CORONERS ACT, 2003

*SOUTH*  *AUSTRALIA*

# FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 30th and 31st days of October 2006, the 1st, 2nd and 3rd days of November 2006, the 7th day of December 2006, the 21st, 22nd and 23rd days of February 2007, the 28th day of March 2007, the 24th day of April 2007, the 9th and 10th days of July 2007 and the 20th day of September 2007, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Elizabeth Rose Edwards.*

*The said Court finds that Elizabeth Rose Edwards aged 9 months, late of 27 Milligan Drive, Para Vista died at 27 Milligan Drive, Para Vista, South Australia on the 30th day of June 2004 as a result of combined effects of asphyxia and inhalation of gastric contents. The said Court finds that the circumstances of her death were as follows:*

## 1. Introduction

1.1. Elizabeth Edwards was nine months old at the time of her death on 30 June 2004. She was born on 4 September 2003. It was a difficult birth. There is a letter in Elizabeth Edwards' Women's and Children's Hospital record (Exhibit C20) from Dr Andrew McPhee of the Department of Perinatal Medicine to the general practitioner responsible for Elizabeth's care dated 18 November 2003 which describes the situation:

> 'Mrs Edwards was admitted at around 29 weeks' gestation with PPROM.[1] Serial cultures grew group B strep and in the days prior to delivery, Morganella morganii, which is a gram negative organism that has occasionally been reported to cause neonatal sepsis. In the early hours of 4/9/03, signs suggestive of chorioamnionitis developed and

[1] Pre-term premature rupture of the membranes

> Michelle was treated with antibiotics and later transferred to Labour Ward with a view to expediting delivery. At the time Elizabeth's delivery as 2112 hours on 4/9/03, she was found to be in poor condition, and required significant resuscitation including intubation and positive pressure ventilation; cord blood analysis revealed a severe mixed acidosis.'

1.2. Dr McPhee was called to give evidence at the Inquest. Dr McPhee explained that there were two broad issues complicating Elizabeth's birth which are interrelated[2]. The first was that the infective process already referred to had found its way into her blood stream which, left untreated, would have been fatal. The other issue was that in pre-term infants, infection around the time of birth, even without infection in the baby itself, appears to be associated with particular patterns of brain injury which can be seen on scanning.

1.3. An MRI scan was carried out on 18 September 2003 which revealed that Elizabeth had sustained a cerebral injury. Dr McPhee was of the opinion that the injury was likely to have some developmental ramifications later in life, possibly involving a left hemiparesis, and visuomotor problems. However, it was not going to be possible to determine the long-term outcome until Elizabeth was approximately twelve to eighteen months of age.

1.4. Elizabeth's mother, Michelle Edwards, was understandably extremely anxious and concerned about Elizabeth's brain injury and the future consequences. She had some difficulty coping with Elizabeth in the ensuing months. Elizabeth had regular checkups with Dr McPhee during this period which I will describe in greater detail later in these findings.

1.5. In April 2004, Michelle Edwards was having particular difficulty in caring for Elizabeth. As a result of this, the Family and Youth Services Division of the Department of Human Services ("FAYS") became involved in Elizabeth's care. At the time of her death on 30 June 2004 Elizabeth was not in her mother's custody. She was at that time in the custody of the Minister for Families and Communities. The Minister's department, FAYS, through an agreement with Anglicare SA Incorporated ("Anglicare") described as a "service agreement" had placed Elizabeth in the care of foster carers provided by Anglicare. The foster carers on 30 June 2004 were Janet and Trevor Todd. It was Janet Todd who discovered Elizabeth in her cot after her death on 30 June 2004.

---

[2] Transcript, page 390

## 2. Elizabeth's care at the Women's and Children's Hospital

2.1. In addition to the account of the circumstances surrounding Elizabeth's birth described above, Dr McPhee gave evidence about Elizabeth's medical care during the months immediately following her birth.

2.2. Immediately after delivery, Elizabeth was taken to the Intensive Care Unit. Blood tests taken from Elizabeth demonstrated a blood stream infection which has already been referred to. By 6 September 2003 Elizabeth's initial problems had settled down. On that day she was extubated, and was clinically stable and breathing without mechanical assistance. Cranial ultrasounds carried out on 5 and 6 September 2003 demonstrated evidence of oedema or swelling on the right side of the brain. This early indication was later confirmed on the MRI scan on 18 September 2003 which has already been referred to.

2.3. Over the next few days Elizabeth was responding well to treatment and was starting to feed. Dr McPhee considered that she was making good progress[3].

2.4. Dr McPhee described the situation in relation to Elizabeth's brain injury as appreciated by the clinicians on 22 September 2003[4]. He said that on a day-to-day basis Elizabeth was "terrific, she was on full feeds, she was quite stable, she wasn't causing us any particular concerns". However, the evolving picture in relation to the brain scans was something of a concern. The scans showed that in one part of the brain on the right side in the periventricular area, the oedema that had been seen earlier had progressed to show little holes in the brain, and this was an indication that that part of the brain had been irreversibly damaged and that the brain was going through the normal process of healing.

2.5. Dr McPhee explained that the MRI scan demonstrated that the brain injury was not bilateral, but was confined to the right side of the brain[5]. The injury had matured to the extent that it was possible to make a reasonably confident assessment that this was the full extent of the injury.

---

[3] Transcript, page 394
[4] Transcript, page 395
[5] Transcript, page 397

2.6. Elizabeth was discharged from the Women's and Children's Hospital on 20 October 2003[6]. She went home on the NED Program which is a program for early release from hospital for premature babies. At that stage to the extent that it was possible to tell, Elizabeth's broad neurological assessment was looking reasonably positive. The Women's and Children's physiotherapist still thought that there was some asymmetry with movement patterns on the left being a little bit immature compared with the right which would be consistent with an injury to the right side of the brain. Dr McPhee explained that babies on the NED Program are visited very regularly, and often daily. As things settle down, the visits become less frequent. The object of the program is to get the baby home with the family more quickly than would otherwise be the case. NED stands for neonatal early discharge.

2.7. Dr McPhee reviewed Elizabeth again on 28 October 2003. He considered that she was making good progress at that time. She had no problems with her hearing and had put on weight. She had had a minor viral illness which she had managed to deal with. Dr McPhee considered that she was doing well at that time.

2.8. Dr McPhee next saw Elizabeth on 15 December 2003. He stated that she had made very good progress in her growth and similarly in her development. However he noted that her left eye tended to drift in a little bit so that she was perhaps developing a squint. But otherwise he thought that she was doing quite well neurologically. Dr McPhee was aware that one of Elizabeth's siblings also had a squint, and so it was difficult to decide at that stage whether the squint was a genetic characteristic or something related to Elizabeth's injury. Elizabeth had been readmitted to the Paediatric Ward on 16 November 2003 where she remained until 23 November 2003. This admission was related to irritability and the possibility of reflux. Dr McPhee stated that there was also an element of maternal anxiety which was not surprising given Elizabeth's history up until that time[7].

2.9. Dr McPhee next saw Elizabeth on 25 February 2004. According to Dr McPhee, Elizabeth's mother had been concerned that Elizabeth was having some little "spells" where she wasn't behaving normally. Michelle Edwards had noticed that Elizabeth had certain episodes where she was staring into space for fifteen to thirty seconds and appeared to be blank. During these brief periods she was not easy to rouse but was

[6] Transcript, page 399
[7] Transcript, page 402

fine afterwards. There was no other evidence to suggest seizures at all. There was no clonic activity (fitting, jerking of limbs). Dr McPhee arranged to obtain an EEG report to see if there was any evidence of seizure activity[8]. The EEG was carried out on that same day and reported by Dr Abbott as normal. On examination, Dr McPhee could not detect any differences between Elizabeth's reactions left and right and thought everything about her looked satisfactory. He wrote in her notes under "assessment":

> 'query seizures/absence spells'[9]

2.10. Elizabeth's next visit to Dr McPhee took place on 8 March 2004. He considered that in the broad she was doing well on that occasion. He noted that there may have been one further event which he described as "chewing activity and the head turn". He explained that this was an event observed by Michelle Edwards which might have been indicative of seizure activity. Michelle Edwards had observed chewing activity or mouth smacking which was unusual in character and occurred at a time when she had her head turned in one direction. However, there was no sleepiness after the episode, and Dr McPhee could draw no conclusions about the matter beyond simply noting it. He noted on this occasion that Elizabeth's left eye tended to drift in still. Michelle Edwards had reported that Elizabeth was more proficient with her right arm than her left arm and Dr McPhee thought that movements of the left hand were less proficient than the right when he examined Elizabeth. He regarded this as perhaps indicating some early evidence of the brain injury on the right side. Dr McPhee stated that the purpose of this examination was to follow Elizabeth's growth and developmental projections[10]. He added that it was not possible to predict accurately the outcome of Elizabeth's neurological condition at such an early stage. He would not be in a position to make prognostic comment until Elizabeth was twelve or eighteen months old. He said that her symptoms were subtle and in the long-term may have been a trivial issue.

