the efforts by Strong Families Safe Babies to maintain the goal of preserving Chloe and Ashlee as a 'family'. The only evidence of the decision to reopen the case is to be found in a case consultation sheet dated 2 December 2008<sup>173</sup>. That document states that the case was reopened on 13 November 2008 'due to two child abuse notifications being made'. This is clearly a reference to the notifications discussed above, namely when Chloe was left with the teenager at Glenelg beach and, secondly, the incident where Chloe was admitted to the Women's and Children's Hospital without Ashlee's presence. The difficulty with the date of reopening referred to in this document is that the Women's and Children's Hospital notification did not come to the attention of Families SA until 14 November 2008. It also makes reference to two intakes but in fact by 14 November 2008 there were three, including the episode where Chloe was seen with the can of beer at the park opposite Tea Tree Plaza. It remains a mystery when the decision to reopen the case was actually made, but it was clearly sometime between 14 November 2008 and 2 December 2008. This is a further example of the appalling state of the records and the poor note keeping that manifests itself throughout this case. Concerningly, the case consultation sheet says:

'Strong Families Safe Babies do feel that the mother has insight in relation to Chloe's physical and emotional needs, however is often tempted to take the easy option.'<sup>174</sup>

In the light of the events giving rise to the incident at Tea Tree Plaza, the incident at Glenelg and the incident at the Women's and Children's Hospital, all of which occurred only a couple of weeks before this document was written, it is difficult to see how Strong Families Safe Babies could have reached that conclusion. This is an example of what counsel assisting referred to as the Strong Families Safe Babies team 'blindly searching for something optimistic in this family picture, as if to reinforce their perceived success at intervention'<sup>175</sup>. It was Ms Curtis' evidence that at this point her priority was to 'get a social worker in there and allocate it as quickly as

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<sup>173</sup> Exhibit C68, page 236

<sup>174</sup> Exhibit C68, page 236

<sup>175</sup> See submissions of counsel assisting

possible to gain a much clearer picture of what was happening for Chloe'<sup>176</sup>. The social worker allocated for that purpose was Leanne Stewart. Ms Stewart joined the Strong Families Safe Babies team in January 2009 and worked on Chloe's case with Ms Daniel who continued as the family support worker.

- 4.95. The Port Youth supported accommodation in Taperoo continued until around July 2009. This was another supported accommodation arrangement with the requirement of the tenancy once again being that a support worker would work closely with Ashlee to help her attain parenting goals and independent living skills. Again this arrangement failed as will be seen through the evidence of Ms Stewart. It is not surprising that it failed. Nothing had changed in Ashlee or her willingness to give Chloe's needs precedence to her own desires. In the result Chloe was subjected to another unhygienic living environment with parties being held at the property and very likely Chloe being exposed to drug taking. Over this period three intakes were raised. One concerned a number of things including the disrepair of the house, broken bottles in the front yard and Ashlee's non-compliance with the support provided by Port Youth Accommodation. Another related to Ashlee being punched twice in the face and being threatened with a knife while she was holding Chloe. On this occasion the assault was allegedly carried out by Lagden. Ashlee conceded to the worker that:

'Chloe had clung to her really hard and that Chloe had not cried as she has got used to violent incidents as she had experienced them in the past.'<sup>177</sup>

Child abuse was confirmed on that occasion but nothing substantially changed other than Ashlee and Chloe finally being given notice of eviction from Port Youth housing. During this period the addition of the senior social worker in Ms Stewart did not seem to make any real difference to Ashlee's attitude to her obligations towards Chloe. This is clear from the lack of respect she displayed towards Ms Stewart and Ms Daniel. Ashlee eventually ended up abandoning the house at Taperoo before being evicted, once again leaving chaos in her wake.

- 4.96. Ms Stewart gave evidence of her various efforts which she described by what was apparently a term of art within Families SA, or within Strong Families Safe Babies, namely 'scaffolding'<sup>178</sup>. Ms Stewart's first home visit took place on 5 January 2009. On that occasion Chloe appeared dirty and unkempt and was only wearing a nappy.

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<sup>176</sup> Transcript, page 1484

<sup>177</sup> Exhibit C68, page 256 and Transcript, page 776

<sup>178</sup> Transcript, pages 947-948

She was in her bouncer which was not suitable for a child of her size. Alice Arsenias from Port Youth Accommodation had contacted Ashlee in relation to damage to her property. On 9 January 2009 Ms Stewart told Ashlee to report a broken window at the house. On 13 January 2009 Ashlee still had not made that report and on 16 January 2009 Ms Stewart arranged to take Ashlee to the Port Adelaide police station to report the damage. However by then the police had already made their own investigations, presumably at the instigation of Port Youth Accommodation. 20 January 2009 brought another home visit. On this occasion<sup>179</sup> Ashlee told Ms Stewart that her reason for leaving Chloe with inappropriate people was that she felt that she needed 'respite'. As a result of this Ms Stewart said that Strong Families Safe Babies decided to organise weekend respite for Chloe with the organisation 'Time for Kids' which is a non-government organisation staffed by volunteers to take children for respite for periods over weekends. Ms Stewart completed a Time for Kids referral form with Ashlee. During this process she described Ashlee as rolling her eyes. Ms Stewart said that Ashlee maintained the position that things she had done in the past were over and became frustrated when, in documents such as the referral form, past issues were referred to.

- 4.97. On 2 February 2009 Ms Stewart obtained information from Ms Kate Wallis that she had looked after Chloe for five days. She said that she was happy to do so but was concerned that Chloe was underweight and her ears were badly blocked with wax. Ms Wallis was also concerned about Chloe's development generally. Ms Wallis had been told by Ashlee that Ashlee had been involved in a domestic violence incident with her then partner, Michael, with whom she had just broken up. Interestingly, on that same day Mr Polkinghorne (Ashlee's father) had contacted Ms Stewart to advise that he was concerned about Chloe's development. He also wished it to be noted on the file that if Chloe was unable to remain in Ashlee's care, he would like to be considered as a carer for her<sup>180</sup>. Mr Polkinghorne was another member of Chloe's extended family within the meaning of that definition in the Children's Protection Act 1993, as was Ms Valentine. Each of them expressed a desire at various times to take Chloe into their care. Placement of Chloe with either of those two people would have been consistent with the objective in the Children's Protection Act 1993 of maintaining Chloe in a stable family environment. However, it appears that no

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<sup>179</sup> Exhibit C68, page 200

<sup>180</sup> Exhibit C68, page 192

consideration was ever given to that and Ms Stewart's evidence was that she did not believe at the time that Strong Families Safe Babies would have met the threshold criteria to succeed in an application to the Youth Court for custody orders for Chloe<sup>181</sup>. Of course, there are many other options that the Youth Court might have been prepared to consider. The only option that any of the witnesses referred to in this context was the option of permanent removal of Chloe from Ashlee's custody<sup>182</sup>.

- 4.98. As a result of the concerns expressed by Ms Wallis and Mr Polkinghorne, Ms Stewart made attempts to contact Ashlee on 5 October 2009. In fact she rang on no less than four occasions<sup>183</sup>. Finally, when she got through Ashlee told her that she would not be home and that Ms Stewart could visit the following day. Ms Stewart informed her that it was urgent because Strong Families Safe Babies had received another notification. Ashlee replied 'are you fuckin' serious? It was my dad wasn't it?' Ashlee then asked Ms Stewart to call her in an hour's time. Remarkably, Ms Stewart complied with this request. No consideration was given by her to the option of, for example, arranging for a family care meeting to be convened under section 27 of the Children's Protection Act 1993. However, as the evidence showed, Families SA rarely made applications under that provision except as a precursor to an application for permanent custody of a child. Ashlee was showing by her attitude to Ms Stewart as early as this that she was not according Ms Stewart very much respect. By the strategic application of the tools available to Families SA under the Children's Protection Act 1993 Ms Stewart could have caused Ashlee to change her focus and become compliant with Families SA's goal of improving her parenting. I do not suggest that this should be done for the purpose of winning a victory over Ashlee, or scoring some points in some ghastly game between Families SA and this recalcitrant young woman. I suggest that intelligent application of the legislative tools available to secure compliance with Families SA's goal of forcing Ashlee to be a reasonable parent should have been the true objective. After all, that was the only option available to Families SA if it did not move to remove Chloe. It could either allow the matter to drift aimlessly, or it could use whatever tools it had available to it to force Ashlee to do what was necessary. Unfortunately, Families SA took the path of least resistance and the whole history of its dealing with Ashlee is a history of drift,

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<sup>181</sup> Transcript, page 747

<sup>182</sup> In Exhibit C120 the Senior Judge of the Youth Court has said that Families SA has a rigid approach to care and protection, seeking long term custody orders rather than alternatives that may be better tailored to the particular case

<sup>183</sup> Exhibit C68, page 187

irresolution and aimlessness. Had Families SA intelligently and strategically applied the legislative tools available to it much more readily, and much earlier, there is every chance that one of two things would have happened. The first possibility is that Ashlee might have changed her ways and become a more responsible parent. As unlikely as that now seems, it must have been a possibility given her very young age and the extended family assistance that would have been available to her if she modified her behaviour. The other possibility is that by increasing the pressure on Ashlee through the strategic and intelligent application of the legislative options, the agency would have brought the matter to a head in the short to medium term. By this I mean that if a family care meeting had been convened and its stipulations and goals had not been met by Ashlee, the next stage would have been to elevate the matter for strategic orders from the Youth Court, for example drug assessments, vocational training and so on. If those goals had not been met by Ashlee, then the Youth Court could have been persuaded without much difficulty to have removed Chloe from Ashlee's care for a short or longer term period.

- 4.99. Had these courses been adopted, it is easy to see that the tragic outcome, namely Chloe's death, might have been avoided.
- 4.100. Instead, the matter was left to drift along with Families SA busily 'scaffolding' around Ashlee and acceding to Ashlee's demands and excusing her failings.
- 4.101. In any event Ms Stewart discussed the notification with Ashlee and she agreed that a meeting could be arranged with her mother being present. A meeting was arranged on 9 February 2009 but Ms Valentine was not present and it turned out that she and Ashlee had had an argument. The various allegations were put to Ashlee but the house was tidy and clean as Ashlee knew that Ms Stewart was coming. The result of the notifications was that abuse was not confirmed. Ms Stewart's note of 9 February 2009 records the following:

'It is SSW<sup>184</sup> assessment (sic) that at times Chloe is exposed to less than perfect parenting by Ashlee, however it is SFSB ongoing assessment that Ashlee's level of parenting is considered above the threshold of 'adequate' and 'good enough'.<sup>185</sup>

This is a particularly concerning note. The reference to a threshold of adequate and good enough in this context is highly subjective. It seems to me that Ms Stewart and

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<sup>184</sup> SSW means senior social worker and is a reference to Ms Stewart

<sup>185</sup> Exhibit C68, page 177

others in Families SA have adjusted their opinions of adequate and good enough markedly below what would be considered adequate and good enough in the general community. No doubt in the subset of families and persons who come to Families SA's attention in a child protection context, the standards are much less than those of the general community. There is a danger that the perspective of what is adequate and good enough is distorted in this situation.

- 4.102. On 3 March 2009 Ms Stewart wrote on behalf of Ashlee to Housing SA seeking public housing for her. The letter was written in the knowledge that the Port Youth Accommodation option was only for twelve months at a maximum and that Ashlee would need to find alternative accommodation by November 2009. However nothing came of this application. On 7 March 2009 there was a notification from the Crisis Response Unit who had received a call from Ashlee stating that Lagden had punched her twice and pulled a knife on her. Lagden was 'off his head' on drugs at the time. While the assault was occurring Ashlee was holding Chloe. Ashlee had a bloody lip, but Chloe was not hurt. However, during the incident Chloe had 'clung to her really hard' and Ashlee went on to say that Chloe had not cried and that she had got used to violent incidents as she had experienced them in the past<sup>186</sup>. A second notification about the same incident came in from Alan Polkinghorne.
- 4.103. Following this report a meeting was arranged between Ms Stewart, Ms Curtis the supervisor and Ashlee to discuss the domestic violence by Lagden and another recent incident involving Michael. It was suggested by Ms Curtis that Ashlee report the matter to the police and get a restraining order. Ashlee became upset about this suggestion and said that she would be put at huge risk of harm if that happened. She feared repercussions or payback from friends of Lagden. No significant steps were taken following this meeting other than continuing with the status quo. Then, on 30 March 2009 Ashlee reported that her unit had been 'crashed' by eight males and that damage had been sustained to the walls of the house. A home visit on 2 April 2009 showed Chloe to be crying and dressed in a nappy with Ashlee and a male outside smoking. On 6 April 2009 Ms Arsenias from Port Youth Accommodation contacted Ms Stewart to advise that she and Ashlee were not getting on well. The file records that the damage that resulted from the males 'crashing' the unit was reported to the police, however Ashlee lied to the police and stated she did not know who was

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<sup>186</sup> Exhibit C68, page 256

responsible. Ashlee was also noted to have two black eyes as a result of an assault she sustained in that incident. On 15 April 2009 Ms Daniel attended at the Taperoo property having carried out some errands for Ashlee. On returning to the unit Ms Daniel overheard a male voice saying 'I'm going to have another bong, do you want one?'. Chloe was in the vicinity at the time<sup>187</sup>. On 20 April 2009 there was a further notification which referred to parties at the home and people coming in from off the street and the associated risks to Chloe. The following day there was a meeting with Ms Stewart, Ms Daniel, Ashlee and the manager and housing worker at Port Youth Accommodation. The Port Youth Accommodation staff said they did not believe that Ashlee was engaging with the support worker they were providing.

- 4.104. Concerningly, on 20 May 2009 Ms Stewart was driving Ashlee to West Lakes shopping centre when Ashlee received a phone call. The note that was made by Ms Stewart suggested that Ms Stewart thought that the phone call was to arrange the purchase of drugs. Ms Stewart put this to Ashlee who denied it, but her response was not convincing to Ms Stewart<sup>188</sup>. The same day a phone call was received from Port Youth Accommodation advising that Ashlee's tenancy was not sustainable and that Ashlee was to be evicted.
- 4.105. By 24 July 2009 it was clear that Ashlee had herself left Port Youth Accommodation and was living elsewhere, but was not prepared to provide an address to Families SA<sup>189</sup>. In late July 2009 Ms Stewart spoke with Ashlee who claimed that she did not know what her new address was. By 3 August 2009 Ms Stewart had ascertained that Ashlee's new address was in Rostrevor. A letter was received from Port Youth Accommodation the following day to the effect that Ashlee's abandoned house had been left in a filthy condition. This came as a surprise to Ms Stewart. However, it seems to me to be entirely consistent with Ashlee's history in relation to her housing.
- 4.106. Ms Stewart said that the next significant event occurred on 10 August 2009 when she spoke to Ashlee following contact that she had received from the Time for Kids volunteer to the effect that Ashlee had been involved in some kind of incident on 7 August 2009. Ms Stewart spoke to Ashlee about this report and Ashlee advised that she had been assaulted on 7 August 2009, but she refused to disclose who the perpetrator was. She refused to give any further details to Ms Stewart and said she

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<sup>187</sup> Exhibit C68, page 88

<sup>188</sup> Exhibit C68, page 120

<sup>189</sup> Exhibit C69, page 73

would speak to Ms Stewart on Thursday. 10 August 2009 was a Monday and the Thursday was 13 August 2009. Ms Stewart met Ashlee on 13 August 2009 at Tea Tree Plaza. Ashlee told her that she had left the Rostrevor house and told her that she had been assaulted by a person call Dylan but that she had broken up with him. Ashlee refused to give Ms Stewart Dylan's surname. Ashlee also disclosed that the assault upon her by Dylan had resulted in bruising and possible fractured ribs and a possible fractured wrist and that Chloe may have witnessed the incident. Ms Stewart said that she did not report this to the police and furthermore she did not make any notification to CARL because Ms Curtis had told her not to do so. Six days later on 19 August 2009 Alan Polkinghorne informed Ms Stewart that Dylan's surname was Hindle. Mr Polkinghorne suggested that Ms Stewart conduct a Google search on that name. To sum up, the information obtained by Ms Stewart on 13 August 2009 was that Ashlee did not intend to report the matter to police and that Ashlee did not intend to seek medical assistance. Clearly this was a time at which the matter should have been escalated to the Youth Court, however that did not happen. Ms Stewart could not remember why she did not ring the police to report the matter herself. She suggested that it may have been because Families SA only knew Dylan's first name prior to the information from Mr Polkinghorne. This is, with respect, ridiculous because the police would have been able to investigate simply on the basis of the first name and the address which Dylan was known to be living at. As a public officer, Ms Stewart had been informed of a crime. In my opinion it was her duty to report this matter to the police regardless of Ashlee's attitude to the matter. That was Ms Stewart's duty as a public officer and the duty of any other Families SA worker who became involved in the situation. In my opinion that should have occurred at the very least.

- 4.107. As a result of speaking with Mr Polkinghorne, Ms Stewart did indeed conduct an internet search under the name Dylan Hindle. She found a newspaper article online about Hindle having a sexual relationship with a girl under the age of consent. Hindle had taken photographs and video of this activity without the girl's permission. He was placed on the National Sex Offenders Register as a result of this conviction. Unbelievably, Ms Stewart said that although she thought that Ashlee needed to know about Hindle's history so that she could make appropriate decisions about having contact with him, Ms Stewart was 'not sure whether I was able to disclose that to her

from a confidentiality perspective'<sup>190</sup>. She said that she had also become aware of some further information about Hindle from Families SA's client information system and it was this that caused her to be concerned about confidentiality. She sought advice from a supervisor called Brenton Carr and the result was that she was not allowed to provide the information about Hindle to Ashlee. Bizarrely, Ms Stewart understood from Mr Carr that she was not even entitled to tell Ashlee that which she had found on the publicly available internet<sup>191</sup>. Ms Stewart was questioned at some length about this issue<sup>192</sup>. Her position in relation to this matter was simply preposterous. On no view could any sensible person arrive at the conclusion that information they had obtained in the public domain could not be conveyed in these circumstances, particularly where Ashlee needed to know about the history of the man she was involved with. It is frightening and concerning to think that Ms Stewart could reach such a bizarre conclusion, particularly after conferring with a colleague who apparently agreed with her. It is difficult to comprehend how an organisation could produce two employees who would reach a conclusion such as this. It is only possible to conclude that there are serious deficiencies in the training of Ms Stewart, Mr Carr and any other person who would operate in this way.

4.108. It was pointed out to Ms Stewart that she was then in possession of information from a newspaper about the terms of Hindle's sentence which was a suspended sentence of imprisonment. She was also aware that Hindle had been involved in an alleged assault of Ashlee. Putting those two pieces of information together would almost certainly establish a breach of the condition of the suspended sentence. This was another event that urgently needed to be reported to the police, but Ms Stewart failed to do that, as did other employees of Families SA. This is a matter that deserves the most condign criticism.

4.109. On 19 August 2009 Ms Stewart made a notification about these events and assessed it as 'no grounds for intervention'. She said the people from Crisis Care agreed with this assessment. She said she would have consulted someone senior about the removal of Chloe, but there is no note to that effect. She maintained that at that point, it being some twelve days since the assault, grounds could not be made out for removal of Chloe from Ashlee's care pursuant to section 16 of the Children's

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<sup>190</sup> Transcript, page 868

<sup>191</sup> Transcript, page 869

<sup>192</sup> Transcript, pages 870-871

Protection Act 1993 which is the power of an officer of Families SA to remove a child who is in a situation of serious danger. She went on to add that:

'So we would have been looking at a planned application which can take several weeks, sometimes months to go through the process.'<sup>193</sup>

In this respect I take her to be referring to an application to the Youth Court under part 5 of the Act. Ms Stewart acknowledged that she believed that Families SA would have been granted an investigation and assessment order, but was not confident that they would have been given custody of Chloe<sup>194</sup>. However, as a matter of fact, no such application was made. In my opinion there is no doubt that this was another time when Families SA could have applied the various legislative tools that were at its disposal under the Children's Protection Act 1993. I have rehearsed them elsewhere in this finding. No action to that effect was taken. This represents another lost opportunity. This notification was opened and closed on the same day, namely 19 August 2009. Another day, another lost opportunity to procure a brighter future for Chloe.

4.110. On 9 September 2009 the Strong Families Safe Babies team wrote a letter to the organisation known as Louise Place which is yet another form of supported accommodation. It was their hope that Louise Place would provide Ashlee with accommodation. Ms Stewart agreed that she would have looked at this letter before it was sent. She acknowledged that the letter, which states that Ashlee was 'observed to maintain the home environment to an appropriate standard' and that for some time Ashlee has not been engaging in substance misuse, was plainly false<sup>195</sup>. Ms Stewart said that the letter was written because there were no other, or few other, options for Ashlee at that point. Ms Stewart said that perhaps her threshold for what was okay and what was not okay had shifted<sup>196</sup>.

4.111. In any event Ashlee and Chloe moved into Louise Place and Strong Families Safe Babies made arrangements for Chloe to go into the Unley Child Care Centre five days per week under a special child care benefit<sup>197</sup>. On 10 December 2009 the director of the Unley Child Care Centre reported that when Ashlee dropped Chloe off, Ashlee smelt of alcohol.

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<sup>193</sup> Transcript, page 879

<sup>194</sup> Transcript, page 880

<sup>195</sup> Transcript, pages 899-900

<sup>196</sup> Transcript, page 902

<sup>197</sup> Transcript, page 903

4.112. From the time that Ashlee entered Louise Place, Ms Stewart was having less to do with the case. The bulk of the work from that point was being undertaken by Janelle Morris who was at that time a social work student who was undertaking a placement at Families SA. Ms Stewart said she thought that Ms Morris had the skills to manage Ashlee in this situation, despite the fact that she was merely a social work student, albeit in her final year, completing a placement at which she was supposed to be obtaining training, supervision and experience<sup>198</sup>. Clearly it was inappropriate that Ms Morris became the lead worker during this period.

4.113. Ms Stewart's final involvement with Ashlee occurred on 7 January 2010. Ms Stewart said that at that point Ashlee had been evicted from Louise Place. Ms Stewart collected Ashlee from her new address in Flinders Park and she had what she described as a very serious conversation with Ashlee about her behaviour, her lifestyle and her choices and the impact that was having on Chloe. She said:

I can recall talking to her about it getting to a point where we were not seeing enough shift from her, she hadn't been able to maintain ... the case had been open for ... two and a half years, that a decision needed to be made as to what happened from here. My recollection of the meeting was that we had gotten to the point that we were saying to Ashlee that we were escalating the matter. We were considering first of all going to a family care meeting which is more formal, that is held at the care and protection units, that is more formal than the family meeting.'<sup>199</sup>

4.114. Ms Stewart was very vague about why this information was conveyed to Ashlee on that occasion. She acknowledged that there were gaps in the notes. She said she assumed it was part of a broader case direction that was given to her by her supervisor, Ms Curtis, but that it was not recorded. She said that something must have happened prior to her conversation, but it was not recorded on the file and she was not clear why<sup>200</sup>. She said it may have been that a review was conducted, but she acknowledged that there was no documentation of it and nothing to indicate what was the catalyst for this discussion that she had with Ashlee<sup>201</sup>. Ms Stewart said that she believed that she would have given Ashlee a timeframe to demonstrate sustained change, saying 'it probably would have been between three and six months from memory'<sup>202</sup> and then noting that it was probably six months<sup>203</sup>. This was Ms Stewart's last substantive involvement in the case.

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<sup>198</sup> Transcript, page 922

<sup>199</sup> Transcript, page 951

<sup>200</sup> Transcript, page 952

<sup>201</sup> Transcript, pages 952-953

<sup>202</sup> Transcript, page 953

4.115. Elizabeth Daniel

I heard evidence from Ms Daniel who confirmed that she was the family support worker involved with Ashlee and Chloe over the two year period in question. Ms Daniel said that when Mr Ratsch left Strong Families Safe Babies on 12 April 2008 because he had a new job, it was at the time Ms Daniel's understanding that the supervisor, Ms Curtis, would assume the case management responsibility for Ashlee and Chloe<sup>204</sup>. However, she agreed that that did not happen and that the case management was essentially left to her, although she was able to get directions from Ms Curtis and a social work student was allocated to the case also. That student was Amy Kidner<sup>205</sup>.

4.116. When Ms Kidner expressed concern in late May 2008 that Chloe had not been seen by a qualified social worker for a month Ms Daniel shared her concern. Ms Daniel said that this was the outcome of there being no senior social worker case managing the file, but noted that it was really Ms Curtis' responsibility given that she had taken the case management to see Chloe more regularly<sup>206</sup>.

4.117. Then, on 6 June 2008, Ms Kidner was attempting to see Chloe but was not able to and spoke instead to Ashlee and she requested Ms Daniel's assistance to ensure that Chloe was seen<sup>207</sup>. Ms Daniel acknowledged that it was possible that Ms Kidner was not at the time getting the role modelling from a person in a senior position that she should have been<sup>208</sup>. In any event, Ms Daniel approached another senior social worker, Daniel Frick, who was not assigned to Chloe's case, but was willing to assist. She approached him to ask him to step in because she needed someone senior in a social work role to be assertive with Ashlee about producing Chloe to Strong Families Safe Babies<sup>209</sup>. Ms Daniel said that Ashlee was at first resistant to Mr Frick's attempts to see Chloe<sup>210</sup>, but that Mr Frick was effective in that he firmly persisted and then was able to see that Chloe was safe. Ms Daniel said that Mr Frick was definitely 'more assertive than what I had seen'<sup>211</sup>.

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<sup>203</sup> Transcript, page 953

<sup>204</sup> Transcript, pages 989-990

<sup>205</sup> Transcript, page 990

<sup>206</sup> Transcript, page 993

<sup>207</sup> Transcript, pages 994-995

<sup>208</sup> Transcript, page 995

<sup>209</sup> Transcript, page 995

<sup>210</sup> Transcript, page 996

<sup>211</sup> Transcript, page 998

4.118. Ms Daniel confirmed that on 21 July 2008 Ms Curtis closed the file 'on the system'<sup>212</sup>. Ms Daniel said that she was directed to continue working with Ashlee even though the case was closed on the system<sup>213</sup>. Ms Daniel said that over the next few months she did not see Chloe and did not know how things were going with her<sup>214</sup>. Up until 20 October 2008 Ms Daniel said it was only she working on the case but with guidance from Ms Curtis. She said that she did have trouble engaging with Ashlee over that period<sup>215</sup>. Ms Daniel said that by the time of the three intakes which occurred around 12 November 2008, which I have referred to above<sup>216</sup>, she was concerned that possibly not enough was being done to keep Chloe safe, but she added 'I don't know what else you would do because you're not with them 24/7'<sup>217</sup>. That is a revealing remark because it suggests that the only way to keep Chloe safe was to be present 24 hours per day. Effectively this is a concession that Chloe should not have remained with Ashlee but that some other solution should be found to keep Chloe safe. Following the admission of Chloe to the Women's and Children's Hospital Ms Daniel spoke to Ashlee who actually suggested that she believed that Ms Benyk and Ms Behsmann had given Chloe something to make her vomit and that Ashlee was 'being set up'<sup>218</sup>. Of course those suggestions are fanciful, but there is no sign of Ms Daniel being firm with Ashlee to that effect. Ms Daniel said that at this time it definitely seemed to her that Strong Families Safe Babies could have been doing more to preserve Chloe's safety. She said that they needed to 'make Ashlee accountable for her actions' by being stricter with her<sup>219</sup>. Ms Daniel said that she left Families SA in 2010 following the birth of her own child. She said that she could not cope with working in the child protection area after that 'seeing and knowing what was happening to children, young children and probably not being able to do as much as you want to change that for them'<sup>220</sup>.

#### 4.119. Janelle Morris

It will be recalled that Janelle Morris was the student social worker who was involved with Ashlee between August and December 2009 during the period that Ashlee was at Louise Place. Ms Morris completed her social work degree in 2009 and was, in that

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<sup>212</sup> Transcript, page 1004

<sup>213</sup> Transcript, page 1004

<sup>214</sup> Transcript, page 1006

<sup>215</sup> Transcript, pages 1013-1014

<sup>216</sup> Chloe with beer can, Chloe left with teenager at Glenelg, Chloe admitted to Women's & Children's Hospital without Ashlee

<sup>217</sup> Transcript, page 1020

<sup>218</sup> Transcript, page 1025

<sup>219</sup> Transcript, page 1026

<sup>220</sup> Transcript, page 1042

year, a student. She was doing her final placement for the purposes of her course with the Strong Families Safe Babies team in the last few months of 2009. She confirmed that although she was a student social worker, she was the primary worker dealing with Ashlee and Chloe for much of that period<sup>221</sup>. She said that her supervisor during that period was Ms Stewart. At the time of giving evidence Ms Morris was a stay at home mother. She commenced work as a qualified social worker with Families SA in February 2010 and worked in that capacity for just over a year until, in March 2011, she took leave to have her first child. She has not been in the workforce since that time. Thus, her total experience, apart from her placements as a student, amounts to just over one year as a qualified social worker. Despite this she presented as being very confident in her opinions about child protection. She made a stark contrast with Ms Kidner who was a much more measured witnesses, who was far more prepared to make appropriate concessions.

- 4.120. Ms Morris said she was aware that Ashlee's previous supported accommodation had been unsuccessful but options were limited and it was necessary to get Ashlee a place, hence Louise Place was an attractive option. She did think that Ashlee should have been told before going to Louise Place that she was at risk of losing Chloe if she did not make it successful. On 25 September 2009 there was a case conference. At that time Ms Stewart was to become the acting supervisor of the office for six weeks and so Ms Morris was to take the lead role with Ashlee and Chloe. On 1 October 2009 Ms Morris made a home visit to Ashlee at Louise Place and found it to be messy but not unhygienic. She said that already Ashlee was expressing frustration with Louise Place's restrictions and rules. Ashlee acknowledged that she had anger management problems. On 7 October 2009 Ms Morris visited again and found Chloe in a singlet and nappy with a runny nose and dirty face. The house was messy and strewn with rubbish, but not large amounts. On 8 October 2009 Sherilee Kartinyeri from Louise Place was expressing concerns that it may not be the right placement for Ashlee. The following day Ms Kartinyeri expressed further concerns and remarked that Ashlee was outspoken and would not follow rules, and that Louise Place had arranged for her to come to a meeting. If she failed to attend the meeting she would be given seven days notice of eviction. Ms Kartinyeri did not think that Louise Place was appropriate for Ashlee and said that the option of outreach housing following her placement at Louise Place would not be made available. Ms Morris maintained that she felt that

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<sup>221</sup> Transcript, page 1168

she was capable of handling the situation. She said she had a lot of conversations with Ms Stewart and these were informal and not noted. Ms Morris said that she was unable to attend the Louise Place meeting because she only worked three days per week.

