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FAIR WORK  
AUSTRALIA

TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**COMMISSIONER SMITH**

**B2011/3949**

**s.424 - Application**

**State of Victoria, Department of Human Services  
and  
Community and Public Sector Union  
(B2011/3949)**

**Melbourne**

**11.03AM, FRIDAY, 18 NOVEMBER 2011**

PN1

THE COMMISSIONER: I'll take appearances please. Yes, Mr Wood.

PN2

MR S. WOOD: I thank the tribunal. I seek permission to appear with my learned friend, MS NAUGHTON, on behalf of the applicant, the State of Victoria.

PN3

MR R. ATTIWILL: My name is Attiwill. I also seek leave to appear with MS KEATING on behalf of the CPSU.

PN4

THE COMMISSIONER: Thank you. Now I'm going to do something unusual. I'm going to adjourn for 20 minutes and require you to talk. Then I'll come back after 20 minutes and if you've been able to explore any options that might lead to any necessity or otherwise for this application to go on, I'll hear that. If not, we will bat on. I'll adjourn briefly.

**<SHORT ADJOURNMENT**

**[11.04AM]**

**<RESUMED**

**[12.46PM]**

PN5

THE COMMISSIONER: Mr Wood.

PN6

MR WOOD: Thank you, Commissioner. We've had some discussions. I think they've been productive but they haven't resulted in a lifting of the bans, but what we have managed to suggest is that there would be some capacity for discussions between Ms Batt and Mr Yates this afternoon, if that was convenient to the tribunal. From our position, it would be a necessary consequence of an agreement to enter into those discussions if the bans were lifted whilst those discussions were occurring. That suggestion has not been adopted by the CPSU; in fact rejected.

PN7

We are faced with the consequence that, as we speak at quarter to 1, there are bans which are currently in place which are threatening to endanger the life, health and personal safety of vulnerable children. In those circumstances, where the CPSU will not lift the bans despite us being able to meet in two hours' time, we feel we have no alternative but to ask you, Commissioner, to deal with an application for interim relief - that is, an interim suspension - pending a final determination of our application, which could be programmed in an appropriate fashion. That's where we've got to, Commissioner.

PN8

THE COMMISSIONER: I see. Thank you. Mr Attiwill.

PN9

MR ATTIWILL: Thank you. The reason why we say we won't withdraw the bans is because we say that no child is at risk. This is an application we received yesterday, having notified of the bans on 7 November; so 10 days pass and the government make that application. We say that the children in Victoria are being protected by child protection workers. We say that the government application addresses matters like allocation, rather than action, and so our intention is to put

on material - and we say that we can do that very quickly, by Sunday morning, we expect - where we would call a number of people, including child protection workers, to actually say what is happening on the ground.

PN10

We believe that the appropriate course is to have that matter - that is, the government's application for a three-month suspension - heard and hopefully determined on Monday, where the government would call its witnesses, we'd cross-examine them, and we'd call our witnesses and they would be cross-examined. We do say that an interim order in relation to the bans is not appropriate for these reasons.

PN11

The first reason is such interim relief is not mandated, perhaps because we will be within the five days. The second matter is this. The material that has been filed in support of this application doesn't give particular incidences of children at risk. It's full of hypothetical scenarios or scenarios where children have been protected. It's full of mathematical calculations - and I note that you won't be in a position to make this assessment at the moment - many of which are inaccurate. Also, revealingly, not one of the witnesses deposes to any particular conversation with any child protection worker at all - any discussion with them about what's happening on the ground, nothing.

PN12

So we say that this application really has no merit but one can really get an insight into that because why did it take them 10 days to come before Fair Work Australia to make this application? What was the reason for the delay if it was very urgent? You're in a position, obviously, where if this matter wasn't heard and determined today - which I think both parties say it should be heard on Monday - what will be the (indistinct) weekend. We've got an affidavit, which we've provided to the State of Victoria, which I can hand up to you.

PN13

THE COMMISSIONER: Have you seen this?

PN14

MR WOOD: Yes, Commissioner.

PN15

MR ATTIWILL: Commissioner, that's an affidavit sworn by Ms Gaske of Maurice Blackburn Lawyers, who are my instructors. You'll see that just in paragraphs 3 to 7 she deposes to matters that really just concern the publicity of this matter by the state, and so I don't intend to take you through those matters, and then just the provision of the application to us in paragraph 7.

PN16

But you'll see that in paragraph 9 she deposes to conversations with a Robert Laird and Amanda Coulsen, officials of the CPSU. They've made inquiries of child protection workplace representatives as to the availability to attend the hearing today. As at 10.30 am we haven't been able to take instructions from the relevant people. I can say to you, Commissioner, that we expect to be able to take those relevant instructions and provide the material.

PN17

You'll see then in paragraphs 10, 11 and 12 what Ms Gaske deposes to is a conversation with Ms Coulsen about what's going to be happening this weekend. What we say will be happening this weekend, firstly in relation to metropolitan Melbourne in paragraph 11 - we say that there's an after-hours child protection emergency service and a Streetwork outreach service. We say that the workers who are employed in those services are not engaging in the industrial action which is set out in paragraph 3.4. So the caps and so forth. They're not engaging in that action.

PN18

Then in paragraph 12 we refer to the child protection workers in rural regions where those services aren't available, and what we say in relation to that is that they're providing emergency and after-hours response in addition to their regular daily workload and that these workers are also not engaging in these activities. So I put that, Commissioner, this way.

PN19

Firstly, I say, look, these people are going to be working over the weekend. I'd also say - which is an issue which you might not be able to, obviously, determine today - that none of the bans that are even in place and that are the subject of the application by the State of Victoria - none of those bans are having any effect at all, we say, on the safety of children in Victoria. We say that an interim ban or an interim suspension, rather, until Monday is just not appropriate in this case.

PN20

THE COMMISSIONER: Right. Thank you.

PN21

MR ATTIWILL: As far as wanting to resolve larger matters, the CPSU are ready, willing and able to attend conciliation. We've had discussions with my learned friend. My learned friend has tried to impose the condition about those discussions. Our position is plain: we will talk to the government. We are ready at 3 o'clock, potentially, although it might be 3.30 because our secretary has to come from two and a half hours away to talk to the government, to get that under way. My instructions are that we're ready tomorrow to continue those discussions and on Sunday and on Monday. It's the state that says, "Look, we'll only talk to you if you withdraw your bans." That's basically the position at the moment, Commissioner.

PN22

THE COMMISSIONER: All right. Thank you. What I propose to do is this. I'm going to adjourn for half an hour to allow an exorbitant lunch break for the parties and then we'll commence with the application that's made by the State of Victoria after that time. That doesn't seem to me to inhibit a meeting between Mr Yates and Ms Batt later on this afternoon, and at the conclusion of the evidence and the cross-examination of that evidence you can renew your application and I'll decide the necessity or otherwise for a further hearing, either on the weekend or Monday.

PN23

MR ATTIWILL: Could I, just in relation to that, say that our position is this, in case I didn't make it clear. We received this material last night. I've obviously

read and considered it and are in a position to cross-examine the witnesses for the State of Victoria, except we're prejudiced in this way. I can cross-examine them on the basis of that material and on the basis of the instructions that I've been able to obtain to date. I haven't had the benefit of talking to people that we will call, which will be, we say, obviously very relevant material that I want to put to each of these witnesses.

PN24

So that would need evidence, for example, from child protection workers who are from the regions where these persons are brought from. So in those circumstances we'd say that although I might be able to cross-examine these witnesses in a limited way, I would in effect have to cross-examine again once I'm in a position to obtain some proper instructions. This material was only served yesterday at 4.20. We don't know when it was being dissimulated but it was served very late and all we simply seek is very short period - that is, till Monday - to be properly instructed to have all of our material and then to run the full case.

PN25

Unless and until such time that I have had the ability to consult with our own witnesses and to take further instructions on the material, we say that we're prejudiced in the running of that application.

PN26

THE COMMISSIONER: What do you say about that, Mr Wood?