2.11. Dr McPhee was asked if he recalled receiving a telephone call on 20 April 2004 from Sherri Humphrys, a social worker employed by of FAYS. He did not have any recollection of this telephone call but did not deny that it might have happened. According Exhibit C11c which is a contact file of FAYS, Sherri Humphrys contacted

[8] Electroencephalogram
[9] Exhibit C20
[10] Transcript, page 410

Dr McPhee in relation to Elizabeth on that day. The relevant entry in the contact file[11] is as follows:

> '**Record of Contact**
> Andy was well aware of mother. Andy stated that he does not have any concerns for the development of the baby to date, however the extent of the baby's disability will not be known until she is 18mths old. Andy stated that he has not experienced the mother to cancel his appts (sic) on the contrary, he has experienced her to come in on occasions additional to the designated appt (sic). Dr McPhee stated that mo (sic) concern for her baby is quite appropriate considering the possible disability. Dr McPhee did state that he does have some concerns regarding the mother mental health and her anxiety regarding the baby may be compounding this. Dr McPhee stated that the mother has been talking about suing the hospital, which is well within her rights, but in his opinion her delivery is unlikely to have caused the problems with Elizabeth.'

The balance of the record of contact is not presently relevant.

2.12. Dr McPhee was asked to comment upon the autopsy report prepared by Dr Allan Cala which is Exhibit C21a in these proceedings. He commented that the neuropathological examination reports attached to the autopsy report did not show more evidence of injury in the periventricular white matter but he agreed that the process of preparation of the tissues for histological examination had caused some slippage in that area which precluded the pathologists from making a good assessment. However Dr McPhee stated that based on the earlier scanning that had been carried out during Elizabeth's life, there was no doubt that the damage had been shown to exist.

2.13. Dr McPhee was asked whether the anecdotal history of spells that had been described by Elizabeth's mother may have had any role to play in her death. He stated that it was possible but not in his opinion probable[12]. He stated that Elizabeth had never had a seizure which was associated with colour change or major cardiorespiratory embarrassment. He stated that although the "little spells" had been noted, it would be incorrect to label them as seizures without more definitive evidence from the EEG. Dr McPhee stated that he thought this was a case of suffocation, "asphyxiation related to the U pillow, perhaps with an element of emesis…"[13].

2.14. Dr McPhee was told that there was some evidence to suggest that the foster carer Mrs Todd had provided a herbal medication called "Calm" with a brand name Brauer

[11] Exhibit C11c
[12] Transcript, page 415
[13] Transcript, page 415

and asked whether this might have had any part to play in her demise. He stated that he considered that to be very unlikely, that the constituent elements of the preparation were unlikely to have an effect on the child's cardiorespiratory system. Dr McPhee expressed the view that the most likely explanation for Elizabeth's death was suffocation brought about by the use of the U shaped pillow which was in her cot[14], and which will be the subject of further discussion in these findings.

2.15. Dr McPhee was asked whether the brain injury that was sustained by Elizabeth at birth might have meant that she was predisposed to fitting. He stated that he was sure that her risk of fitting was higher than had she been born at term without any of the "dramas that had happened"[15]. Dr McPhee stated that he was aware from his research that the type of brain injury suffered by Elizabeth was not strongly associated with later seizures. He stated:

> 'If you look at ex-prems with this pattern of brain injury and follow them, it seems that a very small percentage of them will actually go on to have seizures, despite the fact that many of them will go on to have evidence of brain dysfunction.'[16]

2.16. Dr McPhee said that it was possible that one of Elizabeth's spells may have occurred at the same time as she vomited (a quite frequent event in babies) and that if she turned her face to the right into the pillow at that point this could have contributed to her death. However, he stated that while this was a possibility, in his mind it was improbable that those two things would occur in conjunction with one another[17].

2.17. Dr McPhee summed up his views in relation to Elizabeth's development:

> 'You know, really I thought that she was doing quite well. There were some subtle suggestions that there might be some problems but they can be transient and, in broad terms, you know, she was - most of her development looked perfectly appropriate. Her growth was good, she didn't have any other ongoing medical problems. There was the suspicion of those little events but, again, they hadn't really transpired at that stage to be anything convincing.'[18]

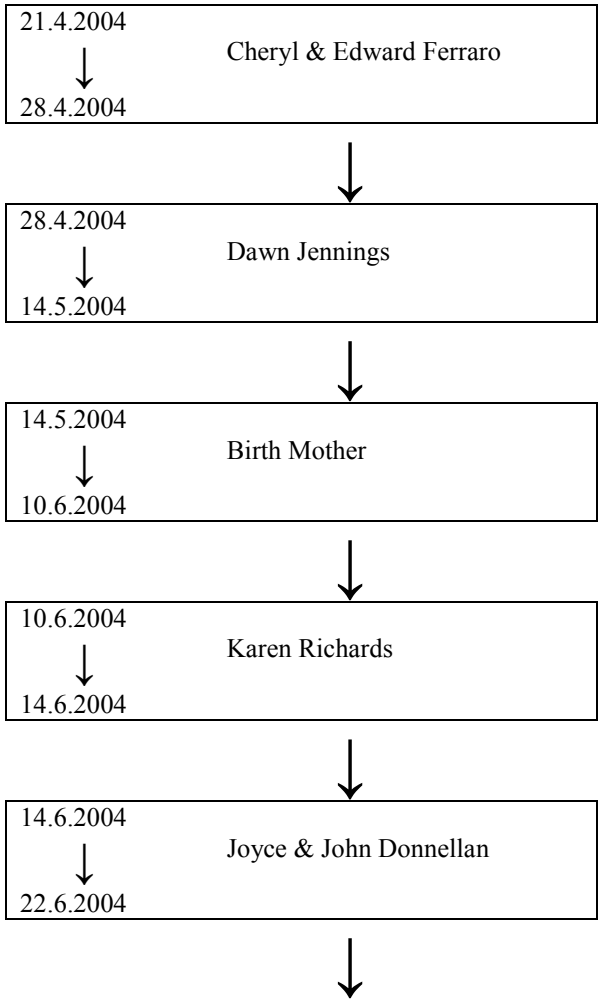
2.18. Dr McPhee was asked whether he would have mentioned the spells to Ms Humphrys. He stated that he would not have because he really thought they were minor events and while he acknowledged their possible relevance in theoretical terms, he still thinks that they were of trivial moment. He stated that he would not ordinarily raise

[14] Transcript, pages 417-418
[15] Transcript, page 422
[16] Transcript, page 423
[17] Transcript, page 424
[18] Transcript, page 427

such matters when talking to allied health workers. Dr McPhee stated that, although when he was having the conversation with Ms Humphrys he did not appreciate that there was a possibility of Elizabeth being placed in foster care, had he known that was a possibility, he still would not have thought it necessary to mention the "spells"[19].

## 3. Elizabeth's foster care

3.1. In circumstances which will be described shortly Elizabeth was placed in alternative foster care on 21 April 2004, just slightly more than two months before her death. Exhibit C11e is an Anglicare file which was tendered in these proceedings. The file contains a document described as a "Placement Flow Chart" which contains a useful summary of the caring arrangements for Elizabeth between 21 April 2004 and 30 June 2004. The placement flow chart is as follows:




[19] Transcript, page 428

| | |
|---|---|
| 22.6.2004<br>↓<br>30.6.2004 | Jan & Trevor Todd |

## 4. Legislative framework

4.1. Elizabeth was in the custody of the Minister for Families and Communities pursuant to section 9 of the Children's Protection Act 1993. That section provides that the guardians of a child and the Minister may enter into an agreement (a "custody agreement"), under which the Minister will have the custody of the child while the agreement is in force. Under section 9(7) of the Act, such an agreement unless terminated sooner, has effect for a period, not exceeding three months, specified in the agreement, and may, on its expiration, be extended but not so that the agreement will operate for a period of more than six months.