4.121. The next report from Louise Place noted that Ashlee had been extremely rude and returned to the complex intoxicated by alcohol. She was placed on probation for one week. Ms Morris said it was concerning because very soon Ashlee would not have accommodation at Louise Place if this continued. She said that Ashlee ‘struggled’ with the restrictions. In early October 2009 as a result of the fears about Ashlee losing her accommodation at Louise Place, Ms Morris had a conversation with Ashlee in which she said that there were decision makers outside the Strong Families Safe Babies team who were watching the case with a view to making decisions about what was best for Chloe’s care because of Ashlee’s transience having been a pattern and Ashlee not prioritising Chloe’s needs<sup>222</sup>. This reference to people watching was designed to imply to Ashlee that she might be at some risk of losing Chloe if she did not improve her behaviour. The decision to have this conversation with Ashlee followed a discussion with Ms Stewart that was an ‘informal chat’ and ‘it wasn’t practice to actually record those informal chats, or perhaps I intended to and I forgot’<sup>223</sup>. In any event there is no note of any decision being made by Ms Stewart or anyone else to authorise the conversation implying that other people were watching with a view to making decisions about Chloe’s care.

4.122. Ms Morris said that she was on leave in October 2009 and could not say who was attending to Chloe and Ashlee’s case in her absence. She said that it was possible that no-one did, although suggested that Ms Daniel may have. On 16 October 2009 Ms Stewart received a call from the director of the Unley Child Care Centre to say that she had observed Chloe in an extremely full nappy and had never seen a nappy as full in her 9 years of experience. Shortly after this Ms Kartinyeri from Louise Place told Ms Morris that Ashlee was going to be asked to leave. She met with Ms Kartinyeri on 27 October 2009. Ashlee was present also. The Louise Place staff said to Ashlee that they questioned her understanding of her responsibility to Chloe and safely parenting her. They said that Ashlee refused to see Chloe’s needs as a priority and focussed only on her own. They said Ashlee became even more defensive when they

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<sup>222</sup> Transcript, pages 1214-1215

<sup>223</sup> Transcript, pages 1215-1216

try to address child protection issues. The staff from Louise Place asked Ashlee what her plan now was with respect to Louise Place, in other words whether she would abide by their rules. She replied that she had nowhere else to live and would try her best to stick by the rules. The staff from Louise Place reminded her that it was not just a matter of sticking to the rules but her willingness to participate<sup>224</sup>. Ms Morris acknowledged that it was not 'ideal' for her to attend this meeting without the support of a senior social worker, or indeed any qualified social worker at all, but explained that it was because of staff shortages<sup>225</sup>.

4.123. On 29 October 2009 Ms Morris conducted a home visit with Ashlee. After some difficulty she gained access to the unit. Ms Morris drove Ashlee and Chloe to the Unley Child Care Centre and then returned with Ashlee to the unit. Once they returned Ms Morris told Ashlee that she would have to think very seriously about how she was going to ensure her continued accommodation at Louise Place. Ms Morris told Ashlee that 'there are other people within Families SA above Leanne and Carolyn who are making decisions around what is considered to be in Chloe's best interests'<sup>226</sup>. Ashlee responded by becoming extremely angry saying that she would run away and that Families SA could not take Chloe. She used expletives. She also stated that she hated Families SA. Ms Morris then explained to Ashlee that she did not say that Chloe was going to be removed, just that other people within Families SA were discussing Chloe's wellbeing and had the authority to make decisions about her care. They discussed Ashlee's anger management problem and Ashlee said 'I wouldn't be angry all the time if you c\*\*\*\* weren't always interfering'<sup>227</sup>. Finally, Ashlee said that although she hated Louise Place she was willing to stay there until she got a job and her own house. Ms Morris told Ashlee that she and Ms Stewart wished to organise a family meeting to determine 'what support family members can provide to Ashlee and Chloe'. Ms Morris explained that the intention of the family meeting was that she and Ms Stewart were wanting to get all of the family members together to see if they could arrange further support for Ashlee and Chloe of any form at all. Once again the casenotes contain no indication of who it was that suggested the notion of a family care meeting or the suggestion that there were people higher up giving consideration to Chloe's welfare<sup>228</sup>.

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<sup>224</sup> Transcript, pages 1224-1225

<sup>225</sup> Transcript, page 1227

<sup>226</sup> Exhibit C72, page 148

<sup>227</sup> Exhibit C72, page 148

<sup>228</sup> Transcript, page 1235

4.124. At first in her evidence Ms Morris suggested that the proposed meeting with the family would be a family care meeting under the Children's Protection Act 1993. However she changed her mind and acknowledged that it was probably an informal family care meeting<sup>229</sup>. In my view that is clearly the case because there is no suggestion whatsoever that at any point consideration was given to invoking section 27 of the Act for a properly constituted family care meeting. That ought to have happened but it never did.

4.125. In any event, there was a degree of to-ing and fro-ing about the family care meeting. Ms Morris wanted Ms Valentine to take part in the family care meeting but Ms Valentine told her that she and Ashlee had been together the previous week and it ended badly with Ashlee blaming her mother for everything and using foul language around her mother's young children. Ashlee told Ms Valentine that she blamed her for Dylan's assault. Ms Valentine also pointed out to Ms Morris that Chloe was in child care four days per week and staying with Joy from Time for Kids every fortnight. She questioned what Ashlee was doing with the rest of her time. Ms Valentine said that she did not understand why Ashlee was not coping if she was not having Chloe in her care for much of the time<sup>230</sup>. Ms Morris told Ms Valentine that Ashlee and Chloe had a 'decent attachment'. She explained this statement as follows:

'Because despite people's concerns, we believed at the time, or I believed at the time that they still had - it was not a perfect attachment by any means but in a kind of child protection scenario, we would sometimes refer to it as good enough. I know that doesn't sound ideal by any stretch of the imagination, but that is the reality of this work and you learn that very quickly.'<sup>231</sup>

4.126. This world weary description of the reality of child protection work does not sit well coming from the lips of a person who has had barely more than one year of experience in the field. It seems to me that Ms Morris was over confident and had too high an assessment of her own capabilities. She was certainly not in a position to make that assessment.

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<sup>229</sup> Transcript, page 1242

<sup>230</sup> Transcript, page 1290

<sup>231</sup> Transcript, page 1296

## 4.127. Ms Morris informed Ms Valentine:

'That recently Ashlee had become very close to having Chloe removed from her care and that this meeting was about showing a united front and ensuring that each person involved with Ashlee were saying the same things.'<sup>232</sup>

4.128. Ms Morris was questioned about that statement and why she said it. She said she did not know why she wrote that she had said that to Ms Valentine. She simply could not explain it and said that she should not have said it to Ms Valentine<sup>233</sup>. She said that the comment may have been as a result of conversations she had had 'with supervisors' and that there were conversations taking place between her and the supervisors about 'possibilities'<sup>234</sup>. When she was asked where the conversations with the supervisors were noted in the file, she said 'it was informal chats mostly and they are not noted'<sup>235</sup>. She said she did not know why they were not noted and said they should have been. When she was asked why she was giving incorrect information out to family members she responded:

'On this one occasion it appears that that happened. It was - I'm - as I'm aware a one-off and we all make mistakes, especially when we're learning.'<sup>236</sup>

With considerable reluctance Ms Morris finally conceded that the support she received from Families SA as a social work student was not sufficient<sup>237</sup>. In any event, the proposed family care meeting did not proceed because Ms Valentine received a telephone call in the meantime from Ashlee who was being abusive and Ms Valentine said that as a result of that she would not be attending the meeting<sup>238</sup>. It appears that Ashlee informed Ms Morris that Ms Valentine had asked Ashlee what the purpose of the meeting was and Ashlee said that it was about how she, Ms Valentine, could support Ashlee and Chloe. Ms Valentine remarked that she did not need to learn how to support them as she already did this and this resulted in a fight. Ashlee said that if her mother would not come to the meeting then there would be no point in having it<sup>239</sup>, a position that Ms Morris accepted. This is a further example of Ashlee controlling the situation and Families SA complying with Ashlee's wishes. The decision as to whether there should be a meeting or not should have been a matter for

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<sup>232</sup> Exhibit C72, page 110

<sup>233</sup> Transcript, page 1298

<sup>234</sup> Transcript, page 1298

<sup>235</sup> Transcript, page 1299

<sup>236</sup> Transcript, page 1299

<sup>237</sup> Transcript, pages 1299-1302

<sup>238</sup> Transcript, page 1302

<sup>239</sup> Transcript, page 1303

Families SA to determine and not Ashlee. Yet Families SA allowed Ashlee to take charge. Ms Morris conceded that should not have happened<sup>240</sup>. She conceded that this was an example of her being out of her depth<sup>241</sup>.

4.129. On 26 November 2009 Ms Morris conducted a further home visit to the Louise Place unit. Before seeing Ashlee she was informed by Ms Kartinyeri at Louise Place that the situation was deteriorating. It was likely that Ashlee would be asked to leave because Ashlee had broken the curfew and that her relationship with the staff had deteriorated. Following this discussion Ms Morris attended Ashlee's unit. Ashlee was not happy about the fact that Ms Morris had met with Ms Kartinyeri without her being present and accused Ms Morris of going behind her back. Ashlee became extremely abusive and said that the situation was entirely the fault of the Louise Place staff. She was extremely angry in her comments about Ms Kartinyeri and was calling Ms Kartinyeri names and blaming her. The note of the visit states that:

'Ashlee stated that we (Safe Babies) cannot take Chloe from her, that she won't let us. Ashlee stated that she has taken care of Chloe now for 2 years by herself and she has never had Chloe taken from her (Ms Morris) stated that removing Chloe was not Safe Babies' intention and that the meeting was taking place so that Safe Babies can discuss their concerns with Ashlee.'<sup>242</sup>

4.130. Ms Morris ended the visit because of its heated nature and the fact that Chloe was exposed to it and she did not wish that to continue<sup>243</sup>. Ms Morris was asked why she gave Ashlee a reassurance that it was not Strong Families Safe Babies' intention to remove Chloe. This was a concerning message to send in the circumstances as it is providing a reassurance to Ashlee that never should have been provided at this point<sup>244</sup>. Ms Morris was unable to give the Court a satisfactory explanation about this. This was another example of the danger of relying on unqualified workers to make decisions about case direction, particularly at times of crisis.

4.131. On 7 December 2009 Ms Vicky Lachlan from Louise Place informed Ms Morris that Louise Place had given Ashlee seven days notice to leave. As a result of this Ashlee and Chloe would again be homeless. Ms Morris was asked whether at that point she

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<sup>240</sup> Transcript, page 1303

<sup>241</sup> Transcript, page 1303

<sup>242</sup> Exhibit C72, page 65

<sup>243</sup> Transcript, page 1313

<sup>244</sup> Transcript, pages 1313-1318

thought Chloe should be removed from Ashlee's care and responded that she did think that at particular moments<sup>245</sup>. She said:

'I think - how can I put this? From someone who has not gone through the court experience myself, and obviously hadn't had anywhere near as much experience as everyone else in the office, I need to explain myself. What I would want - the reality of what is considered good enough parenting in a child protection system is very different to my *reality of what I think is good enough, and that is very sad*. However, I had learnt that workers' ability to get certain cases through the system, the court system to remove them was not an easy process. I know that I had had conversations with Leanne around this, and we believed that it would not be a straightforward process, that it would basically not go through the court.'<sup>246</sup>

4.132. Once again this assessment of the position at the time came from someone who was only a social work student. Furthermore, at the time of giving evidence Ms Morris had only had one further year of experience in child protection work as a fully credentialed social worker and had not been in the field for four years. Yet the sense of hopelessness in approaching the Youth Court comes out very clearly in this passage of evidence. It is quite clear that the attitude of hopelessness in relation to using the Court as a mechanism of securing Chloe's protection had been imbued in Ms Morris by others in the office. She had not had that experience firsthand herself, so it must have come from others, and not only Ms Stewart.

4.133. In my opinion, particularly having regard to Exhibit C120 which is the correspondence from the Senior Judge of the Youth Court, this negative picture of hopelessness simply did not match with reality. In fact, it was completely misinformed.

4.134. Ms Morris made further concessions about the inadequacy of her note keeping practices<sup>247</sup>.

4.135. On the subject of the large amount of time that Chloe was spending in the Unley Child Care Centre, Ms Morris conceded that the child care in this case was not being used for the normal purpose envisaged by child care, namely to provide care to a child while his or her mother or father is engaged in paid work. She said she acknowledged that in this instance the child care was effectively to remove Chloe from Ashlee's care

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<sup>245</sup> Transcript, page 1323

<sup>246</sup> Transcript, page 1324 – the italics are mine

<sup>247</sup> Transcript, page 1325

for a certain amount of time because it would be beneficial to Chloe to not be in her care<sup>248</sup>.

4.136. Aftermath of Ashlee's eviction from Louise Place – an overview

In the aftermath of Ashlee's eviction from Louise Place she and Chloe were again transient. I have already mentioned that in early January 2010 Ms Stewart had the conversation with Ashlee in which she said that it was time to demonstrate a shift in her behaviour or the matter would be escalated<sup>249</sup>. Then, on 15 January 2010, the workers consulted the external consultant, Ms Claire Horgan, who made brief notes of the conversation in relation to Chloe's case<sup>250</sup>. On 20 January 2010 Ashlee and Chloe commenced a tenancy at a private rental property in Mary Street, Unley. In all the circumstances it was truly quite remarkable that they managed to obtain this private tenancy. In any event, during this tenancy the difficulties continued. On 25 March 2010 it was learnt that 'Martha', another client of Families SA, was said to be moving in with Ashlee at the Unley address. Martha had a history of drug use<sup>251</sup>. During this period of time Chloe continued to attend at the Unley Child Care Centre and appeared to be making developmental improvements. On 28 April 2010 Ashlee expressed the view that she did not like the Unley area and wished to move back to Modbury<sup>252</sup>.

4.137. On 20 May 2010 the Strong Families Safe Babies team closed Chloe's file. A case closure summary was prepared at that time<sup>253</sup>. It features in later events and I will attempt to summarise it. It contained a section headed 'rationale for case closure' which referred to signs of secure attachment between Ashlee and Chloe, Ashlee obtaining private rental accommodation in January 2010 with Families SA's assistance, Chloe attending Unley Child Care Centre and showing developmental improvements, Ashlee working as a waitress and cleaner and not apparently having financial difficulties, Chloe spending every second weekend with carer Joy through Time for Kids, Ashlee apparently having no face to face contact with the perpetrator of the domestic violence of August 2009, risk assessment showing low to moderate risk and, finally, no current child protection concerns and stability for a period of five months. The case closure summary also contained a heading 'worker assessment of

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<sup>248</sup> Transcript, page 1338

<sup>249</sup> Exhibit C73, page 158

<sup>250</sup> Transcript, page 2197, Exhibit C119

<sup>251</sup> Exhibit C73, page 62

<sup>252</sup> Exhibit C73, page 22

<sup>253</sup> Exhibit C74, page 175

family's current situation and infant safety' which included mention of the fact that Ashlee's lease would expire at the end of July 2010 and she had been asked to leave after that time<sup>254</sup>. Ashlee had stated that she wanted to return to the Modbury area where her friends were located and Families SA had concerns about her return to the influence of people who had influenced her negatively in the past. On the other hand, Chloe was no longer a vulnerable infant being three years of age and having communication skills. Furthermore, Chloe's attendance at child care consistently is a positive feature, but there is concern that this might cease when she and Ashlee are required to leave their current residence.

- 4.138. On this rather tenuous note the case closure summary sought to justify the decision to close the case.
- 4.139. On 18 June 2010 there was a further notification to CARL concerning Ashlee's poor behaviour and Chloe's health.
- 4.140. By 20 July 2010 Ashlee had moved to another residence in Unley. During this tenancy the situation continued pretty much as it had previously. On 25 August 2010 Joy Rann from Time for Kids contacted that organisation in relation to concerns for Chloe's wellbeing<sup>255</sup>. On 29 December 2010 there was a notification to CARL to the effect that Chloe was being left in the care of people other than her mother and that Ashlee was using drugs again and bragging about earning \$900 at night working as a cleaner<sup>256</sup>. On 30 December 2010 Ashlee contacted Housing SA saying that she needed a house as she was about to be evicted. Ashlee and Chloe were then homeless for an extended period. On 11 January 2011 Ms Rann contacted Time for Kids to advise that Ashlee and Chloe were moving to Queensland. Families SA reopened the file to investigate the notification of 29 December 2010<sup>257</sup>. On 18 January 2011 Ms Rann rang Time for Kids again and informed them that Ashlee's previous house was left in a filthy state. There was a further notification to CARL about concerns that Chloe had not been attending the Unley Child Care Centre and Ashlee was working nights and leaving Chloe with other people<sup>258</sup>. On 21 January 2011 Families SA workers attended to conduct a home visit at Ashlee and Chloe's temporary residence

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<sup>254</sup> This is hardly an encouraging sign one would have thought

<sup>255</sup> Exhibit C98, page 22

<sup>256</sup> Exhibit C91

<sup>257</sup> Exhibit C74, page 141

<sup>258</sup> Exhibit C91

to investigate the notifications of late December 2010 and early January 2011<sup>259</sup>. On 23 January 2011 Ashlee contacted Families SA and requested crisis accommodation<sup>260</sup>. On 24 January 2011 Families SA made a decision not to confirm abuse in response to the notifications and to cease involvement with Chloe's matter. However, on 28 January 2011 there was a further notification to CARL on the basis that Ashlee had been evicted from her residence. On 10 March 2011 Ashlee and Chloe moved into an address at Royal Park with Ms Behsmann, who gave evidence at the Inquest. Her evidence was that the house was not a tidy place<sup>261</sup>. On 8 June 2011 there was a further notification to CARL in which concerns were expressed about drug use, the unkempt state of the house and Ashlee working as a prostitute. A number of notifiers were involved with that notification. On 26 July 2011 the organisation Time for Kids rang Ms Rann and advised that the Woodville office of Families SA had advised that they would not be going to check on Chloe, despite the notifications. On 25 August 2011 Families SA reopened Chloe's file and conducted a visit to the Royal Park address. Ashlee admitted to smoking cannabis<sup>262</sup>. The workers involved in this visit told Ashlee that they would most likely not be confirming the notifications.

4.141. On or about 2 December 2011 Ashlee and Chloe moved into McPartland's address in Ingle Farm. This was the last residence that Chloe lived in. On 16 December 2011 Time for Kids contacted Ms Rann and advised that Ashlee no longer wanted her to be involved with Chloe<sup>263</sup>.

4.142. Families SA actions in 2010-2011

It is now necessary for me to return in the narrative to the end of 2009 and 2010 in order to examine what occurred with Families SA during that period in relation to Chloe. In late 2009 and early 2010 both Ms Stewart and Ms Morris had told Ashlee that her case was being considered by 'others' in Families SA and that she needed to make some major changes if she was to continue to have Chloe in her care. After Ashlee was evicted from Louise Place, Families SA did not take any particular steps. No action was taken to protect Chloe at that time. I have already mentioned that Ms Stewart had a conversation with Ashlee on 7 January 2010 about making a

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<sup>259</sup> Exhibit C74, page 128

<sup>260</sup> Exhibit C91, page 48

<sup>261</sup> Transcript, pages 193-194

<sup>262</sup> Exhibit C74, page 63

<sup>263</sup> Exhibit C98, page 79

fundamental shift in her behaviour and putting Chloe's needs before her own. There is nothing in the various files of Families SA to explain what overall strategy was being enacted in the holding of that conversation. What was it that caused Ms Stewart to have that conversation at that time? The key decision points and strategies that one would expect to find in the files are never there, and this is a further instance of the absence of a record of the adoption of a new strategy.

- 4.143. It is clear that Claire Horgan, a principal social worker at Families SA, had been consulted about the strategy to implement at this time. However, the evidence showed that Ms Horgan was not consulted until 15 January 2010. Ms Horgan made a written note of this<sup>264</sup> in which she briefly noted the case of Chloe Valentine who was 2½ years old, that the mother was 18 years old and had not been 'using' for two years, there was transience and the mother was stuck in adolescence but there was a secure attachment. Reference is made to a family care meeting and to timeframes and clear expectations.
- 4.144. Ms Horgan said this was the information that was given to her by the workers. The reference to a family care meeting is a reference to a formal family care meeting convened under section 27 of the Act<sup>265</sup>. Ms Horgan thought that she would have spoken to Ms Stewart about these things on 15 January 2010.
- 4.145. That note of what Ms Stewart told Ms Horgan contains the barest of detail. It is inaccurate in suggesting that Ashlee had not been 'using'<sup>266</sup> for two years. Clearly Ashlee had been using drugs far more recently than that. The reference to a secure attachment is an optimistic reflection of the true state of affairs. Ms Horgan said that the note reflected what she had been told, and if she had been told more the note would have reflected that<sup>267</sup>. Ms Horgan said that if she had been given a fuller picture of the history of the case she would have asked more questions, particularly about the drug and alcohol history<sup>268</sup>. In any event, this was clearly the very scantest of consultations. Furthermore, it appeared that the decision to suggest to Ashlee that some kind of crisis point had been reached, had already been made and acted on. Ms Horgan was not consulted until after that had occurred. I agree with Ms Kereru's submission that it is not surprising that Ms Horgan agreed with the plan on the brief

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<sup>264</sup> Exhibit C119

<sup>265</sup> Exhibit C73, page 158

<sup>266</sup> I take this to be a reference to the use of illicit drugs

<sup>267</sup> Transcript, page 2204

<sup>268</sup> Transcript, page 2206

and benign history that was conveyed to her. What is also clear is that no family care meeting was ever arranged.

- 4.146. As I have said, in early 2010 Ashlee managed to secure private rental accommodation and Chloe was secured in childcare four days per week at the Unley Child Care Centre and was attending respite with Ms Rann every second weekend. There was also another Time for Kids volunteer involved in her life at that time, a lady by the name of Fereshteh Agahi-Pizarro. Furthermore, Chloe was frequently in the care of others such as Ms Benyk and Ms Wallis.
- 4.147. I consider that a link can be drawn between the stern words of Ms Stewart with Ashlee on 7 January 2010, and the six month timeframe she gave Ashlee at that time to fix things, and the sudden improvement in Ashlee's functioning for the next few months. The team at Strong Families Safe Babies were reassured by the apparent improvement in Ashlee's ability to maintain a barely adequate level of parenting and closed their file on 4 June 2010. The case closure summary<sup>269</sup> that has been mentioned earlier, referred to certain protective factors in the rationale for closing the case. The protective factors included the fact that Chloe had regular contact with carers through childcare at the Unley Child Care Centre and with the Time for Kids carer, Ms Rann. It also noted that Ashlee was not currently in a relationship and therefore domestic violence was not a risk factor at that time.
- 4.148. On 18 June 2010 a notification was made to CARL by a friend of Ashlee's who wished to remain anonymous<sup>270</sup>. The concerns that were expressed were that Chloe was always sick and not properly medicated, that Ashlee got angry if any concerns about her were raised by the notifier, that Chloe was dirty and smelly and that marijuana and cigarettes were smoked in the house. Mention was also made of the fact that Ashlee was earning a lot of money all of a sudden with a suggestion that she might be breaking the law. That outcome of that intake was 'closed no action'<sup>271</sup>. The closure occurred on 29 September 2010.
- 4.149. On 29 December 2010 a further notification was made to CARL, this time by Lesley Benyk and Ms Fick, the director of the Unley Child Care Centre. These concerns were firstly that Chloe was left with various people for 50% of the time, that Ashlee

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<sup>269</sup> Exhibit C74, page 175

<sup>270</sup> Exhibit C74, page 159

<sup>271</sup> Exhibit C74

was working as a cleaner but obtaining \$900 per night for it, her physical appearance had deteriorated, allegedly due to drug use, marijuana was often consumed near Chloe and Chloe was habitually very dirty and hungry and never wanted to return to her mother. The concerns from Ms Fick were that Chloe had not attended childcare for some time and had regressed in her toilet training. She also made mention of the fact that Ashlee was working nights and leaving Chloe with others and was said to be earning \$900 per night.

- 4.150. This intake was investigated. The persons involved were Craig Rainsford who was a social worker at Families SA at that time, Anna Clarke who was a senior social worker who worked with Mr Rainsford on this case and Trevor Bailey who was the supervisor for Ms Clarke and Mr Rainsford.
- 4.151. Each of these three Families SA employees gave evidence. Mr Rainsford said that he got the case to investigate and that he was to contact the notifier and contact the childcare centre and then address the concerns with Ashlee. Mr Rainsford admitted that he did not call the notifier, Lesley Benyk, and said he did not know why he failed to do that and acknowledged that he should have. He said that at that time he had only been a social worker for eight weeks. He did however call Ms Fick from the Unley Child Care Centre and spoke to her to obtain some background. He also spoke to Ms Morris to obtain some further background from her about her time with Ashlee and Chloe. He acknowledged that he did not speak to anyone from Time for Kids and that he should have done so.
- 4.152. On 21 January 2011 he conducted a home visit with Ms Clarke to the address he had been given. As it happened, that address was the home of Lesley Benyk who was one of the notifiers. Mr Rainsford said that this was one of the first cases that he worked on. He said that it was clear to him that the address of the premises was the address of one of the notifiers. Despite this he did not speak to Lesley Benyk, although he remembered Ashlee asking other people in the home about who might have made a notification.
- 4.153. Upon Mr Rainsford and Ms Clarke arriving at the home, Ashlee took them out into the backyard. Chloe was around the yard and was playing. Mr Rainsford could look through glass doors at the back of the house and could see people inside the house. He did not ask Ashlee about why she was now living at that address and not at the

previous Unley address she had been living at. He acknowledged that he did not ask Ashlee about the nature of her work and he put this down to a lack of experience. He also did not question Ashlee about Chloe's failure to attend at the Unley Child Care Centre.

- 4.154. Mr Rainsford said that he did however address the subject of drug use which Ashlee denied. He did not ask to see Chloe's bedroom and could not explain why not. Furthermore, and quite remarkably, he did not question Chloe. He acknowledged that at 3½ years she was old enough to be spoken to, but agreed that they did not speak to her beyond some brief greeting.
- 4.155. For her part, Ms Clarke gave the following account of the visit. She said that she could recall whether she made the connection that the address they were attending was the address of the notifier. She said she could not recall because this is one of dozens of cases that she has done. She said that a woman came to the door and was initially hostile but then let the workers in. This was Ashlee. Ms Clarke said that Chloe appeared happy, clean and healthy and was playing in the vicinity of her mother. Ms Clarke was unable to recall whether Chloe spoke, nor whether she spoke to Chloe. She could not remember if they asked about Chloe not attending childcare. She assumed that she and Mr Rainsford asked about the nature of Ashlee's work but acknowledged that there was no note to that effect. In my opinion Mr Rainsford's recollection is the better in relation to this meeting. It is plain that no attempt was made to challenge Ashlee about the nature of her work.
- 4.156. Ms Clarke said that she informed Ashlee at the end of the visit that there would most likely be no need for further Families SA action, because that was the conclusion she reached during the visit. Ms Clarke said that she did not know why Lesley Benyk was not spoken to. When asked if she looked in the bedrooms at the house she said that they did not because no concerns had been expressed about the bedrooms.
- 4.157. Mr Rainsford said that he recalled Ms Clarke telling Ashlee that there would be no need for further Families SA involvement. He said that at the time he agreed with the assessment. In effect it was enough that they were able to see Chloe and that she seemed to be well. Mr Rainsford agreed that the investigation was substandard. He acknowledged that he was not in a position to assess the bonding and attachment between Ashlee and Chloe and he agreed that that was the most important thing to

observe. Having had a further four years of experience at the time of giving evidence, he acknowledged that the workers could have done better.

4.158. Mr Bailey also gave evidence about this event. He acknowledged that the failure to contact Lesley Benyk and speak to her to gather more information was ‘an oversight’. However, he did not agree that it was a serious deficit in the investigation. It was Mr Bailey’s view that ‘some elements were overlooked’ by the investigation and that there were some oversights but that he did not believe that the outcome would have been significantly different if more questions had been asked because he did believe that Chloe was in serious danger at the time. He said that he did not think there was anything else they would have done at the time, even if they had conducted a thorough investigation.

4.159. In my opinion this event was very poorly handled. To describe the event as an investigation is to glorify it with a title that it does not deserve. Mr Rainsford’s record of the visit and his assessment of the outcome is an appalling document<sup>272</sup>. The document suggests that the social workers observed Chloe as being a very happy and well cared for child. When Ms Clarke was asked about that she acknowledged that she might not have phrased it that way. The document states that Chloe attends the Unley Child Care Centre five days per week. Of course this is inaccurate because Ms Fick had already informed Families SA as part of the original notification that she was concerned that Chloe was not attending. This assertion is completely wrong and Mr Rainsford acknowledged that it was wrong when giving evidence.

4.160. The document went on to say that Ashlee appeared to be a loving mother and showed insight into her previous involvement with Families SA. The document says:

‘Social workers were unable to observe Ashlee offering Chloe any emotional warmth as during the home visit Ashlee was very agitated and angry at Families SA’s involvement. For this same reason, social workers were unable to observe the bonding between Chloe and Ashlee, however when speaking to SFSB, social workers detailed positive attachment and bonding towards the end of their involvement.’<sup>273</sup>

4.161. That summary of the visit is blatantly wrong. The entire exercise miscarried. All of the protective factors that had been identified in the case closure summary by Strong Families Safe Babies in May 2010<sup>274</sup> had now ceased with the exception of Ms Rann’s

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<sup>272</sup> Exhibit C74, page 125

<sup>273</sup> Exhibit C74, page 125

<sup>274</sup> Exhibit C74, page 175

involvement. Chloe no longer had stable accommodation and was no longer attending the Unley Child Care Centre. Her development had regressed and Ashlee's behaviour was concerning.

- 4.162. To his credit Mr Rainsford acknowledged that he was inexperienced and that the investigation was substandard. However, Ms Clarke adopted a very defensive attitude in the witness box. It did her no credit. She deflected questioning by saying this was one of many cases that she had dealt with. Much to his discredit Mr Bailey suggested that the deficiencies in the investigation were mere oversights and that a proper investigation would not have changed anything. In my opinion he is completely wrong. Any competent investigation at this point would have revealed that something was amiss. This represents another lost opportunity in a long history of lost opportunities.
- 4.163. A further notification was made by Ms Fick on 28 January 2011. Ms Fick was concerned that Chloe might become homeless and that she did not have any stability. This notification was closed the same day as a notifier only concern. On 22 May 2011 a notification was made to CARL by an anonymous notifier. This notification was that Ashlee did not have a washing machine and that Chloe's clothes were dirty and smelt. The notifier said that Ashlee worked in a brothel and would leave Chloe with anyone to look after her. Furthermore, that Ashlee called Chloe a c\*\*\* and fed her junk food. This notification was closed the same day and classified as a notifier only concern.
- 4.164. The last notification to CARL that was actually investigated was made on 8 June 2011. The principal investigator was Tara Liston who was a social worker at Families SA. The notification actually included three notifications, one from Ms Rann, one from Ms Benyk and one from Lucy Seppelt from Time for Kids. Ms Rann's concerns included that she believed that Ashlee was working as a prostitute, that Chloe was smelly and her hair was beginning to matt, that two months previously Ms Rann had seen faeces scraped up the wall of the toilet in the house and the bowl of the toilet being almost black, that there were sex toys on the mother's bed in plain sight of the child and that Chloe became increasingly upset when having to return to her mother. She said that three weeks previously they had had no electricity and that there were candles on the floor which were a hazard to Chloe. She said that the mother was considered to be intoxicated or on drugs. Ms Benyk's concerns were that Ashlee was

verbally abusive to Chloe, that she smoked marijuana around Chloe, that she had made a Facebook entry that she had fallen asleep and left Chloe unsupervised and this was a regular event. Ms Benyk said that the home was disgusting with food, bongs, marijuana, scissors and cigarette lighters everywhere. Clothes were washed in the bath, junk food was all that Chloe ate, there was pornographic material in the home and Ashlee was talking about resuming her relationship with Dylan Hindle who had recently been released from prison. Chloe chants the words 'I want a horny daddy' and Ashlee is suspected of prostitution.