PN27

MR WOOD: If this was an application this afternoon for a final application, my learned friend's point would be correct. But he's asking, and we haven't objected to the adjournment of the final application to Monday, when he's properly prepared. What we're saying is that, as we stand here at 1 o'clock today, the matter is sufficiently urgent to justify an application for an interim order that lasts until Monday afternoon.

PN28

THE COMMISSIONER: What do you say about the submission - and I put it no higher than that at this stage - that the weekend should not present the same difficulties as being presented, you say, during the week.

PN29

MR WOOD: That is true to an extent but not to the full extent that my learned friend says. The most urgent cases are notified on the weekend and the capacity of persons in rural regions, the five rural regions, to respond - that is child protection workers - is impeded by the bans. The last paragraph of the affidavit we say is not correct and that really justifies, we would say, our claim that an interim order should be given that deals with the position on the weekend and maintains the status quo until the application for final relief can be heard.

PN30

THE COMMISSIONER: Yes, thanks, Mr Wood.

PN31

MR ATTWILL: The position then seems to be that we all agree that, subject to your view, obviously, Commissioner, the substantive matter would be heard on Monday and the issue really then is what happens in the interim. We have an

affidavit. We've spoken to the relevant person. We say that the position is as reflected in paragraph 12. I've invited my learned friend to actually give me the specifics upon the basis that he challenges paragraph 12. I haven't had a response to that yet but we do say that if no interim order is made, no child will be at risk over the weekend. Just simply it's not the case and there's no evidence before you, we say, that would give you that concern, particularly in circumstances in which we provided an affidavit to you, Commissioner, that addresses each of those two things.

PN32

The metropolitan matter that's in paragraph 11 is accepted by my learned friend and it's only in relation to the rural areas, and all he's said about that is that he's instructed that their capacity is impeded by the bans but hasn't told you why.

PN33

THE COMMISSIONER: I think I might be assisted by some evidence from officers of the department. Those questions you can put to them, Mr Attiwill, so that at least by the end of today I might be better informed, if not wiser. I'll adjourn till 1.30.

**<LUNCHEON ADJOURNMENT** [1.01PM]

**<RESUMED** [1.45PM]

PN34

THE COMMISSIONER: Yes, Mr Wood.

PN35

MR WOOD: Thank you, Commissioner. Given that we said before lunch I wasn't proposing to open in any length in relation to the grounds of our interim application, other than to hand up to you, Commissioner, an outline of argument which we prepared for the final application, but it gives some idea of the position that we adopt in relation to the interim application.

PN36

THE COMMISSIONER: Thank you.

PN37

MR WOOD: We propose to call two witnesses in support of our interim application, Sue Jamison and Elizabeth Armitage and I call Sue Jamison.

**<SUE JAMISON, AFFIRMED** [1.47PM]

PN38

MR WOOD: I think my learned friend would prefer that Ms Armitage be out of the court room whilst Ms Jamison gives evidence, we have no objection to that, Commissioner.

PN39

THE COMMISSIONER: Very well.

**<EXAMINATION-IN-CHIEF BY MR WOOD** [1.47PM]

PN40

MR WOOD: Your name is Sue Jamison?---That's right.

PN41

You are employed as the manager children, youth and families of the Loddon Mallee Region of DHS?---That's correct.

PN42

In your position manager children, youth and families you have prepared a witness statement in this proceedings, Ms Jamison?---I have.

PN43

Do you have that statement in front of you?---Yes, I do.

PN44

Does it run to some eight pages, 36 paragraphs and was dated and signed by you yesterday, 17 November 2011?---That's correct.

PN45

Was that statement true and accurate at the time that you signed and made the statement?---At the time that we signed and made, yes.

PN46

I tender the statement.

#### **EXHIBIT #W1 WITNESS STATEMENT OF SUE JAMISON**

PN47

MR WOOD: I imagine, Ms Jamison, that things have progressed somewhat because of the industrial bans that have been in place since you made that statement, are you in a position to indicate to the Tribunal what the position is now as at about 10 to two on 18 November in terms of the things that you have described in your statement?---Yes, I do, I have some updated information from this morning.

PN48

Can you indicate to the Commissioner in whatever way you see fit, either by going through your statement or just describing in the form of a narrative what that updated information is?---Certainly, so at point 10 where there are some figures quoted I state that by contrast as a direct result of the case ceilings imposed under the bans. My statement as at 17 November said there were 216 children of the 366 children currently in the intake unit not being assigned to a child protection worker to make an intake assessment. The figures as of this morning were there are 171 children who have not been assigned and a total number of children currently in the intake unit of 301.

PN49

So 171 out of 301 have not been assigned?---That's correct. The second update relates to point 11 where I state, "On average the majority of non-urgent cases in the intake unit are resolved within 10 days and no later than 14 days, on the current numbers I expect it will take well in excess of 14 days to undertake the normal initial assessment. It may take as long as a month for some of these children to be assessed." I have spoken with the intake unit manager this morning and she has advised that on her best estimation it is likely to take six weeks to have some of these children assessed.

PN50

Did she explain to you the basis for that assessment?---The basis for that assessment is that there is constant new reports coming into the program and there are 171 children that she is currently managing on an unallocated list and the priorities that come in are the ones that get attention straight away and get referred on, whereas the 171 that are sitting with her may not get attention for a long time as the bans continue. The next correction or the next update relates to point 13 where I provide a case example which was current as at Monday 17 November. As of last night the visit to those children had not yet occurred.

PN51

What can you say about that fact if anything, Ms Jamison?---People may have had an opportunity to read that example which talks about a fairly significant incident of family violence where there are three young children who were exposed to that incident, I think that provides an indication of the level of urgency of cases that we are not able to get to because of the bans that are in place at the moment.

PN52

Given your experience which you depose to of over 20 years in your statement what can you say if anything about the normal response times absent the current industrial bans in relation to a situation like the one referred to in paragraph 13? ---So that case is considered to be a non-urgent case and typically cases of that nature would be visited within 14 days.

PN53

Are there any other updates you wish to make to your statement?---Yes, there are, there's an update for point 19 where I state, "As at 15 November three business days into the bans there are 338 children being monitored and protected by the response unit and 210 of whom are without an allocated child protection worker." I have updated figures as of this morning, there are currently 333 children being monitored and protected by the response unit and 212 of those are without an allocated child protection worker which is 64 per cent of the children in that response unit, and obviously that then changes the number that is referred to in point 20 so that should be replaced with that 212 children are at a higher risk of harm. There is another update relating to point 28 of my statement where I state as at 15 November three business days into the ban there were 443 children being supported and monitored by the long term units. Within that group 206 children had been allocated a child protection worker and 227 were awaiting allocation. The updated figure for that which are current today are that there are currently 450 children being supported and monitored by the long term units, that within that group there are 209 who had been allocated to a child protection worker and 241 who are awaiting allocation. I have actually - I need to go back to point 25, there is also an update to the figure there where I have talked about the number of children in the Bendigo Response Unit who have not yet had a home visit. As of today that figure is 166 children not 146.

PN54

Are there any other updates you wish to bring to our attention in relation to your statement, Ms Jamison?---No.

PN55

Ms Jamison, I understand you were in the body of the court room before lunch and you may have heard the CPSUs representation Mr Attiwill say that they

would prefer this case to be heard Monday and with a decision that would then be some time thereafter, Monday afternoon or Tuesday afternoon. What if anything can you tell the Tribunal about the risk to the vulnerable children in relation to whom you are obliged to provide care over the weekend in relation to the bans that have been imposed by the CPSU in the Loddon Mallee region?---Typically one of the busiest times of the week for our intake units is a Friday afternoon. Our mandated reporters who work a standard nine to five, Monday to Friday week will often report children on a Friday afternoon where the circumstances of those children have become unacceptably unsafe, so those reporters will contact the intake unit with a report about a child. A number of those children who are reported may require an urgent visit that Friday afternoon and often those visits will need to occur beyond the standard working day of the week. So it is common for our staff to be required to attend to an urgent home visit or outreach visit on a Friday afternoon that may go for a considerable number of hours and sometimes into Saturday morning, that is largely a feature of our very large region, our region covers 26 per cent of the state and our Bendigo office covers quite a large part of our region. So it would be common for our staff to have to travel sometimes two or more hours to get to an urgent outreach visit and then do what they need to do often with police and then obviously return from that visit.