4.2. Section 51(1)(b) of the Children's Protection Act provides that the Minister may from time to time make provision for the care of a child of whom the Minister has custody pursuant to the Act by placing the child in the care of an approved foster parent or any other suitable person.

4.3. Sections 40 and following of the Family and Community Services Act 1972 provide for a system of statutory approval for persons to act as foster parents. The central provision is section 41 which prohibits a person from acting as a foster parent to a child unless approved as a foster parent under the Act. By section 42 of the Act a prospective foster parent may apply to the Chief Executive Officer for approval and the Chief Executive Officer must attempt to assess the capacity and willingness of the applicant to care for a child "according to adequate principles and standards of child care, and must, in such manner as the Chief Executive Officer thinks fit, satisfy himself or herself as far as reasonably possible" as to the following matters:

(a) that the applicant will have adequate interest in, and affection and respect for, a child placed in his or her care; and

(b) that the applicant will treat the child in a consistent manner and will provide a safe and stable family environment for the child; and

(c) that the applicant will understand adequately the developing personality of the child, and will provide opportunities to develop the abilities of the child; and

(d) that the applicant will provide adequate accommodation for the child and any other material provision necessary for the welfare of the child; and

(e) that, where appropriate, the applicant will provide opportunities for the child to maintain or recover his or her identity as a member of his or her own family and will allow the child reasonable access to his of her own family; and

(f) that, where appropriate, the applicant will assist the child to return to his or her own family; and

(g) that the applicant is in sound health and is able to withstand the demands of providing foster care; and

(ga) that the applicant is otherwise a fit and proper person to provide foster care; and

(h) on any other matters that the Chief Executive Officer may consider relevant.

4.4. Section 43 of the Act requires the Chief Executive Officer to provide an approval in writing to a person approved as a foster parent. Section 43a of the Act requires the Chief Executive Officer to ensure, in relation to each approved foster parent, that regular assessments are undertaken of the person's role as a foster parent under the Act, and that courses of training are made available to the foster parent, that ongoing support and guidance are provided to the foster parent, and that proper assessments are made of any requirement of the foster parent for financial or other assistance.

4.5. By section 45 of the Act, the Chief Executive Officer or an authorised officer may at any reasonable time enter any place or premises for the purpose of providing an approved foster parent with support and guidance in relation to the care of a child and of ascertaining whether a child is being adequately cared for and whether the provisions of the Act are being complied with.

4.6. Counsel for the Minister for Families and Communities agreed that while in the placements listed above, Elizabeth was under the custody of the Minister for Families and Communities, that the various agreements relating to her custody were entered into pursuant to section 9 of the Children's Protection Act 1993 and that the Minister placed her in foster care pursuant to the authority conferred by section 51 of the

Children's Protection Act 1993[20]. Furthermore, the foster carers with whom she was placed were approved pursuant to the Family and Community Services Act 1972.

4.7. Section 24 of the Family and Community Services Act 1972, provides that the Minister may enter into agreements for the provision or promotion of family or community welfare services or other related services. It was pursuant to this power that the Minister entered into the service agreement with Anglicare which has already been referred to. The Family and Community Services Act does not define what the expression "family or community welfare services" means. However, some indication of the meaning to be attributed to that expression may be gleaned from section 24 itself which qualifies the Minister's power to enter into such agreements. It states that the Minister should avoid, so far as practicable, entering into agreements providing for long-term care of persons in need of such care unless satisfied that the other parties to the agreement do not enter into those agreements with the object of making a profit. It follows from this that at least one aspect of an agreement for the provision of family or community welfare services is the provision of long-term care of persons in need of such care. A review of section 10 of the Act which sets out the objectives of the Minister and the Minister's Department also throws some light on the nature of the expression family or community welfare services. That section provides that the objects of the Minister and the Department are to promote the welfare of the community generally and of individuals, families and groups within the community and to promote the dignity of the individual and the welfare of the family as the bases of the welfare of the community.

4.8. The expression family or community welfare services encompasses such things as assisting persons to overcome personal or social problems, reducing the incidents of disruption of family relationships, assistance to persons suffering from a disadvantage, providing persons in need or distress with assistance by way of grants or loans of money or commodities, accommodations, financial counselling or any other form of assistance. These examples are drawn from section 10 of the Act.

4.9. In my opinion a distinction should be drawn between the provision of family or community welfare services on the one hand, and on the other hand, the regulatory function of approving foster carers and regularly assessing the manner in which an approved foster parent carries out his or her foster caring responsibilities, ensuring

[20] Transcript, page 266

that courses of training are made available to foster parents and ensuring that ongoing support and guidance are provided to foster parents. Those things, which are referred to in section 43a of the Act, are not in themselves family or community welfare services. Instead, they are in the nature of regulatory requirements which are entirely different in nature from the services referred to above.

## 5. Service Agreements between the Government and Anglicare

5.1. The Service Agreement which was in force at the time of Elizabeth's death was admitted in evidence as Annexure NP1 to a statement of Nancy Penna which was admitted as Exhibit C24. It is notable that in paragraph 4 of Exhibit C24, Ms Penna who was the Director of the Guardianship and Alternative Care Directorate of Families SA states:

> 'Pursuant to the Service Agreements contained in NP1, DFC[21] had no responsibility for training of carers during the period 1 July 2002 to 30 June 2004.'

5.2. In paragraph 6 of Exhibit C24, Ms Penna states that Anglicare was required under the Agreement NP1 to provide amongst other things, "Recruitment and assessment of carers for approval and registration by Registration and Licensing". Schedule 1 to NP1, the Service Agreement, provides in 6.6.2 that Anglicare must ensure that the foster carer is properly trained, assessed and approved to provide the necessary care. In 6.6.3 it provides that Anglicare must monitor and review the suitability of the arrangements. In 6.6.9 it provides that Anglicare will train and assess all carers to provide reasonable care to children and young people in accordance with the standards detailed in the Carer's Assessment Manual. In 6.10.1 the Agreement provides that Anglicare will carry out proper assessments, reviews and checks of foster carers, and will carry out ongoing assessments, reviews and checks of foster carers. Under 6.13 the Agreement provides that in considering any application for approval as a foster carer, Anglicare must attempt to assess the capacity and willingness of the applicant to care for a child according to adequate principles and standards of child care as outlined in the Carers Assessment Manual. In 6.10.3.3 the Agreement provides that Anglicare must ensure that there will be reviews of foster carers every twelve months or as agreed between DHS (sic) and Anglicare. 6.13.6 provides that Anglicare must use its best endeavours to ensure that proper

[21] The Department for Families and Communities which is the Department within which Families SA sits.

assessments are made of any requirements of a foster carer for financial or other assistance.

5.3. 6.14 of the Schedule provides that Anglicare must retain the right in respect to the foster carer for Anglicare and/or DHS (sic) to, at any reasonable time, enter any place or premises for the purpose of providing an approved carer with support and guidance in relation to the care of a child or young person and of ascertaining whether a child or young person is being adequately cared for, and whether the provisions of this Part (sic) are being complied with. It will be noted that that provision echoes the wording of section 45 of the Family and Community Services Act 1972.

5.4. A second annexure to Exhibit C24, annexure NP2, sets out a copy of the Service Agreement between the Department for Families and Communities and Anglicare for the period 1 July 2004 to 30 June 2007. That Service Agreement required in paragraph 3.6 of Schedule 3 that Anglicare be responsible for recruitment and assessment of carers for approval and registration by the Carer Assessment and Registration Service, and that it be responsible for the initiation and conduct of carer reviews in line with the requirements of the Carer Assessment and Registration Service.