4.165. Ms Seppelt's notification was that there had been faeces on the walls, but at the next visit it had been cleaned off. Ms Seppelt had discussed further the concerns expressed by Ms Rann about the potential use of amphetamines, involvement in prostitution and Chloe being upset when she was returned to Ashlee.

4.166. Ms Liston said that she conducted an investigation in relation to these concerns. Ms Liston did not speak to Ms Rann but contented herself with speaking only to Ms Seppelt. Ms Seppelt's information had all come from Ms Rann in any event<sup>275</sup>. Ms Liston could not say why she did not speak to Ms Rann and acknowledged that it might possibly have been preferable to have done so. She said that she did not contact the Strong Families Safe Babies team but was content to rely on their case summary from May 2010. She did not consider contacting Ms Benyk and did not know why. She said that she had a heavy workload at the time. She said that in comparison to the other cases she was dealing with, Chloe's case was not as significant. In any event, Ms Liston conducted a home visit. She noted that Chloe was clean, her hair was not matted and there was a washing machine that was working. She said that Ashlee and Chloe engaged very well with one another and that Chloe showed no sign of fear or reserve. The fridge contained food and Chloe's room appeared to be clean and orderly. She said there were toys in the house. Ms Liston took the time to speak to Chloe and asked her to show Ms Liston her room, asked what was her favourite toy and so on. She said that Chloe did not appear scared or neglected and was happy and laughing. As a result of this visit this notification was also closed with no further action.

4.167. Ms Liston had one further involvement in the case and that was on 8 December 2011. She received a phone call from a staff member at Time for Kids who had contacted

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<sup>275</sup> Ms Seppelt was working in the Time for Kids office and did not have face to face contact with Chloe and Ashlee

Ashlee who had answered the phone and sounded disoriented. Ashlee had responded to the caller identifying themselves as coming from Time for Kids by saying that she did not know what Time for Kids was. Ms Liston said she would have discussed the call with someone but did not recall who.

4.168. That was Families SA last involvement before Chloe's death.

4.169. The evidence of Belinda Valentine

Belinda Valentine said that she is the mother of Ashlee Polkinghorne and was married to Alan Polkinghorne, but has since remarried. She works as a face painter and this brings her into contact with children. She works at major Royal Shows around Australia and has had the necessary police checks to permit her to work closely with children in that occupation.

4.170. Ms Valentine said that Ashlee had a good childhood and did very well in primary school. Following Ms Valentine's divorce from Mr Polkinghorne in 2003 Ashlee moved in with her mother but soon wanted to go back to her father's home. Ms Valentine said that from the second half of year 7 and in the first couple of years of high school Ashlee became more and more disruptive. There was a family meeting involving Ms Valentine, her second husband, Ashlee and Ashlee's father because Ashlee was not attending school and needed to be brought into line. Ms Valentine said that they entered into a 'contract' with Ashlee to get her to live with Ms Valentine and her husband. This arrangement was unsuccessful and Ashlee returned to live with her father. Ms Valentine became aware that Ashlee was using alcohol and cannabis because Ashlee bragged to her about it. Ms Valentine said that soon after Mr Polkinghorne commenced a new relationship Ashlee had to leave his home, but was not prepared to come and live with Ms Valentine. Ms Valentine said that Ashlee would not obey any rules imposed upon her by her parents or others and that she burnt her bridges wherever she went. For some time she was couch surfing and was always asking for money. Ms Valentine was reluctant to give her money because she knew that Ashlee was likely to spend it on drugs and alcohol.

4.171. When Ashlee became pregnant Ms Valentine spoke to her about her future and how she would cope with a child. Ms Valentine suggested that Ashlee consider a termination, but Ashlee refused to do so and was angry at the suggestion. Ashlee told Ms Valentine that she wanted someone to love her. However Ms Valentine

commented that Ashlee's idea of love was that if you did not give her what she wanted, you did not love her. Ashlee would frighten Ms Valentine's little boys with her bad behaviour and that was a source of concern to Ms Valentine if Ashlee were to live with her. At a fairly early stage Ms Valentine would have been prepared for Ashlee to live with her provided that she behaved according to Ms Valentine's rules, however there was no prospect that Ashlee would do that. Ms Valentine said that she made efforts to find an appropriate place for Ashlee to live and consideration was given to Louise Place but unfortunately there were no vacancies there and Ashlee was placed on a waiting list.

- 4.172. Ms Valentine said that Chloe was born in July 2007 and that she was present for the birth. Ashlee did not want Chloe to have the surname Polkinghorne and that is why she chose the surname Valentine for Chloe. Once Families SA became involved Ms Valentine was aware of the various workers, including Ms Daniel, Ms Stewart and Ms Morris. She was given a telephone number by Ms Francou to call and as a result of this she never contacted CARL because she had what she thought was a direct line to the social workers.
- 4.173. Ms Valentine said she felt that the Families SA workers did not take her concerns seriously. She said that she never got any feedback. She was never asked for her home to be checked with a view to establishing its suitability for Chloe to live in. She was never asked for her extended family's contact details.
- 4.174. When Ashlee moved to the Hope Valley unit provided by the Salvation Army she needed a deposit. Ms Valentine gave her the necessary amount of \$1,000 so that she would have accommodation. Ms Valentine once again tried to impose some accountability on Ashlee by requiring her to enter into a contract in relation to the \$1,000. The contract was for her to pay the money back when she received her baby bonus and that Ashlee was also to attend a young mother's program known as the Green Room<sup>276</sup>. In the result, Ashlee never complied with the terms of that contract. Ms Valentine said that Ashlee would have been welcome to live with her and her family, but Ashlee was not prepared to comply with their rules and they were not prepared to have her unless she did so. Hence the Salvation Army unit.

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<sup>276</sup> The contract is Exhibit C1d

- 4.175. Soon after Chloe's birth Ashlee seemed excited to have a baby. When Chloe was still very young Ms Valentine saw that Ashlee was feeding her with water because she said she did not have any formula. She did not have a steriliser and appropriate nappies so Ms Valentine bought those things for her at Tea Tree Plaza. Ashlee wanted the receipt but Ms Valentine refused to give it to her. Previously when Ashlee had been given receipts she had used them to return the goods for a refund and then spent the money on alcohol. Ms Valentine said that it reached the point that when she bought items for Chloe she would give them to Chloe and cut the tags off so that Ashlee would be unable to return them.
- 4.176. Ms Valentine said that Ashlee had never lived in dirty circumstances. When she moved into the unit Ms Valentine tried to teach her - again - how to do the things that were necessary and to maintain a reasonable home, even though Ashlee had been shown these things by her before. Ms Valentine said she showed Ashlee how to use the laundry products, including separating whites and so on. Ms Valentine did this a few times but then it became apparent that Ashlee was waiting for her to come rather than doing the work herself. Ms Valentine told Ashlee it was her responsibility and that she needed to be responsible for her actions. Ashlee became furious when Ms Valentine said these things and spoke in a violent manner towards her.
- 4.177. Ms Valentine said that when Ashlee took drugs her behaviour became very emotional and erratic. Ms Valentine said that the Salvation Army unit became a 'party house' and that Ashlee was very thin and haggard. At first it was difficult to tell if this was due to drugs or the fact that Ashlee was a new mother. Ms Valentine thought that Ashlee was using cannabis and spoke to her about it. She also contacted the Adelaide Clinic to see if Ashlee could be admitted there. Ashlee simply laughed at Ms Valentine saying that it was only cannabis and that she should get over it. Ms Valentine told Ashlee that it was illegal and that it could change her state of mind. She wanted Ashlee to get counselling about drugs but Ashlee thought the proposition was ridiculous.
- 4.178. Ms Valentine talked about the occasion when her son's partner, Kate Wallis, recorded a telephone call from Ashlee which I have referred to earlier in this finding. It is sufficient to say that Ms Valentine found the call very distressing and was concerned. She told her son, Jake, to make a report to Families SA about the tape. Subsequently she spoke to Ms Francou who told her that Families SA were in possession of the

recording. Ms Valentine said that Ms Francou told her that even if Ashlee was a drug addict, it did not mean that she could not look after a child. Ms Francou gave Ms Valentine a telephone number to call if she had concerns.

- 4.179. Subsequently Ms Valentine became aware that Lagden was living at the unit. She told Ashlee that this could put her lease in jeopardy and also that Lagden was a drug user. Ms Valentine said that Ashlee asked her husband to attend the unit and patch walls because Lagden had punched them. Ms Valentine spoke to Ashlee about domestic violence, but Ashlee denied that domestic violence was an issue and said that both she and Lagden were angry at the same time.
- 4.180. Ms Valentine said that Ashlee hated what she described as Families SA's 'interference'. Ashlee saw herself as a good mother and said that Families SA should mind their own business. Ms Valentine said that when Ashlee was evicted from the Salvation Army unit she assisted her to move out. She said that she took some of Ashlee's possessions to a storage unit. She said that Ms Daniel was present at the unit on that occasion and Ms Valentine introduced herself. She said that Ms Daniel was the only social worker from Families SA whom she met<sup>277</sup> and Ms Valentine only met her on that one day. She told Ms Daniel about the unhygienic circumstances and the drug use and said that Chloe should be removed and that she would be prepared to have Chloe. Ms Valentine said that Ms Daniel told her that she did not have the authority but would tell Ms Stewart. Ms Valentine also told Ms Daniel about the bond money and how it ought not to go to Ashlee. She was concerned that Ashlee was not managing her money well and that if she came into an amount of \$1,000 she would spend it on drugs. She proposed that the bond money might go to Ashlee in instalments, or go to her, or go towards a further bond for the next house. However, the Families SA staff made it very clear that Ashlee was entitled to receive the bond money back. Ms Valentine was never repaid that amount by Ashlee.
- 4.181. Ms Valentine said that when Chloe was about one year old Ashlee was couch surfing. Ms Valentine said that Chloe was filthy when she saw her and did not seem well fed. She had Chloe stay with her from time to time but no items came with her. Ms Valentine said that Chloe was not happy to go back to Ashlee and she reported this to Ms Stewart at Families SA. She did not report it to CARL because she was reporting it directly to the senior social worker. Ms Valentine said that there was an episode

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<sup>277</sup> Ms Valentine was not then aware that Ms Daniel was a family support worker and not a social worker

when she and her husband were interstate and Ashlee came to her house, using a spare key that was hidden in the garden<sup>278</sup> and stole \$5,000 that was in the house. Ashlee denied that it was she and Ms Valentine was unable to prove that it was Ashlee.

4.182. Ms Valentine was referred to a conversation she had with Ms Daniel on 28 August 2008 when she told Ms Daniel that she had had Chloe overnight. On this occasion Ms Valentine expressed her concerns about Ashlee's couch surfing and about the condition of one of the premises Ashlee was staying at where there were water bong. Ms Valentine suggested to Ashlee that Chloe might come and live with her for awhile but Ashlee became hysterical and violent in her language. Ms Valentine told Ashlee that she would ring Families SA but Ashlee laughed and said that Families SA were a joke. Ashlee said that she would clean the place up and by the time Families SA got there they would see nothing wrong and conclude that Ms Valentine was a malicious liar.

4.183. Ms Valentine said that she regularly contacted Families SA but that over time she thought that her concerns were not being taken seriously. She said that she 'wasn't heard'<sup>279</sup>.

4.184. Ms Valentine referred to an occasion in November 2008 when Ashlee went to live at Taperoo. At about this time Ms Valentine received a call in the early hours of one morning from Crisis Care. Ms Valentine said she was very confused because she was asleep at home and her husband was away. She had the two boys who were then four and eight who were asleep in the house. Ms Valentine said that the Crisis Care worker said she needed to come and collect Chloe who had been left with a 15 year old because Ashlee had become paralytic and wandered off. The 15 year old lived in the Wynn Vale area, a place Ms Valentine had never heard of. She was being asked to pick up Chloe and return her to Ashlee the next day. The details of this conversation are dealt with under the evidence of Ms Heading. I do no more than simply mention it here. For some time after this episode Ms Valentine did not hear from Ashlee and Chloe. Ashlee would not answer the phone.

4.185. Ms Valentine said that on quite a few occasions when she contacted Families SA they said they could not give her information because of Ashlee's privacy. Ms Valentine

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<sup>278</sup> Ashlee knew where it was hidden

<sup>279</sup> Transcript, page 2317

said when she responded that she was calling about Chloe's safety, Families SA still told her that it was a matter of Ashlee's privacy. Ms Valentine said this happened many times.

- 4.186. Ms Valentine said that she was always as supportive as she could be without accepting Ashlee's excuses<sup>280</sup>. She said she really wanted Ashlee to go to counselling but that Ashlee blamed everyone else for her choices. She said that Ashlee was very strong willed and she simply could not force her to accept counselling. She attempted to talk to Ashlee about reality and responsibility but Ashlee did not want a bar of it.
- 4.187. Ms Valentine referred to an incident in August 2009 when Ashlee called her from her new house in Rostrevor to say that she had been beaten up by her boyfriend and wanted Ms Valentine to come to the house. Ashlee told Ms Valentine that the person who had beaten her was called Foetus (this is because he had a tattoo with a jar containing a foetus on his back). Other evidence has revealed this person's identity to be Dylan Hindle, although that was not known to Ms Valentine at the time. Ms Valentine went straight to the house. She said that Chloe was in the lounge room cowering in a corner and Ashlee was in the bedroom with the door closed. Ms Valentine picked Chloe up and she was very frightened. Chloe clung on to Ms Valentine and buried her head into Ms Valentine's arms<sup>281</sup>. Ms Valentine's husband walked over and at first Chloe was frightened of him but after some time she allowed him to hold her. Ms Valentine then went to Ashlee who was curled on her bed and was hurt and frightened. She appeared to have injuries to her wrist and ribs. The room was disgusting. Ashlee said she had only been there a few days. Ms Valentine noticed drug paraphernalia and told Ashlee to call the police. Ashlee refused and said that if Ms Valentine called the police she would never see Chloe again. Ms Valentine told Ashlee to leave the place immediately. She helped her to get some belongings and reminded her to get some of Chloe's clothes as well. Ashlee started collecting some of her drug paraphernalia and Ms Valentine said that she was not to bring it. At that point Ashlee told Ms Valentine to 'fuck off'. Ms Valentine talked about taking Ashlee to a domestic violence shelter so that she could get counselling but Ashlee thought that was ridiculous. Ashlee became angry and rang her friend Nicky Behsmann. Ms Valentine said that she now wished that she had rung

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<sup>280</sup> Transcript, page 2330

<sup>281</sup> Transcript, page 2333

the police at the time but instead rang Families SA<sup>282</sup>. Ashlee screamed at her not to contact Families SA, however Ms Valentine did so and said that she put the call on loudspeaker so that Ashlee could hear. Ms Valentine said that she spoke to Ms Stewart about the situation. Ms Stewart told Ms Valentine that she could not tell Ashlee where to live and that she (Ms Valentine) had no right to take Chloe away (Ms Valentine had said that she wanted to take Chloe to her house)<sup>283</sup>. Ms Stewart was aware that Ashlee was there and was listening. Ms Valentine said that Ashlee was laughing at her so she reminded Ms Stewart that Ashlee was listening. Ms Valentine told Ms Stewart that she wished to have Chloe in her care and that if she ever saw Ashlee with this man again she would go to court to get Chloe's custody. Ms Stewart told Ms Valentine that she would not help. In the meantime Ashlee took Chloe and went with Ms Behsmann. Ms Valentine said that she asked Ms Stewart to put her through to her supervisor but Ms Stewart responded by saying that she was the supervisor and any call would come back to her. Ms Valentine said that her husband was present during this telephone conversation and because it was on loudspeaker he was able to listen to it.

4.188. Following Ms Valentine's evidence about her telephone call to Ms Stewart it was necessary to recall Ms Stewart so that she could be questioned about that topic. Ms Stewart's evidence was that she denied that Ms Valentine had called her on 7 August 2009 as suggested. She believed that she would have recalled such a call. Ms Stewart maintained her denial in the face of the evidence of Ms Valentine that the call had been put on loud speaker so that Ashlee and Ms Valentine's husband could hear it. Ms Valentine's assertion that she was told by Ms Stewart that she had no right to take Chloe away from the situation was also put to Ms Stewart and she denied that she said that. Ms Stewart acknowledged that she had failed to make casenotes in the past, including about important matters. Ms Stewart contended that she was first told about the episode when she learnt about it from an employee of Time for Kids.

4.189. It is true that there is no file note in the Families SA casenotes recording that Ms Valentine made a phone call on 7 August 2009. However, there are many omissions in the casenotes, including of important events. The fact that the matter is not noted is not very persuasive either way. On the other hand, Ms Valentine has only ever had one experience with the child protection system and would have every

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<sup>282</sup> Transcript, page 2335

<sup>283</sup> Transcript, page 2336

reason to have a clear recollection of the event. Furthermore, her version of the event was supported by her husband, Steven Harvey, who corroborated her version of the telephone call and said that he was present and heard the call. His version clearly was that the call occurred on 7 August 2009. Ms Stewart has dealt with hundreds of child protection cases. It would not be surprising if she had forgotten about something that occurred in one of them, particularly when being asked to recollect the event more than five years later. Having regard to all of the evidence I prefer the evidence of Ms Valentine on this subject. However, it does not follow necessarily, and I do not believe, that Ms Stewart deliberately lied to the Court. I consider it more likely that she was mistaken and could no longer recall.

- 4.190. Ms Valentine said the next time she saw Chloe was at the Royal Adelaide Show in the first week of September. Ms Valentine said that Chloe was with Ashlee and that they came to Ms Valentine's stall where she painted Chloe's face. Ashlee asked for a large amount of money and Ms Valentine refused. Ashlee started swearing and screaming, and Chloe started crying and Ashlee took Chloe away.
- 4.191. Ms Valentine said that when Ashlee went to Louise Place with Chloe in late 2008, Ms Valentine followed her progress there. Ms Valentine said that things started to deteriorate with dirty nappies and food everywhere. She said that Chloe was at childcare which she loved. Ms Valentine gave evidence of a dinner with Ashlee and the rest of the family at Caffé Primo at Tea Tree Plaza. Ashlee started talking about Louise Place and how she expected to be evicted because there were too many rules and interference from the staff. Ashlee demanded that Ms Valentine assist her to find private accommodation so that she could rid herself of the interference. Ashlee wanted Ms Valentine to pay for her private rental but Ms Valentine refused and said that Ashlee needed supported accommodation. She also said that Ashlee's environment was unsafe for Chloe and Ashlee. At this Ashlee became very angry and called Ms Valentine a 'fucking c\*\*\*' in the middle of the restaurant<sup>284</sup>.
- 4.192. Several days later Ms Valentine received a telephone call from Ms Morris of Families SA asking her to take part in a family meeting. Ms Valentine said that it would not be helpful given the recent argument she and Ashlee had had. Ms Morris told Ms Valentine that Ashlee was on her last chance with Chloe and was very likely to be evicted from Louise Place. She said that Families SA were looking at the best options

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<sup>284</sup> Transcript, page 2343

for Chloe and that it was important that Families SA and others present a united front, including Ms Valentine<sup>285</sup>. Ms Valentine thought that Families SA might support an application for her to have Chloe. However, Ms Valentine then had a conversation with Ms Stewart who said that the position of Families SA was not that Chloe would come to Ms Valentine by herself, but with Ashlee. Ms Valentine said this was not possible because Ashlee had no respect for the rules in her household and she had two young boys who she wished to keep safe from Ashlee. Ms Valentine said that she made it very clear to Ms Stewart that she would have Chloe, but not Ashlee<sup>286</sup>. Ms Valentine said that she did not wish to be manipulated into a situation where she had to have Ashlee in her home. She said that she loved Ashlee but that Ashlee was dangerous to her young children, had no respect for anyone and was dangerous for Chloe. Following this Ashlee was evicted from Louise Place. Ms Valentine said that Families SA would not tell her where Ashlee and Chloe were at that point out of respect for Ashlee's privacy<sup>287</sup>.

4.193. Ms Valentine said that she next became aware that Ashlee was living in a rented house in Unley. She said that during this time there were some good periods and some bad periods. She said that Ashlee liked it when there was a new thing in her life and that a new place would mean that things would go well for awhile but it would not take long before they started to deteriorate. After some time Ms Valentine thought that Ashlee was drinking heavily<sup>288</sup>. She referred to Chloe's birthday party when Ashlee was drunk at 11am. Ashlee had purchased a large ice cream cake for Chloe and was singing happy birthday, but Chloe was not even in the room at the time. Ms Valentine said that the whole event ended badly when Ashlee asked for money. Ms Valentine asked Ashlee about how she was getting money and Ashlee claimed to have a job as a cleaner. Ms Valentine said she was shocked at this because she simply found it unbelievable that Ashlee would be a cleaner. She tried to ask for details of the job but Ashlee was evasive<sup>289</sup>.

4.194. Ms Valentine soon found out from Ashlee's peer group that Ashlee was in fact working in a brothel as a prostitute<sup>290</sup>. Ms Valentine said that she felt hurt and defeated and very sorry for Ashlee. She confronted Ashlee who denied it.

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<sup>285</sup> Transcript, pages 2344-2345

<sup>286</sup> Transcript, page 2347

<sup>287</sup> Transcript, page 2351

<sup>288</sup> Transcript, page 2351

<sup>289</sup> Transcript, page 2352

<sup>290</sup> Transcript, page 2353

Ms Valentine became aware of a revealing photograph of Ashlee in a bikini wearing boots on Facebook and this confirmed her suspicions. She spoke to Families SA about her concerns as to the prostitution and Families SA confirmed that they were already aware of it and were investigating<sup>291</sup>. Ms Valentine said that after this she had less contact with Ashlee and Chloe. She said that they would occasionally meet in a park. They found that from this period onwards when Ashlee had money of her own she did not need to contact them. In the past when Ashlee had needed money she would ask them for large sums in the order of \$1,500 or \$3,000, not smaller amounts. She said that they did not give her cash because of her issues with drugs.

4.195. Ms Valentine referred to a later stage when Ashlee had moved into an address at Royal Park and Chloe had got older. At this time Chloe's speech had become better thanks to her attendance at childcare. Once again it seemed that Ashlee had made a new start and picked herself up a bit. However it did not last long. Ms Valentine had less contact with Families SA during this period because she was working more and had less contact with Chloe. Furthermore she had lost confidence in Families SA and did not believe they would take any action in relation to her concerns<sup>292</sup>. In October 2011 Ms Valentine received a telephone call from Ashlee who sounded stoned and angry and claimed to be thinking of killing herself because her mother did not care about her. Ashlee said that her then boyfriend would take Chloe when she died. Ms Valentine said to Ashlee that if anything happened to her ever that she would take Chloe. To this Ashlee said that Ms Valentine was a 'fucking c\*\*\*'. During this conversation Ms Valentine was aware that Chloe was in the background. Ms Valentine heard Chloe say to her mother words to the effect of 'don't talk to nanna like that'. Ms Valentine then heard Ashlee say to Chloe words to the effect 'you're just like your nanna, you fucking c\*\*\*'<sup>293</sup>. Ms Valentine felt the situation was really escalating and spoke to Families SA.

4.196. Ms Valentine said that in late 2011 Ashlee had moved into an address at Ingle Farm with McPartland. She said that after she became involved with McPartland, Ashlee became markedly different. The house was extraordinarily clean and Ashlee was very submissive towards McPartland. If Ms Valentine asked to see Chloe, Ashlee said that she would have to check with McPartland first. Ms Valentine said that she and her

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<sup>291</sup> Transcript, page 2354

<sup>292</sup> Transcript, page 2356

<sup>293</sup> Transcript, page 2357

husband took Chloe on a day trip to St Kilda and had a lovely day. She said that Ashlee and McPartland knew that they were returning Chloe to the house and when they arrived there were five couples there with Ashlee and McPartland. Ms Valentine said the whole place was filled with cannabis smoke and she said that she would not leave Chloe in this situation. Ashlee and McPartland laughed at her and said that they would clean it up if she called the police and it would look like Ms Valentine had made it up<sup>294</sup>. Ms Valentine said she did not call Families SA on this occasion because they had not done anything about any of her previous reports. She said towards the end of November Ms Valentine's parents were visiting her from interstate. After speaking with McPartland, Ashlee said that Ms Valentine would be allowed to have Chloe at her house. During the visit Chloe was helping Ms Valentine do the dishes. Chloe dropped a cup and became very distressed. Chloe cowered away and was profusely apologetic. Ms Valentine looked at her and said that it was okay. Ms Valentine's father was in the kitchen too. He could clearly see how Chloe was overreacting to an everyday situation and so he came over and he himself picked up a cup from the sink and dropped it on the ground. He said to Chloe that it was okay and that it was just a cup and it did not matter. He picked Chloe up and said 'all that matters is you, that the silly old cup does not matter'. Chloe snuggled into him<sup>295</sup>. Afterwards Ms Valentine's father asked her what was going on in Chloe's house that resulted in her being so frightened of something so trivial.

4.197. Ms Valentine and her husband dropped Chloe off at Ashlee and McPartland's house. They went in and Chloe was clinging to Ms Valentine and was very uncomfortable and clearly did not want to stay. She said words to the effect of 'please don't leave me here with them'. Ashlee responded by saying 'this is my child' and then Ashlee gave Chloe to McPartland. McPartland took Chloe to her room screaming. Ashlee told Ms Valentine to go away and never come back. This was said in front of Ms Valentine's parents. Ms Valentine said that Ashlee had never been like that in front of her parents before.

4.198. Ms Valentine contacted Families SA to inform them of this event. She did not recall to whom she spoke but rang the usual telephone number. She mentioned also that Ms Rann was no longer involved with Chloe, nor Krystal and Lesley Benyk and that McPartland did not like the way they looked after Chloe. McPartland claimed that

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<sup>294</sup> Transcript, page 2365

<sup>295</sup> Transcript, page 2366

when Chloe came back from one of their houses she would not sleep properly. McPartland also claimed that they were giving Chloe the wrong food. Ms Valentine said that she felt that McPartland and Ashlee were isolating them from Chloe.

- 4.199. Ms Valentine said that on that weekend when Chloe stayed with she and her family, Chloe slept in the same room as Ms Valentine's son who was close to her age. Chloe told the boy that she was frightened of McPartland. Ms Valentine's son only told Ms Valentine about that conversation after Chloe had died. Ms Valentine said that he felt very guilty for not protecting Chloe.
- 4.200. Ms Valentine said that when she spoke to Families SA about her concerns they said they would look into the matter. However she did not get any feedback and had no further contact from them and has never heard from them since.
- 4.201. Ms Valentine said that after Chloe's death she tried to speak to Families SA the following Monday. She rang the Modbury office and asked to speak to the social workers. She said that she wanted to tell them that she did not blame them for Chloe's death. However, she said that she was told that her call was inappropriate and to never speak to Families SA again. Ms Valentine did not know whether a notification had been made about the episode leading to Chloe's death.
- 4.202. Ms Valentine has never since that time been called or contacted by Families SA. They have never asked her about Ashlee's background, nor sought evidence of Ashlee's drug use or anything else. Ms Valentine said that she believed that Chloe was treated like a pawn by Ashlee to get what she wanted and that Ashlee had no intention of stopping her drug taking and was merely interested in her own self gratification.
- 4.203. Before leaving Ms Valentine's evidence I refer again to what she said about the episode when Chloe dropped the cup and reacted with disproportionate fear. This incident was very reminiscent of an incident described by Ms Rann concerning Chloe playing with Ms Rann's iPad. On that occasion that Chloe spilt milk on the iPad and was trembling in fear of the consequences. It was necessary for Ms Rann to provide her with constant reassurance that it was merely an accident<sup>296</sup>. These two episodes, observed by two women who had never met each other but were close to Chloe and

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<sup>296</sup> Refer to paragraph 7.35 of this finding

very interested in her welfare, suggest that the child was very fearful of what might happen to her if she made the slightest mistake. They are a powerful indicator that Chloe was used to being harshly punished for small transgressions. From her reaction it would appear that she was used to such severe consequences that she would tremble and cower in anticipation. This is suggestive of abuse and probably physical abuse. It could have occurred nowhere other than in Ashlee Polkinghorne's home at the hands of either Ashlee herself or McPartland.

## **5. Conflict of interest**

- 5.1. Social workers working with parents of young children, including such parents who are themselves under 18 years, must act at all times in the interests of the child. They must be trained to see that the interests of the child and an irresponsible parent are in conflict. You cannot act in the best interests of both. Any attempt to do so will inevitably lead to confusion and muddle headed thinking such as we have seen throughout this Inquest.
- 5.2. There were many instances of this approach. At times it seemed that Chloe's interests had been forgotten completely while the focus was on Ashlee and her demands. A process of appeasement was followed in their dealings with Ashlee, and the more chances she was given, the more demanding and unreasonable she became. When a firm line was taken – for example in January 2009 when she was told that 'others' were considering options for Chloe's care, she modified her behaviour and improved for a while, only to return to her normal substandard performance when she became comfortable again.
- 5.3. I am firmly of the view that social workers must accept that the child's best interests can and do conflict with the parents' sometimes. In some cases, such as that of Chloe and Ashlee, they conflicted most, if not all of the time. It was not possible to act in a way that was best for both of them. So Ashlee's needs and interests had to give way to Chloe's. They must become the standard approach in dealing with these cases.

## **6. Families SA – workload issues and resources**

- 6.1. The evidence of Families SA witnesses was peppered with remarks about their workload. There were references to the 'hopelessness' of the magnitude of the task, the lack of resources and the risk carried by staff in having to close cases without

action because all available staff were overburdened by their existing work<sup>297</sup>. These passages of evidence were never challenged by counsel for the Department for Education and Child Development. For example, counsel for the Department for Education and Child Development had no questions of Bruce Johnstone, despite his damning evidence about workload and the need to close 20 to 30 cases per week without investigation.

- 6.2. In Mr Harrison's evidence he cited resourcing as an issue in relation to Families SA complying with section 20(2) of the Act<sup>298</sup>. Mr Harrison was asked by his own counsel about resources in the context of tier 2 notifications not being acted upon and he responded as follows:

'... if you're working as smart as you can, that would be the conclusion you would draw. I'm not so sure that we're working as smart as we can currently and that hence the redesigned program is looking at 11 different components of our child protection system internally to ensure that we have got the most efficient and effective aspects of operations in each of those individual areas but through the system from start to finish as best we possibly can. So I'm not so sure we have the most efficient system currently and hence that's why there is a lot of work going on in relation to the redesigned program.'<sup>299</sup>

Thus we have the staff coming along and giving evidence that they have an overwhelming workload. On the other hand we have the chief executive suggesting that additional resources may not be required because he is not convinced that the existing resources are being used as efficiently and effectively as possible. See also paragraph 9.17 of this finding where I note that Mr Kemp, who was recently a senior executive in Families SA does not necessarily accept that existing resources are being properly used. It seems to me that it is necessary that there be a proper assessment to ascertain the most effective resource allocation method for Families SA. Mr Harrison mentioned that work is being done on this. In my opinion that work should include as a starting point a consideration of the volumes of work and what resource effort is needed to carry out that work satisfactorily. There must be an ability to monitor unfinished work. There must be a system to measure the performance of individuals in the agency and the individual parts of the agency and there must be a reliable system for reporting those measurements in a timely manner to managers right up to the chief executive and I intend to recommend accordingly.

