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Benoud & Shea and Anor [2013] FamCA 438 (13 June 2013)

Last Updated: 23 October 2013

FAMILY COURT OF AUSTRALIA

BENOUD & SHEA AND ANOR

[2013] FamCA 438

FAMILY LAW – CHILDREN – Minister for Community Services to have sole parental responsibility for the children – The children to live as directed by the Director-General of the Department of Family and Community Services

Family Law Act 1975 (Cth) ss 60CC, 60B, 61DA, 65DAA
Evidence Act 1995 (Cth) s.140

MRR v GR [2010] HCA 4; (2010) 263 ALR 368

M & M (1988) 166 CLR 69

W & W (Abuse allegations: unacceptable risk) [2005] FamCA 892; (2005) FLC 93-235

N & S (1996) FLC 92-665

APPLICANT:	Mr Benoud
RESPONDENT:	Ms Shea
INTERVENER:	Ms Neville, Crown <u>Solicitor</u>
INDEPENDENT CHILDREN'S LAWYER:	Mr Reeve
FILE NUMBER:	PAC 1407 of 2011
DATE DELIVERED:	13 June 2013
PLACE DELIVERED:	Sydney

PLACE HEARD: Sydney

JUDGMENT OF: Stevenson J

HEARING DATE: 21, 22, 23 24, 25 January 2013, 7 March 2013

REPRESENTATION

COUNSEL FOR THE APPLICANT: Ms Murphy

SOLICITOR FOR THE APPLICANT: DM Roberts & Co

COUNSEL FOR THE RESPONDENT: Mr Gardiner

SOLICITOR FOR THE RESPONDENT: Parks Coady Family Lawyers

COUNSEL FOR THE INTERVENER: Ms Neville

SOLICITOR FOR THE INTERVENER: Crown Solicitor

COUNSEL FOR THE INDEPENDENT CHILDREN'S LAWYER: Ms Sloane

SOLICITOR FOR THE INDEPENDENT CHILDREN'S LAWYER: Marsdens Law Group

ORDERS

(1) That all previous parenting orders in relation to the children

T born on ... February 2003

U born on ... February 2005

V born on ... August 2007

("the children") are discharged.

(2) The Minister for Community Services shall have sole parental responsibility for the children.

(3) Each of the children shall live as directed by the Director-General of the Department of Family and Community Services.

(4) Subject to orders 5 & 6 the children shall spend time with each of the parents as follows:

4.1 at such times as may be agreed between the parent and a delegate of the

- Director-General and failing agreement, on six occasions each year;
- 4.2 at a venue to be determined by a delegate of the Director-General; and
- 4.3 for a period of no less than two hours on each occasion.

- (5) The imposition or dispensation of supervision of the time spent by any of the children with either parent shall be determined by a delegate of the Director-General.
- (6) A delegate of the Director-General may cancel, suspend or terminate any occasion on which the children spend time with either parent in the event that:

- 6.1 the parent attends a visit and is, in the opinion of the supervisor, intoxicated by alcohol or under the influence of a drug;
- 6.2 the parent behaves during a visit in a manner which is, in the opinion of the supervisor, inconsistent with the children's best interests, including but not limited to:
 - 6.2.1 denigrating the other parent or any member of the other parent's family;
 - 6.2.2 discussing these proceedings or orders in the presence of hearing of the children;
 - 6.2.3 initiating discussion with the children about allegations of physical or sexual abuse; or
- 6.3 a child expresses distress before, during or after time with a parent.

- (7) The children shall communicate with each of the parents by telephone as follows:

- 7.1 as agreed between a delegate of the Director-General and the parent and failing agreement, on no less than six occasions each year; and
- 7.2 the imposition or dispensation of supervision of such communication is to be determined by a delegate of the Director-General.

- (8) Subject to order 9 the Minister and the parents shall take all reasonable steps to ensure that the children and parents communicate by sending letters, cards and/or gifts to a delegate of the Director-General who will then forward them to the recipient.

- (9) If, in the opinion of a delegate of the Director-General, it is not in the best interests of the children to receive a particular card, letter or gift, the Director-General may determine not to forward same to the child and instead return the item to the sender.

- (10) Leave is granted to a delegate of the Director-General to provide a copy of the single expert's report to any professional engaged by a delegate of the Director-General to assist in the psychological care, welfare and development of the children.

- (11) Pursuant to section 65DA(2) and 65B the particulars of the obligations these orders create and the particulars of the consequences that may follow if a person contravenes these orders and details of who can assist parties to adjust and comply with an order are set out in the fact sheet attached hereto and these particulars are included in these orders.

- (12) All material produced on subpoena be returned.

IT IS NOTED that publication of this judgment by this Court under the pseudonym *Benoud & Shea and Anor* has been approved by the Chief Justice pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth).

FAMILY COURT OF AUSTRALIA AT SYDNEY

FILE NUMBER: PAC 1407 of 2011

Mr Benoud

Applicant

And

Ms Shea

Respondent

REASONS FOR JUDGMENT**THE PROCEEDINGS**

1. Ms Shea and Mr Benoud are the parents of three children:

T born in February 2003 (10)

U born in February 2005 (8)

V born in August 2007 (5).

These proceedings concern parenting orders in respect of T, U and V.

2. The father commenced the proceedings by an application filed in the then Federal Magistrates Court on 31 March 2011. The Director-General of the Department of Family and Community Services ("FaCS") intervened on 21 October 2011 and the proceedings were transferred to this court on the same day. The family has been known to officers of FaCS since February 2003.
3. FaCS assumed the care of the children on 2 October 2011, on the basis of a risk of physical harm to U and sexual abuse of T and V. The children have since lived in four out-of-home placements and spent time with each parent under supervision.
4. At the commencement of the trial the father sought orders that the children live with him and spend supervised time with the mother. In final submissions counsel for the father indicated that he accepted that the children should remain in out of home care. He proposed that they spend time with him from 10:00am until 4:00pm on each alternate Saturday for six months and thereafter each alternate weekend from 10:00am on Saturday until 4:00pm on Sunday. After a further six months, the children would spend time with the father each alternate weekend from Friday afternoon until Sunday evening; during school holidays and on special occasions.
5. I requested that the father's lawyers provide a Minute of Proposed Orders, as there had been this substantial shift in his position. I received this document on 1 February 2013 and was subsequently advised that the Director-General wished to make submissions in relation to the orders sought by the father. The proceedings were accordingly relisted on 7 March 2013. The Minute of Order submitted on behalf of the father read as follows:
 1. That the father have equal shared parental responsibility with the Minister for Family and Community Services for the children [T] born ... February 2003, [U] born ... February 2005 and [V] born ... August 2007.

2. That the children[T] born ... February 2003, [U] born ... February 2005 and [U] born ... August 2007 live as directed by the Director-General of the Department of Family and Community Services.
3. That the Father spend time with the children as follows:
 - a. Each alternate Saturday from 10am until 4pm commencing the first Saturday following the making of these orders for a period of six months.
 - b. Each alternate weekend from 10am Saturday to 4pm Sunday commencing six months from the date of these orders or the first Saturday following 1 August 2013 whichever is the earliest.
 - c. Every second weekend from after school Friday to before school Monday commencing twelve months from the date of these orders or the first Friday following 1 February 2014 whichever is the earliest.
 - d. Four days each school holiday period during the year 2013 in addition to any day or weekend time provided in these orders.
 - e. Half all school holidays commencing at the end of first term 2014 as agreed with the delegate of the Minister and/or the children's foster carers or in the absence of agreement the first half in even years and the second half in odd years.
 - f. Time on the children's birthdays, the Father's birthday, Father's Day and Christmas Day as agreed with the delegate of the Minister and/or the children's foster carers and in the absence of agreement a minimum of five hours on each occasion.
 - g. Telephone communication on a telephone number provided by the children's foster carers every second Wednesday at 6pm being the Wednesday preceding the Saturday or the weekend when the children are to spend time with their father.
4. That the Father do all acts and things necessary to cooperate with the delegate of the Minister of Family and Community Services with respect to:
 - a. Urinalysis
 - b. Parenting courses
 - c. In supporting the children's placement
 - d. Attending to any medical, therapeutic or other needs of the children.
5. That the children and the Father engage in family therapy as recommended by the Independent Children's Lawyer and/or the [Children's Counselling] program as conducted by [Organisation A].
6. That the mother, [Ms Shea] spend time with the children as directed by the Minister for Family and Community Services.
7. That the Father use his best endeavours to secure a transfer to new housing with the Department of Housing.
8. That for the purpose of the father spending time with the children changeover shall occur at the children's school and where the children are not at school at a McDonald's Restaurant as agreed between the Father and the children's carers.
9. That the father shall be at liberty to attend at the children's school to obtain copies of school reports and/or notices and the father shall be at liberty to attend school and/or extracurricular activities involving the children to which parents are normally invited including parent teacher interviews.
10. That the father shall be at liberty to attend any of the children's sporting activities including training and/or games or events during the week and on weekends including weekends when the children are not spending time with the father.
11. That the Father shall be kept informed of any emergencies involving the children.
12. That the father authorise the school attended by the children to forward direct to the mother copies of all school reports and school notices.
13. That both parties shall not criticise each other to the children in the presence of the children nor allow third parties to do so.

14. That the Father shall be present when his daughter [B] spends time with the children, on a without admissions basis, unless otherwise agreed with a delegate of the Minister for Family and Community Services.
15. In the event the children's proposed placement with their current carers is no longer to continue then there be liberty to restore this matter to Her Honour's list on 72 hours notice.