5.5. Exhibit C27 is the Service Agreement between the Minister for Families and Communities and Anglicare for the period 1 July 2007 to 30 June 2008. This Agreement contains similar obligations. It provides in paragraph 4.1.2.1 that Anglicare will provide services to recruit, assess, train and support prospective carers and in accordance with the relevant service provision principles as set out in the Agreement. It states in 4.1.2.2 that this includes assessment of potential carers for approval and registration by the Department for Families and Communities Registration and Licensing Service. It states in 4.1.2.4 that Anglicare will undertake annual reviews of all carers approved and registered by the Department for Families and Communities Registration and Licensing Service. The Agreement also provides in paragraph 4.3.8 that Anglicare must initiate and conduct carer reviews in accordance with the requirements of the Department for Families and Communities Registration and Licensing Service**.**

5.6. On the face of it, the Department seems to be contracting out the provision of foster care services and also the regulatory requirement to carry out an assessment of foster

carers for the purposes of the periodical review which the Chief Executive Officer is obliged to ensure occurs on a regular basis under section 43A of the Family and Community Services Act 1972. It also seems to envisage that Anglicare will also be responsible for assessment of prospective foster carers for the purposes of an approval under section 43 of the Family and Community Services Act by the Chief Executive Officer.

## 6. Oral evidence in relation to the process for approval and re-approval of foster carers

6.1. Ms Margaret Battye gave evidence at the Inquest. She is the Senior Manager employed by Anglicare. She also provided a statement which was admitted as Exhibit C19 in these proceedings. In 2004 her responsibility for the alternative care services program provided by Anglicare involved the direct line management of the managers at the central teams and the southern team. She had no direct involvement with Mr and Mrs Todd nor with the placement of Elizabeth with them. However, she was able to give general evidence about the way in which Anglicare and Families SA interacted with one another. In her evidence she said that Anglicare staff are responsible for writing a report that follows a pro forma set out in the Carer Assessment Manual. She said that with the report they also provide a recommendation to the Department as to whether the foster carer is competent and capable and whether Anglicare recommends that the foster carer be approved and registered as a foster carer. That material is sent to the Families SA Registration and Licensing Service. Ms Battye understood that the Registration and Licensing Service would then go through the material provided by Anglicare and made a determination as to whether any more information needed to be provided or whether on the information then available they would agree to approve and register the foster carer. She was unable to say how frequently the Registration and Licensing Service would seek further information. She stated that the "bulk of the work" was done by Anglicare[22]. She said that the Families SA Registration and Licensing Service staff go through the paperwork provided by Anglicare. She stated "to my knowledge they have never gone out and actually visited a carer"[23]. Ms Battye stated that in

[22] Transcript, page 288
[23] Transcript, page 288

metropolitan Adelaide a foster carer cannot be approved by Families SA without going through Anglicare[24].

6.2. Ms Nancy Penna gave evidence at the Inquest. She is the Director of Guardianship and Alternative Care with Families SA. She is responsible for the contract administration of the Service Agreements between the Government and Anglicare[25]. She stated that agencies such as Anglicare are required to do the annual review of foster carers[26]. Anglicare must conduct the review in accordance with Carer Assessment Manual and then pass the relevant information on to the Registration and Licensing Service[27]. She agreed that the primary task of gathering information is left to Anglicare. She said that the Registration and Licensing Service will compare that information with anything held internally by Families SA by means of the Justice Information System or other internal files[28]. She said that the primary source of information for registration and licensing is that which comes from Anglicare and that they will have regard to other information that happens to be held by Families SA if any[29].

6.3. I asked Ms Penna whether she considered that there was any tension between the role of Anglicare in providing an assessment of the foster carers while at the same time providing a foster care service using those same carers to the State Government. She responded that she could see that potentially there could be such a conflict but on the other hand regarded the Anglicare staff as being in the best position to make assessments about the competence of foster carers. She said that she could not see how Families SA would otherwise be able to obtain the necessary information as to registration and licensing. I suggested to her that it would be possible for Families SA to send a staff member out to directly question the registered foster carer. She stated that this does not happen under the system as it currently operates[30].

6.4. Ms Penna stated that the Families SA caseworkers assigned to the children who are placed with a registered foster carer are not routinely requested to provide any input into the decision by registration and licensing as to whether that foster carer will be

[24] Transcript, page 289
[25] Transcript, page 710
[26] Transcript, page 714
[27] Transcript, page 714
[28] Transcript, page 718
[29] Transcript, page 719
[30] Transcript, page 723

re-approved. She said that it is only in the event that those social workers have raised a particular concern on the internal files of Families SA that they would have any input into this process[31].

6.5. Ms Penna agreed that the process for re-approval, so far as the Registration and Licensing Service of Families SA is concerned, is essentially a process which is done on the papers prepared and submitted by Anglicare and that the relevant staff do not go off and make their own enquiries and conduct their own assessments[32].

6.6. Ms Penna stated that the Registration and Licensing Service staff do not have a practice of calling for Anglicare's own files in relation to a registered foster carer when deciding whether that person will be re-approved or re-registered. Instead they rely solely on the recommendation for renewal paperwork which is forwarded by Anglicare on an annual basis[33].

6.7. Having regard to the evidence described above, I have concluded that while the Registration and Licensing Service of Families SA does purport to make an independent judgement about the question of whether an individual foster carer should be registered or re-registered, and does not merely rely upon the recommendation provided by Anglicare as to that question, the Registration and Licensing Service does not initiate its own enquiries. It is only if some alert happens to spring up on the Families SA internal record management systems that further inquiries are adopted. I conclude that in the vast majority of cases where Anglicare carries out an assessment recommending the re-approval of a foster carer, that re-approval will routinely be granted by the Registration and Licensing Service of Families SA.

6.8. <u>Conclusion on the role of Anglicare in relation to approval and re-approval of foster carers</u>

In my view consideration needs to be given to the appropriateness of the system of approval and re-approval described above. It may be technically possible under the Families and Community Services Act for the process to operate in the manner described by the documents and the witnesses. However, it seems to me that the system places Anglicare in a position of some conflict. In saying this I do not mean to

[31] Transcript, page 726
[32] Transcript, page 765
[33] Transcript, page 768

suggest any impropriety on the part of Anglicare. The system is devised not by Anglicare, but by Families SA. However, it is a system which expects Anglicare to recruit and provide foster carers in an environment where it is generally accepted that the demand for foster carers is greater than the supply available. Anglicare is under pressure to provide foster carers by reason of its obligations under its Service Agreement. By the same token, Anglicare is obliged by the Service Agreement to provide recommendations and assessments to Families SA as to whether particular people should be registered or re-registered for approval as foster carers. This places Anglicare in the invidious position that if it adopts a particularly rigorous process of assessment it will be defeating its own objective of providing an adequate supply of foster carers for the Alternative Care Placement Service which it is contractually obliged to provide to the State Government. I do not consider that it is appropriate that the service provider be placed in such a position.

## 7. The assessment of the Todds

7.1. Exhibit C12d is evidence of the first approval given to the Todds to act as foster carers. It is a form headed "Foster Family Approval/Re-Approval Form" and it states that Janet and Trevor Todd are approved as foster parents under the Community Welfare Act 1972 as it then was[34]. According to the form, the Todds attended what is referred to as an "orientation course" between 20 October 1996 and 10 November 1996 which was run by the North Eastern Region Placement Team within the Department for Families and Community Services. The form makes no mention of the ages of the children who may be the subject of placement with the Todds, but it limits the number of children to three at any one time. The form is signed by the Todds and by Pauline Cole, Team Leader, Regional Placement Team. At that time, the State Government had not yet contracted out the Alternative Placement Service. The Todds were recruited by the Department for Family and Community Services and not by Anglicare, or any other alternative placement service provider.

7.2. The evidence at the Inquest showed that in the second half of 1997 the Department of Families and Communities contracted out the Alternative Care Service to a number of providers including Anglicare. In the process, they provided details of those foster carers who had been registered and were on the Department's books at that time.

[34] The Community Welfare Act 1972 is now known as the Family and Community Services Act 1972

Amongst them was the Todds. Exhibit C12e is a document entitled "Carer Transition Information". It is dated 5 September 1997. The form states:

> 'Information contained in this document was prepared by the worker with the carer/s, as part of the Alternative Care Restructure (July to December 1997), to assist with the transfer of the carer/s from their existing foster care support agency or Departmental office to the appropriate Area Service.'

7.3. It refers to the Todds' approval status and notes that they are approved foster carers for up to two children with an age range of 5 to 16 years. This age range has appeared for the first time in the document, however nothing turns on this. The form refers to courses of training attended by the Todds, and it sets out the children who were then currently placed with the Todds. It contains a number of personal details about the Todds such as their employment, their family activities and interests, the nature of their accommodation and family health. Under that heading it refers to the fact that Mr Todd suffers from mild asthma and that Mrs Todd takes medication for blood pressure but that there are no other health issues which would impact on the family's ability to foster children. It notes that there had been no past and there were no current allegations of abuse in care in relation to the Todds. I conclude that from some time around the date of Exhibit C12e, the Todds commenced to provide foster care services under the auspices of Anglicare.