PN56

Can you give an example of the facts which would constitute an urgent outreach visit?---So an urgent visit may involve a situation where police who are mandated reporters contact our intake unit on a Friday afternoon, having attended a home where there has been a very serious incident of family violence where perhaps a father has assaulted a mother in front of young children. The mother may be drug affected and the father may have taken off, police have attended that visit. They contact us and we need to send a couple of child protection workers out to that home and if the mother is unable to care for those children, those children may have to be placed in the care of extended family facilitated by our child protection workers or alternatively may have to remain in the care of child protection workers until alternative arrangements can be made.

PN57

What is the impact of the CPSU bans upon those type of urgent outreach visits as you understand things both now and over the weekend?---The urgent outreach visits in the main are conducted by your response unit child protection practitioners. A number of those child protection practitioners are participating in the bans and a number of them have stated that they are not prepared to travel for work purposes in personal time, and therefore if the visit is going to take them longer than the 7.6 hours that they work or take beyond five p.m. in the afternoon they are not prepared to do that visit.

PN58

What impact, given your experience, do you think is likely or may occur to young persons who would be normally treated by child protection workers this afternoon and over the weekend, what sort of impact might be caused by the bans?---There may be children whose lives are at risk or whose safety is seriously threatened, where their parents are unable to meet their needs.

PN59

What do you say if anything to the suggestion that there is no urgency in this application, that can all be determined on Monday?---I believe that there is children that will be at risk over the weekend and the example that I cited earlier around a team heading out this afternoon to do an urgent visit is just one part of the potential impact after hours. In rural regions we have an after hours team which consists of two child protection practitioners rostered on call over the weekend and after hours. Those workers are set up as a primary worker and a secondary worker and if there is an urgent requirement for a visit that comes in after hours, including over the weekend that call will come to the Box Hill Central after hours office and they will then contact our child protection worker that's on call and that worker will then go out with the secondary worker to conduct the urgent visit. A number of the staff that participate in the roster in the Bendigo office are also participating in the bans and some of those staff have requested to not be on that roster because obviously it involves after hours work, and if they can't answer the phone then obviously they can't respond to an after hours call out. So that means the roster of staff that are on over the weekends is a pretty fragile roster. If we were to get unexpected sick leave or we were to get a couple of urgent outreach visits required over the weekend, there is a likelihood that we would be very compromised in being able to respond to those visits because of the fragility of that roster. Those people that are on it are ones who haven't been participating in the bans in the main and those individuals are obviously quite exhausted because of the additional work load they have been experiencing as a result of these bans.

PN60

You said in your answer then that we would be very compromised in terms of the service, what impact would that compromised service have on the young persons in relation to whom the service is supposed to be provided over the weekends? ---They may get no response, in other words we may not be able to get a team out there to respond to them or a very delayed response which may put them at increased risk.

PN61

Increased risk of what?---Physical harm or other forms of harm.

PN62

What level of physical or other levels of harm?---Life threatening potentially.

PN63

That's examination-in-chief, Commissioner.

**<CROSS-EXAMINATION BY MR ATTIWILL**

**[2.04PM]**

PN64

MR ATTIWILL: Ms Jamison, you will recall that in your evidence-in-chief you highlighted one incident that you describe as a fairly significant incident, it was the one with if you like the drunk father assaulting the mother, you can recall that?---That's correct.

PN65

It's right to say, isn't it, that in your evidence before the Commission today that is the example that you highlighted to the Commissioner?---That's one example, yes.

PN66

But it's the example you have highlighted to the Commissioner today isn't it?  
---That's correct.

PN67

That incident involved a non-urgent matter, didn't it?---A matter that didn't reach the classification of urgent, yes.

PN68

You described it, as far as I took a note, it was a non-urgent matter?---That's right.

PN69

You also gave evidence that in the normal course, that is outside the bans, and the normal course non-urgent matters are responded to within 14 days, do you recall that?---That's right.

PN70

This incident took place and was notified on 14 November, wasn't it?---That's correct.

PN71

Although it hasn't been responded to it doesn't have to be responded to, within the guidelines, until 28 November, that's right isn't it?---That's the KPI.

PN72

Exactly. So in other words, this is not an example that demonstrates that the bans are having any impact, does it?---I believe it does because some additional information came in in relation to this case which as you will see was originally classified as non-urgent, so in other words needing to be responded to within the 14 days. Some additional information has come in in relation to that particular case and because it's unallocated it's been unable to be responded to. So the urgency of cases changes on a daily basis, which is the very nature of the dynamic child protection work that occurs.

PN73

I accept that, Ms Jamison, in your evidence you describe this incident very plainly as a non-urgent matter?---By definition.

PN74

Yes, and I am just asking you that in the normal course a not urgent matter, and this one didn't change because you described it as such today, you have got 14 days to respond, that's right isn't it?---That's correct.

PN75

In other words 14 days takes us to 28 November, so this doesn't demonstrate, does it, that the imposition of these bans has related in a delay that is otherwise outside the Department's KPI's, does it, it doesn't demonstrate that?---Not in relation to the KPI's but this case has become more urgent with the additional information that has been provided.

PN76

You don't say though that this matter, that this example was one that now changed classification do you?---No, I don't.

PN77

So what I'm putting to you very clearly is the only example you have managed to highlight to the Commission is one which is classified as non-urgent and still well within the 14 days, okay. I just wanted to ask you some other questions, you are giving evidence on a Friday afternoon in which it seems that a lot of your evidence is directed towards what is going to be happening this afternoon, do you agree with that?---And over the weekend.

PN78

Yes, and over the weekend. The first thing I just wanted to ask you about is when were you first asked to examine the impacts of these bans, that is whether they were having any impact or not, when were you first asked to look at that?  
---Whether the bans were having any impacts?

PN79

Yes?---As I recall earlier this week.

PN80

When would have that have been?---Possibly on Monday.

PN81

It's right isn't it that the bans came into play in your region, was that on 11 November?---Yes, last Friday.

PN82

Who asked you to look at the impacts?---I was requested to look at them by the person from our industrial relations area.

PN83

For the purposes of making an application to Fair Work Australia?---For the purposes of understanding what the impact of the bans were having on our staff in the region and obviously on the children that we support.

PN84

Who do you report to?---I report to the regional director.

PN85

Is it right to say that you haven't prepared any form of report since Monday in relation to these bans and their effect, you haven't provided an such report to your regional director, that's right isn't it?---That's correct.

PN86

In other words what you have been doing is examining the bans really for the purposes of relating information to the industrial section for the purposes of these proceedings isn't it?---To clarify, I haven't provided a written report to the regional director but I have been speaking with him multiple times a day, providing him with an update on the impact of the bans and that has included a face to face meeting with him every day and I spoke with him as recently as last night to provide him with a further update on the bans.

PN87

I don't want to go on about it but presumably you didn't talk to the regional director about the example that you gave in paragraph 13 did you? The one that I took you to about the mother who was - - - ?---No.

PN88

You didn't raise that with the regional director, did you?---I haven't discussed the case referred to in point 13, no.

PN89

You were about to say I think, and it's true isn't it, that you haven't discussed any individual case with the director have you?---Not as I recall.

PN90

No, and the reason you haven't done that is because in no individual case can you identify where there has in fact been an impact, that's right isn't it? As you sit here today there is not one case that you can tell the Commission about where there has been a negative impact as a result of these bans, that's true isn't it?---I think the examples that I have provided in there, there has been a negative impact.

PN91

I want you to identify to me in this statement the example that you are talking about?---Okay, so for example the point - the example I have got at point 13.

PN92

We have dealt with that?---Yes, so my view is that those children are at significant risk, however there is an example at around sexual assault - sorry, I'm just trying to locate that one, under point 21.

PN93

Yes?---Those children are potentially at risk of sexual abuse but we haven't been able to allocate a child protection worker to follow up with those children because it hasn't been possible to allocate a worker due to the bans.