6. On 7 March 2013 counsel for the Director-General indicated that she opposed paragraphs 8, 9, 10 and 12 of the father's Minute. She informed me that "*under the Children (Care and Protection) Act New South Wales the Director-General faces certain restrictions on releasing information about children in out of home care*". Counsel further submitted that these proposals were not explored with caseworkers during the trial and such orders would bind carers who are strangers to these proceedings.
7. The mother supported the position of the Director-General at all times after she swore her affidavit of 31 December 2012. To her great credit, she deposed:

6. I continue to want the children to return to my care but I acknowledge at this time that I still have issues that need to be addressed prior to their return. I accept that at this time it is not possible for the children to reside with me.

8. Ultimately the mother sought orders that the children spend time with her "*at least six times per year*". The Director-General offered no opposition to that proposal, on the basis that he or she would determine from time to time whether there is any necessity for supervision of the children's time with the mother. The Director-General made the same proposal for the children to spend time with the father.
9. The Independent Children's Lawyer ("the ICL") sought the following orders:
 1. That all previous parenting orders be discharged.
 2. That the Applicant Father and Minister for Community Services have equal shared parental responsibility for the children [T] (dob .../2/2003), [U] (dob .../02/2005) and [V] (.../8/2007).
 3. That the Minister for Community Services consult with the Respondent Mother in relation to decisions about the children's health, education and general well being.
 4. That the children live as directed by the Director-General of the Department of Family and Community Services.
 5. That the children spend time with the Applicant Father as follows:
 - 5.1 once a month for no less than 4 hours on each occasion;
 - 5.2 such further times as agreed to between the Applicant Father and Director General;
 - 5.3 that the Applicant Father's time with the children is unsupervised.
 6. That a delegate of the Director General is to deliver the children at the local McDonalds closest to the Applicant Father's place of residence at the commencement of the children spending time with the Applicant Father and the Applicant Father is to deliver the children to the delegate of the Director General at the local McDonalds closest to the Applicant Father's place of residence at the conclusion of their time with the Applicant Father or as agreed to between the Applicant Father and the Director General.
 7. That the children spend time with Respondent Mother as follows:
 - 7.1 for no less than 6 occasions each year for no less than 2 hours on each occasion;
 - 7.2 supervised by a delegate of the Director General;
 - 7.3 at a venue to be determined by a delegate of the Director General;
 - 7.4 at such times as agreed to between the Respondent Mother and the Director General.
 8. That the parties be restrained by injunction from engaging sexual assault counselling for the child [T] in relation to the allegations made against the Applicant Father and

- investigated by JIRT in March and October 2011.
- 9. That the Director of the Department of Family and Community Services do all things necessary to organise and ensure that the child [T] and the Applicant Father engage in family therapy for the purpose of restoring the relationship between the child [T] and the Applicant Father and not for the purposes of reinforcing the child's fears.

Background

10. The father was born in 1969 and is currently 44 years old. The mother was born in 1983 and is presently aged 29 years. Their relationship began in 2001, when the father and the mother were aged about 32 and 17 respectively.
11. T was born in February 2003 and removed from her parents' care by FaCS workers on 24 April 2003. On 7 November 2003 the Children's Court made final orders, which committed parental responsibility for T to the Minister until she attained the age of 18 years.
12. On 27 July 2004 the father filed an application in the Children's Court for restoration of T to the care of her parents. On 1 April 2005 the Children's Court ordered that T be placed in the shared parental responsibility of the Minister and the mother and father for six months. On 14 April 2005 T was restored to the care of her parents, after having been in out-of-home placements for some two years. T was aged between two months and two years during this period of her life.
13. A Magellan report dated 25 November 2011 addressed the circumstances of T's removal from her parents' care in these terms:

Community Services first became involved in the family in February 2003, following [T's] birth, due to child protection concerns in relation to parenting capacity, drug use by the parents, aggressive behaviours by [the mother] and [the father] towards [T] and domestic violence. A protection planning meeting occurred with the hospital and agreement was made for the parents to engage with the hospital and services to ensure [T's] physical, psychological and medical needs were met upon discharge from hospital.

[The mother] and [the father] failed to comply with the agreement and further risk of harm reports were received by Community Services. [T] was removed from her parents' care on 24 April 2003. The reasons for the removal were in relation to [the mother] and [the father's] lack of insight into her medical needs, failing to follow up with her medical appointments, parental drug use, domestic violence and their aggressive behaviours towards [T].

Against this background, it is concerning that the father said in answer to a question by counsel for the ICL:

I take no responsibility for [T's] removal in 2003.

14. The parents separated on 1 January 2008, when the mother moved into the home of the maternal grandmother. On 23 June 2008 the Local Court ordered by consent that the father and mother share parental responsibility and that the children live in an approximately equal time arrangement.
15. The mother was in prison between May and September 2009, having been convicted of possession of a prohibited weapon. According to the mother she received treatment and medication for bipolar disorder during this period.
16. Upon the mother's release, she recommenced a relationship with Mr C but separated from him in August 2010. She moved out of Mr C's premises in January 2011 and went to stay at the father's home.
17. Allegations that the father sexually abused the girls first arose on 11 March 2011, when the mother alleged that V said "*ouch. My bum hurts...my dad hurt my bum*". The mother claimed that she observed that V's anus was "*red and enlarged*" at this time. A Joint Investigation Response Team ("JIRT") commenced an investigation and interviewed V on

- 28 March 2011. JIRT concluded that allegations that V was sexually abused by the father were “*not substantiated*” after this interview.
18. According to the mother, on 23 March 2011 T said to her: “*Last night I went to bed at 9:30pm and my dad woke me up by sticking his thumb up my bum.*” T was interviewed by JIRT on 31 March 2011 and these allegations were found to be “*unsubstantiated*” on 15 April 2011.
 19. On 4 April 2011 interim orders were made to the effect that T and U live with the mother and V with the father. On 6 May 2011 further interim orders were made which provided for T and U to live with the father. On 28 June 2011 interim orders were made to the effect that the children live with the father and spend supervised time with the mother.
 20. In August 2011 the father met the mother’s new partner, Mr D, and visited their home at Suburb E. The father then agreed for V to spend two nights in the mother’s home on an unsupervised basis. This arrangement was contrary to the interim orders and to instructions which the father had received from FaCS caseworkers.
 21. On 1 October 2011 the mother saw a bruise on U’s face. When she asked him what had happened he said “*my dad hit me*”. The mother reported this incident to police and the DOCS Helpline. U was interviewed by FaCS caseworkers on the night of 1 October 2011. They decided to leave the children with the mother until the following day.
 22. On 2 October 2011 police officers attended the mother’s home and attempted to interview U in relation to the alleged assault by the father. They also spoke to T, who said that the father “*puts his finger in my bum*”.
 23. On 2 October 2010 FaCS officers assumed care of the children while they were spending time with their mother. They remained in the first placement until 7 October 2011 and then moved to different carers. They stayed in this placement until 31 March 2012 and moved to their current carers on 28 November 2012.
 24. T’s allegations of sexual abuse by the father of 2 October 2011 were referred to JIRT for investigation on 4 October 2011. T was interviewed by a JIRT team, comprising Ms F and Ms G, on 11 October 2011. They concluded that the allegations were “*substantiated*” and referred T for sexual assault counselling. It emerged during the trial that Ms F made the decision to “*substantiate*” the allegations that T was sexually abused by the father.
 25. I consider these allegations of sexual abuse below in these reasons in some detail. I share the concerns expressed by counsel for the ICL that this investigative process and the decision to substantiate these allegations may not withstand proper scrutiny. The consequence of substantiation, of course, was that T underwent counselling which proceeded on the assumption that she was sexually abused by the father.
 26. I also consider in some detail below in these reasons the evidence as to the circumstances to which U suffered bruising to his face prior to his removal from the father’s care on 2 October 2011. In essence, the father claimed that he accidentally struck the child while trying to prevent him from kicking a visiting friend. It may be, however, that the father struck the child deliberately and in anger.
 27. On 16 December 2011 interim orders were made which provided for the Minister to have sole parental responsibility and for the children to spend supervised time with each parent. In fact, T has spent no time with the father and expressed strong opposition to doing so.
 28. The mother failed to attend scheduled time with the children between 4 May 2012 and early July 2012 but resumed seeing them on 5 July 2012. She conceded in her affidavit of 31 December 2012 that some visits were missed because the children had other commitments and also due to the fact that she “*had difficulties attending*”.
 29. The JIRT investigation into the second set of allegations that the father sexually abused T concluded on 6 July 2012. New South Wales police determined that there was insufficient evidence to pursue criminal charges against the father.
 30. Since 2009 the father has been the victim of two home invasions. On each occasion the children were in the premises. The first invasion occurred in December 2009, when three people bashed the father and smashed his car. The second incident occurred in March 2010, when four people invaded the father’s home while armed with a shortened .22 rifle and a

taser. The father was again bashed and suffered a fracture to his nose.

31. I refer below in more detail to the two home invasions. These incidents were variously attributed in the proceedings to retribution on the part of the mother, violent associates of the father's daughter B and allegations that the father is a drug dealer.

