

CITATION: *The Minister for Family and Community Services v JB, ZJ, BJ, TJ & JJ*
[2006] NTMC 072

PARTIES: THE MINISTER FOR FAMILY AND
COMMUNITY SERVICES OF THE
NORTHERN TERRITORY

v

JB
ZJ
BJ
TJ
JJ

TITLE OF COURT: Family Matters

JURISDICTION: Family Matters Court - Alice Springs

FILE NO(s): 20512293, 20512296, 20513109, 20513104,
20513107

DELIVERED ON: 30th August 2006

DELIVERED AT: Alice Springs

HEARING DATE(s): 19th, 20th and 22nd June 2006

JUDGMENT OF: M Little SM

CATCHWORDS:

Community Welfare Act, whether guardianship be joint or sole, whether orders be made until children are 18 years of age.

REPRESENTATION:

Counsel:

Minister:	John Stirk
Children:	Tony Whitelum
Mother:	Self Represented
Father:	No Appearance

Solicitors:

Minister:	Povey Stirk
Children:	Morgan Buckley
Mother:	Self Represented
Father:	Not Represented

Judgment category classification:	C
Judgment ID number:	[2006] NTMC 072
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IN THE FAMILY MATTERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20512293
20512296
20513109
20513104
20513107

BETWEEN:

**THE MINISTER FOR FAMILY AND
COMMUNITY SERVICES OF THE
NORTHERN TERRITORY**

Applicant

AND:

JB

ZJ

BJ

TJ

JJ

Children

REASONS FOR JUDGMENT

(Delivered 30th August 2006)

Ms Little SM:

1. This is a review pursuant to s.49 of the Community Welfare Act in the Family Matters Court (the Court). The review relates to five children namely JB; DOB: 8 June 1998 (aged 8yrs at time of hearing), ZJ; DOB: 29 July 1999 (aged nearly 7yrs), BJ; DOB: 26 February 2001 (aged 5yrs), TJ; DOB: 8 August 2002 (aged 3 ½ yrs) and JJ; DOB: 10 October 2003 (aged 2 ½ yrs). All children are the natural children of the mother VJ and the father SB. The applicant was the Minister for Family and Community Services (“the Minister”).
2. VJ appeared in person and was not represented at the hearing. She had been represented at earlier stages of the cases. Leave was granted for the Northern

Territory Legal Aid Commission to withdraw prior to the hearing. She attended at the hearing of the review on the 19th, 20th and 22nd of June 2006 and represented herself. For a short period of time the father was represented by Mr McBride but prior to the hearing and during the case management process Mr McBride sought and was granted leave to withdraw. At that time Mr McBride indicated that SB did not propose being involved in the hearing. The father was called and did not attend the hearing. He had been served and the hearing proceeded in his absence.

3. The Minister was represented by Mr Stirk from Povey Stirk, each of the children were represented by Mr Whitelum from Morgan Buckley and the mother appeared in person. There were no other applications for persons to be joined as parties and no other persons were represented or attended the hearing.
4. This decision will relate to each of the children of the relationship unless otherwise indicated in the reasons. There may be some reference to one of the children with respect to a particular issue that child has and in such circumstances the decision will make it clear which child is being discussed.
5. The mother VJ has had two other children who will be referred to in these reasons. Firstly the child SH who was born on 11 February 1992. He is the mother's first child. SH is not the natural child of SB. He was living in Victoria although at the time of the hearing his whereabouts were not known by Family and Community Services. SH plays an important part in the lives of the children the subject of this review. The second child is KJ, born 13 April 2005. KJ was the natural child of the mother and father to these proceedings. KJ died on 1 June 2005. The circumstance of KJ's death was inextricably linked to the application that each of the children be declared in need of care and the consequential orders which are now sought. His death is the subject of criminal proceedings in the South Australian District Court. VJ is currently awaiting trial which is to commence on the 24th of July 2006. This decision post-dates that trial date. No parties applied for the matter to be adjourned past the trial date, or have asked for the matter to be called back on subsequent to the trial. This decision is made without consideration of the outcome of the trial.

6. The hearing was due to start at 10am on 19 of June 2006. I heard evidence that, as at 10am, Family and Community Services had lost contact with VJ. She did not answer a call in the Court foyer at 10am. I ordered pursuant to s.37(3) of the Community Welfare Act that the hearing commence in her absence. As it transpired there was an application by the children's representative that I stand the matter down for approximately 45 minutes for him to read some new material. During that time VJ became available and the hearing proper commenced with her in attendance. At that time VJ confirmed what she had indicated throughout the case management inquiries - that she was not disputing the declaration which had previously been made that each of the children were in need of care.

7. The issues to be resolved are as follows:

Whether there should be an order that the children be in need of care and under a guardianship order until they reach the age of 18 years.

Whether there should be an order that the sole guardian of the children be the Minister OR whether there should be an order for joint guardianship with either the Minister and the mother, OR the Minister, the mother and the father OR, the Minister and the father.

What directions should be made as to access to the children by the mother, the father and SH.

8. The case was comprised of oral and documentary evidence. There was oral evidence from Ms Jackie Walsh, Manager from Family and Community Services Central Australia region and from Dr Lucy Blunt, Consultant Clinical Psychologist from NSW. Exhibits were tendered as follows:

A1: Court report 19 June 2006 together with annexures A to E

A2: Addendum Court report 19 June 2006

A3: Court report 15 June 2005

A4: Three letters sent to SB and postal return certificate

A5: Occupational therapy assessment relating to the child ZJ

M6: Report of Dr Craig Raeside from Modbury, SA relating to the mother together with cover letter from the mother's solicitor acting in the criminal matter.

A curriculum vitae of Dr Blunt was also handed to the Court but did not become a formal exhibit.

9. The exhibits A1 – A5 were tendered by the applicant being the Minister of Family and Community Services. Exhibit M6 was tendered by the mother. All evidence was considered and taken into account when reaching this decision. A summary of the evidence will be set out later in these reasons.
10. It is important to commence with a chronology of how these matters came to be listed for hearing on 19 June 2006.
11. Chronology of dates relevant to these proceedings:

1 June 2005: Application that child be found in need of care lodged by the Minister with respect to each of the children and order made pursuant to s.44 of the Community Welfare Act that each of the children be placed in the custody of the Minister. Case adjourned to 15 June 2005. Order also made in same terms for the baby KJ. (Oral evidence was given to substantiate the grounds for the order that was made on 1 June 2005)

1 June 2005: Baby KJ died.

3 June 2005: Mother arrested and charged relating to KJ's death. Mother not bailed and held on remand in South Australia.

15 June 2005: Court report prepared and provided to the Court.

15 June 2005: Mother bailed in South Australia.

15 June 2005: Family Matters Court orders made in the presence of the father and the Court being satisfied there were grounds to proceed in absence of the mother, declaration that each of the children are in need of care and children placed in the sole guardianship of the Minister for 3 months,

adjourned for 3 months for review. Order made on 1 June 2005 relating to baby KJ discharged.

7 September 2005: Family Matters Court ordered that each of the children be in the sole guardianship of the Minister until 23 November 2005. NTLAC appearing on behalf of the mother who was not present.

16 September 2005: Order made granting leave for the Minister's office to summons file notes and medical records with respect to VJ from the Royal Adelaide Hospital (Forensic Mental Health Service) from 1 June 2005 to the present.