7.4. Exhibit C12j records the first occasion on which Anglicare reviewed the Todds for re-approval as foster carers on behalf of Families and Communities. It is dated 12 May 1998. It records the age range of the children for whom they preferred to care as between 0 and 10 years, and it also recorded that their training had included orientation with FACS, coping with foster children (4 Sundays) parenting, grief and sexual abuse seminars (4 nights), and an Anglicare luncheon. Exhibit C12i is the corresponding assessment document prepared by Anglicare for the period of twelve months ending on 18 July 2000. This document recorded a similar age range preference and that the Todds had received no training and attended no training sessions during the period under review. Exhibit C12h and Exhibit C12g record the assessments carried out by Anglicare for the following two years. Exhibit C12g records attendance at some training sessions in the year ended November 2002. Exhibit C12f records Anglicare's reassessment of the Todds for the twelve month period ended November 2003. It records that Janet's health has been affected by a diagnosis of a need for surgery for carpel tunnel syndrome on both hands and that she

experienced painful tingles and pressure on nerves. The form stated that Mrs Todd was unable to attend training sessions for the year under review because "Jan was sick for a lot of this year – but plans to come to Freda Briggs' workshop this month".

7.5. The evidence is plain that on the strength of these recommendations by Anglicare the registration of the Todds was renewed on an annual basis. According to Exhibit C19, the statement of Ms Battye, at paragraph 40, the Anglicare placement support worker who carried out the annual review on each occasion would also carry out a physical inspection of the Todds' home and any relevant equipment they were using.

## 8. Circumstances in which Elizabeth came into custody

8.1. Sherri Humphrys gave evidence at the Inquest. She is a social worker who is employed by Families SA. She was involved with Elizabeth's case. Ms Humphrys identified the Families SA contact file in relation to Elizabeth. The file was admitted as Exhibit C11c in these proceedings. Ms Humphrys identified at page 97 of that file an intake form which recorded a notification that Elizabeth was an infant at risk. It is dated 20 April 2004 and was raised by the Crisis Response and Child Abuse Service. The notification states that according to an employee of the Crisis Response and Child Abuse Service, she had tried to see Elizabeth twice, but Michelle had not allowed her into the house. The notifier stated that two months previously, she had considered that Michelle was not coping with Elizabeth and a referral was made to Torrens House but Michelle refused to participate. The previous night[35] Michelle had spoken to the notifier and told her that she was very upset and distressed. She stated that she could not cope with Elizabeth and that on the morning of the notification she disclosed that she had reached a point where she had thoughts of hurting Elizabeth because of her inability to cope. As a result of this the notification had been made.

8.2. The notification was assigned to the Adelaide District Centre of Families and Communities and Ms Humphrys assumed responsibility for the matter. Ms Humphrys visited Michelle and Elizabeth at their home and obtained some information about the matter. Ms Humphrys suggested to Michelle that she sign a parental authority to place Elizabeth in temporary care in order to allow Michelle to obtain some rest with a view to attending with Elizabeth at Torrens House as soon as a position became available there. Michelle agreed to this proposal and signed an

[35] That is the night before the notification was made.

authority to disclose information to Torrens House and the Women's and Children's Hospital and other agencies. Ms Humphrys' plan was that Elizabeth would be placed in care for one week until her position at Torrens House became available. Ms Humphrys established that there were no family members who were available to look after Elizabeth and as Michelle could not cope it was appropriate for a referral to be made for an alternative care placement. Such a placement became available the following day.

8.3. Ms Humphrys said that by the end of that placement on 27 April 2004, no place was yet available at Torrens House. As a result of this the parental authority was extended for a further period.

8.4. On 14 May 2004 Michelle withdrew her consent to the voluntary placement of Elizabeth in care. Apparently Michelle had recovered from her previous situation to the point where she felt able to resume care of Elizabeth once more. Ms Humphrys requested that she keep in touch and Michelle agreed to this.

8.5. Ms Humphrys stated that on 7 June 2004 Michelle Edwards made contact with her. A note of the contact is contained in the case file Exhibit C11c at page 19. According to the note, Michelle stated that she was going to be moving house shortly and was requesting that Elizabeth be placed in care for two to three weeks to give Michelle time to move out of her current and into her new house. Ms Humphrys informed Michelle that this would be fine and that Elizabeth could be placed for a little while to relieve Michelle of some of her anxiety. Ms Humphrys informed Michelle that she would contact Michelle as soon as a placement had been found. Ms Humphrys described the series of placements which are set out in paragraph 3.1 of these findings. As that paragraph shows, there were three placements between 10 June and 30 June 2004 including the Todds. The first of those placements ended when the carer became ill and the second placement commenced on 14 June. The second carer in that series of placements advised Ms Humphrys that she was ill on 17 June 2004. As a result of this Ms Humphrys attempted to contact Michelle to arrange for Elizabeth to return to her care. She was unable to make contact with Michelle and while waiting for another placement the carer advised that they could continue to look after Elizabeth despite the illness. Then on 21 June 2004, the second of the group of carers again contacted Ms Humphrys to advise that she was too ill to keep Elizabeth with her. It was at this point that Ms Humphrys made further enquiries with

Anglicare and discovered that Janet Todd was available. Ms Humphrys said that she contacted Michelle and explained the situation to her and also explained that she was concerned about the number of placements which Elizabeth had experienced to that point. Ms Humphrys was interested in exploring the option of Elizabeth returning to Michelle. However, Michelle said that arrangements concerning the new house were such that she was unable to resume the care of Elizabeth and as a result of this a decision was made to place Elizabeth with the Todds.

8.6. Ms Humphrys spoke with Mrs Todd on 21 June 2004 and explained that Elizabeth had had five placements by that stage. She told her that Elizabeth was a premature child and that her corrected age was six months at that stage. Ms Humphrys said that she informed Mrs Todd that Elizabeth had cysts on the brain but that this did not seem to be causing any delays in her development. She gave Mrs Todd Elizabeth's health card number. On 22 June 2004 Ms Humphrys said that she contacted Mrs Todd to find out how Elizabeth had settled. She had been told that Elizabeth had been unsettled the night before. Ms Humphrys asked Mrs Todd to keep in touch. Ms Humphrys called Michelle on 22 June 2004 to let her know how Elizabeth was settling with the Todds. Ms Humphrys tried to contact Mrs Todd again on 25 June 2004 but was unable to speak with her. She spoke with Michelle on 28 and 29 June 2004. Her next contact in relation to the file was when she was informed of Elizabeth's tragic death.

8.7. Ms Humphrys stated that she was aware that Mrs Todd required an operation for her carpel tunnel syndrome. She stated that she asked Mrs Todd whether the carpel tunnel syndrome would affect her ability to hold Elizabeth. She stated that although she did not make any note to that effect she did recall talking to Mrs Todd about that issue[36].

8.8. Michelle Edwards had provided to Ms Humphrys a note setting out Elizabeth's routine. A copy of this note is set out at pages 89-90 of the Families SA contact file, Exhibit C11c. It provides details as to her feeding habits and the concentration of powder milk to be mixed for her, the quantity of Farex baby food that she ate and the quantity of apple or alternative solid puree that she could eat. It described her appropriate dressing for sleep, referring to 1ml of Panadol or teething gel as required for teething, described her routine as being to wake, play and sleep, and also stated:

[36] Transcript, page 188

'Please encourage use of left side'.

8.9. The evidence at Inquest showed that this information as to Elizabeth's routine had not been passed on to the last several of Elizabeth's temporary foster carers, and certainly did not make its way into the possession of the Todds.

8.10. Mrs Todd herself expressed frustration with what she regarded as the inadequate level of information she was provided in relation Elizabeth. Her expression of frustration was recorded in a letter which she wrote to Families SA which is contained at page 16 of Exhibit C23a, the Anglicare file referred to at the Inquest as the "red folder". In that letter the Todds stated that they were not given enough information in relation to Elizabeth. In particular they said that if they had been aware of the information provided by Michelle that Elizabeth had suffered from "seizures" owing to having been born with polyps on the brain they would not have put Elizabeth down in the cot in the way in which they did. It will be recalled that Dr McPhee discounted the notion of seizures playing a part in Elizabeth's death, and further that such brain damage as she suffered at birth was unlikely to have any impact upon the circumstances of her death. Of course, the Todds would not have known this when they wrote that letter.