Approach To These Proceedings

32. In making a parenting order, the Court is governed by a determination of what arrangements are in the best interests of the child who is the subject of the proceedings. Part VII of the *Family Law Act 1975* (Cth) ("the Act") sets out a number of mandatory considerations which prescribe the pathway to that decision. Section 60CC sets out two "primary" and thirteen "additional" considerations, to which the court must have regard in determining what orders are in a child's best interests.
33. The Court must have regard to the objects of Part VII, as contained in section 60B(1) and the principles underlying those objects, as set out in section 60B(2). Section 60B(3) makes particular provision for the right of an Aboriginal or Torres Strait Islander child to enjoy his or her culture.
34. Section 61DA requires the Court to apply a presumption that it is in a child's best interests for his or her parents to have equal shared parental responsibility. This presumption does not apply if there are reasonable grounds for the court to believe that a parent (or a person who lives with a parent) has engaged in abuse of the child (or another child who was a member of the parent's household) or family violence. The presumption may be rebutted by evidence which satisfies the court that it would not be in a child's best interests for his or her parents to have equal shared parental responsibility.
35. If a parenting order provides for equal shared parental responsibility the court must consider whether it is in the child's best interests, and reasonably practicable, for him or her to spend equal time with each parent (section 65DAA(1)). If there is no order for equal time, the court must consider whether it is in the child's best interests, and reasonably practicable, for him or her to spend "substantial and significant" time with each parent. The concepts of "substantial and significant time" and "reasonable practicability" are defined in sections 65DAA(3),(4) and (5). There is no temporal definition of "substantial and significant time".
36. In *MRR v GR* [2010] HCA 4; (2010) 263 ALR 368 the High Court of Australia said:

[8] Subsection (1) of s 65DAA is headed "Equal time" and provides:

If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

(a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

(b) consider whether the child spending equal time with each of the parents is reasonably practicable; and

(c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Subsection (2) makes provision for where a parenting order provides that a child's parents are to have equal shared parental responsibility for the child (para (a)) but the court does not make an order for the child to spend equal time with each of the parents (para (b)). In such a circumstance the court is obliged to:

(c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and

(d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and

(e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Subsection (3) explains what is meant by the phrase “substantial and significant time”.

[9] Each of subss (1)(b) and (2)(d) of s 65DAA require the court to consider whether it is reasonably practicable for the child to spend equal time or substantial and significant time with each of the parents. It is clearly intended that the court determine that question. Subsection (5) provides in that respect that the court “must have regard” to certain matters, such as how far apart the parents live from each other and their capacity to implement the arrangement in question, and “such other matters as the court considers relevant”, “[i]n determining for the purposes of subss (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child’s parents”...

[13] Section 65DAA(1) is expressed in imperative terms. It obliges the court to consider both the question whether it is in the best interests of the child to spend equal time with each of the parents (para (a)) and the question whether it is reasonably practicable that the child spend equal time with each of them (para (b)). It is only where both questions are answered in the affirmative that consideration may be given, under para (c), to the making of an order. The words with which para (c) commences (if it is) refer back to the two preceding questions and make plain that the making of an order can only be considered if the findings mentioned are made. A determination as a question of fact that it is reasonably practicable that equal time be spent with each parent is a statutory condition which must be fulfilled before the court has power to make a parenting order of that kind. It is a matter upon which power is conditioned much as it is where a jurisdictional fact must be proved to exist. If such a finding cannot be made, subss (2)(a) and (b) require that the prospect of the child spending substantial and significant time with each parent then be considered. That subsection follows the same structure as subs (1) and requires the same questions concerning the child’s best interests and reasonable practicability to be answered in the context of the child spending substantial and significant time with each parent....

[15] Section 65DAA(1) is concerned with the reality of the situation of the parents and the child, not whether it is desirable that there be equal time spent by the child with each parent. The presumption in s 61DA(1) is not determinative of the questions arising under s 65DAA(1). Section 65DAA(1)(b) requires a practical assessment of whether equal time parenting is feasible....

37. A leading decision on the approach of the court to allegations of sexual abuse of children is that of the High Court of Australia in *M and M (1988) 166 CLR 69*. Their Honours said (at page 76):

...the resolution of an allegation of sexual abuse against a parent is subservient and ancillary to the Court’s determination of what is in the best interests of the child. The Family Court’s consideration of the paramount issue which it is enjoined to decide cannot be diverted by the supposed need to arrive at a definitive conclusion on the allegation of sexual abuse...

and at page 75:

...the ultimate and paramount issue to be decided in proceedings for custody of, or access to, a child is whether the making of the order sought is in the interests of the welfare of the child. The fact that the proceedings involve an allegation that the child has been sexually abused by the parent who seeks custody or access does not alter the paramount and ultimate issue which the Court has to determine, though the Court’s findings on the disputed allegation of sexual abuse will naturally have an important, perhaps a decisive, impact on the resolution of that issue.

38. In *M and M* (at pp 76-77) the High Court identified the relevant standard of proof in these terms:

In considering an allegation of sexual abuse, the Court should not make a positive finding that the allegation is true unless the Court is so satisfied according to the civil standard of proof, with due regard to the factors mentioned in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 at p.362. There Dixon J said:

‘The seriousness of an allegation made, the inherent likelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.’

39. The “*Briginshaw test*” is now encapsulated in section 140 of the Evidence Act 1995 (Cth), which provides:

140(1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.

(2) Without limiting the matters which a court may take into account in deciding whether it is so satisfied, it is to take into account:

- (a) the nature of the cause of action or defence; and
- (b) the nature of the subject matter of the proceeding; and
- (c) the gravity of the matters alleged.

40. The High Court in *M and M* addressed the issue of “*unacceptable risk*” of sexual abuse and said (at page 77):

In resolving the wider issue the court must determine whether on the evidence there is a risk of sexual abuse occurring if custody or access be granted and assess the magnitude of that risk. After all, in deciding what is in the best interests of a child, the Family Court is frequently called upon to assess and evaluate the likelihood or possibility of events or occurrences which, if they come about, will have a detrimental impact on the child’s welfare. The existence and magnitude of the risk of sexual abuse, as with other risks of harm to the welfare of a child, is a fundamental matter to be taken into account in deciding issues of custody and access. In access cases, the magnitude of the risk may be less if the order in contemplation is supervised access.

41. In *W and W (Abuse allegations: unacceptable risk)* [2005] FamCA 892; (2005) FLC 93-235 the Full Court (Warnick, May and Boland JJ) discussed the “*the unacceptable risk test*”, and said:

In summary, the law is well settled as to the standard of proof required to make a positive finding of sexual abuse, and that such a finding should not be made unless a trial Judge is satisfied to the highest standard, on the balance of probabilities abuse has occurred. We accept, as a matter of practice, a trial Judge will almost inevitably be required in a case where sexual abuse allegations are raised to consider whether abuse has been proven on the balance of probabilities as well as considering whether or not an unacceptable risk of abuse exists. The High Court in *M and M* recognised the difficulty in defining with any degree of precision what constitutes an ‘unacceptable risk’ and the cases determined after that decision testify to the difficulty. However, the questions posed by Fogarty J in *N and S*, and referred to by us in paragraph 105, do provide a structure or framework which may assist a trial Judge to assess future risks to a child.

42. The Full Court in *W and W* cited with approval the following passage from the judgment of

Fogarty J in *N and S* (1996) FLC 92-665:

In asking whether the facts of the case do establish an unacceptable risk the Court will often be required to ask such questions as: What is the nature of the events alleged to have taken place? Who has made the allegations? To whom have the allegations been made? What level of detail do they involve? Over what period of time have the allegations been made? Over what period of time are the events alleged to have occurred? What are the effects exhibited by the child? What is the basis of the allegations? Are the allegations reasonably based? Are the allegations genuinely believed by the person making them? What expert evidence has been provided? Are there satisfactory explanations of the allegations apart from sexual abuse? What are the likely future effects on the child?

I would respectfully observe that this series of questions is a useful, practical tool for a court to utilise in assessing whether there exists an “*unacceptable risk*” of sexual abuse of a child.

The Evidence and Witnesses

43. The applicant father relied upon the following affidavits:
1. Mr Benoud (the father) affirmed or sworn on 21 December 2012 and 18 January 2013
 2. B (the father’s daughter) sworn on 21 December 2012
 3. Mr H (father’s friend who was present on 29 September 2011 when U was injured) affirmed on 14 October 2011
 4. Ms K (father’s friend who was present on 29 September 2011 when U was injured) sworn on 14 October 2011
 5. Ms J (acquaintance of both parties) affirmed on 23 January 2013.
44. B failed to attend for cross-examination. The father suggested that she had suffered an injury and had been taken to hospital on the previous evening but adduced no medical evidence to this effect. As B’s evidence was completely untested, I will afford no weight to the contents of her affidavit.
45. For reasons which are set out below in the context of my consideration of the circumstances of the injury to U on 29 September 2011, the evidence of Mr H and Ms K did not materially assist the father’s case. Their accounts of the incident and their drug use were inconsistent and contradictory.
46. Ms J gave evidence of an alleged conversation with the mother in which she asked her for assistance in arranging a “*hit*” on the father. In light of the mother’s acceptance of the proposals of the Director-General, I gained little assistance from the evidence of Ms J.
47. The respondent mother relied on her affidavits sworn on 30 August 2011 and 31 December 2012. In my view, the mother was a disarmingly honest witness who had no hesitation in admitting to conduct which did not advance her case. By way of example, she said:

My relationship with [Ms L] (the FaCS caseworker) has been up and down. I have made complaints about her but only out of stupidity.

I suffered sexual abuse as a child. I waited too long to seek help for my sexual abuse and now it is embedded in my head. I took the short route of drugs and alcohol.