23 September 2005: Mother granted leave to inspect summonsed material from the Royal Adelaide Hospital. Dr Blunt's report became available.

29 September 2005: All parties granted leave to inspect and copy documents summonsed from the Royal Adelaide Hospital.

23 November 2005: Case adjourned to 7 December 2005 for review with an order that the Minister be sole guardian for each of the children to continue to that date.

7 December 2005: The matter adjourned to 1 February 2006 for review. Order that the children be in sole guardianship of the Minister to continue to that date.

1 February 2006: Matter adjourned to 22 March 2006 for review. Order that the children be in sole guardianship of the Minister to continue to that date.

From this point on VJ was granted leave to appear by telephone from Adelaide.

22 March 2006: The matter adjourned to 29 March 2006 for review. Order that the children be in sole guardianship of the Minister to continue to that date.

29 March 2006: Matter listed for hearing between the 19th to the 23rd of June 2006. Order that the children be in sole guardianship of the Minister to continue to that date.

19 April 2006: Case management inquiries commenced with respect to the hearing.

20 April 2006: Leave granted for both Mr Goldflam appearing on behalf of the mother and Mr McBride appearing on behalf of the father to withdraw from proceedings. Case management inquiries continuing.

10 May 2006: Summons to issue to Minister to produce documents.

19 June 2006: Hearing commenced in the matter.

That concludes the chronology with respect to the relevant dates.

12. As previously set out a declaration has been made that each of these children be declared in need of care. Following the initial declaration an order was made pursuant to s.43(5)(d) of the Community Welfare Act that the sole rights in relation to guardianship of each of the children be transferred to the Minister for the period of the various adjournments and that order continues pending finalisation of the hearing. The hearing that commenced on 19 June 2006 is a review of the order with respect to guardianship, pursuant to s. 49 of the Community Welfare Act.

13. Section 49 of the Community Welfare Act sets out:

(1) “The Court shall review the circumstances of a child in relation to whom an order under section 43(4) is made containing a direction referred to in section 43(5)(d) –

(a) where the sole rights in relation to the custody of the child are vested in the Minister – at intervals not exceeding 2 years; or

(b) in any other case – at such times as it thinks fit,

and may make such further orders in relation to the child as it could have made on the original application. ...

(3) The Court may, at such times as it thinks fit, vary or revoke an order made under this section.”

14. Section 9 of the Community Welfare Act sets out:

“Duty of Minister

In exercising his or her powers under this Part, the Minister shall, at all times, have as his or her main consideration the welfare of the child in relation to whom those powers are exercised and particularly for –

(a) securing for the child such care and guidance as will promote that welfare; and

(b) the maintenance and development of those family relationships that are, in his or her opinion, in the best interests of the child.”

15. While s.9 refers to” this Part”, namely Part IV of the Community Welfare Act, a reading of Part IV demonstrates that this main consideration flows through to the entirety of the Act. For example s.10 reads:

“Where the Minister is of the opinion that a child is in need of care, he or she may – ...

(c) take such other action under this Act, as he or she thinks fit, to ensure the adequate care of the child.”

That would include making an application that a child be declared in need of care and seeking consequential orders under the Act. Accordingly the main consideration for the Minister and her delegates in this case is raised in s.9 of the Act and places the focus on the child’s welfare and best interests.

16. With respect to the matters to be taken into account by the Court, s.43 of the Community Welfare Act sets out the matters which the Family Matters Court shall consider.

“43. Findings of Court

(1) In proceedings in relation to a child in relation to whom an application under this Part is made, the Court shall consider –

- (a) the need to safeguard the welfare and development of the child;
- (b) having regard to the age and comprehension of the child, the reactions of the child to the proceedings and the child’s wishes in relation to the outcome of the proceedings;
- (c) the importance of maintaining and promoting the relationship between the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) and the child;
- (d) the desirability of maintaining the continuity of living in the child’s usual ethnic and social environment.”

Subparagraph (e) is not relevant to these proceedings.

- 17. Section 43(1) of the Community Welfare Act sets out that the Court shall consider the matters it specifies. Accordingly there is a statutory obligation on the Court to consider those matters. The first matter raised is the need to safeguard the welfare and development of the child. In the circumstances of this case this is the principal matter which will be considered. I accept that s.43(1) of the Community Welfare Act does not give any indication as to the most important factor for consideration. However in the circumstances of this case, I find that the need to safeguard the welfare and development of the children is the most important factor.
- 18. As to subparagraph (b), each of the children are too young for this subparagraph to be taken into account. Each of the children are represented by Mr Whitelum and he has conducted the case on the basis that the children are too young and unable to comprehend the nature of the proceedings. The children have been excused from attendance and did not attend the Court. The children were involved in a comprehensive assessment by Dr Blunt and her report will be relied upon in

the Court to consider any matters which the children communicate with respect to the proceedings, in addition to the matters raised by their representative.

19. Subparagraph (c) states the Court shall take into account the importance of maintaining and promoting the relationship between the parents and the child. Without wanting to simplify the mother's position it is evident that this is the main thrust of the mother's opposition to the Minister's application to have the children placed under the sole guardianship of the Minister.
20. Subparagraph (d) will be considered when the material before the Court as to the lifestyle of the mother, and to a lesser extent the father, is considered when looking at the children's overall welfare and development.
21. The Minister seeks an order pursuant to s.43(5)(d) of the Community Welfare Act.
22. That subparagraph sets out as follow:

“(5) Where the Court makes a declaration under subsection (4)(a), the order may include one of the following: ...

- (d) subject to subsection (7), a direction to transfer the sole rights in relation to guardianship of the child to the Minister... for such period, not extending beyond the eighteenth birthday of the child, as it thinks fit (including a direction relating to access of the parents, and such other persons as the Court thinks fit, to the child).”

23. Section 43(7) sets out:

“(7) An order shall not be made under subsection (5)(d) unless the Court is satisfied that –

- (a) no other order that it may make will adequately provide for the welfare of the child; or
- (b) the parents of the child have, without reasonable excuse, failed to maintain substantial contact with the child during the period of 12 months before the application as a result of which the order is made.”

Subsection (7)(a) is the relevant subsection in this case.

24. Accordingly the onus is on the Minister to satisfy the Court that no other order the Court could make would adequately provide for the welfare of the children if it is to succeed in its application that the Minister be the sole guardian until the child is 18 years of age and so satisfy the Court with respect to each of the children. As with all matters pursuant to the Community Welfare Act the burden of proof is on the balance of probabilities.
25. The focus of the Court's attention is to be on the child and in particular the welfare and development of the child. The impact upon the parents of any orders the Courts makes are of secondary importance although the Court must take care to take into an account the inter-connectiveness of the welfare of children and their parents as revealed by the evidence. Prior to consideration of the evidence and making findings necessary to answer the matters in dispute I acknowledge what was put by Mr Whitelum in submissions with respect to the mother's attendance at the hearing. It can not have been an easy experience for her to attend the hearing and hear what was put before the Court in such clear and unambiguous terms. Much of what was heard in evidence amounted to a clear criticism of her parenting abilities. As the primary caregiver, the focus was on her, while the father was less scrutinised. Given the context of a relationship involving domestic violence upon the mother, this could appear unfair. But as previously set out, the welfare and development of the children is the primary issue concerning the Court here. The Court must be informed before making its decision, and not be tempted to move from its focus on the children. The enormity of the task of attempting to raise five children simultaneously, and for a short period of time six children, should not be underestimated. Indeed material was presented to the Court which indicated that a competent registered foster carer was at times finding it difficult to care for the children as a group.
26. With respect to three of the mother's children there have been orders made pursuant to the Community Welfare Act on earlier occasions. The child KJ had an order made on 1 June 2006 as part of the orders made relating to the other five children. This order was discharged subsequent to the child's death. The child TJ had an In Need of Care order made in November 2002 and TJ was placed under