8.11. However, the point remains true that they were not provided with the information as to Elizabeth's routine which had been provided by Michelle Edwards. This was a deficiency in the process adopted by Families SA. It may be that provision of information about that routine would have caused Mrs Todd to adopt a different practice when putting baby Elizabeth down to sleep; on the other hand, Mrs Todd had cared for many children and many babies, and it seems to me that I could not safely conclude that a brief note in a description of a baby's routine would have caused her to adopt a different practice from that which she had routinely adopted on many occasions in the past. On balance, I think it unlikely that the provision of the information about Elizabeth's routine would have altered the tragic outcome. On the other hand, this does not in any way imply that such information should not be diligently passed on.

8.12. On the subject of information transfer I note that Ms Humphrys did contact Dr McPhee in order to obtain information about Elizabeth. I refer to the evidence given by Dr McPhee as to the information provided by him and in particular that he did not think it necessary to pass on the information to Ms Humphrys about the

possibility that Elizabeth may have "absences" or "seizures". In not doing this, it is my opinion that Dr McPhee acted quite appropriately in the exercise of his professional judgement, which was that this phenomenon in Elizabeth had not been well established for all the reasons which he gave in his evidence.

8.13. I assessed Ms Humphrys as a witness of truth. I consider that she was diligent, careful and attentive in the manner in which she approached the giving of her evidence. I have no reason to doubt that she would not have approached her daily duties in a similar manner.

## 9. Evidence of Janet Todd

9.1. Mrs Todd gave evidence at the Inquest. She also provided two statements which were admitted in evidence as Exhibit C16 and C16a. She presented her evidence in a very sincere manner and is clearly a kind and caring person.

9.2. She confirmed the information which I have already referred to in relation to her general health. She also gave evidence about the manner in which she cared for her own children in the 1970's. She explained how she would sometimes leave her children in a cot with a bottle when feeding them and then putting them down to sleep. She assisted in the care of her grandchildren later in life. She said that she and her husband had a considerable amount to do with the upbringing of one of her grandchildren in particular and explained that she would place that child in a cot to cuddle into what she described as a "U-shaped" pillow. She said that she used to prop the children up on the U-shaped pillow and would also use it in the cot when the children were sleeping.

9.3. Mrs Todd explained how once her children and grandchildren grew older she discussed with Mr Todd at length the notion of offering themselves as foster carers. She said that she and Mr Todd both felt that they had enough love to give to those children that needed such care. She stated that there was definitely no financial motivation in their decision to become foster carers, and I readily accept that this is so. Mrs Todd described the initial assessment of the Todds by Modbury FAYS, and described participating in the orientation course which has already been the subject of discussion earlier in this finding. She said that courses undertaken by she and Mr Todd included how to handle temper tantrums, eating habits and how to deal with sexually abused children. She said that the course involved a considerable amount of

role playing. However, she said that there was no specific training in relation to the care of infants.

9.4. Mrs Todd said that she and Mr Todd were, in due course, duly approved as foster carers by FAYS. Mrs Todd gave evidence in which she discussed the subsequent process of assessment by Anglicare once she and her husband had been transferred to that organisation in late 1997. She said that her subsequent opportunities for training as offered by Anglicare did not include training in relation to the care of babies. She said that when children were presented to her for care she was rarely given information about the routines or dietary requirements of those children. She said that the periods for which she and Mr Todd would care for children varied quite considerably.

9.5. Mrs Todd stated that Anglicare provided a support worker for she and Mr Todd. She said that the worker who was assigned for the majority of her time was Meg Cook. She would visit quite regularly. Mrs Todd thought that Meg Cook was not her designated support worker at the time that Elizabeth was assigned to her. She thought that there was no worker assigned to her at this time. This was the subject of some debate at the Inquest. Mr Schrapel, Executive Manager at Anglicare gave evidence on behalf of Anglicare about this and other subjects. He stated that according to Anglicare's computer records, there was in fact a support worker assigned to the Todds at this time, and that was Meg Cook. However, he conceded that Meg Cook was in the process of transferring to a different section at that time and although Mr Schrapel maintained that from Anglicare's point of view, she was the designated support worker for the Todds right up until 30 June 2004, I can understand how the Todds may have gained a different impression. In the end though, I do not consider that this matter played a significant part in Elizabeth's death despite the attention that was paid to it at the Inquest.

9.6. Mrs Todd stated that over her period as a foster carer she had had the care of approximately 200 children altogether. She said that approximately 50 of these would have been babies. She said that she would have greater contact with her Anglicare support worker than she would with FAYS workers, generally speaking. Mrs Todd explained that during their time as foster carers the Todds would have foster children in their care for most of the time. She said that they purchased all of their own

equipment for that purpose. She stated that they cared for children who had been sexually abused and that this had a significant impact on their lives.

9.7. Mrs Todd gave evidence in relation to a particular child for whom she cared in the years leading up to 2004. The significance of this evidence was that the child in question was a 9 week old baby and she was suffering from heroin withdrawal having been born to a mother who was a heroin addict. Mrs Todd stated that she was given some instruction in relation to the methadone medication which had to be provided for this child, but apart from that was given no real advice about how to care for her. Mrs Todd was asked about her practices in relation to putting babies to sleep. She said that she did what she felt would make the baby comfortable. She stated that she had never received any training about babies or how to put them to bed, how to feed them, how to wrap them in preparation for sleep. She stated that she had no reference point other than her own experiences. In particular she never received any information about Sudden Infant Death Syndrome or care practices to prevent the risk of Sudden Infant Death Syndrome.

9.8. Mrs Todd stated that she had used the U-shaped pillow for other babies in the cot. She stated that she bought the particular pillow which was involved in this matter approximately two years prior to 2004. She said that she had never been aware of any warning in relation to these pillows and their use with babies. She said that she bought the particular pillow from K-Mart and could not remember whether there was a warning on the packaging, but said that if there had been, she thinks she would have heeded it. She said that she only became aware of the warning when shown by a police officer who interviewed her.

9.9. Mrs Todd stated that it was her practice to put babies to bed with a bottle. She said that she would put the baby on its side within the U-shaped pillow and she would place the bottle in the baby's mouth. She said that she would not do this with a baby less than 5 months old. She had found that some babies did not like to be held while being fed and this was a good way to approach the feeding of such children provided that they were more than 5 months old. She stated that some babies when placed in a cot would be able to hold a bottle but if the baby could not hold it, she would use the pillow and rest the bottle on the pillow. She said that she found that giving babies a bottle would help them to go off to sleep.

9.10. Mrs Todd was asked about the training she had attended. She said that she was required to do two courses per year and that this was compulsory. She said that Meg Cook used to take her to the courses and she and Meg would go through a calendar and decide which courses to go to. She said that approximately ten or twelve courses would be available per year and that it was expected that the foster carers would attend two of them. She said that it was left to her to decide which courses she would attend. She said that she could not recall a course being offered in relation to babies or very young infants. She stated that sometimes if Meg Cook attended a course which she was unable to attend, Meg would provide the papers to her to read. Mrs Todd explained that some of the courses were held at the Elizabeth office which was convenient for her to attend but others which might be held in the southern region of Adelaide would not be convenient for her.

9.11. Mrs Todd's understanding that the attendance of courses was compulsory is at odds with the Anglicare witnesses. The Anglicare witnesses gave evidence that the attendance of courses was not compulsory and that they could not require foster carers to attend the courses. I find that there was a difference in perception about the compulsory nature or otherwise of attendance at training courses between the Todds and Anglicare. This is clearly undesirable. Mrs Todd's understanding that attendance was compulsory was at odds with the evidence at Inquest which clearly showed that there were years in which she did not in fact attend any training courses at all. This may be explained by the fact that she may have received materials from such courses and become confused when giving evidence. However, the evidence is clear that there were years in which she attended no training courses.