I have a Christmas list of issues to deal with.

It is just ridiculous that he says I have arranged to have him done over. If I did it would not be teenage boys because my ex-partner [Mr C] is a biker.

48. The intervener Director-General relied on the following affidavits:
1. Ms L (FaCS caseworker) sworn on 19 November 2012
 2. Ms F (FaCS JIRT worker) sworn on 21 November 2012
 3. MS N (contact supervisor) sworn on 17 January 2013.

All of these witnesses gave oral evidence in the proceedings.

49. I had the benefit of a Magellan report dated 25 November 2011. I also derived considerable assistance from a single expert report dated 18 December 2012 and oral evidence from Dr O.

Major Issues in the Proceedings

50. There were several serious issues in the proceedings, including the following:

- o whether T was sexually abused by the father
- o whether the father accidentally or intentionally struck U's face and caused an injury
- o the circumstances of the home invasions at the father's premises
- o whether the father is a user of and/or a dealer in illegal drugs.

The Allegations of Sexual Abuse

51. As noted, in March 2011 JIRT officers found "*not substantiated*" allegations that the father sexually abused T and/or V. The Magellan report summarised these complaints, the investigation and the outcome as follows:

In March 2011 Community Services allocated the matter when four risk of significant harm reports were received in relation to allegations that [T], [U] and [V] were at risk of sexual abuse in their father's care.

On 16 March 2011, Community Services received a risk of harm report stating that [V] had been medically examined, and had been observed to have a significant and abnormal anal dilation and loss of anal tone. It was reported that the Mother had denied that [V] had been constipated.

On 18 March 2011, Community Services received a risk of harm report which reported that [T] had been looking sad and was withdrawn, and when asked what was wrong she said it was in relation to [V], and that "daddy hurts her". The report was referred to ... JIRT for investigation.

On 23 March 2011, Community Services received a risk of harm report which reported that [T] had disclosed sexual abuse by the father. It was reported that [T] had stated "My dad, when I was sleeping, put his fingers in my bum two times".

On 30 March 2011, Community Services received a risk of harm report which reported that the mother had observed [T] in the backyard trying to insert the handle of a cricket bat into her anus. It was reported that the mother had asked [T] who taught her how to do that, and she replied that her father did. It was reported that the mother had filmed [T] saying that.

As a result of the investigation, JIRT concluded that the disclosures made by [V] and [T] were "not substantiated".

52. During the JIRT interview on 28 March 2011 (exhibit 4) T made inconsistent statements and advanced inherently improbable propositions, examples of which were as follows:

Q54 O.K. So [T], can you tell me what you've come to talk to me about today?

A Because the baby sister was hurt by my dad.

Q55 Because your, what did you say?

A My baby sister was hurt by my dad.

Q56 Ah, your baby sister was hurt by your dad.

A Yep.

Q57 O.K.

A. Because he put his finger up my baby sister's bum when she was having a nappy change.

Q58 O.K. So he put his fingers up her bum. And so how do you know that your dad put his fingers up her bum?

A Because [U] saw it, then he tell me.

Q59 Because who did?

A [U].

Q297 O.K. O.K. So [T], someone's told me that your dad has put his fingers into your bum.

A Yeah he did when I was asleep.

Q298 So that happened when you were asleep.

A Yep.

Q299 So how do you know that that happened if you were asleep?

A. Because [U] was still awake and when I woke up in the morning he tell me.

Q360 O.K. And where was your dad when you woke up?

A. He was, he was near my bed.

Q361 Your dad was.

A. Yeah. Then he pulled my pants and my undies down, then put his fingers in my bum.

Q362 So you said he pulled your pants and your undies down.

A. Yeah.

Q363 And how do you that he pulled your pants and your undies down?

A. Because I can feel it and [U] sawed it. He was still awake looking through his secret hole. He saw my dad walk in my room and did it.

Q364 O.K. And you said then because you could feel it.

A. Yeah.

Q365 What could you feel?

A. Only my dad putting his fingers in my bum.

Q366 So you said before [T] that you were asleep.

A. Yeah.

Q367 And you didn't know anything happened until [U] told you.

A. Yeah.

Q368 So but you've just said then that you could feel your dad putting his fingers into your bum.

A. Yeah.

Q369 So tell me more about that?

A. When I feel it he put it back. He did it like, do, do, then he put back my undies and my pants.

Q370 And is that what you could feel?

A. Yeah.

Q371 So were you awake, asleep or something else?

A. I was asleep still.

Q372 So how could you feel it if you were asleep still [T]?

A. Because if someone touch me I can feel it.

Q373 And who told you that?

A. I, I keep it a, a secret but I didn't tell anyone.

Q374 What did you keep a secret?

A. Because I can feel whatever my dad can feel when I'm asleep.

Q378 O.K. And you said before that [U] came in the room and turned your light on and you dad was on the lounge.

A. Yeah.

Q379 But then you said that [U] came in and turned on the light and your dad was in your room, so where was your dad?

A. My dad was, went in the lounge and when he went in there he sit on the lounge and watch his favourite show.

Q380 And what's that?

A. I don't know.

Q381 So when [U] came in and turned the light on, was your dad in the room, on the lounge or something else?

A. He was in the lounge room on the lounge.

Q382 So he wasn't in your room.

A. Yeah. He was not in the room.

Q383 I'm just going to ask [Ms P] if she's got any questions for a minute.

So [T], how many fingers did your dad put in your bum?

A Only one.

Q384 And why do you say it was only one?

A Because I can feel the same finger.

Q385 And what could you feel?

A He put his pinky finger in.

Q386 His pinky finger.

A Yeah.

Q387 And why do you think it was his pinky finger [T]?

A Because it was small.

Q388 It was small. And why do you say it was small?

A Because it was the last finger which is thin and small.

Q438 O.K. All right. That's great. Can you sign the bottom of that for me, now I understand your bed? Just write your name on the bottom there for me [T]? So [T] how many times did your daddy or your dad put his fingers into your bum?

A. He did it two times.

Q439 And how do you know it was two times?

A. Because I can feel it and [U] saw it.

Q440 And how do you feel about your dad?

A. Because, he he got big fingers and he put in my bum hole.

Q441 So he's got big fingers.

A. Yeah

Q442 And he put it in your bum hole.

A. Yeah.

Q443 I thought before you said that it was only a little pinky finger.

A. Yeah he put his big pinky finger in.

53. At times during the interview T denied that any one had touched her inappropriately. She said:

Q209The boobs. That's all right. So [Ms P] just said that's O.K.

A Yep.

Q210 All right. And who's allowed to touch you on the boobs?

A No one.

Q211 O.K. Who's not allowed to touch you on the boobs?

A No one.

Q212 Has anyone touched you on the boobs that shouldn't have [T]?

A No.

Q221 That's O.K. That's all right. Who's allowed to touch you on the rude part?

A No one.

Q222 Who's not allowed to touch you on the rude part?

A No one.

Q223 Has anyone every touched you on that rude part [T] that shouldn't have?

A No.

Q257 What was next the bum?

A Yeah.

Q258 Yeah. Who's allowed to touch you on the bum?

A No one

Q259 Who's not allowed to touch you on the bum?

A No one.

Q260 And has anyone touched you on the bum that shouldn't have [T]?

A No.

54. The Magellan report outlined the October 2011 allegations of sexual abuse of T by the father as follows:

On 2 October 2011, Community Services received a risk of harm report, which reported that the children were in the care of the Mother. It was reported that the father had delivered the children to the mother's home and left them to spend unsupervised time with their mother. It was reported that Police attended the mother's home to speak to [U] about the alleged assault by the father.

It was further reported [T] was asked how she feels about living with the father and she said, "not good". When asked why, she replied, "Because he puts his finger in my bum", and the mother was asked about [T's] disclosure, and the mother said that [T] had not made any disclosures of sexual abuse by the father since the JIRT investigation in March 2011. This report was referred to ... JIRT and allocated for investigation.

55. On 11 October 2011 T was interviewed by a JIRT team comprising two FaCS workers, Ms F and Ms G. No police officer participated in the interview. During the trial Ms F said that she made the decision to "*substantiate*" these allegations.

56. Ms F agreed in cross-examination by counsel for the ICL that *“the allegations were substantially the same in March and October 2011”*. She added: *“I thought maybe there were ongoing incidents and she may have been talking about different incidents in March and October 2011”*.
57. Early in the interview T made a statement which was contrary to all other evidence in relation to the bruising to U’s face. She said:

Q49 OK. All right. So, [T], do you know why, can you tell me why you’ve come to speak to me today?

A About [U].

Q50 About who? [U]?

A Yep.

Q51 Who’s [U]?

A My brother.

Q52 Your brother. And what were you going to talk to me about [U], what were you going to tell me about [U]?

A That I kick him on the side of his head.

Q53 OK

A And there was a big bruise.

Q54 OK. And what happened then?

A Mum saw it and I had to tell the police.

Q55 What did you tell the police?

A About [U’s] bruise.

Q56 And did you tell the police anything else?

A Yeah.

Q57 What else did you tell the police?

A Dad put his finger in my and [V’s] bum.

There was no other suggestion whatsoever that T caused U’s injury by kicking his head.

58. Initially T was unable to elaborate on her statement that the father put his finger in her anus. She said:

Q64 OK. So can you tell me everything from start to the end about when dad put his finger in your and [V’s] bottom when you were asleep?

A I didn’t know anything else about that.

Q65 You don’t know anything else about that. OK. So whereabouts were you when this happened?