the joint guardianship of the Minister and the mother for 12 months. Further appearances before the Court resulted in orders being continued and the child returned to the mother's full time care in October 2004. The order relating to TJ was discharged in January 2005. Finally, with respect to SH, in 2000 an order was made placing him into care and this order was discharged in December 2001. The need for these orders can be considered in the applications before the Court and in particular as to the question of the standard of care that parents have provided over the years to the children. It is also important when considering how the parents and especially the mother worked with the Department of Family and Community Services during those periods as well as before and after the orders were made and discharged.

27. No evidence has been put to counter the material tendered for and on behalf of the Minister. As stated in submissions, that is not to say that because no contrary material has been put that the orders of the Court will necessarily reflect what the Minister is seeking. The onus rests with the Minister to persuade the Court that the evidence justifies the orders it is seeking.
28. The child representative has submitted that the orders sought by the Minister are in the best interests of the children.
29. The report which has been tendered by the mother prepared by Dr Raeside sets out the diagnosis of her condition. This has the affect of settling the preliminary diagnosis that was made (as contained in annexures E and F from exhibit A1).
30. I now commence a summary of the evidence and will start with a summary of the exhibits which have been tendered in the matter.
31. Exhibit A1 is a Court report signed by the Family and Community Services on 14 June 2006 and which is entitled "Court Report- Family Matters Court 19 June 2006" with respect to the five (5) children. The report has annexed to exhibits A to F. The report is an extensive report and begins with a family background and history. Family and Community Services first had allegations of possible neglect with respect to the child SH on the 11 February 2000. That was not substantiated and a short time later a second notification occurred during an interview with the child SH. This related to an incident reported to FACS by and involving himself

and two of the other children and were allegations of abuse. There was also an indication that the mother was an IV drug user. Holding orders were obtained with respect to all children at that time, namely SH, JB and ZJ. The mother volunteered a urine sample and a positive test for amphetamines was received. SH retracted his statement during the investigation stage. JB and ZJ were returned to the mother's care with FACS monitoring. At a later stage SH was returned to VK's care following undertakings being made.

32. In June 2000, SH was assaulted by the father in these proceedings (not his biological father) and the father was sentenced to imprisonment. In June 2000, the mother requested assistance and made threats that she may harm SH as she was not able to handle him. A FACS worker arrived to find SH on the roof of the house with the mother yelling at him. The worker witnessed the mother grab SH, twist his arms, put him in a head lock and continue abusing him. A holding order was taken out and eventually SH was placed into foster care for a fourteen (14) month period. During this time, further disclosures about drug use were made regarding the mother. SH disclosed that at times when drug use had occurred he would be looking after the younger children. In December 2001, the order pursuant to the Community Welfare Act was discharged regarding to the child, SH, and he returned to his mother's care. A Domestic Violence Act restraining order had been placed on SB relating to SH.
33. Notifications were received in July 2002 relating to allegations of neglect of SH, JB and ZJ. They related primarily to issues of accommodation. The child TJ was born in August 2002. TJ received some hospital care after birth. Following a notification in November 2002, FACS became involved with TJ's health and welfare and she was admitted to the Alice Springs Hospital. It was reported that she had evidence of severe failure to thrive with a grossly wasted appearance. She was 500 grams less than her birth weight at the age of twelve (12) weeks. An In Need of Care order was made in November 2002 placing her under the joint guardianship of the Minister and VJ for twelve (12) months. The mother was assessed by psychologists in December 2002 and January 2003. No mental illness was reported. A notification in March 2003 related to the use of IV drugs and concerns with respect of physical abuse to the children JB, ZJ and BJ. There was

also a notification of neglect on the basis of the children not being fed adequately. A psychological assessment recommended that TJ remain in care for a further twelve (12) months and that the mother receive psychological counselling with respect to a range of issues.

34. The child JJ was born on 10 October 2003. In November 2003 a notification was received in regards to neglect of the child JJ. Investigations found that the mother was not providing adequate food for the child and the child was diagnosed as failure to thrive. He was admitted to hospital on 18 November 2003 and he had only put on 50 grams over a period of eighteen (18) days. The mother made an agreement to present him for weekly paediatric care upon his discharge.
35. In September 2004, TJ was returned to the mother's full time care and the order relating to TJ was discharged in January 2005. FACS opened a Family Support case with respect to TJ and BJ with paid child care in order to monitor the health of the children. The children did not regularly attend child care.
36. In March 2005, while the child SH was in Melbourne, notifications were received (three separate reports over a period of four days) that the other children were being hit and it was reported that excessive violence was being used, especially towards TJ. The children were also reported to be starving. It was also reported that the mother was dealing in unlawful drugs. She was said to be residing at the Gap View Motel.
37. In April 2005, it was reported that the child TJ had been physically abused and she was found in 2005 with a bite mark. The child reported that the mother had bitten her. The mother said that the bite had occurred at child care. An investigation was undertaken and it was ascertained that TJ was not at child care on the day that the mother had said that the bite had occurred. In the same month, JB ran distressed to the manager of the Gap View Hotel saying that his mother was sticking needles in her arm.
38. Later in April 2005, another bite mark was observed on TJ's lower cheek. It was reported that TJ had fallen from the pram. The FACS worker raised the issue of the new born baby, KJ, needing to be weighed. The mother became hostile and stated that this had been done the previous day. Investigations could find no

evidence of this occurring. The mother was advised by FACS workers that the children were to be interviewed however she refused to allow the children to be interviewed. Family and Community Services offered assistance to ensure that TJ and BJ got to child care and JB and ZJ to school. Information was received from Gillen Primary School that JB and ZJ had been unenrolled from school following concerns about attendance and punctuality leading to an altercation between the vice principal and the mother. Four days later (on 26 April 2005), FACS ascertained that the mother and the children had moved from the Gap View Motel and they were not able to be located.

39. On 17 May 2005, FACS were advised that the mother was at the Coles shopping complex. Two workers attended and found VJ and the children. The mother refused to allow the baby KJ to be medically assessed and made threats to the FACS workers. The police were called and the mother made an agreement that she would bring the children to the FACS office within the next 20 minutes but she did not arrive. Further attempts were made to find the family and they were found to be residing at Elke's backpackers. JB and ZJ arrived at Elke's backpackers with a friend of the mothers. With the help of the police, JB and ZJ were removed by Family and Community Services. The mother made agreements by telephone to attend at the FACS office but did not attend. On the 18 May 2005, a holding order was taken out for JB and ZJ and they were placed into foster care. On the night of the 18 May 2005, there was a report that the room which had been occupied by the mother and her friend had been trashed and considerable damage had been caused. The children BJ, TJ, JJ and KJ remained with the mother at this time.
40. On the 20 May 2005, JB and ZJ were interviewed and disclosed physical abuse of the children and also violence as between the mother and the father. FACS became aware that the mother was travelling to Melbourne to collect SH on the 27 May 2005 the mother, BJ, TJ, JJ and KJ were located in Melbourne but had left prior to police arriving. FACS received information that the mother and the children were on their way back to Alice Springs. On 30 May 2005, JB made disclosures which indicated that the mother may have well been still using IV drugs.