9.12. Anglicare's understanding that carers could not be forced to attend training courses is similarly a concern. The discussion appearing earlier in these findings about the relationship between Anglicare and Families SA in relation to registration and assessment of foster carers shows that the formal legal responsibility for re-registration of foster carers rested with Families SA but the assessment process rested largely, if not exclusively, with Anglicare. The fact of the matter is that it would have been theoretically possible for Anglicare to decline to recommend a foster carer for re-registration on the ground that the foster carer had not attended a minimum required number of training sessions during the period under review. It would then have been a matter for Families SA to decide whether that was a sufficient basis to

refuse to re-register the particular carer. In that sense, Anglicare's perception that attendance at training courses could not be made compulsory was not strictly correct. However, given the division of responsibility between Anglicare and Families SA in this respect it is easy to see how Anglicare or its employees could reach the conclusion that they could not insist upon compulsory attendance at training sessions.

9.13. Training is regarded as a very important element in almost any occupation. I see no reason why foster caring is any different. It seems to me that it is highly desirable that the training of foster carers should be as comprehensive as it can reasonably be. In my opinion it is reasonable to expect that foster carers would be compelled to attend a minimum number of training courses during a particular period. I acknowledge that this would be onerous from the point of view of the foster carers. This raises the question of the way in which foster carers are compensated for their time and efforts in providing their services. This is clearly an issue which is at the forefront of Government consciousness. All of the materials I have seen show that the importance of proper recognition for foster carers is well recognised by all commentators, and by Government. No useful purpose would be served by me commenting on that subject other than to say that I agree that there is a need for foster carers to be appropriately compensated for their generosity in providing homes for children under the alternative care programs offered by the State.

9.14. Mrs Todd's evidence in relation to Elizabeth

Mrs Todd stated in evidence that in June 2004 she was contacted by Anglicare in relation to Elizabeth, a 9 month old baby girl. Mrs Todd stated that she would be willing to care for Elizabeth. Mrs Todd was informed about the fact that Elizabeth was born with cysts on the brain but she was informed that notwithstanding this, Elizabeth "was okay". There were no special requirements resulting from that fact of which she was informed. Mrs Todd said that she was not told about Elizabeth's routine or feeding habits or behaviours. She did not have any recollection of being told whether Elizabeth used a dummy. She was not told what formula Elizabeth should have. Mrs Todd was not told anything about the previous reported episodes of Elizabeth's "absences".

9.15. Mrs Todd stated that Elizabeth was brought to her house by a volunteer. Elizabeth had a few clothes, a bottle and a tin of formula which was nearly empty. Mrs Todd said that the volunteer offered the information that Elizabeth was a little bit grizzly

but nothing else. Mrs Todd did not have any contact with Elizabeth's previous foster carers. She said that she worked out a routine for Elizabeth as she went along.

9.16. Mrs Todd stated that Elizabeth did not like to be fed from her bottle while in Mrs Todd's arms, so Mrs Todd would lie her on the lounge or on the floor and feed her bottle that way. Mrs Todd noted that Elizabeth could roll over onto her stomach but then not roll back again. She said that Elizabeth could not sit up or crawl.

9.17. On her first night with the Todds, Elizabeth did not settle but Mrs Todd described that as normal. Elizabeth awakened her three or four times during the night and Mrs Todd did not get much sleep. Mrs Todd thought that Elizabeth might have some wind and obtained Infacol from a pharmacy for that the following day and thought that it helped. She noted that Elizabeth was teething and tried to find things that would comfort her. She obtained a product called Brauer Calm and used that for Elizabeth. There was some speculation at the Inquest about whether this material may have played a part in the Elizabeth's death, but all medical witnesses discounted any theory along those lines. Mrs Todd stated that after the third night Elizabeth settled quite well and was starting to sleep through. She felt that Elizabeth was settling into a pattern. Mrs Todd described her routine with Elizabeth and referred to the use of the U-shaped pillow. She stated that Elizabeth would have a morning sleep starting between 10:30 and 11:30 and would sleep for a couple of hours. Mrs Todd does not wear a watch but said that she would put Elizabeth down to sleep according to Elizabeth's mood and not the clock. Mrs Todd would put Elizabeth on her side within the U-shaped pillow and give her a bottle by propping it on the pillow. Mrs Todd confirmed that Elizabeth could not hold the bottle. Mrs Todd stated that generally she would wrap Elizabeth before putting her down to sleep.

9.18. Mrs Todd said that on 30 June 2004 she put Elizabeth down to sleep in the cot with a bottle in the middle of the morning. Mrs Todd then went and did some housework. Elizabeth grizzled at the start because she had lost the bottle and Mrs Todd went and replaced the bottle in Elizabeth's mouth. Elizabeth was wrapped. The U-shaped pillow was at the top of the cot and the bottle was on the right hand side of the pillow. Elizabeth was in the middle of the U-shape part of the pillow so that she could take the bottle. Elizabeth was lying with her head turned to her left. Mrs Todd was shown a photograph which had been taken by investigating police of the cot with the U-shaped pillow placed at the head of the cot. She said that the photograph showed

the pillow in the position it was occupying when Elizabeth was put to bed. Mrs Todd stated that Elizabeth had her head on the mattress about 1 inch or 2.5 centimetres from the U-shaped pillow itself. The bottle was resting on the pillow in such a way that Elizabeth could take it in her mouth.

9.19. Mrs Todd was asked about what she said to police about the time at which she found Elizabeth unresponsive in the cot. Mrs Todd conceded that she did not check the time and conceded that her estimate may well have been wrong. She informed the police that Elizabeth was found unresponsive in the cot at 12:30 pm. In her evidence Mrs Todd thought it must have been later than this because the ambulance arrived at approximately 1:30 pm. She said that it was no more than five minutes from when she discovered Elizabeth not breathing until she called the ambulance.

9.20. Some criticism was levelled at Mrs Todd at the Inquest because of her uncertainty about timing. It was suggested on the one hand that if her original estimate as given to police was correct, she delayed calling an ambulance for a considerable amount of time before acting. On the other hand it was suggested that if she did not discover Elizabeth until closer to 1:30 pm, then she had left Elizabeth unattended for too long.

9.21. I do not think that Mrs Todd was attempting to conceal anything in relation to the discovery of Elizabeth. I consider that she most likely discovered Elizabeth closer to 1:30 pm, and did act quickly in calling an ambulance when she discovered that Elizabeth was not breathing. She said that after she put Elizabeth down in the cot she went about ordinary household tasks such as washing dishes, washing clothes and hanging them out, and vacuuming.

9.22. Mrs Todd stated that when she discovered Elizabeth her face was turned into the mattress. She said that Elizabeth was lying on her front and was still wrapped although her hands were outside of the wrapping material. Mrs Todd pulled the wrapping off Elizabeth but Elizabeth was cold to the touch. She attempted to do mouth to mouth resuscitation and then made a call to the ambulance service. The ambulance arrived no more than five minutes after she made the call. The ambulance service operator told her to put Elizabeth on the floor and carry out chest compressions. Mrs Todd followed these instructions.

## 10. The U-shaped pillow

10.1. A considerable amount of material has been published to the effect that it is an extremely unwise and unsafe practice to place a baby in a cot with a U-shaped pillow or with other similar soft toys or objects. Dr Cala found that the cause of Elizabeth's death was the combined effects of asphyxia and inhalation of gastric contents[37] and I so find. Dr Cala considered that the U-shaped pillow had probably caused a smothering effect.

10.2. Professor Roger Byard said that he did not think that the "absences" or "seizures" which were reported in relation to Elizabeth and discussed earlier in these findings had any likely impact upon her cause of death. He said:

> 'So I don't think we really know. Its possible that there was some sort of episode that was a seizure but I think all that would have done is predispose her to asphyxiate and aspirate on her gastric contents because we know she was found in that position.'[38]

10.3. Professor Byard gave evidence about the undesirability of the use of a U-shaped pillow with a sleeping infant. However, he did not go so far as to assert that in this particular case the U-shaped pillow was instrumental in the outcome. Notwithstanding this, I consider it more likely than not that the U-shaped pillow did have a role to play in relation to Elizabeth's tragic death. This case is another tragic reminder that U-shaped pillows should not be used with babies, and particularly not in conjunction with bottles. This message has been the subject of previous inquest findings, and various publications by authors including Professor Byard. It appears that the message has still not been received in some quarters, and I can only hope that this tragic case will afford an opportunity for the message to be repeated and reinforced. I do not think that Elizabeth's reported absences or seizures played a role in her tragic death. In my opinion, the most likely situation was that the U-shaped pillow restricted her ability to breathe freely once she had wriggled into a position in which her face was obstructed by the pillow itself.