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<sup>297</sup> See generally the evidence of Bruce Johnstone, Carolyn Curtis and Janelle Morris

<sup>298</sup> Refer to paragraph 13.2 of this finding

<sup>299</sup> Transcript, pages 2515-2516

- 6.3. Mr Harrison went on to say that the agency is currently considering what is the role and function of a statutory child protection authority. He said:

'Is it about investigation, assessment and response and removal or is it also about investing and building strong families as well and hopefully minimising the necessity and need to remove children from families.'<sup>300</sup>

I am concerned that Mr Harrison seems to be suggesting that Families SA ought to invest more time and effort into building strong families to minimise the necessity to remove children. The work of Dr Jeremy Sammut that I refer to later in this finding<sup>301</sup> makes a very convincing case that relentless pursuit of efforts to support families that are dysfunctional is damaging to children. Families SA needs to ask itself whether its resources are best deployed in having workers such as Mr Ratsch, Ms Kidner and Ms Daniel involved in the physical task of cleaning a filthy mess that has been created by a dysfunctional 16 year old such as Ashlee Polkinghorne, or whether their time would be better utilised in building a case to take to the Youth Court for an investigation and assessment order requiring Ashlee to submit to regular drug testing.

- 6.4. It is relatively easy for a public sector worker to come to the Coroners Court and say that they were overwhelmed with work when questioned about why they did not take action on a particular occasion that seemed to be necessary. This Court often hears that kind of response from public sector employees. The Court must be cautious about accepting such claims in the absence of further information about whether the work of the person concerned is being properly measured, and whether the person is applying their efforts to the highest priority tasks. For example, the task of driving Ashlee from one real estate agent appointment to another, and to assisting her in cleaning her unit, not once but on a number of occasions, would seem to me to be a lower order of priority than the task of properly recording key decisions in Families SA notes. Or, in making the effort to properly investigate some of Ashlee's more unlikely claims by contacting all of the notifiers in relation to a particular notification, and seeking out other sources of information. That kind of work would have a far greater value in my opinion than carrying out menial tasks on Ashlee's behalf.

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<sup>300</sup> Transcript, page 2516

<sup>301</sup> Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out-of-Home Care in Australia (2011) Sammut, Jeremy - ISBN 9781864322064 <http://www.cis.org.au/images/stories/policy-monographs/pm-122.pdf>

7. **The perspective of the external agencies dealing with Ashlee – a radically different perception**

7.1. Throughout the evidence it was apparent that there was an immensely different perception of Ashlee on the part of external services from that professed to be held by the Families SA witnesses. This phenomenon was apparent as early as Ashlee's tenancy with Salvation Army at the Hope Valley unit. The perception of Katie Lawson, her assigned Salvation Army support worker, was completely at odds with the view of Ashlee taken by the workers at the time, particularly Mr Ratsch, and, to her credit, to a lesser degree by Ms Kidner.

7.2. The experience with Port Youth Accommodation at Taperoo was a repeat of the earlier experience. This time the Port Youth Accommodation worker was noted in the Families SA's file as having a clash of personality with Ashlee. The file notes were written as if it was the clash of personality that one might see in a normal interaction between two reasonable people. In fact, a moment's consideration would show that Ashlee was the common denominator in a series of disputes and it would be highly unlikely that she was the 'innocent' party on every occasion but had the back luck to encounter a series of service providers treating her unjustly. This very jarring contrast between the Families SA perspective of Ashlee and the external service provider perspective of Ashlee is well illustrated through the evidence of three witnesses who were involved with Ashlee and Chloe in 2009/2010. They are Vicky Lachlan who was the manager of Louise Place, Cassandra Fick who was the director of the Unley Child Care Centre and Joy Rann who was the Time for Kids volunteer who provided respite care for Chloe. Before leaving these introductory remarks I would also observe that another group of people outside Families SA who were not external service providers had a view of Ashlee that matched the view of the external service providers. That group consisted of Ashlee's family and friends, including particularly her mother, Ms Valentine, and her friend and Chloe's Godmother, Krystal Benyk.

7.3. **Vicky Lachlan**

Ms Lachlan was a very impressive witness. She was the manager at Louise Place for 5½ years. She said that Ashlee moved into Louise Place on 16 September 2009 and at first she seemed willing to engage with Louise Place and their regime. She said that soon however, Ashlee became agitated about their rules and the situation slowly became worse. She said that there were occasions when Ashlee swore at the staff and

walked out of meetings, slamming the door so hard that the impact could be felt through the building. Ms Lachlan's assessment of Chloe was that she was quite independent. She always tried to please her mother and did not get upset. Ms Lachlan formed the view that this was probably because Chloe was used to her needs not being met. Ms Lachlan said that she did not believe that Ashlee was able to learn how to care for her child.

- 7.4. By early October the Louise Place staff requested a meeting about Ashlee breaking their rules and being disrespectful to staff and other clients. The culmination of the meeting was that Ashlee was offered one week's probation.
- 7.5. Ms Lachlan remembered Janelle Morris, who it will be recalled was the social work student who was primarily working with Ashlee and Chloe at that stage. Ms Lachlan thought that Ms Morris was one of the social workers at Strong Families Safe Babies. She did not recall having been told that Ms Morris was a social work student. She said that at the Louise Place site, student social workers would not be allowed to work on their own with clients and were required to have constant supervision. She said that she most likely assumed that Ms Morris was qualified because she was working one to one with Ashlee and that was how Louise Place operated.
- 7.6. Ms Lachlan said that Ashlee gradually became somewhat comfortable at Louise Place. At first she kept her unit in reasonable condition. Ms Lachlan said that Ashlee's unit had been renovated shortly prior to her moving in. She said the unit was really nice at that point.
- 7.7. Ms Lachlan said once Ashlee felt comfortable she appeared to think she did not need to do anything that the Louise Place staff required and the situation deteriorated quite quickly.
- 7.8. Ms Lachlan said that such negative behaviour as that shown by Ashlee in front of Chloe, and the fact that Chloe's needs were not being met by Ashlee was not being seen by Ms Morris.
- 7.9. Ms Lachlan was asked to consider a Strong Families Safe Babies assessment of the situation on 8 December 2009 when they spoke to Ashlee following her eviction from Louise Place. At that time Ms Stewart had felt that Ashlee had made progress according to the assessment. Ms Lachlan said that surprised her. She believed that

Families SA were not taking the whole picture into account. She said that Louise Place staff had told Families SA regularly of their concerns. She said that Ashlee could go from being reasonable to quite unreasonable very quickly. Her reading of the assessment by Ms Stewart was that ‘yet again’ Ashlee had ‘turned on the charm’ and Families SA were going along with that. She said Louise Place staff had regularly expressed their fears for Chloe to Families SA. Ms Lachlan believed, and expressed this belief to Families SA, that Ashlee would only do what was necessary to get her own way to keep Chloe.

- 7.10. Tellingly, Ms Lachlan made the following comment about Ashlee and her attitude to Chloe:

‘... she saw Chloe as her possession rather than her child.’<sup>302</sup>

This is in accord with my impression of the situation having heard all of the evidence in this case and having read the voluminous documentary exhibits<sup>303</sup>.

- 7.11. Ms Lachlan acknowledged that there were in Ashlee what she described as a ‘few flashes of reasonable parenting’, but added that they were few and far between<sup>304</sup>. Ms Lachlan had no hesitation in saying that by the time Ashlee was evicted from Louise Place if she had been the Families SA worker involved she would have removed Chloe to keep her safe<sup>305</sup>. She said that following the eviction she and Louise Place staff held a debriefing session. They all felt that Chloe was at high risk and they did not feel that she was safe with Ashlee<sup>306</sup>.
- 7.12. Ms Lachlan said that after Ashlee’s eviction her workers had to clean the unit and remove all the rubbish from it. She said that they had to get cleaners in which is something that does not usually occur, because of the state of the unit<sup>307</sup>. She said that the unit, which was in very good condition immediately before Ashlee’s tenancy, was filthy and a lot of rubbish was left behind. She said there was only one sheet left on the bed in the unit and it was in such a condition that they threw it away without attempting to wash it. She described the conditions as appalling<sup>308</sup>. When asked for her view as to what might account for the disconnect between the view of the Louise

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<sup>302</sup> Transcript, page 1275

<sup>303</sup> Refer to Section 17 of this Finding – Children are not possessions

<sup>304</sup> Transcript, page 1276

<sup>305</sup> Transcript, page 1276

<sup>306</sup> Transcript, page 1276

<sup>307</sup> Transcript, page 1276

<sup>308</sup> Transcript, page 1277

Place staff and the view of the Families SA staff of Ashlee's time at Louise Place, Ms Lachlan said that she felt:

'It was almost like they didn't take (Ashlee's negative behaviour) into account but they took into account the few little things that Ashlee did almost to appease them.'<sup>309</sup>

Ms Lachlan said that the staff of Louise Place had never experienced the same level of aggression with any other young woman as they experienced with Ashlee, and that Ashlee's anger stood out, and her offensive behaviour to staff in particular stood out<sup>310</sup>. She said that all of the staff had hopes that Chloe would be removed from Ashlee's custody<sup>311</sup>. She summarised her rationale for removal of Chloe from Ashlee's custody as:

'Ashlee's absolute lack of thought for Chloe's wellbeing.'<sup>312</sup>

7.13. Ms Lachlan was asked about a letter written by Ms Kartinyeri on behalf of Louise Place stating that Ashlee's rent had been paid so that Ashlee could use the letter for subsequent applications for accommodation. However, at the time the letter was written the Louise Place staff did not know that Ashlee had cancelled her authorisation to Centrelink to make direct debits in favour of Louise Place. She said sometimes they did not receive a report about payments for three weeks after the relevant period. For that reason the letter was inaccurate, although they believed it to be accurate at the time it was written<sup>313</sup>.

7.14. Finally, Ms Lachlan said that Ashlee had the distinction of being one of only two young women ever to be evicted from Louise Place<sup>314</sup>.

#### 7.15. Cassandra Fick

Ms Fick was the director of the Unley Child Care Centre in 2009 and 2010 when Chloe was attending the Centre. She said that Chloe attended the Centre by virtue of an Australian Government welfare benefit referred to as the 'special childcare benefit' which is for children who are at risk. She said the cost of the childcare is provided by the government at no cost to the parent. She said Chloe's case was the first time she had ever applied for such a benefit. When Chloe started at Unley Child Care Centre it

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<sup>309</sup> Transcript, page 1277

<sup>310</sup> Transcript, page 1278

<sup>311</sup> Transcript, page 1279

<sup>312</sup> Transcript, page 1280

<sup>313</sup> Transcript, page 1281

<sup>314</sup> Transcript, page 1282

was noted that her speech development was slower than other children and she did not have the food skills commensurate with her age in the use of spoons and forks. Chloe's preference was to use a bottle. Ms Fick said that at the beginning Chloe attended for four full days per week and later it became five full days per week. She said that when Chloe failed to attend she would contact Families SA and inform them. She would notice sometimes that the attendance would then improve for a time before perhaps dropping off again.

- 7.16. Ms Fick's first concern in relation to Chloe was on 16 October 2009 when Ms Fick was concerned about the state of Chloe's nappy which was extremely full, in fact the fullest Ms Fick had ever seen. She said the nappy was 'pushed to its absolute limits'<sup>315</sup> and in her opinion might well have been worn for up to 16 hours. She reported this to Families SA. Ms Fick also expressed concern to Ms Stewart that Chloe would often attend with her bottle full of chocolate or other flavoured milk rather than some more appropriate drink<sup>316</sup>.
- 7.17. Ms Fick said that she was consistently communicating her concerns to Families SA as and when they arose. However, she did not recall ever getting feedback from Families SA as to what was happening<sup>317</sup>.
- 7.18. On 15 October 2009 Ms Fick spoke with Ms Morris about Chloe appearing to be stressed by changes in her environment at that time given that Chloe and Ashlee were homeless. This manifested in Chloe's concentration having been up and down<sup>318</sup>. She said that at that time they were in a women's shelter in the city but that there was a bright prospect which was that some of the time they were living with Ms Benyk. Ms Fick noted that Ms Benyk had a really positive relationship with Chloe and that Chloe loved Ms Benyk<sup>319</sup>. Ms Fick said that she was very keen to keep Chloe at childcare for as long as possible. She said that she believed that Chloe had come a long way with her development and she and the other staff had created such a strong bond with Chloe they felt it was in her best interests that they remained as consistent as possible in her life, bearing in mind the instability that was occurring in Chloe's personal life<sup>320</sup>.

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<sup>315</sup> Transcript, page 1576

<sup>316</sup> Transcript, page 1578

<sup>317</sup> Transcript, page 1579

<sup>318</sup> Transcript, page 1588

<sup>319</sup> Transcript, page 1588

<sup>320</sup> Transcript, page 1589

- 7.19. On 17 February 2010 Ms Fick said that the Unley Child Care Centre had begun introducing Chloe to the potty or toilet. She said that this was something that was introduced by the Unley Child Care Centre for Chloe rather than by Ashlee as one would normally expect of a mother. She said that at that time Chloe was with the Centre five days per week and they had noted that she was showing an interest in other children using a toilet or potty so they started to give her that opportunity as well. She said that they purchased suitable clothing that could be used at the Centre to provide for Chloe so that she could be fully toilet trained<sup>321</sup>. They provided underwear and leggings that she could use for this purpose<sup>322</sup>.
- 7.20. Ms Fick was aware that Chloe was attending for respite with Ms Rann who was the Time for Kids volunteer. Ms Fick said that Chloe had a very close relationship with Ms Rann and was always excited to hear on a Friday that it was Ms Rann coming to collect her, and following weekends with Ms Rann always was happy on her return on the Monday<sup>323</sup>. Ms Fick said that the staff noted that after a weekend with Ashlee, Chloe's behaviour would be different. She would act out and have tantrums. By contrast, when she came back from a weekend with Ms Rann she seemed to be more relaxed and happier<sup>324</sup>.
- 7.21. When Ms Fick learnt that Strong Families Safe Babies were closing their file in relation to Chloe in May 2010 she had 'mixed feelings' and explained that there were still things that needed to be worked on regarding Ashlee and Chloe<sup>325</sup>.
- 7.22. By October 2010 Ms Fick noted that Chloe's attendance at the Unley Child Care Centre became more sporadic. By early 2011 Chloe's attendance was becoming much less consistent<sup>326</sup>. By 18 January 2011 Ms Fick had reported to Families SA that Chloe had not attended childcare for some time and that Chloe had been observed to have regressed in that she had been previously toilet trained, but was now observed in nappies. Ms Fick made a notification to CARL in which she reported these things and, furthermore, that Ashlee was reported to have a cleaning job and nights where she was earning \$900 per night<sup>327</sup>.

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<sup>321</sup> Transcript, page 1590

<sup>322</sup> Transcript, page 1590

<sup>323</sup> Transcript, page 1595

<sup>324</sup> Transcript, page 1597

<sup>325</sup> Transcript, page 1598

<sup>326</sup> Transcript, page 1613

<sup>327</sup> Transcript, page 1614

### 7.23. Joy Rann

Ms Rann was an extremely impressive witness. As I have said she was a volunteer at the organisation Time for Kids in 2009 and 2010 and provided respite care. She is the national human resources manager for Bridgestone Australia and clearly a person of insight, maturity and commonsense. I place a great deal of weight on her evidence. She said that she met Ashlee and Chloe in June or July 2009. She thought because they were both so young she could positively influence Ashlee as well as looking after Chloe. She said she was not given too much information. She said that at this time Chloe had just turned two years old. The purpose of the meeting was to check each other out. Ms Rann said that following the meeting she was more than happy to have Chloe in her home and that Chloe was an adorable, dear little soul<sup>328</sup>. She said that she was hesitant about Ashlee, saying that she ‘didn’t trust her at first sight’ and did not feel secure to have her in her house. This shrewd and insightful observation was, as Ms Rann said, ‘certainly substantiated later on’<sup>329</sup>. The first time that Ms Rann had Chloe in her care, Chloe and Ashlee were living with a friend of Ashlee’s called Candice and were sharing a mattress in the lounge room. Ms Rann said:

I was handed Chloe and “off you go”. There was no “come and let’s talk and let’s get her familiar”. It was like “here she is, you just take her and off you go”. So that’s what I did, I took her off and we went to the zoo and had a lovely time at the zoo.’<sup>330</sup>

Ms Rann said that she had thought that Ashlee might have spent a bit more time checking her out<sup>331</sup>. She said that Chloe had mucus on her face, was dirty and smelt of cigarette smoke. However, Chloe enjoyed her time at the zoo. Ms Rann became aware that Ashlee moved into the Louise Place unit which Ms Rann thought was excellent. However, Ashlee did not keep it particularly clean. Ms Rann said that when she would pick Chloe up Ashlee would make a big show of affection to Chloe which Ms Rann did not believe was genuine. She thought that Ashlee was trying to paint a picture of a loving relationship. Ms Rann said that Chloe had her own room at Ms Rann’s home and her own toys. She kept clothes for Chloe at her house which she would dress her in as soon as Chloe arrived. Chloe would often arrive without any footwear on. She said Chloe was always filthy when she arrived and reeked of cigarette smoke. Ms Rann said that there was rarely a time when Chloe did not have a

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<sup>328</sup> Transcript, page 1625

<sup>329</sup> Transcript, page 1625

<sup>330</sup> Transcript, page 1627

<sup>331</sup> Transcript, page 1628

runny nose or a cough. Ms Rann said she took Chloe to the doctor herself a couple of times.

- 7.24. Ms Rann said quite often if she texted Ashlee to tell her that she was returning Chloe, Ashlee would instruct her to drop Chloe off at Ms Benyk's house and she would have to hand over Chloe to Ms Benyk. She said Chloe spent a lot of time with Ms Benyk and her mother, Lesley Benyk and that Ms Benyk adored Chloe and vice versa and they had a fabulous relationship<sup>332</sup>. Ms Rann described the various activities she would take Chloe to. She would sometimes take her to the hairdresser and Chloe would interact with everybody in the salon. She would take Chloe to playgrounds, the zoo and Cleland Wildlife Park. She said that Chloe loved the animals<sup>333</sup>.
- 7.25. Ms Rann said that when Ashlee was at Louise Place, Ms Rann became aware that according to the rules of Louise Place she herself was meant to report to the office when she attended at Ashlee's unit to collect Chloe. When she mentioned this to Ashlee, she said that Ashlee became extremely angry and ranted and raved.
- 7.26. Ms Rann said that if Ashlee became angry with someone she would cut them out of Chloe's life. She said that she knew that if she did something that Ashlee did not like then Ashlee would cut her off as well. She said if Ashlee became angry with someone they would be 'wiped' and would no longer be involved in Chloe's life. She was aware that people who had previously been allowed to have access to Chloe were no longer allowed to have access to her following these events<sup>334</sup>. Ms Rann referred to an occasion in late December 2009 when she noted that Chloe's nappy rash was so bad that Ms Rann was absolutely astounded by what she saw. She said that it was an inch and half to two inches down each leg and was raised and pimply and extremely red<sup>335</sup>. Ms Rann said she put Chloe in a cool bath to see if that would soothe her and got some cream for the area. She said:

'... and she just in typical Chloe fashion went to sit down in the bath. You could see that it was not comfortable for her and then that look came across her face as if to say "oh well, get on with it, just do it". She was very much, I think, used to the fact that things hurt.'<sup>336</sup>

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<sup>332</sup> Transcript, page 1634

<sup>333</sup> Transcript, page 1635

<sup>334</sup> Transcript, page 1639

<sup>335</sup> Transcript, page 1640

<sup>336</sup> Transcript, page 1640

This perceptive remark is very sad. However, I believe that Ms Rann in her evidence showed a great deal of insight into the situation. I do believe that Chloe was used to the miserable state of affairs she had to put up with while with her mother. Ms Rann summarised it as follows:

'No, Chloe just took it all in. I think one of the things I found with Chloe over the years was that she understood that you were trying to help. She very much was a 40-year-old in a two or three-year-old body.'<sup>337</sup>

- 7.27. Ms Rann reported the nappy rash incident to Time for Kids but asked them not to report the fact to Ashlee as she was worried that Ashlee would shut her out. Ms Rann said that in early 2010 she became aware that Ashlee obtained private rental accommodation. Chloe was continuing at the Unley Child Care Centre and Ms Rann would pick her up from there from time to time. Chloe loved the childcare centre and her speech improved and her interaction with adults and children also. She became more affectionate. Ms Rann regarded it as a 360° turnaround<sup>338</sup>. Ms Rann had asked Ashlee about when she was going to start toilet training Chloe and Ashlee had dismissed the idea. Ms Rann said that the Unley Child Care Centre started to work on it and she worked together with them because Ashlee was just not interested and that Chloe was more than ready because she was nearing three years of age<sup>339</sup>.
- 7.28. Ms Rann was very concerned about Chloe's diet and noted that all Ashlee took from the supermarket was sweets. She did not buy fruit or vegetables for Chloe to eat<sup>340</sup>. Ms Rann described the state of the Unley house as 'horrific'. She said when you entered the house the carpet was so disgusting when you walked on it that your feet squished and that the carpet had fluid of some kind in it. The room Chloe used had a bed in it with a television and clothes everywhere, mouldy food, half smoked cigarettes and dirty nappies<sup>341</sup>.
- 7.29. Ms Rann said that on more than one occasion Chloe would be distressed when Ms Rann had to drop her at the Unley house after having had her. She said on one occasion in particular, Chloe did not want to go home and started crying when leaving Ms Rann's house. She cried all the way to the Unley house and then would not leave Ms Rann on arrival. Chloe grabbed her by the hand and screamed and screamed that

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<sup>337</sup> Transcript, page 1640

<sup>338</sup> Transcript, pages 1642-1643

<sup>339</sup> Transcript, page 1643

<sup>340</sup> Transcript, page 1644

<sup>341</sup> Transcript, page 1644

she did not want Ms Rann to go. However, Ashlee was not overly concerned and took Chloe out the back so Ms Rann could leave<sup>342</sup>. Ms Rann noted that Ashlee did not pick her up and cuddle her or anything of that nature. Ms Rann said that she was very concerned about the way in which Chloe was living, which was totally inappropriate for a child. She thought that Ashlee's behaviour was totally inappropriate and then she became aware that Ashlee was apparently working as a prostitute. Ms Rann was concerned because she thought that was a dangerous environment for Chloe to be in. Ashlee would from time to time ask Ms Rann to drop her into town for work, saying she was a cleaner at a hotel and could she drop her off at that hotel. However, the clothing that Ashlee wore was not a cleaner's clothing and Ashlee would never enter the premises where she was dropped off, she would keep walking down the street. Ms Rann noted that after she dropped Ashlee off, Ashlee would walk along Pirie Street in the direction of premises she understood to have topless women and offer 'other services'<sup>343</sup>. Ms Rann said she never asked Ashlee about this because she knew that Ashlee would cut her off if she did. She suggested that Time for Kids might do an impromptu visit, but they said they could not. Around this time Ashlee kept changing her phone number. Ashlee left the private rental in Unley at about this time and Ms Rann became aware that it was left in a filthy mess and possessions were left behind, including Chloe's toys.

- 7.30. On 25 September 2010 Ms Rann notified Time for Kids of her concerns about Chloe. Chloe was not attending childcare every day. Ms Rann was aware that Ashlee weighed 47 kilograms (Ashlee informed her of this). Ms Rann was concerned that Ashlee may have been using drugs apart from cannabis. At that time Ashlee was not having Chloe herself very much at all. Ms Rann quite often picked Chloe up from Ms Benyk's house. Chloe did not want to be with her mother and did not want to return to Ashlee's house. Ms Rann commented that Ashlee very rarely had Chloe and remarked:

'... I think that Ashlee's main thought was the benefits that she gained for having Chloe. So she didn't want to give Chloe up, she didn't want anyone else to have her on a full-time basis because that would impact on her lifestyle.'<sup>344</sup>

Ms Rann thought that the impact that Ashlee was concerned about was financial<sup>345</sup>.

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<sup>342</sup> Transcript, page 1645

<sup>343</sup> Transcript, page 1647

<sup>344</sup> Transcript, page 1653

- 7.31. In early June 2011 Chloe attended one weekend for respite care with Ms Rann and Ms Rann said she was very smelly and unkempt and her hair was beginning to matt. Ms Rann said that her underwear appeared not to have been changed for some time. Her hair was so matted that it was starting to get dreadlocks. Ms Rann had entered the house that Ashlee and Chloe were in at that time which was in Royal Park. Ms Rann saw faeces, or what appeared to be faeces, scraped up the sides of the walls in the toilet. Ashlee had told her that she had different men coming in to her house. Ms Rann said the toilet was almost black and that she saw sex toys in plain sight on the Ashlee's bed. As a result of these observations she made a report to CARL<sup>346</sup>. Ms Rann said that she had seen the sex toys in plain sight on Ashlee's bed and she asked Ashlee what they were. Ashlee told her they were dildos. Ashlee was quite open about that. Ms Rann suggested to Ashlee that she put them away as they were in Chloe's sight. Ashlee responded to this by laughing<sup>347</sup>.
- 7.32. Ms Rann noted that with Ashlee's transience, Chloe would lose her toys and clothes when they moved house. She said that this produced a characteristic in Chloe where every time Ms Rann would pick Chloe up she would say things like 'do you still have my doll house?' or do you still have this or that toy? Ms Rann said:
- 'So she was constantly questioning to see what's changed, because I don't think she liked the change very much. I don't think that mum gave her the undivided attention that she was seeking.'<sup>348</sup>
- 7.33. From this time Ms Rann noted that the relationship between Chloe and Ashlee appeared to have deteriorated. She said that Chloe would push her mother away when her mother went to hug her. Ms Rann said that she would tell her stories about her mother which Ms Rann found hard to determine whether fact or fiction because of Chloe's young age. In response to the CARL notification Ms Rann did not receive any contact from Families SA to ask for details, nor any other form of feedback<sup>349</sup>.
- 7.34. On another occasion in 2011 Ms Rann spoke to Ashlee and she was glassy eyed. She said that she had been smoking cannabis and she had Chloe with her. Ms Rann said

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<sup>345</sup> Transcript, page 1654

<sup>346</sup> Exhibit C74, page 88 and Transcript, pages 1657-1659

<sup>347</sup> Transcript, page 1661

<sup>348</sup> Transcript, page 1663

<sup>349</sup> Transcript, page 1665

that it would be a good idea for Ashlee to go outside and not do it in Chloe's presence. Her response was simply to laugh<sup>350</sup>.

- 7.35. Ms Rann described an occasion when Chloe was playing with Ms Rann's iPad. Unfortunately Chloe spilt milk on the iPad and when Ms Rann approached her, Chloe was trembling in fear. Ms Rann asked her if it was an accident and she said yes and Ms Rann said well if it was an accident and you did not mean to do it, it does not matter. Ms Rann was very concerned when, for the rest of the day, Chloe constantly referred to the incident saying 'it was an accident Joy, it was an accident, I didn't mean to do it'. Ms Rann said this made her wonder what happened at home that Chloe was so petrified over something like that<sup>351</sup>.
- 7.36. Ms Rann said that she became aware that Ashlee met McPartland in about September or October 2011. She met him both at the Royal Park address and then at the Ingle Farm address after Ashlee moved in with him at that location. Chloe told Ms Rann that McPartland was Ashlee's new boyfriend. Ms Rann said that when she met him he made no effort to engage. She never saw him show much interest in Chloe. She thought the house at Ingle Farm was McPartland's grandmother's house, but she was never invited into the house. Ms Rann said that it was only for a short time after Chloe moved into the house at Ingle Farm with her mother that Ms Rann maintained contact with Chloe. Shortly after that she thought that Ashlee had cut her off.
- 7.37. Ms Rann said that her last recollection of Chloe was the last time she took Chloe back to the Ingle Farm address. Chloe was screaming and trying to get back into Ms Rann's car because she did not want to stay there<sup>352</sup>. Ms Rann tried to make contact with Ashlee over the Christmas period in 2011 but her texts went unanswered.
- 7.38. Finally, Ms Rann was asked whether she was still involved with the Time for Kids organisation and she replied that she was not:

'I tried after Chloe passed away and just couldn't do it and - nobody's Chloe, I think that's the best way of finishing it, nobody's Chloe. I've gained a significant health issue since that time, so I think it's the best outcome.'<sup>353</sup>

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<sup>350</sup> Transcript, page 1666

<sup>351</sup> Transcript, page 1673

<sup>352</sup> Transcript, page 1675

<sup>353</sup> Transcript, page 1681

**8. Emeritus Professor Freda Briggs – the content of the social work undergraduate degree course**

- 8.1. Emeritus Professor Freda Briggs is at the University of South Australia and has extensive experience in the child protection field, and that of child development. Professor Briggs expressed concern in her evidence that social work students on completion of their degree course had obtained little insight about children and were unable to tell the difference between normal child development and abnormal child development and that this would lead to mistakes being made in the child protection area<sup>354</sup>. She also commented that social workers must be trained to relate well to children because, if they could not, they would choose instead to relate to the adults and listen to them, thereby missing important information. She said that there was no course content in the social work course relating to child protection<sup>355</sup>. She has campaigned over a long period to have changes made to the content of the social work course. However, she said that her discussions have not been fruitful because the course content is accredited by the Australian Association of Social Workers<sup>356</sup>. Professor Briggs remarked that social workers are responsible for assessing the safety of children and yet their training in child development is not as good as that of a kindergarten teacher<sup>357</sup>. Yet kindergarten teachers are not required to make the serious decisions that social workers make<sup>358</sup>.
- 8.2. Professor Briggs was concerned that inadequate training leads to social workers relying on their emotions rather than their professional knowledge<sup>359</sup>. She was concerned that the Australian Association of Social Workers is making a submission to the current Royal Commission into Child Protection Systems that the employer, namely Families SA, should be responsible for training students to work in child protection. Professor Briggs regards that position as unrealistic<sup>360</sup>.