A In my bedroom sleeping.

Q66 In your bedroom sleeping. And where were you living when that happened?

A At dad's place.

Q67 OK. And do you know what street that was?

A [I Street].

Q68 And do you know what the house number was?

A [omitted]

Q69 And what suburb was [I Street] in?

A [Suburb Q].

Q70 OK. So how many times has dad put his finger in your bottom?

A Twice.

Q71 Twice. OK. Have you always lived at this house in [I Street]?

A Yep.

Q72 Yes. OK. So you said to me that you were in your bedroom sleeping at dad's place in [I Street], [Suburb Q].

A Yep.

Q73 What's your dad's name?

A [The father's first name].

Q74 Does [the father's first name] have a surname or a last name?

A [Benoud].

Q75 OK. So you were in your bedroom sleeping. So what happened? Was it night time or was it day time or was it something else?

A Night time.

Q76 Night time. OK. So can you tell me everything from start to end about what you remember about when dad put his finger in your bottom?

A I don't know anything else.

59. Later in the interview T was asked what the father was wearing at the time of the alleged sexual assault. She said:

Q197 What was he wearing? Do you know? Can you describe to me what his clothes look like?

A His morning clothes.

Q198 Yes? And what are his morning clothes?

A Shirt and shorts.

Q199 And what's his shirt? What colour shirt was he wearing?

A White.

Q200 And what colour was his shorts?

A Black.

60. T had earlier said that she was lying on her side and facing a wall at the time of the alleged assault. This exchange occurred:

Q154 Here? OK. And whereabouts was your head? There. OK And were you sitting, standing or something else, on the bed?

A Laying down.

Q155 Laying down. And do you remember how you were laying down?

A Yeah.

Q156 How were you laying down?

A My whole body straight.

Q157 Your whole body straight. And were you facing the ceiling or were you facing something else? What could you see?

A. The wall.

Q158 The wall? What wall could you see?

A. This wall.

Q159 That wall. OK. So when you were laying straight, what part of your body were you laying on?

A. The side.

Q160 The side? And what side's that?

A. The left.

61. In cross-examination Ms F said: *"I don't know how she would know what he was wearing if she was lying on her side facing the wall. I don't agree she was making up what he was wearing if she could not see."*

62. T said to Ms F that the mother told her that the father sexually assaulted her when she was three years old. This exchange occurred:

Q220...OK. All right. OK. Can I get you to put your name on here for me , please? And I'll put my name on here as well and we'll put today's date, which is the 11th of October. OK. All right. Can you write today's date for me as well like I've put it here? OK. So you've told me about the second time. When was the first time?

A When I was three years old.

Q221 When you were three years old? OK

A But I didn't know anything else when I was three.

Q222 OK. Do you remember what happened when you were three years old?

A (NO AUDIBLE REPLY).

Q223 So how do you know that you were three years old when that happened?

A. Because my mum told me.

Q224 Your mum told you? What did your mum tell you?

A. When I was three he did it too.

Q225 When did your mum tell you that?

A. I don't know what date it was.

Q226 OK. Did your mum tell you a long time ago or a short time ago?

A. A long time.

Q227 OK. And what did your mum tell you? What did your mum say to you?

A. I don't know.

Q228 You don't know? So can you tell me about the time that dad put his finger in your bottom when you were three?

A. I don't remember anything from that...

63. In cross-examination by counsel for the ICL Ms F made these comments as to the use of leading questions in JIRT interviews:

It does not trouble me but sometimes a child won't disclose and leading questions are required...

I am not concerned that this would taint an interview because we are trained that when all other avenues have failed, it is appropriate to ask leading questions...

Leading questions must be appropriate if a child does not make a free disclosure and we have not been able to obtain any information from the child...

64. I am of the view that the use of leading questions must contaminate and undermine the veracity of a complaint of sexual abuse by a child. A careful reading of the transcript of each interview reveals that T was asked leading questions in both March 2011 and October 2011.

65. In her affidavit Ms F deposed:

On 16 March 2011, Community Services received a risk of harm report which reported that [V] had been medically examined, and had been observed to have a significant and abnormal anal dilation and loss of anal tone. It was reported that the Mother had denied that [V] had been constipated.

In fact Dr R and Dr S reported on 25 March 2011 (page 27 annexures to Ms F's affidavit):

The CPU can neither confirm nor deny anal abuse as alleged by the mother. Medical examination showed [V] had adequate anal tone but with pressure there was anal laxity in dilation. This does not necessarily indicate anal abuse. In the absence of neurological abnormality, retention of faeces despite the urge to pass faeces can cause this response. [V] would find it difficult to retain continence of faeces.

66. In cross-examination by counsel for the ICL, Ms F was invited to concede that her description of the state of V's anus was incorrect. She declined to make this concession and, in re-examination, she said that she was referring to a description at page 5 of the annexures to her affidavit, which was as follows:

ROSH Concerns:

...examined [V] today 16/3/11. Mother tells ... that [V] told her that "Daddy has hurt my bottom". Mother is estranged from father. On examination there is significant and abnormal anal dilation and loss of anal tone. Mother denies child has been constipated. Vulva appears normal.

This material came from a report to the FaCS Helpline and is plainly inaccurate when compared to the medical report of Drs [R] and [S].

67. As indicated above, I share the concerns expressed by counsel for the ICL as to the integrity and reliability of the October 2011 JIRT investigation and the decision to "*substantiate*" these allegations. As conceded by Ms F, the March 2011 and October 2011 allegations were very similar in nature.

68. In cross-examination by counsel for the ICL Ms F conceded:

yes, if the mother had told [T] that the father did it when she was three, that would cause me concern about the veracity of the allegations.

As set out above, T clearly said to Ms F that her father sexually abused her when she was three years old and that this was told to her by her mother. Nonetheless, Ms F proceeded to "*substantiate*" the allegations.

69. The mother said in cross-examination that she "*started asking [T] if anything had happened in 2008, only after I left when I went there and saw ten new people there.*"
70. Ms F said that she "*did not think it an important issue to raise with the mother what she may have told her*". I disagree and hold real concerns that T's complaints of sexual abuse by the father were triggered by comments and questions from the mother.
71. Dr O was of the view that there was significant input by the mother, or T's relationship with her, into the child's complaints of sexual abuse by the father. He reported: "*formed the view that the sexual history and allegations appeared to be prompted by the mother*". In his oral evidence Dr O said: "*I think that [T] has a belief that she has been sexually abused and that she thinks that is the correct answer. She has been exposed to repeated questioning.*"
72. These matters, when considered in conjunction with the inconsistent statements and inherently improbable propositions contained in T's JIRT interview, leave me with substantial reservations as to the veracity of both the March 2011 and October 2011 allegations that she was sexually abused by the father. Having carefully considered all of the relevant evidence, I find to the requisite standard that the father did not sexually abuse either T or V.
73. Counsel for the ICL submitted that "*there could be concerns about the allegation of sexual abuse of [T]*". When asked to clarify this submission she agreed with me that there "*could be doubts about the veracity of the allegations and the risk to [T]*".
74. Counsel for the Director-General submitted that "*the court cannot be satisfied that there*

exists an unacceptable risk” of sexual abuse T is placed in the unsupervised care of the father. She indicated in clearest possible terms that the Director-General “does not seek a positive finding that abuse occurred”.

The Injury to U’s Face

75. In his affidavit of 21 October 2012 the father deposed that his friends, Mr H and Ms K, visited his home with their four year old son W and baby X on 29 September 2011. Ms K intervened when U and W began to argue over toy cars. U swore at Ms K and kicked her on the shin. When he moved toward her again, the father struck him on the face with his hand. As noted, there was a significant issue as to whether the father hit the child accidentally or deliberately.
76. The father gave this account of the incident in his affidavit:
100. [W] and my son [U] were playing happily together for approximately 20 minutes with some of [U’s] small Mini Match Box like Go-Karts and they were playing in the dining room area where I was sitting on the backless computer chair and [Ms K] was sitting at the dining room table and [Mr H] was sitting on the arm of a lounge chair. The dining and lounge room are open plan combined. My elder son [Y] was also sitting in the dining room and my other two children, [T] and [V] watching TV.
101. The boys suddenly started arguing over the toys, which ever one had the other one wanted and they started trying to pull them from out of the hands of the other one. At this time both the boys were standing up just behind me and in front of [Ms K].
102. I heard [Ms K] say to the boys, “here, you have these 3 [U] and you have those 3 [W]”, and I saw her hand cars to each of the boys.
103. As she did [U] suddenly kicked [Ms K] in the shin and said to her, “you’re a Fucking Bitch”.
104. After [U] did this I saw him move back and start to charge towards [Ms K]. I was still sitting down and spun around to grab him with my right arm before he got to [Ms K] but as I did he turned his head and looked at him and instead of my grabbing him my hand and his side of face collided with each other, instead of me as I had intended grabbing his shoulder by his shirt.
105. I had no intention of hitting him it was just my intention to grab him to stop him from charging into [Ms K] again and kicking her again.
106. After this incident I asked [U] to apologise to [Ms K] and he refused, so I put him in his bedroom and gave him time out for about for about 10-15 minutes. At that time I didn’t see any mark on his face. He cried when I told him to go to his room for time out. I didn’t think I had hit him that hard.
107. After he had been in his room for approximately 10 minutes I let him out and he came out and sat with me for about 10 minutes then went into the lounge and sat with the rest of the children. When I put him to bed at about 09.30p.m. he was fine.
108. The next day I noticed that he did have a mark on his face but he had no headache and he was playing very happily.
77. In cross-examination by counsel for the Director-General, the father said that he was facing a computer when U kicked Ms K. As is apparent from the marked photograph exhibit 2, the father must have had his back to U and Ms K. He could thus not have seen U kick Ms K.
78. In his affidavit Mr H deposed:
3. We arrived about 07.00p.m. and were sitting around talking in the L shaped lounge room and dining room, whilst the children were all playing in that area. I was sitting on the arm of the lounge chair, [the father] was sitting on his computer bench chair, [Ms K] was at the dining room table and [the father’s] eldest son [Y], aged about 17 at the other end of the dining room table.
4. My son [W] and [the father’s] son [U] seemed to playing happily with what looked like toy

cars, for about 20 minutes. Then suddenly I heard [W] scream a bit, then I heard [Ms K] heard say words to the effect "There's enough for you to share". At that time I was not actually looking at them but I was looking at the computer screen with [the father], however I then looked down and saw [Ms K] give them about 3 each and heard [U] say words to the effect "I don't like these colours I want those". I then looked down, the boys were right behind [the father] on the computer, and saw [U] swing his right leg and kicked [Ms K] in her left leg, and as soon as he did this he said to her "You're a f...g bitch". Then I saw [the father] turn around, and lift his arm as if to grab [U] at the same time [U] seemed to step back right into [the father's] right hand.