41. On 1 June 2005, In Need of Care applications were filed and a s.44 Community Welfare Act order was made by the Court granting custody of all the children to the Minister. At that stage the location of the children was unknown. On that evening, the South Australian Department of Community Youth and Family Services advised FACS (NT) that the child KJ had died whilst in the care of the mother. This was on the return trip to Alice Springs and had occurred in South Australia. A post mortem later revealed that KJ had died due to malnutrition and dehydration. The mother was arrested and the children SH, BJ, JJ and TJ were removed from the mother's care. The children BJ, TJ and JJ were flown back to Alice Springs on 3 June 2005 and placed with foster carers. SH was collected by his father several days later. The mother was later placed on bail to remain in South Australia.
42. The report then continues to outline the various accommodation changes made over the time that the Department has had involvement with the family, further information about the mother's involvement with illicit drugs, child care and school attendances and police investigations. In summary, the report reveals an increasing number of changes of accommodation, an ongoing use of illicit drugs by the mother, an extremely poor attendance record for each of the children with respect to childcare and school and police investigations which involve both the mother and the father. With respect to the child KJ, the mother has been charged with manslaughter and a trial is set in South Australia for 24 July 2006.
43. The report then discusses placement of the children and analyses the attempts made to have the children placed with family members. The children are currently in non-family foster care placements and currently reside in two separate foster placements. The report discusses questions of access and summarises the current situation relating to the children. JB, ZJ and BJ are currently in the same foster care placement with a departmental carer and this is viewed as a long term placement for the three children. TJ and JJ are in a second foster care placement which is also viewed as a long term placement. The children are now regularly attending school or childcare, are attending after school activities, having access to each other as between the foster care parents, attending counselling and therapy and have some access to the parents.

44. A request was made by FACS for an assessment by clinical psychologist Lucy Blunt. That report annexed to the Court report and is appendix D.
45. Following the mother's arrest and charges being laid in South Australia, on 7 June 2005 the mother was transferred to the Glenside psychiatric hospital at James Nash House (which is a custodial institution). She was later transferred to the rural and remote IP unit on 26 June 2005. Exhibits E and F are the discharge summary papers from those institutions which will be later summarised.
46. It is recommended that JB, ZJ, BJ, TJ and JJ be declared as children In Need of Care and remain in the sole guardianship of the Minister until they reach the age of eighteen (18) years. A case plan is set out in detail following this recommendation. This is the end of the Court report.
47. I will now summarise the exhibits which are annexed to the Court report. Exhibit A is the transaction records for the attendance of BJ and TJ to child care. Exhibit B is the Gillen Primary School attendance record for JB and ZJ. Exhibit C is the Centre Care records of the father's attendance for access to the children from June 2005 until May 2006.
48. Exhibit D is the psychological report prepared by Dr Lucy Blunt dated 21 November 2005. This report prepared by Dr Blunt, a clinical psychologist, is 67 pages long and contains extensive recommendations with respect to the children the subject of these proceedings, as well as the child SH. The recommendations have been incorporated into the case plan and recommendations in the Court report. Dr Blunt undertook assessments and interviews with all relevant persons and had observational visits to observe interactions between the parents and the children and between the children. She also received a large amount of documentation relating to the children, material which FACS had accumulated in the matter. The father of the children had extensive involvement during this assessment process and notwithstanding that he did not attend the Court proceedings his views have been given consideration in preparation of the report of Dr Blunt and her recommendations. The mother was also extensively involved in the assessment process and similarly her views were given consideration in the report.

49. As previously stated the focus of this case is upon the welfare of the children and this is reflected in the questions asked of Dr Blunt. She was asked -

A: If it is within the children's best interests to be returned to the care of either VJ or SB;

B: If the case plan for TJ should be different to that of the other children given her different placement and care history;

C: If it is determined that it is unsafe for the children to return to the care of either parent, what should the contact regime be?

D: What orders would be recommended in relation to JB, ZJ, BJ and JJ?

E: What recommendations would be made in relation to access between the mother and the children, access between the father and the children, contact between the siblings (especially in relation to SH), therapeutic recommendations for the children and how best to support SH's placement with his natural father.

50. Dr Blunt concluded that the mother did not have the capacity to parent her children adequately on a regular and ongoing basis. As to question A, if it is within the children's best interest to be returned to the care of either VJ or SB?, she stated at page 62 "In my opinion none of the children should be returned to the care of either VJ or SB, either now in the long term, as it is not in their best interests. Neither parent's perception of the past tallied with the history provided by FACS of the supporting legal documentation. Both parents minimised the concerns, their involvement and the impact upon the children. This leaves the children as being significantly at risk, to an unacceptable level should they be returned to either of their care".

51. Dr Blunt sets out her concerns with respect to the mother and to summarise them, her concerns are that the mother has a history of lack of compliance and honesty with FACS and she had no confidence that the mother could work cooperatively with FACS in the best interests of her children, the mother believes that she has the right to care for the children no matter what the conditions or circumstances

of that care are, that she has a long standing drug problem, that she has not maintained stable accommodation and does not understand the impact this is having on the children, that she has chosen the relationship with the father over the well being of the children in the past and that she has placed the meeting of her own needs over the well being of the children in the past. Dr Blunt further states that the mother has refused medical help for the children when the evidence is that the assistance is needed, there has been a lack of attention to attendance to schooling and an inability to negotiate outcomes with agencies or services involved with her. She sets out matters which would need to be attended to before there should be any consideration given to the mother regaining the care of the 3 eldest children. She stresses that each of these matters should be met before any consideration is given to the mother regaining the care of the children. She would not recommend consideration of the 2 youngest being returned.

52. Dr Blunt's concerns with respect to the father are that he has never had a significant ongoing involvement in the children's lives, he has placed his work commitments in front of his relationship with the children, he has not maintained contact with the children, he has a history of domestic violence with the mother and an assault on the child SH indicating a significant potential risk if the children were placed in his care, he did not attend KJ's funeral even for the purposes of supporting his other children through the process, he was observed to smack the child BJ on three occasions during a 40 minute supervised contact visit indicating low frustration tolerance and inadequate parenting techniques, lack of frankness about his current relationship, no insight or empathy into what the children have suffered or the psychological ramifications of this. Finally she sets out that notwithstanding that he is the biological parent of the children, he is not the psychological parent of the children.
53. Once again a series of factors are set out should consideration ever be given to the father being given the care of JB, ZJ or BJ. As with the mother, she excludes the children TJ and JJ from any future consideration to being placed into the care of the father. If the factors which Dr Blunt set out with respect to regaining the children are met by either or both parents she recommends that, prior to restoration being considered, the children be reassessed by a psychologist in order

to gauge what their needs are. Her overall recommendation is that restoration should not be considered either now or in the future.