PN94

Let me just ask you that question. You don't say that in your statement, do you? Where do you say that last part in your statement, that it hasn't been possible to allocate - - - ?---I say that on the top of page 5, I say, "Unfortunately as a result of the bans it has not been possible to allocate a child protection worker to follow up with these children who remain at risk of sexual abuse."

PN95

In relation to A, well why is that?---Because of the case ceilings that have been applied in our response unit, so the workers in our response unit have either a ceiling of six cases if they have under 12 months experience or 12 cases if they have more than 12 months experience and a case - it is important to note that a case is a child, not a family and with those ceilings those workers have also advised their team leaders and unit managers that they are not prepared to accept daily allocation and re-allocation of cases where urgency changes. So they have advised that they will only manage those cases that are allocated to them and not change those, so that results in the inability of us to allocate a child protection worker to those cases.

PN96

I will just take you to the first one for example, 21A, is that a matter that you had first hand involvement in?---No.

PN97

Who told you that a child protection worker first of all hasn't been allocated to that group of three siblings?---I've read the notes relating to that particular case, so

the intake notes as well as the case notes, so I'm familiar with the detail of it and I was advised by one of the managers about that particular case.

PN98

Who told you that it hasn't been possible to allocate a child protection worker to follow up with those children, who told you that?---I believe it was the team leader.

PN99

Who is that?---The name of the team leader?

PN100

Yes?---A woman by the name of Lisa Ryan.

PN101

I just want to ask you this question because you will see in B and C you make the same point, that is that, "It hasn't been possible to allocate a child protection worker to investigate these new claims," do you see that?---Yes.

PN102

It's true isn't it that the way child protection works in Victoria is like this, not every child who is currently being protected by the Department has been allocated a child protection worker, that's true isn't it?---That's correct.

PN103

At any one time there will be a very large group of children in Victoria who will not have allocated to them a child protection worker?---A proportion.

PN104

Yes, a proportion but not insignificant, you would agree with that?---That's correct.

PN105

So a significant proportion of children in Victoria who are currently the subject of protection by the Department might not have allocated to them a child protection worker, agree?---That's correct.

PN106

The way the system generally seems to work is that we have got child protection workers who have allocated to them at any one time a number of children who need protection?---That's correct.

PN107

That, as you have pointed out to me, changes on a daily, hourly, minute by minute basis potentially depending on the work load?---Depending on the urgency cases.

PN108

And the urgency of cases. So if, for example, we step away from your non-urgent case in paragraph 13 and we have a very urgent case where a child is at risk of dying, for example, and there is a notification to that effect, what is going to happen is that that child is going to be allocated a child protection worker, won't they?---That's correct, but that is assuming the information that you have in that first report regarding that child indicates an accurate reflection of the risk. There are many children, particularly those that are currently waiting on a first visit in

our response unit where the risk is, if you like, the extent or the severity of the risk is unknown because that first visit has not yet occurred.

PN109

In fact Ms Armitage addresses this that until one can investigate, one doesn't really know the true risk, that's right isn't it?---Yes.

PN110

So even though a person might be allocated, a child might be allocated to a child protection worker, one might not know really the true risk until there is a thorough investigation, you'd agree with that, wouldn't you?---A thorough investigation is absolutely part of a good child protection service.

PN111

So what I am saying to you is the mere allocation of a child to a child protection worker confers no real protection until there is some activity done by the child protection, you'd agree with that wouldn't you?---Yes, and the allocation of a worker precipitates the conducting of a first home visit.

PN112

Let's just look at that, so what that means is that one can't really just look at the concept of allocation, one has to look at the concept of action, don't you, you have to look at what the child protection workers are doing on the ground to protect children in Victoria?---Allocation is absolutely fundamental to good case practice and to protecting children. If you have staff that are operating, whether it's in an investigation phase or whether it's when you're working with a child and a family long term, if you have those staff conducting a number of tasks then that compromises the investigation and it potentially compromises the long term work that occurs.

PN113

But all I am putting to you is that the important part of looking to see whether children are at risk in Victoria, who are currently being protected or should be protected, is to look at the actions of the child protection workers on the ground, that's important isn't it?---Actions that occur through an allocation arrangement.

PN114

Yes, but let me just take you back a step. If a child is allocated to a child protection worker that does not automatically mean that that child is guaranteed of some protection, that's true isn't it?---No, it doesn't offer that guarantee.

PN115

That's right, so all I'm putting to you is the guarantee really comes in in the action. That is that regardless of allocation, if you have got a child protection worker who is making all the thorough inquiries and going out and seeing the family and going to the house, then that is the really important part, isn't it?---Yes, and that occurs through allocation.

PN116

But it also occurs in so many other ways, doesn't it?---It can but that compromises the investigation.

PN117

Let employees put this to you. It happens in so many ways because if a child has been allocated a child protection worker that child can be de-allocated, can't they?---Potentially if - - -

PN118

It happens all the time doesn't it, in the Department, that they get de-allocated because another case comes in for that child protection worker, you agree with that, don't you?---They may get de-allocated but they may also get - the case may get closed if there is no risk.

PN119

I'm not talking about hat?---Okay.

PN120

I'm talking about, for example, the child who requires protection but it's not urgent and you have got a child protection worker who needs to take care of that child, who has got some other non-urgent cases. The non-urgent cases might get de-allocated and that other child allocated, that's possible isn't it?---Yes.

PN121

What I wanted to ask you about in your statement is nowhere in your statement do you say that you have spoken to any child protection worker, do you?---I don't say that in my statement, no.

PN122

You would agree with me that it's very important, isn't it, to see whether children are being protected or not to talk to child protection workers, you'd agree with that, wouldn't you?---I've spoken with unit managers and team leaders who directly supervise the child protection workers and I have spoken with them multiple times a day since this industrial action has been in place and they have direct access to those workers and the experience of the bans on them.

PN123

We have got you here before the Commission in relation to the government's application?---Yes.

PN124

You know some child protection workers, don't you, in your region?---Yes.

PN125

You have got their numbers, telephone numbers, you can contact them readily?---I'm based in the Bendigo office so I can - yes.

PN126

In fact they are probably all around you, aren't they?---Yes.

PN127

All I am asking you, and you have confirmed it, is you have not spoken to one child protection worker before giving evidence to this Commission about their work and the impact of these bans, have you?---No, I have spoken to team leaders and unit managers.

PN128

It is the union's position that all child protection workers are doing the same work and working just as hard a month ago as they are today, you don't disagree with that, do you?---I disagree with that.

PN129

You do?---Yes.

PN130

Could you name one child protection worker in your region who is not working as hard?---I wouldn't name an individual worker but your contention is that they are doing the same work as they were doing a week ago.

PN131

Working just as hard?---Just as hard.

PN132

Yes?---Those workers who have imposed the case ceilings and are saying that they will not go through a process of daily allocation and de-allocation, they are remaining working with say those six or 12 cases and in those situations those cases may or those children's circumstances may have in fact stabilised and in other words they are not picking up the more urgent work that's coming in because they are not prepared to have a case de-allocated.

PN133

And that has got absolutely nothing to do with this industrial action because that is not the subject of any ban, is it? What you have just articulated there about a team leader deciding to not de-allocate in certain circumstances, none of that is at all the subject of any industrial action at all by any union member, is it, or do you say it is?---I'm saying it is, those - - -

PN134

I say that - - -

PN135

MR WOOD: Let the witness finish.

PN136

MR ADEWUMI: Sure?---What I'm saying is that those workers that have applied the case ceilings of either six or 12, depending on their length of experience are saying as a result of their interpretation of the bans that they will not have cases de-allocated from them so that they can pick up more urgent cases. They have been clear that that is as a result of the bans. They will continue to work the six or the 12 cases that are allocated to them, but they will not pick up other cases.

PN137

You don't have this in your statement, do you, all of these matters about team leaders not wishing to pick up cases and so forth, none of that, you haven't addressed any of that in your witness statement, have you?