5. [The father] then said to [U] "apologise". [U] did not so then I heard [the father] say "Go to your room". He did go to his room, crying, but came out shortly after, I would say within ten minutes and then just sat with the other children watching TV and playing for the rest of the night.

79. In cross-examination by counsel for the Director-General Mr H said: "*[The father] turned around as soon as he heard [U] say 'you're a fucking bitch'.*" In response to a question by counsel for the ICL, he said: "*[The father] did not really see the incident but he did hear it*". He said further that he was "*pretty sure it was the right side of his face*". A photograph of U's bruising (exhibit 3) clearly showed an injury to the left side of his face. Mr H said that he "*did not notice any mark on his face*".
80. In cross-examination by counsel for the mother Mr H said: "*I am a pretty good friend of [the father]*". He said that he smokes cannabis "*a couple of times a week*" but not with the father. He said further: "*[Ms K] and I smoke cannabis together*".
81. In her affidavit Ms K deposed:

5. We had arrived at the home at about 7:00pm and [W] and [the father's] son [U] were playing with [U's] Mini Hot Wheel type Go-Carts on the floor between the dining room and the lounge room.

6. I was sitting at the dining room table, [the father] was in the dining room sitting at his computer on a chair with no back. My partner [Mr H] was on a chair in the lounge room. The dining room lounge room is a L shaped open plan area, so we could all see each other and talk to each other as well as supervise the children.
7. [U] and [W] were playing happily for about 20 minutes when they started arguing and trying to snatch the Mini Go-Carts from each other.
8. In order to try to stop them arguing I took the six Go-Carts off them and said to the boys "You should learn to share boys, here each of you have 3 each, and that will be alright" and I gave the boys 3 of the Go Carts each.
9. I had not had to stand up to do this, as the boys were right in front of me when they were fighting. Straight after I did this [U] said to me words to the effect "No I don't want that colour I want the other colour he got". [W] then ran into the lounge room with the 3 he had and suddenly [U] kicked me hard on my left shin, and leaned over me and said to me "you're a f...g bitch". He then moved back raised his left arm as if to hit me, I was still sitting and he started to come forward to hit me, when I saw [the father] spin around in his chair and reach out his arm as if to grab his shoulders to block the swing, but at the same time [U] seemed to turn his head and collided with his father's hand.
10. This all happened in an instance.
11. [The father] then said to [U] words to the effect "apologise, say sorry". [U] refused so [the father] too him to his room, where he stayed for about 10 minutes, he then came out and played with the rest of the children including [W].
12. I did not see a mark on him and he appeared to be fine.
82. In cross-examination by counsel for the Director-General Ms K said: "*[U] raised his hand at me. I was sitting behind [the father]. I said '[The father's first name] he is about to hit me, can you help me?'* and he turned around. *[The father] caught [U's] arm in his hand and [U's] face collided*". Neither the father nor Mr H gave any evidence about a request for

help by Ms K.

83. Ms K said further in response to questions from counsel for the intervener: *"I saw no marks on [U's] face. I would be surprised if there was a purplish-brown mark on his face the next day. It could have come from her."* I assume that Ms K referred to the mother when she said "her".
84. In cross-examination by counsel for the mother Ms K said that Mr H smoked cannabis *"until about two years ago"*. Obviously that evidence was a direct contradiction of what Mr H said about his drug use. She said also: *"I used to smoke cannabis in high school six or seven years ago"*. That evidence also was a direct contradiction of Mr H's account of their use of cannabis in each other's company.
85. The photograph of U's bruising (exhibit 3) clearly showed a large mark on the left side of his face. Mr H said that he and Ms K left the father's home approximately forty-five minutes after the incident. I have difficulty in accepting that neither the father, Mr H nor Ms K noticed any mark on U's face after the incident, given the severity of the bruise.
86. The mother reported U's injury to the FaCS Helpline and police subsequently attempted to interview the child. On the application of a police officer, a provisional apprehended violence order ("AVO") was made against the father for the protection of U on 2 October 2011.
87. The material in support of the application for the AVO read in part as follows:

The person reporting ([Shea]) asked the victim how the injury was sustained. The victim stated 'Dad smacked me'.

The person reporting ([Shea]) approached the accused and asked him how the victim sustained the injury. The person reporting ([Shea]) alleged the accused said, 'I hit him because he kicked [Mr H's] missus and swore at her'. The accused further explained, 'I went to smack him and he turned his head'.

88. The material in support of the application read further in part as follows:

Police took a photograph of the victim's injury.

Later, the Crisis Response Team attended ... Police Station and spoke with the victim and [Shea]...

[BB] informed police that victim would not speak to them...

The accused had informed CRT that the victim was smacking another family friend's young child and that the victim was just about to hurt her again when he went to grab the victim by the shirt to stop him and as a result he hurt(got the victim in the face).

89. It seemed to me that there was considerable force in the submission by counsel for the Director-General that *"no significant weight should be given to [Ms K's] evidence"*. Ms K denied drug use by herself and Mr H, while he admitted that they both smoke cannabis. She took the opportunity to try to attribute blame for U's injury to the mother for no apparent reason.
90. Mr H's evidence suggested that the father did not see U move toward Ms K before his hand struck the child's face. The father thus had a very limited opportunity to assess the level of risk which he posed to Ms K.
91. The contents of the application for a provisional AVO established that the father told the Crisis Response Team that he struck U while trying to take hold of his shirt. Of course, the father had some three days to consider what he would say about the incident before the Crisis Response Team spoke to him.
92. I am satisfied that the father struck U with considerable force deliberately and as a punishment for kicking and swearing at Ms K. In my view, the evidence did not establish that the father necessarily intended to strike U's face but I am satisfied and I find that he hit

the child deliberately in an inappropriate act of physical discipline. I thus find that the father physically abused U.

The Home Invasions

93. It is a matter of great concern that the children have been present during two home invasions. The father was subjected to physical violence and threatened with weapons on these occasions. The father attributed blame for the home invasions to the mother or former associates of his daughter B.
94. The first home invasion occurred at approximately 9:00pm on ... December 2009. The relevant COPS entry (exhibit 10) read in part as follows:

On ... December 2009, about 9.10pm, the victim was at home with his three children. The victim is not sure if the front screen door was locked although it was closed. The victim heard a large amount of banging at the front door and has started to walk to the front door from a back bedroom. The victim walked into the hallway where he was confronted by POI 1 and 2. POI 2 has said, "You're a fucken dog." POI2 has then punched the victim to the face area a number of times. The victim has tried to defend himself and get away from POI2 who has grabbed the victim by the shirt and pulled off the victims necklace. The victim would hear an amount of banging coming from around the side of the house while he was being assault[ed]. POI2 continued to punch the victim a further number of times. (exact amount unknown). The victim said, "Mate there are kids in the house". The victim could hear his children crying. POI2 ceased assaulting the victim who by this stage was on the floor of the back children's bedroom. POI1 and 2 left the house via the front door. The victim closed the door and contacted '000'. Police arrived a scene preserved. The victim was observed to have laceration to the right ear, numerous cuts and red marks to the face and scratches on his chest. The victim's shirt which had been ripped during the assault was seized as an exhibit. The victims motor vehicle, ... Holden ... had been hit with a blunt object to the windscreen and front bonnet. A large dent could be observed on the bonnet and the front windscreen smashed.

Author has knowledge that the victim has been involved in the supply of prohibited drugs, being cannabis in the past. The allegation was placed on the victim to which he denied and stated that he had not done that for some time.