54. She answers the next set of questions by way of a consolidated answer and then itemises recommendations with respect to various children. She recommends that the Court orders for all six children be the same (and here I note that the child SH is not the subject of an application in this Court and so I take her recommendation to be in relation to the five children whom the application relates). Dr Blunt recommends that all children should be placed under the sole guardianship of the Minister until the age of 18 years. She recommends long term case plans which could be reviewed every two years as part of the legal process. She then sets out recommended case plans for the children. With respect to the child SH she recommends that he should have free telephone access with his siblings as long as it is not disrupting their placements and that he should have contact with his siblings and mother every school holidays. They are the only recommendations regarding SH which relate to the children the subject of these proceedings.
55. With respect to the children JB, ZJ and BJ it is recommended that they be placed under the sole guardianship of the Minister until the age of 18 years with a placement with a FACS foster carer. She recommends frequent contact with the children TJ and JJ and with SH during school holidays. She recommends free telephone contact between the other children and two supervised two hour contact visits with the mother every school holidays during the visits they have with SH. She recommends the children have supervised contact with the father for a two hour period every two months. She recommends all three children be placed with a professional carer. She also sets out some recommendations with respect to the individual children including medical matters.
56. With respect to TJ and JJ she recommends they be placed under the sole guardianship of the Minister until 18 years of age and should continue residing with their current foster carer. She recommends contact with their other siblings as regularly as is possible, with SH on the school holidays and free telephone contact with each other. She recommends two supervised two hour contact visits with their mother every school holidays during the time when SH is visiting. She recommends supervised contact with their father for a two hour period every two

months. These recommended case plans have been incorporated into the Court report and I have not set out all the recommendations, this being a summary of the report.

57. Exhibit E of the Court report is the discharge summary from the Royal Adelaide Hospital Glenside Campus Mental Health Services – James Nash House – with respect to the mother who was admitted on 7 June 2005 and was discharged on 17 June 2005. The principal diagnosis is adjustment disorder with depressed mood and anxiety. Further diagnosis are border line personality traits and iron deficiency anaemia.
58. Exhibit F of the report from the Royal Adelaide Hospital Glenside Campus Mental Health Services – Rural and Remote IP Unit – with respect to the mother who was admitted on 7 June 2005 and discharged 7 July 2005. The principal diagnosis was normal grief, borderline and antisocial traits and history of poly-substance abuse.
59. Exhibit A2 is an addendum Court report for the Family Matters Court 19 June 2006. In the hearing this report became known as the addendum Court report. The report sets out various matters with respect to the children’s response to supervised access and behavioural incidences since the children came into care. The report demonstrates that the children have significant behavioural issues which require a long term approach.
60. Exhibit A3 is the Court report from 15 June 2005. This report contains material which has been incorporated into the Court report of 19 June 2006 (A1). I do not propose summarising these matters.
61. Exhibit A4 are copies of letters and a postal return where FACS has attempted to make arrangements with the father with respect to access.
62. Exhibit A5 is the occupational therapy assessment with respect to the child ZJ. It had been prepared by Naomi Kimber Occupational Therapist at the Alice Springs Community Health Centre. This was one of the recommendations made by Dr Blunt with respect to the child ZJ and has been tendered as evidence of FACS attention to following up the recommendations made.

63. The final exhibit was tendered by the mother and is marked M6. This is a report of Dr Craig Raeside dated 18 March 2006 and is addressed to the solicitor for the mother in her South Australian proceedings. The report contains details with respect to the mother's personal history and does point to a series of tragedies and inappropriate parenting prior to her leaving home. She left home permanently at the age of 14 but prior to that had had some time away from the family as an 11 year old. Her behaviour as a young person indicated the possibility of sexual abuse and there is also other abuse alleged. This upbringing can not have been conducive to learning appropriate parenting skills with respect to the care of her own children.
64. From page 9 onwards Dr Raeside sets out his conclusions and recommendations. As a primary diagnosis he says that the mother has a severe border line personality disorder. This is reported as "a longstanding maladaptive pattern of behaving and feeling with associated marked feelings of chronic depression alternating with rage, disturbance of self image and identity, disturbance in judgment and difficulty establishing satisfying relationships in other people". Dr Raeside also reports of the history of drug and alcohol abuse. He also has concerns about the mother's intellectual ability and reported it would be appropriate for a specialised assessment of her cognitive and intellectual ability and he recommended a neuropsychological opinion. He said that it is possible that heavy drug and alcohol use may have produced cognitive impairment or this may be life long. He states "she appears to have had significant difficulty in organising herself sufficiently to care for her children in the past to at least even a moderate level". (Page 10 of M6).
65. That finalised the summary of the documentary evidence of the matter. I will now summarise the oral evidence in the matter.
66. Ms Jackie Walsh was called by the applicant. She is employed by FACS and has spent 5 years in the Central Australian region of the Northern Territory. She has a Masters in Social Work and has worked in the area of child protection for twenty years. She attended the Lester University in the United Kingdom. She has known the mother for a period of five years and commenced involvement with the mother with respect to out of home care work with the child SH. The child SH was

returned to the mother and the order was discharged in approximately 2001. She was involved in bringing the application with respect to the children in June 2005. At around that time FACS had concerns regarding notifications they were receiving about all the children and in particular the child KJ. Three of the children's whereabouts were unknown and two were in care with a holding order. Court reports had been prepared and they became MFIs which were later exhibits A1 and A2 tendered.

67. The Department had become aware of Dr Blunt's report and agreed to support the recommendations she made in her report. Pages 18 and 19 from exhibit A1 were directly taken from Dr Blunt's report. The addendum report was prepared after questions were raised by the children's representative with respect to certain matters relating to the children. The addendum report contained additional information from December 2005 to the current time.
68. Ms Walsh was then cross-examined by the children's representative. She advised that when Dr Blunt's report was received it was circulated and a decision was made to accept her recommendations. She could not give an exact date but thought that before the end of November 2005 a decision had been made to accept the recommendations. She indicated that when TJ was in care the Department had extensive contact with the mother. Once TJ was back with VJ they did not have as much contact with the mother. Day care was funded for the child TJ during that time. With respect to the child JJ there were weight gain issues. She indicated the Court report from June 2005 had been incorporated into the more comprehensive report of June 2006 and that the report of 19 June 2006 was the report the Department was principally relying upon.
69. In July 2005 Dr Blunt became involved. Dr Blunt was given copies of case file notes, Court reports and key reports on the files. She said the recommendations at page 66 of Dr Blunt's report relating to JB, ZJ and BJ were implemented at different times included some being implemented prior to the report even being formally handed to the Department. Counselling had started with Di Carney two times a week with respect to each child and that this would reduce to weekly soon.