PN138

MR WOOD: I don't think the witness talked about team leaders not wishing to pick up cases?---Yes, I'm not - - -

PN139

MR ATTIWILL: Not wanting to de-allocate a case to accept a new case of greater urgency, none of that is in your statement is it?

PN140

MR WOOD: The witness wasn't talking about team leaders.

PN141

MR ATTIWILL: She was?---No. My comment was about the workers that are imposing either the six or the 12-case limit are not prepared to have a case deallocated from them by their team leader or unit manager to pick up a more urgent case.

PN142

So that concerns a child protection worker?---That's right.

PN143

You haven't spoken to them. I think you've confirmed that. What I'm putting to you - - -

PN144

MR WOOD: I think for the record, your Honour, the witness indicated assent but didn't say yes.

PN145

THE COMMISSIONER: Yes.

PN146

MR ATTIWILL: Now, what I'm putting to you is are you familiar with the industrial action and the bans that have been put in place?---Yes, I am.

PN147

You've read that material?---Yes, I have.

PN148

Do you know that none of that material, none of those bans, relate to any deallocation? There's nothing in any of that material that says that any child protection worker will not accept a deallocation unless these certain circumstances. None of that is the subject of any ban. You agree with me about that, don't you?---Not in writing but those staff have been advised by their CPSU rep that that is the position of the CPSU.

PN149

For the sake of clarity, it's not our position. Who has told you that?---The team leaders and unit managers.

PN150

I know that you've said you haven't spoken to them but did it ever occur to you to pick up the phone, given the fact that you're familiar with the industrial action, pick up the phone to one of your own child protection workers and say, "Well, look, none of that relates to any of these bans. You really are limited to this," that is the cap of the 12 cases and so forth? Did you ever think of doing that?---No.

PN151

To your knowledge have you or anyone else within your region raised that matter with the union, that is that it looks like somebody is engaging in action that's

separate to the industrial action?---As I understand it, our acting child protection manager attempted to return a call from Mandy Coulsen and I don't believe she managed to speak with her, and at that point she was going to raise that issue.

PN152

Okay, but to your knowledge at the moment that hasn't been raised?---No.

PN153

So if that wasn't the case, that is that if child protection workers were allowing the deallocation of cases, that is to take on more urgent cases, if that was in fact happening then you'd have no concerns about that, would you? Let me just put that in a bit more of a clear way. If child protection workers in your region are doing the same amount of work in relation to protecting children that they were doing a month ago that they're doing today, you'd have no concern about these bans, would you? If they're doing the same volume of good work a month ago that they're doing today, you'd have no concern about the bans, would you?---I would still have a concern about the bans.

PN154

So even though the bans themselves might be having no impact, can you tell the commission what would be your concern about it?---My concern is the case ceilings that are applied where the staff are working with less children than they were previously.

PN155

Exactly. That's the whole government case, isn't it? Not whether or not it has an effect. That's secondary. What the government is concerned with – tell me if you disagree – is just the figures as represented allocations. That's what the government is concerned with, isn't it? How many children are allocated on paper to a child protection worker – that's the big concern, isn't it?---I can only talk about what I'm concerned with and my concern is for the vulnerable children in our region that are supported by our child protection practitioners, and if the service to them is compromised by a limited allocation then I think that has a significant impact. A number of the children who have been deallocated through these industrial bans have had the same worker for a considerable period of time. That worker is no longer involved with them and there will be a whole range of things that are happening where that worker isn't able to continue to build the relationship with that vulnerable child and their family and ensure that that child is kept safe.

PN156

Can I just ask you a few questions in relation to that? The first thing is that when I was asking you those questions I said you would have no concern, would you, if in your region child protection workers are doing the same work today as they were doing a month ago. You'd have no concern otherwise about the bans, would you? In other words, I'm asking you to assume. If there was no impact you'd have no concern about the bans, would you?---If there was no impact of the bans, no. My concern is about the impact of the bans.

PN157

Now, I just wanted to ask you about the evidence that you gave in relation to the roster in the Bendigo office?---Sure.

PN158

I haven't at this stage been able to get instructions in relation to that. It's not a matter that you raise in your witness statement but I wanted to ask you these questions about it?---Yes.

PN159

Has that roster been set?---I believe so.

PN160

There are enough child protection workers on that roster, aren't there, for this weekend?---At this stage.

PN161

Yes. The bans were in place last weekend, weren't they?---That's correct.

PN162

There was absolutely no incident with that roster, was there, last weekend?---No.

PN163

It's right to say that you can always get something unexpected, like four child protection workers having gastro from a restaurant the night before that might cause some grief. That's possible but what I'm putting to you is that these bans, as they're currently in place, didn't affect the roster last weekend. You agree with that?---That's correct.

PN164

There's a roster in place this weekend?---That's correct.

PN165

Now, did you have an opportunity to have a look at an affidavit which was sworn by Ms Gaske?---No.

PN166

THE COMMISSIONER: I can hand it down to the witness.

PN167

MR ATTIWILL: That would be convenient, thank you, Commissioner. We've got another copy?---Thank you.

PN168

THE COMMISSIONER: Take your time to read it?---Okay.

PN169

MR ATTIWILL: If I could just direct the witness - - -

PN170

THE COMMISSIONER: Of course.

PN171

MR ATTIWILL: Not being unfair but maybe paragraphs 1 to 9 don't really concern us?---Okay.

PN172

I'll just direct your attention – only because they're on more procedural matters. It's really paragraphs 10 to 12 and just take your time to read that and I'll ask you a few questions about them?---Is it possible to see paragraph 3.4 of the application?

PN173

Sure, of course?---Thank you.

PN174

Now, I'm not going to ask you questions about paragraph 11 because that concerns the metropolitan region?---That's right.

PN175

But what's set out in paragraph 12, that's precisely what happened last weekend, isn't it?---That's correct, after the bans had been in place for just one day.

PN176

I'm putting to you that the child protection workers, union workers, this is how they're going to behave, just like they did last weekend. That doesn't cause you any concern at all, does it, that they're not engaging in the bans as set out here?---My understanding of those staff that are on the roster are those that are not participating in the bans. Obviously, given there are approximately 73 per cent of our child protection workers in the Bendigo office who are participating in the bans, that means the number of staff available to operate the after-hours roster in the region is significantly reduced.

PN177

Who told you that?---That the number of staff - - -

PN178

Who told you that on the roster for this weekend for Bendigo are only persons who are not participating in the bans? Who told you that?---I don't know that for this weekend. I'm not sure of - - -

PN179

Right?---What I'm saying is when we did the roster we looked at which staff were participating - - -

PN180

I see what has happened?---So that we can ensure that we have coverage because under 3.4 where it says a ban on answering the phones before 9 am and after 4.30 pm, that doesn't refer to Monday to Friday. So obviously there was concerns that we were not going to have coverage after hours as well as some staff, without giving reason, saying they did not want to be on the roster.

PN181

So what has happened here is that you're – and I'm not criticising you for this but you or persons within your region who are in charge of the roster have looked at the roster and thought that it's preferable to roster on persons who aren't participating in the ban. It's that simple, isn't it?---Preferable as well as some staff not wanting to be on the roster. Now, whether that's because of the bans or not - - -

PN182

You don't know?---I can't be sure.

PN183

All I'm saying to you is that although the industrial action – and as you've read it and in the notices, particularly the one in relation to your region – doesn't make a card out like it is in paragraph 12, that is it doesn't make an exception for these

persons, I'm telling you that this is what happened last weekend and this is precisely what's going to happen this weekend. So that you can roster on persons who are child protection workers who are participating in these bans in a weekend roster. Okay?---If they're happy to be on the roster.

PN184

Yes, but if they don't happen to be on the roster - - -?---If they're happy to be on the roster.

PN185

Well, what I'm saying to you but more firmly saying to the commission is that child protection workers who are union members are prepared to go on the roster, subject to the normal caveats, that they're not here or they're in Sydney, but they're not refusing to go on the that roster, on the weekend roster, because of these bans. Okay? That's what paragraph 12 is directed to. Would this be a fair summary, that you're not saying anything different; you're just saying, "Well, look, the roster was prepared on the basis that it was preferable, obviously, to put people on that roster who weren't technically able to participate in the ban," if you like. You were looking at the whole field then. Is that right?---As well as the person who's responsible for the roster checking with staff about whether they were okay to be on the roster or not.