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<sup>354</sup> Transcript, pages 2258-2259

<sup>355</sup> Transcript, page 2259

<sup>356</sup> Transcript, page 2264

<sup>357</sup> Transcript, page 2266

<sup>358</sup> Transcript, page 2266

<sup>359</sup> Transcript, page 2267

<sup>360</sup> Transcript, page 2270

- 8.3. Professor Briggs was asked about cases of neglect of children and commented that experienced social workers become accustomed to seeing houses in which neglect takes place. She said that they can become acclimatised and:

'...what they think is okay, a lot of other people wouldn't. For example, teachers despair that they have a neglected child. If the parents are drug addicts, it can be dismissed as a lifestyle choice when the child is being neglected as a result of the drugs.'<sup>361</sup>

- 8.4. Professor Briggs regarded it as completely irresponsible to send a student social worker to work with a potential child neglect case. She said that student social workers do field work to learn, not to lead. She said they have to be supervised<sup>362</sup>.
- 8.5. There is no statutory registration system for social workers. In my opinion it is appropriate that there should be. In his submissions the Commissioner for Victims' Rights suggested that registration could be achieved through the National Registration and Accreditation Scheme which resulted from the Council of Australian Governments agreement in 2008. That may well be an appropriate mechanism for achieving a system of registration for social workers. I intend simply to recommend that the Minister for Child Protection Reform introduce a measure to provide for registration of social workers. The solution suggested by the Commissioner may commend itself to the Minister as a suitable way to implement that recommendation, but that is a matter for the Minister. Furthermore, I intend to recommend that there be a mandatory restriction on student social workers and qualified social workers with less than 12 months experience having client contact without direct supervision by a senior social worker.

**9. Anthony Kemp – former Director, Practice Development Families SA – an overview of Families SA culture and practice**

- 9.1. Mr Kemp is presently the Deputy Secretary with Children and Youth Services in the State of Tasmania. He qualified as a social worker in the United Kingdom in 1982 and between 2010 and 2013 was the Director, Practice Development in Families SA. His job was to look at the roles of senior social workers and principal social workers but the role changed over time. He left Families SA in November 2013. He did not have any direct involvement in Chloe Valentine's case, but he did oversee the work of

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<sup>361</sup> Transcript, page 2272

<sup>362</sup> Transcript, page 2272

the Adverse Events Review Committee and was the person to whom the adverse events review report in relation to Chloe Valentine<sup>363</sup> was submitted. He had to approve the report and did so. Mr Kemp said that in 2012 there was a recognition that there were problems within Families SA in effectively responding to child protection. He described it as a 'burgeoning recognition', that the structure of child protection, how it was delivered, who delivered it and what they were doing was fundamentally flawed<sup>364</sup>. He said that it was quite clear that changes needed to be made and that it would not be sufficient to tinker around the edges. He said the first step was to acknowledge that the system was broken. He said that there was a problem with the quality of practice amongst social workers in Families SA. He said there were systems that were meant to support good practice but were in fact getting in its way. He said also there was a legacy of toxicity in the agency which was not unique to Families SA. Importantly, he said that assessments of information gathered by social workers about cases were 'fundamentally not assessments, they were story telling'<sup>365</sup>. He said workers were gathering lots of information but not analysing it. He said that there was a lack of clinical supervision and a lack of leadership right through to the top of Families SA. He said Families SA was being seduced into mediocrity. He was commissioned by senior management to prepare what he described as a 'state of the nation address' for the situation that the organisation was in and what needed to happen. He did so. It was entitled 'Adopting a practice approach in Families SA'<sup>366</sup>.

- 9.2. Mr Kemp had some involvement subsequently in the work of Families SA to implement some of the changes that needed to be made. However, he reached the stage where he disagreed with the direction that Families SA was taking and felt that he could no longer remain there. He was successful in obtaining the role in Tasmania and left Families SA in November 2013. Mr Kemp had been provided with all of the transcript of evidence that had been taken to the point at which he was called as a witness. He had also had the opportunity to review the adverse events review report that he himself had previously approved. Mr Kemp was invited to comment on the key events in the management of Chloe's case and how it reflected generally problems in the culture and practice of Families SA. Mr Kemp was asked about the approach to the case in the immediate aftermath of Ashlee being confronted with the tape of her admitting to drug use and the subsequent allocation of the case to the

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<sup>363</sup> Exhibit C117

<sup>364</sup> Transcript, page 1926

<sup>365</sup> Transcript, page 1926

<sup>366</sup> Exhibit C117a

Strong Families Safe Babies program. He was asked to comment on the case conference notes of that time and remarked that he considered that the risk factors to Chloe were 'sanitised' or 'minimised' with a view to giving Ashlee 'a chance'<sup>367</sup>. Mr Kemp talked about the approach that was taken from that point, namely to support Ashlee to keep Chloe almost at all costs. He remarked that Families SA surrounds problem parents with things that they think might make the child safe, but in this instance he commented:

'So asking a 16 year old to stop taking drugs ... is simply nonsense in terms of being able to understand capability. This is not a highly educated teenager who's had a cherished childhood who found herself pregnant. This is a chaotic young woman who has found herself as a mother at the age of 16 years of age.'<sup>368</sup>

He remarked that in a situation such as Chloe and Ashlee's, anything less than Families SA parenting Chloe by 'proxy', almost from breakfast through to night time, would not be sufficient to satisfy Families SA about Chloe's safety<sup>369</sup>. He noted that it was unrealistic to expect Ashlee to change her behaviours while she was parenting. He summarised his remarks in this context by asking the question, 'was it safe to leave the child here with the mother while she is having her capacity built?'<sup>370</sup>. Mr Kemp was asked about the possibility of an application to the Youth Court at that time. He said he thought there was enough to justify an application and remarked upon what he thought was the atrocious quality of information in affidavits to the Youth Court. He said that he would have preferred to have tried and failed rather than not trying at all<sup>371</sup>.

- 9.3. Mr Kemp's remark in relation to Nicholas Ratsch was that he lacked analytical skills and as a consequence he missed opportunities<sup>372</sup>. As regards the notorious incident when Mr Ratsch prepared the safety plan containing the words 'Ashlee and Tom agree that when they choose to consume alcohol or drugs', Mr Kemp remarked that he had a profound problem with it. He questioned its viability as a way of creating safety for a child. He suggested that this might have been an appropriate approach with an older person, but not with a 16 year old<sup>373</sup>.

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<sup>367</sup> Transcript, page 1943

<sup>368</sup> Transcript, page 1945

<sup>369</sup> Transcript, page 1947

<sup>370</sup> Transcript, page 1948

<sup>371</sup> Transcript, pages 1949-1950

<sup>372</sup> Transcript, page 1958

<sup>373</sup> Transcript, page 1959

- 9.4. Mr Kemp was asked about the apparent different standards expected of Ashlee by the Salvation Army on the one hand in relation to her unit at Hope Valley, and Families SA on the other. He said that Families SA had a habit of comparing one case with another and saying how bad is this in relation to another case they have seen. This leads to the situation where different conclusions might be reached by workers on the one hand and providers such as the Salvation Army on the other.
- 9.5. Mr Kemp was asked to comment upon the situation that existed when Mr Ratsch left the Strong Families Safe Babies team in April 2008 and Ms Kidner, the social work student, took up the lead role. Mr Kemp said that it was completely unsatisfactory that a student would be allocated a case even briefly. He said he held this view notwithstanding the involvement of Ms Daniel, the family support worker<sup>374</sup>.
- 9.6. The next event Mr Kemp was asked about was the closure of the file by Strong Families Safe Babies in July 2008. He noted the case summary that was prepared at that time and remarked that it did not align with what was known about Chloe at the time. He said that it suffered from much more than positive spin and that he did not agree with the case closure<sup>375</sup>.
- 9.7. Mr Kemp was asked about the incident when Chloe was left with the 15 year old girl at Glenelg and police became involved later that evening with the ultimate result that Chloe was returned to Ashlee in a chauffeured vehicle in the early hours of the following morning. Mr Kemp regarded Families SA's handling of this situation as 'a catastrophic failing'<sup>376</sup>. He regarded the response as completely misguided<sup>377</sup>. Mr Kemp said he struggled to understand what was going through Ms Heading's mind in this situation and remarked:

'... we are not so atrociously resourced that the actioning of a protected intervention ... was so impossible.'<sup>378</sup>

Mr Kemp remarked:

'This was a 16 month old ... who was put in the back of a taxi or chauffeur and transported to an unknown safety environment. Utterly unacceptable.'<sup>379</sup>

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<sup>374</sup> Transcript, page 1963

<sup>375</sup> Transcript, page 1964

<sup>376</sup> Transcript, page 1970

<sup>377</sup> Transcript, page 1971

<sup>378</sup> Transcript, page 1972

<sup>379</sup> Transcript, page 1974

Mr Kemp said it would have been unacceptable even if they had known Chloe was going somewhere safe, but they did not even know that. He remarked that he could not find any good decisions being made in this process at that time<sup>380</sup>.

- 9.8. The next incident, which as we now know followed very shortly upon Chloe being left with that young woman, was Chloe's admission to the Women's and Children's Hospital, the absence of her mother and the discharge from the hospital to her mother the following afternoon, all of which occurred within 48 hours of the previous episode. Mr Kemp said that this was another opportunity where Families SA should have intervened. He said nothing was changing, that Chloe was at serious risk of harm. He said:

'We discharge a child to the care of a mother who has flagrantly disregarded her role as a parent or was simply incapable of understanding her role as a parent twice in 48 hours. There were absolute satisfactory evidence available to us at that time that serious consideration if not just simply going to that place of using the protective authority of the Act for this child would have been the least that we should have done.'<sup>381</sup>

- 9.9. Mr Kemp also noted that the two intakes resulting firstly from the notification by the police about the leaving of Chloe with the 15 year old, and the second notification that followed the admission to the Women's and Children's Hospital, were rolled into one intake. He said that that was inappropriate and should not have happened<sup>382</sup>.
- 9.10. It will be recalled that only a couple of weeks after these incidents a document was prepared by Ms Curtis in which it was stated that Strong Families Safe Babies thought that the mother had insight in relation to Chloe's physical and emotional needs. Mr Kemp said that he absolutely disagreed with that assessment<sup>383</sup>. Mr Kemp noted that Ashlee's recorded comment that she saw no issue with the events that had occurred completely contradicted the assessment that Ashlee had insight into Chloe's physical and emotional needs<sup>384</sup>. He was asked about the action that was then taken to prepare a safety plan with Ashlee. He remarked that previous safety plans had been prepared with no effect and posed the question 'how was a further safety plan to make

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<sup>380</sup> Transcript, page 1974

<sup>381</sup> Transcript, pages 1976-1977

<sup>382</sup> Transcript, page 1977

<sup>383</sup> Transcript, page 1980

<sup>384</sup> Transcript, page 1981

any difference at this point?'. He said that Families SA's actions were not aligned to the impact on Chloe and remarked:

'Writing a safety plan is - you might as well write it on the back of a postage stamp with a tar brush, it's meaningless ...'<sup>385</sup>

Mr Kemp said that it was at this point that the use of the protective intervention tools in the Children's Protection Act 1993 should have been used<sup>386</sup>.

- 9.11. Mr Kemp was next asked about the notification in March 2009 when Ashlee was punched by Lagden in Chloe's presence and Ashlee was uncooperative with Ms Stewart in dealing with the aftermath. He remarked that Ashlee was putting herself in a dangerous situation and that she had 'normalised violence' within her relationship. He said that there was an absence of consideration of Chloe at that point and that the file records indicated a lack of analysis. He said he would have expected the case record to contain a statement of the purpose of the contact with Ashlee, what was anticipated as an outcome of the conversation, a short transcript of what took place, then an analysis and an action plan. He said:

'There is a saying in practice that if you don't know where you're going, you will end up somewhere else, and this case has that written all over it. Nobody seemed to know where we were going. What you have then are chronic incidents which have been taken in blissful isolation to the whole story, and an attempt then to try and reconcile a mother who is clearly struggling, and is clearly incapable of parenting safely, with a custom and practice of minimising risk and in some ways, rewriting the script of risk.'<sup>387</sup>

- 9.12. Following the incident of domestic violence involving Dylan Hindle in August 2009, Mr Kemp noted that Ashlee appeared not to acknowledge that this was having an effect on Chloe. He said that just because the mother does not believe that it is deleterious to the child is not a reason for us to believe the same:

'There is no assessment as I can see from here that says 'Thank you for your thoughts on that mum, but these are my thoughts, and my thoughts are that you are continuously demonstrating to the point where it is no longer safe or viable for you to continue parenting this child'. Of course that decision should have been made a long time ago, but here we are months and months down the road and we still have the same behaviours.'<sup>388</sup>

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<sup>385</sup> Transcript, page 1982

<sup>386</sup> Transcript, page 1983

<sup>387</sup> Transcript, page 1990

<sup>388</sup> Transcript, page 1995

Mr Kemp added that the time that Ashlee was taking to appreciate these things was all very well, but she was the mother of a child and the child's developmental needs could not wait<sup>389</sup>.

- 9.13. Mr Kemp remarked about the culture of child protection agencies that there is a sense of 'learned helplessness' which is often seen in the clients of the agencies, but sometimes also in the agency itself. He said:

'And we learn - it's - in the organisational literature, it's a disabling and paralysing thing for agencies to get to where they, themselves, almost replicate the very behaviours that they're working with, with families.'<sup>390</sup>

In this he was suggesting that the agency reaches a level of despair commensurate with that of the service recipient and begins to search for what he described as 'grains of evidence' that the situation of the family remained viable.

- 9.14. Mr Kemp was asked about the very negative perceptions the workers generally had about the prospects of success in the Youth Court. He said that he was aware that there was a perception about the complexity of applications to the Youth Court. He said that he did not concur with that sentiment. He said he thought that it was a simplistic answer to a complicated question and amounted to an attitude of 'it's too hard; we won't do it' and that this was not the solution that was required. He said Families SA needed to improve the standard of their applications to the Court<sup>391</sup>. On the subject of family care meetings under the Children's Protection Act 1993 Mr Kemp commented that any opportunity to use the act as a 'leverage point for change' should always be considered<sup>392</sup>. He said that he found it bizarre that the legislation was used as the last resort rather than as a safety measure for the child to be deployed as and when needed<sup>393</sup>.

- 9.15. Mr Kemp was next asked to comment on the case closure summary prepared for the closure of the case in early June 2010. He was scathing about this decision and this document. He said:

'I am utterly speechless. This is my first time of reading this. I cannot find one scintilla of evidence to support the assessment, and leaving aside the case closure for a minute; I am just saying it is simply - it is not even sugar coating, it is beyond that. It has reached

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<sup>389</sup> Transcript, page 1996

<sup>390</sup> Transcript, page 1998

<sup>391</sup> Transcript, page 2004

<sup>392</sup> Transcript, page 2025

<sup>393</sup> Transcript, page 2025

a point of - there is just no integrity to that assessment. I would suggest it is not even an assessment; it is just a series of sentences that simply contradict themselves, have no basis in reality, some of them, secure attachment ... everything I have read up until this point, which I am assuming is the same amount of information that they would have had available to them at this time, tells me exactly the opposite. This child had no attachment with her mother.' <sup>394</sup>

- 9.16. Mr Kemp remarked that the case closure summary contained the words that there were no current child protection concerns. He said that may have been the case on that day, but it was not that day that they needed to be concerned about. He said the system is geared towards the question whether the child is unsafe on a particular day, and if the answer is that the child is safe that day, then Families SA somehow moves towards closing the case. He said this is completely at odds with the notion of cumulative harm and 'joining the dots'<sup>395</sup>. Tellingly, Mr Kemp said:

'... a moment in time of alleged safety does not a child safe make and that's what we've got here.' <sup>396</sup>

- 9.17. Mr Kemp was asked about the subject of intakes being closed with no action because there were no available staff to investigate. He said that he was aware of that practice when he was in Families SA. He said that it had caused him, and he said many others, extraordinary anxiety and distress about the fact that it happened. He said whether it has to happen or not is a separate question<sup>397</sup>. He said that the practice is an extraordinary practice that he had never experienced in his professional career until he got to South Australia<sup>398</sup>. He said that it is true that there was far too much coming in 'the front door' for the service to manage and that there was nothing new about that in Families SA or any other jurisdiction<sup>399</sup>, but he did not accept that it was simply a matter of more resources. He said that is a 'seductive' idea, but that it was necessary to consider whether the existing resources were being used properly. He noted that the structure of Families SA, with a number of different metropolitan and regional offices, was an inefficient use of resources. He described them as fiefdoms and that every office was its own empire and did its own thing<sup>400</sup>.

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<sup>394</sup> Transcript, page 2030

<sup>395</sup> Transcript, page 2032

<sup>396</sup> Transcript, page 2032

<sup>397</sup> Transcript, page 2035

<sup>398</sup> Transcript, page 2035

<sup>399</sup> Transcript, page 2035

<sup>400</sup> Transcript, page 2036

- 9.18. Mr Kemp was asked about the home visit by Craig Rainsford and Anna Clarke in January 2011 when they spoke to Ashlee but did not engage Chloe. Mr Kemp said there should have been communication with Chloe:

'It is just a non-negotiable that when a child is in a position to express something ... they should do that by sitting her down, getting her to draw, getting her to do something.'<sup>401</sup>

He said:

'I find this whole story very, very sad, very sad that, you know, she was telling us stuff here and we ignored her. We absolutely ignored her.'<sup>402</sup>

- 9.19. Mr Kemp was asked to comment on Craig Rainsford's assessment following that home visit. He was very critical:

'What he's doing there or what is being expressed there is what is being crudely understood to be an assessment based on an individual moment in time. So what he's doing is reflecting exactly and he's used the word, snapshot. It is on this day at this time, is this child at risk. If that's your frame of reference then that is factually correct, but that is not your frame of reference if you are understanding a child's journey through trauma and harm.'<sup>403</sup>

- 9.20. On the question of cumulative harm Mr Kemp noted that the renotification rate is extraordinarily high in Families SA, which is the rate at which children were notified, the case closed and there was a subsequent renotification. He described it as children being recycled through a system until it gets too serious and then there is only one choice, namely to remove the child<sup>404</sup>.

- 9.21. Finally, Mr Kemp remarked that it was extraordinary that the option of removing Chloe had not only been considered, but had been a critical part of Families SA's thinking at all times across this case<sup>405</sup>.

- 9.22. I was extremely impressed by Mr Kemp's grasp of the evidence in this case and of its implications for the culture and practice of Families SA. I accept his evidence. It was not challenged by counsel for the Department for Education and Child Development. Mr Kemp's evidence as a whole should be considered and included as a part of the redesign process that Mr Harrison gave evidence about and I propose to recommend accordingly.

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<sup>401</sup> Transcript, pages 2045-2046

<sup>402</sup> Transcript, page 2046

<sup>403</sup> Transcript, page 2049

<sup>404</sup> Transcript, page 2072

<sup>405</sup> Transcript, page 2077

**10. An analysis of the Children's Protection Act 1993**

- 10.1. The operations of Families SA are governed by and carried out under the Children's Protection Act 1993 (the Act). The Act is fundamental to everything Families SA does in connection with child protection and every action, decision and thing that was done by any of the employees of Families SA in relation to Chloe Valentine was governed by the Act. It is important then to see all the facts that occurred so far as the child protection workers are concerned in the context of the Act. For the purposes of this part of the finding, I will refer to the Children's Protection Act as in force from 1 July 2014. The relevant provisions are no different from the provisions as in force during Chloe's life.
- 10.2. I do not propose to refer to every provision in the Act in this analysis, but simply to highlight those that, stripping the Act to its basics, form the essential structure. The objects of the Act are set out in section 3. The first object is to ensure that all children are safe from harm. Another object is to recognise the family as the primary means of providing for the nurture, care and protection of children.
- 10.3. In section 4 the Act recites that its fundamental principles are that, firstly, every child has a right to be safe from harm, secondly every child has a right to a safe and stable family environment and that these two principles are the paramount considerations in the exercise of powers under the Act. The provision also says that in determining a child's best interests consideration has to be given to the desirability of keeping the child within the child's own family and the need to preserve the family. Even where a child is placed in alternative care efforts must be made to maintain relationships with the child's family. The expression family is defined in section 6 of the Act. It means the child's immediate family (including all guardians) and the child's extended family, that is to say, all other persons to whom the child is related by blood or marriage. The expression abuse or neglect is an important expression in the act and it is defined also. Given that all of the notifications relating to Chloe were about neglect, I will only refer to that aspect of the definition. Essentially, the neglect of a child means neglect to the extent that the child has suffered or is likely to suffer physical or psychological injury detrimental to the child's wellbeing or that the child's physical or psychological development is in jeopardy.
- 10.4. The Act sets out the general functions of the Minister and the general functions of the Chief Executive. It is not necessary for this analysis to elaborate on those functions.

- 10.5. Part 4 of the Act deals with notifications and investigations. Division 1 deals with notification of abuse or neglect. For the purposes of notifications, the definition of abuse or neglect is extended to include a reasonable likelihood of a child being neglected by a person with whom the child resides. Section 11 of the Act deals with mandatory notification and was the provision under which the 22 notifications relating to Chloe were made to the Child Abuse Report Line. In summary, Division 1 deals with the process by which people who are concerned about the welfare of a child can notify their concerns to Families SA.
- 10.6. Division 2 of Part 4 of the Act provides for the removal of children in danger. Essentially, it is the provision under which a police officer or an employee of Families SA may remove a child from a situation of serious danger. This provision was never utilised in relation to Chloe. It is in the nature of an ‘emergency’ provision. If a child is removed under that section and is not already under the guardianship or custody of the Minister, the child must be returned to his or her home by the end of the working day following the day on which the child was removed. Of course, in the meantime, an application might be made to the Court under the provisions I will come to next.
- 10.7. Division 3 of the Act deals with investigations. I propose to analyse this division more closely because in each of the 22 notifications to Families SA about Chloe, and on a number of other occasions not triggered by a notification, there were circumstances in which an investigation into whether Chloe was a child at risk could have been carried out. Section 19(1) of the Act says that if the Chief Executive suspects on reasonable grounds that a child is at risk and the risk factors 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. The section also says that as an alternative the Chief Executive can effect a response that more appropriately addresses the potential or actual risk to the child. However, it is plain that if the Chief Executive is provided with an allegation that is credible and that gives rise to a suspicion that a child is at risk, the Chief Executive is obliged to carry out either an assessment or investigation into the child’s circumstances. In effect, it seems to me that there is little difference between the expressions assessment and investigation in this context. If the Chief Executive has no information about the circumstances of the child when the notification is made, then it is only by an investigation – and I use the word investigation here in its widest sense – that the

Chief Executive can progress the matter. So the obtaining of even the most basic information in relation to a child would in this context form part of what might be described as an investigation, and the Chief Executive is unable to progress the matter at all without obtaining basic information by making enquiries. The making of basic enquiries will then provide leads of other more specific enquiries that should be made. This is a process of investigation by which any person charged with the responsibility for establishing the circumstances of a matter must proceed.

- 10.8. Next, section 19 goes on to provide that under the authority of a warrant issued by a magistrate, a police officer may enter or break into premises, seize items or require persons to furnish information ‘for the purposes of assisting an investigation’. Nothing is said about the Chief Executive’s own powers of investigation, nor about the powers of investigation that are available to the Chief Executive’s employees. However, it is very clear that the Act does not envisage that all investigations must involve a police officer acting in the manner referred to above on the authority of a warrant issued by a magistrate. Indeed, I suspect that this would rarely happen. Certainly, it never happened in Chloe’s case. It follows therefore that the Act nevertheless contemplates that the Chief Executive or an employee of Families SA is empowered to investigate child protection matters. For example, they would be permitted under the power of investigation to ask questions of the child’s parents or guardians. They would be permitted to ask questions of the person making the notification. If the notifier, or the parents or guardians refused to answer the questions, it is true that the Chief Executive or employee could not force them to do so. However, it is quite clear that nothing in the Act should be regarded as limiting their ability to ask questions of these people, which may be freely answered or not according to the willingness of the person being questioned to answer. Unlike some other Acts dealing with the investigation of particular matters, the Act does not confer on the Chief Executive or an employee of Families SA a general power to enter premises and seize items and take photographs. However, in my opinion it is implicit that an employee may enter premises if permitted by the occupant to do so, and may ask questions which the occupant is free to answer or not as the case may be.
- 10.9. Division 4 of part 4 of the Act relates to investigation and assessment orders. Under this division the Chief Executive may apply to the Youth Court of South Australia if the Chief Executive has a reasonable suspicion that a child is at risk and that the

matter needs further investigation. Thus, it may be that in a case where the Chief Executive or an employee of the Chief Executive has attempted to investigate a matter but been unable to obtain answers to questions or gain entry to premises, or has met some other barrier to conducting an inquiry, the Chief Executive or employee may elevate the matter to the Youth Court. The Youth Court can then make various orders which facilitate an investigation including orders authorising the examination of the child and, most pertinently for present purposes, orders authorising the Chief Executive to require a person to answer questions put by an employee of Families SA. Thus, by this means and with the aid of the Court, an investigation can be advanced by the obtaining of information coercively that was unavailable on a voluntary basis. The Court may make other orders, including orders directing reports to be provided by professionals who have previously examined the child or a parent of the child and so on. I need not go further than simply to say that investigation and assessment orders are the next stage in advancing an investigation if the Families SA employees are unable to properly investigate the case by resorting to simply asking questions. Importantly, the Court may also grant an order for custody of the child during the investigation. Thus, in circumstances where the child might be at risk if left in the custody of his or her parent or guardian during the progress of an investigation, the Court can protect the child's safety by ordering that the child be placed in the Minister's custody for a specified period.

- 10.10. The next step in the scheme of the Act is for Families SA or the Minister to apply to the Youth Court for a care and protection order. Under this provision the Court is empowered to grant custody of the child to an alternative carer, including the Minister, on a more permanent basis than that envisaged under the investigation provision referred to earlier. An order under this provision may be made until a child attains the age of 18 years.
- 10.11. This part of the Act contains section 27 which provides for family care meetings. The section says that if the Minister is of the opinion that a child is at risk the Minister should cause a family care meeting to be convened. A family care meeting is convened and conducted by a care and protection coordinator nominated by the Senior Judge of the Youth Court. The purpose of the meeting is for a child's family in conjunction with the care and protection coordinator to make decisions as to the best manner of securing the care and protection of the child. The care and protection

coordinator must ensure that sufficient information as to the grounds for believing the child to be at risk are presented to the meeting. Section 35 of the Act provides that if no decisions are made by a family care meeting, or if decisions are made but not implemented or complied with, the Minister will if of the opinion that the child is at risk and that an order of the Court for a care and protection order is required, make an application accordingly. By section 27(2) it is clear that a family care meeting is a necessary precursor to the making of an application for a care and protection order. However, it is also clear that a family care meeting may be convened by the Minister without the Minister having any present intention to apply for a care and protection order. In other words, there is no reason why a family care meeting cannot be convened as a means by which the Minister, and any employee of Families SA as the Minister's alter ego, can 'raise the stakes' for a parent or guardian who may perhaps be uncooperative or reluctant to engage with Families SA's efforts to procure a child's protection by educating or encouraging changed behaviour in the guardian prior to any contemplated court action.

- 10.12. Mention must also be made of section 20(2) of the Act which provides that if the Chief Executive (or any employee in the capacity of the Chief Executive's alter ego) suspects on reasonable grounds that a child is at risk as the result of the abuse of an illicit drug by a parent, guardian or other person, the Chief Executive must apply for an order from the Youth Court directing the parent, guardian or other person to undergo a drug assessment. It will be seen immediately that this provision is mandatory upon the Chief Executive coming into possession of evidence sufficient to found a suspicion on reasonable grounds that a child is at risk as a result of the abuse of an illicit drug by a parent. It is not difficult to see that the abuse of an illicit drug by a parent will very often result in a risk to a child in that parent's care. Certainly, the younger the child, the more likely it is that there will be a risk and the greater the risk will be. In the present case, there was ample evidence on a number of occasions that Chloe was at risk as a result of the abuse of methamphetamines and cannabis by her mother and a number of others, including the several partners her mother had over the short time of Chloe's life. There is no doubt in my mind that at least one, and probably several, occasions arose over Chloe's life when one or more employees of Families SA must have suspected on reasonable grounds – had they turned their minds to that question – that Chloe was at risk by reason of the abuse of one or more of these drugs by one or more of the people referred to above. Yet on no occasion

was an application made under section 20(2) of the Act as required. It is no answer to this point that none of the employees concerned ever turned their mind to the subject. Employees are required to properly administer the Act and to be aware of its provisions. They have a duty to keep the provisions of the Act constantly in mind in carrying out their duties. Section 20(2) is quite clear in its terms. There is no ambiguity and there is no discretion. The fact that it was never invoked in Chloe's case and that there was no adequate explanation why not, causes me to believe that there is a systematic failure in Families SA to properly administer and apply section 20(2) of the Act. It would be interesting to know if there has ever been an application under that section. My powers of inquiry did not enable me to determine that question. However, the question should be considered and investigated. Section 20(2) was enacted in 2005 and came into effect in 2006. It clearly was in effect during the whole of Chloe's life. During the nearly eight years the section has been on the statute books of this State one would expect, given the prevalence of drug taking in the community and its adverse impact on the welfare of children generally, there would have been a large number of applications under section 20(2) of the Act. If as I suspect that is not the case, an explanation and accounting is required.

## **11. Adoption as an alternative placement option**

11.1. Ms Carolyn Curtis was an impressive witness. She gave her evidence sincerely and genuinely. She was obviously very much affected by the death of Chloe and by her experience in her work with Families SA. By the time she gave her evidence she no longer worked with Families SA having pursued a different career as the chief executive officer of the Australian Centre for Social Innovation. She has clearly thought a great deal about the problems faced by the child welfare system. She made the point that the agencies 'get to these families far too late – far, far too late'<sup>406</sup>. She said 'you have to get to these families earlier'<sup>407</sup>.

11.2. Ms Curtis also made the following heartfelt remark:

'Because we can't remove them all. If we removed them all, what would we do with them? And there's so many of them.'<sup>408</sup>

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<sup>406</sup> Transcript, page 1375

<sup>407</sup> Transcript, page 1375

<sup>408</sup> Transcript, page 1377

Later in her evidence she was talking about the difficulties in finding suitable placements for babies and young children and she said ‘it was a struggle every time’ and that sometimes she had to resort to desperate measures:

‘I’ve put many children in hotels with nannies ... sometimes caravan parks.’<sup>409</sup>

She went on to say that the extent of insufficiency of suitable placements is high<sup>410</sup>.

11.3. The system for alternative placement options as I understand it in South Australia is essentially the foster care system, and in some cases, residential care. The latter is typically provided in group homes where multiple non-related children are cared for by paid staff on a 24 hour basis. Each home might contain up to half a dozen children. It is notable that non-government organisations regularly advertise on commercial radio to find people prepared to take the role of foster carers. Disturbingly, some radio advertisements even refer to the financial benefits attached to foster care<sup>411</sup>.