70. She indicated they were pursuing an order for sole guardianship with respect to the children in accordance with Dr Blunt's recommendation. The children would only be placed with FACS foster carers as there were no designated agencies in the Northern Territory. The Department had no intention to consider returning the children to the mother or the father's care. There was a need for long term stability, continuity and predicability from now on. She then qualified her evidence and said that "at this stage" the Department was not considering returning the children to the mother or the father.
71. The life story books had not been prepared yet as there was still no certainty as to the children's ongoing care arrangements. Contact was occurring between the children on a fortnightly basis. She indicated she did not know where SH is at the moment and the NT Department had been liaising with the Department in Victoria. All children were very close to SH and they wish to have contact with him.
72. The mother is now on bail conditions in South Australia, phone contact was being allowed. There was a need to keep the children stable and so there was no proposal to take the children to South Australia to visit the mother. If the mother was imprisoned with respect to the offences before the Courts in South Australia, the Department would look at facilitating access to South Australia but that would involve a lot of preparation and especially that the children may become upset seeing their mother in prison.
73. With respect to access with the father, it had been offered on a two hours every two month basis in with accordance with the report. She indicated that access between the father and the children had not been consistent and he had been failing to attend. The father has told FACS that he has no opposition to the proposals made in Dr Blunt's report.
74. The children are now with professional carers. A registered foster carer must go through an extensive interview process and also allow police checks and referee checks. They undertake health checks and must have an 8 week training course. The carer who has the three eldest children has gone through all these processes and is considered an appropriate carer. She is a single parent and while Dr Blunt

has suggested that JB needs a strong male figure in his life, there is no suitable foster placement available which includes a strong male figure. It was hopeful that within the next 6 weeks something could be achieved to implement a male mentor program for JB. The foster carer is very receptive to assistance and wants to make the situation as normal as possible for the children. JB has commenced weekly tutoring and that started in mid February 2006 and has occurred for two terms. ZJ had attended at an occupational therapist as recommended and a report became available. The two younger children are with a separate foster carer. They have a strong bond with that carer and TJ had been placed with this same person during her first time in care.

75. The Minister is seeking an order that each of the children be placed into the sole guardianship of the Minister until they reach 18 years of age. Given their significant bond that the children have with this particular foster carer the department would support continuation of the placement even if she were to move. If a move occurred there would be a need to ensure the children keep in regular contact with each other and the Department was prepared to facilitate and pay for such contact if that became necessary. Following the recommendations of Dr Blunt the Department would not consider returning either of these children to the mother or father. TJ began seeing a counsellor on 7 November 2005. The foster carer with respect to the two younger children is also registered and had undertaken the checks and training as required.
76. She stated that stability for the children means knowing where they are going to live and what their future holds. Stability involves dealing with as few people as possible in a consistent manner. Predictability is that they need to know what is coming next in their lives. She stated that especially when children have been through trauma they need a structured day and predictability was an important matter in the consideration of the appropriate placements for the children. Ms Walsh's evidence was interrupted at this stage but I will continue on with the summary of her evidence in chief. Exhibits A1, A2, A3, A4 and A5 were tendered through Ms Walsh.
77. Ms Walsh spoke of s.63 of the Community Welfare Act, relating to registration of foster carers. Re-registration of carers occurs every twelve months. There are

approximately 100 registered carers in the Northern Territory and recruitment is an ongoing challenge. The carers receive assistance as required. The Department keeps in regular contact with parents even if sole guardianship orders are made. They will inform the parents of key changes in the children's life, for example admission to hospital, change of school and give a progress report prior to access. The Department would have reservations about giving too much detail with respect to carers and their contact details and there may be circumstances where the particular school a child is attending would not be revealed. Given that the father has been an absent father and there is domestic violence documented, this would be even more carefully dealt with with respect to the father in these circumstances.

78. Following this further examination in chief Mr Whitelum sought and was granted an opportunity to ask further questions in cross-examination of Ms Walsh. She was of the view that if the Minister was the sole guardian they would inform the parents but not consult with them prior to decisions being made. With respect to the question of accommodation they would take care not to destabilise the placement and would need to make the call as to how much information would be given. With questions of religion, each case is dealt with uniquely. Care needs to be taken with respect to information which is given especially prior to an access visit, as access could be undermined with an inappropriate briefing. If an order was made for sole guardianship the message would be clear for both the children and the parents, that this was a long term situation. This was an important message for both the parents and the children. Shorter orders were not as clear. The proposal was now for periods of access five times a year. The parents would not be provided with information as to where the children were living but would have a profile of the carer. If the children were moving to another state the parents would be advised. They would be told of how the children were doing at school but not particular details of the school. They would be told about health problems.
79. VJ did not have any questions to ask in cross-examination.
80. Dr Blunt then gave evidence. She is a clinical psychologist and has previously given expert evidence in a range of Courts. She was asked to assess the children

in this matter and that assessment took place in September 2005. She prepared a report dated 21 November 2005 which is now annexure D to exhibit A1. The case plan proposed by the Minister mirrored her recommendations. She prepared the report in November 2005 and had seen the Court report which had been prepared (part of A1) she stood by her initial recommendations, with one revision. Her suggestion was to revise the question of access to allow contact with the parents in the school holidays making it easier and more predictable for the children – with five visits a year including one at each end of the Christmas break.

81. She was asked why she recommended that the Minister have sole guardianship with respect to each of the children until they were 18 years of age. She pointed to the number of notifications, the extent of the abuse and the fact that FACS had tried everything in the past. She asked rhetorically where is SB in all of this? The children are principally cared for by VK but that had not been successful. She asked herself could SB be given a go? The children were very damaged and their needs had to be considered. She did not believe that either parent had the capacity to meet the children's need. Trauma and unpredictability had featured in the children's lives. A high standard of care was needed to meet to needs of the children. She considered that neither parent had the capacity to meet the needs of the children at this time.

82. If contact were allowed to be too frequent as between the parents and the children, there is a risk they might not settle with their carers. Any needs that cannot be met by the foster carers can be outsourced or recruited. This could include such programs such as the Big Brother Program and sporting programs. This was the end of evidence in chief and prior to cross-examination I asked Dr Blunt what were her views were about a joint guardianship order. She replied that the children need certainty and given the mother's borderline personality disorder and her substance abuse issues she would often place her own needs above others. The mother also exhibited some anti-social traits and she had difficulty working with services and authority figures. The children had long term needs and this would take an extensive period of time to be met. The mother would be asked to work with FACS and then, for example, red herrings would be thrown into the mix and the children's needs would be undermined. The parent's behaviour could

amount to attention seeking and they would attempt to do deals and negotiate with FACS, attempting to compromise situations instead of looking primarily at the interests of the children. This would be especially the case when there were changes to case workers.

83. Mr Whitelum then cross-examined Dr Blunt. He directed Dr Blunt to the Glenside Hospital discharge reports (E and F annexure to A1) and also indicated to Dr Blunt that he had not been able to obtain an independent psychological assessment of VJ as she had missed her appointment. With respect to the diagnosis made in South Australia, Dr Blunt was of the view that the cluster of behaviours that the mother exhibited met the criteria for borderline personality condition. Based on her experience and her training she was of the view that consistency, predictability and stability were needed with respect to the children. Stability would include such matters as education, placement and accommodation. There was a need to keep things certain. Consistency involved the management of the children in a consistent way. Predictability was in particular that the children know how the carer will respond based on past behaviours. A child who was hypervigilant would not develop and would not trust. Once they are in a routine the child can grow and develop.
84. Dr Blunt explains how she takes a lot of time to undertake the assessments that she does. She receives the material such as the parents care history, police records, drug records, schooling, relationships, origins, why they have chosen particular relationships, why they have separated and what are their motivations. She also looks what are hindrances to their ability to care for children. She would also look at the care history of the children. In this case there was no consistency of care by either the mother or father. She would look at what may indicate the main opportunities for change of the parent's behaviour in the future. In this case she was of the view that the father had had a good model for his upbringing but he had not taken the messages on. With respect to the mother, her situation had been reasonably good until her mother died but she lacks the ability to follow through when she makes undertakings. She was of the view that further support would not make a significant improvement in the mother's situation at this stage. She was of the view that an alternative carer would be in the best interests of the children.