95. In cross-examination by counsel for the Director-General the father said that the children were not crying on this occasion. The relevant COPS entry recorded that the father heard the children crying, which is a proposition that could only have come from him. In my view, it would be extraordinary if the children were not very frightened and deeply distressed by this incident.
96. The father said in oral evidence "*I believe [the mother] was involved*". In response to questions from counsel for the ICL he said that he asked the invaders "*did [the mother's first name] send you?*" and they made no reply. He said also "*I asked [the mother] and she denied it all*".
97. In cross-examination by counsel for the ICL the mother denied that she was involved with either home invasion. She said that she did not organise the invasions because she knew that her children were in the home. The mother said also that if she had arranged to have the father "*done over, it would not be by teenage boys*". She said in effect that she could have enlisted help from her ex-partner Mr C who is a "*biker*" if she wished to cause injury to the father. In my view, there was no evidence that the mother had any involvement in either home invasion.
98. The reference to "*teenage boys*" seemed to be to a group of people known as the "*[CC] boys*". The father said in cross-examination by counsel for the ICL that the CC boys had "*taken reprisals against my home because I would not let [B] hang around with them*". He said also "*sometimes I do think a lot about [B] and the people she associates with being a risk to me and the children*". It was not clear to me whether the father blamed "*the [CC]*"

boys" for either or both home invasions or for "other break-ins" of which he said that he has been a victim.

99. The second home invasion occurred at approximately 8:30pm on ... March 2010. The relevant COPS entry (exhibit 9) read in part as follows:

pois 4 X Large Pacific Islander males, Poi's wearing masks nfd covering faces. VOI: late model ... Nissan ... with green Pp plate, no further details. Narrative: The listed address is well known to police as a premises involved in the supply of prohibited drugs. On the above time and date the vic indicates that he has sitting in his living room by himself when the four poi's have entered through the front door of the premises. At this time the front screen door was closed but not locked. The four poi's have assaulted the victim punching him in the face causing numerous lacerations. The vic states that the poi's have then threatened him with a firearm and taser, demanding his wallet. The vic states he has indicated to the poi's the location of his wallet and the poi's have entered his room moving a computer terminal and taking his wallet.

100. In cross-examination by counsel for the Director-General the father said that the invaders were armed with a shortened .22 rifle and a taser. He said "*I tried to kick the gun out of his hands while I was sitting on the lounge*". He said that he was kicked in the face and suffered a fractured nose. The father said that V was seated on the lounge beside him and that she was splashed with his blood. It follows that V must have seen the invader pointing a gun at the father.
101. The father said in his oral evidence that there have been break-ins at his home, the last of which he thought was in December 2010. He gave CCTV footage of this break-in to the police.
102. On 13 August 2012 the father contacted police and said that thirty people were on their way to his home with the intention of bashing him (exhibit 8). In oral evidence he said "*it had to do with [B]*".
103. Mr H said in response to a question from counsel for the mother: "*he has run to my place with blood on him*". He indicated that he lives "*two minutes down the road from the father's home*".
104. All of this evidence gave a strong indication that the father's home is a venue for violent and antisocial activity. It is a matter of great concern that the children lived in such an environment before 2 October 2011. I can have no confidence that they would be protected from physical harm and emotional trauma if they were to spend unsupervised time in the father's home in the future.

The Allegations That The Father Is A User Of And/Or Dealer In Illegal Drugs

105. I have referred above to references in two COPS entries to the father's premises being a location known to police where dealing in illegal drugs takes place. The father denied that he deals in drugs but I attach significance to the assertions to the contrary in COPS entries in December 2009 and March 2010. The father has two convictions for drug related matters. In 1998 he was fined \$500 for possession of amphetamines and in 2001 he received a two year good behaviour bond for possession of marihuana.
106. In cross-examination by counsel for the Director-General the father admitted that he was stopped by police on 18 October 2011, when in possession of a baton and \$1,100 in cash. The father was convicted of possession of a prohibited weapon and fined \$50. On 14 March 2007 the father was convicted of possession of a prohibited weapon, which was a cane containing a sword blade.
107. The father deposed that he was charged with certain offences after police found \$3,800 in cash and a sword in his possession in February 2012. In oral evidence the father said that this sum of \$3,800 was "*not the proceeds of crime*" but offered no alternative source of the money.
108. The father admitted in oral evidence that he and the mother smoked marihuana together

during their relationship. The mother said that she and the father smoked \$150 worth of cannabis every day. She deposed that a mutual friend introduced her to the father "*as a drug dealer*" and that he sold marijuana and amphetamines. In her affidavit the mother gave this unchallenged evidence:

15. Throughout the course of my relationship with [the father] he sold drugs and allowed his 'customers' to attend the home where the children and I lived. I constantly argued with [the father] about him exposing the children to such inappropriate people however [the father] would say to me words to the effect of:

'I get to sit at home while other people go to work and I live better than most of them because I sell pot'.

There was no challenge to this evidence by way of cross-examination.

109. As noted above, the mother gave her evidence in a strikingly frank manner. She gave a clear and compelling account of drug use and dealing on the father's part during the relationship. I prefer her assertions to the father's denials in relation to that issue.
110. Both Mr H and Ms K denied having seen the father use or possess drugs. As noted, I attach little weight to the evidence of Ms K. I have serious reservations also as to the veracity of Mr H, given my findings in relation to the incident when the father struck U and bruised his face.
111. In my view, there are questionable aspects to the father's financial position. I have referred above to the occasion in February 2012 when he was stopped by police while in possession of a weapon and \$3,800 in cash. By that time the children had been removed from his care and his income would have reduced to a Newstart allowance. I have difficulty accepting that the father could save \$3,800 in cash if his only income was a Newstart allowance. Further, the father admitted in cross-examination by counsel for the mother that he was stopped by police in October 2011 and found to be in possession of \$1,100 in cash. Unconvincingly, he claimed that he "*won*" this money.
112. In July 2010 the father purchased a Holden motor vehicle for approximately \$34,000. He entered into a loan agreement with Esanda for an amount of \$14,960, with repayments being \$157 per fortnight. The evidence established that the father failed to meet the repayments in November and December 2012. Between 28 July 2010 and 31 July 2011, however, the father paid a total of \$7,399 to Esanda.
113. The father said that he was "*on a much larger benefit*" when he purchased the Holden in 2010, which would be correct because all three children were then in his care. They were placed in out-of-home care in October 2011 but the evidence established only that the father failed to meet Esanda payments in November and December 2012. I thus infer that the father met the fortnightly repayments between November 2011 and October 2012 when his only legitimate income was said to be a Newstart allowance.
114. On 8 September 2011 the father agreed with FaCS caseworker Ms L that he would attend urinalysis and, on 16 December 2011, he consented to orders to that effect. Ms L set out in her affidavit a history of the father's attendance at scheduled appointments. He failed to attend on a number of occasions in 2011 and 2012. Unconvincingly, he claimed that he could not afford to attend these appointments. He did not advise FaCS caseworkers of any such difficulty.
115. For reasons which I now summarise, I find on the balance of probabilities that the father uses and deals in illegal drugs:
- o records of the New South Wales police service contain two references to the father being a known drug dealer
 - o the mother gave compelling evidence of her observations of the father's involvement with drugs
 - o the father's social security income must be insufficient to account for two large

- amounts of cash in his possession and the sum which he has repaid to Esanda
- it seems unlikely that the father installed surveillance equipment at his premises for innocent reasons
- there was no evidence to connect the two home invasions to the mother or the father's daughter
- FaCS caseworkers held concerns about drug involvement on the part of the father (as well as the mother) when T was removed in 2003 and when all three children were taken into care in October 2011
- the father's failure to attend all scheduled urinalysis appointments raises a suspicion that he was motivated to avoid detection of drugs.

The Best Interests of the Children: Section 60CC Considerations

Section 60CC(2): The Primary Considerations

116. The proposals of all parties would see the children spend time with each parent, albeit on a very limited basis if orders were made in accordance with the Minute submitted by the Director-General. Dr O recommended that the children spend time with each parent, on a "*recognition*" basis in the case of the mother, and more substantially with the father. As appears below, however, Dr O was much more cautious about the children spending unsupervised time with the father when certain matters were brought to his attention in the course of his oral evidence. There was thus consensus that the children would benefit from an ongoing relationship with each parent.
117. Independently of the fact that all parties agreed that the children should continue to spend time with each of the mother and father, I consider that they will benefit from a meaningful relationship with each parent in the future. They are 10, 8 and 5 years old and will continue to live in out of home care in the foreseeable future. In my view, it is essential to their sense of identity that they know and see each of their parents. It may be possible for the children to spend increased time with their parents, if one or both of them manages to establish a more stable lifestyle.
118. The mother conceded that she will see the children only under supervision, so it is unnecessary that I set out in any detail the reasons for that appropriate change in her position. She readily conceded that she has a number of personal issues to address and consented to the orders sought by the Director-General. As noted, it may be that she will be able to spend increased time with the children in the future, if she manages to overcome or at least contain her personal difficulties.
119. I am satisfied and I find that the father has perpetrated family violence against the mother in the past. By his own admission he grabbed her shoulders and shook her, which caused her head to hit a window. The mother maintained and the father denied that he directed far more widespread violence at her. I am inclined to prefer her evidence on this issue. On 4 October 2005 the father was convicted of an assault of the mother and placed on a good behaviour bond. He was ordered, inter alia, to undertake a "*domestic violence perpetrator's program*".
120. On the other hand, I consider it likely that the mother's behaviour was volatile during the relationship. In any event, the parents will not come into contact with each other on the proposals of any party.

Section 60CC(3): Additional Considerations

121. T told Dr O in very definite terms that she does not want to spend time with the father. She said "*I hate him*" and "*he hurt me*". She then added "*he stuck his thumb up my bottom*".
122. Dr O assessed as follows:

At this point [T] is definitely refusing to see her father. [T] appears to be significantly impacted upon by the situation although it is unclear as to how to interpret why she has been so severely affected.