11.4. I have been impressed by the work of Dr Jeremy Sammut of the Centre for Independent Studies in relation to the failures in Australian child protection systems and the low reliance in Australia on adoption as a permanent placement option for children in the child protection system<sup>412</sup>. Many of Dr Sammut’s criticisms of the child protection system in Australia were borne out by the evidence in Chloe Valentine’s case. Dr Sammut makes a case for early statutory intervention and permanent removal by means of adoption by suitable families. He acknowledges that adoption appears to be a taboo subject in the child protection world. He notes that since the 1970s child welfare agencies have been preoccupied with family preservation as the primary goal. He cites the report Child Protection Australia 2009-10 of the Australian Institute of Health and Welfare as follows:

‘The current emphasis in policy and practice is to keep children with their families wherever possible. Where children, for various reasons, need to be placed in out of home care, the practice is to attempt to reunite children with their families.’<sup>413</sup>

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<sup>409</sup> Transcript, page 1555

<sup>410</sup> Transcript, page 1556

<sup>411</sup> <http://www.keyassets.com.au/south-australia/>

<sup>412</sup> Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out-of-Home Care in Australia (2011) Sammut, Jeremy - ISBN 9781864322064 <http://www.cis.org.au/images/stories/policy-monographs/pm-122.pdf> and Still Damaging and Disturbing: Australian Child Protection Data and the Need for National Adoption Targets (2014) Sammut, Jeremy – Issue Analysis ISSN 1440 6306 – <http://www.cis.org.au/images/stories/issue-analysis/ia145.pdf>

<sup>413</sup> AIHW (Australian Institute of Health and Welfare), Child Protection Australia 2009-10 (Canberra: 21 January 2011), 54–55

Dr Sammut remarks that families in the child protection system receive a range of support services:

'... every troubled parent is given virtually limitless opportunities to address their problems.'<sup>414</sup>

This resonates very strongly when one considers the history of Ashlee Polkinghorne and Chloe Valentine. Ashlee was indeed given virtually limitless opportunities to address her problems. She was provided with at least three supported accommodation options, she was provided with government subsidised childcare five days per week for an extensive period, she was provided with assistance by Time for Kids and she was provided with a great deal of support by the various workers from Families SA who focussed on her needs, from driving her to real estate agents to find accommodation, to driving her to Yatala Labour Prison to visit with Lagden to advocating on her behalf with supported accommodation providers, to providing taxi vouchers, furniture storage facilities, financial assistance to buy furniture for her various dwellings and much more.

- 11.5. Dr Sammut notes that the emphasis on family preservation means that child removal occurs only as a last resort. He refers to attempts to work with parents to address bad parental behaviours, particularly those relating to alcohol and drugs. He makes the following remarks which might have been written about Ashlee Polkinghorne and Chloe Valentine:

'Even when parents are demonstrably incapable of properly caring for their children, child protection services fail to take appropriate action to protect vulnerable children with well-founded and ongoing safety concerns.'

'Too many children are being left in dangerous situations due to the misguided bias towards keeping abusive and neglectful families together, which has swung the pendulum too far in favour of protecting the 'rights' of dysfunctional biological parents at the expense of the best interests of children.'<sup>415</sup>

- 11.6. Dr Sammut points out that the number of children in residential care throughout Australia, and in this he is referring not to foster care but to the residential care model I have described above, has increased by 56% in the last 15 years. By the time children find their way into residential care facilities all other options have well and truly been exhausted. Dr Sammut described these facilities as 'modern day

<sup>414</sup> Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out-of-Home Care in Australia (2011) Sammut, Jeremy - ISBN 9781864322064 <http://www.cis.org.au/images/stories/policy-monographs/pm-122.pdf>, page 7

<sup>415</sup> Ibid, page 7

asylums'<sup>416</sup>. Dr Sammut gives the following statistics. 61 Australian children were adopted by non-relatives and 53 by foster carers in 2009-10 which was a total of 114 adoptions, compared to more than 8,500 adoptions in the early 1970s<sup>417</sup>. Dr Sammut compares Australia with England where 3,200 children were adopted from out of care in 2009-10. Of these children, 70% were aged one to four years, 25% were aged five to nine and just 2% were under the age of one. In 70% of the cases children were placed for adoption because of abuse or neglect. Dr Sammut calculated that if Australian children in care were adopted at the same rate as in England, there would have been approximately 1,700 adoptions from care in Australia in 2009-10 rather than the quoted number of something less than 114. Dr Sammut noted that the number of children in care per capita in the United States and Australia is very similar. If Australian children in care were adopted at the same rate as in the United States, there would have been approximately 4,800 adoptions from care in Australia in 2009-10.

- 11.7. Dr Sammut asserts that child protection agencies have a cultural resistance to adoption. He advocates a fundamental change:

'Dysfunctional parents should have an opportunity to access support services to address their problems when they first come under child protection scrutiny. But in the best interests of children, the first chance ought be the last chance to get their acts together in full knowledge of the looming consequences of non-compliance—the permanent removal of children and severance of parental rights.'<sup>418</sup>

- 11.8. When one has regard to Ashlee's abuse of illicit drugs the following extract from Dr Sammut's report is relevant:

'Half to three-quarters of parents involved with child protection services are estimated as having substance abuse problems. Given that substance abuse profoundly impairs parenting ability, and given that substance abusers are highly prone to relapse, there are good grounds for earlier and decisive statutory intervention to stop child maltreatment by parents using illicit drugs and abusing alcohol.'<sup>419</sup>

This surely is the rationale behind the enactment of section 20(2) of the Children's Protection Act 1993 which, as I have noted, Families SA has culturally resisted.

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<sup>416</sup> Do Not Damage and Disturb: On Child Protection Failures and the Pressure on Out-of-Home Care in Australia (2011) Sammut, Jeremy - ISBN 9781864322064 <http://www.cis.org.au/images/stories/policy-monographs/pm-122.pdf>, page 14

<sup>417</sup> Ibid, page 16

<sup>418</sup> Ibid, page 19

<sup>419</sup> Ibid, page 19

11.9. In my opinion adoption should have a place in the alternative placement options in the child protection system. I do not purport to be in a position to offer a settled model of what the role of adoption in the child protection system should look like. However, the evidence of the scarcity of alternative placement options and the notorious under supply of suitable and willing foster parents leads me to the very firm opinion that permanent removal to adoptive parents must have a place in the child protection system and I propose to recommend accordingly.

## 12. **Power of investigation**

12.1. Evidence was given by Ms Leanne Stewart who at the time of giving her evidence was an experienced social worker, well familiar with the operations of Families SA, about the limits of a social worker's powers of investigation. Ms Stewart was being questioned about the occasion on 7 August 2009 when Ashlee Polkinghorne was violently assaulted by her partner of the moment, a Mr Dylan Hindle. It was a serious assault and Chloe was a witness to it. There is a dispute on the evidence as to when Families SA became aware of the event. 7 August 2009 was a Friday. Regardless of the dispute arising out of the versions on the one hand of Ms Stewart and Ms Valentine on the other as to whether Ms Valentine contacted Ms Stewart by telephone on the day of the assault, Families SA's own records<sup>420</sup> clearly show that Families SA was made aware of the event by an employee of Time For Kids no later than the following Monday, 10 August 2009. The documentary evidence of Families SA recorded that an attempt was made to speak to Ashlee Polkinghorne about the matter on 10 August 2009 but that she was evasive and unwilling to disclose the identity of the perpetrator of the assault. The evidence from Families SA files showed that the next step in the matter took place on the following Thursday, 13 August 2009 when Ashlee Polkinghorne was spoken to again.

12.2. Ms Stewart was asked why she had not taken further steps to investigate the matter between the Monday and the Thursday. For example, Ms Stewart could have contacted any and all of the people she knew to have contact with Ashlee to see what those persons knew of the event. Those persons included Lesley Benyk, Krystal Benyk and Candice Owen. There were certainly other people as well, but most relevantly, there was Ms Valentine. The Families SA records contained telephone

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<sup>420</sup> Exhibit C91

numbers and contact details for these people. When Ms Stewart was asked why she did not contact any of those persons to attempt to glean further information about what happened on 7 August 2009 she responded as follows:

'My understanding and reasoning for not having done that on this occasion and previous occasions, is that – I may be completely wrong and I may have been working incorrectly for the last 9, 10 years with this, but unless there is an open investigation, we don't have free rein I suppose, to contact people without a parent's consent.'<sup>421</sup>

She went on to say that in this context the parent was Ashlee Polkinghorne. Ms Stewart elaborated:

'Just to give some context; if we have an open intake, that then gives us scope under the Children's Protection Act to contact the notifier and any informants if we have their details. However, in terms of general case work we need to have consent forms signed, or at the very least, a verbal consent from someone to contact people, whether it be a doctor who may have seen the child or a grandparent or an auntie or godparent as you have mentioned in terms of Krystal.'<sup>422</sup>

- 12.3. Ms Stewart was asked if that was her reasoning at the time or whether she could not remember but was suggesting it probably would have been her reasoning at the time and she responded quite definitely that it was indeed her reasoning at the time. She said:

'That was my reasoning at the time and it remains an ongoing issue ... in terms of navigating the realms of confidentiality and what we are allowed to do and not allowed to do.'<sup>423</sup>

- 12.4. I pressed Ms Stewart on this matter and suggested that it was not correct and she responded:

'I have never been pulled up on it; I graduated as a social worker in 2005 and all bar about three years where I didn't work in the department and was off having a child, I have practised this way. I have never ever been told that that is incorrect or inappropriate or that I should have contacted someone; I have never been directed to in a consultation or anything.'<sup>424</sup>

- 12.5. When it was suggested to Ms Stewart that she could at least initiate an 'intake' by making a notification to the Child Abuse Report Line herself, she responded that that still would not entitle her to speak to anyone other than the notifier or notifiers as the case may be (and in that instance, it would have been herself).

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<sup>421</sup> Transcript, page 2396 – the underlining is mine

<sup>422</sup> Transcript, page 2396

<sup>423</sup> Transcript, page 2396

<sup>424</sup> Transcript, page 2397

12.6. When it was put to Ms Stewart that the need to obtain a parent's consent to speak to any person in a situation such as this with a view to obtaining information was very limiting, she responded:

'Yes and very frustrating.'<sup>425</sup>

12.7. That evidence of Ms Stewart was quite alarming. It represents to my mind not merely a limitation on the power of a social worker to investigate an incident such as a reported episode of domestic violence in this case, but effectively amounts to a barrier to the conduct of any such investigation. If Ms Stewart was unable to speak to any person without Ashlee Polkinghorne's consent then it was impossible for her to take the matter any further. The notes taken by Ms Stewart on 10 August 2009 do not disclose whether she sought Ashlee Polkinghorne's consent to question others about the matter on that day. Very likely Ms Stewart did not bother to do so, in light of Ashlee Polkinghorne's refusal to cooperate by disclosing the identity of the perpetrator or any other details and refusing to speak about the matter until the following Thursday.

12.8. If Ms Stewart were correct in this approach to her daily work of investigating child protection matters, it is difficult to see how any progress could be made at all, bearing in mind that it would not be unusual that a parent who does not want to encourage the scrutiny or interference of Families SA would be prepared to give consent to a social worker speaking to other people. In my opinion, Ms Stewart's view that it was necessary for her to have Ashlee Polkinghorne's consent before she spoke to any other person to obtain information as to the domestic violence incident, an incident the occurrence of which was supported by credible evidence in Ms Stewart's possession on that day, was plainly wrong to the extent that it purportedly relied on the Children's Protection Act. There was no suggestion that it relied on any policy of Families SA outside of the Children's Protection Act and no such policy was ever produced at the Inquest. If there were a policy to this effect, it would be invalid because a policy cannot limit the operation of the Act, and the Act does empower investigation, with or without a parent or guardian's consent. It appears to me that the view of Ms Stewart is based on a wrong interpretation of section 19(1) of the Act which I have referred to above.

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<sup>425</sup> Transcript, page 2399

- 12.9. It is also likely that Ms Stewart would have derived her understanding of that interpretation of her power of investigation from conversations with others. Indeed, in her responses on this topic she made it plain that she held this understanding of her power of investigation following consultation with other workers and supervisors<sup>426</sup>.
- 12.10. Mr Tony Harrison was the Chief Executive of the Department for Education and Child Development (previously Families SA) at the time of giving his evidence at the Inquest, although he was not the Chief Executive during any of the period in which Families SA was working with Ashlee Polkinghorne and Chloe. Mr Harrison was questioned about the view expressed by Ms Stewart as to her inability to ask questions about an episode such as the domestic violence incident on 7 August 2009 without the permission or consent of the mother of the child. Mr Harrison effectively confirmed that Ms Stewart's understanding was in line with Families SA's understanding of the position:

I have picked up a practice whereby people have a view, unless there is an open case we haven't got the authority or the power or the justification to ask questions of people. The only thing, if I could please add, is that under s.19(1) and (2) it very much makes reference to the Chief Executive and then in somewhat an unusual way 19(3) in the way that it's been constructed jumps straight to the authorisation of a police officer and then it talks about (3)(d) 'require a person who may be in a position to furnish information' - I think which fits into the scenario you just provided - 'relevant to the investigation to answer questions of that'. You could interpret, I would interpret that that actually excludes a particular prescribed person, let's say a social worker, because it invests the powers of a police officer to do those things, not a social worker.'<sup>427</sup>

- 12.11. In that passage Mr Harrison was referring to the powers invested in police officers under section 19(3) to exercise coercive powers in pursuance of a warrant issued by a magistrate (see my analysis above). As I said when discussing the effect of this provision under the heading 'An analysis of the Children's Protection Act 1993', the powers that are vested in a police officer to act under a warrant are coercive in nature. They give a power of entry, including forcible entry, into premises and a power to require a person to answer questions. It is an offence for a person to refuse or fail to comply with a requirement made of them by a police officer under the section<sup>428</sup>. However, the coercive powers specifically conferred upon an authorised police officer in no way inhibit the general power of investigation conferred upon the Chief

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<sup>426</sup> Transcript, page 2397

<sup>427</sup> Transcript, page 2530

<sup>428</sup> Section 19(6) of the Children's Protection Act 1993

Executive and those employees, namely social workers, who act as the Chief Executive's alter ego for the purposes of administering the Act. As I said, that general power of investigation clearly includes the power to ask questions of people which they are free to answer or not according to their will. Nevertheless, it is very clear that the Act does not impose any limit or prohibition on the ability of an employee to ask questions. There is certainly nothing in the Act that requires that consent be obtained first.

12.12. Although Mr Harrison did not say that he agreed with the view that it was necessary to obtain consent before asking questions, his view that the power of investigation was arguably only vested in police officers is certainly incorrect. He acknowledged that he was of the view that there is a culture and a convention within Families SA that has precluded staff from asking people to do things or provide information about things<sup>429</sup>. That being Mr Harrison's opinion after having spent some time as the Chief Executive of Families SA, I conclude that the view expressed by Ms Stewart is commonly held within Families SA. Mr Harrison did not offer any comment about what he had done, if anything, to remedy the situation. Indeed, it amounts to a fair reading of his evidence that nothing has been done in that regard. If Mr Harrison has noted what he conceded is a culture and a convention within the organisation that has precluded people from asking people to provide information about things, it is alarming that he has not acted to reverse that culture. An organisation that is set up to investigate child protection matters cannot function and carry out its basic charter without having a culture under which it is not only appropriate, but necessary, to ask questions if those questions will provide information that will assist in securing a child's safety. The fact that three years after Chloe's death Families SA still has a common understanding that it is not permissible to ask questions without the permission of a parent who may or may not be cooperating with Families SA is completely unacceptable.

12.13. I propose to make a recommendation that Families SA urgently re-educate all of its staff to rectify the misunderstanding abroad in the organisation that questions to secure the protection of a child cannot be asked of people without the permission of the child's parent or guardian. There is no such limitation, there never has been, and

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<sup>429</sup> Transcript, page 2529

there never should be. This message must be disseminated urgently within the organisation. It is fundamental to the organisation's responsibilities that its employees have a questioning attitude and a curiosity to establish facts as to a child's welfare. Without this, Families SA cannot achieve its objectives.

12.14. This misunderstanding as to the powers of investigation of social workers or child protection workers as they may as well be called, is the first of several fundamental divergences between the practice of Families SA and the terms of the Children's Protection Act.

### 13. **Divergences between the practices of Families SA and the terms of the Children's Protection Act 1993**

13.1. The first of these divergences was the one I have already referred to, namely the wrongheaded belief that a child protection worker must obtain the consent of a child's parent or guardian before being able to ask any other person any questions relating to securing the wellbeing of that child<sup>430</sup>.

13.2. The next instance was that of section 20(2) of the Act which I referred to under the heading 'An analysis of the Children's Protection Act 1993'. Section 20(2) provides that if the Chief Executive suspects on reasonable grounds that a child is at risk as a result of the abuse of an illicit drug by a parent or guardian, the Chief Executive must apply for an order from the Youth Court. Mr Harrison was asked by his own counsel if he had any comment to make about the practicality of being able to comply with that provision in the Act<sup>431</sup>. Mr Harrison correctly noted that section 20(2) does not provide any discretion. He correctly suggested that the section is triggered not by evidence of abuse or neglect but by a suspicion that a child is at risk of abuse or neglect as a result of drug use. Mr Harrison said:

'Now, when I first identified this, I just tried to think as to how this could actually be applied, knowing the frequency of illicit drug use in our community and that frequency often connected with people who have children. So this needs to be explored in the sense of if this was to occur in accordance with the legislated requirements, it would have, my guess, a dramatic implication for resourcing and also I guess you would need to question as to the merits of actually adopting a must-do approach to something in this

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<sup>430</sup> In expressing myself in this way I do not suggest that if an emergency presented itself in which a child's life was clearly in danger and the agency was satisfied that it could act urgently under section 16 of the Act to secure the child's protection that it would not allow this perceived restriction on its power of investigation to impede the exercise of power under that section. However the issue was not tested in evidence.

<sup>431</sup> Transcript, page 2517

particular area because, unfortunately, we do know that the prevalence of illicit drug use, whether it's from drugs such as cannabis, methamphetamine, heroin and others, there is a relatively significant prevalence of the use of illicit drugs in our community.'<sup>432</sup>

- 13.3. In my opinion this is a damning piece of evidence. It was freely offered in chief. It was not a concession made in cross-examination. As a relatively newly appointed Chief Executive, Mr Harrison appears to have sat down and read the Children's Protection Act and 'identified' the existence of this provision and concluded that it is impractical for the agency to comply with it. There seems to be no sense of surprise or concern that the agency was apparently not complying with it as a matter of course. It is implicit in what Mr Harrison said that indeed the agency was not complying with this provision. This much became evident in the following passage:

*'Coroner* Q. Are you saying - I think you're saying - that this section at the moment is not being complied with.

A. I would be surprised if it's being complied with literally in the case of 'it must'.

Q. Well, I think it goes further than that, doesn't it. You know it's not being complied with.

A. I would certainly believe it's not being complied with, yes, that's right, yes.

Q. You've got a very strong reason to think it's not being complied with. It's almost certain that it's not being complied with.

A. Well, it's certain in the sense as I just don't know practically how it could actually happen.

Q. Would you put your money on it. I'd put my money on it.

A. I would. I would put my money on it.

Q. Yes, it's not being complied with. So let's start with that basic fact and your position is that if it were to be complied with, then there'd be a massive implication for resources.

A. Yes.'<sup>433</sup>

I took Mr Harrison to be suggesting two things. The first was that actual compliance with section 20(2) of the Act would require too many resources and so is not practicable. The second point is that there is a high level of illicit drug use, including cannabis, methamphetamine and heroin, in our community amongst people who also

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<sup>432</sup> Transcript, pages 2517-2518

<sup>433</sup> Transcript, page 2518

have children and he would therefore question the merits of approaching the court for investigation and assessment orders in every such case.

- 13.4. Whatever one might have to say about resourcing, I find the second proposition of Mr Harrison to be quite bizarre. The fact that a particular social ill relating to the welfare of children is prevalent does not mean that society should simply accept it. Mr Harrison came from a policing background and when he was in that role I very much doubt that he would have ever been heard to say that the prevalence of drug taking in the community would be a reason for police to stop actively policing the use and possession of illicit drugs. Mr Harrison has only been the Chief Executive of DECD since the middle of 2013, or for approximately 18 months at the time he gave his evidence. I am left with the conclusion that in only 18 months Mr Harrison has been so influenced by the cultural acceptance of illicit drug consumption by parents of children in the child protection system that he is reduced to expressing an opinion that would have been an anathema to him when he was an Assistant Commissioner of Police.
- 13.5. Section 20(2) was inserted into the Act by the Children's Protection (Miscellaneous) Amendment Act 2005 and section 20(2) came into operation on 1 October 2006. Thus, as at Mr Harrison's tenure the provision has been in the Act for more than eight years.
- 13.6. It is one of the most basic obligations of a Government agency to comply with the legislation that it is required to administer. Section 20(2) is in no way ambiguous. There is nothing difficult in its interpretation. There is no excuse for the provision to be ignored. I note that the provision resulted from an amendment made during the passage of the legislation through the Legislative Council at the behest of Mr Xenophon MLC as he then was. Hansard for 1 December 2005, page 3437, Legislative Council, records that there was a Manager's Conference of the House of Assembly and the Legislative Council in relation to this amendment. Mr Xenophon said on that day:

'It is not in the same form as the amendments I moved (both for assessment); the government's position in relation to treatment is the one that has, in effect, been adopted. I do not resile from my position on the issue of assessments. I believe it is important that, where the thresholds are crossed, both in terms of the chief executive suspecting on reasonable grounds that a child is at risk as a result of the use or the abuse of an illicit drug, there ought to be a drug assessment. The bill still provides for that, but there is an

out clause, that is, 'unless the chief executive is satisfied that an assessment of the parent or guardian or other person has already occurred or is to occur'. How that will be dealt with and interpreted remains to be seen. However it is an improvement on the current position.

The risk to children as a result of illicit drug use - in particular, amphetamines, heroin and cannabis - is a significant issue in our community. The figures from the UN World Drug Report show that we have the highest level of illicit drug use in the OECD, which is a fact that ought to alarm us and ought to be the subject of urgent policy action.

So, I do not resile from my position. I understand the opposition's view that the bill should be passed. It did not want the bill to be withdrawn or to fail because of the deadlock in relation to this clause. I also indicate that I understand that the minister will be making a statement in the other place once the House of Assembly gets the message to the effect that there will be a system of reporting (with the annual reports), so that we will know how many cases have been brought to the attention of the chief executive in terms of the suspicion on reasonable grounds; how many matters were assessed and the consequences; and how those assessments proceeded and on what basis. That is certainly an improvement on what we have now. At least the issue of drug use and its impact on children is now on the agenda in a way that it has not been before, with some prescriptive measures. I again endorse the comments of the Hon. Mr Lawson that this is a case where the Legislative Council has improved legislation. I hope that in the following year strong legislation will be introduced to tackle this very serious problem of children being neglected and being at risk because of the drug use of their parents or guardians.'

- 13.7. My examination of the relevant Hansard does not record that the then Minister, Mr Weatherill, made any undertaking in the House of Assembly to ensure, as Mr Xenophon appeared to expect, that there would be a 'system of reporting (with the annual reports)' about the number of cases that were dealt with under section 20(2) of the Act.
- 13.8. I have not had sufficient resources for the purposes of this Inquest to investigate whether section 20(2) has been reported upon in any of the annual reports of Families SA between section 20(2) coming into operation and the date of the Inquest.
- 13.9. It is an indictment of Families SA that its practice is so completely divergent from the clear terms of the Act. I propose to recommend that Families SA should strictly comply with section 20(2) of the Children's Protection Act with immediate effect. Furthermore, that the Minister for Child Protection Reform draw the evidence of Mr Harrison and my remarks concerning section 20(2) of the Act to the attention of the President of the Legislative Council and the Speaker of the House of Assembly with the request from the Coroner's Court of South Australia that the President and the

Speaker draw to the attention of their respective Houses the evidence of non-compliance with section 20(2) by Families SA.

- 13.10. I further propose to recommend that the Minister for Child Protection Reform investigate whether Families SA have in any of its annual reports since 1 October 2006 reported on compliance with section 20(2) of the Act in accordance with the understanding of the Honourable Mr Xenophon MLC as referred to above. In the event that there has been no such reporting, that fact should also be reported to the President and the Speaker and an explanation provided.
- 13.11. This aspect of the case has been particularly concerning to me. It would be useful to reflect on what might have happened had section 20(2) been complied with in the case of Ashlee Polkinghorne and Chloe Valentine. There was a singular instance when Families SA became aware in the clearest possible terms that Ashlee Polkinghorne was abusing illicit drugs. Furthermore, the agency was provided with a recording of Ashlee Polkinghorne boasting about her drug use and boasting that it improved her parenting of Chloe. Armed with that recording Families SA employees obtained an admission from Ashlee that she was indeed a drug user. The admission was only obtained after denials and hostility on her part. Had Families SA complied with its obligations under section 20(2) on that occasion when Chloe was approximately three months old, and made an application under section 20(2) it would have been able to provide the Court with a record of what Ashlee had said and done and her reluctance to admit to the drug use until she was confronted with the recording that had been obtained. The Court could also have listened to the recording itself. It was played in my Court during the Inquest and makes harrowing listening<sup>434</sup>. There is little doubt that the Court would have ordered an examination and assessment of the child and an order directing Ashlee Polkinghorne to undergo a drug assessment. It is even conceivable that the Court might have made an order granting custody of Chloe to the Minister for a limited period of time. Had any or all of these things occurred there is a very real possibility that Chloe's life might have turned out differently.
- 13.12. The next area of divergence between the provisions of the Act and the practices of the agency is in the area of family care meetings. As I explained in my analysis of the

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<sup>434</sup> In my opinion, section 4 of the Listening and Surveillance Devices Act 1972 (the L&SD Act) would not be a bar to the use of the recording in this manner, it clearly being in the public interest that the proper authorities be made aware of the risk to Chloe disclosed by the recording (see section 7 of the L&SD Act). For the same reason I believe that the original act of making the recording was lawful

provisions of the Act under the heading ‘An analysis of the Children’s Protection Act 1993’ family care meetings are a formal process governed by division 1 of part 5 of the Act. A care and protection coordinator is responsible for convening and conducting a family care meeting and the care and protection coordinator must be nominated by the Senior Judge of the Youth Court<sup>435</sup>. The meeting occurs in a relatively formal setting although nothing like as formal as a hearing in the Youth Court might be. The meeting is intended to provide a proper opportunity for a child’s family to make informed decisions to secure the care and protection of the child<sup>436</sup>.

- 13.13. To my mind, a family care meeting affords an ideal opportunity to act as a circuit breaker when a child protection worker is encountering resistance and a lack of cooperation from a parent or guardian of a child. It affords an opportunity for the parent or guardian who might have become familiar with the child protection worker and accustomed to dealing with that person, to be made accountable to another authority, this time an authority more closely associated with the Youth Court itself. In my view the opportunities for influencing a recalcitrant parent or guardian to change behaviour that are offered by a family care meeting are quite clear. It offers an opportunity to make it plain to a parent or guardian who has become accustomed to fending off the efforts of a particular child protection worker or workers and to avoiding their questions to be made accountable to what might be perceived as a ‘higher authority’.
- 13.14. It was common ground, and it is clear from the Act, that although a family care meeting is a necessary prerequisite to the bringing of an application to the Youth Court seeking custody or guardianship of a child that those are not the only circumstances in which a family care meeting can be convened. Furthermore, it is clear that a family care meeting need not necessarily be a precursor to such an application. There is no reason why a family care meeting cannot be convened and completed without there being a subsequent application to the Youth Court for custody or guardianship of a child. Indeed, I note that it is only applications for custody or guardianship that must be preceded in all circumstances by a family care meeting. Other applications under division 2 of part 5, for example an application to ensure that a parent or guardian undergoes appropriate treatment for drug abuse and

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<sup>435</sup> See section 29(1) of the Children’s Protection Act 1993

<sup>436</sup> See section 28 of the Children’s Protection Act 1993

submits to periodic testing for drug abuse need not be preceded by a family care meeting at all. Conversely, a family care meeting may be held without any anticipated application under division 2 of part 5 to the Youth Court at all. Having said that, if a family care meeting is convened and no decisions are made for securing the care and protection of the child or if decisions are made and not implemented or complied with, the Minister is then required to make an application to the Court if of the opinion that a child is at risk and an order of the Court is necessary<sup>437</sup>.

13.15. The evidence at the Inquest clearly showed that Families SA does not make use of family care meetings except for the purposes of fulfilling the formality as a precursor to an application for custody or guardianship. For example, the evidence of Ms Curtis was that she 'just didn't know what would be achieved from a family care meeting at that point'<sup>438</sup>.

13.16. Certainly, the Senior Judge of the Youth Court is of the opinion that Families SA has never fully embraced and utilised the mechanism of family care meetings<sup>439</sup>. The Senior Judge referred in his letter dated 18 February 2015<sup>440</sup> to a culture of resistance to family care meetings in Families SA. The Senior Judge stated that the family care meeting process is a positive benefit to everyone, including Families SA. I respectfully agree with the view of the Senior Judge. It accords with the remarks that I have expressed above. The Senior Judge expresses the opinion that there is a tendency for Families SA in many cases to go through the motions of a family care meeting as a necessary prerequisite to bringing applications for custody or guardianship. He says that such applications are commenced at the same time the matter is referred for a family care meeting and adds:

'This is plainly contrary to the scheme contemplated (indeed required) by the Act.'<sup>441</sup>

His Honour continues with the following damning assessment:

'Moreover, in cases where the Department do not want the matter to resolve at a family care meeting they thwart the process, by refusing to fund the resolution concurred by the family care meeting coordinator; an independent, trained and experienced officer; who

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<sup>437</sup> Section 35 of the Children's Protection Act 1993

<sup>438</sup> Transcript, page 1484

<sup>439</sup> Exhibit C120

<sup>440</sup> Exhibit C120

<sup>441</sup> Exhibit C120

has persuaded the arrangements to secure the care and protection of the child. This acknowledged policy of the Department is, in my view, quite contrary to the spirit and intent of the Act.'<sup>442</sup>

13.17. This is a most alarming and damning assessment coming from the Senior Judge of the Youth Court. Unfortunately however, it is consistent with the other instances of divergence from the requirements of the Children's Protection Act 1993, and the practices and procedures of Families SA that I have already identified and referred to above. It appears that Families SA simply does not have a proper understanding of the legislation that governs its operations in relation to child protection. Certainly in the case of family care meetings, Families SA does not take advantage of the opportunities they afford and it does not utilise the provisions as contemplated by the Parliament when it enacted the Children's Protection Act 1993. This is very unfortunate because it means that Families SA is not fully utilising opportunities that are available to it to intervene more effectively in child protection cases. It is as if a mechanic setting out to carry out servicing and repairing of motor vehicles refused to use any other of the many tools in the workshop, including spanners, screwdrivers, micrometers, lathes and so on and used only a hammer. The net result would be that the mechanic would become extremely frustrated and the car would leave the workshop in worse order than it arrived. Yes this analogy is perfectly fitting in its application to Families SA's blindness to the legislative tools and opportunities that are available to it under the Children's Protection Act 1993.