85. She was asked with respect to the two younger children whether they had bonded with their mother. She said the child TJ had not bonded with her mother and was in fact fearful of her, she felt that her mother hated her and she felt unloved by her. TJ had bonded with her foster carer. The child JJ still had a strong relationship with his mother and was floating at the present stage – that he did not quite belong anywhere. She was of the view that the transfer of attachment to the carer would likely occur in the future. She had assessed TJ and JJ’s carer and was of the view she was a very impressive and resourceful carer. She said that the child TJ had spent a considerable period of time with her on a previous order. She had initially attempted to care for all five of the children but had not been able to do that. She had been struggling with the behaviours of the three elder children and had asked for help when needed.
86. In addition to values such as stability and predictability in a placement she would also look at a person’s parenting abilities and in particular whether they can ensure that the children’s need come first. She also looks for pride – does the parent have pride in their own children?
87. She was asked as to the issue before the Court and in particular question of sole or joint guardianship. She acknowledged that at times the mother could contribute as a joint guardian but that until now the mother had always been the focus of attention. In particular she noted when concerns for the child KJ became very extreme the mother did not put the child’s interest first. While showing some empathy for the mother’s situation she was of the view that what had happened with the children was unacceptable and that the welfare of the children outweighed everything else. For the Department to be working with someone who had borderline personality traits there was a likelihood that the Department would be involved in manipulation by the parent and the lack of ability to work with authority figures. She cited the inability of the mother to be on time for Court and the fact she had left Court for a short while in the middle of proceedings as examples of this type of problem. I interpose here to say that I do not regard either as being in determinative of the issue to be decided by the Court but rather Dr Blunt was seeking to show how disruptive these behaviours could be.

88. When looking at the definitions of custody and guardianship in the Community Welfare Act she was asked could the mother provide any meaningful assistance. She replied that the mother had failed as a parent and that she was of the view that the issues could be dealt with by FACS and not added to by the mother. Similarly with respect to the question of guardianship she was of the view that the mother could not provide any useful assistance as to guardianship. She stated that the mother would have an opinion and indeed that opinion would be a valid one but that it would not increase the welfare of the children. She cited examples of the mother failing to turn up for case conferences, meaning the Department would be required to consider how long they would wait for her attend meetings and whether they could delay decisions that needed to be made. With respect to the father she stated he could not provide any useful assistance. His behaviour was unpredictable and he had made many commitments to access, which had not been backed up by his behaviour. He had not placed the needs of his children over his own needs.
89. She commended the mother for taking part in the Court process and she was of the view that this demonstrated a greater commitment to the children than the father had shown. She was not inclined to recommend an order that the father have joint guardianship with the Minister.
90. With respect to her recommended case plan suggestion she noted that JB had moved up five reading groups in three months and his literacy was now on track. She would encourage the life story book be prepared as soon as possible and that if the mother had any early photographs of the children that would assist. Dr Blunt stated that how a person resolves conflict is a measure of the relationship and that was an important matter to consider with respect to who were the carers of the children. With respect to the need for a male mentor for JB it may be that a mentor is found naturally, for example, by a sporting coach rather than the person being resourced. She was of the view that sometime this year would be an appropriate time for this to occur. While it would be opportune if all children could attend the same school, it would need to be worked out what was best for all concerned. With respect to the children seeing each other she was of the view that weekly arrangements would be optimal and that may change as they get older.

She considered the counselling the children had been receiving as appropriate. Whilst contact with SH was by phone given his distance it would be preferable to have face-to-face contact with the children on a regular basis. Nevertheless the primary focus at the moment was on the children and the carers. She was of the view that 2 access workers would be needed whenever there were face-to-face visits.

91. I asked why Dr Blunt had recommended that the children be placed in sole guardianship until their 18th birthday as opposed to an earlier date such as 12 or 14 years of age. She stated that it was a protective measure for the state to take responsibility for them until this age. Anything younger than that was not a permanent placement and children at the ages of 12 or 14 were very vulnerable. If the children were in care until they were 18 years of age they would have no sense of insecurity and would have consistency. Sole guardianship would be preferable than joint as that left the children in limbo. Dr Blunt stated that these children had suffered up to 5 – 6 years of trauma and abuse and she was of the view that this was enough.
92. The mother then spoke to Dr Blunt. The mother said she knew where SH was but she was not prepared to tell anyone, that he was away from danger now and he wants to be away from his family. This was not a question - more in the nature of a statement. She inferred that she had not been happy with the way SH had been moved around in placements in the past. Dr Blunt pointed out the difficulties that the mother had working with authority figures, that she would make promises and would not follow through, for example that she agreed she would have contact with the children on the Sunday prior to the hearing but that had not been carried through. Another example was not contacting FACS as to why she had not had access with the children and that she was late for Court. She was also previously known to hide to children so FACS could not find them. This latest example, relating to SH, when put with all the previous incidences, were a demonstration that her behaviours were not consistent with someone who could work with the Department.
93. That was in the close of the Minister's case and the child representative had no report to be handed to the Court as the mother had not attended for an assessment

and he had no other evidence to adduce. The case was stood down until the afternoon and the mother then tendered a report of Dr Craig Raeside, dated 18 March 2006 (M6). She did not call any further evidence.

94. As Dr Blunt had not previously had access to Dr Raeside's report she was given leave to give further evidence following her reading of Dr Raeside's report. She indicated that she had not changed her views or recommendations subsequent to reading Dr Raeside's report. She was of the view that the mother's personality was not likely to change over time and the children needed their future to be ensured.
95. That was the close of the mother's case and the end of evidence in the hearing.
96. The burden of proof for the orders sought by the Minister rests with the Minister. There is no evidence before the Court which is capable of countering the evidence which has been put forward by the Minister. The children's representative supports the Minister's application. In my view the burden of proof has been met in the Minister's case by the oral and written evidence and in particular that orders should be made until the children are 18 years of age, with the Minister being the sole guardian. Nothing that has been tendered by the mother causes me to consider the burden has not been met and in my view exhibit M6 supports the orders being made.
97. The father has not sought to put any material before the Court and does not seek to have an order made in his favour. The mother is seeking an order for joint guardianship with the Minister. In my view the evidence is overwhelming that this arrangement would not be workable in the foreseeable future. The review process which is mandated by legislation to be at least every two years will ensure the mother has the opportunity to apply to the Court that she is an appropriate person to become a joint guardian, or for an alternative order. Alternatively there can be an application for review of orders pursuant to s.48 of the Community Welfare Act if there are significant changes in circumstances. An application for a variation pursuant to s.48 of the Community Welfare Act can be made at anytime. These mechanisms ensure that the mother or the father always have the opportunity of bringing the matters back before the Court for a variation or a

review. Dr Blunt has raised some matters the parents may wish to consider attending to should they seek a variation of the orders that will be made.