PN186

No child protection worker in your region, to your knowledge, has said that they refuse to go on the weekend roster as a result of the ban, have they? That has never been communicated to you?---I understand that there are some staff that have said that but I couldn't tell you who they were.

PN187

Well, you didn't say that five minutes ago, with respect. You said you did have some people who were refusing to be on the roster but you didn't know why. that's what you said?---I don't know why?

PN188

Yes?---No.

PN189

And that you've never been told why. That's true, isn't it? You haven't been told by anybody that any child protection worker in your region is refusing to go on the weekend roster to, if you like, abide by the ban. You've never been told that by anybody, team leader, unit manager or otherwise, have you?---I don't believe so.

PN190

No. I'm not going to take you through all of this now because I'm conscious that this is an interim application but you have a lot of figures and numbers in your witness statement?---Yes.

PN191

Where did they all come from? Were they one source or different sources? I'm talking about children who were allocated or not allocated?---They're from two sources. So from our database that can provide information about the allocation status of children as well as checking directly with our unit managers and team leaders in the relevant areas.

PN192

It's right to say that in relation to bans no student who works in your region has allocated to them a child. That's true, isn't it?---That's correct.

PN193

In relation to, for example, the intake work, how many child protection workers do you have? Do you know?---So we have six staff who are your child protection practitioners who are the ones that carry cases and we also have a couple of part-time staff. So that adds up to seven in total. We then have two team leaders and a unit manager.

PN194

Now, prior to the ban were all children who were in the intake phase allocated?---On 8 November – so just prior to the bans – of a total of 351 children, there were actually 21 that were unallocated on that day.

PN195

You're reading that from somewhere. That's not in your statement, is it?---No.

PN196

Could I just ask you, why do you pick 8 November?---That was just a date prior to the industrial action having commenced and not too long ago.

PN197

So if 21 were unallocated, you had 330 allocated?---331. 330, sorry, yes.

PN198

330 allocated, and you had six child protection workers?---That's right. No, seven.

PN199

Seven?---Because there are two part-time staff as well.

PN200

So a total of seven?---Yes.

PN201

I don't have a calculator with me but over 40 and somewhere under 50 children allocated to each of these child protection workers?---That's correct.

PN202

It wouldn't be your evidence before the commission, would it, that just because each of these seven child protection workers has allocated to them – let's call it 45 children, that each one of those 45 children at that point in time are being immediately taken care of by the child protection worker? That wouldn't be your evidence, would it?---Not immediately but there's a daily process of prioritising those children that are in the intake stage of the program.

PN203

What I want to put to you – I'll just put it once – is that that is precisely what's happening today. You have a child protection worker with an allocation of 12 children and the continuous process that is engaged in there under these bans is that if a more urgent case comes in a child is simply deallocated and another child is allocated. Now, I'm putting to you that that's precisely what was happening when a child protection worker might have 45 children who they can't all look after at once. They're simply prioritising them but recording it differently. That's

true, isn't it?---No. So prior to the bans being imposed the unit manager in the intake unit – well, on that particular day that I have quoted there were 21 children that were unallocated. So she is then available, along with her two team leaders, to support those child protection practitioners with, let's say, the 45 cases or the 45 children that they have. So there is a constant process throughout the day of prioritising those cases with the support of that unit manager. Today there are 171 children that are sitting on an unallocated list that is being managed by that unit manager. She has very limited, if any, capacity to support those staff that have the cases allocated to them to do that prioritising work and she's attempting to do that work with those 171 children supported by the two team leaders.

PN204

You'll have to explain that a bit to me because, as I understand the position, you've got child protection workers really doing the same amount of work as they previously did but in addition, which is something that I think you've touched on, in addition to that it's right to say, isn't it, that the department has brought in additional people to do work. That's true, isn't it?---To do tasks but not to be allocated cases.

PN205

So they might not be allocated a case, that is technically said, "Look, this child is yours," but there's no doubt whatsoever, is there, that persons are being brought in who might have quite extensive child protection experience. That's true, isn't it?---Some.

PN206

They are being directed to do work and to look after children. That's true, isn't it?---The cases that they have been given are those cases that are a low priority where it's unlikely that there will be further investigation. So they are essentially resolving those cases.

PN207

Isn't it true that the position has actually got better because bringing in additional child protection workers and giving them the not so urgent matters means that it is freeing up the child protection workers who are working there every day to go to more needy cases? It's a benefit, isn't it, this ban?---No, not at all.

PN208

Because the contingency planning that is actually being set up by you in your statement and also others actually demonstrates that additional people are being brought in to do the work?---To complete tasks, yes.

PN209

So that if these people weren't being brought in to do this more non-urgent work you'd agree with me that that work would have been done by the child protection workers. You'd agree with that, wouldn't you?---Yes.

PN210

Because they're being brought in to do that work, it has freed up those child protection workers to do other work. You'd agree with that?---No, because the child protection workers are still having to deal with all of those urgent cases that are sitting in intake at the moment.

PN211

No further questions, Commissioner.

**<RE-EXAMINATION BY MR WOOD**

**[2.48PM]**

PN212

MR WOOD: Ms Jamison, you were asked questions about paragraph 13 of your statement which reads, "On Monday, 14 November 2011 the Bendigo office received a report about three siblings, aged seven, three and one, who witnessed their drunk father assault their mother. The children's mother fled the house and went to a neighbour's after seeing the father grab something from the kitchen drawer that she thought was a knife. She left the children in the house with the father who left after the police arrived. The next day the situation became more urgent as the father reported that the mother was abusing diet pills and alcohol and sometimes snapped at and assaults the children." You were cross-examined about that statement and you said that additional information had come to light that made that situation, in your words, become more urgent. What was that additional information?---So the additional information is actually referred to in the statement around the next day the situation becoming more urgent as the father has reported that the mother was abusing diet pills and alcohol.

PN213

What impact did that have on the characterisation of that event which you had described as initially being characterised as non-urgent?---It certainly became more urgent.

PN214

You were asked some - - -

PN215

THE COMMISSIONER: I'm sorry, did it change the category?---The categorisation applies at the beginning when a decision is made whether a visit needs to occur within 48 hours or within two days but every child that we work with in child protection, they're situation can change from time to time and the urgency can become greater. That's not subject to a KPI. It's the nature of the work.

PN216

I understand but how does something become urgent and then still retain the 14 days as a KPI?---It wouldn't retain the 14 days. So you would see someone – if new information came to hand that made the case more urgent then, assuming you had the resources to do it, you would be out there responding to that situation.

PN217

With the case that's being discussed did that go into a different basket than the non-urgent 14 days?---No. It has become more urgent but there's no capacity to allocate it at the moment because of the bans.

PN218

I see.

PN219

MR WOOD: When you say "no capacity to allocate it", what do you mean by that? No capacity to allocate it to a child protection worker or no capacity to

re-rate it as urgent or something else?---No capacity to allocate it to a child protection worker and no capacity to conduct a visit, a further visit, because we currently have, I think, 156 children who are still waiting on a first visit.

PN220

THE COMMISSIONER: Does it follow from that that that conclusion arises from your understanding that there's no capacity to deallocate and reallocate?---Yes.

PN221

MR WOOD: You were asked some questions about what the capacity to deallocate and reallocate was, as the Commissioner has just alluded to. On what basis have you been told that child protection workers will not agree to the deallocation of cases?---So the unit manager and team leader of the response unit have reported that those staff that are participating in the bans have provided advice that they will only work with those cases that are currently allocated to them and that the allocation and deallocation process is not in the spirit of the bans and that therefore they won't pick up urgent cases.