123. In his oral evidence Dr O said:

I think there are more complex issues than sexual abuse in the relationship between [T] and the father. I think the mother's comments have contributed to [T's] position in relation to the father, also that [Ms L's] interview on 1 November 2012 would reinforce and contribute to the ongoing estrangement.

124. Ms L interviewed T at her school on 1 November 2012. She said that her purpose was "*about finding out why she did not want to go to contact with the father, if there was any other reason*". It is clear from the record of this interview (pages 272 to 297 of the annexures to Ms L's affidavit) that she raised the allegations of sexual abuse with T. At one point, Ms L said to T "*you are very brave...*" and "*...but Dad should never had done that*".

125. Dr O summarised his assessment of the children's wishes and relationships with each parent in these terms:

The three children all appear to be developing relatively normally both cognitively and emotionally for their respective ages. At the first interview that I conducted on 15 September 2011 there were no particular wishes that were expressed by any of the children. [T] seemed relaxed with her father and she was quiet. [U] sat on his father's lap. [V] seemed to be relaxed. The children were quite chaotic. There was no major division between the children and the father at that time. However in the follow up appointment on 13 August 2012 [T] screamed defiantly and was very distressed while in the same room as the father. This appeared to be quite extreme...

I found it difficult to interpret considering she was relaxed the previous time she had seen him. It could not have been the fear of abuse as the abuse was supposed to have occurred and first revealed in March 2011. Therefore it didn't appear to be clearly related to fear of abuse. However she was very defiant. [U] presented as a highly anxious boy. He was running around the consulting room. It took a long time for him to settle. He appears to be very anxious and worried. He did seem to relate reasonably well to both his father and his mother. [T] seemed to relate reasonably well to her mother. [V] being significantly younger seemed to be oblivious to the issues and she was more relaxed with both parents. [U] seemed quite concerned that [T] was saying untruths and negative things about the father. He tried to convince her to be more positive about him. The three children all appeared reasonably confused about their lives and the chaos with regard to their parents.

126. In his oral evidence Dr O said of T:

I think her relationship with her mother is a key part of this. She lost her mother when taken into care in 2003-2005 and again when she went into the father's care after the separation. I think she links this sexual abuse allegation with her mother and feels a need to distance herself from her father.

127. The children have spent supervised time only with each parent since October 2011. I have real concerns about the introduction of unsupervised time with the father for reasons to which I have referred above and which I summarise as follows:

- o it is more probable than not that he uses and deals in illegal drugs
- o it is more probable than not that he physically abused U
- o the children have observed two home invasions and seen the father threatened with weapons. They have seen the father bashed, with his blood spilling onto V on one of these occasions
- o the father's home has been broken into and he has been threatened with a bashing by thirty people
- o for whatever reason, T refuses to see the father at present
- o the father keeps a number of weapons in his home.

128. As noted, Dr O expressed reservations about the children spending unsupervised time with

the father in his oral evidence. He was asked about the impact of a finding that the father “*struck and injured [U]*” and replied: “*unsupervised time would worry me*”. When his attention was drawn to the home invasions he said: “*that certainly speaks of a chaotic unstable environment*”. He said that the home invasions and threat of a bashing of the father by thirty people “*alarm me about the children spending time in those premises*”.

129. It is clear that there are serious limitations on the capacity of each of the parents to provide for the children’s needs. Dr O summarised these concerns as follows:

In summary both parents have very prejudicial backgrounds. They both have had very unstable lives. They both have had significant problems with substance abuse and unstable relationships, poor work records and a poor relationship with each other. There has been a lot of conflict between them. [The father] has probably been the more stable of the two parents and he has had the larger responsibility in caring for the children. However his record of keeping the children safe and not exposing them to the extremely unstable mother who has major mental health problems has placed the children at risk. The mother is very unstable with possible bi-polar disorder. [T] was placed in care at three months of age and was under the care of Docs for two and a half years before an attempted restoration. There has been continued instability for the children. Despite the problems the children still appear to be relatively functional. However I do hold grave fears about their future. In essence I formed the view that both parents were not capable of caring for the children satisfactorily. [The father] probably does have some better coping qualities than [the mother] however his judgment in the past has been poor and unreliable.

Ms L and Ms N gave evidence of the proposals for future out-of-home care for the children. Ms L deposed that the children were placed with carers authorised by Barnardos on 30 March 2012. Since 28 November 2012 they have been placed with carers “[Ms Z]” who works in the education field and “[Mr DD]”, who is a public servant.

130. Ms N deposed that the children have said to her:

[V]: I want to live with [Ms Z] and [Mr DD] forever.

[U]: Me too, have you seen the judge yet [Ms N]?

[U]: I want a mum and dad that can look after us.

131. Ms N deposed that “[Ms Z] and [Mr DD] have indicated to Barnardos that they would like to be assessed as long-term carers for the children, if the court decides that the children should remain under the parental responsibility of the Minister for Family and Community Services”. She made it clear that she “*could give no guarantees.*” She said also: “*I agree that long-term placements sometimes break down but in this case I don’t think that will happen because of the strength of the attachments*”.

132. Ms L said that “*the Department’s best endeavours will be to keep the children together but any placement can break down*”. She explained that “*Barnardos have more support than the Department. They are able to support their carers*”.

The Presumption of Equal Shared Parental Responsibility

133. The Director-General sought an order that the Minister have sole parental responsibility for the children and the mother consented to that proposal. There was thus no issue that the mother would have no parental responsibility for the children.

134. The father and the ICL proposed that he and the Minister share parental responsibility. Dr O opined, in response to questions from counsel that: “*there is some appeal in the idea of the Minister and the father have shared parental responsibility. That would require him to follow the Department’s directions*”. Dr O conceded that he “*had not given much thought*” to the prospect of the Minister and the father sharing parental responsibility.

135. In response to questions from counsel for the Director-General, Dr O seemed to be less supportive of a sharing of parental responsibility between the father and the Minister. He said:

Shared parental responsibility could create a bridge between the father and the Department but that would require the court to think that he could engage meaningfully in a cooperative relationship with the Department. Meaningful engagement would involve complying with directions, for example, telling the Department before the event that he could not attend urinalysis due to financial reasons.

136. Dr O said also:

If he did not comply with a safety plan, it would depend on the extent of the non-compliance. If he failed to ensure supervision of time with the mother despite a safety plan, that does not indicate meaningful engagement.

Ultimately, Dr O opined that:

a bridge between the father and the Department could begin to be established if he were informed of major decisions in relation to the children.

137. There have thus been at least two circumstances in which the father failed to follow the directions of FaCS officers. He allowed unsupervised time with the mother contrary to the provisions of a safety plan. He failed to attend all of his urinalysis appointments and gave no prior notice that he did not intend to do so.

138. I have a real concern that the children's stability would be undermined by an order that the Minister and the father share parental responsibility. I have no reason for confidence that he would follow the directions of caseworkers, thus there must be a risk of conflict over decisions to be made for the children. In my view, it is essential for the children's well-being that their current placement is afforded every opportunity of success and longevity. Accordingly, I will order that the Minister have sole parental responsibility for the children.

Conclusion

139. The sad reality of these children's situation is that their only chance of stability is to remain indefinitely in out-of-home care. There is no issue that they will spend time with the mother on a minimum of six occasions per year, with supervision to be a matter for the discretion of a delegate of the Director-General.

140. In my view, the same arrangements and conditions should govern the children's time with the father. I have great concerns about the environment in his home and his capacity to safeguard the children's physical safety and emotional stability in general.

141. I consider that there was considerable force in the submissions by counsel for the Director-General in opposition to the proposals of the father. I cannot bind carers who are strangers to these proceedings. I am not prepared to exclude the Director-General from arrangements for time with the father and changeovers, in circumstances where the Minister will have sole parental responsibility. I am certainly not prepared to grant to the father a liberty to restore this matter to my list on 72 hours notice, in the event that there is a change in the children's placement. Essentially, I will make orders in accordance with the proposals of the Director-General.

142. Certain provisions of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) are relevant to aspects of the father's application. Section 149C provides, in terms of the parties to these proceedings, that the Director-General must disclose information about the children's placement to the father, subject to the consent of the carers in relation to "high level identification information" (section 149E). The Director-General may disclose such information to a parent without that consent if he believes that there will be no

consequent threat to the safety of the children, the carers or a member of their household. The Director-General may disclose such information without the carers' consent only upon satisfaction of certain conditions (section 149F).

143. "High level identification information" is defined in the Act as follows:

"high level identification information, in relation to a child or young person who is in the care responsibility of the Director-General (whether under a temporary care arrangement or otherwise) or who is in out-of-home care, means the following:

- a. *the surnames of the authorised carer of the child or young person and of any other person living in the household of the authorised carer,*
- b. *the street address and locality of the authorised carer of the child or young person,*
- c. *the landline telephone number of the authorised carer of the child or young person,*
- d. *details of the employment or activities of the authorised carer of the child or young person that would be sufficient to identify the authorised carer,*
- e. *the name of the school that the child or young person is attending,*
- f. *any other type of information prescribed by the regulations."*

144. The orders sought by the father would provide him with knowledge of the children's school and potentially the landline telephone number of the carers. There was no evidence as to whether the carers consented to the provision of this information to the father, nor whether the Director-General may nonetheless elect to equip him with this knowledge. I am not prepared to make orders with that result in such circumstances. In my view, that issue is one which the father should pursue with the children's caseworkers.

I certify that the preceding one hundred and forty four (144) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Stevenson delivered on 13 June 2013.

Associate:

Date: 13 June 2013