98. The evidence before the Court demonstrates that the mother has an incapacity to work with organisations such as FACS and the Education Department in the best interests of the children. This is an important finding when considering the issue of joint versus sole guardianship. The medical evidence that she has provided in exhibit M6 together with the annexures E and F of exhibit A1 demonstrate that the mother has a medical condition which makes organisation and consistency extremely difficult to achieve even if she is not abusing substances such as illicit drugs and alcohol. If the mother put aside her substance abuse there may still be difficulties in achieving the type of consistency and organisation which is required to meaningfully take part in decision making relating to the children. The material before me demonstrates that since each of the children have been in care their circumstances have dramatically improved including attendances at day care and school, after school activities, stable accommodation and counselling. They are also receiving medical attention as appropriate and lastly and importantly there are no reported instances of failure to thrive.

99. Section 43(7) of the Community Welfare Act has been considered in coming to these decisions. That section reads:

(7) An order shall not be made under subsection (5)(d) unless the Court is satisfied that –

(a) no other order that it may make will adequately provide for the welfare of the child;

(Subparagraph (b) is not relevant in these proceedings).

100. The improvements in the children's situation and in particular with respect to the question of their health when compared with the history of prior neglect and abuse satisfies me that it is appropriate to make an order pursuant to s.43 (5)(d) namely that the sole rights with respect to the guardianship of the children be transferred to the Minister. I find that no other order will adequately provide for the welfare of each child.

101. I rely upon the material before me and in particular the Court report exhibit A1 which annexures Dr Blunt's report in coming to this finding. The documented history of abuse and neglect, the demonstrated inability of the mother to work in a cooperative fashion with the Minister's office and its workers and the significant improvement in the children's situation since they have been in care are sufficient for me to find that there is no other order that could be made that would make adequate provision for the welfare of the children.
102. This decision is not made lightly and all relevant factors in s.43(1) have been considered. The need to maintain and promote the relationship between the parents and the children has been considered. The material before me including the expert material of Dr Blunt satisfies me that this need can be met without significantly and detrimentally impacting on the children's development and welfare by careful preparation for access visits and with the provision of counselling and other such assistance. It would not be in the children's best interests to return them to the situation which previously existed in an attempt to maintain or promote the relationship between the parents and themselves. To promote the relationship between the parents and the children does not, of necessity, need to involve the parents in decision making on matters relevant to guardianship. Expert assistance is required for the relationships to become more positive. The documented history of the children's lives to date is more than adequate evidence to find that it is not desirable to maintain the continuity of the children's usual social environment. Prior to the children being in foster care (and for TJ this statement is to be read as anytime she has not been in foster care), the children's usual social environment was characterised by neglect leading to instances of failure to thrive, inadequate accommodation, lack of supervision and inadequate priority towards matters such as the need for medical attention and education. One child suffered the ultimate price. Others have survived serious health issues due to the persistence of FACS workers and treatment by medical personnel.
103. The father has never sought to provide a stable alternative for the children and has never played a significant role in their care. The mother has played a significant role in their care as the primary care giver most of their lives. The standard of

care provided was well below what is to be acceptable to the Court especially when considering its focus is upon the best interests of the children.

104. I am persuaded by the evidence before me that a long term order is in the best interests of the children. I am also persuaded that each child should be treated the same way notwithstanding the differences in both their ages and prior history of neglect and abuse. I find that an order for sole guardianship until they are each 18 years of age should be made. I find the evidence justifies the making of that order on each of the files before the Court.
105. As to the question of access, the Court has been asked to make directions. Access to the child SH is of great importance to each of the children. He had been a stabilising and important presence in their lives. Arguably too much of a burden has been placed on him at a young age and he may be left feeling responsible for the lack of appropriate parenting the other children have had (and the consequences of that inappropriate parenting). There must be a balancing of his needs with the needs of the other children. His needs include being able to have contact with his siblings to ensure he is able to further develop his relationships with them, while at the same time being able to have the type and amount of contact he wishes to have with his mother. He is now 14 years old, a potentially difficult time for any young person. I am greatly concerned that to join his access visits with his siblings at the same time that his mother has access to the other children will not be a positive experience for either SH or the other children. His presence at access at the same time as his mother means he may return to an “adult” role in the relationship, rather than being a sibling.
106. Having made this statement I find little support from the expert material before me to validate my concerns. It is recommended that some of the access between SH and the children occur in the presence of the mother. I have no expert material before me which counters that opinion. But I do have the benefit of considering the evidence in its totality.
107. Section 43 (5)(d) of the Community Welfare Act gives power to the Court to make directions relating to access to the parents and such other persons as the Court thinks fit. SH falls within that class of person. Notwithstanding the lack of expert

opinion to validate my concerns on this question, after re-reading the relevant material and considering the evidence as a whole, I remain of the view that there is a risk that the important relationship the children have with SH may be compromised if his access to them is complicated by access to his mother at the same time. I decline to make an order that any access occur between the children, SH and the mother at the same time. If any party wishes to reventilate this issue, the question can be called on on short notice. I flag that I would not be minded to vary this direction without further expert material which is directed to this question and which comprehensively investigates the issues of concern. I direct that access to SH occur with each of the children in the school holidays as often as is practicable and with the proviso that SH is agreeable to the access. Access is to be supervised given the age of the children, and the need to have adult supervision. I also direct that telephone access occur between the children and SH as often as practicable. The cost of all access to SH is to be met by the Minister as guardian of the children. This access is to be separate to the access between the mother and the children. While it may be unnecessary to make this particular direction, I direct that this access not occur at the same time as the access between the children and the father, and restate that the father is not the biological father of SH.

108. I now turn to access between the parents and the children. With respect to the mother, I direct that the mother have supervised access with the children in each of the school holidays and in the Christmas school holiday period access is to be on 2 separate occasions. Each period of access is to be for ½ a day. If the mother is not free to travel to the Northern Territory for access, I direct that the children not be taken to South Australia (or elsewhere) for access to the mother unless a specific expert assessment had been undertaken which recommends supervised access take place in those circumstances.
109. With respect to the father, I direct that he have supervised access to the children for a 2 hour period at a time approximately half way through each school term. This direction is made to ensure that the children do not have too much supervised access over their school holidays.

110. With respect to question of access as between the children, I direct that the children have access to each other as often as is practicable with the aim to achieve weekly access, but at least every fortnight. If the children are geographically separated due to a carer relocating, I direct that access occur on a regular basis, and that the costs be met by the Department. Preference should be given to the older children travelling to meet the younger children at their home town. I direct the children be allowed free telephone access to each other upon request. These directions are made pursuant to s.43 (5)(d) of the Community Welfare Act.

111. I order as follows:

(a) JB 20512293

1. Order child be in the sole guardianship of the Minister until the age of 18 years.
2. Adjourned to 27 August 2008 at 9.30am for review.

(b) ZJ 20512296

1. Order child be in the sole guardianship of the Minister until the age of 18 years.
2. Adjourned to 27 August 2008 at 9.30am for review.

(c) BJ 20513109

1. Order child be in the sole guardianship of the Minister until the age of 18 years.
2. Adjourned to 27 August 2008 at 9.30am for review.

(d) TJ 20513104

1. Order child be in the sole guardianship of the Minister until the age of 18 years.
2. Adjourned to 27 August 2008 at 9.30am for review.

(e) JJ 20513107

1. Order child be in the sole guardianship of the Minister until the age of 18 years.
2. Adjourned to 27 August 2008 at 9.30am for review.

Dated this 30th day of August 2006.

M LITTLE
STIPENDIARY MAGISTRATE