PN222

You were asked some questions about this process of allocation when you were being cross-examined about the difference between tasks and allocation. You said allocation is fundamental and it is fundamental to the way in which you investigate. What did you mean by that?---The continuity of having a worker that follows an investigation from the beginning to its conclusion where a decision is made around substantiating that significant harm has occurred or not is important in the investigation because that person is the holder of all of the information relating to that investigation. So they may be following up with police or extended family members or teachers or maternal and child health nurses and putting together which is often quite a complex picture of abuse that a child may have suffered. If there are a lot of different people conducting bits of an investigation, the chance that a critical piece of information will be missed or not joined up then means that a child will be at risk because there isn't that pulling together, if you like, of the investigation information.

PN223

You were asked some questions about an affidavit you were provided with and you asked to see paragraph 3.4 of the application?---Yes.

PN224

Do you still have the application with you?---Yes, I've got that here.

PN225

Can you go to paragraph 3.4?---Yes.

PN226

You were asked some questions about the bans that are described at (a), (b) and (c), "A ban on checking emails after 12 noon each day. Requests outside this time made via email will not be responded to until the next day. A ban on answering phones before 9 am and after 4.30 pm," and, "A ban on travelling to work for work purposes in own time." You said that 73 per cent of persons employed as child protection workers in the Bendigo branch were not being rostered for this weekend because they were imposing bans, including those bans?---Yes.

actually, what I stated was that 77 – 73 per cent I said but, I'm sorry, it's actually 77, so I need to correct that – of our practitioners in Bendigo are participating in the bans. That's the information that we have. In terms of whether they're prepared to participate in the roster, one can only assume that if they're participating in the bans and the bans detail a ban on answering phones before 9 am and after 4.30 pm, that that applies to potential after-hours work.

PN227

What would happen if that ban or those three bans were imposed by persons who are rostered over the weekend?---They wouldn't be able to perform the work. They wouldn't be able to answer the phone to receive the call from Box Hill. They wouldn't be able to then be aware of what the issue was and go out and conduct the visit, the urgent visit.

PN228

What can you say about the urgency or otherwise of those sorts of visits which occur over the weekend?---The only visits that occur over the weekend are ones that the after-hours child protection emergency service have considered are extremely urgent.

PN229

What would the impact be on persons in need of help if persons on the roster over a weekend imposed those sort of bans?---They could be at significant and life-threatening risk.

PN230

There's no further re-examination, Commissioner.

PN231

THE COMMISSIONER: Thanks. Thank you for your evidence.

<THE WITNESS WITHDREW

[2.57PM]

PN232

THE COMMISSIONER: Mr Attiwill, before we hear the next witness you might be able to clear something up for me. There was some exchange between the witness as to her understanding of the bans that might be on on the weekend.

PN233

MR ATTIWILL: Yes.

PN234

THE COMMISSIONER: Perhaps you could clear up for me whether or not there is any ban or limitation on any protected industrial action – let me put it that way – in relation to making themselves available for rosters and working normally in accordance with that roster during the weekend.

PN235

MR ATTIWILL: No, there isn't. They're ready, willing and able to work subject to their own personal circumstance.

PN236

THE COMMISSIONER: The issue that Mr Wood just raised in his last few questions, the other areas of the protected industrial action, does that apply on the weekend as well?

PN237

MR ATTIWILL: No. It seemed – not that I want to make a submission in the middle of my learned friend’s case but - - -

PN238

THE COMMISSIONER: No, but I think it’s important. It might save a few questions if I understand.

PN239

MR ATTIWILL: It seems that this might be a fair categorisation of what has happened. The protected industrial action has certain terms, of course. The department, and the region then, look like they prepare rosters in relation to what they read and see in the protected industrial relation action. We, as we have deposed to in paragraph 12, are firmly of the view that this is the current circumstance. It seems plain that it was the circumstance in Bendigo last weekend. It’s going to be the circumstance this weekend. Ms Jamison’s evidence finally in relation to my cross-examination was that she has not been told by anybody that any child protection worker in her region is refusing to go onto the roster as a result of these bans. She said she didn’t know why some people weren’t going on a roster. That was the extent of – but I’ve got very plain instructions as to what we consider happened last weekend and what will happen this weekend as a matter of fact.

PN240

THE COMMISSIONER: Yes, my question was twofold: (1), whether or not there is any protected industrial action which gives rise to a refusal to go on a roster, and your answer to that is no, there isn’t; secondly, whether or not then having been on the roster for the performance of duty on the weekend or emergency work, there are any of the other in the list of bans that would apply to the performance of work.

PN241

MR ATTIWILL: Can I just have a moment to - - -

PN242

THE COMMISSIONER: Of course.

PN243

MR ATTIWILL: I just wanted to make sure to make it exactly right. There is no protected industrial action whereby somebody could refuse to go on a roster.

PN244

THE COMMISSIONER: Yes.

PN245

MR ATTIWILL: That wouldn’t be protected and they haven’t done so and don’t intend to do that.

PN246

THE COMMISSIONER: Could they refuse to answer an email after 12.00 – I think that was one of the ones that was raised – during that period of duty?

PN247

MR ATTIWILL: Our position in relation to that, for example, is that if one goes to 3.4, that is 3.4 in the application, they could. In relation to 3.4(a) to (c) they

could do those things but I'm instructed that they haven't done so on the weekend and will not do so this weekend. Or any weekend; I should make that plain, not specifically just this weekend.

PN248

THE COMMISSIONER: Let's just deal with one weekend at a time.

PN249

MR ATTIWILL: They've also voted not to.

PN250

THE COMMISSIONER: It has become more democratic.

PN251

MR ATTIWILL: They've become more democratic. That's right.

PN252

THE COMMISSIONER: All right. Now, Mr Wood, if that was made clear, those matters, does that alter at all your position in relation to the application for an interim order? Now, I understand your concern on Monday. We may have to deal with that but does it alter your position at all in relation to an interim order this weekend?

PN253

MR WOOD: It may well, your Honour. It may well. I'll just have to take some instructions.

PN254

THE COMMISSIONER: Could you do that?

PN255

MR WOOD: Yes, certainly. Would I be able to - - -

PN256

THE COMMISSIONER: Would you like an adjournment?

PN257

MR WOOD: Yes.

PN258

THE COMMISSIONER: By all means. I trust at this time we have the deputy secretary of the department and the secretary of the union madly engaging in discussion. I'll adjourn for 10 minutes.

**<SHORT ADJOURNMENT**

**[3.03PM ]**

**<RESUMED**

**[4.22AM]**

PN259

THE COMMISSIONER: Yes, Mr Wood?

PN260

MR WOOD: Commissioner, the concessions that became apparent from the CPSU were clarifications perhaps a bit less pejorative during the cross-examination of Ms Jamison concerning bans 9, 10, 15, 20 and 21 - were clarifications that did improve the position somewhat in terms of the applicant's

application for an interim suspension, but not to the extent that the applicant does not think that there is no longer an urgent situation that prevails as we sit here at 4.30 on Friday the 18th.

PN261

In particular the applicant is concerned about bans 20 and 21, that is, that members will place an indefinite ban by child protection workers in the Department of Human Services with more than 12 months' experience accepting more than 12 cases, including notifications and 21 members will place an indefinite ban by child protection workers in the Department of Human Services with less than 12 months' experience accepting more than six cases, including notifications.

PN262

Ms Armitage will give some evidence explaining why that situation is an urgent one insofar as the applicant is concerned particularly in circumstances where it appears likely that any final decision would not be given until late on Monday. If that situation was different, then I perceive the applicant's position might be different, but it's the deallocation or, to perhaps put it another way, the non-allocation of cases over Monday when one has regard to the situation that already pertains with bans having been in place in some areas since last Friday that causes the applicant concern in terms of the level of risk it poses to the life, health, personal safety and welfare of the children that it is supposed to protect.

PN263

THE COMMISSIONER: I could sit Sunday.

PN264

MR WOOD: That might alleviate some of the difficulties, Commissioner, apart from - my learned friend Mr Attiwill says apart from their difficulties, but that would - - -

PN265

THE COMMISSIONER: I am conscious we have made arrangements to have the transcript produced quickly. That should be available tomorrow, hopefully tomorrow, and that will be emailed to the parties so they can examine that. We have already made some tentative arrangements to begin at 10 o'clock on Monday, but if you believe that there is evidence that needs to be heard that would require an order to be enlivened by 9 o'clock Monday morning, then if Sunday is the only option, I can hear the relevant evidence from your witnesses and, of course, from Mr Attiwill's.