13.18. Finally I turn to the most fundamental misunderstanding of Families SA in relation to the Children's Protection Act 1993 and the area of greatest divergence between practice and legislation. The overwhelming sentiment expressed by witnesses who were employees of Families SA, with the exception of the former employee Mr Tony Kemp, was that it is quite difficult to obtain an order for care and protection of a child such as Chloe from the Youth Court. Indeed, it was this pervasive theme that led me to write to the Senior Judge of the Youth Court<sup>443</sup> to inform him that evidence had been heard by me about the difficulties or otherwise faced by Families SA in making successful applications for care and protection orders and asking the Senior Judge

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<sup>442</sup> Exhibit C120

<sup>443</sup> Exhibit C120

whether he could provide the Coroner's Court with statistics in respect of outcomes of lodgements of such applications as the evidence before me that that stage was of necessity of an anecdotal nature. The Senior Judge responded most helpfully by letter dated 18 February 2015 with the statistics I requested. They are as follows:

Applications	2009/10		2010/11		2011/12		2012/13		2013/14	
	Lodged	Dismissed								
Investigation and Assessment	210		215		259		227		225	
Extend Investigation and Assessment	57		92		85		47		33	
Care and Protection	403		368		384		397		338	

13.19. The Senior Judge also provided some comments on the table set out above which summarises the data from 2009/10 to 2013/14. He said that it can readily be seen that Families SA has been successful in every single application for investigation and assessment orders, extension of investigation and assessment orders and care and protection orders. No application by Families SA has been dismissed during that period. The Senior Judge said that it is correct that some of the successful applications may not have been entirely successful in the sense of obtaining all orders sought. For example, an application for a long term order may have been refused but an order for a lesser period granted. However, the Senior Judge said this would be only in a small proportion of successful applications. The Senior Judge also rejected any suggestion that difficulties arise in the practice and procedure of the Court. He pointed out that the Court allows a wide scope for the tendering of evidentiary material. The Senior Judge was unable to recall any occasion on which an affidavit or report was rejected. The Senior Judge said provision is made for tendering of Trial Books containing the substance of the Minister's case at the commencement of trials. He pointed out that the Court is not bound by the rules of evidence and acts according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms<sup>444</sup> and that workers can appear by telephone link. It is the Senior Judge's view that the practices and procedures of the Court are as accommodating to all parties, including the Minister, as they could possibly be.

<sup>444</sup> Section 45 of the Children's Protection Act 1993

13.20. Counsel for Families SA did not dispute any of that. I unhesitatingly adopt the Senior Judge's views as part of this finding.

13.21. This leaves me with a glaring disparity between the views of the Families SA employees (apart from Mr Kemp) as to what is possible and feasible by way of an application to the Youth Court, and the reality of the application by the Youth Court of the provisions of the Children's Protection Act 1993. Once again, there is a divergence between the culture and practice of Families SA and the legislation and, in this case, the application of the legislation by the Youth Court.

#### **14. Income management**

14.1. This subject shares a common theme with the topic 'Divergences between the practices of Families SA and the terms of the Children's Protection Act 1993'. The divergence in this instance is between another powerful legislative tool at the disposal of Families SA and Families SA's knowledge of that tool. Furthermore, to the extent that any knowledge had penetrated Families SA on the subject of income management, Families SA had encumbered its flexibility in the use of this most excellent and effective tool by the imposition of an unnecessary barrier to its use.

14.2. I make it quite plain that child protection income management was not available during Chloe Valentine's lifetime. Its relevance in this finding is not to demonstrate that another tool that was available at the time was not used, but rather to:

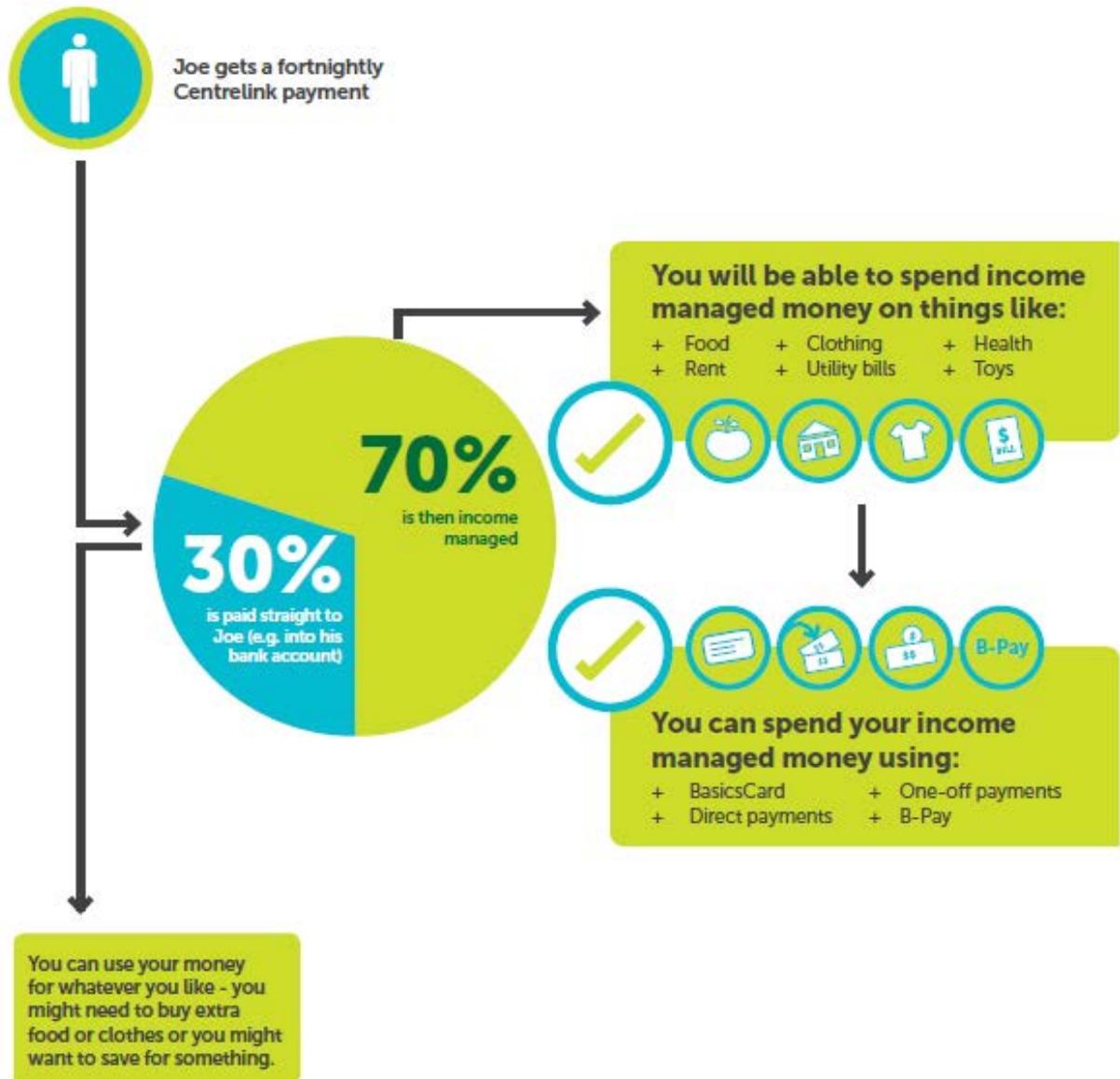
- 1) Note the existence of this tool from mid 2012;
- 2) Consider what preventative opportunities the use of this tool might have afforded had it been available during Chloe's lifetime;
- 3) Consider the use that has been made of child protection income management by Families SA between mid 2012 when it became available and today;
- 4) Make appropriate recommendations.

14.3. I am referring to section 123UC of the Social Security Administration Act 1999 of the Commonwealth. A useful summary of how child protection income management works is to be found in the extract from Exhibit C121 shown over the page.



Australian Government

# How does the child protection measure of income management work?



## More information



To find out more visit [families.fahcsia.gov.au](http://families.fahcsia.gov.au), [humanservices.gov.au](http://humanservices.gov.au) or call 1800 132 594 (for customers).

14.4. Mr Kai Cantwell is the Acting Director of Income Management Operations, Financial and Social Capability Branch of the Commonwealth Department of Social Services<sup>445</sup>. He is authorised to speak on behalf of the Department in relation to section 123UC<sup>446</sup>. He gave evidence by video link.

14.5. Mr Cantwell referred to a Bilateral Agreement for the Implementation of Income Management between the Commonwealth of Australia and the State of South Australia which forms part of his statement<sup>447</sup>. The agreement was signed by the Hon Jenny Macklin MP on behalf of the Commonwealth Government and the Hon Jennifer Rankine MP and the Hon Antonio Piccolo MP on behalf of the South Australian Government. The Bilateral Agreement contains the following notable material:

- 1) The key objectives of income management are to:
  - a) reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients and their children;
  - b) reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
  - c) encourage socially responsible behaviour, particularly in the care and education of children;
- 2) Under Income Management, a proportion of an individual's welfare payment is prioritised for essential items such as food, clothing and housing. In cases

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<sup>445</sup> Exhibit C121

<sup>446</sup> Section 123UC is as follows:

**123UC Persons subject to the income management regime—child protection**

- (1) For the purposes of this Part, a person is **subject to the income management regime** at a particular time (the **test time**) if:
  - (a) at the test time, the person, or the person's partner, is an eligible recipient of a category H welfare payment; and
  - (b) before the test time, a child protection officer of a State or Territory gave the Secretary a written notice requiring that the person be subject to the income management regime under this section; and
  - (c) the notice was given:
    - (i) under a law (whether written or unwritten) in force in a State or Territory (other than a law of the Commonwealth); or
    - (ii) in the exercise of the executive power of a State or Territory; and
  - (d) at the test time, the notice had not been withdrawn or revoked; and
  - (e) at the test time, the State or Territory is a declared child protection State or Territory; and
  - (f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and
  - (g) at the test time, the person is not subject to the income management regime under section 123UF.
- (2) For the purposes of this Part, a person is **subject to the income management regime** at a particular time (the **test time**) if:
  - (a) at the test time, the person is not subject to the income management regime under any other provision of this Subdivision; and
  - (b) at the test time, the person has a Part 3B payment nominee; and
  - (c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).

<sup>447</sup> Exhibit C121

where children are at risk of neglect, it also ensures that welfare payments are spent in the best interests of children. Income managed funds cannot be spent on excluded items such as tobacco, alcohol (including home-brew kits and concentrates), gambling and pornography;

- 3) South Australia has agreed to participate in the implementation of income management on a trial basis, during a period which expires on 30 June 2016<sup>448</sup>;
- 4) Clause 5.5(b) of the Agreement says that as part of the trial, child protection income management will be used as an additional tool<sup>449</sup> to assist Families SA child protection workers in meeting the needs of children, young people and families in the trial locations. Child protection workers will be able to give a notice to DHS<sup>450</sup> for child protection income management. The decision making process under which Families SA will give a notice will be set out in Families SA policy and procedures<sup>451</sup>;
- 5) Clause 6.2 of the Agreement says that child protection income management provides a tool that the State can use as part of its functions, powers and duties in relation to the care, protection and welfare of children and young people. Child protection income management will redirect payments provided by the Commonwealth to promote the care and protection of children and young people by ensuring that family income is appropriately prioritised to meet their needs;
- 6) One of the principles of child protection income management is that individuals who are subject to the functions, powers or duties of a child protection worker and who receive relevant Commonwealth income support payments should use those payments to ensure children and young people are adequately housed, clothed and fed<sup>452</sup>;
- 7) Child protection income management is intended for cases where a child protection worker has identified that concerns for the care, protection or welfare of a child or young person are related wholly or in part to the use of

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<sup>448</sup> See Clause 2 of the Bilateral Agreement

<sup>449</sup> The underlining is mine

<sup>450</sup> The Commonwealth Agency responsible for administering the Social Security Act of the Commonwealth

<sup>451</sup> The evidence in this case disclosed that there are no such policies and procedures within Families SA at the date of the Inquest

<sup>452</sup> See Clause 6.2.1(e) of the Bilateral Agreement

available financial resources by an individual such that the priority needs of that individual and/or their children are being inadequately met and it is considered that income management will assist the individual to appropriately apply available financial resources to meet their and/or their children's priority needs<sup>453</sup>;

- 8) Clause 6.2.3 of the Agreement provides that the parties, namely South Australia and the Commonwealth, agree that child protection income management will be used as a tool to assist the child protection process with the purpose of achieving the following direct outcomes for the care and protection of children and young people:
  - a) a portion of the individual's relevant welfare payments is directed so that the priority needs of any dependant child are satisfactorily met
  - b) the wellbeing of the child is improved as a result of the intervention;
  - c) the individual's ability to manage their income for the benefit of themselves and their children is improved;
- 9) Clause 7.2.b.ii provides that it is part of the Commonwealth's responsibility under the agreement to ensure that persons subject to income management are not disadvantaged and that they have access to a good range of convenient and culturally appropriate shops, services and facilities through the development of a merchants strategy. This will extend to people who move outside the relevant trial location but remain on income management;
- 10) Clause 7.3.a.i provides that the South Australian Department for Education and Child Development (Families SA) will identify individuals who reside in a trial location and who are case managed by a case protection worker and who may benefit from child protection income management;
- 11) Clause 7.3.a.vi says that the South Australian Department for Education and Child Development (Families SA) will provide information and data to the

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<sup>453</sup> See Clause 6.2.2(a) of the Bilateral Agreement. I note that had child protection income management been available during Chloe's short life it would have been ideally suited as a 'tool' to assist in procuring Chloe's welfare. The evidence in this case showed again and again that Ashlee Polkinghorne used the funds were available at her disposal, including particularly Commonwealth support payments, for practically any purpose other than securing Chloe's basic needs. She was frequently unable to provide Chloe with a house to live in, she was frequently unable to provide Chloe with adequate food and she was frequently unable to provide Chloe with adequate clothing. All of these shortcomings in Ashlee Polkinghorne's parenting could have been addressed and corrected by the diversion of her Commonwealth support benefits to Chloe's needs rather than going directly to Ashlee so that she could use them for alcohol and drugs which she clearly did.

Commonwealth for evaluation reports to determine how the agreement is working;

- 12) Schedule 1 to the Agreement provides that the implementation location in South Australia is the City of Playford which is defined as the City of Playford Local Government Area. Mr Cantwell's evidence was that this includes some 37 suburbs<sup>454</sup>;
- 13) The Agreement provides that it is the responsibility of the South Australian Department for Education and Child Development (Families SA) to communicate the benefits of income management to child protection workers<sup>455</sup>;
- 14) It is a further responsibility of the South Australian Department for Education and Child Development (Families SA) to develop material for child protection workers around assessment and referral processes to ensure they are well informed of the policy and to develop information for internal use by staff for training and ongoing information purposes as appropriate<sup>456</sup>;
- 15) Clause 3c of Attachment 3 to Schedule 1 of the Agreement provides that for the purposes of an evaluation strategy which is to be undertaken by independent researchers from Deloitte Access Economics the following questions are to be asked:
  1. What has been the impact of income management on child neglect/abuse?
  2. What has been the impact on child physical and mental wellbeing in those families referred to child protection income management?
  3. What are the barriers and facilitating factors for child protection workers to use income management as a casework tool?

14.6. The evidence that was presented to this Inquest demonstrates that the State of South Australia will be unable to assist Deloitte Access Economics in the evaluation process and that each of those three questions will not be meaningfully answered because

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<sup>454</sup> Transcript, page 2228

<sup>455</sup> Paragraph 5 of Attachment 2 to Schedule 1 of the Bilateral Agreement. The evidence at the Inquest shows that Families SA has failed to fulfil this responsibility.

<sup>456</sup> Paragraph 7 of Attachment 2 to Schedule 1 of the Bilateral Agreement. This is a responsibility which the evidence at the Inquest showed that Families SA has completely failed to comply with.

there will be a dearth of information available for that purpose, as will become apparent below.

14.7. The evidence at the Inquest is quite clear that no employee witness of Families SA apart from Mr Harrison and the former employee, Mr Kemp, had any proper appreciation, and in some cases no appreciation, of the availability of child protection income management. This is notwithstanding the fact that as at the date of the Inquest the Commonwealth legislation regarding child protection income management had been in place since mid 2012 and the Bilateral Agreement had been in place for more than a year. The most glaring piece of evidence about the use that has been made of this child protection measure, or tool, was that of Mr Cantwell who said that as at the date of his evidence in February 2015 there has only been one person in South Australia who has been nominated for income management by Families SA, and that person for only a period of six months<sup>457</sup>. The State Government solemnly committed, through the signatures of two Ministers, to the highly detailed and elaborate Bilateral Agreement which I have summarised above. The Agreement itself is 84 pages long. It would seem to me that the work involved in preparing the agreement exceeds, by a very long measure, the work that has been put into its implementation by Families SA to date. The question that one is led to ask is: what is the point of signing an elaborate agreement about child protection income management and barely using it? The evidence was clear that there was a dearth of knowledge and awareness in Families SA of the availability of child protection income management. The witnesses were each asked about their awareness of child protection income management and each of them had either never heard of it or had some hazy knowledge of what is known as the Northern Territory Intervention which does not have any relevance to South Australia.

14.8. It is clear that no proper effort has been made by the State of South Australia to comply with its obligations under the Bilateral Agreement. This is a further example, and a very glaring example, of Families SA failing to use a legislative tool for child protection purposes, a tool that is readily available and easy of implementation. Nothing more is required than for a child protection worker to enter a secure website that is available via the Commonwealth agency and at the press of a button the task is complete. The fact that this has only occurred once in a period of, at the very least,

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<sup>457</sup> Transcript, page 2236

18 months, is staggering. It is obvious that vastly more than one single person in the Playford area would have been appropriate for the income management trial during that period. It is obviously the case that with the trial scheduled to come to an end in June 2016 that on the present trajectory, the State will have made no proper effort to trial child protection income management in accordance with the Bilateral Agreement. The extremely elaborate and thorough evaluation process envisaged by the Agreement via Deloitte Access Economics will be a useless exercise because there will be no data on which to form a proper evaluation.

14.9. Thus, the first major obstacle to the use of income management as a child protection tool is that Families SA appears to have largely ignored it and has failed to inform its staff about the availability of income management as a child protection tool, despite the State's obligations under the Bilateral Agreement. However, there is a second, more fundamental, difficulty. That is that according to the evidence of Mr Cantwell Families SA requires that a welfare recipient's consent be obtained before they will be referred to income management<sup>458</sup>. As Mr Cantwell said, the obtaining of consent is not a Commonwealth requirement. Mr Cantwell appeared to be of the impression – he was by no means certain about this – that the obtaining of consent may be a legislative requirement in South Australia. In fact, that proves not to be the case as confirmed to me by counsel for Families SA on instructions. Counsel informed me that this is a 'policy decision' and not a requirement of any South Australian Act or law<sup>459</sup>. It is concerning that despite being a Commonwealth official, Mr Cantwell is more familiar with the operation of child protection income management in South Australia than any other witness including the Chief Executive, Mr Harrison.

14.10. According to Mr Cantwell the State of Western Australia and the Northern Territory do not require consent before the imposition of child protection income management. He said that in Western Australia there are 301 cases of child protection income management and there are 67 in the Northern Territory<sup>460</sup>. Mr Cantwell said that there are three cases of child protection income management in Queensland and two in New South Wales. His evidence was that the low numbers in Queensland and New South Wales may also be accounted for by the requirement of consent in those jurisdictions.

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<sup>458</sup> Transcript, page 2229

<sup>459</sup> Transcript, page 2253

<sup>460</sup> Transcript, page 2237

- 14.11. It seems to me to be an unnecessary burden on the effectiveness of income management to require a person's consent. It is quite clear from the evidence that I heard in this case that Ashlee Polkinghorne would never have consented to income management, and yet it is obvious that it would have been highly effective in diverting her income to Chloe's welfare rather than to drugs for Ashlee's personal use. In short, the imposition of a requirement that consent be obtained before this tool is used effectively renders it impotent in this State. This is clearly demonstrated by the statistics I have referred to above.
- 14.12. Mr Cantwell also gave very helpful evidence about the mechanics of income management arrangements. For example, if a person living in the Playford area becomes subject to child protection income management, they cannot escape its consequences merely by moving out of the Playford area. Once they are subject to income management they remain subject to income management. Mr Cantwell said that there are a large number of merchants who accept the 'basics card' that is provided by Centrelink for income management purposes. He also said that Centrelink replaces basics cards that are lost free of charge and immediately upon the person presenting to a Centrelink office. Thus in that respect the cards are more convenient than bank issued credit cards. Mr Cantwell also said that it would be possible for a child protection worker in South Australia through a conversation with his or her counterpart in Mr Cantwell's Department to negotiate the application of child protection income management upon a person who was not resident in the Playford area if the child protection worker wished to do so.
- 14.13. In short, there are no impediments to the wide application of child protection income management in this State. The Bilateral Agreement itself envisages that other areas apart from the Playford area could be included by negotiation, and as I have already said, Mr Cantwell left open that possibility on a case by case basis. The system is well thought out and an excellent Commonwealth Government initiative. It falls down when it comes to Families SA actually making use of it.
- 14.14. This Inquest began in August 2014. The matter of income management was raised with various Families SA witnesses from that time. Mr Harrison was the last witness to give evidence at the Inquest in February 2015 after 30 days of sitting. I would have expected Mr Harrison to be well aware that income management was a matter that the Court was exploring. He was asked about the matter of consent and whether there is a

written policy in Families SA about the requirement for consent to be obtained before income management is applied. Mr Harrison responded:

'I would have to find that out for you. I'm not aware of that, whether it is the case or not.'<sup>461</sup>

Mr Harrison did agree that child protection income management is an excellent tool<sup>462</sup> and he agreed that the obtaining of consent is an unnecessary blockage to the use of that tool<sup>463</sup>.

14.15. It has been said of measures such as income management that they rob welfare recipients of dignity and autonomy. I note that the Commonwealth Government announced on 22 March 2015 that it proposes to trial the use of an extended form of income management at the end of 2015 to reduce the extent to which benefits are spent on alcohol, drugs and gambling<sup>464</sup>. This proposed trial is not conditioned on the existence of a child protection concern, but will apply generally. It is not for me to comment on that proposal, but I am strongly of the opinion that money provided by the Government as a welfare measure should not be spent on illicit drugs, alcohol, cigarettes or gambling when a child of the recipient is subjected to anything less than parenting that conforms to standards commonly accepted by right thinking members of society. And when that parenting has descended to a level that has attracted the attention of Families SA, the case is irrefutable: no welfare benefits should be wasted on illicit drugs, alcohol, cigarettes or gambling. Finally, if it is suggested that to impose such a measure on a parent who is believed to be abstaining from all of those habits is patronising or condescending, I respond that if they are abstaining from those things, they will not be adversely affected.

14.16. I propose to recommend that Families SA direct its staff to actively apply child protection income management in the Playford area of South Australia and that the 'policy' of obtaining a benefit recipient's consent to that course be abolished. Furthermore, I propose to recommend that the State Government take immediate steps to negotiate with the Commonwealth Government for the declaring of areas other than the City of Playford as declared areas for the imposition of child protection income management. There is no sensible rationale for confining to one geographical area a

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<sup>461</sup> Transcript, page 2531

<sup>462</sup> Transcript, page 2532

<sup>463</sup> Transcript, page 2532

<sup>464</sup> <https://alantudge.dpmc.gov.au/media/2015-03-22/doorstop-4-treasury-place-melbourne>

tool which could have the effect of benefitting many children at risk of neglect and abuse in this State who happen to live outside of the geographical area of the City of Playford. It is absurd to impose a geographical limitation of that kind in my opinion. Finally, I propose to recommend that the State Government begin negotiations with the Commonwealth Government with a view to making the child protection income management regime a permanent structure and to that end, negotiate an indefinite extension beyond 30 June 2015 which is when the present Bilateral Agreement expires.

## 15. **Family reunification**

- 15.1. Under the heading ‘An analysis of the Children’s Protection Act 1993’ I mentioned that one of the objectives of the Act is to recognise the family as the primary means for providing for the nurture, care and protection of children. I also pointed out that the definition of family in section 6 of the Act includes the child’s extended family. In Chloe’s case of course her extended family included her maternal grandmother, Ms Valentine, who made it quite plain in her evidence that at all times she was willing and prepared to take Chloe into her care<sup>465</sup>. What she was not prepared to do, was to have Ashlee in her home because of Ashlee’s disruptive and antisocial behaviour and the impact that that would have on Ms Valentine herself and her other family members including her children<sup>466</sup>. Alan Polkinghorne made the same offer.
- 15.2. Clearly no consideration was ever given by Families SA to the option of placing Chloe with Belinda Valentine or Alan Polkinghorne. It appeared to me that there was an assumption that Chloe should remain with her mother and the threshold for removal would not be reached until Chloe was actually in imminent danger of being harmed. But Chloe suffered neglect for her whole life until the final period of physical abuse that she was subjected to in the days preceding her death. Over that four and a half years of neglect, in each instance where Chloe was exposed to the risk of harm, her mother made some arrangement to lower the risk to its habitual cause of barely adequate parenting<sup>467</sup>. So the Families SA threshold of imminent danger of being harmed was never reached. A number of Families SA witnesses referred to the objective of maintaining a family environment for Chloe<sup>468</sup>. However, given that they

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<sup>465</sup> Transcript, pages 2310, 2316, 2335, 2336, 2344, 2349, 2376

<sup>466</sup> Transcript, pages 2347, 2349

<sup>467</sup> Which I have described as unacceptable and inadequate according to the standards of rightful thinking members of society

<sup>468</sup> Cheverton Transcript, pages 345-346, Morris Transcript, page 1176, Curtis Transcript, page 1373 and Harrison, Transcript, page 2496

never gave any consideration to placing Chloe in Belinda Valentine's or Alan Polkinghorne's care, even temporarily, it would seem that the conception of 'family' for Families SA workers in Chloe's case was Chloe and Ashlee Polkinghorne. Ashlee was only a couple of weeks past her 16<sup>th</sup> birthday when Chloe was born. Even the most highly functioning, emotionally mature and responsible 16 year old is not equipped to undertake the responsibility of caring for an infant without extensive, constant and continuous assistance. By her actions, Ashlee had made it impossible for her to have that kind of assistance from her mother or her father. The fact was that there was no such assistance available for Ashlee from the moment of Chloe's birth. Furthermore, Ashlee was far from the model teenager I have described above. She was emotionally immature and completely irresponsible. In short, the notion of her being able to provide a proper nurturing family environment for Chloe was fanciful from the outset.

## **16. Cumulative harm**

- 16.1. During the course of the Inquest it was common ground that for most of her life Chloe suffered chronic neglect. The threshold for removal of imminent danger of harm was reached several times, but Ashlee made some arrangement to alleviate the risk, or by the time Families SA became aware of the episode, the risk was no longer imminent. The situation had returned to the usual chronic neglect.
- 16.2. Families SA approached each of these instances without reference to those that preceded them, and the general pattern of chronic neglect over a period of years. It was suggested that the Children's Protection Act 1993 should be amended to make it clear that cumulative harm is a relevant factor in making decisions about the care of a child. I agree that this is a sensible proposal, but with this qualification: the inclusion of the words cumulative harm in the objects section of the Act will not achieve anything unless it is acted on. The fact is that there is nothing to prevent Families SA building a case for a care and protection order based on sufficient evidence of multiple instances of neglect. Merely including these words in the Act without more will not solve anything apart from creating an impression that something is being done in response to Chloe's tragic death. Far more than this is needed to prevent a repetition. Nothing less than a massive overhaul of Families SA and the culture and training of its staff will suffice.

**17. Children are not possessions**

- 17.1. The danger in the heavy emphasis placed on family reunification by the Children's Protection Act 1993 is that some people, and I include Ashlee Polkinghorne in this, regard children as possessions or items of property. It is a terrible thing to say, but the conclusion I have reached is that Chloe was nothing more than an item of property to be utilised by Ashlee Polkinghorne for her own benefit. Chloe represented nothing more to Ashlee than a means by which her income could be enhanced by obtaining support payments not available to a childless person. She also used Chloe as a pawn or bargaining chip to deploy in order to manipulate other people such as Belinda Valentine, Krystal Benyk, Lesley Benyk and indeed the various child protection workers employed by Families SA involved in the case. Ashlee simply had to threaten these people with the prospect of denying them access to, or contact with, Chloe unless they complied with Ashlee's demands and requirements. The threat was that if they failed to do so they would cease to be able to satisfy themselves that Chloe was safe. That was the desire of everyone connected with Chloe with the exception of Ashlee and her various domestic partners. The threat of losing contact with Chloe and providing her with whatever succour was able to be given in the time allotted to them for that purpose by Ashlee, was the device by which Ashlee was able to bend them to her will.
- 17.2. In short, Ashlee deployed Chloe as a possession or a piece of property. She could deploy Chloe in a way that would assist her to obtain her own personal objectives. Of course, the various people who were manipulated by her by this device saw Chloe as a precious vulnerable child and they all acted accordingly.
- 17.3. To me, the flaw in the conception of Ashlee and Chloe as a family within the context of the Children's Protection Act 1993, and the philosophy of Families SA, is that it enabled Ashlee Polkinghorne to deploy Chloe as a possession.
- 17.4. In the course of hearing other child protection cases it is clear to me that Ashlee Polkinghorne is not the only person in society who has this attitude to children. There is a clear need to act early to save children such as Chloe by removing them to a safe environment and preventing the cumulative harm that accrues while they remain in the custody of parents who are not interested in treating them as precious children, but simply as possessions to be applied for the parents' advantage.

**18. Continuity of care**

- 18.1. Over the time that Families SA was involved with Chloe and Ashlee, many different workers dealt with the matter for various periods. Each of them gained knowledge about the factors that were affecting Chloe's safety. They also gained knowledge about Ashlee's patterns of behaviour. There are clear and obvious benefits in using this kind of knowledge seamlessly in the management of a child protection case. Yet Families SA did not allocate Chloe's file to the same worker or workers in order to maintain continuity of care. Nor did Families SA mandate that there be a formal handover of the case when there was a transfer of case management from one worker to another. This lack of continuity meant that the significance of particular events and patterns of behaviour was not recognised at crucial stages of the case. To exacerbate the problem, note taking was grossly inadequate for much of the time. I intend to recommend that Families SA should allocate cases to workers so that there is continuity of care in the management of children at risk.

**19. Note taking**

- 19.1. I have found that the note taking in Chloe's case was, more often than not, grossly inadequate. To make matters worse there were cases of selective noting, with the effect that the overall impression was misleading. The worst instance of this was Ms Heading's note on the occasion when Chloe was left with the teenager and Belinda Valentine was asked in the middle of the night to go to an unfamiliar address to pick her up. The note stated the Ms Valentine would do so 'if she must'. There was no mention of the other factors at play for Ms Valentine - her two young boys in bed without anyone to look after them if she left, the fact that she had only one child seat in the car, and so on. This selectivity was mischievous and deliberately suggested that Ms Valentine was unhelpful and uncaring of her grandchild's welfare. The next social worker to read the file would gain an unfair impression of Ms Valentine, with the result that she might be regarded as an unsuitable potential placement option for Chloe. This was not only unfair to Ms Valentine, but also did a disservice to Chloe.
- 19.2. Note taking is intended to record matters factually and accurately. There is, I suppose, a place for social workers to record their opinions of people and their behaviours and motivations in the case notes, but these should be expressly recorded

as opinions, and not mixed in with the factual record of the event. I intend to recommend that Families SA train social workers in the art of proper note taking, with emphasis on the need to be factually accurate, and make a clear distinction between the facts of an event and the worker's opinions and judgements about the event and particular individuals.