## 11. The assertions that the Todds were unsuitable carers

11.1. When the Inquest was under way, the Court was contacted by a person claiming some knowledge of the Todds, and claiming to be in possession of information which would be of assistance to the Court. This person gave evidence. She was the

[37] See Exhibit C21a, post mortem report of Dr Allan Cala
[38] Transcript, page 458

grandmother of a child for whom the Todds had provided foster care some years previously. She clearly had a number of grievances against the Todds. However, the grievances were, in my opinion, typical of the tensions which arise between the birth families of children in care and the foster carers who are entrusted with the care of those children by reason of the circumstances which lead to the children not being able to be cared for by their own birth families.

11.2. It became apparent during the Inquest that a number of other complaints had been made against the Todds by people involved with children who had been cared for by the Todds in the past. In my opinion, these complaints also fell into the category of the kind of complaint that would typically be made against a foster carer by aggrieved family members. In reaching this conclusion, I have regard to the fact that it is to be expected that the families of children who are placed in alternative care are likely to have strong emotions and indeed anger about the circumstances in which their children or grandchildren are placed with alternative carers. It is in the nature of things that many allegations are made against foster carers. Many such allegations are never substantiated. In the end, none of the material which was provided to me in relation to previous complaints against the Todds really assisted me in investigating the cause or circumstances of Elizabeth's death. However, given the potential relevance of this material, I considered that it was necessary to allow it to be produced to me.

11.3. I requested that Counsel for the Department for Families and Communities gather together all material referring to complaints made against the Todds, and prepare a list of all relevant complaints. This list was then considered by Counsel Assisting me and Counsel representing Michelle Edwards. After that consideration, the potentially relevant material was narrowed down to complaints relating to three children. That material was then placed into a book which was admitted in evidence as Exhibit C25. I considered the material, but it does not assist me in reaching a conclusion about Elizabeth's death or the circumstances leading to it. It was theoretically possible that this material may have been relevant in the sense that it might have provided evidence of complaints which, if properly investigated, might have led to the Todds being deregistered as carers. If that had occurred, then it was theoretically possible that the Todds may not have been registered as carers at the time that Elizabeth was to be placed, and accordingly may not have been in charge of Elizabeth on the day of her

death. However, none of the material would have provided a sufficient basis for the deregistration of the Todds.

11.4. Most of the material can be ascribed to the kinds of grievances which I have already referred to. I do not consider it necessary to refer any further to this aspect of the matter in these findings, other than to note that this aspect of the Inquest demonstrated that in 2004, Families SA had no central computerised record keeping system that would enable the agency to keep track of complaints made against foster carers in a strategic manner. Complaints would be dealt with at individual district office level, and no central means of tracking complaints and ascertaining the existence of any pattern was available within the Department. This clear deficiency in Departmental record keeping has been addressed since 2004, according to evidence given by Mr Steven Edginton, who is the Manager of the Special Investigations Unit within the Department for Families and Communities. That Unit has responsibility for the investigation of all allegations made against carers of children in care. It is not necessary to describe Mr Edginton's evidence at any length in these findings. It is sufficient to note that, at least since 2004, any allegations relating to a particular person are centrally recorded within Families SA, and it seems to me probable that the system would allow any pattern that might emerge to be detected at an early stage.

## 12. The training provided by Anglicare to foster carers

12.1. The evidence at Inquest was that there was, prior to Elizabeth's death, no training specifically related to the care of babies and very young children by Anglicare[39]. Ms Battye explained why this was so. She explained that Anglicare had limited funding from the Government and accordingly it determined priorities about the type of training that would be provided to foster carers. Ms Battye said that foster carers would be surveyed on an annual basis to find out what they believed their training requirements were. Anglicare would then prioritise their training to take into account the preferences of the foster carers as indicated in the survey. They would also carry out a risk assessment of their own as to where the focus of training programs should be directed. As a result of this they focussed on matters predominantly relating to

[39] Evidence of Margaret Battye – Transcript, page 260

older children including attachment, loss and grief, managing challenging behaviours and child development[40].

12.2. Mr Schrapel also said in evidence that, prior to Elizabeth's death, training priorities within Anglicare were prioritised according to a risk assessment. He said that Anglicare was looking for areas of vulnerability and that this led to a focus on older children:

> '… children that had actually experienced quite considerable distress and, for want of a better word, damage at the time that they came into care: children with special needs, disabilities; children that had been sexually abused, in particular, I mean, these were high-risk areas for us in terms of equipping carers to be able to manage those sorts of situations. I mean, one would argue that they are the extraordinary situations of caring.'[41]

Mr Schrapel went on to say:

> 'Well, they're also older - they're also children that are probably more at risk of things like suicidal behaviours and, you know, they are particular risks we're facing, particularly with children who've actually got mental-health problems.'[42]

Mr Schrapel conceded that this risk assessment resulted in a focus upon older children rather than babies:

> 'The risk analysis indicated where our high risks were and they were the areas that we dedicated particular resources and training to, that's true.'[43]

12.3. After Elizabeth's death, partly as a result of her death and other factors, Anglicare did put in place a training package specifically directed to carers of children under the age of two[44]. Mr Schrapel also said that the present situation at Anglicare is that children under the age of two will not be placed with carers who have not undertaken specific training for the care of such children[45]. This evidence was echoed by Ms Morrison:

> '.. they would now not be approved for that age group unless they attended the formal training for carers for children under two.'[46]

12.4. I find that there was no formal training available for the care of children under the age of two. I find that no such training was available to, nor provided to, the Todds. I find that since the death of Elizabeth, formal training for children under the age of two

---

[40] Transcript, page 259
[41] Transcript, page 485
[42] Transcript, page 485
[43] Transcript, page 485
[44] Evidence of Mr Schrapel – Transcript, pages 533 – 534
[45] Transcript, page 571
[46] Transcript, page 657

has been introduced by Anglicare. I find that persons will not now be permitted to care for children under the age of two unless they have undergone that specific training.

12.5. The introduction of specific training for very young children since the death of Elizabeth is an implicit acknowledgement of a deficiency in the system as it existed prior to her death. Had such training been available for Mrs Todd, it is possible that she may not have placed Elizabeth in a cot with a U-shaped pillow. It is possible that such training may have prevented what was, in all probability, an avoidable death.

12.6. I agree with the changes which have been introduced since Elizabeth's death. I endorse the provision of specific training for foster carers who have charge of children under the age of two.

## 13. Mrs Todd's general health

It is clear on the evidence that Anglicare through its employees was well aware of Mrs Todd's various medical conditions, including her carpel tunnel syndrome. It is a matter of concern that Anglicare would nevertheless be tempted to place a very young child in the care of Mrs Todd. The decision to place a very young child in the care of Mrs Todd was made against the background of Elizabeth's numerous previous placements, and the compelling need to find a further carer for Elizabeth in view of the sickness of her then foster carer. I assume that if another carer had been available who had not had some of the health problems faced by Mrs Todd, Of Anglicare would have been likely to place Elizabeth with that person instead.

## 14. Recommendations

14.1. I recommend that for foster carers, education and training should be compulsory not only prior to registration, but as a necessary prerequisite to the renewal of registration.

14.2. I recommend that there should be an objective assessment of the aptitude of the foster carer as part of their training and that foster carers should achieve an acceptable level of knowledge about the caring of children.

14.3. I recommend that the assessment of foster carers for registration should take into account their physical capabilities together with their fitness and energy levels, with a

view to ensuring that their physical capabilities match the demands that would be anticipated in caring for children of the ages for which the carers are registered.

14.4. I recommend that foster carers should be provided with a summary of all relevant details about the history of a child coming into their care in order that they can make proper arrangements for the child's care.

14.5. I recommend that the Minister for Families and Communities give consideration to the appropriateness of the participation of Anglicare and other providers in the process of assessment and review of foster carers. This should include a consideration of whether the present arrangement is consistent with the Families and Communities Act 1972, and if so, whether it is in any event desirable given the conflicting objectives referred to earlier in this finding.

14.6. I recommend that the Minister for Health issue a further reminder to the general public about the serious risks involved in placing a baby in a cot with U-shaped pillows.

*Key Words: Asphyxia; Foster Care; Infant deaths; U-shaped pillow.*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 20th day of September, 2007.*

*State Coroner*