PN266

MR WOOD: Those are my instructions, Commissioner.

PN267

THE COMMISSIONER: Do you have a view on this?

PN268

MR ATTIWILL: About whether we sit on Sunday?

PN269

THE COMMISSIONER: Yes.

PN270

MR ATTIWILL: I just make this response: I just raise two things. One is I will get instructions about the Sunday. What I do say is this: it seems plain at the moment that based upon the evidence which has been put forward by the State there is not enough evidence to justify an interim order even till the Monday. The concerns that the State had about what may or may not happen over the weekend, in my submission, have been fully addressed and it was plain at the end of Ms Jamison's evidence that the fear that they had about what could happen over the weekend is simply not going to arise. What that means is we would really just be dealing with what's going to happen on Monday.

PN271

Now, you have heard obviously the submissions that I have put about the fact that there's no current threat, we say, or any harm being caused to any child but that's not a matter that necessarily you can just determine in the absence of all the evidence. I can well understand that. We do say though particularly over the weekend that there's not enough evidence to support the interim. Probably the best way to deal with it is this: I'll get some instructions about whether we could have this full case heard on the Sunday, but I do raise this issue and it's not put lightly.

PN272

These bans were first notified to the government on 7 November. What Mr Wood is really putting to you, it seemed to me, is that the only really remaining concern on the interim basis is really Monday because there seems to be satisfaction as to the state of play that will be had over the weekend so it's really just – we're just talking about the Monday. We have already heard obviously Jamison's evidence. It might be that the matter is able to be heard and determined on the Monday. We're only talking a day.

PN273

What we say is that there's no threat to any child. If there was that sort of threat to the wellbeing or safety of a child, you would have thought that the State would have made this application on 7 November but it didn't. It spent 10 days at least putting its house in order and then comes on the 18th. We have spent all day today. We have lost one day on the State's case running these matters and calling through the witnesses. We really say that one morning or a bit of the afternoon on Monday is not going to make any difference here.

PN274

THE COMMISSIONER: How many witnesses would you be proposing to call?

PN275

MR ATTIWILL: We have four witnesses who would be - - -

PN276

THE COMMISSIONER: That's all right. Four gives me an idea of time.

PN277

MR ATTIWILL: Yes. I'm instructed that it wouldn't be any less than three. I haven't spoken to these people but they're all going to be child protection workers so one would think that the cross-examination of all of them – the first person might be cross-examined and the others might not be so long. I know that you

smiled as I say that and it's infectious to me as I say it, but I can see that that will take half a day and then there's got to be submissions about it so I can see that - - -

PN278

THE COMMISSIONER: Yes.

PN279

MR ATTIWILL: We do say that just one day is not going to make really any difference in this case. The reason I say that is what the child protection workers are doing over the weekend, we say, really supports that they are acting responsibly. I mean, here are child protection workers who have the protection of industrial action but, as we have said in paragraphs 11 and 12, aren't taking it over the weekend and that's not in dispute. So we say that there's nothing that's really been produced that would even give some basis for an interim order, Commissioner, but I can get some instructions about the Sunday.

PN280

THE COMMISSIONER: Let me put it this way: from the material to date and from the concessions made I don't have any apprehensions about the conduct of child protection workers over the weekend, but there is still a case that's agitated between you about protected industrial action that will resume on Monday.

PN281

MR ATTIWILL: Yes.

PN282

THE COMMISSIONER: Now, the case that's between you is pretty simply one where on the one hand it says that there is great risk to the community; on the other hand it says there's not. It's an area of service to the community which one has to take very seriously and so I wouldn't lightly assume that one case or the other is right without hearing evidence and so I would be minded to hear the evidence and be in a position to make a decision prior to any impact or otherwise that might occur. That is why I suggested we could do it Sunday. Now, I am also conscious of what was said earlier, namely that Ms Batt and Mr Yates and the union said they will meet at any time. That should continue and that can continue this afternoon and continue tomorrow. The parties know my phone number. I am easily contactable.

PN283

MR ATTIWILL: I am instructed that they're going to meet on Sunday, each of those two persons.

PN284

THE COMMISSIONER: Yes, all right.

PN285

MR ATTIWILL: So it reduces a bit more of the complexity about us sitting on the Sunday.

PN286

THE COMMISSIONER: Indeed.

PN287

MR ATTIWILL: I know that we have done this a lot today, but it would be convenient if I was just to have, say, another 10 minutes so that we could see if

we can progress some matters even just very quickly internally and then have a chat to the State.

PN288

THE COMMISSIONER: Yes, of course, I don't have any difficulty with that whatsoever, but you see my inclination.

PN289

MR ATTIWILL: Yes.

PN290

THE COMMISSIONER: Very well. I will adjourn for another 15 minutes.

**<SHORT ADJOURNMENT**

**[4.25PM]**

**<RESUMED**

**[5.11PM]**

PN291

MR ATTIWILL: Commissioner, thank you for the time.

PN292

THE COMMISSIONER: That's all right.

PN293

MR ATTIWILL: In discussions with my learned friend we have come up with this proposal: a hearing on Sunday of the application and if it was convenient to you, Commissioner, we thought about starting that at 11 o'clock in the morning just to give everybody some additional time.

PN294

THE COMMISSIONER: Can I add one caveat?

PN295

MR ATTIWILL: Yes.

PN296

THE COMMISSIONER: I would be really grateful if any documents that I need to read could be delivered at 10.30.

PN297

MR ATTIWILL: Right.

PN298

THE COMMISSIONER: That way I can read them prior to the commencement time.

PN299

MR ATTIWILL: Yes, we would be happy with that, Commissioner.

PN300

THE COMMISSIONER: I'm sorry, they would have to be brought here. We have had massive failures in our IT system over the last week.

PN301

MR ATTIWILL: Yes, we will bring up hard copies to you at 10.30.

PN302

THE COMMISSIONER: That would be great. I will be standing at the door.

PN303

MR ATTIWILL: The other matter was in relation to our evidence we're going to put that on by 2 o'clock tomorrow and I have said to Mr Wood that in the event that any part of that late, then we communicate that to him. So we're going to use our best endeavours because I haven't seen these people, but that's the intention, to put in all the material by 2 o'clock tomorrow.

PN304

THE COMMISSIONER: Thank you.

PN305

MR ATTIWILL: The only other matter that I can tell you about, Commissioner, is it's my understanding that there will be a meeting at 3 o'clock on Sunday. That meeting will be between Mr Yates and Ms Batt and any of the other people who they wish to bring along, but it will definitely be between the two of them and they will be meeting on Sunday independently of this application at 3 o'clock.

PN306

THE COMMISSIONER: We all wish them well.

PN307

MR ATTIWILL: I don't think there are any matters that we need to trouble you with at this point.

PN308

THE COMMISSIONER: No, that's all right. I will adjourn until 11 o'clock Sunday and I will at 10.30 be available to receive any hard copies.

PN309

MR ATTIWILL: Yes.

PN310

THE COMMISSIONER: Thank you.

**<ADJOURNED UNTIL SUNDAY, 20 NOVEMBER 2011**

**[5.13PM]**

<b>LIST OF WITNESSES, EXHIBITS AND MFIs</b>
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<b>&lt;SUE JAMISON, AFFIRMED .....</b>	<b>PN37</b>
<b>&lt;EXAMINATION-IN-CHIEF BY MR WOOD .....</b>	<b>PN39</b>
<b>EXHIBIT #W1 WITNESS STATEMENT OF SUE JAMISON.....</b>	<b>PN46</b>
<b>&lt;CROSS-EXAMINATION BY MR ATTIWILL.....</b>	<b>PN63</b>
<b>&lt;RE-EXAMINATION BY MR WOOD.....</b>	<b>PN211</b>
<b>&lt;THE WITNESS WITHDREW .....</b>	<b>PN231</b>