## **20. Ashlee Polkinghorne's responsibility**

20.1. This Inquest has found many flaws in the processes of Families SA. But I have kept steadily in mind throughout that the person with primary responsibility for Chloe's sad and tragic life was Ashlee Polkinghorne. I have also given a great deal of thought to the fact that Ms Polkinghorne will be released from prison in a very few years, and that the tragedy of Chloe's life will be repeated in the likely event that Ms Polkinghorne has another child, bearing in mind that she is only in her early 20s. I do not suggest that her next child will inevitably die as a result of her criminal neglect as Chloe did, but I am satisfied on the evidence I have seen that Ashlee Polkinghorne is not fit to be a parent. In my opinion it would be reasonable for the Children's Protection Act 1993 to be amended to deal with this situation by providing that a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder<sup>469</sup> will, by force of the Act, be placed from birth under the custody of the Minister. The Act should then continue to apply to the child in the same way as if the custody had been ordered by the court under section 38(1)(d), so that the parent might apply to the court for a variation or revocation of the custody of the Minister. Furthermore, the Minister would have the same powers in relation to the child as any other child under the Minister's care and protection: for example, the Minister might, by section 51(1)(a), permit the child to remain in the care of some other member of the child's family. This might, for example, include the other parent of the child, who may have no previous conviction in relation to children, and may be a suitable person to care for the child. In such a case the Minister should be empowered to impose conditions on the convicted parent's dealings with the child, if the parents are still in a relationship. That would alleviate the risk that the proposal might work an injustice upon a person with no relevant conviction who happens to have a child with a person to whom the section applies. The Minister would be able to place the child with that parent, if satisfied

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<sup>469</sup> I have only mentioned murder. The amendment should also include other forms of homicide not involving a conviction, for example, cases dealt with under section 269 of the Criminal Law Consolidation Act.

that he or she was committed to ensuring that the child would be protected from neglect or abuse at the hands of the convicted parent.

- 20.2. The power vested in the court to vary or revoke the Minister's custody might be exercised in the convicted parent's favour in the event that they could establish to the court's satisfaction that they had changed their behaviours and attitudes so that the court could be satisfied that they would not subject the child to abuse or neglect. The court might direct that assessments and investigations be carried out by appropriate experts to assist it. By this means the proposal would not prevent a person such as Ashlee Polkinghorne being able to demonstrate that they had, with time, fundamentally changed.
- 20.3. An amendment to the Act in those terms would prevent Ashlee Polkinghorne neglecting and abusing a future child, if it were enacted before her current incarceration ends by remission or parole.

## **21. Summary of key issues**

- 21.1. Intelligent application of the legislative tools available to secure compliance with Families SA's goal of forcing Ashlee to be a reasonable parent should have been the true objective. After all, that was the only option available to Families SA if it did not move to remove Chloe. It could either allow the matter to drift aimlessly, or it could use whatever tools it had available to it to force Ashlee to do what was necessary. Unfortunately, Families SA took the path of least resistance and the whole history of its dealing with Ashlee is a history of drift, irresolution and aimlessness. Had Families SA intelligently and strategically applied the legislative tools available to it much more readily, and much earlier, there is every chance that one of two things would have happened. The first possibility is that Ashlee might have changed her ways and become a more responsible parent. As unlikely as that now seems, it must have been a possibility given her very young age and the extended family assistance that would have been available to her if she modified her behaviour. The other possibility is that by increasing the pressure on Ashlee through the strategic and intelligent application of the legislative options, the agency would have brought the matter to a head in the short to medium term. By this I mean that if a family care meeting had been convened and its stipulations and goals had not been met by Ashlee, the next stage would have been to elevate the matter for strategic orders from the

Youth Court, for example drug assessments, vocational training and so on. If those goals had not been met by Ashlee, then the Youth Court could have been persuaded without much difficulty to have removed Chloe from Ashlee's care for a short or longer term period.

- 21.2. Section 20(2) of the Children's Protection Act 1993 says that if Families SA suspects on reasonable grounds that a child is at risk as the result of the abuse of an illicit drug by a parent, it must apply to the Youth Court to direct a drug assessment. There were several occasions when there was ample evidence of methamphetamine abuse by Ashlee and, multiple instances where there were grounds to suspect it. Yet no application was ever made. The evidence of Mr Harrison showed this to be a systematic failing in Families SA.
- 21.3. Mr Kemp summarised Families SA's shortcomings. He said it was being seduced into mediocrity. Some social workers had poor quality of practice. Their assessments were not assessments, but story-telling. There was a lack of analysis, a lack of clinical supervision and a lack of leadership. In summary, it was broken and fundamentally flawed.
- 21.4. Ashlee was given virtually limitless opportunities to address her problems. She was given three supported accommodation options, she was provided with government subsidised childcare five days per week for an extensive period, she was provided with assistance by Time for Kids and she was provided with a great deal of support by the various workers from Families SA who focussed on her needs, from driving her to real estate agents to find accommodation, to driving her to Yatala Labour Prison to visit with Lagden to advocating on her behalf with supported accommodation providers, to providing taxi vouchers, furniture storage facilities, financial assistance to buy furniture for her various dwellings and much more. The fact is that she was demonstrably unable to properly care for Chloe. The pendulum has swung too far in protecting the 'rights' of dysfunctional parents. Instead of Families SA workers performing menial cleaning tasks for Ashlee, their time should be used rigorously analysing the evidence and, if necessary, building a case to put to the Youth Court.
- 21.5. Social workers cannot act in the best interests of a child and the child's irresponsible parent simultaneously. At times it seemed Chloe's interests had been forgotten completely while the focus was on Ashlee and her demands. A child's interests can

and do sometimes conflict with the parents'. It must be a standard approach for workers to always act in the child's best interest only.

- 21.6. Mr Harrison and Mr Kemp both thought that the answer to Families SA's problems is not necessarily more resources, yet a number of staff witnesses made that claim. Clearly Families SA needs a system to measure the performance of individuals in its agency and to measure work volume and uncompleted work. This Court often hears public sector workers claiming that overwork was their reason for not doing something which has ultimately contributed, directly or indirectly, to a death. Such claims are easily made but should be approached with caution in the absence of independent evidence about the volume of work actually performed by the person making the claim and his or her effectiveness in performing that work. For example, driving Ashlee to an appointment with a real estate agency is hardly as high a priority as making proper case notes or contacting all informants for a particular notification.
- 21.7. The audio recording of Ashlee boasting about using methamphetamines and it making her a better mother was described by Ms Francou as a turning point in the case for her to be able to do something. Ashlee had lied to Ms Francou about drug use and even tried to deny that the recording was her voice. Yet Ms Francou saw her as a terrified kid of 16 being confronted by senior social workers who she would find very intimidating. She was quite wrong. Ashlee's behaviour was not that of a terrified kid. It was the behaviour of an accomplished liar practised in deceit and manipulation. Ms Francou misread her completely and was fooled into thinking Ashlee had seen the error of her ways and would make positive changes. Ms Francou turned down Ashlee's offer to submit voluntarily to regular drug testing as unnecessary. That was a fundamental mistake. Ashlee would go on with her hedonistic selfish lifestyle and continue to neglect Chloe.
- 21.8. The safety agreement prepared by Mr Ratsch that used the words 'Ashlee and Tom agree that when they choose to consume alcohol or drugs' directly contradicted the undertaking Ashlee had made shortly prior to cease drug use altogether. It was another fundamental mistake. It might have been appropriate for adult parents who had a long history of drug use, but not for a 16 year old.
- 21.9. What if Families SA had complied with section 20(2) of the Act when it had the audio recording of Ashlee boasting about using methamphetamines and it making her a

better parent of Chloe? Families SA would have provided the Youth Court with the audio recording and the fact that she had denied drug use up until it was played and had even attempted to deny it was a recording of her speaking. There is little doubt that the Court would have ordered that Ashlee undergo a drug assessment and that Chloe be assessed. The Court might have ordered that Chloe be placed in the Minister's custody for a time. If these things had happened, Chloe's life might have turned out differently.

- 21.10. When the Salvation Army workers attended Ashlee's unit and, finding it unlocked, went inside to find the conditions to be filthy and chaotic, Mr Ratsch noted on his file that they had trespassed. He told Ashlee that they had no right to enter her unit, despite the fact that their visit disclosed legitimate child protection concerns. This only made Ashlee more contemptuous of authority than she already was. It was a foolish and ultimately dangerous thing to do.
- 21.11. There were at least two options of alternative care for Chloe that met the Children's Protection Act 1993 definition of family: Belinda Valentine and Alan Polkinghorne. Yet neither option was ever considered. The principle of maintaining Chloe in her 'family' situation was applied much too rigidly.
- 21.12. When Chloe needed to be rescued in the middle of the night after her paralytic mother left her in the care of a 15 year old, Ms Heading of the Crisis Care Unit decided that Chloe would be transported by a hire car company with an unknown driver and delivered to Ashlee who was rudely and angrily demanding Chloe's return. Ms Heading had first attempted to get Belinda Valentine to collect Chloe but she was unable to do so as it was the middle of the night and she was already caring for her own young children. Ms Heading made a note suggesting that Ms Valentine was simply unwilling to take her granddaughter without referring to her understandable logistical difficulties. She sent Chloe as a hostage to fate with a complete stranger into a situation she admitted she would not have entered except in the company of a colleague for safety reasons. She failed to discharge her duties to an appropriate standard of care.
- 21.13. Ms Stewart said that when Ashlee refused to disclose to her the identity of the person who assaulted her in Chloe's presence and refused to further discuss the matter, Ms Stewart believed she could not seek further information from other potential sources

without Ashlee's consent. If that were true, it meant that Ms Stewart could not contact various people in Ashlee's life to seek answers, even though she had spoken to them previously and knew they were willing to pass on information they had. An inability even to ask questions without the subject's consent would be a barrier to investigation. It was plainly wrong. Yet it was a view that was generally held in Families SA. The Children's Protection Act 1993 does not impose any limit on the ability of a social worker to ask questions, and there is certainly nothing in the Act that requires consent be obtained first.

- 21.14. An organisation that is setup to investigate child protection matters cannot function and carry out its basic charter without having a culture under which it is not only appropriate, but necessary, to ask questions if those questions will provide information that will assist in securing a child's safety.
- 21.15. When Ashlee was assaulted by Dylan Hindle but refused to tell Ms Stewart who had done it, as a public officer Ms Stewart had been informed of a crime. In my opinion it was her duty to report this matter to the police regardless of Ashlee's attitude to the matter. That was Ms Stewart's duty as a public officer and the duty of any other Families SA worker who became involved in the situation. In my opinion that should have occurred at the very least.
- 21.16. When Ms Stewart learnt about Dylan Hindle's paedophile history from an internet news site but did not inform Ashlee for privacy reasons, her position was simply preposterous. On no view could any sensible person arrive at the conclusion that information they had obtained in the public domain could not be conveyed in these circumstances, particularly where Ashlee needed to know about the history of the man she was involved with. It is frightening and concerning to think that Ms Stewart could reach such a bizarre conclusion, particularly after conferring with a colleague who apparently agreed with her. It is difficult to comprehend how an organisation could produce two employees who would reach a conclusion such as this. It is only possible to conclude that there are serious deficiencies in the training of Ms Stewart, Mr Carr and any other person who would operate in this way.
- 21.17. In January 2011 a notification about Chloe's neglect and Ashlee's prostitution was investigated by workers Mr Bailey, Ms Clarke and Mr Rainsford. When they visited the home they did not engage with Chloe at all although she was then 3½ years of

age. They did not contact all the informants. To describe this as an investigation is to glorify it with a title it does not deserve. The resulting 'assessment' was not worthy of the name. It was full of inaccuracies.

21.18. Some people, including Ashlee Polkinghorne, regard children as possessions. Chloe represented nothing more to Ashlee than a means by which her income could be enhanced by obtaining support payments not available to a childless person. She also used Chloe as a bargaining chip to manipulate her friends and Families SA workers. The concept of family preservation should only apply to parents who treat their child as precious – not a mere possession to be used for their own benefit.

21.19. The inclusion of 'cumulative harm' as a criteria of risk in the Act is an unobjectionable proposal: but merely including the words in the Act without more will not solve anything apart from creating an impression that something is being done in response to Chloe's tragic death. Far more than this is needed to prevent a repetition. Nothing less than a massive overhaul of Families SA and the culture and training of its staff will suffice. The question should not be whether a child is safe at a given point in time. Mr Kemp said:

'A moment in time of alleged safety does not a child safe make.'<sup>470</sup>

21.20. Only 114 Australian children were adopted in 2009-10 compared to more than 8,500 in the early 1970s. If Australian children in care were adopted at the same rate as in England, there would have been 1,700 adoptions in Australia. If at the same rate as in the United States, there would have been 4,800 adoptions in Australia. Permanent removal to adoptive parents must have a place in South Australia's child protection system.

21.21. Child protection income management has been a tool at Families SA's disposal since 2012, yet only one person has been subject to income management in that time. This is because Families SA unnecessarily seeks the permission of the benefit recipient before invoking income management, despite the fact that their child is at risk of abuse or neglect. Very few people would consent to the discipline of income management. Consent is unnecessary and creates an unnecessary impediment to the wide use of income management. It should be used much more frequently, and the nonsensical prerequisite of consent should be cast aside.

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<sup>470</sup> Transcript, page 2032

- 21.22. Money provided by Government to the parents of children who are at risk of abuse or neglect should not be spent on illicit drugs, alcohol, cigarettes or gambling. If such parents are not already wasting Government benefits on such things, they have nothing to fear from income management.
- 21.23. The law should be amended to provide that, with certain qualifications, a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder will, by force of the Act, be placed from birth under the custody of the Minister.

## **22. Recommendations**

- 22.1. Pursuant to Section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest. I make the following recommendations directed to the Minister for Child Protection Reform and the Minister for Education and Child Development.
- 22.2. I recommend that the Children's Protection Act 1993 be amended to provide that a child born to a person who has a conviction in respect of a child previously born to them for manslaughter by criminal neglect, manslaughter or murder<sup>471</sup> will, by force of the Act, be placed from birth under the custody of the Minister. The Act would then continue to apply to the child in the same way as if the custody had been ordered by the court under section 38(1)(d), so that the parent might apply to the court for a variation or revocation of the custody of the Minister. Furthermore, the Minister would have the same powers in relation to the child as any other child under the Minister's care and protection: for example, the Minister might, by section 51(1)(a), permit the child to remain in the care of some other member of the child's family. This might, for example, include the other parent of the child, who may have no previous conviction in relation to children, and may be a suitable person to care for the child. In such a case the Minister should be empowered to impose conditions on the convicted parent's dealings with the child, if the parents are still in a relationship. That would alleviate the risk that the proposal might work an injustice upon a person with no relevant conviction who happens to have a child with a person to whom the

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<sup>471</sup> The amendment should also include other forms of homicide not involving a conviction, for example, cases dealt with under section 269 of the Criminal Law Consolidation Act.

section applies. The Minister would be able to place the child with that parent, if satisfied that he or she was committed to ensuring that the child would be protected from neglect or abuse at the hands of the convicted parent. The power vested in the court to vary or revoke the Minister's custody might be exercised in the convicted parent's favour in the event that they could establish to the court's satisfaction that they had changed their behaviours and attitudes so that the court could be satisfied that they would not subject the child to abuse or neglect. The court might direct that assessments and investigations be carried out by appropriate experts to assist it. By this means the proposal would not prevent a person such as Ashlee Polkinghorne being able to demonstrate that they had, with time, fundamentally changed.

- 22.3. I recommend that Families SA urgently re-educate all of its staff to rectify the misunderstanding abroad in the organisation that questions to secure the protection of a child cannot be asked of people without the permission of the child's parent or guardian. There is no such limitation, there never has been, and there never should be. This message must be disseminated urgently within the organisation. It is fundamental to the organisation's responsibilities that its employees have a questioning attitude and a curiosity to establish facts as to a child's welfare. Without this, Families SA cannot achieve its objectives.
- 22.4. I recommend that Families SA should strictly comply with section 20(2) of the Children's Protection Act with immediate effect. Furthermore, that the Minister for Child Protection Reform draw the evidence of Mr Harrison and my remarks concerning section 20(2) of the Act to the attention of the President of the Legislative Council and the Speaker of the House of Assembly with the request from the Coroner's Court of South Australia that the President and the Speaker draw to the attention of their respective Houses the flagrant disregard of section 20(2) by Families SA.
- 22.5. I recommend that the Minister for Child Protection Reform investigate whether Families SA have in any of its annual reports since 1 October 2006 reported on compliance with section 20(2) of the Act in accordance with the understanding of the Honourable Mr Xenophon MLC as referred to above. In the event that there has been no such reporting, that fact should also be reported to the President and the Speaker and an explanation provided.

- 22.6. I recommend that Families SA direct its staff to actively apply child protection income management in the Playford area of South Australia and that the 'policy' of obtaining a benefit recipient's consent to that course be abolished.
- 22.7. I recommend that the State Government take immediate steps to negotiate with the Commonwealth Government for the declaring of areas other than the City of Playford as declared areas for the imposition of child protection income management. There is no sensible rationale for confining to one geographical area a tool which could have the effect of benefitting many children at risk of neglect and abuse in this State who happen to live outside of the geographical area of the City of Playford. It is absurd to impose a geographical limitation of that kind in my opinion.
- 22.8. I recommend that the State Government begin negotiations with the Commonwealth Government with a view to making the child protection income management regime a permanent structure and to that end, negotiate an indefinite extension beyond 30 June 2015 which is when the present Bilateral Agreement expires.
- 22.9. I recommend that Families SA issue a policy prohibiting the transport alone of a child under the age of 12 years in any circumstances with a chauffeured delivery service unless in the custody of an employee of Families SA.
- 22.10. I recommend that the operations of the Crisis Response Unit be reviewed with a view to determining whether it has sufficient resources and there is sufficient backup for situations such as that faced by Ms Heading on 12 November 2008. Ms Heading appeared to have a reluctance to call in a worker who may have been 'on-call'. There should be no such reluctance in a situation such as that being faced by Ms Heading. There should be no hesitation in arranging a call back for an on-call worker in a case such as that. I am concerned that there may be a reluctance on the part of a person in Ms Heading's position to institute a call back because of financial considerations. Staff should be informed as a matter of policy that the appropriate action is to institute a call back in a situation such as that faced by Ms Heading. There should be no doubt at all about this and I recommend accordingly.
- 22.11. I recommend that the Children's Protection Act 1993 be amended to include cumulative harm as a relevant factor in making decisions about the care of a child.

- 22.12. I recommend that the Children's Protection Act 1993 be amended to make it plain that the paramount consideration is to keep children safe from harm. Maintaining the child in her or his family must give way to the child's safety.
- 22.13. It is my opinion that adoption should have a place in the alternative placement options in the child protection system. I do not purport to be in a position to offer a settled model of what the role of adoption in the child protection system should look like. However, the evidence of the scarcity of alternative placement options and the notorious under supply of suitable and willing foster parents leads me to the very firm opinion that permanent removal to adoptive parents must have a place in the child protection system and I recommend accordingly.
- 22.14. I recommend that a proper assessment be undertaken to ascertain the most effective resource allocation method for Families SA. That assessment should include, as a starting point, a consideration of the volumes of work and what resource effort is needed to carry out that work satisfactorily. There must be an ability to monitor unfinished work and a system to measure the performance of individuals and the individual parts of the agency and there must be a reliable system for reporting those measurements in a timely manner to managers right up to the chief executive.
- 22.15. I recommend that the evidence of Anthony Kemp, as a whole, be considered and included as a part of the redesign process referred to by Mr Harrison in his evidence.
- 22.16. I recommend that Families SA allocate cases to dedicated workers to ensure continuity of care in the management of children at risk.
- 22.17. I recommend that Families SA train social workers in the art of proper note taking, with emphasis on the need to be factually accurate, and make a clear distinction between the facts of an event and the worker's opinions and judgements about the event and particular individuals.
- 22.18. I recommend that Families SA does not close files on their computer system when they are still in fact involved with the management of a file.
- 22.19. I recommend that when Families SA becomes aware of the involvement of another agency with a client, an accurate summary document is provided to the agency setting

out relevant information about the client to ensure the agency is properly equipped to assist in ensuring the safety of any children under that client's care.

22.20. I recommend that domestic violence counselling be implemented in all circumstances where Families SA identifies it as a risk factor for a client and that a failure to participate in domestic violence counselling be recorded for adverse consideration when assessing the onward progress of the care of a child.

22.21. I recommend that a measure be introduced which provides for registration of social workers.

22.22. I recommend that there be a mandatory restriction on student social workers and qualified social workers with less than 12 months experience having client contact without direct supervision by a senior social worker.

*Key Words: Child Abuse; Child Protection; Families SA (Department of Education and Child Development); Domestic Violence*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 9<sup>th</sup> day of April, 2015.*

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*State Coroner*

**ANNEXURE 1 – Persons referred to in the Finding**

<b>Name</b>	<b>Involvement in the matter</b>
Agahi-Pizarro, Fereshthe	Carer, Time for Kids
Arsenias, Alice	Support Worker, Port Youth Accommodation
Bailey, Trevor	Supervisor, Families SA
Behsmann, Nicky	Friend of Ashlee Polkinghorne
Bentley, James	Senior Constable, South Australia Police
Benyk, Krystal	Friend of Ashlee Polkinghorne and Chloe's Godmother
Benyk, Lesley	Mother of Krystal Benyk
Bretones, Natalie	15 year old girl left to look after Chloe at Glenelg beach
Brown, Lou	Owner of Browns Chauffeured Vehicles
Briggs, Emeritus Professor Freda	University of South Australia
Cantwell, Kai	A/Director of Income Management Operations, Financial and Social Capability Branch of Commonwealth Department of Social Services
Carr, Brenton	Supervisor, Families SA
Cheverton, Megan	Social Worker, Families SA
Clarke, Anna	Senior Social Worker, Families SA
Cooper, Di	Supervisor, Families SA, Crisis Response Unit
Cox, Adrian	Senior Constable, South Australia Police
Curtis, Carolyn (nee Lockett)	Supervisor, Families SA, Strong Families Safe Babies
Daniel, Elizabeth	Family Support Worker, Families SA, Strong Families Safe Babies
Edwards, Bobby	16 year old boy left to look after Chloe at Civic Park
Fick, Cassandra	Director, Unley Child Care Centre
Foord, Trisha	Mother of Kate Wallis
Francou, Kelly	Supervisor, Families SA Modbury Office
Frick, Daniel	Senior Social Worker, Families SA
Harrison, Tony	Current CEO, Department of Education and Child Development
Harvey, Steven	Husband of Belinda Valentine
Haskell, Claire	Senior Social Worker, Women's & Children's Hospital
Heading, Katrina	Crisis Care Response Worker, Families SA, Crisis Response Unit
Heath, Dr Karen	Forensic Pathologist, Forensic Science South Australia

<b>Name</b>	<b>Involvement in the matter</b>
Hindle, Dylan	Previous partner of Ashlee Polkinghorne
Horgan, Claire	Principal Social Worker, Families SA
Johnston, Alan Bruce	Manager, Families SA Enfield and Modbury
Kartinyeri, Sherilee	Case Manager, Louise Place
Kemp, Anthony	Former Director, Practice Development in Families SA Approved the Adverse Events Review Report
Kidner, Amy	Student Social Worker, Families SA, Strong Families Safe Babies
Lachlan, Vicky	Manager, Louise Place
Lagden, Thomas	Father of Chloe Valentine
Lawson, Katie	Case Manager, Salvation Army
Liston, Tara	Social Worker, Families SA
Martha	Friend of Ashlee Polkinghorne
Martin, Mairi	Registered Nurse, Metro Home Link
McDonald, Clare	Registered Nurse and midwife, Metro Home Link
McPartland, Benjamin	Partner of Ashlee Polkinghorne at the time of Chloe's death
Morris, Janelle	Student Social Worker, Families SA, Strong Families Safe Babies
Polkinghorne, Alan	Father of Ashlee Polkinghorne
Rainsford, Craig	Social Worker, Families SA
Ranford, Rosie	Child and Youth Health Service
Rankine, Karen	Detective Brevet Sergeant, South Australia Police
Rann, Joy	Volunteer, Time for Kids
Ratsch, Nicholas	Senior Social Worker, Families SA, Strong Families Safe Babies
Sammut, Dr Jeremy	Centre for Independent Studies
Seppelt, Lucy	Social Worker, Time for Kids
Sowerby, Leanne	Social Worker, Families SA
Stewart, Leanne	Senior Social Worker, Families SA
Topley, Michael	Previous partner of Ashlee Polkinghorne
Valentine, Belinda	Mother of Ashlee Polkinghorne
Wallis, Kate	Friend of Ashlee Polkinghorne & partner of Ashlee's brother, Jake
Warren, Jennifer	Senior Social Worker, Families SA
Woods, Dot	Child and Youth Health Service

**ANNEXURE 2 – Intake Summary**

<b>Date</b>	<b>Notifier(s)</b>	<b>Summary</b>
01/06/07	Trisha Foord	Ashlee taking drugs and drinking whilst pregnant. No antenatal care.
08/08/07	Jasmine Fletcher	Chloe not being fed with Ashlee claiming no money for formula.
22/08/07	Nikki Nichols, Tricia Foord Kate Wallis, Jasmine Fletcher Laura (Youth Centre)	Drug use by mother and visitors. Chloe being fed tap water. State of house.
19/03/08	Katie Lawson	Numerous people at the home address. Rubbish and rats sighted.
27/08/08	Anonymous	Chloe neglected and homeless.
28/08/08	Senior Constable Adrian Cox	Chloe left in care of 16 year old boy at Civic Park.
24/09/08	Trisha Foord Tamika Sheldon	Chloe and Ashlee move in with known criminal. Chloe sick, vomiting and losing hair. Ashlee drinking and using drugs.
10/11/08	Anonymous	Chloe neglected at Civic Park while mother intoxicated. Chloe given alcohol.
11/11/08	Constable James Bentley	Chloe left in care of 15 year old girl at Glenelg
14/11/08	Claire Haskell	Chloe admitted to Women's and Children's Hospital. Ashlee did not present as she was intoxicated.
24/11/08	Anthea Bamet	Chloe pale, gaunt, dehydrated and lethargic.
30/01/09 02/02/09	Alan Polkinghorne Kate Wallis	Chloe neglected, unfed, skinny and dirty. Chloe not collected from carer.
07/03/09	Alan Polkinghorne	Domestic violence incident occurred whilst Ashlee was holding Chloe.

<b>Date</b>	<b>Notifier(s)</b>	<b>Summary</b>
20/04/09	Anonymous	Ashlee having parties at her home with people from off the streets and neglecting Chloe.
09/07/09	Anonymous	Chloe neglected while Ashlee intoxicated.
19/08/09	Leanne Stewart	Domestic violence incident witnessed by Chloe.
23/11/09	Sarah Matthews	Chloe out until early hours of the morning inappropriately dressed and witnessed violence.
18/06/10	Anonymous	Ashlee's poor behaviour, Chloe's health compromised.
29/12/10	Lesley Benyk Cassandra Fink	Chloe left with various people for both short and extended stays. Chloe exposed to drugs. Chloe not attending childcare.
28/01/11	Cassandra Fick	General lack of stability and care in Chloe's life.
22/05/11	Anonymous	Chloe being neglected whilst mother working as a prostitute.
08/06/11	Joy Rann, Krystal Benyk Social Worker	Chloe suffering significant neglect in unhygienic environment. Ashlee exposing Chloe to drugs and pornographic material and feeding Chloe junk food.

**ANNEXURE 3 – Accommodation Summary**

<b>Period</b>	<b>Location</b>	<b>Support</b>
June 2007 to May 2008	Ashlee Polkinghorne resides in unit provided by Salvation Army in Hope Valley Lagden resided at this unit with Ashlee Polkinghorne Chloe was born on 13 July 2007	Katie Lawson, Salvation Army Megan Cheverton, Families SA Kelly Francou, Families SA Leanne Sowerby, Families SA Nicholas Ratsch, Families SA (SFSB) Elizabeth Daniel, Families SA (SFSB) Amy Kidner, Families SA (SFSB) Dot Woods & Rosie Ranford, CYWHS
May 2008	Ashlee Polkinghorne and Lagden reside briefly with Ladgen's mother	Amy Kidner, Families SA (SFSB) Elizabeth Daniel, Families SA (SFSB)
June 2008	Ashlee Polkinghorne residing at unknown address of a friend Address not listed in Families SA notes	Amy Kidner, Families SA (SFSB) Elizabeth Daniel, Families SA (SFSB) Daniel Frick, Families SA (SFSB) Jennifer Warren, Families SA
September 2008	Ashlee Polkinghorne continued to be transient, moved in with a man known to have an extensive criminal history	Elizabeth Daniel, Families SA (SFSB)
Approx 11 November 2008	Ashlee Polkinghorne residing in Taperoo via Port Youth Accommodation Accommodation is abandoned just prior to forced eviction	Elizabeth Daniel, Families SA (SFSB) Leanne Stewart, Families SA (SFSB) Katrina Heading, Families SA, CRU Clare McDonald, Metro Home Link Mairi Martin, Metro Home Link Support Worker from Port Youth Time for Kids Volunteer

<b>Period</b>	<b>Location</b>	<b>Support</b>
Late July 2009	Ashlee Polkinghorne residing at an address in Rostrevor	Elizabeth Daniel, Families SA (SFSB) Leanne Stewart, Families SA (SFSB) Joy Rann, Time for Kids
Mid August 2009	Ashlee Polkinghorne moves out of Rostrevor address following assault Living address unknown	Elizabeth Daniel, Families SA (SFSB) Leanne Stewart, Families SA (SFSB) Joy Rann, Time for Kids
16 September 2009	Ashlee Polkinghorne residing at Louise Place	Janelle Morris, Families SA (SFSB) Leanne Stewart, Families SA (SFSB) Sherilee Kartinyeri, Louise Place Vicky Lachlan, Louise Place Cassandra Fick, Unley Child Care Joy Rann, Time for Kids
January 2010	Ashlee Polkinghorne evicted from Louise Place and residing in Flinders Park	Leanne Stewart, Families SA (SFSB) Cassandra Fick, Unley Child Care Joy Rann, Time for Kids
20 January 2010	Ashlee Polkinghorne residing at private rental in Unley	Leanne Stewart, Families SA (SFSB) Cassandra Fick, Unley Child Care Joy Rann, Time for Kids
20 July 2010	Ashlee Polkinghorne residing at another rental property in Unley	Cassandra Fick, Unley Child Care Joy Rann, Time for Kids
Approx 30 December 2010	Ashlee Polkinghorne evicted from Unley and transient for a time	Cassandra Fick, Unley Child Care Joy Rann, Time for Kids

<b>Period</b>	<b>Location</b>	<b>Support</b>
21 January 2011	Ashlee Polkinghorne is noted to be residing with Lesley Benyk	Anna Clarke, Families SA Craig Rainsford, Families SA Trevor Bailey, Families SA Joy Rann, Time for Kids
10 March 2011	Ashlee Polkinghorne residing in Royal Park with Nicky Behsmann	Tara Liston, Families SA Joy Rann, Time for Kids
Around 2 December 2011	Ashlee Polkinghorne residing with Benjamin McPartland at Ingle Farm	Tara Liston, Families SA